

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Rhode Island

Securities & Exchange Commission

Plaintiff

v.

Patrick Churchville, et al.

Defendant

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Civil Action No. 15-CV-000191-S-LDA

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Keeper of Records, Commerce Bank & Trust Company, 386 Main Street, Worcester, MA 01608-1709

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attached Requests.

Place: Donoghue Barrett & Singal, PC One Cedar Street, Suite 300 Providence, RI 02903	Date and Time: 11/06/2015 4:00 pm
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/23/2015

CLERK OF COURT

OR /s/ Nicholas L. Nybo

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Stephen F. DeI Sesto, as Receiver, who issues or requests this subpoena, are: Nicholas L. Nybo, One Cedar St., Suite 300, Providence, RI, nnybo@dbslawfirm.com, (401) 454-0400

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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Civil Action No. 15-cv-000191-S-LDA

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* Keeper of Records, Commerce Bank and Trust Company was received by me on *(date)* 10/23/2015 .

I served the subpoena by delivering a copy to the named person as follows: In hand to Kim Valdez authorized to accept on behalf of the Keeper of Records, Commerce Bank and Trust Company at 386 Main Street, Worcester, Ma. 01608 on *(date)* 10/26/2015 ; or

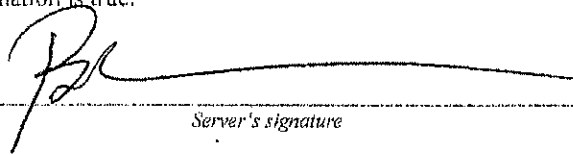
I returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of \$

My fees are \$ for travel and \$ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: 10/26/2015


Server's signature

B. Keith Wheeler
Printed name and title
2 Park Plaza, Suite 409
Boston, MA 02116

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) **For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) **For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) **Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,)
)
 Plaintiff,)
)
 vs.)
)
 PATRICK CHURCHVILLE,)
 CLEARPATH WEALTH MANAGEMENT, LLC,)
)
 Defendants,)
)
 and)
)
 CLEARPATH MULTI-STRATEGY FUND I, L.P.,)
 CLEARPATH MULTI-STRATEGY FUND II, L.P.,)
 CLEARPATH MULTI-STRATEGY FUND III, L.P.,)
 HCR VALUE FUND, L.P.,)
)
 Relief Defendants.)

Case No. 15-CV-000191-S-LDA

**EXHIBIT A TO SUBPOENA DIRECTED TO
COMMERCE BANK & TRUST COMPANY**

In accordance with the provisions of Fed. R. Civ. P. 45, Stephen F. Del Sesto, as Receiver, commands Commerce Bank & Trust Company to produce or make available for inspection and copying all documents, as defined below, requested herein no later than November 6, 2015 at 4:00 p.m. to Nicholas L. Nybo, Esq., Donoghue Barrett & Singal, P.C., One Cedar Street, Suite 300, Providence, Rhode Island 02903.

Definitions

As used herein, the words and phrases set out below shall have the following meanings:

1. “Commerce Bank” shall mean Commerce Bank & Trust Company, its officers, directors, employees, partners, and any and all other persons or entities acting or purporting to act on its behalf or subject to its direction and control.

2. “Document” is used in the broadest sense possible and shall mean, without limitation, any “Communication” as defined herein, any written, recorded, or graphic matter, in any language, whether produced or reproduced or stored on paper, cards, tapes, films, computer storing devices, or any other media, and shall include, without limiting the generality of the foregoing, correspondence, records, statements, letters, e-mails (whether or not deleted or archived), instant messages, text messages, courtesy copies of correspondence or letters, telegrams, other written communications, contracts, agreements, notes, memoranda, recordings, computer printouts or media, analyses, projections, work papers, orders, invoices, diaries, calendars, desk calendars, minutes, affidavits, books, photographs, telephone messages, transcripts, summaries, opinions, proposals, reports, studies, evaluations, estimates, journals, appointment books, lists, tabulations, or any other writings.

