

STATE OF MAINE  
OFFICE OF SECURITIES  
121 STATE HOUSE STATION  
AUGUSTA, ME 04333

In the matter of )  
 ) No. 03-101  
BEAR, STEARNS & CO. INC., )  
 )  
Respondent. ) CONSENT ORDER  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )

---

**CONSENT ORDER**

WHEREAS, Bear, Stearns & Co. Inc. (“Bear Stearns” or the “Firm”) is a broker-dealer licensed in the State of Maine;

WHEREAS, coordinated investigations into Bear Stearns' activities in connection with certain conflicts of interest that research analysts were subject to during the period of July 1, 1999 through June 30, 2001 have been conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers (collectively, the "regulators");

WHEREAS, Bear Stearns has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations;

WHEREAS, Bear Stearns has advised regulators of its agreement to resolve the investigations relating to its research practices;

WHEREAS, Bear Stearns agrees to implement certain changes with respect to its research and banking practices, and to make certain payments; and

WHEREAS, Bear Stearns elects to permanently waive any right to a hearing and appeal under 32 M.R.S.A. §§ 10708-10709 with respect to this Consent Order (the “Order”);

NOW, THEREFORE, the Securities Administrator of the State of Maine Office of Securities, as administrator of the Revised Maine Securities Act, 32 M.R.S.A. §§ 10101-10713, hereby enters this Order:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## I. JURISDICTION/CONSENT

Bear Stearns admits the jurisdiction of the Office of Securities, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the Securities Administrator.

## II. FINDINGS OF FACT

### A. Background and Jurisdiction

1. Bear Stearns, a Delaware corporation with its principal place of business in New York, New York, is a subsidiary of The Bear Stearns Companies, Inc. Bear Stearns provides equity research, sales, and trading services; merger and acquisition advisory services; venture capital services; and underwriting services on a global basis.
2. Bear Stearns is registered with the Securities and Exchange Commission ("Commission"), is a member of the New York Stock Exchange, Inc. ("Exchange") and the NASD Inc. ("NASD") and is licensed to conduct securities business on a nationwide basis.
3. Bear Stearns is currently licensed with the Office of Securities as a broker-dealer, and has been so licensed since at least 1984.
4. This action concerns the time period of July 1, 1999 to June 30, 2001 (the "relevant period"). During that time, Bear Stearns engaged in retail securities sales, research, and investment banking ("IB") activities.

### B. Overview

1. During the relevant period, the Firm sought and did IB business with many companies covered by its research. Research analysts were encouraged to participate in IB activities, and that was a factor considered in the analysts' compensation system. In addition, the decision to initiate and maintain research coverage of certain companies was in some cases coordinated with the IB Department and influenced by IB interests.
2. As a result of the foregoing, certain research analysts at the Firm were subjected to IB influences and conflicts of interest between supporting the IB business at the Firm and publishing objective research.

- 1 3. The Firm had knowledge of these IB influences and conflicts of interest yet failed  
2 to establish and maintain adequate policies, systems and procedures that were  
3 reasonably designed to detect and prevent the influences and manage the  
4 conflicts.

5 **C. Research Analyst Participation in Investment Banking Activities**

- 6 1. Research analysts were responsible for providing analyses of the financial outlook  
7 of particular companies in the context of the business sectors in which those  
8 companies operated and the securities market as a whole.
- 9 2. Research analysts evaluated companies by, among other things, examining  
10 financial information contained in public filings, questioning company  
11 management, investigating customer and supplier relationships, evaluating  
12 companies' business plans and the products or services offered, building financial  
13 models and analyzing competitive trends.
- 14 3. After synthesizing and analyzing this information, analysts produced research in  
15 the form of full reports and more abbreviated formats that typically contained a  
16 recommendation, a price target, and a summary and analysis of the factors relied  
17 upon by the analyst.
- 18 4. The Firm distributed its analysts' research internally to various departments at the  
19 Firm and externally to the Firm's retail and institutional investing clients. In  
20 addition, the Firm sold some of its research directly to non-clients, disseminated it  
21 through distribution agreements with other broker dealers, made it available to  
22 third party subscription services such as First Call, and offered it for sale via  
23 market websites such as MultexInvestor.
- 24 5. In addition to performing research functions, certain research analysts participated  
25 or assisted in IB activities. These IB activities included identifying companies as  
26 prospects for IB services, participating in "pitches"<sup>1</sup> of IB services to companies,  
attending "road shows"<sup>2</sup> associated with underwriting transactions, and speaking  
to investors to generate interest in underwriting transactions.

