

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :
 :
 : Plaintiff, :
 :
 : – against – :
 :
 BEAR, STEARNS & CO. INC., :
 :
 : Defendant. :
-----X

Civil Action No.
03 Civ. 2937 (WHP)

**ORDER REGARDING
INVESTOR EDUCATION
PLAN**

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SECURITIES AND EXCHANGE COMMISSION, :
 :
 : Plaintiff, :
 :
 : – against – :
 :
 JACK BENJAMIN GRUBMAN, :
 :
 : Defendant. :
-----X

Civil Action No.
03 Civ. 2938 (WHP)

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SECURITIES AND EXCHANGE COMMISSION, :
 :
 : Plaintiff, :
 :
 : – against – :
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 J.P. MORGAN SECURITIES INC., :
 :
 : Defendant. :
-----X

Civil Action No.
03 Civ. 2939 (WHP)

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SECURITIES AND EXCHANGE COMMISSION, :
Plaintiff, :
- against - :
LEHMAN BROTHERS, INC., :
Defendant. :

Civil Action No.
03 Civ. 2940 (WHP)

-----X
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SECURITIES AND EXCHANGE COMMISSION, :
Plaintiff, :
- against - :
MERRILL LYNCH, PIERCE, FENNER & :
SMITH INCORPORATED, :
Defendant. :

Civil Action No.
03 Civ. 2941 (WHP)

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SECURITIES AND EXCHANGE COMMISSION, :
Plaintiff, :
- against - :
U.S. BANCORP PIPER JAFFRAY, INC., :
Defendant. :

Civil Action No.
03 Civ. 2942 (WHP)

SEC's complaint against Deutsche Bank concerning equity research analyst practices. That Final Judgment required Deutsche Bank to contribute investor education funds pursuant to the plan approved by the Court on March 25, 2004.

By application dated May 4, 2005, the SEC proposed a new investor education plan that would dissolve the Investor Education entity ("Investor Education Entity") established pursuant to this Court's March 25, 2004 Order, and fulfill the investor education objectives of the Final Judgments by charting a different course. In its May 4, 2005 plan, the SEC proposed distributing the investor education funds on deposit at the Federal Reserve Bank of New York to the NASD Investor Education Foundation ("NASD Foundation").

On June 9, 2005, this Court conducted a hearing to consider the merits of the SEC's new investor education plan. Prior to the hearing, this Court received submissions objecting to the SEC's proposal. Having considered the SEC's motion as well as the submissions of interested parties and the presentations of counsel, this Court grants the SEC's application on the following terms.

This Order supersedes the Court's Investor Education Orders dated October 31, 2003 and modifies the Deutsche Bank Final Judgment dated September 24, 2004. The Investor Education Plan approved by the March 25, 2004 Order is rescinded.

A. Dissolution Of Investor Education Entity

1. The Investor Education Entity established pursuant to this Court's March 25, 2004 Order is directed to take all necessary steps to wind down its affairs and terminate its corporate existence.

2. Within thirty days of entry of this Order, the Investor Education Entity shall file

with the Court an application for payment of reasonable and necessary fees, costs, and expenses incurred by the entity. The application may include legal fees, costs and expenses associated with the termination of the Investor Education Entity. At least fifteen days before making such application to the Court, the Investor Education Entity shall submit the application to the SEC, and the SEC shall advise the Court whether it has any objection. Upon approval of any such application by the Court, the Court by an implementing order will authorize the payment of the approved fees and expenses.

3. All notices, reports, and other information required to be submitted to the SEC under this Order shall be sent to the attention of Susan F. Wyderko, SEC, Office of Investor Education and Assistance, 100 F. Street, N.E., Washington, D.C., 20549.

4. The income tax reporting requirements relating to the investor education funds on deposit at the Federal Reserve Bank of New York (“FRBNY Investor Education Accounts”) shall be the responsibility of Damasco & Associates, which is appointed the Interim Tax Administrator of the FRBNY Investor Education Accounts pursuant to the terms set forth in Section F of this Order. After the funds are transferred to the NASD Foundation, any tax reporting requirements relating to any income earned on such funds shall be the sole responsibility of the NASD Foundation for the period during which the NASD Foundation administers the funds.

