

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

AUG - 7 2006

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

OKLAHOMA DEPARTMENT OF)
SECURITIES ex rel. IRVING L.)
FAUGHT, ADMINISTRATOR,)

Plaintiff,)

v.)

BARRY POLLARD AND)
ROXANNE POLLARD,)

Defendants and Third Party)
Plaintiffs,)

v.)

AXA ADVISORS, LLC, a Delaware)
Limited Liability Company; and AXA)
EQUITABLE LIFE INSURANCE)
COMPANY, f/k/a EQUITABLE LIFE)
ASSURANCE SOCIETY OF THE)
UNITED STATES,)

Third Party Defendants.)

Case No. CJ-2005-3799
Hon. Vicki Robertson

**AXA ADVISORS, LLC and AXA EQUITABLE LIFE INSURANCE COMPANY'S
MOTION TO COMPEL ARBITRATION AND BRIEF IN SUPPORT**

Third Party Defendants AXA Advisors, LLC, a Delaware Limited Liability Company; and AXA Equitable Life Insurance Company, f/k/a Equitable Life Assurance Society of the United States (collectively "AXA"), file their Motion to Compel Arbitration pursuant to the Oklahoma Uniform Arbitration Act, 12 O.S. §§1851-1881 and the Federal Arbitration Act, 9 U.S.C. §§1-16 (1994 & Supp. 2001), requesting entry of an order compelling arbitration of third party plaintiffs', Barry Pollard and Roxanne Pollard

("Third Party Plaintiffs"), claims asserted in this action. In support, AXA shows the Court as follows:

STATEMENT OF FACTS

A. Factual Background

On or about March 24, 2000, Third Party Plaintiff Barry Pollard opened account no. 64A-003702 (the "Account") with AXA through Marsha Schubert at the Crescent, Oklahoma, branch office. See Brokerage Account Application and Agreement, Part 1 and Part 2, attached collectively as Exhibit 1 (the "Account Agreement").¹ This is the Account upon which the Pollards base their claims against AXA. The Account Agreement with AXA contains the following valid and enforceable agreement to arbitrate:

21. ARBITRATION DISCLOSURES.

I understand that:

- (i) Arbitration is final and binding on the parties.**
- (ii) The parties are waiving their right to seek remedies in court, including the right to a jury trial.**
- (iii) Pre-arbitration discovery is generally more limited than and different from court proceedings.
- (iv) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings by the arbitrators is strictly limited.
- (v) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

Any controversy arising out of or relating to your business or this agreement shall be subject to arbitration. This agreement and its enforcement shall be governed by the laws of the State of New York. Arbitration shall be conducted before the New York Stock Exchange, Inc., or any other national securities exchange on which a transaction giving

¹ Personal identification information (social security number and mother's maiden name) has been redacted from Exhibit 1 to prevent public disclosure. An unredacted copy will be made available to counsel for the Pollards and to the Court upon request.

rise to the claim took place (and only such exchange) or before the National Association of Securities Dealers, Inc., as I may elect and in accordance with the rules of the selected organization. Arbitration must be commenced by service upon the other party of a written demand for arbitration or a written notice of intention to arbitrate....

Exhibit 1 at ¶ 21(emphasis added).

As the emphasized text indicates, the arbitration clause applies to prior and subsequent contracts entered into between the Pollards and AXA.

B. Procedural History

This case relates to an action filed on October 14, 2004, by the Oklahoma Department of Securities (“ODS”) against Marsha Schubert (“Schubert”) alleging, *inter alia*, violations of the Oklahoma Uniform Securities Act of 2004. Case No. CJ-2004-256 in the District Court of Logan County, State of Oklahoma (the “Schubert Action”). In the Schubert Action, the ODS alleged that Schubert offered and sold unregistered securities, effectively operating a ponzi scheme. On May 11, 2005, the ODS filed an action against the Pollards alleging unjust enrichment and fraudulent transfer as a result of the Pollards’ receipt of cash and other property that were the proceeds of the unlawful activities of Schubert (the “Complaint”). On January 25, 2006, the Pollards filed their Answer to the Complaint. In addition to denying the allegations made by the ODS, and as part of their affirmative response to the Complaint, the Pollards asserted a Third Party Petition against AXA, alleging that “AXA and AXA Equitable failed to meet their obligations to supervise their agent Schubert and the AXA or AXA Equitable in Crescent, Oklahoma office [sic].” See, Third Party Petition, at ¶ 26. The Pollards contend that AXA is liable for the allegedly criminal activity of its former agent, Marsha Schubert, under theories of Actual Fraud, Agency, Negligent Supervision, Respondeat

Superior and Constructive Fraud. Since the service of the Third Party Petition, the time for AXA to answer or otherwise plead in response to the Third Party Petition was extended by agreement until August 7, 2006.

