

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Civil Action No.  
03 Civ. 2937 (WHP)

**APPLICATION OF PLAINTIFF  
SEC FOR ORDER APPROVING  
NEW INVESTOR EDUCATION  
PLAN**

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

Civil Action No.  
03 Civ. 2938 (WHP)

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

Civil Action No.  
03 Civ. 2939 (WHP)

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

Civil Action No.  
03 Civ. 2940 (WHP)

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

Civil Action No.  
03 Civ. 2941 (WHP)

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

Civil Action No.  
03 Civ. 2942 (WHP)

-----X  
:  
SECURITIES AND EXCHANGE COMMISSION, :  
:  
                                  Plaintiff, :  
:  
                  – against – :  
:  
UBS WARBURG LLC, :  
:  
                                  Defendant. :  
-----X

Civil Action No.  
03 Civ. 2943 (WHP)

-----X  
-----X  
:  
SECURITIES AND EXCHANGE COMMISSION, :  
:  
                                  Plaintiff, :  
:  
                  – against – :  
:  
GOLDMAN, SACHS & CO., :  
:  
                                  Defendant. :  
-----X

Civil Action No.  
03 Civ. 2944 (WHP)

-----X  
-----X  
:  
SECURITIES AND EXCHANGE COMMISSION, :  
:  
                                  Plaintiff, :  
:  
                  – against – :  
:  
CITIGROUP GLOBAL MARKETS, INC., F/K/A :  
SALOMON SMITH BARNEY INC., :  
:  
                                  Defendant. :  
-----X

Civil Action No.  
03 Civ. 2945 (WHP)

-----X  
:  
SECURITIES AND EXCHANGE COMMISSION, :  
:  
                                  Plaintiff, :  
:  
                  – against – :  
:  
CREDIT SUISSE FIRST BOSTON LLC, :  
F/K/A CREDIT SUISSE FIRST BOSTON :  
CORPORATION, :  
:  
                                  Defendant. :  
-----X

Civil Action No.  
03 Civ. 2946 (WHP)

-----X  
-----X  
:  
SECURITIES AND EXCHANGE COMMISSION, :  
:  
                                  Plaintiff, :  
:  
                  – against – :  
:  
HENRY McKELVEY BLODGET, :  
:  
                                  Defendant. :  
-----X

Civil Action No.  
03 Civ. 2947 (WHP)

-----X  
-----X  
:  
SECURITIES AND EXCHANGE COMMISSION, :  
:  
                                  Plaintiff, :  
:  
                  – against – :  
:  
MORGAN STANLEY & CO. INCORPORATED, :  
:  
                                  Defendant. :  
-----X

Civil Action No.  
03 Civ. 2948 (WHP)

-----X  
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SECURITIES AND EXCHANGE COMMISSION, :
  
:
  
  Plaintiff, :
  
:
  
                                  – against – :
  
:
  
DEUTSCHE BANK SECURITIES INC., :
  
:
  
  Defendant. :
  
-----X

Civil Action No.  
04 Civ. 6909 (WHP)

-----X  
-----X  
:
  
SECURITIES AND EXCHANGE COMMISSION, :
  
:
  
  Plaintiff, :
  
:
  
                                  – against – :
  
:
  
THOMAS WEISEL PARTNERS LLC, :
  
:
  
  Defendant. :
  
-----X

Civil Action No.  
04 Civ. 6910 (WHP)

**I. INTRODUCTION**

The SEC submits for the Court’s consideration a proposed Order approving a new investor education plan. The new plan calls for the dissolution of the current investor education entity and the distribution of investor education funds to the NASD Investor Education Foundation. The NASD Foundation, a non-profit tax-exempt organization, will use the funds to distribute grants that serve specific areas that have been identified by the SEC as most in need of funding. The new plan is consistent with the terms of the Final Judgments that require the investor education funds to be used to support programs designed to equip investors with the knowledge and skills necessary to make informed investment decisions. The new plan will not require extensive Court and SEC oversight, and will result in the efficient, cost-effective, and

expeditious distribution of investor education funds. The SEC has discussed with counsel for the current investor education entity and a representative of the NASD Foundation the portions of the new plan applicable to these entities. The terms of the proposed Order are acceptable to the NASD Foundation. The current investor education entity is amenable to the dissolution provisions set forth in the proposed Order. The SEC respectfully requests that the Court enter the proposed Order as the new investor education plan.