5. Monies in the FRBNY Investor Education Accounts are intended to be “qualified settlement funds” pursuant to Section 468B(g) of the Internal Revenue Code and regulations thereunder. Monies in the FRBNY Investor Education Accounts may be used to pay any taxes on income earned by such accounts. The expenses referred to in ¶ A.2 of this Order shall be

obligations of and shall be paid from the qualified settlement funds and not the Investor Education Entity.

6. The resignations of the Investor Education Entity's board members and officers Charles D. Ellis, George G. Daly, Sheila C. Bair, Joseph L. Dionne, Carol J. Loomis, Lionel L. Nowell, III, Rebecca W. Rimel, and Jay Vivian will be effective upon the receipt by the entity of a Certificate of Dissolution issued by the State of Delaware. Counsel for the entity shall provide a copy of the Certificate of Dissolution to the Court and the SEC.

B. The Distribution Of The Investor Education Funds

1. All of the funds in the FRBNY Investor Education Accounts and all future investor education installment payments required of defendants Bear Stearns & Co., Inc., Citigroup Global Markets, Inc., f/k/a/ Salomon Smith Barney, Inc., Goldman, Sachs & Co., J.P. Morgan Securities, Inc., Lehman Brothers, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, UBS Warburg LLC, and Deutsche Bank Securities, Inc. (less the taxes and approved fees, costs, and expenses described in ¶¶ A.2, A.4, and F.1-5 of this Order, and any outstanding amount due for the administrative court registry fee as required under ¶ A.2 of the Final Judgments), shall be distributed to the NASD Foundation by an implementing order of this Court. For the period during which the NASD Foundation administers these funds, the terms of this Order shall apply to the NASD Foundation. These funds, and any interest thereon, shall be maintained by the NASD Foundation in a segregated account (the "NASD Foundation Investor Education Account") to be used exclusively to effectuate the purposes of this Order. The funds in the NASD Foundation Investor Education Account shall be invested in money market funds or securities with maturities of less than six months and backed by the full faith and credit of the

U.S. government.

2. The future investor education installment payments of the defendants identified in ¶ B.1 of this Order, required to be paid annually on or before the month and day of entry of the Final Judgment in each case, shall be made directly to the NASD Foundation. The NASD Foundation shall provide these defendants with payment/wire instructions for deposit to the segregated account referred to in ¶ B.1 (the NASD Foundation Investor Education Account), and defendants shall provide the Court and the SEC with contemporaneous proof of the payments. The NASD Foundation shall keep account records sufficient to document whether each defendant identified in ¶ B.1 of this Order has made timely and complete payments.

3. The NASD Foundation shall use the funds in the NASD Foundation Investor Education Account to award grants pursuant to the guidelines of its grant program, appended for reference as Exhibit A. The funds in the NASD Foundation Investor Education Account shall be utilized for new or expanded education initiatives. The NASD Foundation Investor Education Account is not intended to replace current NASD funding of the NASD Foundation. At a minimum, such NASD funding should continue in the same proportion as such funding bore to the NASD's overall 2004 budget during the period the NASD Foundation Investor Education Account exists.

4. As applied to the grantees of grants awarded by the NASD Foundation from the NASD Foundation Investor Education Account, such grants shall not be used:

(A) to benefit, directly or indirectly:

(1) beyond any payments authorized by the Court, any person involved in the review or approval of applications for grants, and any entity that employs

such a person;

- (2) Defendants, their predecessors, successors, or their subsidiaries, affiliates, present or former officers, directors, or their employees, or those in active concert or participation with them, through subrogation or otherwise;
 - (3) any person who has been convicted of a crime substantially related to any act or practice, or the types of acts or practices, identified in the Complaints in the captioned actions;
 - (4) any person who has been enjoined by a court or sanctioned by the Commission or any other regulatory authority for any act or practice, or the types of acts or practices, identified in the Complaints in the captioned actions; or
 - (5) any person named as a defendant in a pending federal criminal or civil enforcement action for any act or practice, or the types of acts or practices, identified in the Complaints in the captioned actions;
- (B) to promote, directly or indirectly, the investment products or services of any single firm or entity; provided, however, that monies from the NASD Foundation Investor Education Account may be directed exclusively to the NASD Foundation for use and disposition in accordance with this Order;
 - (C) for any unlawful or unethical purpose; or
 - (D) for any non-educational or non-research purpose.

