NEW YORK STOCK EXCHANGE, INC.

<u>EXCHANGE HEARING PANEL DECISION 05-163</u> **December 22, 2005**
BEAR, STEARNS & CO. INC.
MEMBER ORGANIZATION

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Violated NYSE Rule 80A by permitting agency index arbitrage basket orders to be executed without required "plus tick" notation when collar was in place; violated Rules 17a-3 and 17a-4 under Securities Exchange Act of 1934 and NYSE Rule 440 by having books and records that did not reflect index arbitrage trading with specificity and failed to timely report index arbitrage trades; violated NYSE Rule 440B and Rule 10a-1 under Securities Exchange Act of 1934 by transmitting index arbitrage basket in which certain issues violated short sale rule; violated NYSE Rule 342 by failing to have adequate systems and written procedures regarding index arbitrage trading, trading collars, short sales and derivatives trading, to adequately supervise activities in customer's accounts, and to detect and prevent research analyst's videotaped appearance on Internet road show, sales literature, or similar communications from being made available to public without advance supervisory approval; violated NYSE Rule 405 by failing to: (a) use due diligence to learn essential facts relative to every customer and every order; and (b) diligently supervise all accounts handled by registered representative; violated Exchange Rule 472 by making available, to customers or public, sales literature or similar type of communications without prior supervisory approval and by utilizing communication in connection with investment banking transaction that was not fair and balanced – Consent to censure and $1.5 million fine.

Appearances:

For the Division of Enforcement
Linda S. Riefberg, Esq.
Joy A. Weber, Esq.
Jeanne R. Elmadany, Esq.
John C. Saxton, Jr., Esq.

For the Respondent
David Weintraub, Esq.

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A Hearing Panel of the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") met to consider a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement ("Enforcement") and Bear, Stearns & Co. Inc. ("Respondent Firm" or the "Firm" or "Bear Stearns"). Without admitting or denying guilt, Respondent Firm consented to a finding by the Hearing Panel that it:

I. Violated NYSE Rule 80A when Respondent Firm permitted agency index arbitrage basket orders to be transmitted to, and executed on, the Floor of the NYSE without the "plus tick" notation required for arbitrage index trades when a collar was in place.

II. Violated Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 (the "Exchange Act") and NYSE Rule 440 in that Respondent Firm's books and records did not reflect with specificity its index arbitrage trading and failed to report index arbitrage trades on its Derivatives Program Trading Report ("DPTR") to the NYSE in a timely fashion.

III. Violated NYSE Rule 440B and Exchange Act Rule 10a-1 when Respondent Firm transmitted to the Floor of the NYSE an index arbitrage basket in which certain issues in the basket violated the short-sale rule.

IV. Violated NYSE Rule 342 in that Respondent Firm failed to:

A. Have written procedures for compliance with NYSE Rule 80A.

B. Have in place a system to calculate, determine and inform employees when a trading collar was in place.

C. Have in place a system that would inhibit basket trades without the appropriate tick indicator from being transmitted to the Floor of the NYSE when a Rule 80A restriction was in place.

D. Have written procedures regarding its index arbitrage trading activities and a system to review trades for accuracy prior to transmission to the Floor of the NYSE and to have in place inhibitors that would prevent trades that exceeded the trading desk's daily trading limits in equities and derivatives from being transmitted to the Floor of the NYSE.

E. Adequately educate Firm personnel as to the provisions of NYSE Rules 80A 440B and Exchange Act Rule 10a-1.

F. Monitor adequately, on a real-time and trade-date-plus-one basis, its index arbitrage business because it failed to create reports that reflected trading aggregated by department to ensure review for accuracy of order entry and compliance with NYSE Rules.

G. Evidence supervision of its derivatives trading and have reports that would facilitate this review.

H. Adequately supervise the activities of a registered representative and the activities in a customer's accounts.

I. Detect and prevent: a research analyst's videotaped appearance on an Internet road show; sales literature or a similar communication's being made available to customers or the public, without advance supervisory approval; and utilization of a communication in connection with an investment banking transaction that was not fair and balanced because it failed to disclose the potential risks of an investment in the offering.

V. Violated NYSE Rule 405 in that Respondent Firm failed to:

A. Use due diligence to learn the essential facts relative to every customer and every order.

B. Supervise diligently all accounts handled by a registered representative.

VI. Violated NYSE Rule 472 in that it:

A. Made available to customers or the public, sales literature or a similar type of communication, without prior supervisory approval.

