

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SAMUEL T. COHEN and JEROME BIRN, On  
Behalf of Themselves and All Others Similarly  
Situated and Derivatively on Behalf of THE BEAR  
STEARNS COMPANIES, INC.,

Plaintiffs,

vs.

JAMES E. CAYNE, SAMUEL L. MOLINARO,  
JEFFREY M. FARBER, JEFFREY MAYER,  
MICHAEL MINIKES, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, HENRY BIENEN, CARL  
D. GLICKMAN, MICHAEL GOLDSTEIN, ALAN  
C. GREENBERG, DONALD J. HARRINGTON,  
FRANK T. NICKELL, PAUL A. NOVELLY,  
FREDERIC V. SALERNO, VINCENT TESE,  
WESLEY S. WILLIAMS, JR.,

Defendants,

-and-

THE BEAR STEARNS COMPANIES, INC., a  
Delaware corporation,

Nominal Defendant

Civil Action No. 07-cv-10453-RMB

**VERIFIED SECOND AMENDED  
SHAREHOLDER DERIVATIVE AND  
CLASS COMPLAINT**

**DEMAND FOR JURY TRIAL**

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Plaintiffs Samuel T. Cohen and Jerome Birn ("Plaintiffs"), upon their personal knowledge as to the allegations pertaining to them, and upon information and belief, based upon, amongst other things, the investigations made by their attorneys, as to all other allegations, submit this Verified Second Amended Shareholder Derivative and Class Complaint against the defendants named herein, and allege the following:

**INTRODUCTION**

1. This is a hybrid shareholder derivative and class action brought by shareholders of The Bear Stearns Companies, Inc. ("Bear Stearns" or the "Company") on behalf of the Company and

holders of Bear Stearns common stock against certain of its officers and directors seeking to remedy defendants' violations of state and federal law, including breaches of fiduciary duties, corporate mismanagement, waste of corporate assets, unjust enrichment and violations of the Securities Exchange Act of 1934 (the "Exchange Act"), that occurred beginning no later than March 2006 and continuing to the present (the "Relevant Period"). On behalf of Bear Stearns, this action seeks, among other things, damages, corporate governance reforms, restitution and the declaration of a constructive trust to remedy defendants' violations of state and federal law. On behalf of the Class (as defined below), this action seeks relief against Bear Stearns senior officers and directors arising out of their efforts to sell Bear Stearns via an unfair process at a grossly inadequate and unfair price (the "Acquisition") to JPMorgan Chase & Co. ("JPMorgan").

2. During the Relevant Period, Bear Stearns, under defendants' direction, recklessly spent billions of dollars purchasing subprime loans to be used for future collateralized debt obligations. Due to defendants' misfeasance and malfeasance alleged herein, these subprime mortgages have caused substantial monetary losses to Bear Stearns and other damages, such as to its reputation and goodwill. Moreover, during the Relevant Period, defendants ignored the signs and news of the impending subprime loan failures and violated the Company's publicly disclosed risk management procedures, thereby ensuring the collapse of one of the giant Wall Street investment banks.

3. Bear Stearns was a multifaceted financial institution that offers, among other things, investment banking and prime brokerage services; it was, during the Relevant Period, the second largest prime brokerage firm in terms of aggregate client assets. Bear Stearns was the fifth-largest U.S. investment bank by market cap and generates more of its revenue from mortgage securities and domestic markets than many of its peers, a statistic which has left the Company poorly positioned as these actions were reckless.

### **Bear Stearns Hedge-Fund Fallouts**

4. During the Relevant Period, defendants failed to take appropriate reserves for the large amount of Collateralized Debt Obligations ("CDOs") in its portfolio, both on and off the balance sheet, and this information was not disclosed to investors. CDOs are complex financial instruments that combine slices of varying assets and debt. Many CDOs are backed by subprime mortgages - loans given to customers with poor credit history. As those mortgages have increasingly defaulted, banks are being forced to write down the value of bonds and CDOs backed by the loans.

5. Defendants actively concealed the Company's failure to write down impaired securities tied to subprime debt. While defendants were directing the Company to issue false and misleading statements regarding the Company's business and financial condition, which was due largely to Bear Stearns' pre-existing exposure to the subprime mortgage market, defendants were also recklessly directing Bear Stearns to acquire a subprime loan portfolio for \$1.2 billion from a troubled subprime mortgage lending company and repurchase over \$2.6 billion worth of its own shares at artificially inflated prices. Even worse, certain of the defendants sold their personally held shares while in possession of material non-public information for over \$65 million in proceeds.

6. Defendants' failure to appropriately and promptly take adequate reserves and the Company's false and misleading statements regarding its subprime exposure was due in part to the inadequacy and abandonment of the Company's publicly disclosed risk management procedures and practices. The Company's risk management structure was wholly insufficient to identify the massive risks associated with Bear Stearns' aggressive subprime mortgage financing and investments, and its procedures violated by the defendants as shown through its eventual collapse and forced sale.

7. As a result of the improper financial reporting, violations of law and mismanagement, Bear Stearns' credibility with investors, clients and counterparties vanished. At the end of the Relevant Period, Bear Stearns teetered on the brink of bankruptcy and its share price declined from over \$170 per share to its eventual forced sale price of \$10 per share.

8. Beginning in July 2007, Bear Stearns began disclosing the true extent of its exposure to the widening subprime mortgage crisis. On July 17, 2007, Bear Stearns informed investors that it was closing two Company-managed hedge funds, whose assets consisted of subprime mortgage-related assets and CDOs. The collapse of these two funds represents over \$1.5 billion in losses for investors. Currently, Bear Stearns is the subject of two lawsuits and governmental investigations in connection with the two funds.

9. On September 20, 2007, the defendants caused or allowed Bear Stearns to announce earnings for the third quarter of fiscal 2007 that were 61% lower than the same quarter in the prior year. Bear Stearns attributed those weak earnings to "extremely challenging" market conditions affecting its mortgage and credit business.

10. On November 14, 2007, the defendants caused or allowed the Company to announce that it would need to write-down \$1.2 billion of its assets linked to mortgage related investments in the fourth quarter. The write-down was at the time equal to 9% of Bear Stearns' equity. However, more losses are forthcoming as the extent of the damage to the Company continues to grow. During a November 14, 2007 conference call, the Company's Chief Financial Officer commented with respect to the exposure of the Company, saying "[w]e're certainly not pleased with the results that we have and the magnitude of the write-downs." The CFO also acknowledged, however, that the market is still challenging and the size of the write-down may change.

11. Also on November 14, 2007, the Secretary of State of Massachusetts filed a complaint against Bear Stearns alleging that one of its units failed to notify the hedge funds' independent directors that it was trading securities from its own accounts with hedge funds it also advised. The two hedge funds suffered billions of dollars in losses.

12. On December 20, 2007, the defendants caused or allowed Bear Stearns to disclose a \$1.9 billion write-down of its mortgage inventory. This write-down led to the Company's first reported loss in its 84 year history.

13. As a result, quarterly net income for the period ended in August 2007 sank 61% to \$171.3 million, or \$1.16 a share, from the year-earlier period and revenue fell to \$1.3 billion from \$2.13 billion last year.

#### **Defendants Announce the Acquisition**

14. While American securities markets were closed on Sunday, March 16, 2008, Bear Stearns announced it had been forced to merge with JPMorgan at a fire sale price (the "Merger"). Even though the Company's shares had sold for approximately \$70 per share just a week before and had closed at approximately \$30 per share the preceding Friday, the consideration for the deal was set at a shocking \$2 per share, or \$236 million. Defendants accepted this offer despite: (i) Bear Stearns' Chief Financial Officer's statements on March 14, 2008 that the Company's book value was still in the mid-\$80 per share range; (ii) Bear Stearns' Chief Executive Officer and President's statements on March 12, 2008 that he was comfortable with the range of earnings estimates by analysts for the Company's first quarter 2008; (iii) Bear Stearns' other strong and profitable divisions, such as its prime brokerage and global clearing businesses; and (iv) Bear Stearns' stock was trading on the open market in the \$60 per share range.

15. But the inadequate \$2 Merger price was only one of the dramatic problems with defendants' proposed coercive deal. The deal also has a so-called "no solicitation" clause that prevents Bear Stearns from soliciting competitive bids and a "force-the-vote" clause that requires Bear Stearns to force call a shareholder vote on the deal, even if the Board withdraws its recommendation of the deal. If the shareholders reject the deal after a vote, Bear Stearns' only recourse is to "restructure" the deal without any chance for an increase in consideration *for a year* – until the deal self-terminates in March 2009. This essentially amounts to a 1-year option to buy Bear Stearns in favor of JPMorgan. Meanwhile, the deal cedes the operation of the Company to JPMorgan's "reasonable discretion." Furthermore, even if the deal fails to close, JPMorgan will have the option of buying Bear Stearns New York City office located in the heart of Manhattan and a separate, unilateral option to buy 19.9% of Bear Stearns.

16. Defendants are now also facing extraordinary regulatory scrutiny. The extremely low consideration of the Merger and its draconian and restrictive terms have attracted the attention of the Securities and Exchange Commission ("SEC"), which recently sent a notice to JPMorgan that it would be investigating statements made by Bear Stearns before the announcement of the takeover by JPMorgan. This is hardly surprising, given that Bear Stearns was assuring investors and the public of its viability nearly up to the weekend in which it finally faced complete collapse.

17. Faced with scrutiny and a pending backlash from Bear Stearns shareholders, on March 24, 2008, JPMorgan agreed to increase its offer to approximately \$10 per share, which still compares poorly to the \$70 per share at which Bear Stearns was trading at only two weeks before. But JPMorgan's decision to increase its offer was not an act of charity. In exchange, the Board agreed to a Stock Exchange Agreement that allows JPMorgan to exchange 20.6 million of its shares for 95 million newly issued Bear Stearns' shares. Along with its open market purchase of Bear Stearns' stock, JPMorgan holds, as of April 8, 2008, approximately 47.41% of the Company's outstanding shares. Moreover, in connection with the agreement, certain members of the Board of Directors holding 7.5 million Bear Stearns shares agreed to vote their personally held shares in favor of the Merger. If the Stock Exchange Agreement is consummated, only near-unanimous opposition from Bear Stearns' remaining shareholders or judicial intervention will prevent the Merger from closing.