## **II. DISCUSSION**

### **A. The Basis For Change**

On October 31, 2003 and September 24, 2004, the Court approved and entered the Final Judgments in these related actions resolving the SEC's complaints against twelve major investment banks and two individuals concerning equity research analyst practices in the late 1990s. In addition, for each of the eight investment bank defendants contributing money for investor education ("Investor Education Funds"), the Court entered an Order Regarding Investor Education ("Investor Education Orders"). The Investor Education Orders required the SEC to propose an investor education plan for the Court's consideration and approval. The SEC submitted the plan on February 13, 2004. The Court approved the plan by Order dated March 25, 2004 (the "prior plan").<sup>1</sup>

The prior plan called for the creation of a non-profit tax-exempt grant administration entity to fund investor education programs. The Court appointed Charles Ellis the Chairman of the entity on March 22, 2004 and appointed George Daly as the Executive Director on March 24,

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<sup>1</sup> All references in this Application to "Investor Education Orders" are meant to exclude the Court's March 25, 2004 Order.

2004. The Court approved the appointment of eight members of the board of directors on September 20, 2004.

The entity created by the prior plan, “The Foundation for Investors Education,” as with any organization in a start-up phase, has had problems putting an operational structure in place and defining the vision and mission of the entity. All members of the board of directors have recently expressed the desire to resign from the board. These events have led the SEC to conclude that the prior plan needs to be replaced with a new streamlined plan. The SEC’s submission of a new plan should not be interpreted as a criticism of the efforts of the board of directors, but as a recognition that the distribution of investor education funds can be accomplished under a new simpler plan.

**B. Dissolution Of The Current Entity**

Given the new direction the SEC proposes to take, and the desire of all board members to resign from the entity, the current investor education entity should be dissolved. The new plan directs the entity to wind down its affairs and dissolve its corporate existence. As detailed below, the entity is agreeable to dissolution.

In winding down the affairs of the entity, the matter of expenses, fees, and costs incurred by the entity and its members will need to be addressed. The SEC proposes that within thirty days of entry of the proposed Order, the entity file with the Court an application for payment of reasonable and necessary fees, costs, and expenses incurred by the entity. Permissible fees, costs, and expenses should include charges associated with the dissolution process, including legal fees and compensation for any board member involved in the process. The SEC also believes that it is appropriate to compensate any board member for services performed where such services were necessitated by the Executive Director’s notice of intent to resign. The entity will provide the

application to the SEC for review at least fifteen days before filing with the Court, and the SEC will advise the Court if it has any objections. To expedite this process, the SEC staff has already started to review expenses, fees, and costs incurred by the entity, and engaged in preliminary discussions regarding this topic with the entity and its legal counsel.

The entity also needs to satisfy the tax reporting requirements regarding any taxes due on income earned on the “Investor Education Fund Accounts” at the Federal Reserve Bank of New York (“FRBNY”) (as that term is defined in the Final Judgments and Investor Education Orders). To handle this task, the SEC proposes that the Court appoint Damasco & Associates as the Tax Administrator for the Investor Education Fund Accounts. As detailed below, the entity concurs with this request by the SEC.

The SEC has a pre-existing agreement with Damasco & Associates for the firm to provide tax services associated with any qualified settlement fund (“QSF”) created by an SEC enforcement action. The agreement provides for Damasco & Associates to provide the same type of tax services required of the investor education entity pursuant to Section A.2 of the Investor Education Orders, for a fixed fee ranging from \$500 to \$1500 depending on the type of tax return required. Fixed fee tax compliance services include: (1) Obtain a federal tax identification number (“FEIN”) for the QSF; (2) Prepare and file federal and state income tax returns, as required; (3) Where required, calculate quarterly estimated tax payments and provide information to the Court so that payments may be made timely; (4) Assist SEC counsel to prepare motion(s) and supporting documentation to move the Court to disburse funds to pay tax obligations and the Tax Administrator’s fees and expenses; (5) Calculate and recommend retention of a reserve, if necessary, for penalties and interest to be assessed as a result of any late filing of tax returns and late payment of taxes; and (6) Determine and comply with tax reporting obligations of the QSF

relating to distributions or payments to vendors, if applicable. The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator's duties would be paid out of the investor education funds in accordance with the agreement between the SEC and Damasco & Associates.