3. “Communication” shall mean the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), including, without limitation, any correspondence, contact, conversation, memorandum, meeting, note, discussion, or other kind of written, electronic, and/or oral exchange between two or more persons including, but not limited to, all telephone conversations, correspondence, electronic mail (“e-mail”), instant messaging or other electronic exchanges, face to face conversations, meetings, visits, conferences, or any other conveyance of information, whether orally, in writing, electronically or otherwise, and any memorandum or other document which abstracts, digests, transcribes, records, reflects or memorializes, in whole or in part, the substance of any such communication.

4. “Correspondence” is defined as any communications between agents or representatives of Commerce Bank or any communications between agents or representatives of Commerce Bank and Patrick E. Churchville or any other agent or representative of ClearPath Wealth Management, LLC, ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., ClearPath Multi-Strategy Fund III, L.P. or ClearPath Private Equity Fund L.P.

5. “Related to” with respect to any given subject, shall mean constituting, pertaining to, concerning, in connection with, reflecting, respecting, regarding, concerning, referring to, based upon, stating, showing, evidencing, establishing, supporting, negating, contradicting, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, analyzing, discussing, specifying, identifying, or in any manner logically, factually, indirectly or directly, or in any other way, connecting to the matter addressed in the request, in whole or in part.

6. The term “Request” refers generically to any of the separate enumerated requests listed under “Documents Requested.”

7. The term “including” shall be construed to mean including without limitation.

8. The connectives “and” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of the Requests all information that might otherwise be construed to be outside of its scope.

9. The terms “all,” “any,” “each,” and “every” shall each be construed as both “each” and “every” to bring within the scope of the Requests all documents which might otherwise be construed to be outside of its scope.

10. With regard to the terms contained herein, all terms used in the singular shall include the plural, and all terms used in the plural shall include the singular. All other terms shall be given their usual and regular dictionary meaning.

INSTRUCTIONS

1. Please produce all responsive documents, including electronically stored data, with all attachments.
2. Please supplement your responses as required by the Federal Rules of Civil Procedure.
3. If you claim that any Request calls for divulging the production of privileged or work product materials, and if you seek to assert such privilege or protection, then please provide a privilege log detailing for each withheld document, the type of the document, its date, author(s), signatories, or recipient(s), the nature of the privilege(s) claimed and a description of the information you claim is privileged.
4. Whenever a document is not produced in full or is produced in redacted form, state with particularity the reason or reasons it is not being produced in full and describe to the best of your knowledge, information, and belief, those portions of the document which are not being produced.
5. Any Request may be in whole or in part redundant of another Request, or may be more or less specific or general than another Request. If so, your responsibility to respond to each Request is in no way altered, other than that you need not produce more than one copy of a given document in the event that two Requests call for the same document.
6. Documents attached to each other or contained in a file, folder, or other binder must not be separated.

7. Each Request shall be responded to fully unless you state a good faith objection for any failure to fully respond. You shall state with specificity all grounds upon which you rely for asserting your objection. If an objection pertains to only a portion of a Request, or to a word, phrase, or clause contained within a Request, an objection to that portion only should be stated and response to the remainder of the Request is required.

DOCUMENT REQUESTS

1. Any and all records, documents, correspondence and statements related to accounts held by Patrick E. Churchville, ClearPath Wealth Management, LLC, ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., or ClearPath Multi-Strategy Fund III, L.P.

2. Any and all records, documents, correspondence and statements related to the \$7,000,000 line of credit extended by Commerce Bank (closed on or around December 22, 2011) to ClearPath Multi-Strategy Fund I, L.P. (and any other applicable ClearPath funds that may invest in Feingold O’Keeffe Distressed Loan Fund, LP) secured by investment shares in Feingold O’Keeffe Loan Fund, LP.

3. Any and all records, documents, correspondence and statements related any repayment of the \$7,000,000 line of credit extended by Commerce Bank to ClearPath Multi-Strategy Fund I, L.P. (and any other applicable ClearPath funds that may invest in Feingold O’Keeffe Distressed Loan Fund, LP) secured by investment shares in Feingold O’Keeffe Loan Fund, LP.