18. Defendants issued the 95 million Bear Stearns shares without first soliciting shareholder approval as required by New York Stock Exchange ("NYSE") rules. Under those rules, defendants can only avoid shareholder approval if they can show that obtaining that approval would seriously jeopardize Bear Stearns' financial viability. Shareholder approval or disapproval of the Share Exchange Agreement, however, does not jeopardize the Company's financial viability – *it only jeopardizes JPMorgan's position*. The Federal Reserve is currently guaranteeing billions of Bear Stearns' assets and obligations. There is no evidence that the Federal Reserve would be unwilling to finance an alternative transaction in the event that another bidder stepped into JPMorgan's shoes.

19. Also on March 24, 2008, Bear Stearns entered into an agreement with JPMorgan, further tying up Bear Stearns assets and making it more difficult for Bear Stearns shareholders should they vote down the agreement. Pursuant to the Guarantee and Collateral Agreement (the "Collateral Agreement"), Bear Stearns agreed to guarantee their obligations to repay JPMorgan for any loans or lines of credit extended by JPMorgan and any debts paid by JPMorgan on behalf of Bear Stearns to creditors prior to the completion of the sale. The Collateral Agreement was secured by a lien on Bear Stearns assets, effectively giving JPMorgan rights to all Bear Stearns assets whether the proposed Merger is approved or not.

20. In response to the heavy involvement of the Federal Reserve in the proposed Merger and the government's responsibility to taxpayers, the Senate Committee on Finance is now also inquiring into the terms of the Acquisition. On March 26, 2008, the Senate Committee on Finance sent a letter to the CEOs of both Bear Stearns and JPMorgan, as well as to the Federal Reserve Chairman Ben Bernanke, Treasury Secretary Henry Paulson, and Federal Reserve Bank CEO Timothy Geithner requesting the details of the proposed merger, how and by whom it was negotiated, and all parties involved in the proposed Merger. Senate Finance Committee Chairman Max Baucus stated in news release issued on March 26, 2008 by the Senate Committee on Finance, "Americans are being asked to back a brand-new kind of transaction, to the tune of tens of billions of dollars ... and we have a responsibility to all taxpayers to review the details of this deal." Testimony from defendant Schwartz and JPMorgan Chairman and Chief Executive Officer James Dimon was taken by the Senate Committee on Banking, Housing and Urban Affairs on April 3, 2008.

21. Bear Stearns directors had no qualms in agreeing to vote their personally held shares in favor of the Merger. The Merger is structured such that it will extinguish the Company as a separate entity. In this way, Board members who are named as defendants in a pending shareholder derivative lawsuit may escape liability. Defendants will undoubtedly try to use the fire sale and elimination of Bear Stearns to argue that if JPMorgan acquired the Company, then the derivative plaintiffs should lose standing to pursue claims on behalf of Bear Stearns.

22. The proposed Merger is the product of a severely flawed process by which Bear Stearns agreed to merge the Company with JPMorgan without providing its shareholders with adequate compensation in exchange. Defendants have structured the proposed Merger in a manner that assures that no better deal can be obtained for shareholders, or even solicited. The proposed deal also locks-up Company jewels and grants a unilateral option to buy approximately 20% of the Company in favor of JPMorgan and vests it with control over Bear Stearns' operations for a year. The deal, thus, subverts the interests of Plaintiffs and the other public stockholders of Bear Stearns.

23. In pursuing the unlawful plan to squeeze out Bear Stearns public stockholders for grossly inadequate consideration, and without full and fair disclosure of all material information, defendants have breached their fiduciary duties of loyalty, due care, independence, candor, good faith and fair dealing, and have aided and abetted such breaches by Bear Stearns officers and directors. Instead of attempting to obtain the highest price reasonably available for the Company's stockholders, defendants are spending a substantial effort to tailor the Acquisition to meet the specific demands of JPMorgan.

24. Moreover, defendants breached their fiduciary obligations by arranging to squeeze Plaintiffs and Bear Stearns' shareholders out of their equity interest in Bear Stearns by effectuating a stock-for-stock transaction with JPMorgan in exchange for indemnity and as a fraudulent means of dismissing present shareholder derivative litigation against them. Thus, the only parties that will benefit are defendants who wish to expunge their liability to Bear Stearns.

25. Because defendants dominate and control the business and corporate affairs of Bear Stearns and are in possession of private corporate information concerning Bear Stearns assets, business and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of Bear Stearns, which makes it inherently unfair for them to pursue any proposed transaction wherein they will reap disproportionate benefits to the exclusion of maximizing shareholder value.



26. In short, the Acquisition is designed to unlawfully divest Bear Stearns' public stockholders of a large portion of the valuable assets of the Company for grossly inadequate consideration. Defendants know that the Company possesses several assets that could increase the value of the Acquisition and provide Bear Stearns shareholders with a benefit from the Acquisition. In fact, defendants even announced just days prior to the announcement of the Acquisition that the Company's book value was \$84 per share. Accordingly, Plaintiffs challenge the Acquisition.

### JURISDICTION AND VENUE

27. This Court has jurisdiction in this case arising under Article III of the United States Constitution and 28 U.S.C. §1331 because of claims arising under the Exchange Act.

28. This Court has jurisdiction over all claims asserted herein under 28 U.S.C. §1332, as complete diversity exists between Plaintiffs and each defendant and the amount in controversy exceeds the jurisdictional minimum of this Court. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a) over all other claims that are related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

29. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

30. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because: (i) Bear Stearns maintains its principal place of business in the District; (ii) one or more of the defendants either resides in or maintains executive offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, and aiding and abetting and conspiracy in violation of fiduciary duties

owed to Bear Stearns occurred in this District; and (iv) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

### **THE PARTIES**

31. Plaintiff Samuel T. Cohen is, and was at the time of the transactions of which Plaintiffs complain, an owner and holder of Bear Stearns common stock. Plaintiff, who resides in Baltimore City, Maryland and is a citizen of the State of Maryland, currently owns 115 shares of Bear Stearns stock.

32. Plaintiff Jerome Birn is, and was at the time of the transactions of which Plaintiffs complain, an owner and holder of Bear Stearns common stock. Plaintiff, who resides in Beverly Hills, California and is a citizen of the State of California, currently owns 200 shares of Bear Stearns stock.

33. Defendant The Bear Stearns Companies, Inc. includes all of its predecessors and affiliated entities (collectively, "Bear Stearns"), and is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in New York, New York.

34. Defendant James E. Cayne ("Cayne") is Bear Stearns' Chairman of the Board and has been since June 2001. Cayne is also a Bear Stearns director and has been since 1985. As Chairman and a member of the Bear Stearns Board, Cayne authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board, Cayne authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Cayne was Bear Stearns' Chief Executive Officer ("CEO") from July 1993 to January 2008; a member of the Executive Committee from at least 2007 to January 2008; and President from at least 1991 to June 2001. Because of his positions, defendant Cayne knew, consciously disregarded, was reckless and grossly negligent in not knowing and should

have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Cayne participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Cayne received the following compensation:

<b>Fiscal Year</b>	<b>Salary</b>	<b>Bonus</b>	<b>Restricted Stock Awards</b>	<b>Securities Underlying Options</b>	<b>All Other Compensation</b>
2006	\$250,000	\$17,070,746	\$14,838,829	35,788	\$6,154,315
2005	\$200,000	\$12,721,154	\$10,295,769	56,573	\$5,180,904

Defendant Cayne sold 219,036 shares of Bear Stearns stock for \$23,010,474.01 in proceeds while in possession of material non-public information, all of which was sold in the year end 2006 and 2007.

Defendant Cayne approved the Acquisition. Defendant Cayne is a citizen of California.

35. Defendant Alan D. Schwartz ("Schwartz") is Bear Stearns' current CEO and has been since January 2008. Schwartz is also Bear Stearns' President and a member of the Executive Committee and has been since June 2001 and a director and has been since 1999. Schwartz was Bear Stearns' Co-Chief Operating Officer from June 2001 to January 2008; a director from 1987 to 1996; and Executive Vice President and Head of the Investment Banking Division from 1985 to June 2001. Because of his positions, defendant Schwartz knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Schwartz participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Schwartz received the following compensation from his employment with Bear Stearns:

<b>Fiscal Year</b>	<b>Salary</b>	<b>Bonus</b>	<b>Restricted Stock Awards</b>	<b>Securities Underlying Options</b>	<b>All Other Compensation</b>
2006	\$250,000	\$16,237,150	\$14,014,065	33,847	\$5,233,207
2005	\$200,000	\$12,072,654	\$9,744,544	53,650	\$4,487,164

Defendant Schwartz sold 91,233 shares of Bear Stearns stock for \$9,867,000.76 in proceeds while in possession of material non-public information, all of which was sold in the year end 2006 and 2007.

Defendant Schwartz approved the Acquisition. Defendant Schwartz is a citizen of New York.

36. Defendant Samuel L. Molinaro, Jr. ("Molinaro") is Bear Stearns' Chief Operating Officer ("COO") and has been since August 2007. Molinaro is also Bear Stearns' Executive Vice President and has been since December 2001, and Chief Financial Officer ("CFO") and has been since 1996. Because of his positions, defendant Molinaro knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Molinaro participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Molinaro received the following compensation from his employment with Bear Stearns:

<b>Fiscal Year</b>	<b>Salary</b>	<b>Bonus</b>	<b>Restricted Stock Awards</b>	<b>Securities Underlying Options</b>	<b>All Other Compensation</b>
2006	\$250,000	\$12,967,500	\$10,971,750	26,691	\$2,364,500
2005	\$200,000	\$8,052,654	\$6,327,544	35,534	\$1,524,739

Defendant Molinaro sold 38,552 shares of Bear Stearns stock for \$4,230,828.50 in proceeds while in possession of material non-public information, all of which was sold in the year end 2006 and 2007.

Defendant Molinaro is a citizen of Connecticut.