The appointment of Damasco & Associates as the Tax Administrator pursuant to an existing agreement with the SEC would be an efficient and cost-saving means to satisfy the tax obligations of the entity. The SEC requests that the Court appoint Damasco & Associates the Tax Administrator for the Investor Education Fund Accounts at the FRBNY.

After the entity takes the necessary steps to dissolve, the investor education entity will obtain a Certificate of Dissolution from the State of Delaware, and provide copies to the Court and the SEC. The resignations of the entity's board members and officers will be effective on the date the Certificate of Dissolution is issued.

The SEC has discussed each of these items with counsel for the investor education entity, Celia Roady and Christian Mixter, partners at the law firm of Morgan, Lewis, and Bockius. Ms. Roady has expertise in corporate governance and taxation issues relating to tax-exempt organizations. Mr. Mixter is the former Chief Litigation Counsel for the SEC. Ms. Roady and Mr. Mixter have reviewed the language of the SEC's proposed Order relating to the dissolution of the entity. They have also informed the SEC that on behalf of the entity they will enter a notice of appearance and file a report with the Court immediately after the SEC's Application is filed stating, in part, that the entity's board of directors has passed certain resolutions relating to the SEC's new plan, including: (1) in the event the Court approves the SEC's new plan, the entity is prepared to take all necessary steps to wind down its affairs and dissolve its corporate existence, (2) the entity concurs in the request of the SEC to appoint Damasco & Associates to be

the Tax Administrator of the Investor Education Fund Accounts at the FRBNY, as set forth in Section A.2 of the Investor Education Orders; (3) the appointment of one board member to take all necessary steps to wind down and dissolve the entity; and (4) the continued engagement of Morgan Lewis to assist the entity in the dissolution process. Pursuant to the Court's Order of March 15, 2005, the SEC will review the report of the entity before it is filed and state its views on the report in writing.

**C. The Distribution Of The Investor Education Funds**

**1. The NASD Investor Education Foundation**

The new plan provides for the distribution of Investor Education Funds to the NASD Investor Education Foundation ("NASD Foundation"). The NASD Foundation will use the Investor Education Funds to award grants in targeted areas pursuant to the terms of its grant program and prudent and reasonable standards of grant making. The SEC has discussed this new plan with representatives of the NASD Foundation, who have advised the SEC that the terms of the proposed Order are acceptable. The NASD Foundation plans to inform the Court of this fact, in writing, upon the filing of the SEC's Application.

The NASD Foundation is exempt from federal income tax under Section 501(c) of the Internal Revenue Code. The NASD Foundation was established in 2003 with the goal of providing investors with high quality, easily accessible information and tools to better understand investing and the markets. It has invested in educational programs and research aimed at segments of the investing public that could benefit from additional resources. In 2004, the NASD Foundation awarded 11 grants totaling over \$1.1 million; it reviewed applications seeking over \$10 million in funding. In the same year, the NASD Foundation operated in partnership with the National Endowment for Financial Education, an established non-profit financial

education organization with significant experience in administering financial education grant programs.

The NASD Foundation is an entity separate from the NASD with its own Board of Directors and officers. The Board consists of three members from NASD and two public members. The NASD Foundation has informed the SEC that it will take steps to add more public board members to ensure that a majority of the board consists of members of the public who are not regulators and not part of the securities industry. The NASD Foundation has established grant guidelines that include criteria for seeking proposals as well as application requirements, and awards grants to organizations designated as tax-exempt under Internal Revenue Code Section 501(c)(3) and to non-profit colleges and universities.

The NASD Foundation operates under strict conflict of interest guidelines. For example, the NASD Foundation will not award grants to securities firms regulated by NASD or organizations affiliated with a securities firm or individual regulated by NASD, such as a foundation established by a securities firm. The NASD Foundation also does not award grants to entities that discriminate on the basis of age, color, disability, marital status, national origin, race, religion, sex, sexual orientation, or veteran status. The new plan proposed by the SEC specifically includes these conflict of interest and eligibility requirements. In addition, the grantees of grants awarded by the NASD Foundation will be subject to the existing limitations on the use of Investor Education Funds set forth in ¶ A.1 of the Investor Education Orders.