B. Utilized a communication in connection with an investment banking transaction that was not fair and balanced because it failed to disclose the potential risks of an investment in the offering.

For the sole purpose of settling this disciplinary proceeding, Enforcement and Respondent Firm stipulate to certain facts, the substance of which follows:[1]

Background and Jurisdiction

1. Bear, Stearns & Co. Inc. ("Bear Stearns" or the "Firm") is the global investment banking, securities trading and brokerage arm of parent company The Bear Stearns Companies Inc. Bear, Stearns Securities Corp., a wholly owned subsidiary of Bear Stearns, processes approximately 8% of the Exchange's volume cleared daily through the National Securities Clearing Corp. ("NSCC") and accounts for an average of 20% of the reported NYSE short interest. Bear Stearns has an approximate total net capital of approximately $37.5 billion, assets of $209.7 billion and is the seventh largest securities firm in terms of total capital.

2. At all times relevant, the Firm was engaged in index arbitrage trading involving single transaction and basket trades of both New York Stock Exchange ("NYSE") and National Association Securities Dealers ("NASD") index products and employed hedging strategies involving these products. The Firm utilized the Exchange's SuperDot system to deliver these equities and derivatives trades to the Floor of the

1 The facts, allegations, and conclusions contained in paragraphs 1-58 are taken from the executed Stipulation of Facts and Consent to Penalty between Enforcement and Respondent. No changes have been made to the stipulated paragraphs by the Hearing Panel, except that certain names have been deleted to protect the privacy of non-parties, or as otherwise noted.

Exchange. In addition, the Firm: provided equity research, merger and acquisition advise; venture capital and underwriting services on a global basis and engaged in, retail and institutional trading.

Summary of Violative Conduct

3. On three separate dates, July 6, 2001, October 2, 2002 and May 30, 2003, the Firm violated certain Exchange rules and regulations concerning the Securities Exchange Act of 1934 ("SEA") in connection with its derivatives trading.

4. Further, during the period January 1998 through December 2002 the Firm violated certain Exchange rules concerning the supervision of accounts controlled by a foreign customer. The Firm also failed to use due diligence to learn essential facts relative to this foreign customer and this customer's orders.

5. In addition, during the period April 26, 2003 through May 8, 2003, a video of a Bear Stearns research analyst appeared on an Internet road show for a public offering for which the Firm was lead underwrite. The analyst's comments on the Internet road show, which were made available to Firm customers and potential investors through the Firm's website, did not present fair and balanced information regarding the potential risks and rewards of an investment in the offering.

Trading Violations

6. NYSE Rule 80A, in effect at the time relevant herein, required that on a trading day that the Dow Jones Industrial Average ("DJIA") declined below its closing value on the previous trading day by at least the "two-percent value" as calculated in accordance with the Supplementary Material to this Rule,[2] all index arbitrage orders to sell any component of the S&P 500 Stock Price Index ("SPX") must be entered with the instruction "sell plus." Further, on a trading day that the DJIA advanced above its closing value on the previous trading day by at least the "two-percent value," all index arbitrage orders to buy any component of the SPX must be entered with the instruction "buy minus."[3] The purpose of NYSE Rule 80A is to reduce market volatility.

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[2] Pursuant to NYSE Rule 80A.10, as in effect at the relevant time, "[t]he "two-percent value" shall be calculated at the beginning of each calendar quarter and shall be two-percent (2%), rounded down to the nearest 10 points, of the average closing value of the DJIA for the last month of the previous quarter."

[3] The restrictions governed by NYSE Rule 80A were removed only if, in the case of certain sell orders, the DJIA subsequently reached a value below its closing value on the previous trading day that is a decline equal to the "one-percent value" or less as calculated in accordance with the Supplementary Material to this Rule and in the case of certain buy orders, the DJIA subsequently reached a value above its closing value on the previous trading day that is an advance equal to the "one-percent value" or less. Such restrictions could be re-imposed if the DJIA again reached the "two-percent value."

7. Rule 440B and Securities Exchange Act Regulation 10a-1 states in pertinent part that no member shall, for his own account or for the account of any person, effect on the Exchange a short sale of any security; (i) below the price at which the last sale thereof, regular way, was effected on the Exchange; or (ii) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on the Exchange.

