

Investor Protection Center

J. SAMUEL TENENBAUM, DIRECTOR



June 4, 2009

Honorable William H. Pauley III
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 2210 (Courtroom 11D)
New York, NY 10007

VIA FACSIMILE without Enclosures

VIA OVERNIGHT MAIL with Enclosures for Electronic Docketing

Re: Research Analyst Conflict of Interest Cases, Nos. 03 Civ. 2937 et al.

Dear Judge Pauley,

We just learned of your May 29 order through our regular review of the docket as we are not on the service list and were not provided a copy. Our prior request is noted as a bullet point on page 6 of the Report attached to your Order. We had planned on sending you an update on the work of our clinics. The need, both for our services and for funding, we set forth in our prior submissions (copies attached for the Court's convenience as exhibit B), still exists. As to the interest payments and the small claims payments we note that anytime investors can be made whole it is a good thing. That is precisely what our clinics strive for.

In reviewing the report we note that there will still be \$65 million available for distribution. The various investor protection clinics only seek a portion of those funds. As we noted previously, FINRA Educational Foundation guidelines do not allow for any of the Foundation monies (or the monies this Court has previously awarded the Foundation) to be used to fund ongoing clinical activities. While FINRA is thinking about changing the guidelines to allow for the startup funding of new clinics in underserved areas, those changed specify that existing clinics will not be able to obtain support. If this Court is willing to consider using some of the remaining settlement funds to support our clinics we will quickly prepare for the Court a detailed proposal as to proposed amount and guidelines as well as any other factors the Court wishes. We would be happy to work with Professor McGovern to prepare such a report.

I also attached recent articles concerning some of the clinics (attached as Exhibit A). As to our own clinic, we are busier than ever. As Northwestern takes cases from around the country I can assure the Court that the plight of the small investor continues unabated. Each of our clinics has experienced situations like those described in the attached articles. Our clinics are about the only place small investors, primarily the elderly, can go for redress. As one client recently wrote the clinic at Fordham:

Northwestern University School of Law
Investor Protection Center
357 East Chicago Avenue
Chicago, Illinois 60611-3069
312.503.0210; fax 312.503.8977
Bluhm Legal Clinic: 312.503.8576
Investor-Protection@law.northwestern.edu
www.law.northwestern.edu

I offer my sincerest gratitude to Fordham Law School for offering the Fordham Law Clinic. This service offers hope to those that are unable to afford the substantial cost of legal representation. If it weren't for this service I couldn't afford to dream of any form of civil justice for myself. The professionalism and careful attention that I receive from the students and professors is second to none. I won my judgment so that says a lot about their work. I have been awarded more than I could have ever imagined due to their hard work. I highly recommend this resource to anyone in need of help.

Best,

Paul

I also thought I would share with you a portion of one of my graduating student's journals. It describes in a nutshell the benefits our clinics provide:

Self-Evaluation

Working at the clinic this year has been such a rewarding experience. I was unsure of what the experience would be like when I signed up at the beginning of the year, but I think this semester proved how much you can learn (not only about law and the arbitration process, but also about yourself) in such a short period of time. I learned a lot about securities law, the arbitration process, and how FINRA operates, which will certainly help me in my career since I intend to work in securities law. I also learned how to hone my client skills and manage difficult, needy clients effectively.

It is amazing for me to think that in one year, I was able to successfully negotiate and arbitrate for three clients and claim victories on their behalf. Those are real wins for real clients-it's something I will never forget because it's the first time I was able to put my lawyering skills into action and come out on top. It is truly remarkable knowing that I was able to help people who would otherwise have been without any hope of recovery for their losses. The clinic provides such an amazing opportunity for students to hone their legal skills and gain real-life experience while still in law school.

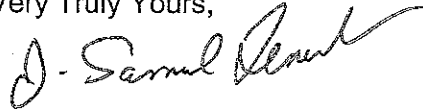
Aside from legal skills, the advancement of my client skills was also a benefit of the clinic experience. Even after working in a client-service field for five years before law school, it is still difficult to deal with clients who are needy or unruly. Unlike my previous work experience, lawyers have a stringent billing system and for this reason, allowing a client to take up too much of your time is unacceptable. It was difficult at first learning the best ways to control these types of clients, but I found that once I established a routine schedule to communicate with them, all of our lives became a lot easier. I was able to get more work done and they still felt like they were in the loop on the progress of their cases. Such a learning experience is invaluable since it can be too late to learn this while billing actual hours at a law firm.

Overall, the clinic experience has given me a lot more self-confidence in my capabilities as a future lawyer. I've learned that I have the compassion and diligence to handle difficult situations, to think creatively about client complaints, and to overcome obstacles to generate a positive end result. I didn't realize how valuable such practical experience could be-how "hands on" learning could prove to be as important as (if not more important than) case books.

I'm so glad I decided to be part of the clinic community during my time at law school. It was just the thing I needed to open my eyes to the realities of the legal practice before graduating and entering the workforce.

We hope you will consider giving favorable consideration to our request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "J. Samuel Tenenbaum". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

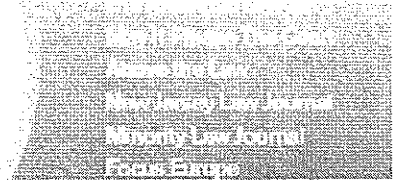
J. Samuel Tenenbaum

On behalf of the Securities
Investor Protection Clinics

cc: All counsel of Record

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FINRA Faces Blitz of Claims

Arbitration cases jump due to unrest

Marcia Coyle
The National Law Journal
March 30, 2009

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Accused of lax oversight in the wake of recent financial frauds, FINRA, the largest nongovernmental regulator of securities firms, is now facing an explosion of arbitration claims stemming from troubles in the capital markets.

Moving some of those claims into the FINRA arbitration process are about a dozen law school securities arbitration clinics across the country, which, say their directors, are fielding numerous requests for help, often from elderly investors.

"It's really gone crazy in the last month," said Professor Curtis Pew, director of the clinic at Hofstra University School of Law. "We literally are getting a call a day, and from all over the country. Our funding limits us to people who are linked to our area at the time the claim arose or who are here presently. I just wish I had more money."

FINRA -- the Financial Industry Regulatory Authority -- oversees nearly 5,000 brokerage firms, 173,000 branch offices and 659,000 registered securities representatives. It describes its chief role as protecting investors by maintaining the fairness of the U.S. capital markets.

The agency recently reported that the number of new arbitration claims filed in January and February was 90 percent more than the number filed in the same period in 2008: 1,065 through February 2009, as compared to 561 through February 2008.

"We don't have official projections for 2009, but if the trend continues, we're probably looking at a high that will match what we saw in '03 and '04," said FINRA spokesman Brendan Intindola.

Arbitration cases filed in 2003 and 2004 -- the largest number in 14 years -- almost reached the 9,000 mark and were driven by the bursting of the dot-com bubble and the subsequent decline in the equity markets. In 2007, slightly more than 3,000 cases were filed, and in 2008, nearly 5,000.

Lawyers who represent customers and industry members generally believe

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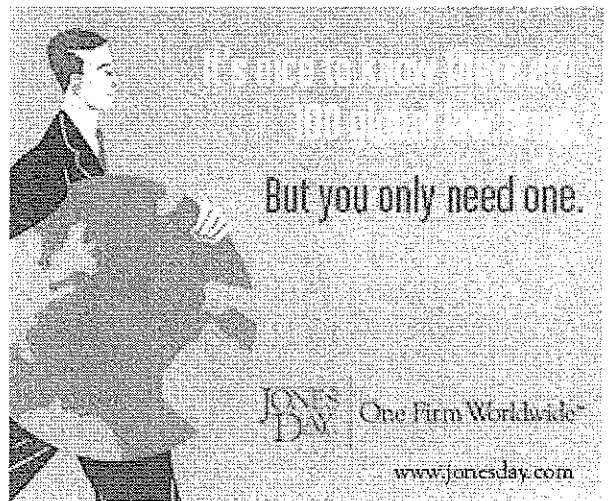
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that FINRA will be able to manage the dramatic increase in its arbitration workload, but they are divided on whether its arbitration panels -- charged with industry bias in the past -- now provide a level playing field to those using the process.

"The general perception is it is very tilted," said one practitioner who asked for anonymity. "Even if only one-third of the panel is from industry, that's the person with alleged expertise and who has disproportionate sway on the panels."

FINRA has taken small steps to begin to ensure fairness, said other practitioners, but, one added, "It's moving in the right direction, but it's not there yet."

MARKET TURMOIL

Individual and institutional customers can require a FINRA member to arbitrate disputes. Practitioners explain that most securities broker/dealers will refuse to do business with customers who do not agree to arbitrate disputes. Disputes between FINRA members may also be submitted to arbitration.

K&L Gates partners Clare Tanner and Paul Donahue recently noted the high stakes that are present in some FINRA arbitrations as well as the speedy resolutions. A FINRA panel earlier this year ordered Credit Suisse Securities USA LLC, a brokerage unit of the Swiss bank, to pay \$400 million to its customer STMicroelectronics N.V., a European semiconductor maker.

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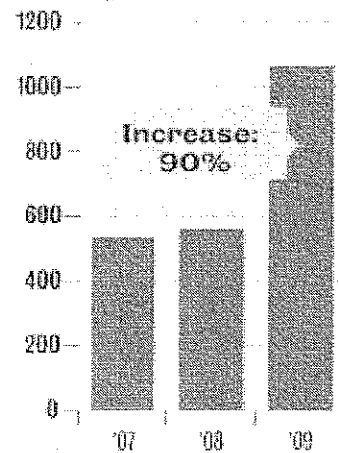
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CASES FILED

New arbitration cases filed with the Financial Industry Regulatory Authority in January and February, 2007-2009.



Source: FINRA

The entire arbitration process, including 28 hearing sessions, took just under a year. "Any court proceeding would undoubtedly have taken far longer," they wrote in a firm analysis. "Nonetheless, STMicroelectronics, according to the award, incurred more than \$4 million in legal fees during that time."

The agency's arbitration rules generally require a three-person panel to arbitrate customer disputes -- one industry member and two "public" or independent members. But a new FINRA rule raises to \$100,000 from \$50,000 the size of claims that can be decided by single arbitrators.

FINRA's Intindola echoed the experiences of practitioners as to what is driving the dramatic increase in claims -- market turmoil, especially as it relates to the subprime mortgage crisis -- and as to what types of securities are most involved: derivative securities and auction-rate securities, particularly the latter.

Auction-rate securities basically are long-term bonds or preferred shares whose interest rates are set at weekly or monthly auctions run by broker-dealers. Many investors holding auction-rate securities suffered when outside bidders disappeared and investment banks that ran the auctions refused to buy the securities.

"To me, the primary reason for the dramatic increase in claims is the stock market," said Professor Jill Gross, director of the Investor Rights Clinic at Pace Law School. "If you chart out the performance of the Dow and flip the chart on its other side, it almost exactly tracks the arbitration docket at FINRA."

The most prevalent complaints by customers, according to FINRA and practitioners, involve misrepresentation by broker-dealers, unsuitability of the products being sold for a client's age or financial condition, omission of facts and breach of fiduciary duty.

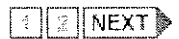
"There are also new products out there, and it takes a while until people catch on that they are not what they claim to be," said Gross.

"It may be a particular fund or annuity or CMOs and CDOs -- we're seeing a lot of those claims."

CDOs -- collateralized debt obligations -- are packages of securities backed by bonds, mortgages and other loans. CMOs are collateralized mortgage obligations.

"We're seeing a lot of bread-and-butter suitability cases and a lot of cases which I've seen only periodically over the last few years," Gross added.

"For example, the client was elderly and banked with the local bank for years. They go to the bank to renew a CD or savings bond and suddenly they're directed to a mutual fund which they know nothing about. There has been this blurring of functions -- banks are also broker-dealers and in the same branch, you will have a CD desk and a broker desk. Elderly, unsophisticated investors don't understand the fundamental difference between a savings product and an investment product."

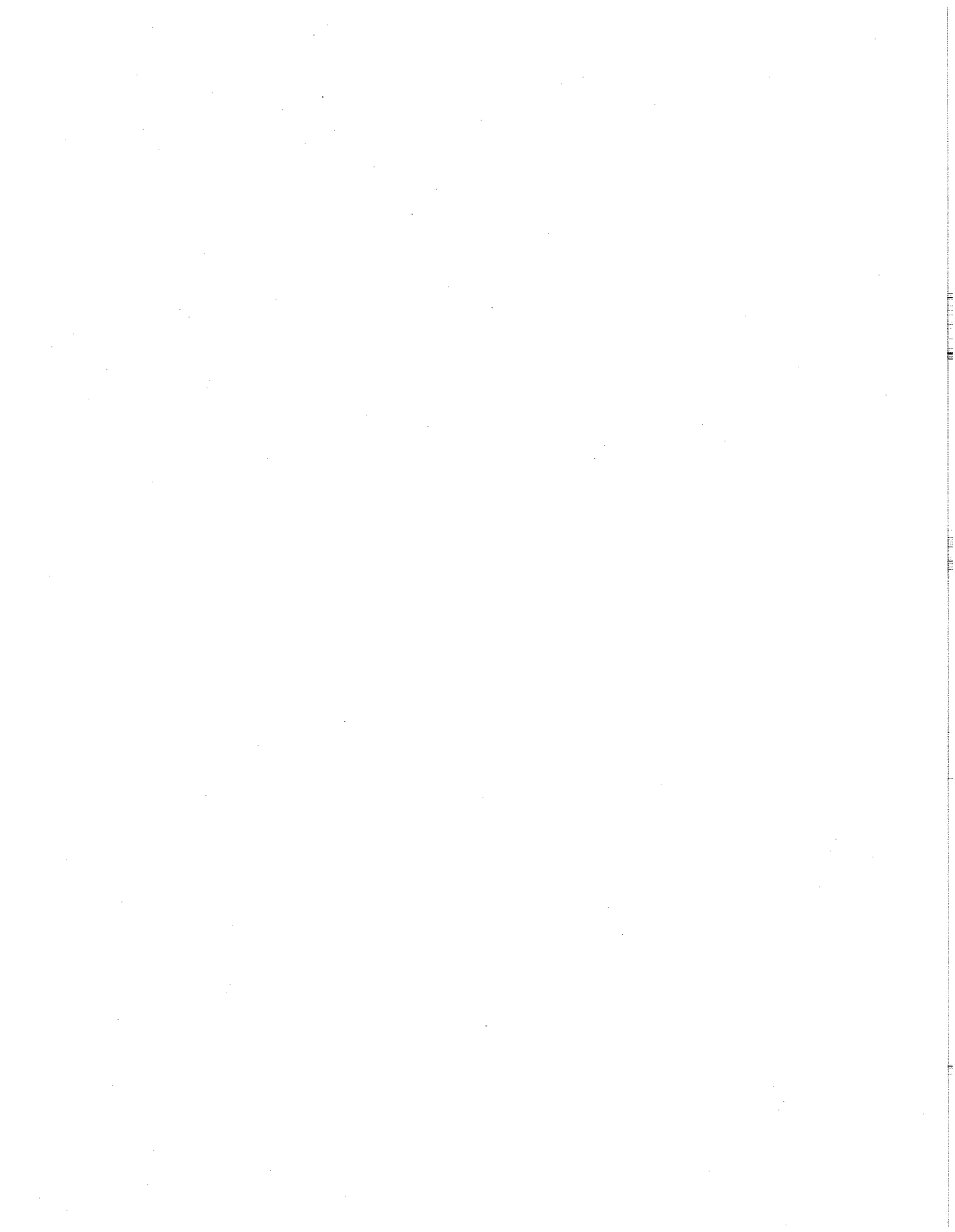


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Small Investors Get Help From Law School Clinics

As investors endured another market meltdown last week, 14 law school clinics devoted to helping small investors with claims against their brokers are bracing for an expected onslaught of claims from small investors with big problems.