The NASD Foundation is an appropriate vehicle for distributing the Investor Education Funds because its mission and scope essentially embody the investor education goals of the Global Research Analyst Settlement. This is a streamlined approach that saves the substantial time and money that would be required to establish and operate a new investor education

corporation. It obviates the need for significant Court and SEC involvement. It provides the best means for expeditiously distributing the Investor Education Funds.

## **2. The Process For Distribution Of Funds**

Under the current plan, Investor Education Funds are held in Investor Education Accounts at the FRBNY. An administrative fee is required to be deducted from the accounts as the court registry fee. The new plan eliminates the need for the Investor Education Accounts at the FRBNY and associated administrative fees. The funds in the Investor Education Accounts will be distributed to the NASD Foundation. The Account Agreement between the Clerk of the Court and the FRBNY will need to be amended accordingly. Future investor education installment payments required of certain defendants will be made directly to the NASD Foundation. The NASD Foundation will establish a separate account for Investor Education Funds and may invest the funds in money market funds or securities with maturities of less than six months backed by the full faith and credit of the U.S. government. The NASD Foundation will keep account records sufficient to determine whether each defendant required to make investor education payments has made timely and complete payments.

## **3. Expeditious Use Of Funds; Expenses**

It is not the intention of the new plan that the funds distributed to the NASD Foundation be used as a permanent endowment, and the proposed Order directs the NASD Foundation to use its best efforts to distribute the funds in an expeditious manner. The proposed Order permits the NASD Foundation to use a portion of the funds to cover the reasonable and necessary expenses associated with distributing grant awards from the funds.

#### **4. Targeted Areas For Funding**

To further ensure that the settlement's investor education objectives are achieved, the new plan will require the NASD Foundation to use the Investor Education Funds to serve specific areas of need. The SEC's Office of Investor Education and Assistance ("OIEA"), after appropriate consultation with those knowledgeable in the area of investor education, believes that the best use of the Investor Education Funds is to target three specific areas that appear to be most in need of additional funding and attention. Thus, the new plan will require that the Investor Education Funds be used in the following three areas:

##### **a. Investor Education in the Workplace**

Large numbers of adults congregate in the workplace daily. Employers have an interest in financially literate employees, but many lack access to neutral, unbiased information that will educate their employees. While employers have systems to disseminate information to employees, there is a need for a more effective nationwide distribution of investor education materials so that they are most useful. The distribution of materials will be particularly focused on (I) new entrants to the workforce, who need education on the importance of investing early and diversification; (II) middle aged workers, who may be supporting parents and also saving for their children's education; and (III) those nearing retirement, who need advice about retirement planning and effective money management.

##### **b. Dissemination of Effective Investor Protection Messages**

There is a need for nationwide dissemination of effective investor protection messages, including information about affinity fraud, cautionary advice about risky products, and how to effectively evaluate investment opportunities to deter fraud. This information is critically important for Americans of all ages, all cultural backgrounds and all socio-economic levels.

Particularly vulnerable audiences include the elderly, those whose primary language is not English, and those who belong to identifiable groups or organizations that are vulnerable to affinity fraud.

**c. Those Who Educate Others**

There is a need to provide adequate investor education training to those who teach and mentor others, in schools, community groups and within religious organizations. These individuals belong to and have the means to teach groups at the local level – in schools, places of worship, and libraries. These educators need to be empowered with knowledge and skills so that they may effectively teach investor education concepts to others.

The new plan also directs the NASD Foundation to seek to address when possible the significant need for investor education of the various diverse and minority segments of the U.S. population. The new plan also provides that the target areas may be amended by Court Order at the request of the SEC, should it become necessary to ensure the effective and efficient use of the Investor Education Funds.

**5. Reporting Requirement**

Because the Investor Education Funds will be distributed to a reputable, established non-profit grant organization with existing reporting obligations, Court oversight on an ongoing basis will not be necessary. The NASD Foundation is subject to its own audit requirements and is required to file an annual Form 990 with the IRS. The Form 990 requires the NASD Foundation to disclose in detail its revenue, expenses, and changes in net assets or fund balances. Additional safeguards are provided for in the new plan.