---

1 A "pitch" is a presentation made by bankers and research analysts to a potential IB client in order to obtain the  
2 mandate for an upcoming IB transaction. In competing for an IB mandate, the Firm typically sent bankers and  
3 the analyst to meet with company management to persuade the company to select the Firm as one of the  
4 investment bankers in a contemplated transaction. At these "pitch" meetings Firm bankers would present their  
5 level of expertise in the company's sector and discuss their previous experience with other such companies, as  
6 well as their view of the company's merits and likelihood of success.

7 A "road show" is a series of presentations made to potential investors in conjunction with the marketing of an  
8 upcoming underwriting.

- 1 6. In preparation for each "pitch" the bankers, with the analyst's input, prepared a  
2 "pitch book" which was distributed at the meeting and contained a summary of  
3 the Firm's presentation.
- 4 7. The pitch books, in some instances, identified the covering analyst by name,  
5 provided information about that analyst's background and reputation, sometimes  
6 characterizing the analyst as the "ax" in his or her coverage sector, and  
7 highlighted the success of Bear Stearns' underwritten IPOs covered by the analyst.  
8 The pitch books also highlighted such factors as the number of lead and co-  
9 managed IPOs that the Firm currently had under research coverage. This  
10 information was intended to convey to the issuer that such treatment would be  
11 accorded to it if Bear Stearns received the mandate for the IB transaction.
- 12 8. The analyst's reputation played a role in pitching the Firm's IB services to  
13 potential clients. Issuers often chose an investment bank because of the  
14 reputation of the analyst that would cover the company's stock.
- 15 9. The pitch to an issuer by the research analyst contributed to Bear Stearns' ability  
16 to win investment banking deals and receive investment banking fees from that  
17 and subsequent investment banking relationships.
- 18 10. The investment banking division at Bear Stearns advised corporate clients and  
19 helped them execute various financial transactions, including the issuance of  
20 stock and other securities. Bear Stearns frequently served as the lead or as a co-  
21 lead underwriter in initial public offerings ("IPOs") -- the first public issuance of  
22 stock of a company that has not previously been publicly traded -- and follow-on  
23 offering of securities.
- 24 11. During the relevant period, investment banking was an important source of  
25 revenues and profits for Bear Stearns. In 2000, investment banking generated  
26 more than \$965 million in net revenues, or approximately eighteen percent of  
27 Bear Stearns' total net revenues.
- 28 12. The IB activities in which analysts participated also included participating in  
29 commitment committee<sup>3</sup> and due diligence activities in connection with  
30 underwriting transactions and from time to time assisting the IB Department in  
31 providing merger and acquisition ("M&A") and other advisory services to  
32 companies.
- 33 13. The Firm encouraged research analysts to support the IB and other businesses of  
34 the Firm. With regard to IB, research analysts were encouraged to work in  
35 partnership with the IB Department by participating in the foregoing IB activities,  
36 and the level of certain research analysts' participation in these IB activities was  
37 sometimes significant.

---

<sup>3</sup> The "commitment committee" was responsible for, among other things, evaluating and determining the Firm's participation in IPOs and other IB transactions.

- 1 a. On September 23, 1999, the Head of Research provided research analysts  
2 with guidelines to follow in drafting their business plans. The guidelines  
3 stated they were “designed to help [the research analysts] focus on  
4 executing and delivering [their] goals, improving [their] overall  
5 contribution to the firm and enhancing [their] relationships with [their]  
6 partners throughout the firm.” These guidelines requested the research  
7 analysts to describe their contributions to nine separate areas of the Firm’s  
8 business. With respect to the area identified as “Banking,” the guidelines  
9 stated: “After your business plan meeting with your bankers please discuss  
10 any ideas you have generated for deal origination and timing of coverage  
11 for existing or proposed corporate relationships. Include or attach to your  
12 business plan a list of stocks you and your corporate finance team have  
13 agreed upon as priorities. Include plans to help market transactions or to  
14 introduce M&A activity. Discuss any plans to drop coverage where there  
15 is no longer a strategic fit.”
- 16 b. In her 1997/1998 business plan, an analyst stated, “If I were any more  
17 aggressive in the banking area, my office would be on the third floor  
18 [location of IB offices of the Firm].”

19 14. In connection with their participation in IB activities, certain research analysts and  
20 investment bankers ("bankers") communicated, in various frequency and extent,  
21 through meetings and via telephone and electronic mail ("e-mail").

22 15. The IB department at the Firm was organized into industry groups that  
23 corresponded to certain research sectors. Research analysts were aware that, in  
24 certain circumstances, their positive and continued coverage of particular  
25 companies was an important factor for the generation of investment banking  
26 business. Thus, some research analysts and bankers coordinated the initiation and  
maintenance of research coverage, based upon, among other things, investment  
banking considerations.

- 1 a. On February 9, 2000, two bankers and an analyst submitted a joint  
business plan to the co-heads of the IB technology group. The stated  
purpose of the memorandum was to "describe a strategy for investment  
banking and research coverage and coordination of companies which  
provide Internet enabling technologies. The near-term goal is to establish  
an organized and prioritized calling effort with an emphasis on cultivating  
fewer and deeper, lead managed relationships." [Emphasis in original.]

#### 24 **D. Participation in Investment Banking Activities was a Factor in Evaluating and** 25 **Compensating Research Analysts**

- 26 1. The compensation system at the Firm provided an incentive for research analysts  
to contribute to all areas of the Firm’s business, including participating in IB

1 activities and assisting in generating IB business for the Firm. Research analysts'  
2 participation in IB activities was one of several factors considered in determining  
3 their compensation. Notes of staff meetings reflect the following statements by  
4 the Head of Research to analysts:

5 a. "I'd like to remind everyone how you get paid at Bear Stearns. It is based  
6 on your contribution to your team and your contribution to the firm . . .  
7 Notice that being a partner with banking is part of the analyst job  
8 description. You are not compared or matrixed or in any way paid on a  
9 formula. Working on transactions is not incremental to your  
10 compensation, it is an expected part of it."

11 b. "I need to remind you that investment banking revenues are not  
12 incremental to your bonus. Being a partner to banking is part of your job.  
13 You are paid on performance and based on your contribution to the firm."

14 2. The performance of research analysts was evaluated through an annual review  
15 process. Where not set by contract, the research analyst's salary and annual  
16 bonus were also determined through this process.

17 3. Information on the analyst's job performance was gathered through annual self-  
18 evaluations, analyst's business plans, surveys of management, and trading and  
19 institutional sales department personnel, e-mail and oral feedback from employees  
20 in the IB and other departments at the Firm, and the Firm's institutional clients.

21 4. The research analysts' annual business plans contained, among other things, their  
22 contributions to various areas of the Firm, including IB, for the past year, and  
23 their plans for improving their contribution to these areas of the Firm, including  
24 IB, in the coming year.

25 5. In their self-evaluations, which were used to communicate their accomplishments  
26 to and petition management for increased compensation analysts discussed such  
areas as their rankings in independent research polls, the scope of their research  
coverage, their participation in industry conferences, and the Firm's Autex  
rankings in stocks they covered. Certain research analysts provided extensive  
information regarding their assistance to IB, including accomplishments, goals,  
and participation in lead- and co-managed underwritings, and sometimes also  
including the revenues to the Firm associated with the IB transactions on which  
the analyst worked. In addition, analysts were occasionally requested to inform  
research management of fees generated by the IB transactions on which they  
worked.

27 a. In an October 24, 2000 e-mail to the Head of Research, a senior analyst  
28 summarized his 9 key accomplishments during fiscal year 2000. The first  
29 and largest point, which dealt with his contributions to IB, stated as  
30 follows: "\*Corporate finance: generated over \$23 million in fees to the  
firm in nine separate transactions: \*Storage networking: identified a new  
financial opportunity for the firm, which resulted in six transactions... I

1 should be designated as a finder for Ancor [Ancor Communications], JNI  
2 [JNI Corp.] and Vixel [Vixel Corp.]. \*iAppliances: identified a new  
3 industry category ...which was a source of two IPOs... \*Agilent [Agilent  
4 Technologies]: I should be designated as a finder -- or at least a save for  
5 Agilent. BS pitched the business and lost. I went in and re-won the  
6 business, generated fees of around \$2.5 million to the firm." The e-mail to  
7 the Head of Research included a spreadsheet listing the IB transactions on  
8 which he had worked and the associated revenues to the Firm. The Head  
9 of Research praised the format of the summary and suggested she might  
10 have all research analysts submit theirs in the same form.

11 b. In a June 21, 2001 e-mail from a member of the research management  
12 staff, the research analysts were requested to submit information regarding  
13 all banking transactions that had closed or that were pending in their  
14 sectors during the prior 6 month period.

15 6. Certain research analysts perceived that the amount of their bonus would be  
16 influenced by their contribution to and impact on the firm's IB business, and the  
17 fees generated by IB transactions on which they worked.