ARGUMENT AND AUTHORITIES

A. Standard for Determination of a Motion to Compel Arbitration.

Because of the agreement to arbitrate contained in the Account Agreement, the Oklahoma Uniform Arbitration Act, 12 O.S. §§1851-1881 (2006) ("OUAA"), and the Federal Arbitration Act, 9 U.S.C. §§1-16 (1994 & Supp. 2001) ("FAA"), are applicable to this case and control the results of this Motion. The Oklahoma Supreme Court has stated "[i]n Oklahoma state courts, the OUAA determines how proceedings on an arbitration shall be conducted so long as the OUAA does not frustrate the purposes underlying the FAA." *Rogers v. Dell Computer Corp.*, 2005 OK 51, 127 P.3d 560, 564 (Okla. 2005); *but see, Wilkinson v. Dean Witter Reynolds, Inc.*, 1997 OK 20, 933 P.2d 878, 879 (stating in dicta, "[A]rbitration agreements covering brokerage accounts are governed by the Federal Arbitration Act.").

With regard to compelling arbitration when one party ignores the agreement to arbitrate and brings suit in court instead, the OUAA provides, in relevant part, that "an application for judicial relief under the Uniform Arbitration Act must be made by application and motion to the court and heard in the manner provided by law or rule of court for making and hearing motions." 12 O.S. § 1856(A)(2006). The OUAA further provides in §1858(A)(2) as follows:

On application and motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

* * *

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate. The court may also tax costs against the party opposing the motion if the court concludes the opposition was not brought in good faith.

12 O.S. §1858(A)(2)(2006).

"[A] party seeking to compel arbitration must present a statement of the law and facts showing an enforceable agreement to arbitrate the issues presented by the petition." *Rogers* 127 P.3d at 565 (citing Oklahoma D. Ct. R. 4). Here AXA has presented the Account Agreement that satisfies this requirement. In making its decision with regard to a motion to compel arbitration, "the district court should be mindful of the OUAA's policy favoring arbitration; ambiguity falls on the side of the existence of an agreement to arbitrate." *Rogers*, 127 P.3d at 565 (citing *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983); *Wilkinson*, 933 P.2d at 879; *Shaffer v. Jeffrey*, 1996 OK 47, 915 P.2d at 917).

B. This Court Should Dismiss the Pollards' Third Party Petition in Favor of Arbitration.

In the instant case, the plain language of the Account Agreement requires arbitration and, therefore, dismissal as a matter of law. The OUAA requires that agreements to arbitrate must be enforced:

An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

12 O.S. §1857(A)(2006) (emphasis supplied). The FAA contains a nearly identical provision.²

Moreover, public policy, both under the OUAA and under the FAA, favors arbitration. *Northland Ins. Co. v. Kellogg*, 1995 OK CIV APP 84, 897 P.2d 1161, 1162 (citing *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 US 1, 24 (1983) (“[Q]uestions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration.”)); see also, *Rogers Realty, Inc. v. Smith*, 2003 OK CIV APP 74, 76 P.3d 71, 72; *Rollings v. Thermodyne Indus., Inc.*, 1996 OK 6, 910 P.2d 1030, 1036. Arbitration clauses should be construed as broadly as possible. *Fleming Companies, Inc. v. Tru Discount Foods*, 1999 OK CIV APP 18, 977 P.2d 367, 371. To that end, any doubts concerning the scope of an arbitration agreement should be resolved in favor of arbitration. *Fleming Companies, Inc.*, 977 P.2d at 371 (citing *Moses H. Cone Memorial Hosp.*, 460 U.S. at 24-25). “[W]hether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay or a like defense to arbitrability,” it should be resolved in favor of arbitration.” *Moses H. Cone Memorial Hosp.*, 460 U.S. at 24.