8. Exchange Rule 342 states in essence that: "[e]ach office, department or business activity of a member or member organization…shall be under the supervision and control of the member or member organization establishing it and of the personnel delegated such authority and responsibility."

9. Exchange Rule 342(b) provides that "[t]he general partners or directors of each member organization shall provide for the appropriate supervisory control and shall designate a general partner or principal executive officer to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations. This person shall:

    (1) delegate to qualified principals or employees responsibility and authority for supervision and control of each office, department or business activity, and provide for appropriate procedures of supervision and control.

    (2) establish a separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised.

10. Exchange Rule 440 and Regulations 17a-3 and 17a-4 ("Regs. 17a-3 and 17a-4") of the Securities and Exchange Act of 1934 ("SEA") in essence require that every member not associated with a member organization and every member organization shall make and preserve books and records as the Exchange may prescribe.

11. Exchange Rule 405 requires every member organization to use due diligence to learn the essential facts relative to every customer, every order, and every cash or margin account accepted or carried by such organization.

The July 6, 2001 Violations

12. On July 6, 2001, the Firm transmitted nine agency index arbitrage sell programs (a/k/a basket index trades) on the Firm's automated system to the Floor of the Exchange over SuperDot without the required "sell plus" notation, when the DJIA had declined 210 points from the close of the previous day and tick restrictions set forth in Rule 80A were in place.

13. Further, the Firm's books and records were insufficient as they did not capture, with specificity, its index arbitrage trading and failed to report the nine-index arbitrage trades transmitted to the Floor of the Exchange on July 6, 2001 on its Derivatives

Program Trading Report ("DPTR") in a timely fashion. The Firm provided data on these trades months after the trades occurred subject to a request from the Exchange.

14. During times relevant hereto, the Firm's derivatives traders were involved in trading Exchange Traded Funds ("ETFs"). ETFs are index funds representing a basket of stocks that trade on the American Stock Exchange ("AMEX") and the NYSE throughout the day, with intra-day pricing. The ETFs offer diversity in the combination of stocks in the basket that reflect the performance of the market index, industry or sector in one security.[4]

15. The Firm utilized a data feed that advised its traders of changes in the DJIA for business purposes. The traders took advantage of changes in the DJIA by selecting a pre-configured basket and executing a long transaction or engaging in various hedging strategies for the Firm's proprietary account or accounts for which the Firm acted as agent including affiliates.

16. On July 6, 2001, the Firm engaged in index arbitrage trading without having a system to calculate, determine and inform its traders that a collar was in place and failed to have in place a system that would inhibit trades from being transmitted to the Floor of the Exchange when a rule 80A restriction was in place without the appropriate tick indicators.

17. At the time, the Firm's traders performed a manual calculation of changes in the DJIA for Rule 80A purposes and disseminated this information to each other by word of mouth.

18. In addition to the systems and procedural deficits, the Firm failed to adequately educate its traders regarding procedures when a Rule 80A collar is in place.

<u>**The October 2, 2002 Violations**</u>

19. On October 2, 2002, the quantity of an index arbitrage order was misstated and a $4 billion rather than a $4 million dollar trade was transmitted for execution. Portions of such order violated Exchange Rule 440B (the short sale rule) in 38 of the issues in the order sent to the Floor of the Exchange. The Firm's Basket Trading System ("BTS") lacked a trade confirmation or pop-up feature for the trader to confirm the trade and lacked a feature (inhibitor) to prohibit the transmission of trades that exceeded the trading desk's daily $2 billion limit.

20. On October 2, 2002, the Firm was long 2.5 billion Standard & Poor 500 ("S&P") component stocks; short futures, and short S&P 500 Stock Price Index ("SPX") and S&P Depository Receipts a/k/a "SPYDERS". During the trading day, the Firm traded

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[4] The Firm was engaged in index arbitrage trading, a hedge strategy in which the Firm was long certain securities which are part of the S&P500 against which they create a short utilizing ETFs on the American Stock Exchange as options. The spread made in these trades represents the arbitrage opportunity.

index arbitrage baskets against futures and SPYDERS for the account of a foreign broker-affiliate. Bear Stearns had discretion over that account.

21. At approximately 3:30 p.m. in the afternoon, a trader at the Firm engaged in a series of hedge trades that began with covering a short SPYDERS position by purchasing SPYDERS on the AMEX then hedging the position by selling an equivalent basket of S&P 500 component stocks on the Exchange.