18 7. Research analysts were encouraged to support and assist all areas of the Firm and  
19 to participate in IB activities and activities that enhanced the reputation of the  
20 Firm's IB business. Based upon statements by research management indicating  
21 that partnership with banking was part of their job as research analysts, the  
22 inclusion of a "Banking" section in their annual business plans, information  
23 regarding IB transactions in their self-evaluations, and requests from research  
24 management for specific information regarding IB transactions in their coverage  
25 sectors, certain research analysts believed that the revenues generated by their  
26 participation in IB activities was an important factor in their evaluations and  
compensation. Accordingly, some research analysts were encouraged to  
participate in IB activities, increase IB revenues, and enhance the reputation of the  
Firm, including its IB business.

8. Research Analysts' salaries and bonuses were determined by a multiple factor-  
based approach. Among other things, analysts were judged for compensation  
purposes based on the performance of their stock picks, their impact on the buy-  
side accounts as measured by votes, the Firm's market share in trading volume in  
the stocks they covered, their participation in IB activities, and the fees and  
secondary trading commissions generated from those activities were considered.

23 **E. Investment Banking Interests Influenced the Firm's Decisions to Initiate and**  
24 **Maintain Research Coverage**

25 1. In general, the Firm determined whether to initiate and maintain research  
26 coverage based upon institutional investors' interest in the company, and the  
company's importance to the sector or IB considerations, such as attracting

1 companies to the Firm to generate IB business or maintaining a positive  
2 relationship with existing IB clients.

- 3 2. The nature and duration of research coverage were important criteria for a  
4 company's choice of a broker dealer for IB services. The pitch books typically  
5 contained information stating, among other things, that: "an important element to  
6 successfully executing an IPO is having an assurance that the Firm will provide  
7 research coverage to the IPO candidate in the offering and in the aftermarket."
- 8 3. The Firm generally initiated coverage on companies that engaged the Firm in an  
9 IB transaction. In pitching for IB business, the Firm sometimes represented to the  
10 company the frequency with which reports would be issued.
- 11 4. The Firm's ratings system, which was intended to reflect the long-term prospects  
12 of a rated stock, allowed research analysts to assign one of five ratings to a stock:  
13 (1) "Buy" - Expected to outperform the local market by 20% in the next 12  
14 months. Strong conviction and typically accompanied by an identifiable catalyst;  
15 (2) "Attractive" - Expected to outperform the local market by 10% or more, it is  
16 usually more difficult to identify the catalyst; (3) "Neutral" - Expected to perform  
17 in line with the local market; (4) "Unattractive" - Expected to underperform the  
18 local market; and (5) "Sell" - Avoid the stock.
- 19 5. During the relevant period, there was a sharp downturn in the stock market and  
20 stocks in certain sectors performed poorly. During this period, the Firm did not  
21 issue ratings of "Unattractive" or "Sell" in connection with any covered  
22 companies in these sectors.
- 23 6. Research management communicated with IB management to ensure that  
24 research opportunities were appropriately aligned with identified IB opportunities.
- 25 7. The Stock Selection Committee was ultimately responsible for making the  
26 determination to initiate coverage of a given company. The Head of Research  
was ultimately responsible for making the determination to maintain research  
coverage. Nonetheless, IB considerations sometimes influenced the decision to  
initiate and maintain coverage.
8. Some research analysts and bankers actively coordinated the initiation and  
maintenance of research coverage based upon, among other things, IB  
considerations. This coordination consisted of meetings and communications by  
telephone and e-mail.
9. In some circumstances, research coverage was initiated based on IB  
considerations.
- a. In an April 19, 2000 e-mail from a member of his staff, the head of the IB  
Technology Group communicated the following to the Heads of Research  
and IB as well as numerous analysts and bankers: "[Analyst A] and  
[Analyst B] agree that [Analyst B] will be the analyst covering CacheFlo



1 [Cacheflow]. [Banker] and [Analyst B] will discuss with CacheFlo what  
2 the planned timing of their offering will be so as to insure that if we  
3 initiate coverage in advance of the transaction we will not be prohibited  
4 from being an underwriter. [Analyst B] and [Banker] will also stress to  
the company that if we initiate coverage we expect our position in the  
company's future financing and strategy actions to be materially  
improved."