In this case, the Pollards allege joint claims against AXA for actual and constructive fraud and negligent supervision arising out of the management and

² The parallel provision of the FAA provides:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

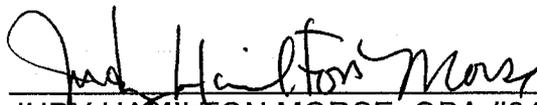
9 U.S.C. §2.

supervision of the Pollards' Account with AXA. Such claims clearly fall within the language of the arbitration clause, which requires, "Any controversy arising out of or relating to your business or this agreement shall be subject to arbitration." Accordingly, the Pollards are bound by the arbitration clause, and this Court should dismiss the Pollards' Third Party Petition in favor of arbitration. Dismissal of the Third Party Petition will have no impact on the claims brought by the OSD, which can proceed in the normal course.

CONCLUSION

For the reasons set out herein, AXA respectfully requests that this Court grant its Motion to Compel Arbitration.

Respectfully submitted,



JUDY HAMILTON MORSE, OBA #6450
REGAN STRICKLAND BEATTY, OBA #20349
- Of the Firm -
CROWE & DUNLEVY,
A Professional Corporation
20 North Broadway, Suite 1800
Oklahoma City, OK 73102
(405) 235-7700
(405) 239-6651 Facsimile

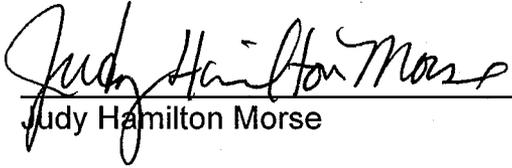
ATTORNEYS FOR AXA ADVISORS, LLC and
AXA EQUITABLE LIFE INSURANCE
COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of August, 2006, a true and correct copy of the foregoing document was mailed by first class mail, postage prepaid, to:

Richard Parrish
Shawn Fulkerson
Carloie Rozell
Fulkerson & Fulkerson, PC
10444 Greenbriar Place
Oklahoma City, OK 73159

Amanda Cornmesser
Gerri Stuckey
Melanie Hall
Oklahoma Department of Securities
First National Center, Suite 860
120 N. Robinson
Oklahoma City, OK 73102



Judy Hamilton Morse

Application (Part 1)



1290 Avenue of the Americas, New York, NY 10104

RR#

Customer Information

6-A-003702

Individual JTWROS Ten/Com Trust* Partnership* IRA Qualified Plan
 UGMA/UTMA Association* Corporation* Estate* Other* Attach appropriate DLJ retirement plan paperwork.
 Attach Account Application - Part 2. Community Prop.* ***Additional documentation required.**

Account Holder: Barry L. Pollard Birthdate: REDACTED Soc Sec or Tax ID #: REDACTED
 Joint Account Holder (if applicable): _____ Birthdate: _____ Soc Sec or Tax ID #: _____
 Mailing Address: 102 S. Van Buren Street Home Phone: 580-758-3818
 City: Enid State: OKla Zip Code: 73703 US Citizen Resident Alien
 Non-Resident Alien
 Home Address If Different From Above: _____ Street City: _____ State: _____ Zip Code: _____ Email Address (optional): _____
 Employed By: Neurological Associates Occupation: Doctor Years Employed: 18 yrs Mother's Maiden Name: _____
 Address: 102 S. Van Buren, Enid, OK Business Phone: 580-242-7030 Primary Account Holder:
 Joint Account Holder Employed By: _____ Occupation: _____ Years Employed: _____ Marital Status: Single
 Married Widowed
 Address: _____ Business Phone: _____ # of dependents: 3

Financial Information - (Complete All Areas)

Investment Objective
 Income Growth Aggressive Growth
 Tax-Deferred Growth/Income
Risk Tolerance
 Low Moderate High

Annual Household Income
 Earned Income: REDACTED
 Unearned Income: _____
 Retirement Income (Include Social Security): _____
 Total: _____

Investment Experience
 Stocks: # of Years: 2+ Still Own:
 Bonds: # of Years: Still Own:
 Mutual Funds/UITs: # of Years: Still Own:
 Variable Annuities: # of Years: Still Own:
 Fixed Annuities: # of Years: Still Own:
 Other: _____ # of Years: Still Own:
 None: _____ # of Years: Still Own:

Marginal Tax Bracket: _____ % Net Worth (excludes residence): REDACTED

Total Liquid Assets (BEFORE this investment): REDACTED
 Cash (All Checking, Savings, Money Market Account/Funds): _____
 + All CDs: _____
 + Other (Stocks, Bonds, Mutual Funds): _____
 = TOTAL: _____

Bank Reference: Peoples First (Account #) _____ (Address) 510 Commerce Enid, OK 73703
 Are you or any member of your immediate family affiliated with, or employed by, a member firm of a stock exchange, a bank, trust company or insurance company or the National Association of Securities Dealers, Inc.?
 Yes No
 If Yes to either question, please indicate any such affiliation: _____
 Are you or any member of your immediate family affiliated with, or employed by, AXA Financial, Inc. or any of its subsidiaries or affiliates?
 Yes No
 Are you or a joint account holder a senior officer, director or 10% shareholder of a public company?
 Yes No
 Name of the company: _____

Account Opening Information

Account is being opened in conjunction with a financial plan. I do not want my account information online.

Agreement

To: AXA Advisors, LLC

In consideration of AXA Advisors, LLC accepting this account, I/We hereby acknowledge that I/We have read and understand the terms set forth in the Customer Agreement on the reverse side of this application and agree to such terms.

I/we hereby certify that all the supporting documents I/we have provided are true and correct copies and are complete and still in full force and effect, and I/we agree to notify you in writing prior to placing any order to purchase securities if this is not true. Absent such notification, by placing an order I/we am/are recertifying that all such documents are true, correct and complete, and are still in full force and effect.

Under penalties of perjury, I/we certify (1) that the number shown on this form is my/our correct taxpayer identification number, and (2) that I/we am/are not subject to backup withholding because (a) I/we have not been notified that I/we am/are subject to backup withholding as a result of a failure to report all interest or dividends, or (b) the Internal Revenue Service has notified me/us that I/we am/are no longer subject to backup withholding. (Note: If you have been notified that you are subject to backup withholding and the Internal Revenue Service has not yet advised you that backup withholding has been terminated, strike out item (2).)

I/we certify that my/our personal and financial information is complete and accurate, and agree to notify you of any material change. This Agreement contains a pre-dispute arbitration clause in paragraph 21 on the reverse side of this page. I/We acknowledge receiving a copy of this Agreement. ALL MUST SIGN.

"The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding."

Barry Pollard Exhibit " 1 " 3/24/2000
 Primary Account Holder Signature Date

Masha Schubert AIB 3/24/2000
 Primary Associate Signature Associate Name# Date

Marsha Schubert AIB
 Associate Name/# Associate Name/#

Agency Use Only Approved By Date Headquarters Use Only Approved By Date
 _____ _____ _____ _____ _____ 3/31/00

CUSTOMER AGREEMENT

TO: AXA Advisors, LLC

This is my Customer Agreement with you. In the event you approve my Application and open one or more brokerage accounts on my behalf, I agree as follows:

1. **MEANING OF WORDS IN THE AGREEMENT.** The words "I", "me", "my", "we" and "us" refer to the person(s) or entity that has signed the Application and Agreement. The words "you" and "your" refer to AXA Advisors, LLC. The words "the clearing agent" shall mean the third party clearing agent through which all customer securities accounts shall be carried.
2. **AUTHORITY AND OWNERSHIP.** I represent that I have legal capacity, and am authorized, to enter into this Agreement and have obtained and shall provide you with all necessary authorizations from third parties to open my brokerage account(s) and effect transactions in securities purchased, held and sold by me through you. I shall be the owner of my account(s) or shall have the legal capacity to control the assets in the account(s). Any grant of authorization to you under this Agreement shall also be deemed to be a grant of similar authorization to Pershing.
3. **LIMITED AUTHORIZATION.** I authorize the associate(s) listed on my account application or any successor representative assigned by you to be responsible for my account to be my agent and attorney-in-fact to buy, sell (including short sales) and trade in stocks, bonds, options contracts and any other securities on margin or otherwise in accordance with your terms and conditions for my account and risk and in my name on your books. In addition, I authorize the aforesaid representative to make transactions which would result in uncovered short positions in options contracts or in the uncovering of any existing short position in options contracts. I agree to indemnify and hold you harmless from and to pay you promptly on demand any and all losses arising therefrom or debit balance due thereon.
In all such purchases, sales or trades you are authorized to follow the instructions of the aforesaid representative in every respect concerning my account with you; and the aforesaid representative is authorized to act for me and on my behalf in the same manner and with the same force and effect as I might or could do with respect to such purchases, sales or trades as well as with respect to all other things necessary or incidental to the furtherance or conduct of such purchases, sales or trades. I hereby ratify and confirm any and all transactions with you heretofore or hereafter made by the aforesaid representative or for my account.
This authorization and indemnity is also a continuing one and shall remain in full force and effect until revoked by me in a written notice addressed to you and delivered, but such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation. This authorization and indemnity shall extend to the benefit of your present firm and of any successor firm or firms irrespective of any change or changes at any time in the personnel thereof for any cause whatsoever, and of the assigns of your present firm or any successor firm.
I agree that I am responsible for making all decisions as to each transaction effected in any account of mine at your firm. I understand that each order (to buy, sell or trade) I enter must be complete as to security, quantity, price and duration of the order.
4. **ORAL INSTRUCTIONS.** You may follow my oral instructions and those of my authorized agent, and you shall not be liable for acting upon any such instructions which you believe in good faith to have been so given. I understand that you shall provide me with one or more telephone numbers which may be used for the purpose of giving oral instructions during the hours and on the days permitted by you and that for our mutual protection you may record such telephone conversations.
5. **APPOINTMENT OF AGENT.** I appoint you as my agent to carry out my instructions for the purchase or sale of securities. I authorize you to open or close brokerage accounts with Pershing, to place and withdraw orders, provide information to the clearing agent and to other third parties and take such other steps as are reasonable to carry out my instructions. I understand that you may at any time refuse or limit any transaction which I may wish to effect.
6. **ORDERS AND STATEMENTS.** Reports of the execution of orders and statements of my account shall be conclusive if not objected to in writing within ten business days, after forwarding by you to me by mail or otherwise.
7. **RECEIPT OF PROSPECTUS, ETC.** I will not place any order to purchase securities unless I have received and read a copy of the prospectus, private placement memorandum (PPM) or offering circular (OC) for the security being purchased (excepted for brokerage account transactions for which no prospectus, PPM or OC is required), and I understand that any investment that I make will be on and subject to the terms and conditions set forth in the prospectus, PPM or OC.
8. **INDEBTEDNESS TO AXA ADVISORS, LLC.** If you are unable to settle the purchase or sale of any security because of my failure to make payment or deliver securities in good form, I authorize you to take appropriate steps to cancel the transaction to minimize your loss, and I shall reimburse you for any and all costs, losses or liabilities incurred by you, including attorneys' fees.
Any and all credit balances, securities and other property belonging to me or in which I may have an interest which are held by you or carried for my accounts shall be subject to a general lien for the discharge of my obligations to you; may be carried in general loan accounts maintained by you or by Pershing without notice to me, and all securities may be pledged, repledged, hypothecated or rehypothecated, separately or in common with other securities, for the sum due to you thereon or for a greater sum and without your retaining in your possession and control for delivery a like amount of similar securities or other property. At any time you may in your discretion, without notice to me, apply and/or transfer any securities, cash or other property therein interchangeably between any of my accounts. Whenever, in your discretion, you deem it desirable for your protection, you may, without prior demand, tender or notice, sell any or all securities or other property which may be in your possession or which you may be carrying for me or buy any securities or other property of which my account or accounts may be short, in order to close out in whole or in part any commitment on my behalf. Such sale or purchase may be made at your discretion on any exchange or other market where such business is then transacted. All costs and expenses in connection with any such sale or purchase shall be borne by my account. In enforcing your lien and making any such sales, you shall have the discretion to determine which securities and property are to be sold and which contracts are to be closed.