The schools have married the needs of small investors, whose losses are not big enough to make it feasible to hire lawyers, and law students, who gain experience in research, argument and legal writing on real cases that may range from \$3,000 to \$25,000 in losses.

NEW YORK ROOTS

The bulk of the clinics began in New York with funding from former Attorney General Eliot Spitzer, generated from fines levied against Wall Street executives, according to Gary Pieples, director of the Consumer Law Clinic at Syracuse University College of Law. Others have popped up in California, Illinois and Pennsylvania.

At Fordham University School of Law in New York, students at the Securities Arbitration Clinic, founded in 1998, have seen an uptick in cases among small investors who bought auction-rate securities on the promise that they were liquid and not very risky, according to Paul Radvany, director of the clinic.


Fordham's closer proximity to Wall Street may put it out front with claims. Law school clinics at the University of San Francisco in California; Cornell University in Ithaca, N.Y.; and Duquesne University in Pittsburgh have not seen big jumps yet, but are expecting calls to start coming in faster by the end of the year.

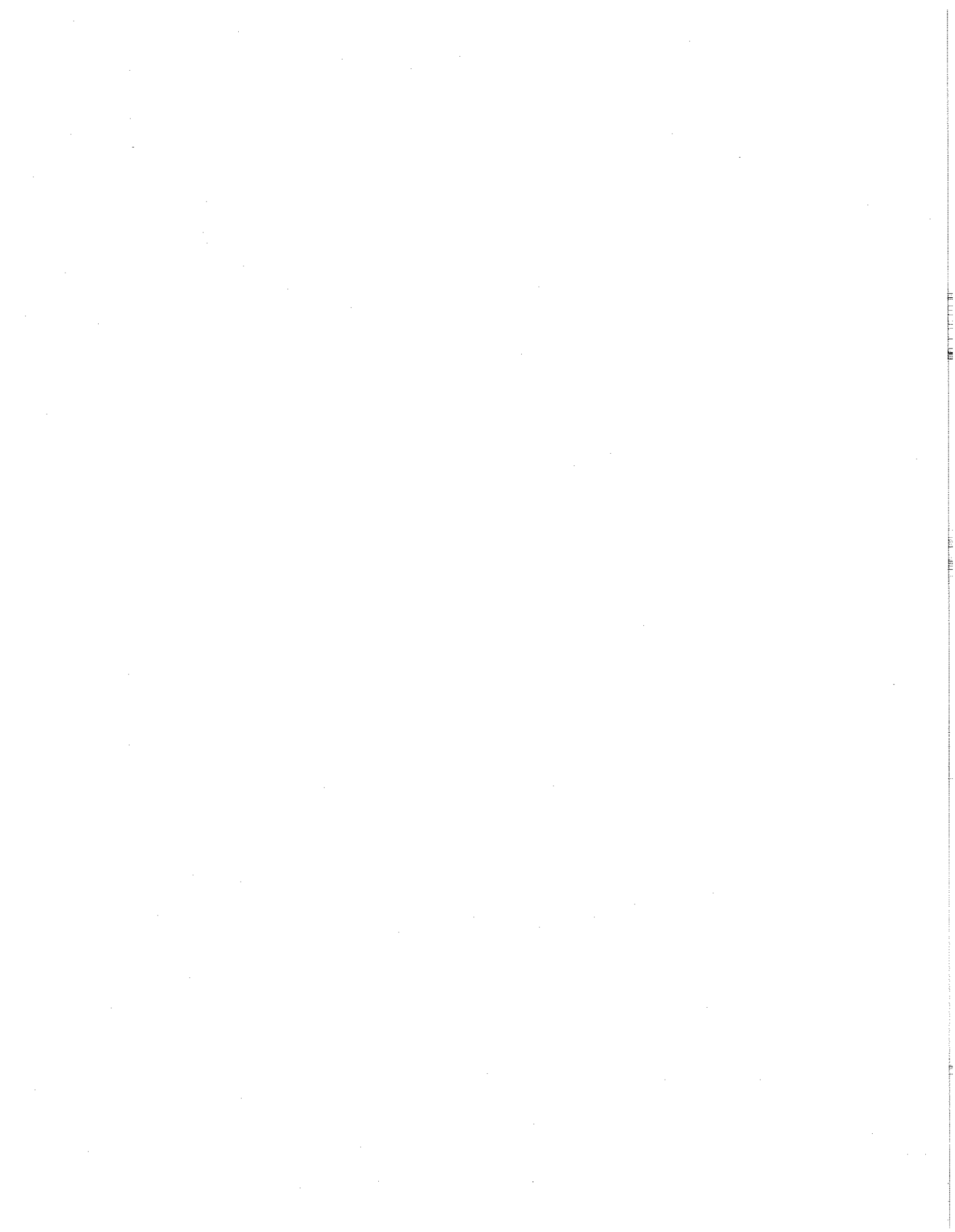
"Our clients are generally seniors or disabled," according to Robert Talbot, head of the University of San Francisco School of Law's Investor Justice Project. Generally, claims arise from brokers who make unsuitable investments because the risk is too great for the age or assets of the customers, he said. The clinic, founded in 2001 by Talbot, had 33 new cases waiting for his six law students at the start of the school year, he said.

Cornell Law School's Securities Law Clinic began in January with a mix of second- and third-year students. It provides a mix of help for small investors, public education programs and public commentary on rule-change proposals by the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority (FINRA). "We have filed a dozen comment letters on rule proposals, including FINRA arbitration-rule proposals," said William Jacobson, director of the clinic. "We've been very, very busy in just the two semesters of operation."

Alice Stewart, clinic director at Duquesne University School of Law, said she expects to see calls for help begin to pick up in January and February for the small investors her eight students represent in arbitrations before FINRA.

"We've seen churning, quite a bit of misrepresentation and unauthorized transactions and a number of unsuitability claims," she said. Stewart expects to see a rise in unsuitability claims, which refers to investments that are unsuitable for the customer either because of their age, resources or risk tolerance.

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Law students help small investors

BY PHYLLIS FURMAN
 DAILY NEWS BUSINESS WRITER
 Monday, February 18th 2008, 4:00 AM

Even though she believed she had been wronged by her stock broker, retired school teacher Arline Jacoby never considered calling a lawyer.

"I find lawyers are very costly," said Jacoby, who lives on Roosevelt Island and retired 20 years ago.

In 1999, Jacoby's broker recommended that she buy a variable annuity for \$50,000. At the time, her net worth was \$230,000, having lost half her pension in a divorce.

Soon after, the annuity, which was tied to risky investments, plummeted in value to \$25,000. For years, Jacoby did nothing until she heard about free legal advice offered by New York Law School's securities arbitration clinic.

Teams of third-year law students supervised by the clinic's co-director, Howard Meyers, took on her case. Recently, they reached a settlement with the brokerage firm that sold Jacoby the annuity, and a check arrived in the mail. (She didn't want to disclose the amount.)

"I feel rather proud of myself," Jacoby said. "I was glad I was able to get something back."

For investors whose cases might be too small for lawyers to take on, there is an alternative route to justice.

Seven New York-area law schools, including New York Law School, Brooklyn Law School and Benjamin N. Cardozo School of Law, cater to people of low to moderate income who otherwise might choose to forgo legal help.

The role of these free clinics could become more important now given the stock market's volatility. Over the last two months as the Dow has tanked, the clinic at New York Law School has seen inquiries surge by 50%.

"They are fantastic resources for investors," said Kenneth Andrichik of the Financial Industry Regulatory Authority. "They are trying to help people of modest means who can't otherwise find representation."

For students, the clinics offer first-hand work experience beyond the classroom. "It's a great feeling to apply what you have learned and help someone out," said third-year New York Law student Lucas Charleston, 26, of Red Bank, N.J., who worked on Jacoby's case.

Securities lawyers who represent investors are generally paid on a contingency basis, meaning they get a portion of the award or settlement, usually one third. In deciding whether to take a case, they figure out whether the potential recovery is worth their time. That leaves many small investors in the cold.

The clients of New York Law School's arbitration clinic generally earn less than \$75,000 a year. The damages in their cases often range from \$5,000 to \$75,000, though there are no limits.

"We evaluate each client on a case by case basis," Meyers said. "We're extremely cautious - we won't take frivolous suits."

Students may act as lawyers in securities cases, doing everything from drafting complaints to negotiating settlements, due to an order issued by the appellate division of the state Supreme Court. Much of the funding for the clinics comes from settlements former Attorney General Eliot Spitzer won prosecuting Wall Street firms.

Even though it often takes on powerful brokerage firms like Merrill Lynch and Smith Barney, New York Law School was able to settle six out of six cases last year.

Brooklyn Law School's securities arbitration clinic settles between 75% and 80% of the cases it takes on, said its director, Karen van Ingen. In one recent case, the clinic's law students were able to recover 90% of their client's losses.



Smith for News

New York Law School Prof. Howard Meyers (r.), led a team of students who gave free legal advice to Arline Jacoby, below.



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"A lot of people are embarrassed that they have lost money. But a lot of people lose money and it's not their fault," van Ingen said. "We can see if you have a good case. Make the call."

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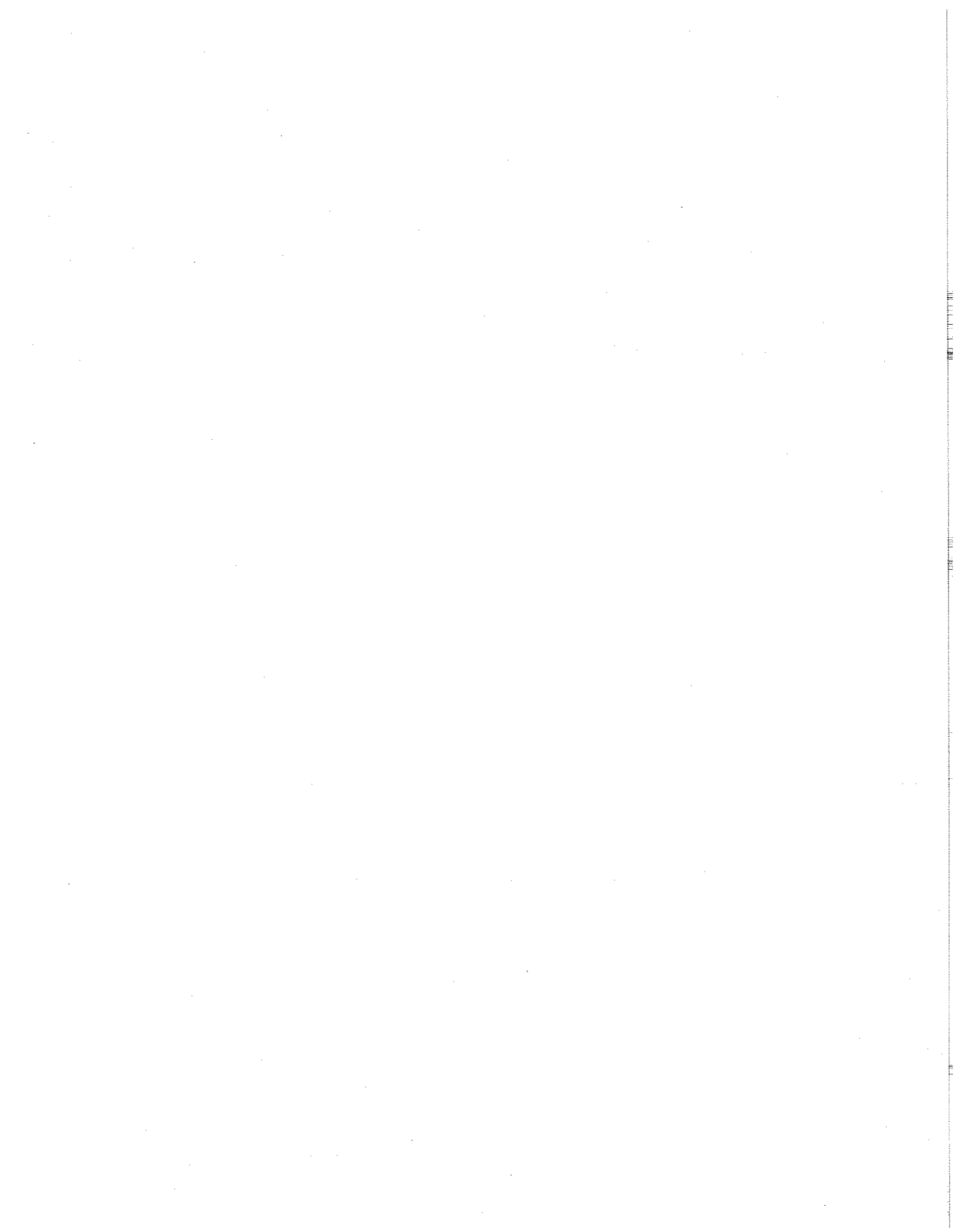
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EDUCATION NEWS

Free advice for those who lost money

Friday, December 05, 2008 | 6:48 PM

By Art McFarland

NEW YORK (WABC) -- Students at New York Law School are both studying and practicing securities arbitration.

The Securities Arbitration Clinic at the school gives free representation to people such as Arline Jacoby, who lost thousands of dollars due to bad financial advice.

"I was hard on myself that I could have let this type of thing happen or have so much trust in someone, but it was a hard time in my life," Jacoby said.

Ms. Jacoby is 84-years-old. A broker she considered a friend had coaxed her to invest in annuities. The clinic was able to win a partial settlement.

[Story continues below](#)

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"Based on the investment that she was sold, she would have had to live another 25 years just to break even on her investment," New York Law School Professor Howard Meyers said.

The volume of people who have come into the Securities Arbitration Clinic has increased by a whopping 50 per cent since October. It is no surprise to anyone that the spike in the number of people needing help is directly related to the downturn in the economy.

"In an economy such as this, where there are so many losses that people are experiencing, people are more alert and more aware of what's going on with their accounts and they're monitoring them much closer," student Robert Zecher said.

Students feel their work in the clinic will help in their careers.

"A lot of being a lawyer, especially a lawyer in litigation, is interacting with clients and learning how to respond to their needs, and that's something you can't learn in a classroom," student Magdalena Kadziolka said.