5. It is the intention of this Order that the funds in the NASD Foundation Investor Education Account will not be used as a permanent endowment. The NASD Foundation shall

use its best efforts to distribute these funds in an expeditious manner, consistent at all times with the terms of this Order, and by no later than ten years from the date of this Order; provided, however, that the NASD Foundation shall have the right to seek the Court's permission to modify this deadline on notice to the SEC.

6. Members of the NASD Foundation Board of Directors will be selected by NASD, subject to the relevant NASD Foundation By-Laws and the provisions of this Order. The NASD will consult with the SEC about proposed NASD Foundation Board appointments, and agrees to appoint persons acceptable to the SEC. The NASD Foundation By-Laws shall be amended to require that at least a majority of the Board of Directors of the NASD Foundation shall consist of members of the public who are not employed by a securities regulator and who have no material business relationship with the securities industry, provided that a "material business relationship" does not include an educational or research entity that is unaffiliated with the securities industry.

7. The NASD Foundation may use a portion of the funds in the NASD Foundation Investor Education Account to cover the reasonable and necessary expenses associated with distributing grant awards from the funds in the NASD Foundation Investor Education Account and complying with the terms of this Order.

8. The NASD Foundation shall provide the SEC with quarterly reports that describe the use of funds in the NASD Foundation Investor Education Account in the preceding quarter as well as NASD Foundation's strategic plan for use of the funds in the upcoming quarter. The SEC shall file a copy of each NASD Foundation quarterly report with this Court. Each report shall, at a minimum, identify both approved and non-approved grant applications since the last

quarterly report. In each case, a report will identify the party seeking the grant, describe the intended use of the grant, the grant amount, the project term, and the type of grant (education, research, or combination education/research). The report should detail all expenses incurred in distributing grant awards from the NASD Foundation Investor Education Account. Each report shall also include an accounting of receipts and expenses in reasonable detail. The NASD Foundation shall also provide the SEC with an annual report setting forth the NASD Foundation's strategic plan for the upcoming year regarding the use of funds in the NASD Foundation Investor Education Account; the fourth quarter report will be included in the annual report. The SEC shall file each NASD Foundation annual report with the Court.

9. An annual audit of the NASD Foundation shall be performed by an independent third party. The results of the audits will be provided to the SEC and the SEC will file them with this Court.

10. In the event of a proposed dissolution of the NASD Foundation, the SEC shall file an application with the Court setting forth a plan for the disposition of any remaining funds in the NASD Foundation Investor Education Account.

C. Amendments To Final Judgment Against Merrill Lynch

1. The following paragraphs in Section C of this Order apply to the Final Judgment entered against Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch Final Judgment").

2. Section IV, Paragraph A.2 of the Merrill Lynch Final Judgment is amended to delete the reference to an "Investor Education Fund," as that term was defined as a depository account of the prior investor education entity. Section IV, Paragraph A.2 of the Merrill Lynch

Final Judgment is further amended to delete the last three sentences that require the deduction from the investor education funds of an administrative court registry fee.

3. Section IV, Paragraph B.1 of the Merrill Lynch Final Judgment is amended to delete the reference to an “Investor Education Fund.”

4. Section IV, Paragraph B.2 of the Merrill Lynch Final Judgment is amended to delete the requirement that the investor education funds be used to help establish a new tax-exempt, non-profit grant administration organization, and is further amended to delete references to the term “Investor Education Fund.”

5. Section IV, Paragraph C of the Merrill Lynch Final Judgment is amended to delete the references to an “Investor Education Fund.”