The NASD Foundation will provide the SEC's OIEA with quarterly reports that describe the use of the Investor Education Funds. At a minimum, the report will identify the grant

recipient, the use of the grant, the grant amount, and the type of grant (education or research).

The report should be sufficient to allow the OIEA to determine that the grants have been awarded consistent with the targeted areas. The report will also detail the necessary and reasonable expenses associated with distributing grant awards from the Investor Education Funds. In addition to the quarterly reports, the NASD Foundation will provide the OIEA with a forward-looking annual report, setting forth the plan for the upcoming year regarding the use of Investor Education Funds.

#### **6. Use Of Any Remaining Funds**

In the event the NASD Foundation is dissolved in the future, any remaining Investor Education Funds will be distributed according to the recommendation of the SEC upon further Order of the Court.

#### **C. Amendments to Final Judgments**

The new plan will require certain amendments to the terms governing investor education in the Final Judgments. These amendments are detailed in the proposed Order. The SEC proposes that the Final Judgments be amended to delete the following: (1) provisions that permit the transfer of funds from the FRBNY to a depository account of the current investor education entity (defined in the Final Judgments as an “Investor Education Fund”), (2) all references to such an “Investor Education Fund,” (3) provision that requires deduction from the Investor Education Fund Accounts of an administrative court registry fee (because the funds in these accounts will be transferred out of the FRBNY), (4) provisions requiring that a new tax-exempt, non-profit grant administration organization be established, and (5) all references to such an “Investor Education Entity.”

#### **D. Amendments to Investor Education Orders**

Certain amendments are also required in the Investor Education Orders. These amendments are detailed in the proposed Order. Because the term “Investor Education Fund” was defined as a depository account of the current investor education entity, the SEC proposes that this term be deleted from the Orders. The SEC also proposes that certain provisions that applied to the creation and operation of the current investor education entity be deleted. Such provisions are no longer necessary, as the new plan no longer requires such an entity. The SEC proposes that the provision regarding restrictions on the use of the investor education funds be amended to apply to the grantees of grants awarded by the NASD Foundation from the funds. The SEC further proposes that certain protections in the Investor Education Orders for those involved in distributing the funds be extended to the NASD Foundation. Finally, the SEC proposes that the Investor Education Orders be amended to name Damasco & Associates as the Tax Administrator for the funds in the Investor Education Fund Accounts.

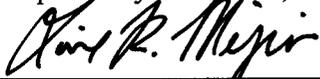
#### **III. CONCLUSION**

The SEC believes that the new streamlined plan will result in the efficient, cost-effective, and expeditious distribution of investor education funds. The SEC respectfully requests that the Court enter the proposed Order as the new investor education plan.

Date: May 4, 2005

Stephen M. Cutler, Director  
Linda Chatman Thomsen, Deputy Director  
Antonia Chion, Associate Director  
Division of Enforcement  
Securities and Exchange Commission

Respectfully submitted,

  
Luis R. Mejia (LM 5387)  
Assistant Chief Litigation Counsel  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0911  
Telephone: (202) 551-4481  
Fax: (202) 772-9245  
[MejiaL@sec.gov](mailto:MejiaL@sec.gov)  
Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Civil Action No.  
03 Civ. 2937 (WHP)  
**[PROPOSED]**  
**ORDER REGARDING**  
**INVESTOR EDUCATION**  
**PLAN**

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

Civil Action No.  
03 Civ. 2938 (WHP)

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

Civil Action No.  
03 Civ. 2939 (WHP)

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

Civil Action No.  
03 Civ. 2940 (WHP)

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

Civil Action No.  
03 Civ. 2941 (WHP)

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

Civil Action No.  
03 Civ. 2942 (WHP)

-----X  
SECURITIES AND EXCHANGE COMMISSION, :  
 :  
 : Civil Action No.  
 :  
 : Plaintiff, :  
 :  
 : 03 Civ. 2943 (WHP)  
 :  
 : - against - :  
 :  
 : UBS WARBURG LLC, :  
 :  
 : Defendant. :  
 :  
-----X

