

THOMAS, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 01–800

KAREN HOWSAM, ETC., PETITIONER *v.* DEAN
WITTER REYNOLDS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

[December 10, 2002]

JUSTICE THOMAS, concurring in the judgment.

As our precedents make clear and as the Court notes, arbitration is a matter of contract. *Ante*, at 3. In *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468 (1989), we held that under the Federal Arbitration Act courts must enforce private agreements to arbitrate just as they would ordinary contracts: in accordance with their terms. Under *Volt*, when an arbitration agreement contains a choice-of-law provision, that provision must be honored, and a court interpreting the agreement must follow the law of the jurisdiction selected by the parties. See *id.*, at 478–479 (enforcing a choice-of-law provision that incorporated a state procedural rule concerning arbitration proceedings); see also *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U. S. 52, 67 (1995) (THOMAS, J., dissenting) (concluding that the choice-of-law provision in question was indistinguishable from the one in *Volt* and, thus, should have been given effect). A straightforward application of these principles easily resolves the question presented in this case.

The agreement now before us provides that it “shall be construed and enforced in accordance with the laws of the State of New York.” App. 6. Interpreting two agreements containing provisions virtually identical to the ones in

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dispute here, the New York Court of Appeals held that issues implicating §15 (now §10304) of the National Association of Securities Dealers Code of Arbitration Procedure are for arbitrators to decide. See *Smith Barney Shearson Inc. v. Sacharow*, 91 N. Y. 2d 39, 689 N. E. 2d 884 (1997). Because the parties agreed to be bound by New York law and because *Volt* requires us to enforce their agreement, I would permit arbitrators to resolve the §10304 issues that have arisen in this case, just as New York case law provides. The Court follows a different route to reach the same conclusion; accordingly, I concur only in the judgment.