6. Section IV, Paragraph D of the Merrill Lynch Final Judgment is amended to delete the references to an “Investor Education Fund.”

D. Amendments To Final Judgment Against Deutsche Bank

1. The following paragraphs in Section D of this Order apply to the Final Judgment entered against Deutsche Bank Securities, Inc. (“Deutsche Bank Final Judgment”).

2. Section IX, Paragraphs A.1 and A.2 of the Deutsche Bank Final Judgment is amended to delete the reference to an “Investor Education Fund,” as that term was defined in Section IX, Paragraph A.2 as a depositary account of the prior investor education entity.

3. Section IX, Paragraph A.2 of the Deutsche Bank Final Judgment is amended to delete the last three sentences that require the deduction from the investor education funds of an administrative court registry fee.

4. Section IX, Paragraph B.1 of the Deutsche Bank Final Judgment is amended to

delete the reference to an “Investor Education Fund.”

5. Section IX, Paragraph B.2 of the Deutsche Bank Final Judgment is amended to delete the requirement that the investor education funds be used to help establish a new tax-exempt, non-profit grant administration organization, and is further amended to delete references to the term “Investor Education Fund.”

6. Paragraph C.1 of the Deutsche Bank Final Judgment, which mirrored a provision of Investor Education Orders now superseded, is deleted. The provision, as amended, is set forth in this Order.

7. Paragraph C.2 of the Deutsche Bank Final Judgment, which mirrored a provision of Investor Education Orders now superseded, is deleted. The provision, as amended, is set forth in this Order.

8. Paragraph D of the Deutsche Bank Final Judgment is deleted.

9. Paragraphs E, F.1, F.2, and F.5 of the Deutsche Bank Final Judgment are deleted, as these provisions applied to the creation and continued operation of a new investor education entity.

10. Paragraphs F.3, F.4, F.6, F.7 and G of the Deutsche Bank Final Judgment, which mirrored provisions of Investor Education Orders now superseded, are deleted. The provisions, as amended, are provided for in this Order.

E. Amendments To Final Judgments Against Other Defendants Required To Make Investor Education Payments

1. The following paragraphs in Section E of this Order apply to the Final Judgments entered against defendants Bear Stearns & Co., Inc., Citigroup Global Markets, Inc., f/k/a/ Salomon Smith Barney, Inc., Goldman, Sachs & Co., J.P. Morgan Securities, Inc., Lehman

Brothers, Inc., and UBS Warburg LLC.

2. Section IX, Paragraphs A.1 and A.2 of the Final Judgments are amended to delete the reference to an “Investor Education Fund,” as that term was defined in Section IX, Paragraph A.2 as a depository account of the prior investor education entity.

3. Section IX, Paragraph A.2 of the Final Judgments is amended to delete the last three sentences that require the deduction from the investor education funds of an administrative court registry fee.

4. Section IX, Paragraph B.1 of the Final Judgments is amended to delete the reference to an “Investor Education Fund.”

5. Section IX, Paragraph B.2 of the Final Judgments is amended to delete the requirement that the investor education funds be used to help establish a new tax-exempt, non-profit grant administration organization, and is further amended to delete references to the term “Investor Education Fund.”

6. Section IX, Paragraph C of the Final Judgments is amended to delete the references to an “Investor Education Fund.”

7. Section IX, Paragraph D of the Final Judgments is amended to delete the references to an “Investor Education Fund.”

F. Appointment Of Interim Tax Administrator

1. Damasco & Associates is appointed as Interim Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to funds in the FRBNY Investor Education Accounts. Damasco & Associates will not have tax administrator responsibilities for any income earned on these funds after they are

transferred to the NASD Foundation.

2. Damasco & Associates shall be designated the interim administrator of the FRBNY Investor Education Fund Accounts, pursuant to section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, and shall satisfy the administrative requirements imposed by those regulations, including but not limited to (a) obtaining a taxpayer identification number, (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Investor Education Fund Accounts, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the FRBNY Investor Education Accounts. The Interim Tax Administrator shall contemporaneously provide copies of all such filings to the SEC.

3. The Interim Tax Administrator shall, at such times as the Interim Tax Administrator deems necessary to fulfill the tax obligations of the FRBNY Investor Education Accounts, request that the SEC file with the Court a motion, supported by the Interim Tax Administrator's declaration of the amount of taxes due, to transfer funds from the FRBNY Investor Education Accounts to pay any tax obligations of the Accounts.

4. The Interim Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the SEC dated February 25, 2005. The Interim Tax Administrator shall, at such times as the Interim Tax Administrator deems appropriate, submit a declaration of fees and expenses to the SEC for submission to the Court for approval and for payment from the FRBNY Investor Education Accounts. No fees or expenses may be paid absent the Court's prior approval.

5. At least ten (10) days before any motion to pay fees and expenses is filed with the

Court, the Interim Tax Administrator shall provide the SEC with a draft of the supporting declaration for review. If the SEC staff has any corrections or objections to the declaration, the Interim Tax Administrator and the SEC staff shall attempt to resolve them on a consensual basis. If a consensual resolution is not reached, the SEC may submit with the motion any objections along with the Interim Tax Administrator's response thereto.

G. Retained Jurisdiction

1. This Court shall retain jurisdiction for the purpose of ensuring compliance with the terms of this Order and the Final Judgments and other Orders in the related actions.

Dated: September 2, 2005
New York, New York

SO ORDERED:



WILLIAM H. PAULEY III
U.S.D.J.

Exhibit A

NASD Investor Education Foundation Grant Guidelines

NASD Investor Education Foundation Mission

Established in 2003, the NASD Investor Education Foundation is a natural outgrowth of the NASD's long standing mission to protect investors and uphold the integrity of the markets. Investors need a better sense of what they are doing and why. At the Foundation, we meet this need by funding innovative research and educational projects aimed at segments of the investing public who could benefit from additional resources.

Eligibility

The Foundation will award grants to entities designated as tax-exempt according to Internal Revenue Code Section 501(c)(3) and state and other public colleges and universities. The Foundation accepts grant proposals from persons of any race, color, creed, age, sex, disability, and national or ethnic origin.

The Foundation will **not** award grants to:

- Individuals
- Organizations affiliated with a current director, officer or staff member of the Foundation
- Organizations affiliated with any person involved in the review or approval of grants or the organization that employs such a person
- Organizations affiliated with a current member of the NASD Board of Governors
- Securities firms regulated by NASD
- Organizations affiliated with a securities firm or individual regulated by NASD, such as a foundation established by a securities firm
- Securities regulators, self-regulatory organizations or securities industry trade associations
- Organizations that are "disqualified persons" pursuant to Article III, Section 3(d) of NASD By-Laws
- Organizations prohibited from receiving grants pursuant to the Order dated August __, 2005 in SEC vs. Bear Stearns & Co., Inc. et al., Civil Action Nos. 03 Civ. 2937 - 2948 (WHP) and Civil Action Nos. 04 Civ. 6909 - 6910 (WHP)
- Organizations that discriminate on the basis of age, color, disability, marital status, national origin, race, religion, sex, sexual orientation, or veteran status

Grant Priorities

Of particular interest to the Foundation are projects that:

- Expand the body of knowledge and/or provide practical materials that will have a positive impact on investor education or protection
- Research methods to improve disclosure to investors about investments and financial services
- Encourage investors to check the background of financial professionals prior to doing business with them
- Empower the nation's young people that are about to enter the workforce to better prepare for retirement and to meet other financial goals
- Better prepare older Americans for handling their finances during retirement
- Encourage women and minority populations to take control of their financial future through investor education

- Advance practice, policy, and thought in the fields of investor education and protection

Types of Projects

The Foundation seeks to fund projects that advance its mission through:

- **Educational projects or programs.** Funding is for programs that respond to an unmet investor education or protection need for a target audience.
- **Research.** Funding is for research that expands the body of knowledge and offers solutions in the field of investor education and protection.
- **Combination of research and educational program.** Funding is for initiatives that lead with a research element and follow with a high-impact investor education or investor protection project based upon the results of the research.

Types of Funding

The Foundation provides for three types of funding:

- **Directed**
These grants are awarded to fund projects initiated by the Foundation in response to specific investor education or protection needs identified by the Foundation. In this case, the Foundation conceptualizes the project, and locates the groups or individuals whose knowledge and experience qualify them to pursue the project, and then provides the funding necessary to accomplish the project objective. Directed grants may be awarded at any time, as projects related to the Foundation's funding priorities are identified.
- **Requests for Proposals**
The Foundation issues requests for proposals that seek to address the Foundation's funding priorities. A request for proposals may identify a specific issue or target audience or may be general in nature.
- **Unsolicited Proposals**
These grants typically are awarded in response to unsolicited funding requests from eligible organizations for self-initiated projects that support the Foundation's mission.
- **Targeted Projects**
The Foundation may initiate educational projects or research in response to specific investor education or protection needs identified by the Foundation. In this case, the Foundation conceptualizes the project, and uses a combination of Foundation-managed programs and directed grants to reach a specific target audience or to address an unmet need in investor education. The Foundation provides the funding necessary to accomplish the project objective. Targeted projects may be initiated at any time, as unmet needs related to the Foundation's funding priorities are identified.

All grants proposals and targeted projects are subject to evaluation by the Foundation's Board of Directors. A request to submit a grant proposal does not guarantee that a grant will be awarded.

General Grant Criteria

The Foundation seeks proposals that advance its mission and also:

- Present a practical and detailed plan for distributing the project deliverables
- Field test promising ideas and evaluate results or take proven ideas and approaches to scale
- Involve strategic collaboration with partners, including those in the non-profit, public or for-profit sectors
- Are sustainable once Foundation funding ends

- Can easily be expanded or replicated by other organizations
- Use technology wherever possible to reduce the cost and increase availability
- Expand or leverage programs or materials developed or supported by NASD, the Foundation, NEFE or the U.S. Securities and Exchange Commission
- Present a project based on research attesting to the relevance of the intended deliverables
- Address whether a behavioral change in the target audience is necessary for the project's success and, if so, how that change will be identified, achieved, and measured
- Substantiate the ability to develop the project on time and within the requested budget

The Foundation will generally not consider proposals to fund:

- International programs or projects
- Expenses that are not directly related to the project for which funding is sought
- Salaries of permanent staff (for example, prorated salaries of administrative and executive personnel, or oversight and coordination activities of a project principal). (Note that modest amounts for release time of university professors are acceptable.)
- Capital costs such as building and construction or equipment such as computer hardware and office furniture
- Pass-through funding—for example, if the 501(c)(3) organization plans to turn over the funding to a proprietary organization or consultant
- Projects with a potential conflict of interest (for example where funded technical support or expertise might be provided by a board member of the 501(c)(3) organization)
- Conferences and similar activities that fail to provide a long-term solution or sufficiently broad outreach
- Distribution methodologies that require ongoing maintenance when the ability to perform upkeep without continued funding is questionable. For example, materials with a short “shelf life” that would require ongoing funding for frequent updating
- Projects with proprietary elements, such as for-profit activities, use or purchase of copyrighted or trademarked materials, and proprietary research
- Lobbying, political contributions, fund-raising events, or other similar activities designed to influence legislation or intervene in political campaigns
- Donations, endowments, challenge grants, matching funds, and other similar programs
- Direct or matching payments to members of the public, such as scholarships, assistance with personal and family financial difficulties, registration fees for conferences and training, or similar activities

Grant Amounts

There is no set minimum or maximum grant amount. In considering grant requests, the merits of the proposed project are the primary focus.

Distribution of Grant Funds

Award of funding is contingent upon successful negotiation of a grant agreement within a reasonable time. If a grantee and the Foundation cannot successfully negotiate a grant agreement within a reasonable time as determined by the Foundation, the funding will not be released. After a grant agreement is executed, funds will be awarded in installments contingent upon performance and actual expenses, not to exceed the grant amount.