If I owe you money in the operation of my brokerage account(s), I shall pay the debt on demand. If I fail to pay the debt after demand, you may close my account and liquidate any assets then in it or otherwise held by you and I shall be liable to you for any deficiency. It is understood and agreed that debit balances in any of my accounts shall be charged interest at the prevailing rate as determined by you.
9. **LIABILITY.** Neither you nor the clearing agent shall be liable for any loss or delay caused directly or indirectly by war, natural disasters, government restrictions, exchange or market rulings, interruption or malfunction of communication facilities or other conditions beyond your reasonable control. To the extent permitted by applicable law and the rules of any self-regulatory organization, you shall in no event be liable for indirect, incidental, special or consequential damages, even if you are advised as to the possibility thereof.
10. **CREDIT INVESTIGATIONS.** You may exchange credit information about me with others. You may request a credit report on me and upon request, you will state the name and address of the consumer reporting agency that furnished it. If you extend, update or renew my credit, you may request a new credit report without telling me.
11. **RELATIONSHIP WITH THE CLEARING AGENT.** You may share with, remit to or otherwise pay the clearing agent for its services from your commissions and fees charged to me. I understand and agree that the clearing agent may refuse to accept or carry my brokerage account(s) or to process any transactions which I may wish to effect. I authorize you to accept on my behalf information, advices and notices to me. I understand that summary monthly statements of activity in my brokerage account(s), as well as certain other documents and communications, shall be mailed to me directly by the clearing agent, but that statements shall only be mailed quarterly in the event there are balances or positions in my brokerage account(s) and there has been no other activity. I agree to notify you promptly by telephone (followed by prompt written confirmation) of any error or discrepancy in, or objection to, any confirmation, advice or statement.
12. **RESTRICTED SECURITIES.** I shall not buy or sell any securities of a corporation of which I am an affiliate or sell any restricted securities except in compliance with applicable laws and regulations.
13. **FEES AND CHARGES.** I shall pay the fees and charges shown on your fee schedule which you have given to me or on any amendments. You may change the fee schedule from time to time.
14. **TWO OR MORE BROKERAGE ACCOUNTS.** In the event you open two or more brokerage accounts in my name, I shall be the sole owner of the accounts or shall have the legal capacity to control the assets in the accounts; the accounts shall be kept separate for my convenience only and each account shall unreservedly guarantee each other account.
15. **JOINT ACCOUNTS.** If two persons have signed this Application and Agreement, unless we notify you otherwise and provide such documentation as you require, the brokerage account(s) shall be held by us jointly with right of survivorship (payable to either or the survivor of us). Each joint tenant irrevocably appoints the other as attorney-in-fact to take all action on his behalf and to represent him in all respects in connection with this Agreement. You shall be fully protected in acting upon the instructions of either of us; in sending confirmation advices, notices or other communications to either of us, or in otherwise dealing with either of us. Each of us shall be liable, jointly and individually, for any amounts due to you pursuant to this Agreement, whether incurred by either or both of us.
16. **SEVERABILITY.** If any provision of this Agreement shall be invalid, illegal or unenforceable under any law or regulation, it shall not affect the validity of the remaining provisions of this Agreement which shall remain in full force and effect.
17. **RELATIONSHIP WITH OTHER AGREEMENTS.** The rights and obligations contained within this Agreement shall be in addition to those contained in any other agreement I may enter into or have with you.
18. **AMENDMENTS AND TERMINATION.** You may amend this Agreement at any time in any respect effective five days after you have mailed written notice to me. You may terminate this Agreement, at your discretion, at any time effective upon your sending of written notice to me and, I shall continue to be responsible for any obligation incurred by me prior to termination. It is agreed, as one of the conditions on which you transact business for me, that this Agreement cannot be modified or any of its provisions waived except by a writing signed by an officer of AXA Advisors, LLC and without limiting the foregoing, that (a) no employee or agent of yours shall have authority to modify this Agreement or waive any of its provisions; either orally or (except by an officer of yours) in writing; and (b) no waiver of any provision of this Agreement shall be deemed a waiver of any other provision nor a waiver in any other instance.
19. **ADDRESS FOR PURPOSE OF COMMUNICATION.** I understand that any notice of communication sent by you or the clearing agent will be sent to me at my address as it appears on your books. Should I change my address, I shall notify you at once in writing.
20. **GOVERNING LAW.** I understand that all orders and transactions with respect to my brokerage account(s) shall be subject to the constitution, rules, regulations, customs, usages, rulings and interpretations of the exchange or market, and the clearing facility, if any, where the transactions are executed and/or settled, or if applicable, of the National Association of Securities Dealers, Incorporated and to all applicable laws and regulations. This Agreement shall be governed by the laws of the State of New York.
21. **ARBITRATION DISCLOSURES.**
I understand that:
(i) Arbitration is final and binding on the parties.
(ii) The parties are waiving their right to seek remedies in court, including the right to jury trial.
(iii) Pre-arbitration discovery is generally more limited than and different from court proceedings.
(iv) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.
(v) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
Any controversy arising out of or relating to your business or this agreement shall be subject to arbitration. This agreement and its enforcement shall be governed by the laws of the State of New York. Arbitration shall be conducted before the New York Stock Exchange, Inc. or any other national securities exchange on which a transaction giving rise to the claim took place (and only before such exchange) or before the National Association of Securities Dealers, Inc., as I may elect and in accordance with the rules of the selected organization. Arbitration must be commenced by service upon the other party of a written demand for arbitration or a written notice of intention to arbitrate.
No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement, except to the extent stated herein.

