UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – BEAR, STEARNS & CO. INC., Defendant.	Civil Action No. 03 Civ. 2937 (WHP) ORDER REGARDING INVESTOR EDUCATION PLAN
SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – JACK BENJAMIN GRUBMAN, Defendant.	Civil Action No. 03 Civ. 2938 (WHP)
SECURITIES AND EXCHANGE COMMISSION, Plaintiff, – against – J.P. MORGAN SECURITIES INC., Defendant.	Civil Action No. 03 Civ. 2939 (WHP)

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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 03 Civ. 2940 (WHP)
– against – :
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LEHMAN BROTHERS, INC., :
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Defendant. :
- -x
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 03 Civ. 2941 (WHP)
– against – :
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MERRILL LYNCH, PIERCE, FENNER & :
SMITH INCORPORATED, :
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Defendant. :
- -x
- -x
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 03 Civ. 2942 (WHP)
– against – :
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U.S. BANCORP PIPER JAFFRAY, INC., :
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Defendant. :
- -x
- -x
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.

Plaintiff, :
: 03 Civ. 2943 (WHP)
– against – :
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UBS WARBURG LLC, :
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Defendant. :
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 03 Civ. 2944 (WHP)
– against – :
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GOLDMAN, SACHS & CO., :
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Defendant. :
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 03 Civ. 2945 (WHP)
– against – :
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CITIGROUP GLOBAL MARKETS, INC., F/K/A :
SALOMON SMITH BARNEY INC., :
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Defendant. :
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 03 Civ. 2946 (WHP)
– against – :

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CREDIT SUISSE FIRST BOSTON LLC, :
F/K/A CREDIT SUISSE FIRST BOSTON :
CORPORATION, :
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Defendant. :
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 03 Civ. 2947 (WHP)
– against – :
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HENRY McKELVEY BLODGET, :
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Defendant. :
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 03 Civ. 2948 (WHP)
– against – :
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MORGAN STANLEY & CO. INCORPORATED, :
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Defendant. :
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SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.
Plaintiff, :
: 04 Civ. 6909 (WHP)
– against – :
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DEUTSCHE BANK SECURITIES INC., :

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Defendant. :

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SECURITIES AND EXCHANGE COMMISSION, :

: Civil Action No.

Plaintiff, :

: 04 Civ. 6910 (WHP)

– against – :

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THOMAS WEISEL PARTNERS LLC, :

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Defendant. :

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SUBMISSION BY LAW SCHOOL INVESTOR PROTECTION CLINICS PURSUANT TO COURT'S ORDER OF JUNE 13, 2006

1. Introduction

The Investor Protection Clinics for Northwestern University School of Law, Pace University School of Law, Fordham University School of Law, and the University of San Francisco School of Law respectfully submit to the Court these Comments pursuant to the Court's Order of June 13, 2006 soliciting recommendations from interested persons as to the distribution or use of the remaining Funds.

The Investor Protection Clinics request the Court to consider using a portion of the remaining Funds to establish a permanent endowment for existing investor protection legal clinics and for creating investor protection legal clinics in underserved geographic areas. As described below, the recommended endowment not only is consistent with both the Final Judgments and the Original Distribution Plan but would also be the best use of a portion of the remaining Funds.

2. A Brief History and Explanation of Investor Protection Clinics

Due to the advance in technology, more people than ever are entrusting their savings to the stock market. Though the regulation of the stock market has improved throughout the twentieth century, small private investors, especially the elderly and novice investors, are still much more likely to be both targeted and taken advantage of by unscrupulous brokers and investment firms. Furthermore, since many of these small investors are not investment savvy, they often believe the losses they suffer are a natural condition of the market or their own fault, rather than a result of broker misconduct. In fact, a 2003 NASD Investor Education survey revealed that ninety-seven percent of small investors realize they need to be better informed about investing. Even when small private investors do realize they have a potential claim, they lack the resources to obtain legal expertise.

Investment Protection Clinics (IPCs) are clinical law programs in which students, for academic credit and under the supervision of law faculty, provide free legal assistance to investors who have arbitrable disputes with their securities brokers or brokerage firms, but who are unable to obtain legal representation because of the size of their claim and lack of resources. IPCs close the gap in legal representation by providing access to justice for small investors. These clinics attempt not only to better educate private investors of their options but also provide them with legal representation that most private investors otherwise could not afford. IPCs ensure equal protection for women, the elderly, and novice investors in both mediation and arbitration. While providing investors with these resources, these clinics also are providing law students with the means to gain practical legal experience while still in law school.

The first clinics were started in the late 1990s after the publication of empirical studies showing that "win rates" in arbitration – as well as the percentage of claimed losses awarded – were significantly higher where claimants were represented by counsel than where the claimants pursued their claims pro se.

At the same time these studies were published, then-SEC Chairman Arthur Levitt attended a series of town meetings around the country and heard complaints about the difficulty or inability of small investors to retain adequate and affordable counsel to assist them in their efforts to pursue their claims. Small investors' claims are too small to make it cost-effective for a lawyer to take the case, and, this, coupled with the fact that those with legal counsel fare far better in the arbitration process, leads to built-in bias against small investors in securities arbitration. Chairman Levitt engaged in discussions with law school deans, convinced that the vehicle of the law school clinic could be used to overcome this bias and deliver legal services to small investors.

Various deans and professors agreed with Chairman Levitt, and within two years, four new IPCs had been created at Pace, Fordham, Brooklyn, and Buffalo. To date, eleven IPCs have been established. These are: Pace University School of Law, Fordham University School of Law, Brooklyn Law School, State University of New York at Buffalo, Syracuse University College of Law, St. John's University School of Law, Benjamin N. Cardozo School of Law, New York Law School, Duquesne University School of Law (Pittsburgh), Northwestern University School of Law (Chicago), and the University of San Francisco School of Law, though this last is a mediation center only.

IPCs serve those small investors that meet the clinic's eligibility standards. These standards vary from IPC to IPC, but all of them require that potential clients have some sort of claim cap (usually in the range of $50,000 to $100,000). However, most clients do not ever reach the set claim cap, and claims are often less than $10,000. Despite the small monetary amounts involved, to those the IPCs serve, it is often the vast majority – if not the entirety – of their life savings. Clinics also have financial standards potential clients must meet. (See e.g. Exhibit A)

Once students have determined that a potential client meets the clinic's eligibility standards, students then initiate a detailed investigation of the client's claim to evaluate both its legal viability and its evidentiary strength. This investigation typically includes telephone and in-person interviews of the client, factual and legal research, a review of account documentation, and, when appropriate, witness interviews. Typical claims include, but are not limited to, churning, unauthorized trading, misrepresentations, theft, and unsuitable recommendations by brokers.

If the IPC determines that the claim has merit, the IPC offers its services to the prospective client, making certain the prospective client understands that IPC students will be their legal representatives and that the prospective client is comfortable with this arrangement. Throughout the case, the IPC faculty provides guidance to the students, reviews all student work, and makes certain that the case is moving forward at an appropriate pace. The supervising faculty members, however, give the students considerable latitude in the decision-making process. Faculty members also are present at any significant discussion involving the case (e.g., the initial meeting with the prospective client, settlement discussions with opposing counsel, the pre-hearing conference with arbitrators, and the arbitration hearing itself), but their primary function is advisory rather than an active participant in the case.

Beyond providing legal counsel, IPCs attempt to educate not only their students (who may well later practice in this area) but also the general public. IPCs take initiative in creating a more investment-savvy public. Most IPCs either run or are in the process of running securities seminars, panels, and/or publications for the public-at-large. These seminars, panels, and publications feature experts from both the legal and financial professions who offer their advice to the would-be small investor. Although this dissemination of information is no sure guarantee that small investors will avoid the numerous pitfalls of investment, it at least offers them a measure of added protection.

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3. The Current Crisis in Investor Protection Clinic Funding

The need for close faculty supervision keeps IPCs small. Professors must first provide students with a thorough background in both securities arbitration and then teach the actual practice of the law, two subjects unfamiliar to students. Besides providing a crash course to their students, faculty must closely critique every aspect of the students' work, and so the number of students and, consequently, the number of cases an IPC may handle remains limited. Despite their small size, in-house legal clinics are the most expensive form of legal education, both in terms of time and actual monetary funds.

It is also very difficult to raise funds for IPCs. Some law schools prohibit their clinics from charging clients any attorney's fees. Even if it is permitted, the small size of the claims makes it impossible for IPCs to self-fund through contingency fees. After all, IPCs take claims that are too small for practicing attorneys to profitably take, and the idea of taking a fee from those that have lost the whole of their slight savings is challenging at best. When a person has lost slightly less than $100,000 and all an IPC is able to recover is $10,000 – and this is now all that remains of that person's retirement – an IPC is hard-pressed to ask for a fee. Therefore, IPCs must look elsewhere for a source of funding. These facts are currently being documented in a study the IPC at Northwestern University School of Law is doing pursuant to a grant provided by the NASD Investor Education Foundation.

New York – where the bulk of IPCs may be found – initially provided funding for its IPCs through a grant from the Office of the New York State Attorney General. The Attorney General settled an IPO case against five communications companies; however, his Office was not able to determine who was entitled to restitution. Therefore, the Office decided to use these settlement funds for public securities education. These so-called Spitzer Grants allowed many law schools to expand the services of existing IPCs or create new ones, including those IPCs at Albany, Cardozo, New York Law, St. John's, and Syracuse.

Spitzer Grants, however, run out. Many IPCs are reaching a critical period in funding; Albany already has closed its IPC due to its inability to obtain alternative funding after the exhaustion of its Spitzer Grant. The NASD Investor Education Fund created by this Court offers grants that may be used for research purposes; however, NASD Investor Education Fund guidelines *prohibit* the continued funding of clinics. Therefore, older clinics such as Pace and Fordham – cannot apply for NASD funding to continue their programs. The IPCs at Syracuse University College of Law, Benjamin N. Cardozo School of Law, and State University of New York at Buffalo School of Law are in such a fund crisis that they are seriously considering closing their doors. Besides the NASD Investor Protection Fund and state grants, however, there are few organizations with either the capacity or the inclination to provide the funds IPCs require to remain in operation.

Newer IPCs, such as the one at Northwestern University School of Law, can and have applied for a NASD Investor Education Fund grant. However, Northwestern's NASD Investor Education Fund grant was not granted to the IPC at Northwestern to *establish* a new clinic but rather study how Investor Protection Clinics are both established and operated. In the course of fulfilling the NASD Investor Protection Fund grant mandates, the IPC at Northwestern has discovered that both new and old clinics suffer from the same funding crisis. Moreover, there is no guarantee that the NASD Investor Education Fund will ever accept a grant proposal to establish a new clinic. The same may be said of state agencies: there is a need for clinics in such states as Florida, Arizona, Texas, and California, and despite dialogue between concerned professors and state securities commissioners, no new IPCs have been created. Although Pepperdine University School of Law has had several serious discussions about creating its own IPC, a lack of funding has been one of the main reasons why a Pepperdine IPC has yet to be established. Similarly, in Florida, both Nova Southeastern University Shepard Broad Law Center and St. Thomas University School of Law have been interested in creating IPCs and yet funding remains an issue to overcome.

In an attempt to keep funding to a minimum, some IPCs, such as the one at San Francisco University School of Law, limit their legal counsel to mediation rather than the more costly arbitration. This, however, also limits the help an IPC can provide to small investors and, therefore, can be a very damaging trade-off.

