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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Civil Action No. 03 Civ. 2937 (WHP)

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

Civil Action No. 03 Civ. 2938 (WHP)

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

Civil Action No. 03 Civ. 2939 (WHP)

RESPONSE OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION TO THE SUBMISSION OF MCGOVERN REGARDING DISTRIBUTION OF UNEXPENDED FUNDS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

– against –

LEHMAN BROTHERS, INC.,

Defendant.

Civil Action No.

03 Civ. 2940 (WHP)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

– against –

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,

Defendant.

Civil Action No.

03 Civ. 2941 (WHP)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

– against –

U.S. BANCORP PIPER JAFFRAY, INC.,

Defendant.

Civil Action No.

03 Civ. 2942 (WHP)

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – UBS WARBURG LLC, Defendant.	Civil Action No. 03 Civ. 2943 (WHP)
SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – GOLDMAN, SACHS & CO., Defendant.	Civil Action No. 03 Civ. 2944 (WHP)
SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – CITIGROUP GLOBAL MARKETS, INC., F/K/A SALOMON SMITH BARNEY INC., Defendant.	Civil Action No. 03 Civ. 2945 (WHP)

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – CREDIT SUISSE FIRST BOSTON LLC, F/K/A CREDIT SUISSE FIRST BOSTON CORPORATION, Defendant.	Civil Action No. 03 Civ. 2946 (WHP)

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – HENRY McKELVEY BLODGET, Defendant.	Civil Action No. 03 Civ. 2947 (WHP)

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – MORGAN STANLEY & CO. INCORPORATED, Defendant.	Civil Action No. 03 Civ. 2948 (WHP)

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – DEUTSCHE BANK SECURITIES INC., Defendant.	Civil Action No. 04 Civ. 6909 (WHP)
SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – THOMAS WEISEL PARTNERS LLC, Defendant.	Civil Action No. 04 Civ. 6910 (WHP)

I. INTRODUCTION

On June 5, 2006, Francis E. McGovern, the Distribution Fund Administrator, submitted to the Court "Recommended Approaches to Disburse Remaining Funds from the Global Research Analyst Settlement," as required by the Court's Order of May 23, 2006. The SEC recommends approval of the recommended approaches subject to the conditions set forth in this response. The recommended approaches, if modified as the SEC proposes, are consistent with the Final Judgments and original Distribution Plan – to benefit customers of the defendants victimized by the conduct alleged in the above-captioned actions. The SEC anticipates that it will oppose all recommendations to the Court by interested persons for any other purpose.

II. DISCUSSION

A. The Use Of Distribution Funds Is Limited To A Specific Purpose

The SEC's strongly held view is that distribution funds are intended for investors victimized by defendants' conduct and cannot be used for other purposes. The funds consist of penalties and disgorgement paid by defendants to resolve actions brought by the SEC, NYSE, and NASD involving conflicts of interest between research and investment banking. The parties contemplated, and the Final Judgments reflect, that the distribution funds are for the benefit of customers of the defendants victimized by the conduct alleged in the above-captioned actions.

The Final Judgments provide that the distribution funds are to be utilized "[t]o pay Eligible Distribution Fund Recipients . . ." § III.B; see also § IV.C.2 (requiring that the Distribution Fund Administrator "distribute monies from the Distribution Fund to Eligible Fund Recipients"). Such recipients are defined as follows: (1) "[the] person must have purchased the 'equity securities in question' through Defendant during the relevant period of purchase" and (2) "[t]he person must have suffered a net loss on his equity securities purchases in question." § V.C. The Final Judgments also require that the Distribution Plan "provide for the equitable, cost-effective distribution of funds to Eligible Distribution Fund Recipients" and that "those who are allocated funds receive meaningful payments from the Distribution Fund." §§ V.A., V.B. The original Distribution Plan is consistent with the fundamental principles set forth in the Final Judgments. There are also a number of restrictions on the use of distribution funds. For example, the funds cannot be used directly or indirectly to pay defendants, any judgment or award of punitive or non-compensatory damages, and attorneys' fees. § III.C. Thus, the unexpended distribution funds cannot be used for purposes other than those set forth in the Final Judgments.