- 5 10. Given that research analysts participated in determining in which IB transactions  
6 in their sectors the Firm would participate, if the Firm determined to participate in  
7 an equity offering for a company, it was expected the company would qualify for  
8 an initial "Buy" rating.
- 9 11. An analyst who anticipated initiating coverage of such a company with less than a  
10 "Buy" rating informed IB in advance as follows.
- 11 a. In a February 8, 2000 e-mail to bankers and the Head of Research, this  
12 analyst stated: "Just wanted to be sure that everyone knows that we will  
13 be using an Attractive rating on go.com. If anyone has any comments or  
14 issues, please let me know."
- 15 b. In a March 17, 2000 e-mail to research analysts, an associate analyst  
16 stated: "I talked to [the liaison between research and IB] and we have the  
17 go ahead to initiate on IPET [Pets.com] with an Attractive rating.  
18 According to [the liaison] we should explain somewhere in the text, why  
19 our opinion about the company's prospects have changed from the time  
20 we initiated coverage."<sup>4</sup>
- 21 c. In his annual evaluation, this analyst was criticized as follows: "Has been  
22 working poorly w/bankers - in changing opinions after the firm has  
23 committed to co. mgmts". The analyst testified that he believed the  
24 statement related to his communicating his opinions regarding companies  
25 to bankers in a timely manner, and that if his opinion regarding a company  
26 changed from a more positive opinion to a more negative opinion about a  
company after a banker had already made some sort of commitment to a  
company, it made life difficult for the banker and was not ideal from his  
standpoint. He went on to testify that, particularly in his highly volatile  
sector, companies often changed a lot between the time of the first  
organizational meeting and the date of the IPO.
12. In some circumstances, the determination to maintain research was influenced by  
IB considerations.
- a. Due to IB influences a supervisory analyst perceived and communicated to  
others that IB approval was required before coverage could be dropped.  
In response to an inquiry by an associate analyst regarding dropping

---

<sup>4</sup> In fact, Bear Stearns had not yet initiated coverage on IPET at the time this e-mail was sent.

1 coverage of 2 companies, a supervisory analyst stated in an April 19, 2002  
2 e-mail: "[The Head of Research] says before dropping coverage, you need  
3 to get permission from both: 1. the market makers on the trading desk, 2.  
4 the bankers."

- 5 b. In an April 3, 2000 e-mail to the Heads of Research and IB as well as  
6 numerous members of both departments, a banker discussed a company's  
7 decision to exclude the Firm from a follow-on offering. He stated: "I  
8 expressed significant disappointment with the fact that they neglected to  
9 discuss this issue with us prior to this time and that they left us no choice  
10 but to drop research coverage and trading, since they obviously did not  
11 value our support to date. [Analyst] - As we discussed, feel free to drop at  
12 any time. I told the CFO that you would likely put out a note, but did not  
13 know when." In a follow-up e-mail the Head of Research stated that she  
14 agreed with the decision to drop coverage. The analyst ultimately  
15 determined not to drop coverage.

16 **F. Research Analysts Were Visible on Stocks to Generate Investment Banking  
17 Business**

- 18 1. Issuers also considered investment banks' aftermarket trading support as a factor  
19 in selecting an investment bank. The Firm's trading volume and trading rank were  
20 factors it promoted to IB clients in pitch presentations.
- 21 2. The Firm distributed to sales and trading personnel and research analysts the  
22 "Trading Focus List," which contained stocks of companies from which the Firm  
23 was seeking or with which the Firm had IB business.
- 24 3. A research analyst actively marketed companies on the Trading Focus List in  
25 order to obtain IB business.
- 26 a. In a December 10, 1999 e-mail, an analyst wrote the following to Equity  
Trading copied to the Heads of Research and IB: "Subject: Pls make the  
trading of Packeteer a top priority. I spent two days with Packeteer  
(PKTR) management this week visiting investors. Management are  
extremely happy with our research coverage and banking services. But  
they have repeatedly indicated to me that our trading stat. is not  
satisfactory...CEO hinted to me many times that we have a chance for the  
books for the secondary if we improve the trading...They are likely to do a  
secondary in Q1 - mostly likely late January/early February; could be as  
much as \$200 MM deal. Please help us in improving our trading  
immediately. We will do whatever it takes from the research side."
- b. In a September 14, 2000 e-mail to Equity Trading the same analyst wrote  
the following regarding banking client SonicWall ("SNWL"): "We need  
help in boosting our trading stat for SNWL. Both management and their

1 VC called me yesterday complaining about our trading - #2 in August and  
2 #3 so far in September. More importantly, they argued that we are not  
3 supporting the stock when it is weak...I made a positive call on Monday  
4 but am not getting much support. Pls help us here since this important  
5 technology client indicated to me that if we do not improve, it will hurt  
6 our banking relationship with the company."