22. At all times relevant, the Firm's BTS routed orders to the Firm's Program Trading System where a branch code and sequence number was assigned to each order prior to transmission to the appropriate exchange. The basket in this instance was transmitted over SuperDot to the Floor of the Exchange.

23. At approximately 3:40 p.m. the same trader entered an order to sell an equivalent basket of S&P Component stocks to hedge a 50,000-lot SPYDERS position. The trader, utilizing a system that had been originally designed for futures and options orders; failed to recognize that the order entry system he was utilizing was automatically adding three zeros to the quantity field and his order of 50,000 lots of SPYDERS valued at $4 million was in fact entered as 50 million lots of SPYDERS with a value of $4 billion dollars.

24. The trader recognized the error almost immediately after transmission and cancelled as many of the orders as possible via SuperDot and through Floor personnel. The trader hedged those orders that were not cancelled.

25. At all times relevant, the Firm's BTS system did not have in place a feature that would require the trader to confirm the elements of the trade, including quantity, prior to the trade being transmitted. This trade information confirmation feature (sometimes referred to as a "pop-up") is a safeguard against errors occuring prior to transmission, very much like the error that occurred in the current instance. Nor did the BTS have in place an inhibitor that would have blocked an order that exceeded the derivatives desk's trading limit for the day ($2 billion). Had the Firm made these provisions to BTS to safeguard its trading, the $2 billion error would not have been processed and transmitted to the Floor of the Exchange.

26. The BTS contained inhibitors that prevented orders from being processed once the total value of the orders reached approximately $1.85 billion, which when combined with trading earlier in the day, comprised the $2 billion trading limit for the day for this type of derivatives trading by the trading desk at issue.

27. As a result of the error, 4,433 sell orders of 499 separate issues of 30,000 shares each were entered in the Firm's system for transmission to the Floor of the Exchange with an aggregate value of $4 billion of which approximately $1.85 billion were transmitted to the Floor, and of which there were violations of the short sale rule in 38 of the issues involved in the error trade. Of these orders 2,391orders of 290 issues were transmitted for execution with a total value of $1.85 billion of which 907 orders (183 issues) were executed on the Exchange, AMEX and OTC markets.

28. The Firm failed to have a system of "pop-ups" in place that would have required a trader to confirm on BTS order entry data prior to transmission; failed to have in place inhibitors on BTS that would block the transmission of an order that exceeded the dollar trading limits for the day; and failed to have in place an order cancellation system on BTS that could respond promptly to the demands of the type of trading in which it was engaged. The Firm's order entry and cancellation systems added considerably to the volatility of the market on October 2, 2002.

29. At all times relevant to the trading described above, the Firm did not provide traders with reports on a real time basis that would permit them to review their order entries and executions separately from the rest of the Firm. The Firm's derivatives traders instead created their own spread sheets to monitor their positions, which documents were not reviewed by Firm supervisors.

The May 30, 2003 Violations

30. On May 30, 2003, the Firm violated Exchange Rule 80A on two occasions when the Firm permitted agency index arbitrage basket orders to be transmitted to, and executed on the Floor of the Exchange without the "plus tick" notation required for arbitrage index trades when a collar was in place.

31. Following the July 6, 2001 incident, the Firm utilized a split feed off the DJIA circuit to provide data to its traders to monitor declines in the DJIA for Rule 80A purposes.

32. On May 30, 2003, Rule 80A tick restrictions became effective at approximately 10:43 a.m. and remained in effect to the close of trading.

33. At approximately 10:32 a.m., the Firm temporarily shut down its BTS due to technology issues, which arose intra-day. During the shutdown, the trading collar threshold was reached, triggering the Rule 80A trade restrictions.

34. When the Firm brought the BTS up at 11:01 a.m., the collars were still in effect, but the BTS did not recognize the curb.

35. At 2:31 p.m. and again at 2:32 p.m., the Firm violated Exchange Rule 80A with the entry of two basket trades which lacked the required tick indicator.

36. The Firm's technology department and its traders were unaware that when the system is brought down intra-day, the DJIA indicators had to be reset manually by the trader. At all times relevant, the Firm did not have a system to back up the BTS which traders could utilized when the BTS was inoperable.

37. The Firm not only violated Exchange Rule 80A on two occasions on May 30, 2003, but failed to have in place a system that re-sets and monitors changes in the DJIA for Rule 80A purposes if the system is brought down intra-day for any purpose.

38. At all times relevant, the Firm failed establish, maintain and implement appropriate procedures for supervision and control of Firm employees and departments in order to detect and prevent the violations described above involving its derivatives index arbitrage trading business.

Failure to Supervise Accounts with Suspicious Activity

39. In 1994, SR opened a personal account at Bear Stearns. At the time, SR's occupation was listed on his new account documentation as the Chairman of a certain Russian bank ("Russian Bank A"). SR maintained a business address in Moscow, Russia and a home address in Luxembourg. Later, SR became Secretary of a commercial bank located in Russia ("Russian Bank B"). SR's wife was the President of Russian Bank B. Between 1998 and 2000, SR opened and controlled ten (10) accounts at Bear Stearns, including several accounts in the name of Russian Bank B, as well as accounts in his own name and in the name of a financial firm (hereafter collectively referred to as SR's accounts). During 1998 through 2002, SR's accounts ranged in equity from $50,000 to $12 million.

40. As early as 1995 SR was the subject of Russian news reports alleging fraud and financial improprieties at Russian Bank A while SR was Chairman. During the period 1998 through 2000, when SR opened additional accounts at Bear Stearns and the Firm was doing business with SR, the Firm failed to learn the essential facts concerning him as well details regarding the accounts SR maintained at the Firm in the name of various entities. Had the Firm inquired, the Firm would have discovered these essential facts.

41. During the period January 1998 through December 2002, RR was the registered representative assigned to service SR's accounts. During this same period, there were in excess of 20 wires into SR's Bear Stearns accounts totaling in excess of $20 million. On more than 95 occasions, funds totaling in excess of $18 million, were wired from SR's accounts. On approximately 145 occasions a total in excess of $15 million was journaled between SR's various accounts at the Firm.

42. Many of the wires and/or journals noted above were processed with out any underlying security transactions being effected in the accounts receiving the funds.

43. For example in November 2000, approximately $2 million was journaled between two accounts at the Firm that based on account documentation maintained by the Firm, appear to be unrelated accounts. At the time of the transfers, there were no securities transactions in the account that received the funds. Approximately four days later, the $2 million dollars was wired to a US bank in the name of an unrelated entity.

44. The frequency and size of the wires and journals involving SR's accounts at the Firm, should have subjected them to further scrutiny and review by the Firm and its supervisory personnel, at or around the time they occurred, particularly since several

of these wires and/or journals coincided with suspicious investment activity in US Treasury Bills.

45. For example, on May 25, 2001, approximately $6 million worth of US Treasury Bills, with a due date of July 5, 2001, were purchased on margin in a Russian Bank B account maintained at the Firm. On May 29, 2001, an additional $625,000 worth of these US Treasury Bills were purchased on margin. These transactions were paid for by funds that were journaled from another SR account maintained at the Firm. Based on account documentation maintained by the Firm, at the time these transactions occurred, they appeared to be unrelated accounts. These positions were liquidated on May 30, 2001 and June 4, 2001 and the funds were journaled back to the account that funded the purchase.

46. During the period January 1998 through October 2002, the Firm had in place written policies and procedures that were designed to detect and prevent suspicious transactions of the type that occurred in SR's accounts. Despite having such policies and procedures in place, the Firm permitted the suspicious activity discussed above to continue in SR's accounts without making any reasonable inquiry into the transactions. Further, the Firm failed to discuss with RR the manner in which SR's accounts were being handled and it failed to learn the essential facts relative to orders the Firm executed for SR's accounts. Although the Firm eventually detected the suspicious activity and reported it to the federal authorities in August 2002, the Firm did not report this activity with specificity to the Exchange until October 15, 2002.

47. In light of the foregoing, as detailed in paragraphs 39 through 46,[5] the Firm failed to supervise the activities of RR; the transactions and orders in the accounts controlled by SR; and failed to supervise RR's handling of SR's accounts.

<u>Communications with the Public and Road Show Violations</u>

<u>Analyst Participation in an Internet Road Show</u>

48. In April 2002, a Bear Stearns research analyst began working with IB to obtain the IB mandate for an anticipated initial public offering ("IPO") by XYZ, Inc. ("XYZ"). The analyst helped draft and was featured in the pitch book presented to XYZ, and he and IB had multiple pitch meetings with XYZ. In June 2002 Bear Stearns was selected as a co-lead underwriter for the XYZ IPO.