B. Options That Provide Funds To Eligible Distribution Fund Recipients Should Be Approved

The first three options proposed by the Distribution Fund Administrator are clearly within the scope of the Final Judgments and original Distribution Plan since these options involve the distribution of funds to Eligible Distribution Fund Recipients. The SEC endorses the options to: pay losses for late claims, engage in additional efforts to reach investors, and pay interest to claimants. The SEC agrees that both pre-judgment and post-judgment interest should be paid and calculated in the manner recommended by the Distribution Fund Administrator.

C. The Transfer Of Funds To Other Settlements Should Only Occur If Defendants Can Demonstrate A Substantially Similar Connection

If funds remain after the first three options have been fully implemented the SEC does not object to the transfer of funds to other settlements provided that the defendants can show a substantial similarity between the settlements and the SEC settlement. The requirement that there be a showing of "substantial similarity" is necessary in order to ensure that such distributions are consistent with the express intent of the Final Judgments and the original Distribution Plan that funds be distributed to investors victimized by the conduct alleged in the SEC settlement. The SEC agrees that certain factors outlined by the Distribution Fund Administrator should be applied to determine eligible settlements. The settlement must involve: (a) a defendant who is a defendant in these cases; (b) substantially similar allegations; (c) the same securities and time periods set forth in the original Distribution Plan; and (d) claimants who purchased the securities from the defendants in these cases. Defendants should bear the sole burden and expense of demonstrating that each of these factors is met. The SEC proposes that the written requests be sufficiently detailed to demonstrate substantial similarity under the factors set forth above. The SEC also requests that it be permitted to submit a response to each written request. The SEC does not object to the deadline of December 31, 2006 for defendants to submit a request for funds.

Should the Court approve of a transfer of funds to a substantially similar settlement, the SEC proposes that certain conditions apply to the use of such funds. The funds cannot be used to pay attorneys' fees or expenses. The Claims Administrators in the substantially similar settlements should be responsible for filing any tax returns associated with their receipt and use of the funds. In addition, the transmittal letter to eligible claimants sent by the Claims Administrators should include an acknowledgment that the distribution reflects a contribution by the SEC, the NYSE, and the NASD and set forth the specific amount of the contribution. If any checks remain uncashed the SEC's contribution should be returned to the SEC for distribution to the U.S. Treasury and the regulators responsible for the above-captioned actions. These conditions should be set forth in the Order approving the plan for unexpended funds.

D. Remaining Funds Should Be Transferred To The U.S. Treasury And Regulators Responsible For The Federal Settlement

Should any funds remain after the options described above have been fully implemented, the remaining funds should be transferred to the United States Treasury and regulators responsible for the settlement of the above-captioned actions. The distribution funds consist of penalties and disgorgement paid by defendants to resolve actions brought by the SEC, NYSE, and NASD. The NYSE and NASD agreed to place their proportional share of settlement proceeds into the distribution funds in these cases. The rationale for this approach is that once all options for distributing funds to victims of defendants' conduct have been exhausted, any remaining funds should properly revert to the parties who brought the above-captioned actions against the defendants. In addition, a portion of the funds consist of penalties paid into the distribution funds pursuant to Section 308 of Sarbanes-Oxley (Fair Funds Provision). In the absence of an Order directing Fair Funds treatment of penalties in a given case, such penalties routinely are paid to the U.S. Treasury. In the above-captioned actions, there is no reason to depart from this standard practice after all distribution options have been exhausted. Finally, defendants are expressly barred by the Final Judgments from receiving any of the funds.

III. CONCLUSION

Subject to the conditions expressed above, the SEC endorses the options proposed by the Distribution Fund Administrator.

Respectfully submitted,

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Date: June 19, 2006

CERTIFICATE OF SERVICE

I hereby certify that, on June 19, 2006, I caused the foregoing Comments of Plaintiff Securities and Exchange Commission to be served on the following by e-mail transmission pursuant to agreement among the parties:

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