7 c. In a March 8, 2001 e-mail the same analyst again wrote to Equity Trading  
8 regarding two IB clients he covered: "Subject: MUSE [Micromuse] and  
9 ISSX [Internet Security Systems] autex - both on focus list. On MUSE -  
10 we dropped from #3 or 4 in 2000 to #10 in Feb and March to date. I just  
11 called the trader to see what we can do. I have been extremely active on  
12 the name- took management to Boston, Denver, Minneapolis and KC in  
13 February alone. Do not quite understand. Pls follow up. ISSX - we  
14 dropped from #2 or #3...to #11 in March. I am very active on ISSX also.  
15 Thanks for your help on this." Equity Trading responded: "What do you  
16 want me to do? Get some orders on the stock yourself. Generate some  
17 order flow!!" The analyst replied: "I am trying...but are the traders on  
18 these two stocks good?"

19 4. In order to raise or maintain the Firm's visibility on stocks with which the Firm  
20 wanted to do IB business, certain research analysts nominated companies to  
21 participate at Firm sponsored conferences, took company managements on non-  
22 deal road shows, hosted field trips for institutional investors to companies'  
23 headquarters and arranged other meetings between institutional investor clients  
24 and companies.

25 5. Research analysts were visible on stocks of companies with which the Firm  
26 wanted to do IB business in order to generate IB business.

## 18 **G. Research Analysts Were Subject to Pressure by Covered Companies**

19 1. Certain research analysts communicated regularly with employees of the  
20 companies that they covered, including executive and senior management of those  
21 companies. These communications occurred through telephone and e-mail  
22 exchanges, company-sponsored events, and analyst calls.

23 2. Research analysts were sometimes subject to pressure from companies they  
24 covered to issue better ratings and recommendations. Research analysts  
25 understood that negative ratings and recommendations could adversely affect the  
26 Firm's ability to attract and retain IB business from those companies.

a. On November 2, 2000, in his 2000 self-evaluation an analyst wrote in a  
section entitled "Areas to Improve: We want our banking clients to know  
that our research is objective and independent but always sensitive to their  
best interests. There have been instances in my career where certain

1 banking clients felt that our research and public comments weren't  
2 sensitive to their interests. This is a very important issue for us and we  
3 take it most seriously. We will continue to make every effort to be  
4 sensitive to our clients and our banking partners."

- 5
- 6 3. When research analysts downgraded or issued a negative comment on a banking  
7 client, they sometimes received direct feedback from high-ranking company  
8 officials.
- 9 a. In an August 24, 2000 e-mail, a banking client responding to a downgrade  
10 of his company wrote: "Your earnings estimates are on track, however,  
11 given the downgrade, I sure would have liked to see you give us a lower  
12 bar on revenue...[W]hile we affirmed the revenue estimate, they were  
13 definitely a stretch. Seems a shame to waste a downgrade by not buying  
14 the opportunity for us both to over-perform going forward..."

#### 10 **H. In Certain Instances, the Firm Published Exaggerated or Unwarranted Research**

- 11
- 12 1. On several occasions, the conflicts of interest discussed above resulted in analysts  
13 publishing recommendations and/or ratings that were exaggerated or unwarranted,  
14 and/or contained opinions for which there was no reasonable basis. The  
15 following are examples of how these conflicts affected the research.
- 16 a. Bear Stearns lead managed the IPO and secondary offerings for SonicWall  
17 in November 1999 and March 2000 respectively. An analyst rated the  
18 stock a "Buy" from the IPO until April 2002. In January 25, 2001 while  
19 they were participating in a SonicWall conference call the analyst stated  
20 to his associate: "I am trying to make them look good...on the dso and the  
21 growth etc." A few minutes later he added: "we got paid for this...and I am  
22 going to Cancun tomorrow b/c of them!"
- 23 b. Bear Stearns initiated coverage of MUSE with an "Attractive" rating in  
24 September 1999, raised the rating to a "Buy" in January 2000 and  
25 maintained a "Buy" rating on the stock until July 2002. While listening to  
26 a MUSE analyst call on July 18, 2001, an analyst suggested to his  
associate that he was going to downgrade his rating on the stock to  
"Attractive". The associate disagreed with the suggestion and the analyst  
responded that the stock was "dead money!" However, the analyst did not  
downgrade his rating on the stock, instead issuing research the same day  
maintaining his "Buy" rating.
- c. Bear Stearns lead managed the IPO for CAIS Internet, Inc. in May 1999.  
The analyst rated the stock a "Buy" from the IPO through his last report on  
the company in November 2000. On January 24, 2001, in response to an  
e-mail reporting extensive service failures at CAIS the analyst stated:  
"Any other scoop on this piece of shit?" A few days later, in response to

1 an institutional client's request for his thoughts on CAIS' 4<sup>th</sup> quarter, the  
2 analyst stated: "It's up a lot year to date...don't overstay your welcome on  
3 this one."