49. As one of the first XYZ road show events, the Firm's ECM department arranged for XYZ management to make a presentation to the Firm's sales staff at Bear Stearns' headquarters in New York City on April 25, 2003. This presentation consisted of an introduction of XYZ and its management personnel by the analyst, a presentation by XYZ management, and a question and answer period during which both the analyst and XYZ management responded to questions.

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[5] The equivalent reference in the Stipulation of Facts and Consent to Penalty was to paragraphs 36 through 43 of that document.

50. The analyst's introductory remarks consisted entirely of his extremely favorable opinion of XYZ's business, its management, and his opinion that there would be an extraordinary return from an investment in XYZ. During the question and answer period, in response to a question posed to XYZ management, the analyst projected XYZ would experience 20% internal growth in the coming year. He asked XYZ management numerous questions eliciting favorable information regarding XYZ and the offering. Neither the analyst's introduction nor any of his comments during the question and answer period included any discussions of risks associated with an investment in XYZ.

51. From April 28, 2003 through May 8, 2003, a videotape of the XYZ presentation, including the analyst's introductory remarks and the question and answer period, was made available to Bear Stearns customers and potential investors via a password-protected website as the Internet road show for the XYZ IPO. Sixty-five Bear Stearns customers and potential investors viewed the XYZ Internet road show numerous times during this period. The Firm was unaware of the analyst's appearance on the XYZ Internet road show until 10 days after it had been posted to the Firm's website.

Failure to Supervise Appearance of Analyst on Internet Road show

52. From April 2002 through April 2003, the Exchange[6] conducted an investigation regarding the Firm's research and IB activities. The investigation revealed that during the period July 1999 through June 2001, Bear Stearns engaged in acts and practices that created or maintained inappropriate influence by its IB department over research analysts. One practice that placed research analysts in conflict was their participation in deal road shows.[7] In fact, during April 2003, the Firm had a policy generally prohibiting such activity.

53. Nonetheless, the Firm failed to establish reasonable procedures to detect and prevent violation of this policy, which occurred when the video of the analyst's introduction and comments during the question and answer period was included in the Internet road show.

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6 The Exchange conducted its investigation jointly with the SEC, NASD, National Association of States Securities Administrators and New York State Attorney General's office.

7 In Hearing Panel Decision 03-63, issued April 22, 2003, the Firm consented to a penalty of a censure, a total payment of $80 million and an undertaking, which, when effective, among other things, would prohibit analyst participation in IB activities, including road shows. The undertaking provision prohibiting research analyst participation in road shows did not become effective until December 2003. The posting of the XYZ road show to the Firm's website in April 2003 was not a violation of that settlement since the case had not been finalized at that time. However, as the result of the findings of the investigation and the negotiations, in April 2003, the Firm was well aware that its research analysts should not be participating in road shows.

Failure to Supervise Communications with the Public

54. Exchange Rule 472(a) provides in pertinent part that each sales literature or other similar type of communication which is generally distributed or made available by a member organization shall be approved in advance by a member, allied member, supervisory analyst or person designated under the provisions of Exchange Rule 342(b)(1).

55. Bear Stearns conducted Internet road shows in connection with investment banking transactions prior to XYZ. The production of the Firm's Internet road shows and their posting to the Firm's website was managed entirely by an ECM administrative employee.

56. The Firm did not have any policy or procedure to undertake a supervisory review of materials posted to the Firm's website as Internet road shows either before or after the Internet road shows were made available to its customers and potential investors. This included the XYZ road show.

57. The XYZ Internet road show, which included the analyst's appearance, was a communication with the public subject to the General Standards for All Communications provision of Exchange Rule 472.

58. Neither the analyst's introductory comments nor any of his other statements on the XYZ Internet road show presented fair and balanced information regarding the potential risks and rewards of an investment in the offering.

DECISION

The Hearing Panel, in accepting the Stipulation of Facts and Consent to Penalty, found Respondent Firm guilty as set forth above by unanimous vote.

PENALTY

In view of the above findings, the Hearing Panel, by unanimous vote, imposed the penalty consented to by Respondent Firm of a censure and a $1.5 million fine.

For the Hearing Panel

Peggy Kuo - Chief Hearing Officer
Panelists:
Richard M. Jablonski
John P. O'Brien