-----X  
SECURITIES AND EXCHANGE COMMISSION, :  
 :  
 : Civil Action No.  
 :  
 : Plaintiff, :  
 :  
 : 03 Civ. 2944 (WHP)  
 :  
 : - against - :  
 :  
 : GOLDMAN, SACHS & CO., :  
 :  
 : Defendant. :  
 :  
-----X

-----X  
SECURITIES AND EXCHANGE COMMISSION, :  
 :  
 : Civil Action No.  
 :  
 : Plaintiff, :  
 :  
 : 03 Civ. 2945 (WHP)  
 :  
 : - against - :  
 :  
 : CITIGROUP GLOBAL MARKETS, INC., F/K/A :  
 : SALOMON SMITH BARNEY INC., :  
 :  
 : Defendant. :  
 :  
-----X

-----X  
SECURITIES AND EXCHANGE COMMISSION, :  
:   
Plaintiff, :   
:   
-- against -- :   
:   
CREDIT SUISSE FIRST BOSTON LLC, :   
F/K/A CREDIT SUISSE FIRST BOSTON :   
CORPORATION, :   
:   
Defendant. :  
-----X

Civil Action No.  
03 Civ. 2946 (WHP)

-----X  
SECURITIES AND EXCHANGE COMMISSION, :  
:   
Plaintiff, :   
:   
-- against -- :   
:   
HENRY McKELVEY BLODGET, :   
:   
Defendant. :  
-----X

Civil Action No.  
03 Civ. 2947 (WHP)

-----X  
SECURITIES AND EXCHANGE COMMISSION, :  
:   
Plaintiff, :   
:   
-- against -- :   
:   
MORGAN STANLEY & CO. INCORPORATED, :   
:   
Defendant. :  
-----X

Civil Action No.  
03 Civ. 2948 (WHP)

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

**ORDER REGARDING INVESTOR EDUCATION PLAN**

On October 31, 2003 and September 24, 2004, the Court approved and entered the Final Judgments in these related actions resolving the SEC’s complaints against twelve major investment banks and two individuals concerning equity research analyst practices in the late 1990s. In addition, for each of the eight investment bank defendants contributing investor education funds, the Court entered an Order Regarding Investor Education (“Investor Education Orders”). Section B of the Investor Education Orders required the SEC to propose an Investor Education Plan for the Court’s consideration and approval. The SEC submitted the plan on February 13, 2004. The Court approved the plan by Order dated March 25, 2004.

The SEC has determined that the goals of investor education can be carried out more efficiently by replacing the current plan with a new streamlined plan. The SEC has filed a motion with the Court for entry of this Order approving the new plan.

The Court, for good cause shown, GRANTS the SEC's motion.

This Order supersedes the Court's Order of March 25, 2004 and the investor education plan approved by the Court on that date in its entirety. All references in this Order to Investor Education Orders are meant to exclude the Court's March 25, 2004 Order.

The current Investor Education Entity shall remain subject to the terms that applied to it, supplemented by the terms of Section A of this Order, until the entity is terminated. In other respects, however, the terms of the Final Judgments and Investor Education Orders that required the creation of, and applied to, an "Investor Education Entity," or that are otherwise inconsistent with this Order are superseded. With these exceptions, and the amendments set forth below, the terms of the Final Judgments and Investor Education Orders shall remain in effect and are incorporated by reference as if fully set forth herein.

**A. Dissolution Of Current Entity "The Foundation For Investors Education"**

1. Based on the SEC's submission of the new investor education plan that does not require the current Investor Education Entity to continue operations, and the desire of all board members to resign from this entity, the entity shall take all necessary steps to wind down its affairs and terminate its corporate existence. Board members and the entity's legal counsel may be compensated for this purpose at a reasonable hourly rate.

2. Within thirty days of entry of this Order, the current Investor Education Entity shall file with the Court, with copies to the SEC staff, 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 entity. The application may also include compensation at a reasonable hourly rate for services performed for the entity by any board member, where such services were necessitated by the Executive Director's notice of intent to resign. At least fifteen days before making such application to the Court, the entity shall submit the application to the SEC staff, and the SEC staff shall advise the Court whether it has any objection. Upon approval of any such application by the Court, the Court will authorize the payment of the approved fees and expenses.