Brokerage Account Application (Part 2)



INITIAL ACCOUNT MINIMUM REQUIREMENT (cash and/or marginable securities)

Gold Account \$10,000
 Platinum Account \$20,000

E. MAILING ADDRESS (if different from primary residence):

Street Address _____ Apt. _____
 City _____ State _____ Zip Code _____

1. ACCOUNT INFORMATION

A. CURRENT BROKERAGE ACCOUNT NUMBER (To be completed by AXA Advisors, LLC):

64 A-003702

B. PLEASE PROVIDE THE FOLLOWING INFORMATION AS IT SHOULD APPEAR ON YOUR ACCOUNT:

Barry Pollard
 Primary Account Owner's Name

Social Security Number Or Tax ID Number _____

REDACTED US
 Date Of Birth _____ Citizenship

Joint Account Owner's Name _____

Social Security Number Or Tax ID Number _____

Date Of Birth _____ Citizenship _____

C. ACCOUNT REGISTRATION TYPE (select one):

- Individual Joint
- Corporation (attach copy of resolution)* Partnership*
- Estate* Profit Sharing Plan*
- Investment Club Trust (attach copy of agreement)
- Other* _____

*Contact AXA Advisors, LLC for additional documentation that must accompany this application. Certain restrictions may apply.

D. PRIMARY RESIDENCE:

102 S. Van Buren
 Street Address _____ Apt. _____
 Enid OK 73703
 City State Zip Code
 580-757-3818
 Home Telephone

2. MONEY MARKET FUND PORTFOLIO (select one)

- Alliance Capital Reserves (PACR)
- Alliance Government Reserves (PAGR)
- Alliance Treasury Reserves (PATR)
- Alliance Institutional Reserves Tax-Free Portfolio (initial minimum \$1,000,000) (PAIB)
- Alliance Institutional Reserves Trust Portfolio (initial minimum \$100,000) (PART)

ALLIANCE MUNICIPAL TRUST PORTFOLIOS:

- General (PAMT)
- California* (PACA)
- Connecticut* (PACT)
- Florida* (PAFL)
- Other _____
- Massachusetts* (PAHS)
- New Jersey* (PANS)
- New York* (PANY)
- Virginia* (PAVA)

*Available to residents of that state only.

A prospectus is included with this application. Unless you indicate otherwise, your cash will be invested in Alliance Capital Reserves. An investment in a money market fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency. Although a money market fund seeks to preserve the value of your investment at \$1.00 per share, it is possible to lose money by investing in a money market fund.

3. CHECKING (complete this section if you want check-writing services)

Please PRINT the information that will appear on checks (not to exceed 32 characters per line):

Barry Pollard
 Primary Account Owner

Joint Account Owner (if applicable)
 102 S. Van Buren
 Street Address _____
 Enid OK 73703
 City State Zip Code
 580-242-7030
 Other Optional Information (e.g., telephone number)

AXA ADVISORS

4. **MASTERCARD®¹** (complete this section if you want debit card(s) issued)

Gold

Platinum

Please print the account owners' name(s) below if you would like the debit card registration to appear differently from section 1:

Barry Pollard

Primary Account Owner's Name

Joint Account Owner's Name

Corporation's Name (For corporate accounts only. Indicate the name of the corporation, if that name is desired on the cards.)