37. Defendant Warren J. Spector ("Spector") was Bear Stearns' Senior Managing Director from August 2007 to December 2007. Spector was also Bear Stearns' President and Co-COO and a member of the Executive Committee from June 2001 to August 2007; a Bear Stearns director from

1999 to August 2007; an Executive Vice President from November 1992 to June 2001; and a director from 1987 to 1996. Because of his positions, defendant Spector knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Spector participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Spector received the following compensation from his employment with Bear Stearns:

<b>Fiscal Year</b>	<b>Salary</b>	<b>Bonus</b>	<b>Restricted Stock Awards</b>	<b>Securities Underlying Options</b>	<b>All Other Compensation</b>
2006	\$250,000	\$16,194,430	\$14,052,513	33,938	\$4,795,112
2005	\$200,000	\$12,072,654	\$9,744,544	53,650	\$4,919,625

Defendant Spector sold 116,255 shares of Bear Stearns stock for \$19,066,373.04 in proceeds while in possession of material non-public information, all of which was sold in the year end 2006 and 2007. Defendant Spector is a citizen of New York.

38. Defendant Michael Minikes ("Minikes") is CEO of Bear, Stearns Securities Corp. and has been since January 2008. Minikes was also Bear Stearns' Treasurer from at least 2001 to January 2008. From 1980 to about 2001, Minikes held various positions with Bear Stearns and Bear, Stearns Securities Corp. Because of his positions, defendant Minikes knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Minikes participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Minikes sold 46,496 shares of Bear Stearns stock for \$5,678,457.25 in proceeds while in possession of material non-public information, all of which was sold in the year end 2006 and 2007. Defendant Minikes is a citizen of New York.

39. Defendant Jeffrey M. Farber ("Farber") is Bear Stearns' Senior Vice President – Finance and has been since March 2007. Farber is also Bear Stearns' Controller and Principal Accounting Officer and has been since January 2004. Farber was Bear Stearns' Assistant Controller from May 2000 to January 2004. Because of his positions, defendant Farber knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Farber participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Farber sold 4,324 shares of Bear Stearns stock for \$500,684.51 in proceeds while in possession of material non-public information, of which \$362,534.51 was realized by Defendant Farber on the sale of 3,324 shares in the year end 2006. Defendant Farber is a citizen of Connecticut.

40. Individual Defendant Jeffrey Mayer ("Mayer") is Executive Vice President of the Company and has been since August 2007. Mayer is also the Co-Head of the Fixed Income Division of the Company and Bear Stearns since March 2002. Because of his positions, defendant Mayer knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Mayer participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Mayer was named to the Bear Stearns Executive Committee on August 5, 2007. Defendant Mayer sold 102,408 shares of Bear Stearns stock for \$9,115,336.08 in proceeds while in possession of material non-public information, all of which was sold in 2007. Defendant Mayer is a citizen of New Jersey.

41. Defendant Alan C. Greenberg ("Greenberg") is a Bear Stearns director and has been since 1985. As a member of the Bear Stearns Board of Directors, Greenberg authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid

business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board of Directors, Greenberg authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Greenberg is also Chairman of Bear Stearns' Executive Committee and has been since at least 1997. Greenberg was Bear Stearns' Chairman of the Board of Directors from at least 1991 to June 2001 and CEO from 1985 to July 1993. Because of his positions, defendant Greenberg knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Greenberg participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Greenberg received the following compensation from his employment with Bear Stearns:

<b>Fiscal Year</b>	<b>Salary</b>	<b>Bonus</b>	<b>Restricted Stock Awards</b>	<b>Securities Underlying Options</b>	<b>All Other Compensation</b>
2006	\$250,000	\$9,000,000	\$7,612,500	18,789	\$3,057,772
2005	\$200,000	\$7,274,154	\$5,665,819	32,026	\$2,183,559

Defendant Greenberg sold 278,570 shares of Bear Stearns stock for \$37,649,433.01 in proceeds while in possession of material non-public information, all of which was sold in the year end 2006 and 2007. Defendant Greenburg approved the Acquisition. Defendant Greenberg is a citizen of New York.

42. Defendant Donald J. Harrington ("Harrington") is a Bear Stearns director and has been since 1993. As a member of the Bear Stearns Board of Directors, Harrington authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board of Directors, Harrington authorized the repurchase of over \$2.6 billion worth of

the Company's shares at artificially inflated prices during December 2005 through December 2006. Harrington is also a member of Bear Stearns' Compensation Committee and has been since at least 2005. Because of his positions, defendant Harrington knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Harrington participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Harrington sold 1,000 shares of Bear Stearns stock for \$171,450 in proceeds while in possession of material non-public information, all of which was sold in 2007. Defendant Harrington approved the Acquisition. Defendant Harrington is a citizen of New York.

43. Defendant Carl D. Glickman ("Glickman") is a Bear Stearns director and has been since 1985. As a member of the Bear Stearns Board of Directors, Glickman authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board of Directors, Glickman authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Glickman is also a member of the Audit Committee and has been since at least 2005. As a member of the Audit Committee, Glickman had a duty to review and discuss earnings press releases, financial information and earnings guidance and discuss with the Finance and Risk Committee Bear Stearns' policies regarding risk assessment and risk management. Glickman is also Chairman of Bear Stearns' Compensation Committee and has been since at least 2005 and a member of the Qualified Legal Compliance Committee. Because of his positions, defendant Glickman knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Glickman participated in the issuance of improper statements, including the preparation of the



improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Glickman sold 3,427 shares of Bear Stearns stock for \$317,066.04 in proceeds while in possession of material non-public information, all of which was sold in 2007. Defendant Glickman approved the Acquisition. Defendant Glickman is a citizen of Ohio.

44. Defendant Michael Goldstein ("Goldstein") is a Bear Stearns director and has been since January 2007. As a member of the Bear Stearns Board of Directors, Goldstein authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Goldstein is also a member of Bear Stearns' Audit Committee and has been since January 2007. As a member of the Audit Committee, Goldstein had a duty to review and discuss earnings press releases, financial information and earnings guidance and discuss with the Finance and Risk Committee Bear Stearns' policies regarding risk assessment and risk management. Because of his positions, defendant Goldstein knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Goldstein participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Goldstein approved the Acquisition. Defendant Goldstein is a citizen of New York.

45. Defendant Henry S. Bienen ("Bienen") is a Bear Stearns director and has been since 2004. As a member of the Bear Stearns Board, Bienen authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board, Bienen authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Bienen is also a member of Bear Stearns'

Audit Committee and has been since at least 2005. As a member of the Audit Committee, Bienen had a duty to review and discuss earnings press releases, financial information and earnings guidance and discuss with the Finance and Risk Committee Bear Stearns' policies regarding risk assessment and risk management. Bienen is also a member of the Qualified Legal Compliance Committee. Because of his positions, defendant Bienen knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Bienen participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Bienen approved the Acquisition. Defendant Bienen is a citizen of Illinois.

46. Defendant Frank T. Nickell ("Nickell") is a Bear Stearns director and has been since 1993. As a member of the Bear Stearns Board of Directors, Nickell authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board, Nickell authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Nickell is also a member of Bear Stearns' Finance and Risk Committee and has been since at 2007. As a member of the Finance and Risk Committee, Nickell had a duty to review and discuss with the Audit Committee the policies and procedures regarding risk assessment, risk management and significant risk exposures and trends as well and review and discuss the risk measures and risk models utilized by the Company. Nickell is also a member of the Compensation Committee and has been since at least 2005 and a member of the Corporate Governance and Nominating Committee. Because of his positions, defendant Nickell knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Nickell participated in the issuance of improper statements, including the preparation of the

improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Nickell approved the Acquisition. Defendant Nickell is a citizen of New York.

47. Defendant Paul A. Novelly ("Novelly") is a Bear Stearns director and has been since 2002. As a member of the Bear Stearns Board of Directors, Novelly authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board, Novelly authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Novelly is also Chairman of Bear Stearns' Finance and Risk Committee and has been since January 2007. As Chairman and a member of the Finance and Risk Committee, Nickell had a duty to review and discuss with the Audit Committee the policies and procedures regarding risk assessment, risk management and significant risk exposures and trends as well and review and discuss the risk measures and risk models utilized by the Company. Novelly is also a member of the Audit Committee and has been since at least 2005. As a member of the Audit Committee, Novelly had a duty to review and discuss earnings press releases, financial information and earnings guidance and discuss with the Finance and Risk Committee Bear Stearns' policies regarding risk assessment and risk management. Defendant Novelly is also a member of the Corporate Governance and Nominating Committee and a member of the Qualified Legal Compliance Committee. Because of his positions, defendant Novelly knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Novelly participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Novelly sold 50,000 shares of Bear Stearns stock for \$4,339,000.00 in proceeds while in possession of material non-public information,

all of which was sold in 2007. Defendant Novelly approved the Acquisition. Defendant Novelly is a citizen of Missouri.

48. Defendant Frederic V. Salerno ("Salerno") is a Bear Stearns director and has been since 1992. As a member of the Bear Stearns Board of Directors, Salerno authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board of Directors, Salerno authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Salerno is also a member of Bear Stearns' Finance and Risk Committee and has been since January 2007. As a member of the Finance and Risk Committee, Salerno had a duty to review and discuss with the Audit Committee the policies and procedures regarding risk assessment, risk management and significant risk exposures and trends as well and review and discuss the risk measures and risk models utilized by the Company. Salerno is also a member of the Audit Committee and has been since at least 2005. As a member of the Audit Committee, Salerno had a duty to review and discuss earnings press releases, financial information and earnings guidance and discuss with the Finance and Risk Committee Bear Stearns' policies regarding risk assessment and risk management. Defendant Salerno is also a member of the Corporate Governance and Nominating Committee and a member of the Qualified Legal Compliance Committee. Because of his positions, defendant Salerno knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Salerno participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Salerno approved the Acquisition. Defendant Salerno is a citizen of Florida.

49. Defendant Vincent Tese ("Tese") is a Bear Stearns director and has been since 1994. As a member of the Bear Stearns Board of Directors, Tese authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board, Tese authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Tese is also Chairman of Bear Stearns' Audit Committee and has been since at least 2005. As Chairman and a member of the Audit Committee, Salerno had a duty to review and discuss earnings press releases, financial information and earnings guidance and discuss with the Finance and Risk Committee Bear Stearns' policies regarding risk assessment and risk management. Tese is also a member of Bear Stearns' Finance and Risk Committee and has been since January 2007. As a member of the Finance and Risk Committee, Tese had a duty to review and discuss with the Audit Committee the policies and procedures regarding risk assessment, risk management and significant risk exposures and trends as well and review and discuss the risk measures and risk models utilized by the Company. Tese is also a member of the Compensation Committee and has been since at least 2005, a member of the Corporate Governance and Nominating Committee and is Chairman of the Qualified Legal Compliance Committee. Because of his positions, defendant Tese knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Tese participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Tese sold 716 shares of Bear Stearns stock for \$62,929.24 in proceeds while in possession of material non-public information, all of which was sold in 2007. Defendant Tese approved the Acquisition. Defendant Tese is a citizen of New York.

50. Defendant Wesley S. Williams, Jr. ("Williams") is a Bear Stearns director and has been since 2004. As a member of the Bear Stearns Board of Directors, Williams authorized the acquisition of a company's subprime mortgage origination platform and did not exercise valid business judgment when it rendered the decision to acquire ECC's whole subprime loan portfolio worth \$1.2 billion that was large affected by the subprime mortgage crisis. Also as a member of the Bear Stearns Board of Directors, Williams authorized the repurchase of over \$2.6 billion worth of the Company's shares at artificially inflated prices during December 2005 through December 2006. Williams is also a member of Bear Stearns' Audit Committee and has been since at least 2005. As a member of the Audit Committee, Salerno had a duty to review and discuss earnings press releases, financial information and earnings guidance and discuss with the Finance and Risk Committee Bear Stearns' policies regarding risk assessment and risk management. Defendant Williams is also a member of the Qualified Legal Compliance Committee. Because of his positions, defendant Williams knew, consciously disregarded, was reckless and grossly negligent in not knowing and should have known the adverse, non-public information about the business of Bear Stearns. During the Relevant Period, Williams participated in the issuance of improper statements, including the preparation of the improper press releases and SEC filings and approval of other statements made to the press, securities analysts and Bear Stearns shareholders. Defendant Williams approved the Acquisition. Defendant Williams is a citizen of the District of Columbia.

51. Defendants Cayne, Molinaro, Mayer, Farber, and Schwartz are sometimes collectively referred to herein as the "Officer Defendants." Because of their positions with the Company, the Officer Defendants possessed the power and authority to control the contents of Bear Stearns' quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. They were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions with the Company, and their access to material non-public information

available to them but not to the public, the Officer Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading. The Officer Defendants are liable for the false statements pleaded below.

52. Defendants Bienen, Cayne, Glickman, Goldstein, Greenberg, Harrington, Nickell, Novelly, Salerno, Schwartz, Tese, and Williams are sometimes collectively referred to herein as the "Director Defendants." By reason of their positions as directors of the Company and because of their ability to control the business and corporate affairs of the Company, the Director Defendants owed the Company and its shareholders the fiduciary obligations to exercise a high degree of due care, loyalty and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The Director Defendants were and are required to act in furtherance of the best interests of the Company and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. As a result of these duties, the Director Defendants are obligated to use their best efforts to act in the interests of the Company and shareholders to ensure that no waste of corporate assets occurs. The Director Defendants, because of their positions of control and authority as directors and/or officers of the Company, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein.

53. Defendants Cayne, Schwartz, Farber, Greenberg, Harrington, Glickman, Minikes, Molinaro and Spector are referred to herein as the "Insider Selling Defendants." Defendant Cayne, Schwartz, Bienen, Glickman, Goldstein Greenburg, Harrington, Nickell, Novelly, Salerno, Tese and Williams are referred to herein as the "Acquisition Defendants." Collectively, the Director Defendants and the Officer Defendants are referred to herein as the "Individual Defendants."

#### **DEFENDANTS DUTIES**

54. Officers, directors and/or fiduciaries of Bear Stearns have the ability to control the business and corporate affairs of Bear Stearns. The Individual Defendants owe Bear Stearns and its

shareholders fiduciary obligations of trust, loyalty and good faith and are required to use their ability to control and manage Bear Stearns in a fair, honest and equitable manner. The Individual Defendants are not, however, to act in furtherance of their own personal interest or benefit when acting on behalf of the Company.

55. Each of the Individual Defendants as officers and directors owe Bear Stearns and its shareholders a duty of good faith, loyalty and fair dealing in the business affairs of the Company. Moreover, the Individual Defendants had a duty, as officers and directors of a publicly traded company, to disseminate accurate and truthful information with respect to the financials, operations, management, performance and forecasts of Bear Stearns.

56. The Individual Defendants directly and/or indirectly controlled, by virtue of their positions as officers and directors of the Company, wrongful acts alleged herein as well as the dissemination of false and misleading statements they caused the Company to issue. Each of the Individual Defendants had access to adverse non-public information about the financial condition, management, and operations of Bear Stearns.

57. Further, defendants Bienen, Glickman, Goldstein, Novelly, Salerno, Tese and Williams, as members of the Audit Committee, had a special duty to know and understand material information as set out in the Audit Committee's charter, which provides that the Audit Committee is responsible for reviewing and discussing: (i) earnings press releases; (ii) financial information and earnings guidance provided to analysts and rating agencies; and (iii) Bear Stearns' policies regarding risk assessment and risk management. Defendants Nickell, Novelly, Salerno and Tese, as members of the Finance and Risk Committee, also had a special duty to know and understand material information as set out in the Finance and Risk Committee's charter which provides that the Finance and Risk Committee is responsible for: (i) reviewing and discussing with the Audit Committee Bear Stearns' policies and procedures regarding risk assessment and risk management of the Company's trading and investment risks; (ii) reviewing and discussing the risk measures and risk models utilized



by the Company in evaluating and limiting financial risks; and (iii) reviewing and discussing with the Audit Committee significant risk exposures and trends.

58. At all times relevant hereto, each of the Individual Defendants was the agent of each of the other Individual Defendants and of Bear Stearns, and was at all times acting within the course and scope of such agency.

59. To discharge their duties, the officers and directors of Bear Stearns were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of Bear Stearns were required to, among other things:

(a) refrain from acting upon material inside corporate information to benefit themselves;

(b) ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the SEC and the investing public;

(c) conduct the affairs of the Company in an efficient, business-like manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(d) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's financial results and prospects, and ensuring that the Company maintained an adequate system of financial controls such that the Company's financial reporting would be true and accurate at all times;

(e) remain informed as to how Bear Stearns conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with securities laws; and

(f) ensure that the Company was operated in a diligent, honest and prudent manner in compliance with all applicable laws, rules and regulations.

60. Each Individual Defendant, by virtue of his position as a director and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of Bear Stearns, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company. The conduct of the Individual Defendants who were also officers and/or directors of the Company during the Relevant Period have been ratified by the remaining Individual Defendants who collectively comprised all of Bear Stearns' Board during the Relevant Period.

61. The Individual Defendants breached their duties of good faith and fair dealing by allowing defendants to cause and causing Bear Stearns to issue false and misleading financial results and by failing to prevent the Individual Defendants from taking illegal actions.

#### **ACQUISITION DEFENDANTS' FIDUCIARY DUTIES**

62. Under Delaware law, in any situation where the directors of a publicly traded corporation undertake a transaction that will result in either: (i) a change in corporate control; or (ii) a break up of the corporation's assets, the directors have an affirmative fiduciary obligation to obtain the highest value reasonably available for the corporation's shareholders, and if such transaction will result in a change of corporate control, the directors must maximize shareholder value. To diligently comply with these duties, the directors and/or officers may not take any action that:

- (a) adversely affects the value provided to the corporation's shareholders;
- (b) will discourage or inhibit alternative offers to purchase control of the corporation or its assets;

- (c) contractually prohibits themselves from complying with their fiduciary duties;
- (d) will otherwise adversely affect their duty to search and secure the best value reasonably available under the circumstances for the corporation's shareholders; and/or
- (e) will provide the directors and/or officers with preferential treatment at the expense of, or separate from, the public shareholders.

63. In accordance with their duties of loyalty and good faith, the Acquisition Defendants, as directors and/or officers of Bear Stearns, are obligated under Delaware law to refrain from:

- (a) participating in any transaction where the directors' or officers' loyalties are divided;
- (b) participating in any transaction where the directors or officers receive, or are entitled to receive, a personal financial benefit not equally shared by the public shareholders of the corporation; and/or
- (c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.

64. Plaintiffs allege herein that the Acquisition Defendants, separately and together, in connection with the Acquisition, are knowingly or recklessly violating their fiduciary duties, including their duties of loyalty, good faith and independence owed to Plaintiffs and other public shareholders of Bear Stearns. Defendants stand on both sides of the transaction, are engaging in self-dealing, are obtaining for themselves personal benefits, including personal financial benefits not shared equally by Plaintiffs or the Class, and choosing not to provide shareholders with all information necessary to make an informed decision in connection with the Acquisition. As a result of the Acquisition Defendants' self-dealing and divided loyalties, neither Plaintiffs nor the Class will receive adequate or fair value for their Bear Stearns common stock in the proposed Acquisition.

65. The Acquisition Defendants also owe the Company's stockholders a duty of truthfulness under Delaware law, which includes the disclosure of all material facts concerning the Acquisition and, particularly, the fairness of the price offered for the stockholders' equity interest.

The Acquisition Defendants are knowingly or recklessly breaching their fiduciary duties of candor and good faith by failing to disclose all material information concerning the Acquisition.

66. Because the Acquisition Defendants are knowingly or recklessly breaching their duties of loyalty, good faith, independence and candor in connection with the Acquisition, the burden of proving the inherent or entire fairness of the Acquisition, including all aspects of its negotiation, structure, price and terms, is placed upon defendants as a matter of law.

