

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28143; 812-13352]

Bear Stearns Asset Management, Inc., et al.; Notice of Application

February 5, 2008

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c-1 under the Act.

Applicants: Bear Stearns Asset Management, Inc. (the “Advisor”), ALPS Distributors, Inc. (the “Distributor”), and Bear Stearns Active ETF Trust (the “Trust”).

Summary of Application: Applicants request an order that permits (a) series of certain open-end management investment companies to issue shares (“ETS”) redeemable in large aggregations only (“Creation Unit Aggregations”) and (b) secondary market transactions in ETS to occur at negotiated market prices.

Filing Dates: The application was filed on December 21, 2006 and amended on August 8, 2007, September 14, 2007, November 5, 2007, December 10, 2007, December 26, 2007, and January 14, 2008.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 26, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest,

the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: Advisor and Trust, 237 Park Avenue, New York, New York 10017; Distributor, 1290 Broadway, Suite 1100, Denver, CO 80203.

For Further Information Contact: Laura J. Riegel, Senior Counsel, at (202) 551-6873, or Marilyn Mann, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE, Washington, DC 20549-0102 (tel. 202-551-5850).

Applicants' Representations:

1. The Trust is an open-end management investment company registered under the Act and formed as a Delaware statutory trust. The Trust is organized as a series fund with one initial series: Bear Stearns Current Yield Fund (the "Current Yield Fund"). The investment objective of the Current Yield Fund will be to seek as high a level of current income as is consistent with the preservation of capital and liquidity by investing primarily in short-term debt obligations, repurchase agreements and reverse repurchase agreements that meet certain minimum ratings requirements (or if unrated, that the Advisor determines are of comparable quality). The Current Yield Fund's portfolio will have an average dollar-weighted maturity of approximately 180 days.

2. The Advisor plans to introduce future series of the Trust or of other open-end management investment companies ("Future Funds"). The Future Funds will invest primarily in

investment grade fixed-income securities (or, if unrated, that the Advisor determines are of a comparable quality).¹ Applicants request that the order apply to any such Future Funds. Any Future Fund will be (a) advised by the Advisor or an entity controlled by or under common control with the Advisor, and (b) comply with the terms and conditions of the application.² The Current Yield Fund and Future Funds together are the “Funds.” Each Fund will operate as an actively-managed exchange-traded fund (“ETF”).

3. The Advisor, a New York corporation, is a wholly-owned subsidiary of The Bear Stearns Companies Inc., a holding company that through its subsidiaries (including its principal subsidiary, Bear, Stearns & Co., Inc.) is a United States investment banking, securities trading and brokerage firm serving U.S. and foreign corporations, governments, and institutional and individual investors. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”) and will serve as investment adviser to all the Funds. The Advisor may retain other investment advisers to act as “sub-advisors” to Future Funds (“Subadvisors”). Any Subadvisor will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, will act as each Fund’s distributor and principal underwriter.

4. ETS of the Funds will be sold in Creation Unit Aggregations initially of 50,000 ETS. All orders to purchase Creation Unit Aggregations must be placed with the Distributor by or through a party that has entered into an agreement with the Distributor (“Authorized Participant”). An Authorized Participant must be a participant in the Depository Trust Company

¹ With respect to both the Current Yield Fund and the Future Funds, if a security satisfies the minimum rating requirement at the time of purchase and is subsequently downgraded below that rating, the Advisor will determine what action, including the sale of the security, is in the best interest of the applicable Fund and its shareholders.

² All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

(“DTC,” and such participant, “DTC Participant”). Creation Unit Aggregations will be created and redeemed solely in cash at net asset value (“NAV”). Each Fund will sell and redeem Creation Unit Aggregations on each day required by section 22(e) of the Act (each such day, a “Business Day”).

5. An investor purchasing a Creation Unit Aggregation from a Fund will be charged a fixed fee (“Transaction Fee”) to protect the continuing ETS holders against the possible dilutive transactional expenses in connection with the purchase of Creation Unit Aggregations. From time to time, a Fund may waive or modify the Transaction Fee. The exact amounts of the Transaction Fee will be determined separately for each Fund. The Transaction Fee relevant to each Fund will be fully disclosed in the prospectus (“Prospectus”) and the method of calculating that Transaction Fee will be fully disclosed in the statement of additional information of such Fund. All orders to purchase Creation Unit Aggregations will be placed with the Distributor by or through an Authorized Participant and it will be the Distributor’s responsibility to transmit such orders to the Trust. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Unit Aggregations, and for maintaining records of both the orders placed with it and the acknowledgments furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of ETS.

6. Purchasers of ETS in Creation Unit Aggregations may hold such ETS or may sell such ETS into the secondary market. ETS will be listed and traded on a national securities exchange as defined in section 2(a)(26) of the Act (“Exchange”). It is expected that one or more member firms of a listing Exchange will be designated to act as a specialist and maintain a market for ETS on the Exchange (the “Exchange Specialist”). Prices of ETS trading on an

Exchange will be based on the current bid/offer market.³ ETS sold in the secondary market will be subject to customary brokerage fees or commissions.

7. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs. The Exchange Specialist, in providing a fair and orderly secondary market for the ETS, also may purchase Creation Unit Aggregations for use in its market-making activities. Applicants expect that secondary market purchasers of ETS will include both institutional investors and retail investors.⁴ Applicants expect that the price at which the ETS trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Unit Aggregations at their NAV, which should ensure that the ETS will not trade at a material discount or premium in relation to their NAV.

8. ETS will not be individually redeemable, and owners of ETS may acquire those ETS from a Fund, or tender such ETS for redemption to the Fund, in Creation Unit Aggregations only. To redeem, an investor will have to accumulate enough ETS to constitute a Creation Unit Aggregation. Redemption orders must be placed by or through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Unit Aggregations.

³ The Exchange intends to disseminate every 15 seconds, during regular trading hours, through the facilities of the Consolidated Tape Association, the indicative intra-day value (“IIV”) of each Fund on a per-ETS basis. An independent third party calculator will calculate the IIV during the hours of trading on the Exchange by dividing (a) the sum of the estimated amount of cash held in the applicable Fund’s portfolio, the estimated amount of accrued interest owing to the applicable Fund and the estimated value of the securities held in the applicable Fund’s portfolio, minus the estimated amount of liabilities, as of the time of calculation by (b) the total number of outstanding ETS of the Fund. Applicants assert that the calculation and dissemination of IIV will allow for efficient arbitrage and thus avoid the possibility that significant deviations could develop between the market price of ETS and NAV.

⁴ ETS will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding ETS. DTC or DTC Participants will maintain records reflecting beneficial owners of ETS.

9. Neither the Trust nor any Fund will be advertised, marketed or otherwise held out as an "open-end investment company" or a "mutual fund." Instead, each Fund will be marketed as an "actively-managed exchange-traded fund." All marketing materials that describe the method of obtaining, buying or selling ETS, or refer to redeemability, will prominently disclose that ETS are not individually redeemable and that the owners of ETS may purchase or redeem ETS from a Fund in Creation Unit Aggregations only. The same approach will be followed in shareholder reports and other communications and investor educational materials issued or circulated in connection with the ETS. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of ETS.

10. The Funds' website, which will be publicly available prior to the public offering of ETS, will include the Prospectus and other information about the Funds that is updated on a daily basis, including the reported mid-point of the bid-ask spread at the time of the calculation of NAV ("Bid/Ask Price"). On each Business Day, before the commencement of trading in ETS on the Exchange, each Fund will disclose on its website the identities and quantities of the portfolio securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.⁵ Applicants assert that the website disclosure of each Fund's portfolio securities and other assets will provide a level of portfolio transparency that is substantially similar to that of index-based ETFs.

Applicants' Legal Analysis:

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c-1 under the Act.

⁵ Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T + 1"). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an “open-end company” as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer’s current net assets, or the cash equivalent. Because ETS will not be individually redeemable, applicants request an order that would permit each Fund, as a series of an open-end management investment company, to issue ETS that are redeemable in Creation Unit Aggregations only. Applicants state that investors may purchase ETS in Creation Unit Aggregations from each Fund and redeem Creation Unit Aggregations from each Fund. Applicants further state that because the market price of ETS will be disciplined by arbitrage opportunities, investors should be able to sell ETS in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c-1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable

security do so only at a price based on its NAV. Applicants state that secondary market trading in ETS will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of ETS in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing ETS. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting ETS to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in ETS does not involve the Funds as parties and cannot result in dilution of an investment in ETS, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in ETS will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of ETS and their NAV remains narrow.

Applicants' Conditions:

The applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Neither the Trust nor any of the Funds will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that the Fund is an "actively managed exchange-traded fund." Each Prospectus also will prominently disclose that ETS are not individually redeemable and will disclose that owners of ETS may acquire those ETS from the Fund and tender those ETS for redemption to a Fund in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that ETS are not individually redeemable and that owners of ETS may acquire those ETS from a Fund and tender those ETS for redemption to a Fund in Creation Unit Aggregations only.

2. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, ETS are issued by a registered investment company, and that the acquisition of ETS by investment companies and companies relying on sections 3(c)(1) or 3(c)(7) of the Act is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

3. The website for the Funds, which is and will be publicly accessible at no charge, will contain the following information, on a per-ETS basis, for each Fund: (a) the prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of

discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

4. The Prospectus and annual report for each Fund will also include: (a) the information listed in condition 3(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, calculated on a per ETS basis for one-, five- and ten-year periods (or life of the Fund).

5. As long as the Funds operate in reliance on the requested order, ETS will be listed on an Exchange.

6. On each Business Day, before the commencement of trading in ETS on each Fund's Exchange, the Fund will disclose on its website the identities and quantities of the portfolio securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon
Deputy Secretary