3. Upon the request of the SEC, unopposed by the current Investor Education Entity, the income tax reporting requirements relating to the Investor Education Fund Accounts at the Federal Reserve Bank of New York ("FRBNY"), as set forth in Section A.2 of the Investor Education Orders, shall be the responsibility of Damasco & Associates, which is appointed the Tax Administrator of such Accounts pursuant to the terms set forth in Section E of this Order.

4. The resignations of current 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 Fund Accounts**

1. The NASD Investor Education Foundation ("NASD Foundation") is an organization exempt from federal income tax under § 501(c) of the Internal Revenue Code. The NASD Foundation's grant program funds educational programs and research aimed at segments

of the investing public who could benefit from additional resources.

2. The funds in the Investor Education Fund Accounts and all future investor education installment payments required of certain defendants (less the taxes and approved fees, costs, and expenses described in ¶¶ A.1, A.3, and E.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) (“Investor Education Funds”), shall be distributed to the NASD Foundation. The Clerk of the Court is directed to take steps to amend the Account Agreement between the Clerk of the Court and the FRBNY to provide for the distribution to the NASD Foundation of funds currently in the Investor Education Fund Accounts. The NASD Foundation shall at all times keep the Investor Education Funds separate from other NASD funds available for disbursement. The NASD Foundation shall invest the Investor Education Funds 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.

3. Future investor education installment payments required of certain defendants, annually on or before the month and day of entry of the Final Judgment in each case, shall be made to the NASD Foundation. The NASD Foundation shall provide the defendants with payment/wire instructions for deposit to the separate account referred to in ¶ B.2. Defendants required to make investor education payments shall provide the SEC’s Office of Investor Education and Assistance (“OIEA”) with contemporaneous proof of the payments. The NASD Foundation shall keep account records sufficient to document whether each defendant required to make investor education payments has made timely and complete payments.

4. The NASD Foundation shall use the Investor Education Funds to award grants

pursuant to the terms of its grant program and prudent, reasonable, and ethical standards of grant making. The grants shall serve one or more of the following three areas (“targeted areas”):

- (a) investor education in the workplace – by the distribution of neutral, unbiased investor education in the workplace, with a particular emphasis on new entrants to the workforce, middle aged workers, and those nearing retirement;
- (b) dissemination of effective investor protection messages, including information about affinity fraud, cautionary advice about risky products, and how to effectively evaluate investment opportunities to deter fraud, and such messages may be particularly focused to reach the elderly, those whose primary language is not English, and those who belong to identifiable groups or organizations that are vulnerable to affinity fraud; and
- (c) those who educate others - by providing investor education training to those who teach and mentor others, in schools, community groups, and within religious organizations so that they have the knowledge and skills to effectively teach investor education concepts to others.

Within these target areas, the NASD Foundation should seek to address when possible the significant need for investor education of the various diverse and minority segments of the U.S. population. These target areas may be amended by further Court Order upon the application of the SEC if the SEC determines that such amendment is necessary to ensure that Investor Education Funds are used effectively and efficiently.

5. Grants awarded by the NASD Foundation from Investor Education Funds shall be subject to the limitations on the use of the Investor Education Funds set forth in ¶ A.1 of the Investor Education Orders, and subject to the eligibility and other guidelines in effect under the NASD Foundation's grant program. The following eligibility terms shall also apply:

(a) Eligibility – The NASD Foundation will award grants to organizations designated as tax-exempt according to Internal Revenue Code Section 501(c)(3), and non-profit colleges and universities. The NASD Foundation will accept grant proposals from persons of any race, color, creed, age, sex, disability, and national or ethnic origin.

(b) Ineligibility – The NASD Foundation will not award grants to:

- (1) Individuals;
- (2) Organizations affiliated with a current member of the NASD Foundation Board of Directors or NASD Board of Governors;
- (3) Securities firms regulated by NASD;
- (4) Organizations affiliated with a securities firm regulated by the NASD or individual regulated by NASD, such as a foundation established by a securities firm;
- (5) Securities regulators, self-regulatory organizations or securities industry trade associations;
- (6) Organizations that are “disqualified persons” pursuant to Article III, Section 3(d) of the NASD By-Laws;
- (7) Foreign organizations; and
- (8) Entities that discriminate on the basis of age, color, disability,

marital status, national origin, race, religion, sex, sexual orientation, or veteran status.

