

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 59356 / February 4, 2009

Administrative Proceedings
File No. 3-12238

In the Matter of

BEAR, STEARNS & CO., INC. and
BEAR, STEARNS SECURITIES CORP.,
Respondents.

ORDER APPROVING DISTRIBUTION
PLAN, APPOINTING A FUND
ADMINISTRATOR, AND WAIVING
BOND

I.

On March 16, 2006, the Commission instituted settled administrative and cease-and-desist proceedings against Bear, Stearns & Co., Inc. (“BS&Co.”) and Bear, Stearns Securities Corp. (“BSSC”) (collectively, “Respondents”) for violations of the federal securities laws in connection with late trading and deceptive market timing practices in the trading of mutual funds. The Commission issued an Order providing for the payment of disgorgement and civil penalties totaling \$250 million.¹ It further provided that a Fair Fund (the “Bear Stearns Fair Fund”) be established and distributed pursuant to a distribution plan developed by an Independent Distribution Consultant (“IDC”) retained by Respondents.

In May 2006, Respondents selected Francis E. McGovern, a Professor of Law at Duke University, to serve as the Bear Stearns Fair Fund’s IDC. Since that time, the IDC has developed a proposed distribution plan (the “Bear Stearns Plan” or the “Distribution Plan”) in consultation with the staff and Respondents.

The Bear Stearns Fair Fund is comprised of the \$250 million paid by Respondents, plus accumulated interest, less any federal, state, or local taxes on the interest. The Distribution Plan provides for the distribution of the Bear Stearns Fair Fund to certain mutual funds affected by the activity described in the Order during the period from January 4, 1999, through October 29, 2003, according to a formula designed to capture the proportional dilution in such mutual funds relative to the dilution in all such mutual funds. In some instances, where practicable and

¹ See In the Matter of Bear, Stearns & Co., Inc. and Bear, Stearns Securities Corp., AP File No. 3-12238, Exchange Act Rel. No. 53490 (March 16, 2006).

feasible, the Distribution Plan allows for the IDC to use an Independent Distribution Consultant or Fund Administrator appointed in another Commission proceeding to distribute the monies directly to the shareholders of such mutual funds who held their shares during the relevant period. Persons eligible for distributions from the Fair Fund will not need to go through a claims process.

In accordance with the Commission's Rules on Fair Fund and Disgorgement Plans (the "Fair Fund Rules"), 17 C.F.R. § 201.1100, *et seq.*, the Plan proposes a Fund Administrator and sets forth, among other things, procedures for the distribution of proceeds to funds or shareholders of funds; procedures for the administration of the Fund, including provisions for filing tax returns; and a proposed timeframe for the termination of the Bear Stearns Fair Fund.

Rust Consulting, Inc., proposed in the Plan as the Fund Administrator, has not posted the bond generally required of third parties under Fair Fund Rule 1105(c). Rather, the Plan incorporates several layers of protection for the Bear Stearns Fair Fund. Among other things, under the Plan: (1) the Fund Administrator will have no custody, and only limited control, of the Bear Stearns Fair Fund; (2) the Bear Stearns Fair Fund will be held by the U.S. Treasury Bureau of Public Debt until immediately before transmittal of checks or electronic transfers to eligible investors; (3) upon transfer from the U.S. Treasury, funds will be held in an escrow account, separate from the Escrow Bank's² assets until presentation of a check or electronic transfer, at which time funds will be transferred to a controlled distribution account; (4) presented checks or electronic transfers will be subject to "positive pay" controls before being honored by the Escrow Bank; and (5) both the Escrow Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance and fraud.

On December 8, 2008, the Commission published the Plan and issued a Notice of Proposed Distribution Plan and Opportunity for Comment (Exchange Act Release No. 57489) pursuant to Fair Fund Rule 1103, 17 C.F.R. § 201.1103. The Notice advised interested parties that they could obtain a copy of the Plan at <http://www.sec.gov>, or by submitting a written request to Alison Conn, Assistant Regional Director, United States Securities and Exchange Commission, Room 400, 3 World Financial Center, New York, NY 10281-1022. The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, no later than January 7, 2009. No comments were received by the Commission in response to the Notice that were related to the Plan and no modification has been made to the Plan since its publication.

The Commission has determined that the Plan will be approved. The Commission has further determined that, for good cause shown, the bond required under Fair Fund Rule 1105(c) will be waived.

² The "Escrow Bank" refers to Deutsche Bank as defined in ¶ 9 and described in ¶¶ 72 and 73 of the Plan.

Accordingly, IT IS ORDERED that:

- A. Pursuant to the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1104, the Distribution Plan is approved;
- B. Pursuant to the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1105(a), Rust Consulting, Inc., is appointed as the Fund Administrator; and
- C. The bond requirement of Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1105(c), is waived for good cause shown.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary