

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, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Stephen Bornstein, Bear Stearns Asset Management Inc., 383 Madison Avenue, New York, NY 10179.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Todd F. Kuehl, Branch Chief, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

Applicants' Representations

1. BS&Co., a Delaware corporation, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. BSAM serves as investment adviser or subadviser for one or more registered investment companies ("Funds"). BS&Co. acts as the depositor or principal underwriter for Funds.²

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against BS&Co. in a matter brought by the Commission.³ The Commission alleged in the complaint ("Complaint") that BS&Co. violated certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules") by engaging in acts and practices that created or maintained inappropriate influence by BS&Co.'s investment banking business (the "Investment Banking Department") over the research analysts in BS&Co.'s research department (the "Research

Department"). The Federal Injunction enjoined BS&Co. directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, BS&Co. consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by BS&Co. to adopt and implement policies and procedures relating to certain research activities. Applicants state that BS&Co. expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a "State Injunction," and, together with the Federal Injunction, the "Injunctions"). Applicants request that this application cover any disqualifications of the Applicants under section 9(a) resulting from the Injunctions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that BS&Co. is an affiliated person of BSAM within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to

grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor, or principal underwriter for a Fund. Applicants state that none of the current or former officers or employees of the Applicants, who served or serves as adviser, subadviser, principal underwriter or depositor to the Funds, was involved in the conduct that forms the basis of the Complaint. While the Applicants' portfolio managers had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds, except as noted in the application.⁴ Although some of the Funds held securities in their portfolios at the time that BS&Co. issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants had any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Final Judgment. In addition, each of the Applicants that serve as an investment adviser or sub-adviser to Funds has adopted policies regarding information barriers (the "Policies") designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of BS&Co. The Policies, which were in effect at the time of the conduct described in the Complaint, restrict communications between portfolio managers and certain other employees of BS&Co.

² Any registered unit investment trusts ("UIT") or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

³ *Securities and Exchange Commission v. Bear, Stearns & Co. Inc.*, 03 CV 2937 (WHP) (S.D.N.Y., filed April 28, 2003).

⁴ Applicants state that they act as investment adviser to one Fund whose portfolio securities were selected based primarily on a list of recommended securities compiled by the Research Department.