- 4 d. Bear Stearns co-managed the IPO and secondary offerings for Digital  
5 River in August and December 1998 respectively. The Firm, via three  
6 successive analysts, rated the stock a "Buy" from the IPO until April 2002.  
7 In an April 1, 2002 e-mail to his IB counterpart an analyst stated: "I have  
8 to tell you, I feel a bit compromised today. I have told every client on the  
9 phone that they should avoid or short the stock over the last few months. I  
10 have been fairly hands-off on DRIV [Digital River, a stock under his  
11 coverage], primarily because of the banking prospect that you and  
12 [Another Banker] have noted. Today, clearly the stock is down a lot. The  
13 artificial Buy rating on the stock, while artificial, still makes me look bad.  
14 In the future, I'd like to have more leeway with the ratings, even for  
15 companies like Digital River, where we have a relationship on the banking  
16 side. I trust it would benefit all of us."

17 **I. The Firm Made A Payment for Research**

- 18 1. In August 2000, as part of an offering that took place in May 2000, the Firm made  
19 a payment of \$102,750 to another broker-dealer in connection with research  
20 coverage it provided for Andrx Corp. ("ADRX"), a Bear Stearns' investment  
21 banking client in connection with an underwriting transaction for which Bear  
22 Stearns was a lead manager.  
23 2. Bear Stearns did not take steps to ensure that this broker-dealer disclosed in its  
24 research that it had been paid to issue research on ADRX. Further Bear Stearns  
25 did not disclose or cause to be disclosed the details of this payment.

26 **J. Bear Stearns Failed to Adequately Supervise Its Research and Investment Banking  
Departments**

1. While the role of the research analysts was to produce objective research, the  
Firm also encouraged them to participate in IB activities. As a result of the  
foregoing, research analysts were subject to IB influences and conflicts of interest  
between supporting the IB business at the Firm and publishing objective research.  
2. The Firm had knowledge of these IB influences and conflicts of interest yet failed  
to manage them adequately to protect the objectivity of its published research.  
3. Bear Stearns failed to establish and maintain adequate policies, systems and  
procedures reasonably designed to ensure the objectivity of its published research.  
Although Bear Stearns had some policies governing research analyst activities

1 during the relevant period, these policies were inadequate and did not address the  
2 conflicts of interest that existed.

### 3 III. CONCLUSIONS OF LAW

- 4
- 5 1. The Office of Securities has jurisdiction over this matter pursuant to the Revised Maine  
6 Securities Act, 32 M.R.S.A. §§ 10101-10713.
  - 7 2. The Securities Administrator finds the following relief appropriate and in the public  
8 interest.
  - 9 3. 32 M.R.S.A. § 10313(1) states that the Securities Administrator may by order deny,  
10 suspend, or revoke any license if she finds that the order is in the public interest and that  
11 the applicant or licensee or, in the case of a broker-dealer or investment adviser, any  
12 partner, executive officer, or director, any person occupying a similar status or  
13 performing similar functions, or any person directly or indirectly controlling the broker-  
14 dealer or investment adviser: (G) has engaged in any unlawful, unethical or dishonest  
15 conduct or practice in the securities business; or (J) has failed reasonably to supervise  
16 sales representatives if a broker-dealer, or employees if an investment adviser.
    - 17 a. Bear Stearns failed to ensure that analysts who issued research were adequately  
18 insulated from pressures and influences from covered companies and investment  
19 banking. This conduct was a dishonest and unethical practice under 32 M.R.S.A.  
20 § 10313(1)(G).
    - 21 b. Bear Stearns failed to reasonably supervise its employees to ensure that its  
22 analysts who issued research were adequately insulated from pressures and  
23 influences from covered companies and investment banking as required by 32  
24 M.R.S.A. § 10313(1)(J).

### 25 IV. ORDER

26 On the basis of the Findings of Fact, Conclusions of Law, and Bear Stearns' consent to the  
entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without  
admitting or denying any of the Findings of Fact or Conclusions of Law.

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Office of Securities and any other action that  
the Office of Securities could commence under the Revised Maine Securities Act on behalf  
of the Securities Administrator as it relates to Bear Stearns, relating to certain research or  
banking practices at Bear Stearns.