### **FACTUAL BACKGROUND**

67. Bear Stearns was one of the world's leading wealth management, capital markets and advisory companies. Bear Stearns offers a broad range of financial services to private clients, small businesses, and institutions and corporations. In fact, prior to its sale, Bear Stearns was the second-biggest underwriter of mortgage bonds in the U.S.

68. The recent subprime mortgage crisis began with mortgages that were loaned to subprime borrowers, borrowers with low-rated credit history. The loans were then packaged into security and debt obligations and sold into commercial paper markets. Mortgage backed securities are generally sold as commercial instruments, such as bonds and CDOs. When the borrowers began to default on their mortgage payments, due to increasing interest rates, investment banks, such as Bear Stearns, began to feel the effects in the market for mortgage backed securities.

69. Since 2006, the erosion of the market for securities linked to subprime mortgages has led to a global credit-market contraction. Holdings of CDOs as well as its high-risk home loans and bonds are among the types of securities that have been suffering the most. Bear Stearns, being the 10th largest underwriter of asset-backed CDOs last year with \$9.4 billion for CDOs, has taken one of the biggest hits.

70. The Individual Defendants caused or allowed Bear Stearns to develop a scheme to conceal a tremendously risky subprime mortgage portfolio. Bear Stearns used this portfolio as the collateral for debt instruments sold or held by the Company. During the Relevant Period, the Individual Defendants directed Bear Stearns to acquire a large inventory of securities backed by

mortgages made to subprime borrowers. These actions were reckless due to the impending subprime mortgage crisis and increasing delinquency rates among subprime borrowers.

71. In addition, Bear Stearns also provided the initial financing in many instances which has helped create the subprime mortgage crisis in the first instance. Bear Stearns provided warehouse lines of credit to subprime lenders which enabled the subprime lenders to make subprime loans. After the loans were made to subprime borrowers, Bear Stearns was then able to package the subprime loans and sell them as CDOs or invest in them. Thus, by providing the warehouse lines of credit to subprime lenders to begin with, Bear Stearns provided the seed money for lenders to continue to provide subprime loans to those who were unable to afford them.

72. As a supposed safeguard over the valuation of its financial instruments, the Company stated publicly its practices and procedures regarding risk management. The Company's supposed internal controls to ensure appropriate valuations and adequate financial disclosures failed either through a deficient risk management structure or its lax implementation or both. Bear Stearns' flawed design to protect the firm from these types of overly aggressive investment and business strategies reflected the failures of the Individual Defendants at every turn to prevent the Company's eventual collapse and forced sale.

73. Despite these material adverse circumstances, the Individual Defendants directed Bear Stearns to issue a series of improper statements that proclaimed record growth. The Individual Defendants have misled investors regarding the financial condition of Bear Stearns and its exposure to risk in the subprime market by failing to disclose the risks created by its subprime lending activities.

74. In fact, the Company's then CEO, James E. Cayne stated in a press release issued at the end of the fourth quarter in 2006 that, "collateralized loan and debt origination activities increased substantially. The credit franchise delivered its best results ever as the high yield, leverage finance and credit trading areas all produced record revenues." In addition, on March 15, 2007, Cayne, reassured investors in a press release that "[w]e are pleased with this excellent performance,

revenues for the first quarter were up for every business segment ... [g]rowing the company remains a core focus as we continue to invest in the clearing, mortgage, international and asset management franchises with successful results."

75. However, the Individual Defendants were not able to conceal the truth any longer when Bear Stearns was forced to reveal the risks and value of its mortgage-backed securities to the market and by November 14, 2007, was forced to reveal the extent of its overvaluing of its mortgage-backed debt instruments and announced a write-down of approximately \$1.2 billion of mortgage-backed debt instruments held on its balance sheet.

76. In fact, Bear Stearns credit rating was cut by Standard & Poor's after the securities firm revealed it would write down the value of subprime assets by \$1.2 billion, leading to its first quarterly loss since becoming a public company. "About half of Bear Stearns' s revenue is derived from fixed income, and a quarter of that comes from mortgage-backed securities" according to analysts at Sanford C. Bernstein & Co. "Bear Stearns has been among the worst performers on the Amex Securities Broker/Dealer Index this year partly because the firm is more reliant on fixed-income revenue and the U.S. market than its peers. It's down 39 percent this year, worst among the five- largest brokers."

77. One analyst has commented, "while Bear Stearns had much smaller subprime losses than rivals like Merrill Lynch in the third quarter, investors are concerned that Bear Stearns is too reliant on the U.S. mortgage market for future earnings." In fact, the write-down will lead to a loss in the fourth quarter, making fourth quarter 2007 the first unprofitable quarter since at least 1985, when Bear Stearns went public.

78. In addition, preceding the recent announcement of its massive write-down, during June and July 2007, two hedge funds managed by the Company were roiled by mortgage losses and subsequently went bankrupt. The failure of the two mortgage-related funds, Bear Stearns High-Grade Structured Credit Strategies Fund and High-Grade Structured Enhanced Leverage Fund, cost investors \$1.6 billion. On November 15, 2007, Massachusetts securities regulators filed a complaint

accusing Bear Stearns of fraud for allegedly improperly trading with two in-house hedge funds that collapsed in June and July 2007. Bear Stearns allegedly traded mortgage-backed securities for its own account with the hedge funds without notifying the independent directors in advance. Advance disclosure of principal trades is required to make sure trades are fair to investors. Securities Regulators have commented that "hundreds" of principal transactions- including those involving mortgage-backed securities and collateralized debt obligations – were processed without prior approval from the funds' independent directors. In 2006, 79% of principal transactions lacked prior approval, while 59% were missing prior approval in 2005, and 30% in 2004. As a result, earnings at Bear Stearns dropped 61 percent in third quarter 2007, the biggest earnings decline in more than a decade. In fact, the company, under former CEO defendant Cayne, has cut 900 jobs, or about 6 percent of its workforce.

79. Predictably, Bear Stearns credibility took a massive hit and its share value had already fallen 40% by February 2008.

80. The true facts, which were known by the Individual Defendants but concealed from the investing public during the Relevant Period were as follows:

(a) The Individual Defendants' portfolio of CDOs contained over a billion dollars worth of impaired and risk securities, most of which were backed by subprime mortgage loans;

(b) The Individual Defendants failed to properly account for highly leveraged loans such as mortgage securities; and

(c) The Individual Defendants failed to record impairment of debt securities which they knew or disregarded were impaired, causing the Company's results to be false and misleading.

**DEFENDANTS' FALSE AND MISLEADING STATEMENTS**  
**ISSUED DURING THE RELEVANT PERIOD**

81. The Individual Defendants failed to disclose to shareholders known risks regarding its exposure in the subprime debacle and consistently assured shareholders, in Company financial

statements, that the Company had sound risk management policies, and continued to release positive earnings statements.

82. For example, on March 16, 2006, the Individual Defendants caused or allowed the Company to issue a press release in connection with the filing of its Form 8-K for the second fiscal quarter. The press release highlighted record revenue growth and positive trends in Bear Stearns strategic actions. The press release stated in part:

- *Bear Stearns Reports Record Quarterly Results*
- *Highest Ever Net Revenues, Net Income and EPS*
- *Net Revenues Rise 19% to \$2.2 Billion*
- *Net Income Increases 36% to \$514 Million*
- *Earnings Per Share Up 34% to \$3.54*
- *Record Net Revenues from Institutional Equities, Fixed Income and Wealth Management*

The Bear Stearns Companies Inc. today reported record earnings per share (diluted) of \$3.54 for the first quarter ended February 28, 2006, up 34% from \$2.64 per share for the first quarter of 2005. Net income for the first quarter of 2006 was a record \$514 million, up 36% from \$379 million for the first quarter of 2005. Net revenues were a record \$2.2 billion for the 2006 first quarter, up 19% from \$1.8 billion in the 2005 first quarter. The annualized return on common stockholders' equity was 20.1% for the first quarter of 2006 and 17.1% for the trailing 12-month period ended February 28, 2006.

"I am extremely pleased to report our second consecutive quarter of record net revenues, record net income and record earnings per share," said James E. Cayne, chairman and chief executive officer of The Bear Stearns Companies Inc. "These results were driven by strong contributions from all of our businesses, and in particular we saw record revenues in the Institutional Equities, Fixed Income and Wealth Management areas. We are proud of this quarter's outstanding results and look forward to the rest of 2006."

### **Capital Markets**

Capital Markets net revenues for the first quarter of 2006 were a record \$1.7 billion, up 20% from the first quarter ended February 28, 2005.

- Institutional Equities net revenues were a record \$488 million, up 56% from \$313 million for the first quarter of 2005. Equity derivatives delivered a second consecutive record quarter on the strength of increased customer activity levels and market-share gains. International sales and trading revenues increased in



the first quarter of 2006 compared with the year-ago quarter, and risk arbitrage net revenues rose reflecting improved market conditions and increased customer activity.

- Fixed Income net revenues were a record \$889 million, up 3% from \$866 million in the year-ago quarter. The credit businesses were extremely strong, led by the credit derivatives and leveraged finance areas. *Mortgage-related revenues increased from the prior year period, as origination volume remained high and customer demand increased. During the quarter, we ranked as the number one underwriter of U.S. Mortgage-backed securities.*

- Investment Banking net revenues were \$297 million in the first quarter of 2006, up 36% from \$217 million in the comparable prior-year period. Significantly higher U.S.-completed M&A volumes led to higher advisory, merger and acquisition-related revenues. Merchant banking related revenues also increased compared with the year-ago-period reflecting higher performance fees on merchant banking fund investments and increased principal gains.

### Global Clearing Services

First quarter 2006 Global Clearing Services net revenues were \$264 million down 2% from \$270 million in the first quarter of 2005. Net interest revenues were unchanged from the prior-year quarter as increased net interest spreads served to offset lower customer balances. Commission revenues declined reflecting marginally lower transaction volumes and rates. Average customer margin debt balances for the quarter ended February 28, 2006 were \$64.5 billion, up from \$64.0 billion in the prior year quarter. Average customer short balances decreased to \$78.2 billion from \$88.5 billion for the first quarter of 2005. Average free credit balances were \$29.9 billion in the current quarter, down from \$31.1 billion in the first quarter last year.