The geographic scope of IPCs is extremely limited. Due to state bar unauthorized practice limitations (which usually includes out-of-state legal students), IPCs generally cannot represent an investor arbitration hearing in a state other their home state. Yet at present, outside of New York, only three other states have an IPCS: (1) Illinois, through the IPC at Northwestern; (2) Pennsylvania, through the securities arbitration practicum at Duquesne University School of Law in Pittsburgh; (2) California, through University of San Francisco Investor Justice Clinic (mediation only). Northwestern is the only clinic currently taking cases outside of its home state. This situation drastically hurts small investors' chances of successfully overcoming the biases in our current arbitration system.

4. The Continued Need for Investor Protection Clinics and Concluding Remarks

Although the current state of IPCs is much stronger than when Chairman Levitt made his initial proposal to the law community, the demand for IPCs far exceeds the supply. On average, IPCs can only accept about one out of every four potential clients. Some of these potential clients are rejected for such reasons as not having a meritious claim, but many of them are rejected because an IPC has more cases than it can handle.

However, despite this, intra-clinic and inter-clinic studies have shown that IPCs are a roaring success. They are popular among law students, as evidenced by the fact that more students seek admission into IPCs than there are spaces available. The arbitration forums of both the NASD and the NYSE have been very helpful to and supportive of IPCs, and numerous mediators and expert witnesses have volunteered their services without charge. There are now several hundred attorneys and soon-to-be attorneys who know a great deal about the securities arbitration and mediation process, and – most importantly – there are numerous small investors who have managed to overcome the built-in biases against them in the securities arbitration process and regain at least a portion of their losses.

For example, Pace Law School's Securities Arbitration Clinic represented a retired, disabled firefighter who was on fixed income. The client alleged that his broker made an unsuitable recommendation that he purchase a deferred variable annuity in his account. After settling a portion of the claim against the firm, the client proceeded with the remaining claim for damages against the broker in an NASD Simplified Arbitration. After a hearing on the papers, the single arbitrator issued an award for Pace's client in the amount of $13,841.01 (plus interest). This award amount made Pace's client whole by ordering the broker to repay the entirety of his out-of-pocket damages. Although the broker attempted to have a state court vacate the award, he was unsuccessful, and an appellate court affirmed the lower court's confirmation of the award for Pace's client. A different client of Pace's clinic – an elderly couple who obtained a sizable settlement from a suitability claim against a major financial advisory firm – wrote: "I cannot find the words to fully express our gratitude as this settlement has not only been such a wonderful help to us financially but also a great help to me, emotionally….Each morning when I awake, I offer my thanks for our blessings which includes the settlement…."

Another success story comes from the IPC at Northwestern. The IPC recently recovered a college-savings bond for a Chicago college student. One of the IPC students discovered that the college-savings bond had been given to the college student's guardians despite the fact that the student had turned twenty-one and had warned the agent paying out the bond that her custodian would likely steal it. The IPC was fully prepared to file in state court against both the agent and the custodian, but the same IPC student negotiated an eleventh-hour settlement with the custodian. The custodian agreed to return the full amount of the bond to the college student. This is the sort of case that would be refused had the student sought traditional legal representation due to the small size of the claim. Had she represented herself, her chances of recovery would have been drastically reduced – as she was wary of confronting her former guardians without the authority of legal counsel behind her. The presence of an IPC in Chicago, however, allowed the college student a "level playing field."

Another example comes from the IPC at Fordham where Ms. B, a seventy five year old grandmother with a high school education and still working as a secretary at a job she had held for the last thirty years, transferred her retirement savings of less than $50,000 to a brokerage firm. Although she did not know what a margin was, her broker opened a margin account for her and purchased securities on margin. When her account at the firm was finally sold out, she had lost 40% of her retirement savings and this was at a time when the Dow Jones Industrial Average gained 60%.

Her broker transferred to a new brokerage and Ms. B transferred her account to her at the new firm and continued to lose money.

Her broker then transferred to a third brokerage firm and brought Ms. B's account with her again. The broker continued to purchase securities in Ms. B's account that were far more risky than her financial condition warranted. Further, the broker churned the meager amount left in her account and, needless to say, she continued to lose money.

Fordham's IPC filed a claim against both the original firm and the broker and settled on behalf of both, receiving a substantial portion of her initial losses. The Clinic next filed a claim against a subsequent firm as well as the broker. This firm settled on its own behalf, and Ms. B. continued her claim against the broker. An NASD arbitrator awarded Ms. B. the full amount of her claim. The Clinic is hoping to confirm the award and pursue further claims on behalf of Ms. B. against the remaining firm.

A former Fordham IPC client had this to say: "The Clinic provides a vital service. In addition to providing students with some hands-on experience in the Securities area, it also provides the opportunity for someone like myself, who because of losses inappropriately incurred, has no resources left to hire legal representation." This same client ends his thank-you letter to the IPC by expressing his gratitude towards everyone involved because they have helped him "get back on [his] feet after a really horrible financial experience."

Beyond helping individuals, however, IPCs serve as community-building exercises between a law school, the greater legal community, and the general public.

Northwestern University School of Law's strategic plan outlines what it expects from its clinics:

Northwestern's nationally recognized clinical program has been a leader in teaching about the law in action in three ways: simulation of trials and negotiations, actual client representation, and externship work in a variety of legal practice settings. Northwestern's clinical program also has served as a unique model of linking pedagogy to legal reform through programs such as the Children and Family Justice Center, which *has been instrumental in reforming the delivery of justice to juveniles. We will pursue other opportunities to link teaching and institutional reform. Our clinical faculty, while taking on some of the most challenging cases and social issues, has gone beyond teaching the practice of law to uniquely contribute influential scholarship toward the resolution of key social issues, to improve clinical trial practice, and to lead in the development of new clinical pedagogy. We will build upon this strong foundation to create a clinical program second to none.*

These words serve as a beacon not only for Northwestern's Investor Protection Clinic but all IPCs, be they already established or still in the planning. A representative of the NASD has stated: "[The] NASD believes strongly that the clinical programs provide an excellent service for small investors who may not be able to afford counsel. In addition, the clinics create opportunity for students to gain practical experience."

In short, IPCs provide a range of much-needed services to the public that the clinics increasingly cannot afford to maintain.

Therefore, the Investor Protection Clinics respectfully ask the Court to set aside a portion of the unused settlement funds for investor protection clinics. The Investor Protection Clinics would like an opportunity to formulate a detailed proposal for permanent endowment for both existing clinics and the creation of new clinics in underserved areas of the country. When it comes to investor education, providing access to justice to a needy population of small investors is one of the best ways that the Remaining Funds can serve the public good.

EXHIBIT A (IPC ELIGIBILITY STANDARDS)

1. NORTHWESTERN UNIVERSITY SCHOOL OF LAW

Eligibility standards include:

Client's household annual income generally cannot exceed $100,000

Client's claim generally cannot exceed $100,000

Investors living in the United States may seek help from Northwestern Law's Investor Protection Center. However, the center is limited in the help it can provide to investors residing outside of Illinois.

2. PACE LAW SCHOOL

JJLS can consider representing only those investors who meet these eligibility standards:

1. Your household’s annual income cannot exceed $75,000.

2. Your claim cannot exceed $50,000.

3. You cannot have any major assets except your home and your car.

4. You must have consulted three attorneys, who have declined to represent you because of the amount or nature of your claim, or a legal referral service that certifies you are unlikely to obtain representation on a contingency basis. 5. You must be a resident of New York State.

3. ST. JOHN’S UNIVERSITY SCHOOL OF LAW

SAC can consider representing only those investors who meet the following eligibility standards:

1. Your claim cannot exceed $100,000.

2. You cannot have any major assets except your home and your car.

3. You must have consulted three attorneys, who have declined to represent you because of the amount or nature of your claim, or a legal referral service that certifies you are unlikely to obtain representation on a contingency basis.

4. You must be a New York State Resident.

5. Preference will be given to senior citizens.

6. Your annual income and net worth must be within a certain range. SAC will exercise discretion and flexibility based upon individualized circumstances regarding annual income, claim amount and net worth.