- 1 2. Bear Stearns will CEASE AND DESIST from violating sections 10313(1)(G) and  
2 10313(1)(J) of the Revised Maine Securities Act in connection with the research practices  
3 referenced in this Order and will comply with the undertakings of Addendum A,  
4 incorporated herein by reference.
- 5 3. If payment is not made by Bear Stearns or if Bear Stearns defaults in any of its  
6 obligations set forth in this Order, the Office of Securities may vacate this Order, at its  
7 sole discretion, upon 10 days notice to Bear Stearns and without opportunity for  
8 administrative hearing.
- 9 4. This Order is not intended by the Office of Securities to subject any Covered Person to  
10 any disqualifications under the laws of any state, the District of Columbia or Puerto Rico  
11 (collectively, "State"), including, without limitation, any disqualifications from relying  
12 upon the State registration exemptions or State safe harbor provisions. "Covered Person"  
13 means Bear Stearns, or any of its officers, directors, affiliates, current or former  
14 employees, or other persons that would otherwise be disqualified as a result of the Orders  
15 (as defined below).
- 16 5. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of  
17 Acceptance, Waiver and Consent, this Order and the order of any other State in related  
18 proceedings against Bear Stearns (collectively, the "Orders") shall not disqualify any  
19 Covered Person from any business that they otherwise are qualified, licensed or permitted  
20 to perform under applicable law of the State of Maine and any disqualifications from  
21 relying upon this state's registration exemptions or safe harbor provisions that arise from  
22 the Orders are hereby waived.
- 23 6. For any person or entity not a party to this Order, this Order does not limit or create any  
24 private rights or remedies against Bear Stearns including, without limitation, the use of any  
25 e-mails or other documents of Bear Stearns or of others regarding research practices or limit  
26 or create liability of Bear Stearns or limit or create defenses of Bear Stearns to any claims.
7. Nothing herein shall preclude the State of Maine, its departments, agencies, boards,  
commissions, authorities, political subdivisions and corporations, other than the Office of  
Securities and only to the extent set forth in paragraph 1 above (collectively, "State  
Entities") and the officers, agents or employees of State Entities from asserting any claims,  
causes of action, or applications for compensatory, nominal and/or punitive damages,  
administrative, civil, criminal, or injunctive relief against Bear Stearns in connection with  
certain research and/or banking practices at Bear Stearns.

V. MONETARY SANCTIONS

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

As a result of the Findings of Fact and Conclusions of Law contained in this Order, Bear Stearns shall pay a total amount of \$80,000,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:

\$25,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (Bear Stearns’ offer to the state securities regulators hereinafter shall be called the “state settlement offer”). Upon execution of this Order, Bear Stearns shall pay the sum of \$250,000 of this amount to the State of Maine Office of Securities as a civil monetary penalty pursuant to 32 M.R.S.A. § 10602(1)(E). The total amount to be paid by Bear Stearns to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept Bear Stearns’ state settlement offer, the total amount of the State of Maine payment shall not be affected, and shall remain at \$250,000;

\$25,000,000 as disgorgement of commissions, fees and other monies as specified in the SEC Final Judgment;

\$25,000,000, to be used for the procurement of independent research, as described in the SEC Final Judgment;

\$5,000,000, to be used for investor education, as described in Addendum A, incorporated by reference herein.

Bear Stearns agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to all penalty amounts that Bear Stearns shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Bear Stearns further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that Bear Stearns shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors. Bear Stearns understands and acknowledges that these provisions are not intended to imply that the State of Maine Office of Securities would agree that any other amounts Bear Stearns shall pay pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**VI. GENERAL PROVISIONS**

This order and any dispute related thereto shall be construed and enforced in accordance, and governed by, the laws of the State of Maine.

The parties represent, warrant and agree that they have received independent legal advice from their attorneys with respect to the advisability of executing this Order.

Dated this 28th day of August, 2003.

By: s/Christine A. Bruenn  
Christine A. Bruenn, Securities Administrator  
State of Maine Office of Securities

**CONSENT TO ENTRY OF ADMINISTRATIVE  
ORDER BY BEAR, STEARNS & CO. INC.**

1. Bear Stearns hereby acknowledges that it has been served with a copy of this Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.
2. Bear Stearns admits the jurisdiction of the Office of Securities, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the Securities Administrator as settlement of the issues contained in this Order.
3. Bear Stearns states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.
4. Bear Stearns understands that the State of Maine may make such public announcement concerning this agreement and the subject matter thereof as the State of Maine may deem appropriate.

Mark E. Lehman represents that he/she is General Counsel of Bear Stearns and that, as such, has been authorized by Bear Stearns to enter into this Order for and on behalf of Bear Stearns.

Dated this 21st day of August, 2003.  
Bear, Stearns & Co. Inc.

By: s/Mark E. Lehman

Title: Senior Managing Director and General Counsel

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_