### Wealth Management

Wealth Management net revenues for the first quarter of 2006 were a record \$223 million, an increase of 32% from \$169 million in the first quarter of 2005. Net revenue growth was largely due to increases in performance and management fees.

- Private Client Services net revenues were \$129 million in the first quarter of 2006, an increase of 13% from \$114 million in the 2005 first quarter. The increase was mainly attributable to the continued growth of fee-based activities and assets.
- Asset Management net revenues grew 71% to a record \$94 million for the first quarter of 2006 from \$55 million in the prior year's quarter. The increase is due to higher performance and management fees. Assets under management rose 14% to \$45.4 billion as of

February 28, 2006, compared with \$40.0 billion as of February 28, 2005.

### **Expenses**

- Compensation as a percentage of net revenues was 47.9% in the first quarter of 2006 as compared with 49.3% for the quarter ended February 28, 2005.
- Non-compensation expenses were \$386 million for the quarter ended February 28, 2006, an increase of 9% from \$353 million in the 2005 first quarter. The increase is primarily due to higher professional fees, occupancy, communications and technology and legal costs.

The pre-tax profit margin rose to a record 34.4% in the first quarter of 2006 as compared with 31.5% in the quarter ended February 28, 2005.

As of February 28, 2006, total capital, including stockholders' equity and long-term borrowings, was approximately \$57.6 billion. Book value as of February 28, 2006 was \$75.46 per share, based on 145.2 million shares outstanding.

### **Quarterly Common Stock Cash Dividend Declared**

The Board of Directors of The Bear Stearns Companies Inc. declared a regular quarterly cash dividend of 28 cents per share on the outstanding shares of common stock payable April 28, 2006 to stockholders of record on April 18, 2006.

### **Quarterly Preferred Stock Cash Dividends Declared**

The Board of Directors of The Bear Stearns Companies Inc. declared the following regular quarterly dividends: (i) a cash dividend of \$3.075 per share on the outstanding shares of 6.15% Cumulative Preferred Stock, Series E (which is equivalent to 76.875 cents per related depository share); (ii) a cash dividend of \$2.86 per share on the outstanding shares of 5.72% Cumulative Preferred Stock, Series F (which is equivalent to 71.50 cents per related depository share); and (iii) a cash dividend of \$2.745 per share on the outstanding shares of 5.49% Cumulative Preferred Stock, Series G (which is equivalent to 68.625 cents per related depository share); all payable April 15, 2006 to stockholders of record on March 31, 2006.

83. The Individual Defendants failed to disclose, however, that being "ranked the number one underwriter for mortgage backed securities for the quarter" also meant that it retained a significant risk exposure on these securitizations.

84. On June 15, 2006, the Individual Defendants caused or allowed Bear Stearns to issue a press release announcing its fiscal second quarter 2006 earnings. Bear Stearns reported earnings of \$539 million. Also according to the press release, Bear Stearns' "mortgage franchise retained its number one industry ranking for the first half of fiscal 2006." Defendant Cayne commented that "[t]he first half of 2006 has proved to be [Bear Stearns'] best ever." In particular, the press release provided as follows:

- *Bear Stearns Reports Third Consecutive Record Quarter*
- *Earnings Per Share Rose 78% To A Record \$3.72*
- *Record Net Income Of \$539 Million, An 81% Increase*
- *Record Net Revenues Of \$2.5 Billion*
- *Institutional Equities, Fixed Income And Global Clearing Services Post*
- *Record Quarterly Net Revenues*

The Bear Stearns Companies Inc. today reported earnings per share (diluted) of \$3.72 for the second quarter ended May 31, 2006, up 78% from \$2.09 per share for the second quarter of 2005. Net income for the second quarter of 2006 was \$539 million, up 81% from \$298 million for the second quarter of 2005. Net revenues for the 2006 second quarter were a record \$2.5 billion, up 33% from \$1.9 billion for the 2005 second quarter. The annualized return on common stockholders' equity for the second quarter of 2006 was 20.1%, and 18.7% for the trailing 12-month period ended May 31, 2006.

"We are very pleased to report our third consecutive quarter of record setting results. The first half of 2006 has proven to be our best ever," said James E. Cayne, chairman and chief executive officer. "Our success in increasing the depth and breadth of our business both domestically and internationally has fueled our enthusiasm and appetite for further growth. We will continue to explore ways to expand our business through launching new products, gaining market share in existing product areas, and increasing our presence internationally."

#### **Capital Markets**

Capital Markets net revenues for the second quarter of 2006 were \$2.0 billion, up 40% from \$1.4 billion for the quarter ended May 31, 2005.

- Institutional Equities net revenues were a record \$554 million, up 42% from \$390 million for the second quarter of 2005. Higher customer activity levels and favorable market conditions across the equity franchise drove these record results. Equity derivatives and international sales and trading produced record net revenues this quarter.
- Fixed Income net revenues were a record \$1.2 billion, up 45% from \$808 million in the second quarter of 2005. The mortgage franchise retained its number one industry ranking for the first half of fiscal 2006. Securitization and trading volumes remained high, and origination flow from the vertical integration of the mortgage platform rose producing record net revenues. Interest rate derivatives and foreign exchange produced record net revenues contributing to a record quarter in the interest rate products area. Robust customer activity levels led to record net revenues in both the distressed debt and leverage finance areas driving record net revenues in the credit businesses this quarter.
- Investment Banking net revenues were \$278 million, up 20% from the \$232 million in the prior year quarter. Merger and acquisition advisory fees increased significantly this quarter as a number of previously announced transactions were completed during the quarter. Underwriting net revenues were up as equity new issuance volumes increased compared with the year-ago quarter. These gains were partially offset by decreases in merchant banking net revenues compared with the prior year quarter.

### **Global Clearing Services**

- Global Clearing Services net revenues were \$290 million for the second quarter 2006, up 5% from \$276 million in the year ago quarter. Net interest revenue increases were driven by higher average customer margin balances and improved net interest margins. Average customer margin debt balances for the quarter ended May 31, 2006 were a record \$68.4 billion, up 6% from \$64.7 billion in the prior year quarter. Customer short balances averaged \$80.2 billion during the second quarter of 2006 down from \$86.8 billion in the prior year period.

### **Wealth Management**

Wealth Management net revenues for the quarter ended May 31, 2006 were \$151 million, down 3% from \$156 million in the second quarter of 2005.

- Private Client Services net revenues were \$129 million, an increase of 22% from \$106 million in the 2005 second quarter. Increased investor activity and management fees from an increase in fee-based assets were the primary drivers of these results.

- Asset Management net revenues were \$22 million for the second quarter of 2006 a decrease of 56% from \$50 million in the prior year's quarter mainly due to a decline in performance fees on proprietary hedge funds. Assets under management increased 20% to \$48 billion on May 31, 2006, from \$40 billion on May 31, 2005.

#### Expenses

- Compensation as a percentage of net revenues was 48.8% in the second quarter of 2006 as compared with 49.3% for the second quarter of 2005. Year-to-date compensation to net revenues was 48.4% for 2006 versus 49.3% for the six months ended May 31, 2005.
- Non-compensation expenses were \$445 million for the quarter ended May 31, 2006, a decrease of 9% from \$488 million in the 2005 quarter. The decline in non-compensation related expenses is primarily due to a reduction in litigation related costs partially offset by increased communications and technology and occupancy costs associated with increased headcount. In addition, CAP plan related expenses and minority interest expense increased in conjunction with increased profitability.

The pre-tax profit margin increased to 33.4% in the quarter ended May 31, 2006 from 24.7% in the 2005 second quarter.

- As of May 31, 2006, total capital, including stockholders' equity and long-term borrowings, was approximately \$58.4 billion. Book value as of May 31, 2006 was \$79.30 per share, based on 147.0 million shares outstanding.

85. On September 14, 2006, the Individual Defendants caused or allowed Bear Stearns to issue a press release announcing its earnings for its fiscal third quarter 2006. Bear Stearns reported earnings of \$438 million. According to the press release, "[m]ortgage-related revenues increased from the prior year period as customer activity and gains in market share more than offset declining industry volumes. Bear Stearns continues to be ranked as the number one underwriter of U.S. Mortgage backed securities for the third quarter ...." Defendant Cayne commented that "Bear Stearns produced excellent results for the third quarter and record results for the first nine months of 2006." In particular, the press release provided as follows:

- *Bear Stearns Reports Third Quarter Earnings Per Share Of \$3.02*
- *Net Income Rises 16% To \$438 Million*
- *Highest Ever Net Revenues, Net Income And Earnings Per Share*

- *For The First Nine Months Of 2006*
- *All Business Segments Contribute To Strong Growth*
- *Capital Markets Net Revenues Up 13%*
- *Wealth Management Net Revenues Rose 36%*
- *Global Clearing Services Net Revenues Increase 4%*

The Bear Stearns Companies Inc. today reported earnings per share (diluted) of \$3.02 for the third quarter ended August 31, 2006, up 12% from \$2.69 per share for the third quarter of 2005. Net income for the third quarter of 2006 was \$438 million, up 16% from \$378 million for the third quarter of 2005. Net revenues were \$2.1 billion for the third quarter, up 17% from \$1.8 billion for the third quarter of 2005. The annualized return on common stockholders' equity for the third quarter 2006 was 15.8%, and 18.4% for the trailing 12-month period ended August 31, 2006.

"Bear Stearns produced excellent results for the third quarter and record results for the first nine months of 2006," said James E. Cayne, chairman and chief executive officer. "Our franchise continues to grow as we selectively hire talented professionals worldwide. We are seizing opportunities in the marketplace to both expand our existing core businesses and enter new areas where we can profitably develop our market presence. I am proud of our success and I am enthusiastic about our future."

### **Capital Markets**

Net revenues for the Capital Markets segment were \$1.5 billion for the quarter ended August 31, 2006, up 13% from \$1.4 billion for the third quarter of 2005.

