

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20041000121-01**

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REGISTRATION & DISCLOSURE

TO: Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA")

RE: Bear, Stearns & Co., Inc., Respondent  
Broker-Dealer  
CRD No. 79

Pursuant to NASD Rule 9216 of FINRA Code of Procedure, Bear, Stearns & Co., Inc. (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

The firm has been a member of FINRA (f/k/a NASD) since December 17, 1936 and its registration remains in effect.

**RELEVANT PRIOR DISCIPLINARY HISTORY**

On June 20, 2003, FINRA accepted an AWC (CMS030139) which censured and fined the firm \$5,000 plus \$156.25 in restitution for violations of NASD Conduct Rules 2110, 2320, 2320(G) and 3110(B). On June 23, 2003, FINRA accepted an AWC (CMS030141) which censured and fined the firm \$20,000 for violations of NASD Conduct Rule 2110 and NASD Marketplace Rules 6620(A) and 6420(A). On September 20, 2004, FINRA accepted an AWC (CMS040144) which censured and fined the firm \$7,500 for violations of SEC Rules 10b-10 and 11Ac1-5(B). On July 20, 2006, FINRA accepted an AWC (20042000210-01) which censured and fined the firm \$42,000 for violations of NASD Rules 2110, 6130(D), 6420(C)(2), 6620(A), 6620(A)(3) and SEC Rule 10A-1.

## **OVERVIEW**

In Matter 20041000121, the staff conducted a review of the firm's short sales activity in Vion Pharmaceuticals, Inc. ("VION") during the April 1, 2004 through May 31, 2004 review period (the "VION review period").

In Matter 20041000163, the staff conducted a review of the firm's short sales activity in Travelzoo, Inc. ("TZOO") during the June 1, 2004 through October 31, 2004 review period (the "TZOO review period").

In Matter 20050017979, the staff conducted a regulatory sweep of the firm's compliance with equity trade reporting rules during the January 1, 2005 through April 30, 2005 review period (the "1T'05 review period").

In Matter 20050023188, the staff conducted a review of the firm's compliance with best execution rules during the April 1, 2005 through June 30, 2005 review period (the "2Q'05 review period").

In Matter 20060043746, the staff conducted a Trading and Market Making Analysis Examination ("TMMS Exam") for the 2006 review period (the "2006 TMMS Exam review period") for trade dates in January 2006. A description of the areas and sample sizes reviewed by the staff is attached hereto as Exhibit A.

The violations contained herein are a result of these reviews.

## **FACTS/VIOLOGATIVE CONDUCT BY RESPONDENT**

### **Matter 20041000121 (Short Sales 04/04-05/04)**

1. During the VION review period, the firm accepted nine customer short sale orders in VION and failed to make an affirmative determination that the firm would receive delivery of the security on behalf of the customer or that the firm could borrow the security on behalf of the customer for delivery by settlement date. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rule 3370.

### **Matter 20041000163 (Short Sales 06/04-10/04)**

2. During the TZOO review period, the firm accepted seven customer short sale orders in TZOO and failed to make an affirmative determination that the firm would receive delivery of the security on behalf of the customer or that the firm could borrow the security on behalf of the customer for delivery by settlement date. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rule 3370.
3. During the TZOO review period, the firm effected two short sales in TZOO for the firm's proprietary accounts and failed to make an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the

securities by settlement date. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rule 3370.

Matter 20050017979 (1T'05 Trade Reporting)

4. BEST failed, within 90 seconds after execution, to transmit through the Nasdaq Market Center Service ("NMC") 929 last sale reports of transactions in CQS securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 4632 (formerly Rule 6420). These transactions constitute 4.30% of all eligible transactions in CQS securities that BEST was required to report to NMC during the 1T'05 review period. This conduct constitutes a pattern or practice of late reporting without exceptional circumstances, in apparent violation of NASD Conduct Rule 2110.

Matter 20050023188 (2Q'05 Best Execution Sweep)

5. BEST failed in 16 instances during the 2Q'05 review period to use reasonable diligence to ascertain the best inter-dealer markets for the securities listed in Exhibit B so that the resultant prices to its customers were as favorable as possible under prevailing market conditions. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rule 2320.

Matter 20060043746 (2006 TMMS Exam)

6. The firm failed on eight occasions to provide written notification disclosing to its customer that it was a market maker in each security. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
7. The firm failed on six occasions to provide written notification disclosing to its customer its correct capacity in the transaction. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
8. The firm failed on five occasions to provide written notification disclosing to its customer that the transaction was executed at an average price, and on one occasion incorrectly disclosed on a confirmation that the price received by the customer was an average price. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.

B. The firm hereby consents to the imposition of the following sanctions:

**A censure, a \$25,500 fine** (\$5,000 for the short sales violations in 20041000121 and 20041000163, \$7,500 for the trade reporting violations in 200510017979, \$10,000 for the best execution violations in 20050023188, and \$3,000 for the SEC Rule 10b-10 violations in 20060043746), and **restitution** by the firm (in

20050023188) to the parties involved in the transactions described on Exhibit B attached (the "Recipients") in the total amount of \$2,119.16, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from the date of the violative conduct until the date this AWC is accepted by the NAC. A registered principal of the firm shall submit satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, to the COMPLIANCE ASSISTANT, LEGAL SECTION, DEPARTMENT OF MARKET REGULATION 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850 no later than 120 days after acceptance of this AWC. If for any reason, the firm cannot locate any Recipient after reasonable and documented efforts within such period, or such additional period agreed to by the staff, the firm shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed-property or abandoned-property fund for the state in which the customer last resided.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The firm has submitted an Election of Payment form showing the method by which the firm proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### **III.**

#### **OTHER MATTERS**

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
  - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
  - 4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC

**D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that the firm may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.**

9/19/2007  
Date

By: 2L White  
Name: Tracy White  
Title: SMB

### Counsel for Respondent

Accepted by FINRA:

9/17/07  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

Thomas R. Gira  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation

## Exhibit A

### Scope of the Trading and Market Making Surveillance Examination

FINRA staff reviewed the following samples during the examination:

| <u>Sample Size</u> | <u>Review Area</u>                                                                                                                                                              | <u>Sample Source</u>             |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 50                 | customer and proprietary sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),                                                                                 | from trade date January 25, 2006 |
| 50                 | customer and proprietary sales, for compliance with NASD Rule 6130,                                                                                                             | from trade date January 25, 2006 |
| 0                  | short sales in NNM securities, for compliance with NASD Rule 3350,                                                                                                              | from trade date January 25, 2006 |
| 0                  | short sales in CQS securities, for compliance with SEC Rule 10a-1 (Tick Test),                                                                                                  | from trade date January 25, 2006 |
| 45                 | cancelled trades for compliance with NASD Rules 4632(g), 4642(g), 4652(g), 6420(f), and 6620(f) and SEC Rule 17a-3(a)(6) and (a)(7),                                            | from trade date January 25, 2006 |
| 145                | limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rules 11Ac1-1 and 11Ac1-4,                                | from trade date January 25, 2006 |
| 11                 | "non displayed" limit orders and 0 marketable orders in the same securities received while holding the "non-displayed" orders, for compliance with NASD Rule 2320.              | from trade date January 25, 2006 |
| 100                | limit and market orders and 166 trades executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules, | from trade date January 25, 2006 |
| 24                 | orders for NASDAQ securities in soft dollar accounts and 25 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e), | from trade date January 25, 2006 |
| 0                  | open buy limit orders and stop sell limit orders in securities traded ex-dividend, for compliance with NASD Rule 3220,                                                          | from trade date January 25, 2006 |
| 0                  | trades reported and modified through a mixed capacity regulatory report, for compliance with NASD Rule 6130,                                                                    | from trade date January 25, 2006 |
| 0                  | trades in NNM or SC securities reported with a .PRP modifier, for compliance with NASD Rules 4632 and 2320,                                                                     | from trade date January 25, 2006 |

| <u>Sample Size</u>    | <u>Review Area</u>                                                                                                                                                                                          | <u>Sample Source</u>                        |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 25                    | orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 11Ac1-5,                                                       | from trade date January 25, 2006            |
| 4 Groups<br>39 Orders | security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5,                                                                           | from the report for December 2005           |
| N/A                   | data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6,                                                                                                          | from the report for 1st Qtr 2006            |
| 25                    | customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,                                                                                                  | from trade date January 25, 2006            |
| 14                    | persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,                                                                                            | from trade date January 25, 2006            |
| 403                   | order/trade records prepared and maintained in connection with the above samples, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,                                                 | from trade date January 25, 2006            |
| 639                   | trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,                                                                       | from trade date January 25, 2006            |
| 95                    | customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,                                                                                            | from trade date January 25, 2006            |
| 50                    | orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,                                                                                                                       | from trade date January 25, 2006            |
| N/A                   | the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with NASD Rules 2320 and 3010, | based on WSPs in effect during January 2006 |
| N/A                   | the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010,                                                                 | based on WSPs in effect during January 2006 |

## Exhibit B

Bear Stearns and Co., Inc. ("BEST")

| AWC Incident No. | Wells Incident No. | Date      | MPID | B/S | Volume | SECID  | Price | Contra | Report Time | Execution Time | Modifier | Inside Bid or Ask at Execution | Executed Price | Correct Price* | No. of Shares Requiring Restitution | Restitution |
|------------------|--------------------|-----------|------|-----|--------|--------|-------|--------|-------------|----------------|----------|--------------------------------|----------------|----------------|-------------------------------------|-------------|
| 1                | 1                  | 4/5/2005  | BEST | S   | 400    | FBF\$  | 25.75 |        | 14:35:32    | 14:35:32       |          |                                | 25.74          | 25.75          | 400                                 | \$4.00      |
| 2                | 3                  | 4/12/2005 | BEST | S   | 700    | GYA    | 23.2  |        | 9:59:27     | 9:59:27        |          |                                | 23.19          | 23.2           | 700                                 | \$7.00      |
| 3                | 4                  | 4/12/2005 | BEST | S   | 400    | GYA    | 23.2  |        | 11:09:55    | 11:09:55       |          |                                | 23.19          | 23.2           | 400                                 | \$4.00      |
| 4                | 6                  | 4/26/2005 | BEST | S   | 1000   | FRE\$P | 50.25 |        | 16:01:02    | 16:01:02       | T        |                                | 49.95          | 50.25          | 1000                                | \$300.00    |
| 5                | 8                  | 5/4/2005  | BEST | B   | 500    | FNMSF  | 35.4  |        | 14:18:19    | 14:18:19       |          | 35.8                           |                | 35.4           | 500                                 | \$200.00    |
| 6                | 10                 | 5/16/2005 | BEST | S   | 1000   | CSZ    | 25.95 |        | 12:55:06    | 12:55:05       |          |                                | 25.93          | 25.95          | 1000                                | \$20.00     |
| 7                | 11                 | 5/19/2005 | BEST | S   | 800    | MER\$H | 24    |        | 13:20:54    | 13:20:54       |          |                                | 23.99          | 24             | 800                                 | \$6.00      |
| 8                | 12                 | 5/20/2005 | BEST | S   | 2000   | ISP    | 25.2  |        | 13:59:15    | 13:59:16       |          |                                | 25.18          | 25.2           | 2000                                | \$40.00     |
| 9                | 13                 | 5/23/2005 | BEST | S   | 500    | FNMSH  | 49    |        | 14:59:03    | 14:59:02       |          |                                | 48.99          | 49             | 500                                 | \$5.00      |
| 10               | 15                 | 5/24/2005 | BEST | S   | 600    | FNMSH  | 49.5  |        | 14:51:45    | 14:51:46       |          |                                | 49.06          | 49.5           | 600                                 | \$252.00    |
| 11               | 18                 | 5/31/2005 | BEST | B   | 1960   | JPM\$X | 25.05 |        | 10:03:45    | 10:03:44       |          | 25.06                          |                | 25.05          | 1960                                | \$19.60     |
| 12               | 19                 | 6/2/2005  | BEST | S   | 500    | FNMSH  | 49.25 |        | 10:12:15    | 10:12:16       |          |                                | 49             | 49.25          | 500                                 | \$125.00    |
| 13               | 20                 | 6/6/2005  | BEST | S   | 326    | LEH\$  | 25.2  |        | 15:42:29    | 15:42:28       |          |                                | 25.14          | 25.2           | 326                                 | \$19.56     |
| 14               | 21                 | 6/17/2005 | BEST | S   | 1000   | PJE    | 24.85 |        | 13:53:38    | 13:53:38       |          |                                | 23.9           | 24.85          | 1000                                | \$950.00    |
| 15               | 25                 | 6/24/2005 | BEST | B   | 1500   | SHO\$A | 26.2  |        | 13:45:29    | 13:45:30       |          | 26.26                          |                | 26.2           | 1500                                | \$75.00     |
| 16               | 27                 | 6/30/2005 | BEST | S   | 1000   | MET\$B | 25.2  |        | 14:54:42    | 14:54:43       |          |                                | 25.11          | 25.2           | 1000                                | \$90.00     |
|                  |                    |           |      |     |        |        |       |        |             |                |          |                                |                |                | Total Restitution =                 | \$2,119.16  |