The clinic is thought to be good training for students studying 'any' field of the law.

More information is available:

Securities Arbitration Clinic:

<http://old.nyls.edu/pages/3185.asp>

Professor Howard Meyers at 212.431.2892, Ext. 3.

Consumers can also learn if there are a significant number of complaints about a specific broker by visiting the website:

www.finra.org.

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THE CHRONICLE

of Higher Education.

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Colleges' Billion-Dollar Campaigns Feel the Economy's Sting

BY KATHERYN MASTERTSON

THE ECONOMY'S collapse has caught up with the billion-dollar campaign. In the past 12 months, the amount of money raised by a dozen of the colleges engaged in higher education's biggest fund-raising campaigns fell 32 percent from the year before, according to a *Chronicle* analysis.

The decline, which started before the worst of the recession, has forced colleges to postpone expansion plans, readjust their budgets, and ask better-off donors to expedite pledge payments. If the slump continues, experts say, more serious cutbacks could come. It's a situation institutions can't ignore as they look to private giving to make up for huge endowment losses and declining government support.

Overall Declines in 12 Big Campaigns

Year	Total	Percent change
2007-8	\$2,483,200,000	
2008-9	\$1,771,500,000	-32%

NOTE: Totals based on institutional reports from February 2007 through January 2009.

The economic volatility is causing donors—even some of the wealthiest, who are normally insulated from downturns—to postpone gifts or rethink the timing and

size of future donations.

"Fewer people are willing to make multiple-year commitments at nearly the level they would have six months ago," says Donald M. Fellows, chief executive of the fund-raising consultants Marts & Lundy. He and other observers predict a difficult 2009.

In response to the tough climate, colleges are shifting priorities from

capital projects to student aid, hiring more fund raisers, and looking for any way to get in front of the most loyal supporters.

The *Chronicle's* findings, which come from fund-raising totals reported by the 12 colleges that have been in billion-dollar campaigns since 2007, follow a February report from the Council for Aid to Education, which said fund raisers start

Continued on Page A.

They're Hiring in Hong Kong

Universities recruit professors worldwide in ambitious overhaul.

BY MARA H'VISTENDAH

HONG KONG

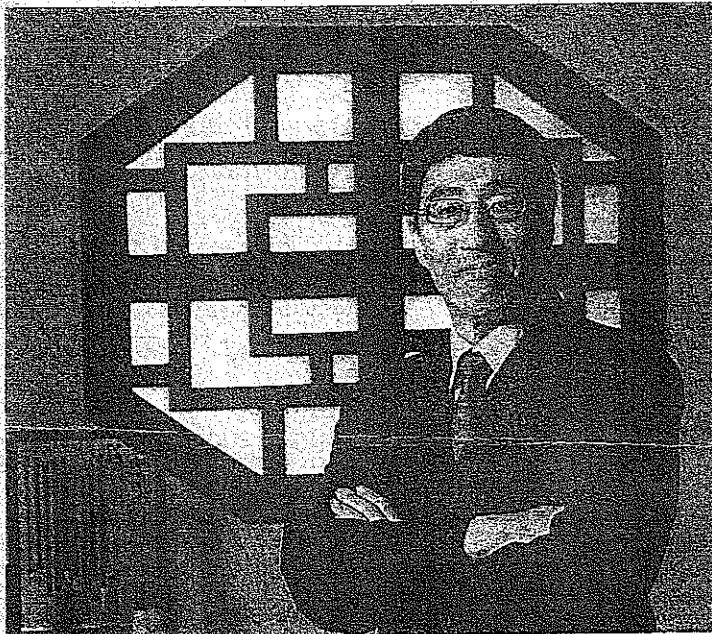
ANDREJ BOGDANOV would have been a great catch for any American university. Arriving in the United States from Macedonia in 1996, he succeeded at the top computer-science programs in the country; bachelor's of science from the Massachusetts Institute of Technology, Ph.D. from Berkeley, postdoctoral fellowship at the Institute for Advanced Study.

But after a fruitless job hunt in the United States, he turned his sights to East Asia.

Following a visit to the Chinese University of Hong Kong, he applied on a whim—and promptly landed a high-paying tenure-track position in theoretical computer science.

To many academics in the United States, Mr. Bogdanov's choice

Continued on Page A18



Way Kuo, president of the City U. of Hong Kong, was recruited last fall from the U. of Tennessee at Knoxville. He hopes to hire 200 new professors to join him.

Peru v. Yale: A Battle Rages Over Machu Picchu

BY DAVID GLENN

IN EARLY 1916, the legendary Yale University archaeologist Hiram Bingham III completed his third and final expedition in southern Peru. He shipped home 74 boxes of artifacts from Machu Picchu, spectacular site in the Andes that believed to have been the last major settlement of the Inca empire.

Those boxes were supposed to sit on temporary loan and sent back to Peru by July 1917, according to a government decree that authorized their export.

But toward the end of 1916, Bingham, who would soon be pulled in service as a pilot in World War I, began to worry that he would not have time to study the artifacts. In a letter to a colleague, he confessed that he had thought about cheating on it. "I am almost tempted to let it Peruvians 'whistle for it,'" he wrote. The Peruvians are whistling for now.

Arguing that Yale improperly holds thousands of objects from a three of Bingham's Machu Picchu expeditions, the government of Peru filed a federal lawsuit against the university in December, just over a year after the parties appeared to have settled the dispute. Yale now has moved to dismiss the case, saying that Peru filed in the wrong court and that it

Continued on Page A

Amid Downturn, Law Students Give Aggrieved Investors a Day in Court



Cru Ulrich, a U. of San Francisco law student, is helping Edward and Jean Marnell try to recover their life savings.

BY KATHERINE MANGAN

CRU ULRICH doesn't pretend to be a financial-planning expert. But when an elderly couple turned to his law school's Investor Justice Clinic for help, he knew enough to be outraged.

The second-year law student at the University of San Francisco is trying to help the couple recover a significant chunk of their nest egg, which disintegrated when a broker talked them into investing \$100,000 of it in risky bonds that wouldn't mature for 30 years.

Within four months, their portfolio's value had plummeted to \$71,000. Panicked about the possibility of losing any more of their life savings, the couple sold the bonds.

Working under a law professor's super-

vision, Mr. Ulrich helped file an arbitration claim with the Financial Industry Regulatory Authority in February, seeking to recover the money the couple had ended up losing.

"The more the community at large learns that elderly and disadvantaged people are being taken advantage of, the more likely it is that we'll get some serious oversight and regulation," he says of the pending claim.

The University of San Francisco School of Law is one of at least a dozen law schools in the United States where students represent small investors facing big headaches, often because their brokers were more interested in maximizing their own commissions than in giving sound advice. Supervised by law professors, teams of students file motions, interview clients,

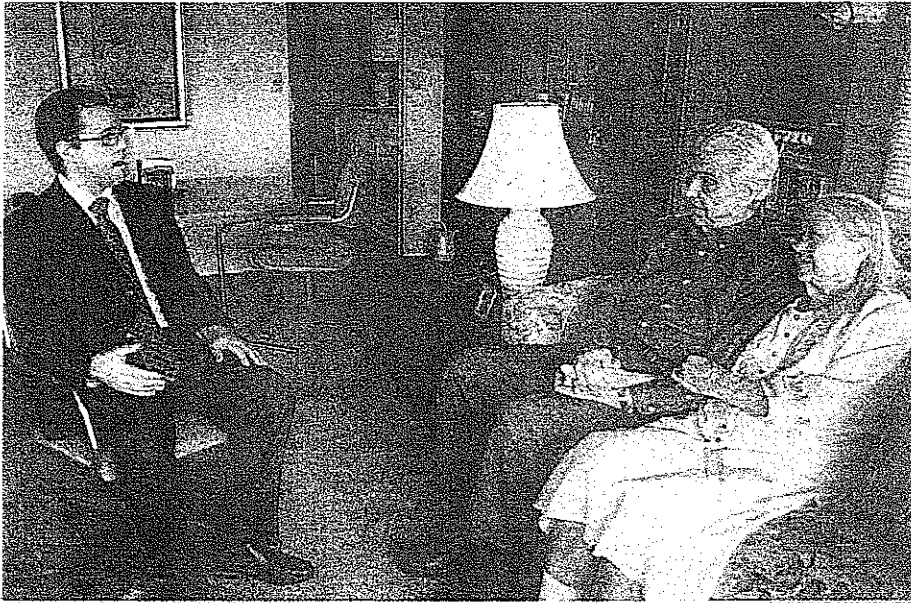
Continued on Page A17



Applying for Student Aid Simplify, Simplify

Advocates want to make the federal application easier to fill out, but it isn't that simple: A15

STUDENTS

<http://chronicle.com/students>

Cris Ulrich, a law student at the U. of San Francisco, with his clients, Edward and Jean Marnell; "The more the community at large learns that elderly and disadvantaged people are being taking advantage of, the more likely it is that we'll get some serious oversight and regulation."

Law-School Clinics Are Seeing an Influx of Aggrieved Investors

Continued From Page A1

and make their cases in hearings before arbitration panels.

Clinics that used to receive a couple of calls a week have fielded dozens in recent weeks, as investors realize the extent of their losses in the economic downturn. Many can't afford to hire a lawyer, or their claim is too small to interest one.

Most of the clinics started in New York State, with support from settlements that a former state attorney general, Eliot Spitzer, won prosecuting Wall Street firms. More than a half-dozen law schools in the state, including those at Fordham University and Pace University, and New York Law School, now offer free clinics for small-time investors. Similar clinics are operating at Duquesne and Northwestern Universities.

The case that Mr. Ulrich is working on is typical. Edward and Jean Marnell, both in their mid-80s, sold their house in Stockton, Calif., several years ago and moved into a mobile home. In 2005 they turned to an adviser with Morgan Stanley for tips on how to generate income from their \$100,000 profit on the sale.

Despite the fact that Mrs. Marnell had Alzheimer's disease and the couple needed immediate access to their money, the broker talked them into investing their savings in four 30-year corporate bonds, at least three of which were in the automobile industry.

"These corporate bonds were set to mature when the Marnells would be nearly 120 years old, and in the meantime, they needed the money to live off of and pay their medical bills," says Mr. Ulrich. "We're not alleging that the broker intentionally lost our client's

money. But it does make me question whether he was incompetent."

A Morgan Stanley spokeswoman, contacted by *The Chronicle*, said the company "denies the allegations in the statement of claim and intends to contest them."

A VERY DIFFICULT TIME

In a tanking market, part of the challenge for the student lawyers and clinic staff members is demonstrating that the outcome would have been different if the broker had suggested a wiser investment strategy.

The team working on the Marnells' case determined that if the money had been invested in a safer, more diversified manner, the portfolio would probably have grown \$2,000 during that time.

William A. Jacobson, director of Cornell University's Securities Law Clinic, says his students take a similar approach to calculating how their clients' portfolios might have performed. "Even in this horrible market, you might have been down," he says, "but not by 50 to 60 percent."

Generally, when people open brokerage accounts, they sign an agreement that they will handle any conflicts through a dispute-resolution panel. But investors who try to handle cases themselves are often overwhelmed by legal and financial jargon.

"Obviously, in this period of collapse, that clinic is a beacon," says Jeffrey S. Brand, dean of the San Francisco law school. Business has also picked up at the school's other clinics, such as those dealing with claims of predatory lending and employment discrimination.

"This is a very difficult time for students

as they watch the economy collapse," says Mr. Brand. "They're rightly concerned about their well-being. It's important to provide them a means to feed their mouths, but also to nourish their souls and spirits."

Robert E. Talbot, a law professor who heads the Investor Justice Clinic, says many of its elderly clients fall prey to telephone pitches. "A lot of these people are lonely, and the callers are charming," he says. "They get into a trusting state and buy the product, and

Clinics that used to receive a couple of calls a week now are fielding dozens, as investors realize the extent of their losses.

then all of a sudden there's a financial downturn and they've lost the money."

SMALL POTATOES, BIG THERMIL

Law-school clinics take on cases that private-practice lawyers won't bother with because the potential for recovery is too small. "Maybe someone lost \$40,000 of their life savings of \$80,000, and they talk to a few lawyers who won't take it," Mr. Talbot says. He says that with idealistic, energetic students, he is "thrilled" to take on such cases.

Resolving such a case usually takes longer because students are learning on the job, but clients who have nowhere else to turn rarely complain.

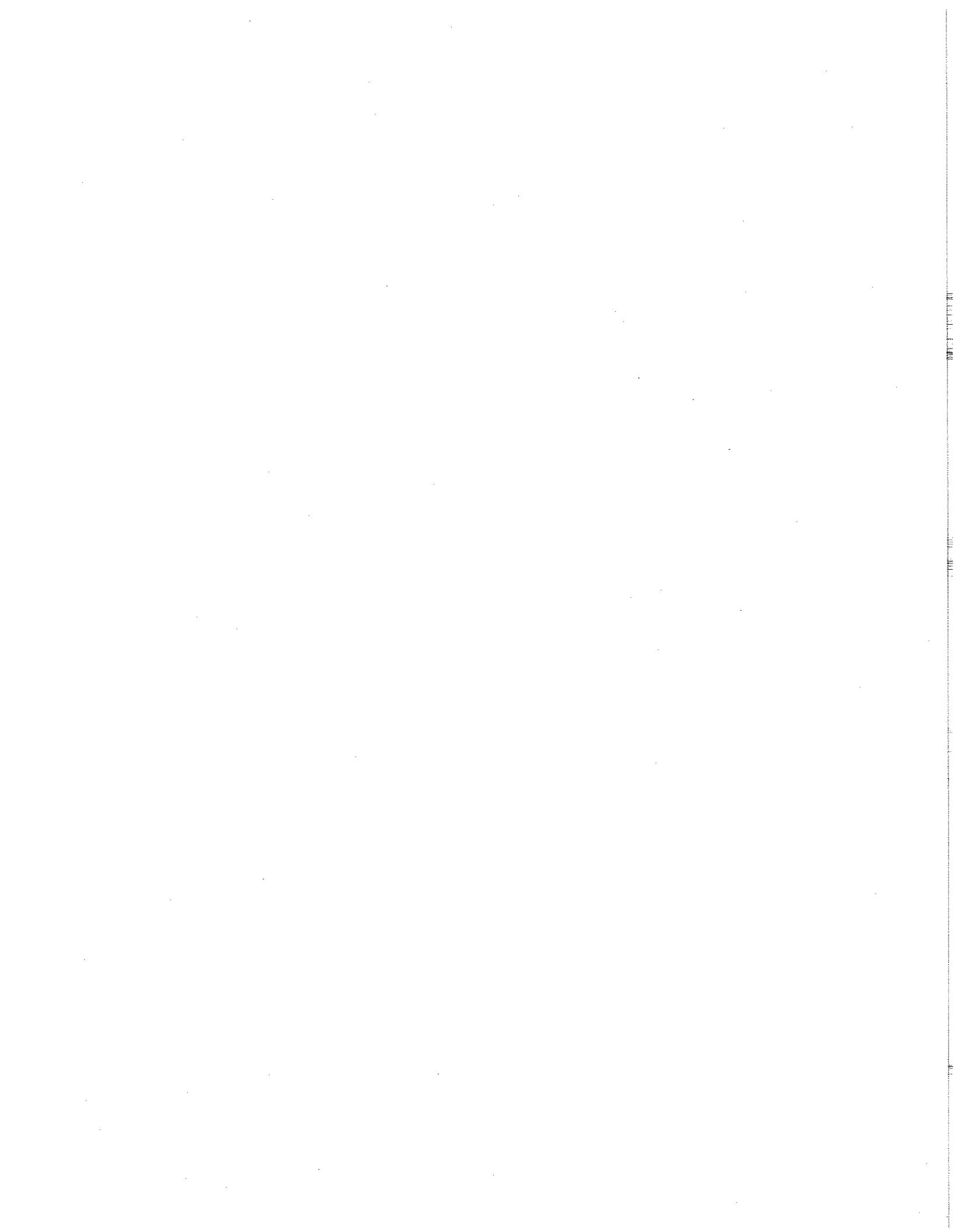
At Cornell, "there's no question we're at capacity," says Mr. Jacobson, director of the Securities Law Clinic, which opened last year and has received about three dozen calls from investors this academic year. The clinic can take only a handful of cases—many have to be rejected because they are from out of state—and the ones they select tend to be time-consuming.

Last year Duquesne's law clinic handled four cases, but as of this March it had taken on nine.

The Securities Arbitration Clinic, at Fordham's law school, recently won \$23,000 in compensatory damages and \$44,000 in punitive damages for an elderly couple who had been defrauded out of \$25,000. Their broker had "basically stolen" their money by making phony investments with it, says Paul B. Radvany, a clinical associate professor who directs the clinic. Ten students juggle about a dozen cases there now.

Kate Moore, a second-year student, is one of four students preparing a case for arbitration in April. Their client gave a family friend \$50,000 to invest in a venture-capital deal that turned out to be fraudulent. The client had told the friend that she hoped to make enough money to help her sister pay for college. He had assured her, she said, that even in a worst-case scenario, she would get all of her investment back. Instead she has received only \$6,000 back from the defendant and his partner, both of whom have been jailed on fraud convictions related to the clinic's case.

"You hear about so many cases that are fueled by greed, with family friends even stealing from close acquaintances," says Ms. Moore. "When I'm reading about people like Bernie Madoff, I can feel that I'm doing something good to help someone who has been a victim."



Sunday, October
8, 2006 C3

PERSONAL FINANCE

Law Students to the Rescue

Retiree Grace Purnia was able to win back much of her modest life savings in a dispute with her broker thanks to a school legal clinic.

By KATHY M. KRISTOF
Times Staff Writer

After the last dollar was drained from Grace Purnia's investment account, the 74-year-old retiree responded to a securities lawyer's television advertisement that offered to get her money back.

There was just one problem with her case against her investment advisor: Purnia didn't lose enough money.

The former file clerk from Fontana had lost her life savings, but that amounted to less than \$63,000. The TV attorney she consulted said she had a strong case, but politely declined to help.

That's a common occurrence, experts say, for even clear-cut securities cases. They can cost tens of thousands of dollars to take through arbitration, the most common way to resolve serious legal disputes between brokers and their clients.

With surveys showing that the average American has less than \$50,000 saved, those who lose it all may not have lost enough money to interest a securities lawyer.

"There are a lot of ordinary investors who can't get an attorney to represent them because their losses are too small," said John Nester, a spokesman for the Securities and Exchange Commission. "But no matter the dollar amount, when you lose your life savings, it's devastating."

Investors can represent themselves, but those who are not intimately familiar with securities laws are at a disadvantage, said Margaret M. Flint, executive director of the John Jay Legal Services clinic at Pace University's School of Law in White Plains, N.Y.

"Even though arbitration is less formal than court, the playing field is not level when the securities firms are represented by lawyers but the plaintiffs are not," she said.

Fortunately for thousands of investors like Purnia, there is another alternative.

About a dozen law schools around the country offer securities arbitration and mediation clinics. The clinics, first launched in New York less than a decade ago, take small cases like Purnia's free of charge.

The arbitration cases are prepared by second- and third-year law students, under the supervision of seasoned lawyers. In some cases, the students represent the investor at hearings. In others, they complete the case through written filings.

The clinics have no interest in competing with the securities lawyers who represent investors for a living, Flint said. They aim to help only low- and moderate-income individuals whose losses are too small to interest a securities lawyer.

The John Jay clinic, for example, won't handle a case for anyone earning more than \$75,000 annually or whose securities claims exceed \$50,000.

Other schools, such as Northwestern University's School of Law in Chicago, take clients with as much as \$100,000 in income and claims of as much as \$100,000. Some waive income limits for clients who have been turned away by other lawyers.

Several other universities, such as the University of San Francisco, where Purnia sought help, have even lower limits. USF says it takes only cases that involve losses of less than \$25,000. Its clients should earn less than \$50,000.

But that limit is loose, said Robert Talbot, a law professor who heads USF's Investor Justice Project. Purnia's case exceeded the limit but met all the other criteria.

The tougher standard to meet is determining whether the client has been the victim of wrongdoing, he said.

"It's not enough to lose money," Talbot said. "We go through cases, analyze them and decide whether the investor's rights have been violated. Sometimes we won't take a case because even though the investor lost money, no one did anything wrong."



PLAINTIFF: Grace Purnia of Fontana lost less than \$63,000 in investments. Securities lawyers declined to take her small case, but San Francisco law students helped her recover some funds.

To seek an arbitration award for a securities violation, investors generally must prove that their broker ignored their wishes, put them in unsuitable investments or traded solely to generate commissions for the broker rather than profits for the investors, Talbot said.

Purnia's situation filled the bill.

She retired from a \$12-an-hour job at Kaiser Permanente in 1996, when she was 65.

Kaiser cashed out her retirement account, sending her a check for \$63,078.99. She had never before invested but had no other source of income. She contacted Smith Barney, the brokerage arm of Citigroup Global Markets Inc., on the recommendation of a friend.

Initially, her broker did exactly what she asked, according to her complaint. She said she needed \$500 a month to supplement her monthly Social Security check. And she told the broker that she had no ability to absorb a loss.

The broker put her money in bond mutual funds and money market accounts that paid \$300 to \$650 a month. Purnia paid an upfront fee to get into the bond funds, and the only other cost was a \$40 annual maintenance charge.

In 2000, the broker convinced Purnia that she ought to give him discretionary trading authority and switch to a "wrap" account, in which he would do everything for a set annual fee.

She said that she didn't understand but that she'd trust him.

The maintenance fee for Purnia's account went from \$40 annually to more than \$500 every three months, the complaint said. Worse yet, the broker switched her out of the staid fixed-income investments into growth stocks, which quickly lost three-quarters of their value.

Unbeknownst to Purnia, her monthly stipend of \$600 a month was then being generated by the sale of her securities, not from the investment income earned on her account.

"The account was just dwindling away," Purnia said. The broker's secretary "called me up and said, real apologetic, that they were just going to have to cash me out."

Without her investment income, Purnia has had to live the last three years on Social Security. Her son, a plumber, helped her make ends meet by paying her utility bills.

"Grace literally lost everything," said Brett Alcalá, a San Mateo, Calif., lawyer who represented Purnia at the arbitration hearing. "She had \$22 in her checking account when we were sitting in that hearing. She lost her entire retirement nest egg."

The students at USF believed that there was serious wrongdoing in how she lost her money. The school ignored its rule about taking only cases worth \$25,000 or less and filed a claim for more than \$72,000 — the value of Purnia's investment, plus interest.

The school has no budget to

go to court, however, so it contracted with Alcalá to take the case to arbitration. Purnia granted Alcalá permission to be paid a portion of the damages if she won the case.

And she did. The settlement, awarded this year, was about \$60,000. After court costs and fees, Purnia will get just over \$33,000.

A spokesman for Smith Barney said the company was displeased by the arbitration decision. "We disagree with the result and don't believe the decision was supported by the facts," spokesman Alexander Samuelson said.

It's worth noting that investors in New York state are often represented in hearings free of charge because state Atty. Gen. Eliot Spitzer used securities settlement money to fund the state's legal clinics. As a result, the majority of such clinics operate in New York. And the state's legal clinics have the budget to send students to hearings. USF's law school gets no such funding in California, Talbot said.

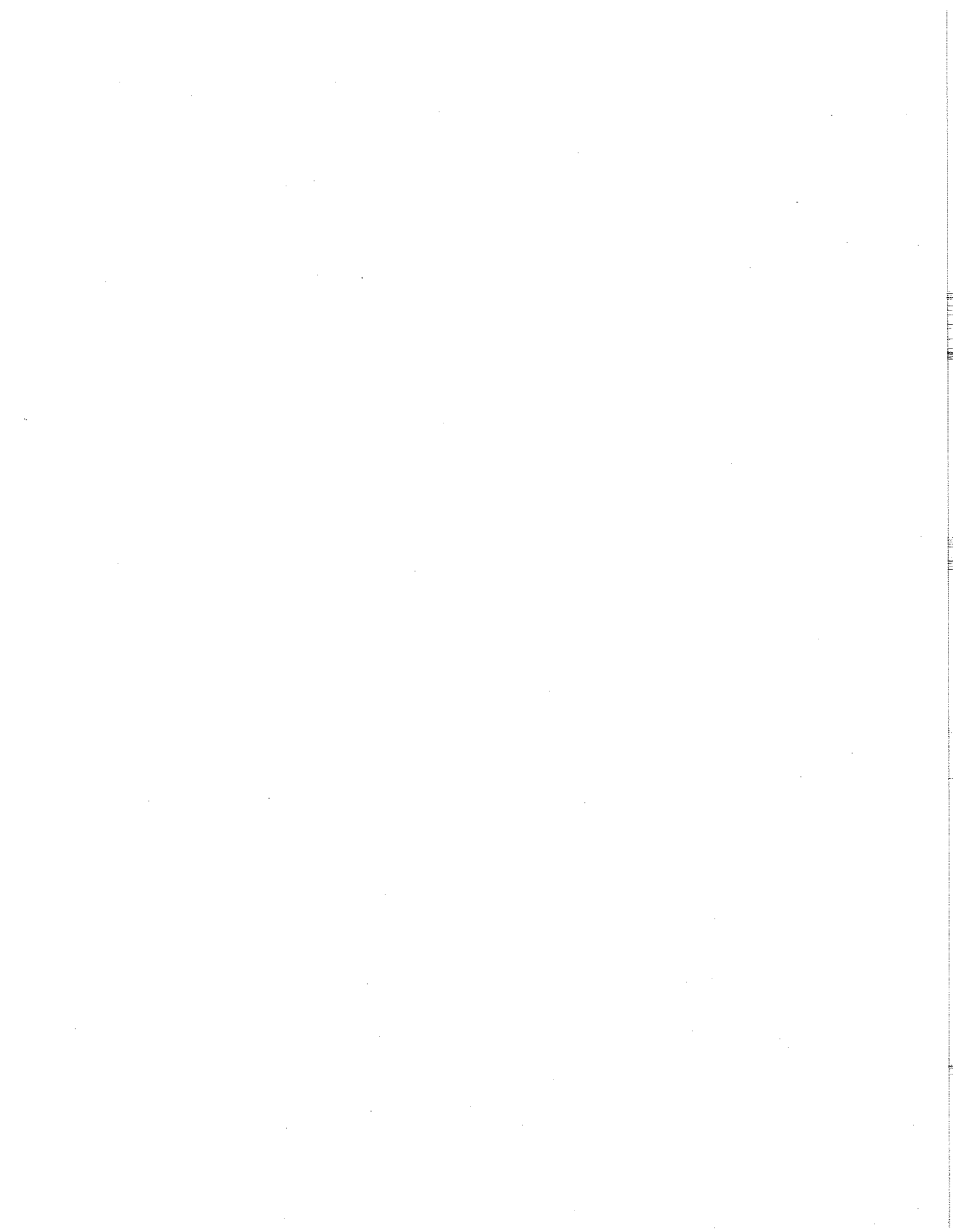
Purnia said that although she would have liked to win back everything, she was relieved to at least get a partial recovery. Getting some monthly income from her nest egg will take pressure off her son, she said.

"I know there are other people who want to get their money back," she said. "I'm not the only one."

Kathy M. Kristof welcomes your comments. Write to Personal Finance, Business Section, Los Angeles Times, 202 W. 1st St., Los Angeles, CA 90012, or e-mail kathy.kristof@latimes.com. For previous columns, visit latimes.com/kristof.

*I know
there are
other people
who want to
get their
money
back.*

Grace Purnia,
retiree and
investor



Reducing the Risk for Elder Abuse in Finance

Law School Clinic
 Helps Senior Citizens
 Protect Against
 Securities Scams

By Rebecca Beyer
 Daily Journal Staff Writer

SAN FRANCISCO — Some of them have walkers or wheelchairs. Even with hearing aids and glasses, they can't hear or see very well. They are grandparents and great-grandparents, widows and widowers.

And, as senior citizens, they are particularly vulnerable to financial scams and unsuitable investments.

In response, a clinic at the University of San Francisco School of Law that helps people who have disputes with their securities brokers is reaching out to seniors with seminars across San Francisco.

People older than 65 belong to a powerful demographic force. They are expected to double their numbers in California to 6.4 million by 2020.

Attorneys who represent them are part of a growing practice area. Elder financial abuse cases — which can range from a family member or neighbor swindling a senior out of his or her life savings to the sale of unsuitable financial products — are also on the rise, and for good reason: Seniors hold more than two-thirds of the nation's wealth, according to statistics.

Professor Robert E. Talbot started the Investor Justice Clinic at the University of San Francisco School of Law in 2002. Most investors sign arbitration agreements with brokers when they become clients, so Talbot and his students handle arbitrations for clients who cannot afford a private attorney. The clinic does not charge for its



LAURA MORTON / For the Daily Journal

Attorney Brett Alan Alcalá, University of San Francisco School of Law professor Robert Talbot and Elizabeth Falk of Finance Outsourco (left to right) answer questions after giving a presentation to senior citizens on avoiding investment fraud at the Osher Lifelong Learning Center in San Francisco.

services.

Talbot said the effort to reach out to seniors is in response to a growing concern about financial products that are pushed upon seniors even when they don't make sense for their needs.

"Everybody sees seniors as a vulnerable population," Talbot said. "A lot of [securities sales] are done by cold-calling. Most telemarketers get hung up on, but very often seniors who want somebody to talk to will talk to them."

Talbot's clinic, the only one recognized on the West Coast by the Financial Industry Regulation Authority, helps people who have lost less than \$25,000 and whose income does not exceed \$50,000.

Tim Ulen, a second-year law student at the University of San Francisco, worked in the financial industry for four years and acquired a few securities licenses before deciding to go to law school.

"My firm was very conservative," he said. "But I was always on the lookout for making sure representatives were placing clients in the best investments."

Certain investments, Ulen said, are just "red flags for older people."

Ulen said he joined the clinic because it seemed like a good way to get "hands-on experience" in a field with which he was familiar.

Brett A. Alcalá, a San Mateo attorney who handles securities cas-

es, refers people to the clinic when he can't take them as clients.

"I've talked to hundreds of people over the years who have very sad, compelling stories," he said. "As a practicing attorney, it's difficult to help them if their claim is so small it doesn't make economic sense. It's nice to have a resource like the clinic to refer clients to."

Talbot said most of the clinic's cases come from situations where a senior whose investments should be tailored for wealth preservation are instead geared for growth and placed in funds with high commissions or fees.

Kathryn A. Stebner, of SAN
 See Page 2 — LAW

Advocates Push To Reinstate HMO Patients

Watchdogs Slam
 Regulators for
 Rescission Inaction

Blue Cross Woes

By Evan George
 Daily Journal Staff Writer

LOS ANGELES — Though state regulators fined Blue Cross \$1 million last year for improperly dropping policyholders after they fell ill, they stopped short of helping patients get their coverage back.

Now, consumer advocates are urging state regulators to force Blue Cross to reinstate at least 90 patients. They also are challenging regulators to show legal justification if they refuse to do so.

Wrongful Cancellations

In 2007, when state regulators investigated Blue Cross, they randomly selected 90 cases from 1,000 complaints. All 90 were deemed wrongful cancellations.

One year later, those 90 patients — and the thousands more who complain Blue Cross illegally dropped them — are still waiting for the reinstatement of their medical coverage.

In a letter Thursday, advocacy group Consumer Watchdog asked the state Department of Managed Health Care, which regulates HMOs, to force Blue Cross to reinstate the 90 patients it decided were wrongfully dropped.

Although the department fined Blue Cross \$1 million last year for the 90 violations, it stopped short of offering any individual relief to patients. Blue Cross is in the process of appealing that fine.

This month, the company also changed its name from Blue Cross of California to Anthem Blue Cross, advertising itself as "an old friend with a new name." Despite the switch, the company's legal woes continue.

Rocky Steps In

Today, City Attorney Rocky Delgadillo is expected to announce he is suing Blue Cross for a slew of violations relating to policy cancellations.

In addition, two major class actions against Blue Cross over rescissions, which partly spurred investigations of the company in the first place, are the subject of new settlement negotiations this week.

The push to reinstate consumers who had their coverage revoked is the latest tussle between advocates for tougher sanctions on HMOs and

See Page 2 — ADVOCATES

Sheppard Mullin Strengthens Corporate Group in Los Angeles

By Rebecca U. Cho
 Daily Journal Staff Writer

LOS ANGELES — Eric A. Klein, the former co-chair of Katten Muchin Rosenman's West Coast corporate practice, has taken his substantial book of business to Sheppard Mullin Richter & Hampton, where he will start today as a partner in Century City.

John J. Molloy III, who was also a corporate lawyer at Katten, has moved with Klein, and joins the firm as special counsel.

Klein, 48, said to have a book of business in excess of \$5 million, cited a desire to grow his practice as motivation for his move. He said Los Angeles-based Sheppard Mullin's corporate department has been seeing a rapid expansion in California and firmwide.

"Katten has not seen the same growth on the West Coast that Sheppard has," Klein said. "My

practice is continuing to grow and needed a better platform."

But Gail Migdal Title, Katten Muchin's Los Angeles co-managing partner, insisted that the firm is strong on the West Coast. She said the firm recently added Roseann Stevenson, an environmental lawyer who had her own private practice, and who was formerly with Morgan, Lewis & Brocius.

While Title said she wishes Klein well, she said his leaving was by joint assent.

"By mutual agreement, Eric Klein and the firm decided to part ways," Title said. "As far as Mr. Molloy goes, he came to the firm with Eric. He's worked with Eric for many years. So, we understand his leaving with Eric."

Klein and Molloy joined New York-based Katten Muchin in 2003, from what was then Shaw Pittman.

Klein, who specializes in health care and life

sciences, said he expects to bring his entire book of clients, which includes Plymouth Health and WSA Global Holdings.

In 2007, Klein represented Plymouth Health in its purchase of Alvarado Hospital in San Diego. Jon Newby, a corporate partner in Sheppard Mullin's Century City office, said Klein brings strengths in areas in which the firm has been trying to grow: health care and technology.

"We're very excited," Newby said. "Many of us, including me, have known Eric for many years and have worked with Eric. He's a great corporate lawyer, very well known in the community."

Klein received his law degree from Boston University School of Law in 1985.

Molloy graduated from the USC Gould School of Law in 1972. His corporate practice focuses on entrepreneurial and middle-market companies.

Legal recruiting firm Watanabe Nason Schwartz & Lippman brokered the deal.

rules Schwarzenegger, Lets Killer Out on Parole

San Diego Tuesday
 Schwarzenegger and
 fison of a man who
 Valentine's Day in



Judge Denies Pellicano Mistrial After Prosecutors Take the Stand

By Robert Iafolla
 Daily Journal Staff Writer

LOS ANGELES — After prosecutors testified they did not rely on immunized statements to discredit

Arneson has admitted to supplying private detective Pellicano with information from law enforcement databases, but claimed he did so for valuable tips to bust criminals, not personal profit. Arneson, Pellicano and their three co-defendants face

Several lawmakers have since challenged the USDA to impose a total ban because downers pose a greater risk of illnesses such as mad cow disease.

After the video's release, the Humane Society sued the USDA to seek a total ban, calling the current policy a loophole that should be closed to protect consumers and ensure the humane treatment of animals. The suit says the China

to \$0,000 a year because of the prohibition, which was put in place by the USDA following the first case of mad cow disease in the U.S. He says tightening the ban would further depress dairy farmer income.

The USDA's Food Safety and Inspection Service, which oversees the nation's slaughterhouses, says it does not keep numbers on how many downers enter the food supply after they've been re-inspected

total ban in part because of opposition from the dairy and packer industries, "which want to make every last dollar on these animals. Also the USDA and the industries have the same basic attitude about these animals as commodities — without any regard for the animals' welfare and consideration for consumer health and ethical sensitivity."

Baur also argued that a clear ban on downers would provide an incentive for dairy farmers to take better care of their animals.

"These cows should not be pushed beyond their capabilities," he said. "They shouldn't be kept on the farm until they're milked for every last drop."

Agriculture Secretary Ed Schafer said he was limited in what he could say on the issue because of the Humane Society lawsuit.

Law School Helps Elders Reduce Their Financial Risk

Continued from page 1

Francisco's Stebner & Associates, focuses on physical and financial elder-abuse cases. She does not take securities cases because of the arbitration requirement. But she said securities are one area, like many other areas, where seniors are targeted for high-commission sales and therefore need representation.

She said seniors who may have a great deal of money tied up in their home or investments often try to free up cash for living expenses.

"They're afraid of not having money and of having to depend on someone else," she said. "So they buy these products. Then, they're too embarrassed to tell their family."

Stebner said the clinic provides a great service.

"A lot of seniors don't know who to reach out to," she said.

Having an attorney and law students say "you didn't do anything wrong; I'm here to help," is important, she said.

Talbot said the clinic doesn't add

an elder-abuse claim in an arbitration unless someone has lost his or her entire life savings or the breach of duty to the investor was "extreme."

He remembers one elder-abuse case the clinic settled in which he applied to have the arbitration fees waived because the woman had only \$17 to her name. She had lost more than \$40,000 in an unsuitable investment.

At one recent seminar at an assisted-living facility in San Francisco, Ulen and another student addressed about two dozen seniors under Talbot's supervision.

At the end of their hour-long presentation about what to look for, including excessive trading or unnecessarily high fees, they gave each senior a large-print copy of their notes and told them to call with any questions.

One woman didn't wait that long. She approached Ulen right away to make an appointment for the following week.

Judge Denies Pellicano Mistrial After Prosecutors Take the Stand

Continued from page 1

make cannot be used against them in any criminal proceedings.

In 1999, a co-worker claimed Arneson received Department of Motor Vehicles photos that were unrelated to his unit's casework and that he was frequently making database inquiries, even though he was assigned to beach patrol at the time. That triggered an internal investigation and Arneson gave immunized statements in his successful defense against the allegations.

On Friday, Assistant U.S. Attorney Daniel A. Saunders brought up the investigation during a blistering cross-examination of Arneson.

"And you beat that internal af-

until it was entered into evidence in Tuesday's hearing.

Lally said the tape was not used in preparation for Arneson's cross-examination. Hummel asked why Saunders probed on the topic of the 1999 investigation if he had not used it.

"That's because your client got up here and told the most outrageous story, and any good prosecutor would build on that," Lally answered.

Saunders testified that he had no idea the prosecution had immunized statements about the investigation, since Lally had not told him. If given a second chance, he said, he would not go into that area, knowing what he knows now.

Panel Overru

Continued from page 1

is not whether some evidence supports the governor's reasons for denying parole, but whether some evidence indicates release unreasonably endangers public safety.

Other courts have rejected that standard and looked to the facts of the crime itself.

"Until our high court resolves this uncertainty," wrote Associate Justice James A. McIntyre, "we believe the appropriate inquiry is not whether there is some evidence to support the individual suitability or unsuitability factors," but rather a analysis of the societal risk factors

Viray, then 27, had been drinking too much at a nightclub and had been provoked by victim Victor Gonzales Cacha, according to parole board records quoted in Tuesday's decision. On the dance floor, Viray felt intimidated whe

Advocates Urg

Continued from page 1

state regulators. Jerry Flanagan, health policy director of Consumer Watchdog said the Department of Managed Health Care is legally obligated to intervene.

"Not only is the rescinded patient left uninsured and often hundreds of thousands of dollars in medical debt, but he is also virtually uninsurable in the individual market. Flanagan wrote in a letter to the department's director Cindy Rhoads

Bar Talk

PEOPLE AND PRACTICES

MONDAY, APRIL 14, 2008

USF law students help investors through downturn

May Chang spent several weeks studying variable annuities, and she still wouldn't put her own money into these investment vehicles — they're too complicated.

The third-year student at University of San Francisco School of Law has spent the semester helping people who were less hesitant.

Chang is one of the students at the law school's Investor Justice Clinic helping people get some money back through arbitration. Through this month, the students have also been holding educational seminars targeted at seniors about the trouble they can find themselves in if they don't understand what their broker or banker is selling them.

"This semester we've gotten a lot of variable annuities cases," Chang said. "People aren't very good at explaining it." Calculations of the fees and penalties are befuddling, she said, and there are a lot of hidden costs.

USF law professor Robert Talbot opened the clinic in 2002 in response to a different financial crisis than the one rocking the economy right now. In the wake of Enron and other accounting scandals, Talbot said, he watched people lose money on company stocks while the executives built multimillion-dollar homes in sunshine states. "If you lost under \$100,000 it would be impossible to get an attorney even if you had a good case at the time," he said. "I wanted to do something with law students." The clinic at that time focused on small investors who lost less than \$25,000, representing them in arbitration against brokers who sold them securities.

These days, Talbot said, the clinic is focusing on seniors, "the most vulnerable and easiest to fall for certain types of sales tactics."

Students study the workings of brokerages and the rules that apply to them, as well as the laws applied during arbitration. "It's pretty technical," Talbot said. "An average practicing lawyer that hasn't special-



TIMELY PRACTICE: Professor Robert Talbot, founder of the USF law school's Investor Justice Clinic, answered questions Friday at one of the educational seminars the clinic has hosted to help seniors burned by investments.

ized in these cases would not understand" the documents and financial statements involved.

This semester the clinic has handled about 20 cases. With the stock market's volatility now, Talbot said, he expects the volume of cases to go up.

One of Chang's clients is a woman who took \$50,000 that she received from her father to the bank. Representatives there persuaded her to invest in variable annuities, Chang said. That was in 2000. Today, she has \$1,000 left, Chang said, adding that she believes the loss is partly a result of her client's lack of understanding, and partly of the bank employees' inability to explain. Chang has been steering her client through every step of the arbitration process, coordinating communications with the Financial Industry Regulatory Authority, or FINRA, and studying all documents. Currently, she's helping her client

prioritize the list of 10 arbitrators sent to her from FINRA. But there is a problem with the six-year statute of limitations having run out. "I'm hoping for a sympathetic arbitrator," Chang said.

— Petra Pasternak

Split bet for Coughlin Stoia

San Diego-based Coughlin Stoia Geller Rudman & Robbins is putting the chips down on its new intellectual property practices — and it's betting on a split in the IP bar.

John Herman, the Atlanta-based head of the IP practice at a firm known for securities class actions, said general counsel at big companies are starting to push their outside law firms not to represent patent plaintiffs, like inventors or so-called "patent trolls." That could mean more work for Coughlin Stoia, which wants to do contingency fee work for wronged patent holders on the

plaintiff side, he said.

"For whatever reason, IP has been one of those areas that GCs have given their outside counsel a pass — if you look at other areas you don't see that," said Herman. "[GCs] are going to put more pressure about not being on both sides."

As evidence of the split, Herman pointed to Am Law 100 firm Howrey, which recently swore off representing "patent trolls" in a provocative firm brochure that called trolls a scourge on legitimate businesses.

At least one patent lawyer isn't excited at the prospect of more polarization in patent cases.

"Historically, the patent bar has worked both sides of the fence and I think it's a very healthy phenomenon," said A. James Isbester, a patent litigator with Berkeley's Isbester & Thackray. "You can't take outlandish positions because you'll have to eat them tomorrow."

Other parts of the law have long been separated like oil and vinegar between plaintiffs and defense firms, such as employment lawsuits or securities class actions.

Melvin Goldman, a veteran of the securities bar at Morrison & Foerster, said a split makes sense on a legal level in his field because with evolving securities law, he wouldn't want to advance law that might hurt clients in the long run by arguing on both sides.

Of course, some of the securities split just comes down to the realities of law firm business. "A large part of it is contingent fee and noncontingent fee work and suits against corporations or defending corporations," Goldman said.

So, while some of the cleavage in the IP bar may be philosophical — between those who favor the rights of patent holders, regardless of who they are, and those who disdain so-called trolls — economics is perhaps more powerful. And as usual, the divide is between firms that like their clients to pay by the hour and firms that take contingency fees.

— Zusha Elinson

THIS WEEK IN RECORDER HISTORY

STORIES FROM THE WEEK
OF APRIL 14 - 20

FIVE YEARS AGO

Gray Cary Ware & Freidenrich announced it would take over 120,000 square feet of East Palo Alto space that had been abandoned by the now-defunct Brobeck, Phleger & Harrison. J. Terence O'Malley, Gray Cary's chairman, said he had looked at the space while it was still under construction but worried that real estate prices were too high. "The combination of the downturn in the real estate market and the unique circumstances surrounding the former tenant created a situation that was too good to pass up," O'Malley said.