- Institutional Equities net revenues were \$436 million for the third quarter of 2006, a 31% increase from \$334 million for the comparable prior-year quarter. Strong results from domestic and international sales and trading, structured equity products and energy/commodity activities all contributed to this robust performance.
- Fixed Income net revenues were \$878 million for the third quarter 2006, up 19% from \$739 million reported for the quarter ended August 31, 2005. Mortgage-related revenues increased from the prior year period as customer activity and gains in market share more than offset declining industry volumes. Bear Stearns continues to be ranked as the number one underwriter of U.S. Mortgage-backed securities for the third quarter as well as for the nine months ending August 31, 2006. The credit businesses remained very strong, led by the leveraged finance and credit trading areas.
- Investment Banking net revenues were \$232 million for the quarter ended August 31, 2006, down 23% from \$300 million for the year-ago third quarter. Excluding merchant banking, Investment Banking net revenues increased 8% due to increased merger and acquisition advisory fees as a number of previously announced transactions were completed during the quarter.

Partially offsetting the increase in merger and acquisition advisory fees were reduced underwriting net revenues reflecting lower industry activity levels as compared with the prior-year quarter.

### **Global Clearing Services**

Net revenues for Global Clearing Services were \$269 million for the quarter ended August 31, 2006, up 4% from \$258 million for the quarter ended August 31, 2005. Higher customer margin debt and customer short balances resulted in increased net interest revenues. Average customer margin debt balances were \$68.8 billion during the quarter ended August 31, 2006, up 9% from \$63.4 billion in the comparable quarter of fiscal 2005. Customer short balances averaged \$82.1 billion for the third quarter of 2006, compared with \$81.3 billion for the third quarter of 2005.

### **Wealth Management**

Wealth Management net revenues for the quarter ended August 31, 2006 were \$231 million, an increase of 36% from \$170 million for the quarter ended August 31, 2005.

- Private Client Services net revenues were \$127 million in the third quarter of 2006, up 12% from \$114 million in the prior-year quarter. Increased client activity levels and the continued growth in fee-based assets drove the increase in net revenues for the 2006 third quarter.
- Asset Management net revenues rose 87% to \$104 million for the third quarter of 2006 from \$56 million in the prior-year quarter. Performance fees increased compared with the third quarter of 2005 as our proprietary hedge fund products recorded strong performance. Management fees also increased as assets under management increased 25% to \$50.2 billion at quarter end, up from \$40.3 billion on August 31, 2005.

### **Expenses**

- Compensation as a percentage of net revenues was 48.1% for the third quarter of 2006 versus 47.0% in the quarter ended August 31, 2005. Compensation as a percentage of net revenues for the nine months ended August 31, 2006 was 48.3% and 47.9% for the full year ended November 30, 2005.
- Non-compensation expenses were \$437 million for the quarter ended August 31, 2006, a rise of 15% from \$381 million for the comparable prior-year period. The increase is primarily related to occupancy fees, higher communications and technology costs associated with

additional headcount as well as higher professional fees.

The third quarter 2006 pre-tax profit margin was 31.3% as compared with 32.0% for the third quarter of 2005.

- As of August 31, 2006, total capital, including stockholders' equity and long-term borrowings, was \$61.9 billion. The book value of Bear Stearns common stock at August 31, 2006 was \$81.52 per share, based on 146.3 million shares outstanding.

86. On December 14, 2006, the Individual Defendants caused or allowed Bear Stearns to issue a press release announcing its fiscal fourth quarter and full year 2006 earnings. Bear Stearns reported earnings of \$563 million for the quarter and \$2.1 billion for the year. According to the press release, "[m]ortgage revenues increased reflecting higher volumes and increased commercial-mortgage securitization activity." Defendant Cayne commented that "[w]e are pleased to announce Bear Stearns' fifth consecutive year of record net income and earnings per share." In particular, the press release provided as follows:

- *Bear Stearns Reports Best Ever Quarter*
- *Record Net Income of \$563 million, up 38%*
- *Earnings Increase 38% to a Record \$4.00 Per Share*
- *Full Year Results Set A Record For The Fifth Consecutive Year*
- *Net Income Increases 40% to \$2.1 Billion*
- *Annual Earnings Per Share of \$14.27*
- *Net Revenues Increase 25% to a Record \$9.2 Billion*
- *Firm Increases Quarterly Dividend 14% to \$0.32 Per Share*

The Bear Stearns Companies Inc. today reported earnings per share (diluted) of \$4.00 for the fourth quarter ended November 30, 2006, up 38% from \$2.90 per share for the fourth quarter of 2005. Net income for the fourth quarter of 2006 was \$563 million, up 38% from \$407 million for the fourth quarter of 2005. Net revenues for the 2006 fourth quarter were \$2.4 billion, up 28% from \$1.9 billion for the 2005 fourth quarter. The annualized return on common stockholders' equity for the fourth quarter of 2006 was 20.5%.

For the full fiscal year ended November 30, 2006, earnings per share (diluted) were a record \$14.27, up 38% from \$10.31 for fiscal 2005. Net income for the fiscal year 2006 was \$2.1 billion, up 40% from the \$1.5 billion earned in the twelve-month period ended November 30, 2005. Net revenues for fiscal year 2006 were \$9.2 billion, an increase of 25% from \$7.4 billion in the prior fiscal year. The after-tax return on common stockholders' equity was 19.1% for fiscal 2006.



"We are pleased to announce Bear Stearns' fifth consecutive year of record net income and earnings per share," said James E. Cayne, chairman and chief executive officer. "Our continued success is a testament to our unwavering focus on serving our clients with excellence; attracting and retaining talented professionals and profitably expanding our broad and diverse franchise. I look forward to 2007 and our continued expansion both internationally and domestically."

## **Capital Markets**

### **Fourth Quarter**

Net revenues in Capital Markets, which includes Institutional Equities, Fixed Income and Investment Banking, were \$1.8 billion for the fourth quarter of 2006, up 26% from \$1.4 billion for the fourth quarter ended November 30, 2005.

- Institutional Equities net revenues were \$397 million, up 7% from \$373 million for the fourth quarter of 2005. Record results from risk arbitrage and continued strong results from equity derivatives and international sales and trading contributed to this strong performance.
- Fixed income net revenues were \$1.1 billion, up 25% from \$839 million in the fourth quarter of 2005. The credit business produced record results led by the credit derivatives, distressed debt and leveraged finance areas. Mortgage revenues increased reflecting higher volumes and increased commercial-mortgage securitization activity.
- Investment Banking net revenues were \$364 million in the fourth quarter of 2006, up 58% from the \$231 million in the comparable prior year period. This increase reflects fees from higher underwriting and merger and acquisition transaction volumes.

### **Full Year**

Capital Markets net revenues were a record \$7.0 billion for fiscal year 2006, an increase of 25% over the previous record of \$5.6 billion reported in 2005.

- Institutional Equities net revenues for the fiscal year ended November 30, 2006 were up 33% to a record \$1.9 billion from \$1.4 billion in fiscal 2005. Equity derivatives, risk arbitrage, energy/commodity activities and international sales and trading all delivered record results.
- Fixed Income net revenues were a record \$4.0 billion in 2006, up 23% from \$3.3 billion in 2005. This was the sixth consecutive year of record results and was led by revenue growth in the mortgage and credit departments. In the mortgage business, the record results were driven by market share gains in

commercial mortgage-backed securities and the growth in captive origination volumes from the vertical integration of the mortgage platform. In addition, collateralized loan and debt origination activities increased substantially. The credit franchise delivered its best results ever as the high yield, leverage finance and credit trading areas all produced record revenues.

- Investment Banking reported net revenues of \$1.2 billion for fiscal 2006, up 19% from \$980 million in the prior fiscal year. The increase in net revenues was due to greater transaction volumes in both underwriting and advisory areas.

### **Global Clearing Services**

#### **Fourth Quarter**

- Fourth quarter 2006 Global Clearing Services net revenues were \$281 million, up 7% from \$263 million in the fourth quarter of 2005. Net interest revenues increased due to higher margin debt and customer short balances. Average customer margin debt balances for the quarter ended November 30, 2006 were \$72.0 billion, up from \$67.4 billion in the prior year quarter. Customer short balances averaged \$90.0 billion during the fourth quarter of 2006, up from the prior year fourth quarter average of \$81.2 billion.

#### **Full Year**

- Net revenues for the 2006 fiscal year in Global Clearing Services were \$1.10 billion, up 3% from \$1.07 billion in fiscal 2005. Net interest revenues increased due to higher levels of customer margin debt balances partially offset by declining commission revenues. Average customer margin debt balances for the fiscal year were \$68.4 billion as compared with \$64.9 billion for the year ended November 30, 2005. Customer short balances averaged \$82.6 billion during the 2006 fiscal year, down from the average of \$84.4 billion for 2005.

### **Wealth Management**

#### **Fourth Quarter**

In the Wealth Management segment, which includes Private Client Services and Asset Management, net revenues were \$245 million for the quarter ended November 30, 2006, up 33% from \$184 million in the fourth quarter of 2005.

- Private Client Services revenues were \$133 million in the fourth quarter of 2006, an increase of 14% from \$117 million in the 2005 quarter. Increased

equity in client accounts, higher activity levels, and robust growth in fee-based assets drove the quarterly revenue increase.

- Asset Management net revenues grew 66% to \$112 million for the fourth quarter of 2006 from \$67 million in the prior year quarter. The rise in net revenues was due to increased performance fees from hedge fund products, as well as management fees from a growing base of assets under management.

### **Full Year**

Wealth Management net revenues were \$850 million for fiscal 2006, an increase of 25% compared with \$679 million in fiscal 2005.

- Revenues from Private Client Services rose 15% to \$518 million for the 2006 fiscal year from \$450 million for fiscal 2005. The improvement reflects the growing contribution of revenues from fee-based assets.
- The Asset Management business reported record net revenues of \$332 million for the 2006 fiscal year, up 45% from \$229 million in the prior year. Growth in alternative assets under management together with increased performance fees contributed to these excellent results.
- Assets under management rose to \$52.5 billion as of November 30, 2006, up 25% from \$41.9 billion as of November 30, 2005.