6. It is the intention of this Order that the Investor Education Funds distributed to the NASD Foundation will not be used as a permanent endowment. The NASD Foundation shall use its best efforts to distribute the Investor Education Funds in an expeditious manner, consistent at all times with the terms of this Order.

7. The NASD Foundation may use a portion of the Investor Education Funds to cover the reasonable and necessary expenses associated with distributing grant awards from the Investor Education Funds.

8. The NASD Foundation shall provide the SEC's OIEA with quarterly reports that describe the use of the Investor Education Funds. The report shall, at a minimum, identify the grant recipient, describe the use of the grant, the grant amount, project term, and type of grant (education or research). The report should detail the reasonable and necessary expenses associated with distributing grant awards from the Investor Education Funds. The report should also be sufficient for the SEC's OIEA to determine that the grants are consistent with the targeted areas. The NASD Foundation shall also provide the SEC's OIEA with an annual report setting forth the NASD Foundation's strategic plan for the upcoming year regarding the use of Investor Education Funds.

9. Upon dissolution of the NASD Foundation any remaining Investor Education Funds will be distributed according to the recommendation of the SEC upon further Order of the Court.

**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 Fund Accounts 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 Fund Accounts 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 IV, Paragraph C of the Merrill Lynch Final Judgment is amended to delete the references to an “Investor Education Fund” and an “Investor Education Entity.”

7. 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, Paragraph A.1 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 depository 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 Fund Accounts 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 Fund Accounts 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 is amended to apply its restrictions solely to grants awarded by the NASD Foundation from the Investor Education Funds.
7. Paragraph C.2 of the Deutsche Bank Final Judgment is amended to delete references to the “Executive Director of the Investor Education Entity” and replace with “Damasco & Associates.”
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, and G of the Deutsche Bank Final Judgment are amended to add the NASD Foundation as a covered party.

**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 required to make investor education payments other than Merrill Lynch and Deutsche Bank.

2. Section IX, Paragraph A.1 of the Final Judgments is 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 Fund Accounts 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 Fund Accounts 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” and an “Investor Education Entity.”

7. Section IX, Paragraph D of the Final Judgments is amended to delete the

references to an “Investor Education Fund.”

**F. Amendments To Investor Education Orders**

1. All references in the Investor Education Orders to the term “Investor Education Fund” are deleted as that term was defined as a depository account of the prior investor education entity.

2. Paragraph A.1 of the Investor Education Orders is amended to apply its restrictions solely to the grantee of grants awarded by the NASD Foundation from the Investor Education Funds.

3. Paragraph A.2 of the Investor Education Orders is amended to delete references to the “Executive Director of the Investor Education Entity” and replace with “Damasco & Associates.”

4. Paragraphs B.4, B.5, B.6, C, D.1, D.2, and D.5 of the Investor Education Orders are deleted, as these provisions applied to the creation and continued operation of a new investor education entity.

5. Paragraphs D.3, D.4, D.6, and E of the Investor Education Orders are amended to add the NASD Foundation as a covered party.

**G. Appointment Of Tax Administrator**

1. Damasco & Associates is appointed as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to funds in the Investor Education Fund Accounts.

2. Damasco & Associates shall be designated the administrator of the 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 Investor Education Fund Accounts. The Tax Administrator shall contemporaneously provide copies of all such filings to the SEC staff.

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

4. The 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 Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a declaration of fees and expenses to the SEC staff for submission to the Court for approval and for payment from the Investor Education Fund 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 Tax Administrator shall provide the SEC staff with a draft of the supporting declaration for review. If the SEC staff has any corrections or objections to the declaration, the 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 Tax Administrator's response thereto.

**H. Retained Jurisdiction**

1. This Court shall retain jurisdiction for the purpose of ensuring compliance with the terms of this Order.

SO ORDERED.

Dated: New York, New York  
\_\_\_\_\_, 2005

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WILLIAM H. PAULEY III  
UNITED STATES DISTRICT JUDGE