Democratic presidential hopeful John Kerry, a senator from Massachusetts, delivered a lunchtime speech to a large crowd of supporters at the Bar Association of San Francisco. Kerry had harsh words for Attorney General John Ashcroft. "I will appoint an attorney general that has a full measure of respect for the Constitution of the United States," Kerry said to loud applause.



KERRY

President Bush nominated San Francisco Superior Court Judge Carlos Bea to the Ninth Circuit U.S. Court of Appeals. Bea, 68, joined Third District Court of Appeal Justice Consuelo Callahan as Bush's latest picks to the nation's largest — and most liberal — appellate court.

10 YEARS AGO

BankAmerica Corp. chose New York's Wachtell, Lipton, Rosen & Katz to handle its \$64 billion merger with NationsBank Corp. Local counsel Pillsbury, Madison & Suto had handled BofA's M&A deals in the past. Because the country's capital markets were based in New York, firms there still received the lion's share of the work.

A Southern California litigation boutique did not lose a key rainmaker to Brobeck, Phleger & Harrison was seeking to recover \$70 million in damages over the raid. The case, scheduled for trial later in the month in Santa Monica, raised novel questions about the free agency of lawyers. Partners in the now-defunct Dickson, Carlson & Campillo sued both Brobeck and two

See HISTORY page 5

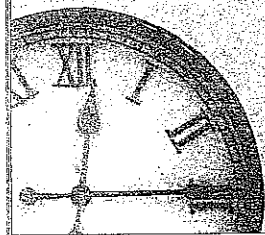
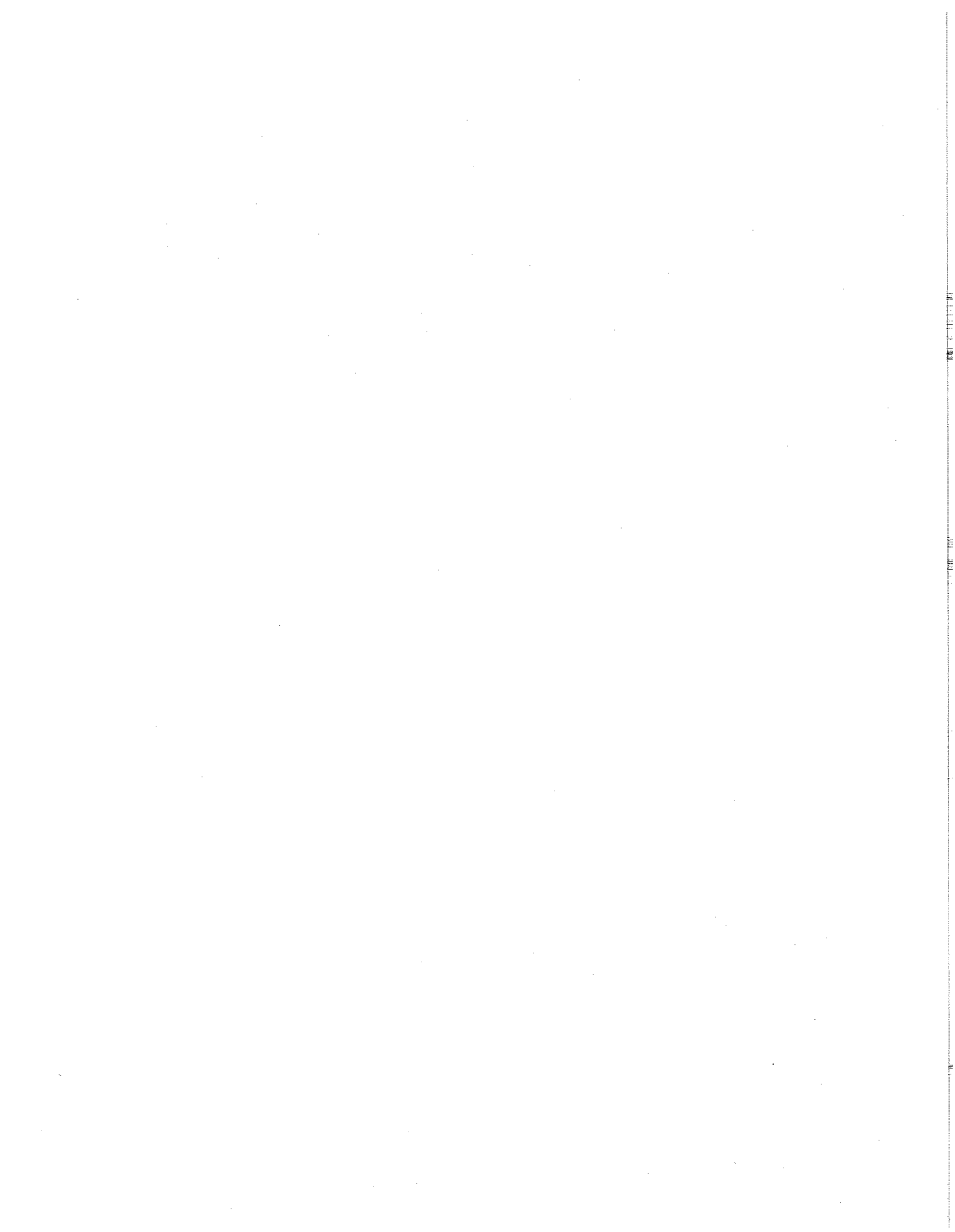
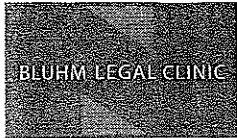


EXHIBIT B



Investor Protection Center

J. SAMUEL TENENBAUM, DIRECTOR



September 27, 2007

Honorable William H. Pauley III
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 2210 (Courtroom 11D)
New York, NY 10007

Re: Research Analyst Conflict of Interest Cases, Nos. 03 Civ. 2937-03 Civ. 2984; 04 Civ. 6909—04 Civ. 6910, United States District Court, Southern District of New York

Dear Judge Pauley,

We – the investor protection clinics – recently learned that on September 12, 2007, the Court held a status conference about the excess funds in the Research Analyst Conflict of Interest Cases settlement. As I hope you recall, we appeared before the Court on July 7, 2006, and at our appearance, we requested that some of the excess funds be set aside for investor protection legal clinics. We believe – then and now – that this would greatly enhance the mission of investor protection clinics of providing legal assistance to those investors who cannot otherwise obtain it.

To further support our request, I have enclosed a letter from Professor David Ruder, former chairman of the Securities and Exchange Commissions to the current chairman, the Honorable Christopher Cox. Also enclosed are certain attachments to that letter as well as a letter we provided to Research Analyst Fund Administrator Francis McGovern. We would be more than happy to attend any further court hearings on this request and/or answer any questions that the Court may have. If the Court has any questions that it would like us to address in writing, we would be more than happy to do so.

Sincerely,

A handwritten signature in cursive script that reads "J. Samuel Tenenbaum".

J. Samuel Tenenbaum

Northwestern University School of Law
Investor Protection Center
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Chicago, Illinois 60611-3069
312.503.0210; fax 312.503.8977
Bluhm Legal Clinic: 312.503.8576
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NORTHWESTERN UNIVERSITY SCHOOL OF LAW

David S. Ruder
William W. Gurley Memorial Professor of Law

Phone: (312) 503-8444
Fax: (312) 503-5950
E-mail: d-ruder@law.northwestern.edu

September 11, 2007

The Honorable Christopher Cox
Chairman
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Research Analyst Conflict of Interest Cases, Nos. 03 Civ. 2937 – 03
Civ. 2984; 04 Civ. 6909 -- 04 Civ. 6910, United States District Court,
Southern District of New York

Dear Chairman Cox:

As a former Chairman of the Securities and Exchange Commission and as a member of the Advisory Board of the Investor Protection Clinic of the Northwestern University School of Law, I write to urge the Commission to support the submission of Investor Protection Clinics of Northwestern and other law schools asking that the funds remaining from the Global Research Analyst Settlement (the Settlement Funds) be used to establish a permanent endowment to both initiate and maintain investor protection clinics.

This matter is of current importance because The Honorable William H. Pauley III., the judge presiding over the Settlement Funds will be holding a hearing tomorrow, September 12, 2007, to determine disposition of more than \$80,000,000 in Settlement Funds remaining after payment of all claims by investors entitled to payments from the funds. At that hearing the Clinics will renew their requests for use of the remaining Settlement Funds. (A copy of the Clinics' prior submission is attached).

The Investor Protection Clinics 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 claims and lack of resources. The Clinics maintain that use of the Settlement Funds for Clinics is consistent with the goals of the settlements to provide investor education and benefits, including the need to inform and assist investors regarding their rights and remedies in securities disputes and to assist them in obtaining recoveries.

The Honorable Christopher Cox
Page 2
September 11, 2007

On September 11, 2006, the Commission sent a proposed order to Judge Pauley opposing the Clinics' for use of the Settlement funds request, stating that: "funds for the goals of independent research and investor education have been adequately provided for by other portions of the settlements in the above-captioned cases." (A copy of the Commission's proposed order is attached).

The Commission is in error in reaching the latter conclusion, since it appears to be relying on the Court's September 2, 2005 order transferring Investor Education Accounts and subsequent payments resulting from the settlements to the NASD Foundation Investor Education Account. (A copy of that order is attached). The NASD's Grant Guidelines attached to that order clearly show that the transferred funds may not be used to support existing organizations, so that the NASD funds cannot be used either to create or to maintain an Investor Protection Clinic.

In his order of September 22, 2006 regarding the Settlement Funds (attached), Judge Pauley authorized payments to late filing claimants and authorized additional outreach to seek additional compensable claims. He did not decide what disposition should be made of the remaining Settlement Funds and did not accept the Commission's proposed order.

Significantly the Settlement Funds are not funds from Investor Related Accounts, but are unexpended funds originally intended to compensate investors. The Clinics believe that their suggestion for use of the remaining Settlement Funds for the creation and maintenance of Investor Protection Clinics is the only solution to the use of those funds that has been presented to the Court that is consistent with the purposes of the settlements, to benefit investors. (Attached is a copy of a letter to Francis McGovern, Funds Administrator, intended for transmission to the Court and containing precedent for use of settlement funds.)

If the remaining Settlement Funds are not used for the benefit of investors and instead are remitted to the U.S. Treasury for general purposes in support of the U.S. government, I believe that the Commission will have lost a major opportunity to fulfill its mission to protect investors. I urge the Commission to abandon its prior position and to support the submission of the Clinics.

Sincerely,



David S. Ruder

cc: Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Annette L. Nazareth
Commissioner Kathleen L. Casey

Mr. Michael J. Halloran
Mr. Luis R. Mejia
Ms. Linda Chatman Thomsen



July 14, 2006

Francis McGovern, Esq.
Global Research Analyst Distribution Funds, Administrator
201 S. Lyndale Ave. Suite S-3, P.O. Box 1779
Fairbault, MN 55021

Dear Professor McGovern:

We enjoyed meeting you and making our presentation at the recent Settlement Funds hearing. We are directing this letter to you for delivery to the Court because we are not sure how we should communicate follow-up points.

The hearing reinforced our opinion that nothing in Judge Pauley's orders precludes using a portion of the residual funds for investor education. We are, therefore, very much in agreement with what you said at the hearing: that it is within Judge Pauley's discretion to determine how to utilize excess settlement funds.

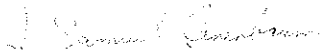
The hearing made it clear that the intent of the parties was that residual funds be used for investor education. At the hearing, various defendants' counsel said that was what the residual funds would be used *for*. Furthermore, despite the SEC's wish to subsume the funds into their general budget, the SEC did not dispute the defendants' version of the negotiations. Additionally as I pointed out, the only language regarding residual funds provided for them to be used for investor education, albeit in the form of the now defunct foundation. Contrary to the SEC's position, nothing in the Court's recent order changes that intent.

We feel establishing permanent endowments for investor protection programs best serves the interests of investors as a whole. As we stated at the hearing, the current investor protection programs level the field for small investors, but are experiencing a severe funding crisis.

I am sure the Court will take into consideration how other courts in similar situations have successfully transferred excess settlement funds into programs that

benefit educational activities. The Public Interest Law Initiative (PILI), the University of Chicago's Mandel Legal Aid Clinic, The Legal Aid Bureau of United Charities, University of Illinois College of Law, Loyola University of Chicago College of Law, Chicago Volunteer Legal Services, AIDS Legal Council of Chicago, Chicago Lawyers' Committee for Civil Rights, Legal Assistance Foundation of Chicago, the Berkley Impact Fund, as well as other legal assistance organizations all have received funds in this manner, enabling them to continue their *pro bono* endeavors. (see attached.)

Sincerely yours,



J. Samuel Tenenbaum
Investor Protection Center, Director
Northwestern University School of Law

For additional support, please see:

(Cases)

In Re "Agent Orange" Product Liability Litigation, 818 F.2d 179, 185 (2d. Cir. 1987) (concluding, among other things that "a district court may in order to maximize the beneficial impact of a settlement fund on the need of a class set aside a portion of the settlement proceeds for programs designed to assist that class").

Jones v. Nat'l Distillers, 56 F. Supp. 2d. 355, 359 (acknowledging that "courts have approved charitable donations of unclaimed settlement funds to support non-profit provision of pro bono legal services").

Superior Beverage Co., Inc. v. Owen-Illinois, Inc., 827 F. Supp. 477 (N.D. Ill. 1993) (concluding that "the doctrine of cy pres and courts' broad equitable powers now permit use of funds for other public interest purposes by educational, charitable, and other public service organizations, both for current programs or, where appropriate, to constitute an endowment and source of future income for long-range programs to be used in conjunction with other funds raised contemporaneously").

Nelson v. Elliot, 802 F.2d 405 (11th Cir. 1986) (allowing unclaimed damages to be used as a fluid recovery system).

New York by Vacco v. Reebok Int'l, 96 F.3d 44, 49 (2d Cir. 1996) (concluding "district court did not err in approving distribution to the states and no-profit entities to be used in providing and improving athletic equipment due to unlikelihood of individual net recovery").

Pray v. Lockheed Aircraft Corp., 644 F. Supp. 1289, 1302 (D.D.C. 1986) (holding that cy pres allowed court to distribute part of settlement fund to a charitable organization).

State v. Levi Strauss & Co., 715 P.2d 564 (1986) (discussing acceptable forms of fluid recovery).

Superior Beverage Co., Inc. v. Owen-Illinois, Inc., 827 F. Supp. 477 (N.D. Ill. 1993) (concluding that "the doctrine of cy pres and courts' broad equitable powers now permit use of funds for other public interest purposes by educational, charitable, and other public service organizations, both for current programs or, where appropriate, to constitute an endowment and source of future income for long-range programs to be used in conjunction with other funds raised contemporaneously").

(Law Review Articles)

Susan Beth Farmer, *More Lessons from the Laboratories: Cy Pres Distributions in Parens Patriae Antitrust Actions Brought by the State's Attorneys General*, 68 Fordham L. Rev. 361 (discussing unused funds after distribution in consumer class action cases).