### **Expenses**

#### **Fourth Quarter**

- Compensation as a percentage of net revenues was 43.6% for the fourth quarter of 2006 compared with 46.2% for the quarter ended November 30, 2005.
- Non-compensation expenses were \$469 million for the quarter ended November 30, 2006, up 9% from \$429 million in the 2005 quarter. The increase is primarily related to higher occupancy fees, professional fees, and communications and technology costs associated with additional headcount.

The 2006 fourth quarter pre-tax profit margin was 37.0%, as compared with 31.1% for the prior year quarter.

## **Full Year**

- For the twelve-months ended November 30, 2006, compensation as a percentage of net revenues was 47.1% as compared with 47.9% for the 2005 fiscal year.
- Non-compensation expenses for the fiscal year 2006 were \$1.74 billion, 5% higher than the \$1.65 billion reported in 2005. The increase is primarily related to increased occupancy expenses, professional fees, and communications and technology costs associated with an expanding workforce.

For fiscal year 2006 the pre-tax margin was 34.1% versus 29.8% in fiscal year 2005. As of November 30, 2006, total capital, including stockholders' equity and long-term borrowings, was \$66.7 billion. Book value on November 30, 2006 was \$86.39 per share, based on 145.7 million shares outstanding. The company repurchased approximately 10.6 million shares of its common stock during fiscal 2006.

### **Quarterly Common Stock Cash Dividend Declared**

- The Board of Directors of The Bear Stearns Companies Inc. declared a regular quarterly cash dividend of 32 cents per share on the outstanding shares of common stock payable January 26, 2007, to stockholders of record on January 16, 2007. This represents a 14% increase over the 28 cent per share quarterly dividend paid since January 2006.

### **Quarterly Preferred Stock Cash Dividends Declared**

- The Board of Directors of The Bear Stearns Companies Inc. declared the following regular quarterly dividends: (i) a cash dividend of \$3.075 per share on the outstanding shares of 6.15% Cumulative Preferred Stock, Series E (which is equivalent to 76.875 cents per related depository share); (ii) a cash dividend of \$2.86 per share on the outstanding shares of 5.72% Cumulative Preferred Stock, Series F (which is equivalent to 71.50 cents per related depository share); and (iii) a cash dividend of \$2.745 per share on the outstanding shares of 5.49% Cumulative Preferred Stock, Series G (which is equivalent to 68.625 cents per related depository share); all payable January 15, 2007 to stockholders of record on December 29, 2006.

87. In the beginning of 2007, the subprime mortgage crisis began to intensify and the Individual Defendants caused or allowed Bear Stearns to continue to disseminate false information to investors regarding its exposure in its portfolio of mortgage-backed securities.

88. On February 13, 2007, the Individual Defendants caused Bear Stearns to file its Form 10-K, which included the same financial results previously reported. The Form 10-K also included a certification by Defendant Cayne, which stated:

#### CERTIFICATION

I, James E. Cayne, certify that:

1. I have reviewed this Annual Report on Form 10-K of The Bear Stearns Companies, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or cause such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information and;

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

89. Individual Defendant Molinaro signed a nearly identical certification included in the Form 10-K.

90. On March 15, 2007, the Individual Defendants caused or allowed the Company to issue a press release announcing its fiscal first quarter 2007 earnings. Bear Stearns reported earnings of \$554 million. Defendant Cayne commented in the press release that "[w]e are pleased with this excellent performance, revenues for the first quarter were up for every business segment." In particular, the press release provided as follows:

- *Bear Stearns Reports First Quarter 2007 Results*
- *Net Revenues Rise In Every Business Segment*
- *Net Revenues Rise 14% to \$2.5 Billion*
- *Net Income Increases 8% to \$554 Million*
- *Earnings Per Share Up 8% to \$3.82*

The Bear Stearns Companies Inc. today reported earnings per share (diluted) of \$3.82 for the first quarter ended February 28, 2007, up 8% from \$3.54 per share for the first quarter of 2006. Net income for the first quarter of 2007 was \$554 million, up 8% from \$514 million for the first quarter of 2006. Net revenues were \$2.5 billion for the 2007 first quarter, up 14% from \$2.2 billion in the 2006 first quarter. The annualized return on common stockholders' equity was 18.3% for the first quarter of 2007 and 18.6% for the trailing 12-month period ended February 28, 2007.

"We are pleased with this excellent performance, revenues for the first quarter were up for every business segment," said James E. Cayne, chairman and chief executive officer of The Bear Stearns Companies Inc. "Growing the company remains a core focus as we continue to invest in the clearing, mortgage, international and asset management franchises with successful results."

### **Capital Markets**

Capital Markets net revenues for the first quarter of 2007 were \$2.0 billion, up 15% from \$1.7 billion in the first quarter of 2006.

- Institutional Equities net revenues were \$513 million, up 3% from \$500 million for the first quarter of 2006. Equity derivatives delivered a record quarter with improved market conditions leading to increased customer activity. International sales and trading revenues increased in the first quarter compared with the year-ago quarter, and risk arbitrage net revenues rose reflecting a high level of activity in announced merger and acquisition transactions.

- Fixed Income net revenues were \$1.1 billion, up 27% from \$907 million in the year-ago quarter. The credit business produced record results led by the credit derivatives and distressed debt areas. The interest rate area also produced strong results reflecting increased volatility and higher customer volume. Residential mortgage-related revenues decreased from the prior year period, reflecting weakness in the U.S. residential mortgage-backed securities market.

- Investment Banking net revenues were \$303 million in the first quarter of 2007, up 3% from \$296 million in the comparable prior-year period. Equity underwriting and merger and acquisition activity remained strong in the first quarter of 2007. However, merchant banking revenues were lower than in the prior year quarter. Excluding merchant banking revenues, Investment Banking net revenues increased 20% compared with the first quarter of 2006.

### **Global Clearing Services**

- First quarter 2007 Global Clearing Services net revenues were \$276 million, up 5% from \$263 million in the first quarter of 2006. Net interest revenues increased from the prior-year quarter as interest-bearing balances rose to record

levels. Average customer margin debt balances for the quarter ended February 28, 2007 were \$81.3 billion, up from \$64.5 billion in the prior year quarter. Average customer short balances increased to \$94.0 billion for the first quarter of 2007 from \$78.2 billion for the first quarter of 2006. Average free credit balances were \$33.8 billion in the current quarter, up from \$29.9 billion in the first quarter last year.

### **Wealth Management**

Wealth Management net revenues for the first quarter of 2007 were \$255 million, an increase of 14% from \$225 million in the first quarter of 2006. Net revenue continued to grow with higher levels of assets under management.

- Private Client Services net revenues were \$136 million in the first quarter of 2007, an increase of 5% from \$130 million in the 2006 first quarter. The increase was mainly attributable to revenues associated with the continued growth of fee-based assets.

- Asset Management net revenues grew 25% to \$119 million for the first quarter of 2007 from \$95 million in the prior year's quarter. The increase was primarily due to higher management fees and investment performance. Assets under management rose 19% to \$54.1 billion as of February 28, 2007, compared with \$45.4 billion as of February 28, 2006.

### **Expenses**

- Compensation as a percentage of net revenues was 48.5% in the first quarter of 2007 as compared with 47.9% for the quarter ended February 28, 2006.

- Non-compensation expenses were \$442 million for the quarter ended February 28, 2007, an increase of 15% from \$386 million in the 2006 first quarter. The increase is primarily due to higher professional fees, occupancy and communications and technology costs.

The pre-tax profit margin in the first quarter of 2007 was 33.7% as compared with 34.4% in the quarter ended February 28, 2006.

As of February 28, 2007, total capital, including stockholders' equity and long-term borrowings, was approximately \$71.8 billion. Book value as of February 28, 2007 was \$90.57 per share, based on 145.1 million shares outstanding.

91. On April 9, 2007, the Individual Defendants caused or allowed the Company to file its Form 10-Q for the first quarter which included the same financial results previously reported.



92. On June 12, 2007, the media reported that two hedge fund controlled by Bear Stearns had fallen 23% from the beginning of 2007 to present. The High-Grade Structured Credit Strategies Enhanced Leverage Fund was widely exposed to subprime mortgages, or home loans to borrowers with weak credit histories. The two hedge funds managed by the Company were roiled by mortgage losses and subsequently went bankrupt. The failure of the two mortgage cost investors \$1.6 billion.

93. On June 14, 2007, the Individual Defendants caused or allowed Bear Stearns to issue a press release announcing its earnings for its fiscal second quarter 2007 earnings. Bear Stearns announced earnings of \$362 million. Defendant Cayne commented that "[t]he diversity of our franchise is clearly demonstrated in the record net revenues generated this quarter." In particular, the press release provided as follows:

The Bear Stearns Companies Inc. today reported earnings per share (diluted), after a non-cash charge, of \$2.52 for the second quarter ended May 31, 2007, down 32% from \$3.72 per share for the second quarter of 2006. Second quarter results include the effect of a \$227 million or \$0.88 per share (diluted) non-cash charge related to the write-down of intangible assets, representing goodwill and specialist rights of Bear Wagner Specialists. Earnings per share (diluted) excluding this charge would have been \$3.40 for the 2007 second quarter. Net income for the second quarter of 2007, after the non-cash charge, was \$362 million. Net income excluding the non-cash charge would have been \$486 million, down 10% from \$539 million for the second quarter of 2006. Net revenues for the 2007 second quarter were a record \$2.512 billion, up from the previous record of \$2.499 billion reported for the 2006 second quarter. The annualized return on common stockholders' equity for the second quarter of 2007 was 11.6%, and 16.4% for the trailing 12-month period ended May 31, 2007. Excluding the non-cash charge, annualized return on common stockholders' equity for the second quarter of 2007 would have been 15.6%, and 17.5% for the trailing 12-month period ended May 31, 2007.

"The diversity of our franchise is clearly demonstrated in the record net revenues generated this quarter," said James E. Cayne, chairman and chief executive officer of The Bear Stearns Companies Inc. "The Global Clearing Services and Wealth Management segments reported record performance while results were also very strong from debt and equity underwriting, equity derivatives and leveraged finance. Internationally, we continue to grow aggressively, hiring talented people, broadening our product platform and reaching new clients in multiple geographies."

A brief discussion of the firm's business segments follows: