

# **EXHIBIT QQ**

**Alison Cohen**

---

**From:** Stoelting, David [StoeltingD@SEC.GOV]  
**Sent:** Monday, October 25, 2010 4:21 PM  
**To:** Martin P. Russo; Mehraban, Lara; McGrath, Kevin  
**Cc:** acohen@gkblaw.com; Martin H. Kaplan  
**Subject:** RE: Discovery Responses

Marty – We see no reason to amend the interrogatory responses. In addition, your email below incorrectly states that we have taken the position that the names and contact information of persons that communicated with the SEC have been withheld. In fact, in our interrogatory responses we provided the names and contact information for more than 50 people with whom we communicated. If you mean to say that we did not provide a list of the FINRA employees that we talked to, then you should explain the relevance of such a list. We will provide a privilege log in 2 weeks.

On a separate point, we plan to proceed with our review of the materials on the hard drives we produced to you on Sept. 2. Nearly two months have passed since we provided these hard drives to you with the electronic images from the search. At the time, we agreed to your request to conduct a privilege review of the drives, and we agreed not to review the drives ourselves pending your privilege review. We also said that we would try to obtain a custodian list from the USAO, but we have not yet received the custodian list and we do not know if or when we will receive it.

Under these circumstances, we must proceed with our review. There is an evidentiary hearing on the trust/annuity issues on November 16, and our exhibit list in due November 12, so it is important that we review the drives for material relevant to the hearing. In addition, you have had 8 weeks to conduct a privilege review, which seems more than fair.

---

**From:** Martin P. Russo [<mailto:mrusso@gkblaw.com>]  
**Sent:** Monday, October 25, 2010 2:46 PM  
**To:** Stoelting, David; Mehraban, Lara; McGrath, Kevin  
**Cc:** [acohen@gkblaw.com](mailto:acohen@gkblaw.com); 'Martin H. Kaplan'  
**Subject:** Discovery Responses

Lady and Gentlemen:

Please call me this afternoon to discuss the SEC's position with respect to Smith and McGinn's interrogatories and document requests. We have attempted to call each of you, but were unsuccessful. We would like to meet and confer on two issues so that we can include them on tomorrow's conference call with Judge Homer if necessary. I am sure the Court would appreciate the efficiency of not having to hold another conference. With respect to the former, our position is that the names and contact information of persons with whom the SEC has discussed our clients or the subject matter of this litigation is not privileged in any way. Please advise whether you will amend your responses to provide this information. With respect to the latter, Rule 26 requires that a party asserting privilege as a ground for not producing a document provide a privilege log so that the requesting party and the Court may assess the claim of privilege. You have failed to provide a log at this time. Please advise whether you will provide one shortly.

Best,

Marty

**Martin P. Russo, Esq.**  
GUSRAE KAPLAN BRUNO & NUSBAUM PLLC  
120 Wall Street, 11th Floor  
New York, New York 10005  
(212) 269-1400  
[www.gkblaw.com](http://www.gkblaw.com)

**This transmission may contain information that is privileged, confidential, legally privileged, and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the information contained herein (including any reliance thereon) is STRICTLY PROHIBITED. If you received this transmission in error, please immediately contact the sender and destroy the material in its entirety, whether in electronic or hard copy format.**

**This communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the tax laws of the United States, or promoting, marketing or recommending to another party any transaction or matter addressed in this communication.**

**Internet communications cannot be guaranteed to be secure or error-free as information could arrive late, contain viruses or be intercepted, corrupted, or lost. Gusrae Kaplan Bruno & Nusbaum PLLC does not accept liability for any errors or omissions in the content of this message which arise as a result of internet transmission. Although this transmission and any attachments are believed to be free of any virus or other defect that might affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Gusrae Kaplan Bruno & Nusbaum, PLLC for any loss or damage arising in any way from its use.**