

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, : ORDER  
Plaintiff, :  
-against- : 03 Civ. 2937 (WHP)  
BEAR, STEARNS & CO. INC., :  
Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :  
Plaintiff, :  
-against- : 03 Civ. 2938 (WHP)  
JACK BENJAMIN GRUBMAN, :  
Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :  
Plaintiff, :  
-against- : 03 Civ. 2939 (WHP)  
J.P. MORGAN SECURITIES INC., :  
Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :  
Plaintiff, :  
-against- : 03 Civ. 2940 (WHP)  
LEHMAN BROTHERS INC., :  
Defendant. :

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :  
Plaintiff, :  
-against- : 03 Civ. 2941 (WHP)  
MERRILL LYNCH, PIERCE, FENNER & :  
SMITH INCORPORATED :  
Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :  
Plaintiff, :  
-against- : 03 Civ. 2942 (WHP)  
U.S. BANCORP PIPER JAFFRAY INC., :  
Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :  
Plaintiff, :  
-against- : 03 Civ. 2943 (WHP)  
UBS WARBURG LLC, :  
Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :  
Plaintiff, :  
-against- : 03 Civ. 2944 (WHP)  
GOLDMAN, SACHS & CO., :  
Defendant. :

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- : 03 Civ. 2945 (WHP)

CITIGROUP GLOBAL MARKETS INC., :  
f/k/a SALOMON SMITH BARNEY, :

Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- : 03 Civ. 2946 (WHP)

CREDIT SUISSE FIRST BOSTON LLC, :  
f/k/a CREDIT SUISSE FIRST BOSTON :  
CORPORATION, :

Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- : 03 Civ. 2947 (WHP)

HENRY McELVEY BLODGET, :

Defendant. :

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- : 03 Civ. 2948 (WHP)

MORGAN STANLEY & CO. INCORPORATED, :

Defendant. :

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WILLIAM H. PAULEY III, District Judge:

On June 2, 2003, this Court directed the SEC and the defendants to consider certain administrative matters and answer substantive questions concerning the proposed consent judgments in the what the SEC has labeled the "global research analyst settlement."<sup>1</sup> On June 16, 2003, the SEC filed a twenty-three page response, and the defendant investment banks and individuals filed a two-paragraph statement "tak[ing] no position with regard to the content of the [SEC's] memorandum, but confirm[ing] that they have nothing substantive to add to it that would be responsive to the Order."

This Court appreciates the time and effort expended by the SEC in responding to its June 2, 2003 Order. However, in considering the fairness and reasonableness of the proposed

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<sup>1</sup> All defined terms from the June 2, 2003 Order apply to this Order.

consent judgments, and their subsequent enforcement, this Court has additional questions. The parties are directed to respond individually in memoranda to the Court by July 18, 2003, addressing the following issues:

1. Eligibility to participate in the Distribution Fund is limited to investors who (i) purchased (ii) equity securities (iii) of a company referenced in the complaint (iv) through the investment bank defendant named in the complaint (v) during the relevant time period described in the complaint. The SEC should submit, for each proposed judgment: (1) the name(s) of each qualifying equity security; and (2) the relevant time period. In view of the requirement of Fed. R. Civ. P. 58 that a judgment be "a self-contained document," Massey Ferguson Division of Varsity Corp. v. Gurley, 51 F.3d 102, 104 (7<sup>th</sup> Cir. 1995), this Court suggests that the SEC consider including this information in each proposed judgment. Further, each defendant investment bank should submit, for each equity security identified by the SEC, the total number of shares purchased by its clients during the relevant time period and total dollar volume of those purchases. The parties may choose to submit this information to the Court on one spreadsheet for each defendant investment bank.
2. In its response, the SEC explained that the amount of the Federal Payment characterized as a penalty "will depend on how each state that accepts the State Settlement Offer treats the payment made to it," see SEC Response at 11, and that the respective percentages of the Federal Payment characterized as a penalty and disgorgement "are not known at this point," see SEC Response at 11 n.8. In view of Fed. R. Civ. P. 58, can this Court approve a settlement where the precise amount of the penalty and disgorgement is not fixed, and no time line has been set for that determination? Has any court passed upon (i.e., approved or disapproved) a "final" judgment, or has the SEC ever issued a "final" decision, where the penalty and disgorgement amounts or other

sanctions were not fixed at the time the judgment or decision was entered?

- a. Identify the states that have accepted the State Settlement Offers, and describe the terms and allocations as to each defendant of penalty and disgorgement with respect to each such state.
  - b. Has any investment bank defendant or individual defendant sought a federal income tax deduction with respect to any portion of the Federal Payment? Does any defendant intend to?
  - c. Has any investment bank defendant or individual defendant sought indemnification or reimbursement from an insurer or other entity for any portion of the Federal Payment? Does any defendant intend to?
3. Do the prohibitions on conflicts between investment banking and research analysts, and the injunctive relief sought to enforce them, apply to foreign affiliates or subsidiaries of the defendant investment banks? Does the proposed injunctive relief apply to activities by the defendant investment banks in non-U.S. markets?
  4. The Investor Education Fund Administrator will be entrusted with substantial sums of money and have broad discretion, without Court approval or SEC oversight, in deciding how to spend those funds once the Investor Education Plans are approved. Further, the proposed judgments contemplate the creation of a non-profit grant administration program with no apparent oversight structure. What audit procedures do the parties envision to ensure that expenditures by the Investor Education Fund Administrator and the grant administration program are appropriate? Does the SEC contemplate the posting of a bond for the Investor Education Fund Administrator?

If the parties need additional time to prepare their respective responses, they may present a letter application to the Court.

Of course, this Court may raise additional matters as its review continues.

On an administrative point, this Court informally advised the SEC that it should submit the names and curriculum vitae of three (3) candidates for the position of Distribution Fund Administrator. The SEC has informed Chambers that it plans to submit two (2) names at first, with a third to follow shortly thereafter. In an abundance of caution and to avoid any appearance of pre-selection, the SEC should submit all three (3) candidates simultaneously. In addition, the SEC should submit the names and curriculum vitae of three (3) candidates for the position of Investor Education Fund Administrator when it is practicable for the Commission to do so. In its response to the Court, the SEC is invited to propose dates when each of these sets of nominations can be made.

The SEC is directed to serve copies of this Order on all counsel appearing for defendants in this action.

The Clerk is directed to file copies of this Order in all of the related actions bearing the following docket numbers: 03 Civ. 2937, 03 Civ. 2938, 03 Civ. 2939, 03 Civ. 2940, 03 Civ. 2941, 03 Civ. 2942, 03 Civ. 2943, 03 Civ. 2944, 03 Civ. 2945, 03 Civ. 2946, 03 Civ. 2947 and 03 Civ. 2948.

Dated: July 3, 2003  
New York, New York

SO ORDERED:

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

*Copy faxed and mailed to:*

James A. Meyers, Esq.  
United States Securities  
and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0911