5. **SECURITY**

For security purposes, please indicate your mother's maiden name or code name below. The information is mandatory for all account types.

Primary Account Owner

Joint Account Owner (if applicable)

6. **NO-ANNUAL-MAINTENANCE-FEE IRA (for Platinum accounts only)**

Donaldson, Lufkin & Jenrette Securities Corporation (DLJSC) must be the custodian. The no-annual-maintenance-fee IRA is only available for individual and joint Platinum AXA Asset Accounts. For a jointly owned AXA Asset Account, one IRA fee will be waived. The IRA must belong to the primary or joint account owner.

Individual Retirement Account Number:

7. **ACCOUNT AGREEMENT**

To open an AXA Asset Account, please read the following section carefully and sign in section 8.

I/we hereby request AXA Advisors, LLC to open a brokerage account with the Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation ("Pershing") in the name(s) listed as account holder(s) on this application. I/we further request Bank One (the "Bank") to issue checks and MasterCard® debit card(s) as indicated on this application. Prior to signing below, I/we have received and read the AXA Asset Account Agreement, as currently in effect and as amended from time to time, which governs my/our AXA Asset Account, and I/we agree to be bound by such Account Agreement.

I/we understand that interest on debit balances will be charged and compounded in accordance with the AXA Asset Account Agreement.

New York Stock Exchange Rule 407 prohibits certain account holders from engaging in margin transactions without their employer's prior written consent. I/we understand that Pershing may suspend execution of any trades in my/our account pending receipt of this consent.

I/WE UNDERSTAND THAT PERSHING WILL GRANT MARGIN PRIVILEGES FOR MY/OUR AXA ASSET ACCOUNT UNLESS PROHIBITED BY LAW, OR BY MY/OUR REQUEST, INDICATED BY STRIKING THIS LINE.

This agreement, with respect to all portions of the AXA Asset Account, including interest charges on loans Pershing may make to me/us, will be governed by, and interpreted under, the laws of the State of New York. The terms of my/our agreement with Bank One are governed by Ohio law.

By signing this application, I/we acknowledge that securities not fully paid for may be loaned to Pershing or loaned out by Pershing to others.

By signing this application, I/we accept the terms of the enclosed Account Agreement.

PLEASE NOTE THAT THE AXA ASSET ACCOUNT AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION AGREEMENT WHICH IS SET FORTH IN PARAGRAPHS 30 AND 31. I/WE ACKNOWLEDGE RECEIVING A COPY OF THIS AGREEMENT.

8. **ACCOUNT OWNER(S) SIGNATURE(S)** (please provide all account owners' signatures)

SIGN HERE:

Barry Pollard

Primary Account Owner's Signature

SIGN HERE:

Joint Account Owner's Signature (if applicable)

SIGN HERE:

Additional Account Owner's Signature (if applicable)

SIGN HERE:

Additional Account Owner's Signature (if applicable)

9. **ADDITIONAL SIGNATORIES (for check writing only)**

If you have an individual or joint account and would like to add other signatories (for individuals who are not listed on the account registration) please have the additional signatories sign below.

1.

2.

The primary account owner authorizes the additional signatories on this application by signing below.

Primary Account Holder

To be completed by AXA Advisors, LLC ONLY:

Approved by authorized person at AXA Advisors, LLC
I/we hereby request AXA Advisors, LLC to open a brokerage account with the Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation ("Pershing") in the name(s) listed as account holder(s) on this application. I/we further request Bank One (the "Bank") to issue checks and MasterCard® debit card(s) as indicated on this application. Prior to signing below, I/we have received and read the AXA Asset Account Agreement, as currently in effect and as amended from time to time, which governs my/our AXA Asset Account, and I/we agree to be bound by such Account Agreement.

¹MasterCard® is a trademark of MasterCard® International Incorporated.

BARRY POLLARD
FARM ACCOUNT
102 S. VAN BUREN PH. 242-7030
ENID, OK 73703

PAY TO THE
ORDER OF

AXA Advisors
Twenty thousand

DATE

3/24/00

88-278/1031

2891

\$ 20,000

DOLLARS Security features included. See back.

people first
(800) 234-4152
510 Commerce
Enid, OK 73703

FOR *Shells*

1:10

B Pollard

REDACTED

00 MAR 29 PM 3 11

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