David Pai, *When Congress Gives You Lemons: Alternatives to Legal Services Corporation Funding in the Quest to Provide Access to Justice*, 2 *Hastings Race & Poverty L. J.* 83, 93 (stating that “in such cases [of excess settlement funds], outright grants to public interests organizations are made to ensure that the defendant does not enjoy a windfall as a result of his legal conduct”).



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION, :
 : Civil Action No.
 :
 : Plaintiff, : 03 Civ. 2937 (WHP)
 :
 : - against - :
 :
 : BEAR, STEARNS & CO. INC., :
 : ORDER REGARDING
 : INVESTOR EDUCATION
 : PLAN
 :
 : Defendant. :
 :
 : -----X
 : -----X

SECURITIES AND EXCHANGE COMMISSION, :
 : Civil Action No.
 :
 : Plaintiff, : 03 Civ. 2938 (WHP)
 :
 : - against - :
 :
 : JACK BENJAMIN GRUBMAN, :
 :
 : Defendant. :
 :
 : -----X
 : -----X

SECURITIES AND EXCHANGE COMMISSION, :
 : Civil Action No.
 :
 : Plaintiff, : 03 Civ. 2939 (WHP)
 :
 : - against - :
 :
 : J.P. MORGAN SECURITIES INC., :
 :
 : Defendant. :
 :
 : -----X
 : -----X

SECURITIES AND EXCHANGE COMMISSION, :
 : Civil Action No.
 :
 : Plaintiff, : 03 Civ. 2940 (WHP)
 :
 : - against - :
 :
 : -----X

LEHMAN BROTHERS, INC.,

Defendant.

-----X
-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED,

Defendant.

-----X
-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

U.S. BANCORP PIPER JAFFRAY, INC.,

Defendant.

-----X
-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

UBS WARBURG LLC,

Defendant.

-----X
-----X
SECURITIES AND EXCHANGE COMMISSION,

Civil Action No.

03 Civ. 2941 (WHP)

Civil Action No.

03 Civ. 2942 (WHP)

Civil Action No.

03 Civ. 2943 (WHP)

Civil Action No.

Plaintiff, :
: 03 Civ. 2944 (WHP)
- against - :
: :
GOLDMAN, SACHS & CO., :
: :
Defendant. :

-----X
-----X
: :
SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.

Plaintiff, :
: 03 Civ. 2945 (WHP)
- against - :
: :
CITIGROUP GLOBAL MARKETS, INC., F/K/A :
SALOMON SMITH BARNEY INC., :
: :
Defendant. :

-----X
-----X
: :
SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.

Plaintiff, :
: 03 Civ. 2946 (WHP)
- against - :
: :
CREDIT SUISSE FIRST BOSTON LLC, :
F/K/A CREDIT SUISSE FIRST BOSTON :
CORPORATION, :
: :
Defendant. :

-----X
-----X
: :
SECURITIES AND EXCHANGE COMMISSION, :
: Civil Action No.

Plaintiff, :
: 03 Civ. 2947 (WHP)

- against - :
: :
HENRY McKELVEY BLODGET, :
: :
Defendant. :

-----X
 -----X
 :
 SECURITIES AND EXCHANGE COMMISSION, :
 :
 Plaintiff, :
 :
 - against - :
 :
 MORGAN STANLEY & CO. INCORPORATED, :
 :
 Defendant. :

Civil Action No.
 03 Civ. 2948 (WHP)

-----X
 -----X
 :
 SECURITIES AND EXCHANGE COMMISSION, :
 :
 Plaintiff, :
 :
 - against - :
 :
 DEUTSCHE BANK SECURITIES INC., :
 :
 Defendant. :

Civil Action No.
 04 Civ. 6909 (WHP)

-----X
 -----X
 :
 SECURITIES AND EXCHANGE COMMISSION, :
 :
 Plaintiff, :
 :
 - against - :
 :
 THOMAS WEISEL PARTNERS LLC, :
 :
 Defendant. :

Civil Action No.
 04 Civ. 6910 (WHP)

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.

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 meritorious 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.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

against -- :

BEAR, STEARNS & CO. INC., :

Defendant. :

Civil Action No. :

03 Civ. 2937 (WHP) :

**ORDER REGARDING
INVESTOR EDUCATION
PLAN**

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

against -- :

JACK BENJAMIN GRUBMAN, :

Defendant. :

Civil Action No. :

03 Civ. 2938 (WHP) :

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

against :

J.P. MORGAN SECURITIES INC., :

Defendant. :

Civil Action No. :

03 Civ. 2939 (WHP) :

-----X
: SECURITIES AND EXCHANGE COMMISSION, :
: Plaintiff, :
: -- against -- :
: LEHMAN BROTHERS, INC., :
: Defendant. :
-----X

Civil Action No.
03 Civ. 2940 (WHP)

-----X
: SECURITIES AND EXCHANGE COMMISSION, :
: Plaintiff, :
: -- against -- :
: MERRILL LYNCH, PIERCE, FENNER & :
: SMITH INCORPORATED, :
: Defendant. :
-----X

Civil Action No.
03 Civ. 2941 (WHP)

-----X
: SECURITIES AND EXCHANGE COMMISSION, :
: Plaintiff, :
: -- against :
: U.S. BANCORP PIPER JAFFRAY, INC., :
: Defendant. :
-----X

Civil Action No.
03 Civ. 2942 (WHP)

-----X
: SECURITIES AND EXCHANGE COMMISSION, :
: Plaintiff, :
: - against - :
: UBS WARBURG LLC, :
: Defendant. :
-----X

Civil Action No.
03 Civ. 2943 (WHIP)

-----X
: SECURITIES AND EXCHANGE COMMISSION, :
: Plaintiff, :
: - against - :
: GOLDMAN, SACHS & CO., :
: Defendant. :
-----X

Civil Action No.
03 Civ. 2944 (WHIP)

-----X
: SECURITIES AND EXCHANGE COMMISSION, :
: Plaintiff, :
: - against - :
: CITIGROUP GLOBAL MARKETS, INC., F/K/A :
: SALOMON SMITH BARNEY INC., :
: Defendant. :
-----X

Civil Action No.
03 Civ. 2945 (WHIP)

-----X
SECURITIES AND EXCHANGE COMMISSION, :
 :
 Plaintiff, :
 :
 against -- :
 :
 CREDIT SUISSE FIRST BOSTON LLC, :
 F/K/A CREDIT SUISSE FIRST BOSTON :
 CORPORATION, :
 :
 Defendant. :
-----X
-----X

Civil Action No.
03 Civ. 2946 (WHP)

SECURITIES AND EXCHANGE COMMISSION, :
 :
 Plaintiff, :
 :
 - against - :
 :
 HENRY McKELVEY BLODGET, :
 :
 Defendant. :
-----X
-----X

Civil Action No.
03 Civ. 2947 (WHP)

SECURITIES AND EXCHANGE COMMISSION, :
 :
 Plaintiff, :
 :
 - against - :
 :
 MORGAN STANLEY & CO. INCORPORATED, :
 :
 Defendant. :
-----X

Civil Action No.
03 Civ. 2948 (WHP)

-----X
SECURITIES AND EXCHANGE COMMISSION, :
 :
 : Plaintiff, :
 :
 : against -- :
 :
 : DEUTSCHE BANK SECURITIES INC., :
 :
 : Defendant. :
 :
 :-----X

Civil Action No.
04 Civ. 6909 (WHP)

-----X
SECURITIES AND EXCHANGE COMMISSION, :
 :
 : Plaintiff, :
 :
 : -- against -- :
 :
 : THOMAS WEISEL PARTNERS L.L.C. :
 :
 : Defendant. :
 :
 :-----X

Civil Action No.
04 Civ. 6910 (WHP)

ORDER REGARDING INVESTOR EDUCATION PLAN

On October 31, 2003, this Court approved and entered the Final Judgments in these related actions resolving the SEC's complaints against ten major investment banks and two individuals concerning equity research analyst practices in the late 1990s. At that time, this Court entered an Order Regarding Investor Education for each of the seven investment bank defendants contributing investor education funds ("Investor Education Orders"). Section B of the Investor Education Orders required the SEC to propose an Investor Education Plan for the Court's consideration and approval. The SEC submitted its plan on February 13, 2004. The Court approved that plan by Order dated March 25, 2004.

On September 24, 2004, this Court approved and entered a Final Judgment resolving the

SEC's complaint against Deutsche Bank concerning equity research analyst practices. That Final Judgment required Deutsche Bank to contribute investor education funds pursuant to the plan approved by the Court on March 25, 2004.

By application dated May 4, 2005, the SEC proposed a new investor education plan that would dissolve the Investor Education entity ("Investor Education Entity") established pursuant to this Court's March 25, 2004 Order, and fulfill the investor education objectives of the Final Judgments by charting a different course. In its May 4, 2005 plan, the SEC proposed distributing the investor education funds on deposit at the Federal Reserve Bank of New York to the NASD Investor Education Foundation ("NASD Foundation").

On June 9, 2005, this Court conducted a hearing to consider the merits of the SEC's new investor education plan. Prior to the hearing, this Court received submissions objecting to the SEC's proposal. Having considered the SEC's motion as well as the submissions of interested parties and the presentations of counsel, this Court grants the SEC's application on the following terms.

This Order supersedes the Court's Investor Education Orders dated October 31, 2003 and modifies the Deutsche Bank Final Judgment dated September 24, 2004. The Investor Education Plan approved by the March 25, 2004 Order is rescinded.

A. Dissolution Of Investor Education Entity

1. The Investor Education Entity established pursuant to this Court's March 25, 2004 Order is directed to take all necessary steps to wind down its affairs and terminate its corporate existence.

2. Within thirty days of entry of this Order, the Investor Education Entity shall file

with the Court an application for payment of reasonable and necessary fees, costs, and expenses incurred by the entity. The application may include legal fees, costs and expenses associated with the termination of the Investor Education Entity. At least fifteen days before making such application to the Court, the Investor Education Entity shall submit the application to the SEC, and the SEC shall advise the Court whether it has any objection. Upon approval of any such application by the Court, the Court by an implementing order will authorize the payment of the approved fees and expenses.

3. All notices, reports, and other information required to be submitted to the SEC under this Order shall be sent to the attention of Susan F. Wyderko, SEC, Office of Investor Education and Assistance, 100 F. Street, N.E., Washington, D.C., 20549.

4. The income tax reporting requirements relating to the investor education funds on deposit at the Federal Reserve Bank of New York ("FRBNY Investor Education Accounts") shall be the responsibility of Damaseo & Associates, which is appointed the Interim Tax Administrator of the FRBNY Investor Education Accounts pursuant to the terms set forth in Section F of this Order. After the funds are transferred to the NASD Foundation, any tax reporting requirements relating to any income earned on such funds shall be the sole responsibility of the NASD Foundation for the period during which the NASD Foundation administers the funds.

5. Monies in the FRBNY Investor Education Accounts are intended to be "qualified settlement funds" pursuant to Section 468B(g) of the Internal Revenue Code and regulations thereunder. Monies in the FRBNY Investor Education Accounts may be used to pay any taxes on income earned by such accounts. The expenses referred to in ¶ A.2 of this Order shall be

obligations of and shall be paid from the qualified settlement funds and not the Investor Education Entity.

6. The resignations of the Investor Education Entity's board members and officers Charles D. Ellis, George G. Daly, Sheila C. Bair, Joseph L. Dionne, Carol J. Loomis, Lionel L. Nowell, III, Rebecca W. Rimel, and Jay Vivian will be effective upon the receipt by the entity of a Certificate of Dissolution issued by the State of Delaware. Counsel for the entity shall provide a copy of the Certificate of Dissolution to the Court and the SEC.

B. The Distribution Of The Investor Education Funds

1. All of the funds in the FRBNY Investor Education Accounts and all future investor education installment payments required of defendants Bear Stearns & Co., Inc., Citigroup Global Markets, Inc., /k/a/ Salomon Smith Barney, Inc., Goldman, Sachs & Co., J.P. Morgan Securities, Inc., Lehman Brothers, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, UBS Warburg LLC, and Deutsche Bank Securities, Inc. (less the taxes and approved fees, costs, and expenses described in ¶¶ A.2, A.4, and F.1-5 of this Order, and any outstanding amount due for the administrative court registry fee as required under ¶ A.2 of the Final Judgments), shall be distributed to the NASD Foundation by an implementing order of this Court. For the period during which the NASD Foundation administers these funds, the terms of this Order shall apply to the NASD Foundation. These funds, and any interest thereon, shall be maintained by the NASD Foundation in a segregated account (the "NASD Foundation Investor Education Account") to be used exclusively to effectuate the purposes of this Order. The funds in the NASD Foundation Investor Education Account shall be invested in money market funds or securities with maturities of less than six months and backed by the full faith and credit of the

U.S. government.

2. The future investor education installment payments of the defendants identified in ¶ B.1 of this Order, required to be paid annually on or before the month and day of entry of the Final Judgment in each case, shall be made directly to the NASD Foundation. The NASD Foundation shall provide these defendants with payment/wire instructions for deposit to the segregated account referred to in ¶ B.1 (the NASD Foundation Investor Education Account), and defendants shall provide the Court and the SEC with contemporaneous proof of the payments. The NASD Foundation shall keep account records sufficient to document whether each defendant identified in ¶ B.1 of this Order has made timely and complete payments.

3. The NASD Foundation shall use the funds in the NASD Foundation Investor Education Account to award grants pursuant to the guidelines of its grant program, appended for reference as Exhibit A. The funds in the NASD Foundation Investor Education Account shall be utilized for new or expanded education initiatives. The NASD Foundation Investor Education Account is not intended to replace current NASD funding of the NASD Foundation. At a minimum, such NASD funding should continue in the same proportion as such funding bore to the NASD's overall 2004 budget during the period the NASD Foundation Investor Education Account exists.

4. As applied to the grantees of grants awarded by the NASD Foundation from the NASD Foundation Investor Education Account, such grants shall not be used:

(A) to benefit, directly or indirectly:

(1) beyond any payments authorized by the Court, any person involved in the review or approval of applications for grants, and any entity that employs

such a person:

- (2) Defendants, their predecessors, successors, or their subsidiaries, affiliates, present or former officers, directors, or their employees, or those in active concert or participation with them, through subrogation or otherwise;
 - (3) any person who has been convicted of a crime substantially related to any act or practice, or the types of acts or practices, identified in the Complaints in the captioned actions;
 - (4) any person who has been enjoined by a court or sanctioned by the Commission or any other regulatory authority for any act or practice, or the types of acts or practices, identified in the Complaints in the captioned actions; or
 - (5) any person named as a defendant in a pending federal criminal or civil enforcement action for any act or practice, or the types of acts or practices, identified in the Complaints in the captioned actions;
- (B) to promote, directly or indirectly, the investment products or services of any single firm or entity; provided, however, that monies from the NASD Foundation Investor Education Account may be directed exclusively to the NASD Foundation for use and disposition in accordance with this Order;
- (C) for any unlawful or unethical purpose; or
- (D) for any non-educational or non-research purpose.

5. It is the intention of this Order that the funds in the NASD Foundation Investor Education Account will not be used as a permanent endowment. The NASD Foundation shall

use its best efforts to distribute these funds in an expeditious manner, consistent at all times with the terms of this Order, and by no later than ten years from the date of this Order; provided, however, that the NASD Foundation shall have the right to seek the Court's permission to modify this deadline on notice to the SEC.

6. Members of the NASD Foundation Board of Directors will be selected by NASD, subject to the relevant NASD Foundation By-Laws and the provisions of this Order. The NASD will consult with the SEC about proposed NASD Foundation Board appointments, and agrees to appoint persons acceptable to the SEC. The NASD Foundation By-Laws shall be amended to require that at least a majority of the Board of Directors of the NASD Foundation shall consist of members of the public who are not employed by a securities regulator and who have no material business relationship with the securities industry, provided that a "material business relationship" does not include an educational or research entity that is unaffiliated with the securities industry.

7. The NASD Foundation may use a portion of the funds in the NASD Foundation Investor Education Account to cover the reasonable and necessary expenses associated with distributing grant awards from the funds in the NASD Foundation Investor Education Account and complying with the terms of this Order.

8. The NASD Foundation shall provide the SEC with quarterly reports that describe the use of funds in the NASD Foundation Investor Education Account in the preceding quarter as well as NASD Foundation's strategic plan for use of the funds in the upcoming quarter. The SEC shall file a copy of each NASD Foundation quarterly report with this Court. Each report shall, at a minimum, identify both approved and non-approved grant applications since the last

quarterly report. In each case, a report will identify the party seeking the grant, describe the intended use of the grant, the grant amount, the project term, and the type of grant (education, research, or combination education/research). The report should detail all expenses incurred in distributing grant awards from the NASD Foundation Investor Education Account. Each report shall also include an accounting of receipts and expenses in reasonable detail. The NASD Foundation shall also provide the SEC with an annual report setting forth the NASD Foundation's strategic plan for the upcoming year regarding the use of funds in the NASD Foundation Investor Education Account; the fourth quarter report will be included in the annual report. The SEC shall file each NASD Foundation annual report with the Court.

9. An annual audit of the NASD Foundation shall be performed by an independent third party. The results of the audits will be provided to the SEC and the SEC will file them with this Court.

10. In the event of a proposed dissolution of the NASD Foundation, the SEC shall file an application with the Court setting forth a plan for the disposition of any remaining funds in the NASD Foundation Investor Education Account.

C. Amendments To Final Judgment Against Merrill Lynch

1. The following paragraphs in Section C of this Order apply to the Final Judgment entered against Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch Final Judgment").

2. Section IV, Paragraph A.2 of the Merrill Lynch Final Judgment is amended to delete the reference to an "Investor Education Fund," as that term was defined as a depository account of the prior investor education entity. Section IV, Paragraph A.2 of the Merrill Lynch

Final Judgment is further amended to delete the last three sentences that require the deduction from the investor education funds of an administrative court registry fee.

3. Section IV, Paragraph B.1 of the Merrill Lynch Final Judgment is amended to delete the reference to an "Investor Education Fund."

4. Section IV, Paragraph B.2 of the Merrill Lynch Final Judgment is amended to delete the requirement that the investor education funds be used to help establish a new tax-exempt, non-profit grant administration organization, and is further amended to delete references to the term "Investor Education Fund."

5. Section IV, Paragraph C of the Merrill Lynch Final Judgment is amended to delete the references to an "Investor Education Fund."

6. Section IV, Paragraph D of the Merrill Lynch Final Judgment is amended to delete the references to an "Investor Education Fund."

D. Amendments To Final Judgment Against Deutsche Bank

1. The following paragraphs in Section D of this Order apply to the Final Judgment entered against Deutsche Bank Securities, Inc. ("Deutsche Bank Final Judgment").

2. Section IX, Paragraphs A.1 and A.2 of the Deutsche Bank Final Judgment is amended to delete the reference to an "Investor Education Fund," as that term was defined in Section IX, Paragraph A.2 as a depositary account of the prior investor education entity.

3. Section IX, Paragraph A.2 of the Deutsche Bank Final Judgment is amended to delete the last three sentences that require the deduction from the investor education funds of an administrative court registry fee.

4. Section IX, Paragraph B.1 of the Deutsche Bank Final Judgment is amended to

delete the reference to an "Investor Education Fund."

5. Section IX, Paragraph B.2 of the Deutsche Bank Final Judgment is amended to delete the requirement that the investor education funds be used to help establish a new tax-exempt, non-profit grant administration organization, and is further amended to delete references to the term "Investor Education Fund."

6. Paragraph C.1 of the Deutsche Bank Final Judgment, which mirrored a provision of Investor Education Orders now superseded, is deleted. The provision, as amended, is set forth in this Order.

7. Paragraph C.2 of the Deutsche Bank Final Judgment, which mirrored a provision of Investor Education Orders now superseded, is deleted. The provision, as amended, is set forth in this Order.

8. Paragraph D of the Deutsche Bank Final Judgment is deleted.

9. Paragraphs E, F.1, F.2, and F.5 of the Deutsche Bank Final Judgment are deleted, as these provisions applied to the creation and continued operation of a new investor education entity.

10. Paragraphs E.3, F.4, F.6, F.7 and G of the Deutsche Bank Final Judgment, which mirrored provisions of Investor Education Orders now superseded, are deleted. The provisions, as amended, are provided for in this Order.

E. Amendments To Final Judgments Against Other Defendants Required To Make Investor Education Payments

1. The following paragraphs in Section E of this Order apply to the Final Judgments entered against defendants Bear Stearns & Co., Inc., Citigroup Global Markets, Inc., Eka/Salomon Smith Barney, Inc., Goldman, Sachs & Co., J.P. Morgan Securities, Inc., Lehman

Brothers, Inc., and UBS Warburg LLC.

2. Section IX, Paragraphs A.1 and A.2 of the Final Judgments are amended to delete the reference to an "Investor Education Fund," as that term was defined in Section IX, Paragraph A.2 as a depository account of the prior investor education entity.

3. Section IX, Paragraph A.2 of the Final Judgments is amended to delete the last three sentences that require the deduction from the investor education funds of an administrative court registry fee.

4. Section IX, Paragraph B.1 of the Final Judgments is amended to delete the reference to an "Investor Education Fund."

5. Section IX, Paragraph B.2 of the Final Judgments is amended to delete the requirement that the investor education funds be used to help establish a new tax-exempt, non-profit grant administration organization, and is further amended to delete references to the term "Investor Education Fund."

6. Section IX, Paragraph C of the Final Judgments is amended to delete the references to an "Investor Education Fund."

7. Section IX, Paragraph D of the Final Judgments is amended to delete the references to an "Investor Education Fund."

F. Appointment Of Interim Tax Administrator

1. Damasco & Associates is appointed as Interim Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to funds in the FRBNY Investor Education Accounts. Damasco & Associates will not have tax administrator responsibilities for any income earned on these funds after they are

transferred to the NASD Foundation.

2. Damasco & Associates shall be designated the interim administrator of the FRBNY Investor Education Fund Accounts, pursuant to section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, and shall satisfy the administrative requirements imposed by those regulations, including but not limited to (a) obtaining a taxpayer identification number, (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Investor Education Fund Accounts, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the FRBNY Investor Education Accounts. The Interim Tax Administrator shall contemporaneously provide copies of all such filings to the SEC.

3. The Interim Tax Administrator shall, at such times as the Interim Tax Administrator deems necessary to fulfill the tax obligations of the FRBNY Investor Education Accounts, request that the SEC file with the Court a motion, supported by the Interim Tax Administrator's declaration of the amount of taxes due, to transfer funds from the FRBNY Investor Education Accounts to pay any tax obligations of the Accounts.

4. The Interim Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the SEC dated February 25, 2005. The Interim Tax Administrator shall, at such times as the Interim Tax Administrator deems appropriate, submit a declaration of fees and expenses to the SEC for submission to the Court for approval and for payment from the FRBNY Investor Education Accounts. No fees or expenses may be paid absent the Court's prior approval.

5. At least ten (10) days before any motion to pay fees and expenses is filed with the

Court, the Interim Tax Administrator shall provide the SEC with a draft of the supporting declaration for review. If the SEC staff has any corrections or objections to the declaration, the Interim Tax Administrator and the SEC staff shall attempt to resolve them on a consensual basis. If a consensual resolution is not reached, the SEC may submit with the motion any objections along with the Interim Tax Administrator's response thereto.

G. Retained Jurisdiction

1. This Court shall retain jurisdiction for the purpose of ensuring compliance with the terms of this Order and the Final Judgments and other Orders in the related actions.

Dated September 2, 2005
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

Exhibit A

NASD Investor Education Foundation
Grant Guidelines

NASD Investor Education Foundation Mission

Established in 2003, the NASD Investor Education Foundation is a natural outgrowth of the NASD's long standing mission to protect investors and uphold the integrity of the markets. Investors need a better sense of what they are doing and why. At the Foundation, we meet this need by funding innovative research and educational projects aimed at segments of the investing public who could benefit from additional resources.

Eligibility

The Foundation will award grants to entities designated as tax-exempt according to Internal Revenue Code Section 501(c)(3) and state and other public colleges and universities. The Foundation accepts grant proposals from persons of any race, color, creed, age, sex, disability, and national or ethnic origin.

The Foundation will not award grants to:

- Individuals
- Organizations affiliated with a current director, officer or staff member of the Foundation
- Organizations affiliated with any person involved in the review or approval of grants or the organization that employs such a person
- Organizations affiliated with a current member of the NASD Board of Governors
- Securities firms regulated by NASD
- Organizations affiliated with a securities firm or individual regulated by NASD, such as a foundation established by a securities firm
- Securities regulators, self-regulatory organizations or securities industry trade associations
- Organizations that are "disqualified persons" pursuant to Article III, Section 3(d) of NASD By-Laws
- Organizations prohibited from receiving grants pursuant to the Order dated August __, 2005 in SEC vs. Bear Stearns & Co., Inc., et al., Civil Action Nos. 03 Civ. 2937 - 2948 (WHP) and Civil Action Nos. 04 Civ. 6909 - 6910 (WHP)
- Organizations that discriminate on the basis of age, color, disability, marital status, national origin, race, religion, sex, sexual orientation, or veteran status

Grant Priorities

Of particular interest to the Foundation are projects that:

- Expand the body of knowledge and/or provide practical materials that will have a positive impact on investor education or protection
- Research methods to improve disclosure to investors about investments and financial services
- Encourage investors to check the background of financial professionals prior to doing business with them
- Empower the nation's young people that are about to enter the workforce to better prepare for retirement and to meet other financial goals
- Better prepare older Americans for handling their finances during retirement
- Encourage women and minority populations to take control of their financial future through investor education

- Advance practice, policy, and thought in the fields of investor education and protection

Types of Projects

The Foundation seeks to fund projects that advance its mission through:

- **Educational projects or programs.** Funding is for programs that respond to an unmet investor education or protection need for a target audience.
- **Research.** Funding is for research that expands the body of knowledge and offers solutions in the field of investor education and protection.
- **Combination of research and educational program.** Funding is for initiatives that lead with a research element and follow with a high-impact investor education or investor protection project based upon the results of the research.

Types of Funding

The Foundation provides for three types of funding:

- **Directed**
These grants are awarded to fund projects initiated by the Foundation in response to specific investor education or protection needs identified by the Foundation. In this case, the Foundation conceptualizes the project, and locates the groups or individuals whose knowledge and experience qualify them to pursue the project, and then provides the funding necessary to accomplish the project objective. Directed grants may be awarded at any time, as projects related to the Foundation's funding priorities are identified.
- **Requests for Proposals**
The Foundation issues requests for proposals that seek to address the Foundation's funding priorities. A request for proposals may identify a specific issue or target audience or may be general in nature.
- **Unsolicited Proposals**
These grants typically are awarded in response to unsolicited funding requests from eligible organizations for self-initiated projects that support the Foundation's mission.
- **Targeted Projects**
The Foundation may initiate educational projects or research in response to specific investor education or protection needs identified by the Foundation. In this case, the Foundation conceptualizes the project, and uses a combination of Foundation-managed programs and directed grants to reach a specific target audience or to address an unmet need in investor education. The Foundation provides the funding necessary to accomplish the project objective. Targeted projects may be initiated at any time, as unmet needs related to the Foundation's funding priorities are identified.

All grants proposals and targeted projects are subject to evaluation by the Foundation's Board of Directors. A request to submit a grant proposal does not guarantee that a grant will be awarded.

General Grant Criteria

The Foundation seeks proposals that advance its mission and also

- Present a practical and detailed plan for distributing the project deliverables
- Field test promising ideas and evaluate results or take proven ideas and approaches to scale
- Involve strategic collaboration with partners, including those in the non-profit, public or for-profit sectors
- Are sustainable once Foundation funding ends

- Can easily be expanded or replicated by other organizations
- Use technology wherever possible to reduce the cost and increase availability.
- Expand or leverage programs or materials developed or supported by NASD, the Foundation, NEFE or the U.S. Securities and Exchange Commission
- Present a project based on research attesting to the relevance of the intended deliverables
- Address whether a behavioral change in the target audience is necessary for the project's success and, if so, how that change will be identified, achieved, and measured
- Substantiate the ability to develop the project on time and within the requested budget

The Foundation will generally not consider proposals to fund:

- International programs or projects
- Expenses that are not directly related to the project for which funding is sought
- Salaries of permanent staff (for example prorated salaries of administrative and executive personnel, or oversight and coordination activities of a project principal) (Note that modest amounts for release time of university professors are acceptable.)
- Capital costs such as building and construction or equipment such as computer hardware and office furniture
- Pass-through funding—for example, if the 501(c)(3) organization plans to turn over the funding to a proprietary organization or consultant
- Projects with a potential conflict of interest (for example where funded technical support or expertise might be provided by a board member of the 501(c)(3) organization)
- Conferences and similar activities that fail to provide a long-term solution or sufficiently broad outreach
- Distribution methodologies that require ongoing maintenance when the ability to perform upkeep without continued funding is questionable. For example, materials with a short "shelf life" that would require ongoing funding for frequent updating
- Projects with proprietary elements, such as for-profit activities, use or purchase of copyrighted or trademarked materials, and proprietary research
- Lobbying, political contributions, fund-raising events, or other similar activities designed to influence legislation or intervene in political campaigns
- Donations, endowments, challenge grants, matching funds, and other similar programs
- Direct or matching payments to members of the public, such as scholarships, assistance with personal and family financial difficulties, registration fees for conferences and training, or similar activities

Grant Amounts

There is no set minimum or maximum grant amount. In considering grant requests, the merits of the proposed project are the primary focus.

Distribution of Grant Funds

Award of funding is contingent upon successful negotiation of a grant agreement within a reasonable time. If a grantee and the Foundation cannot successfully negotiate a grant agreement within a reasonable time as determined by the Foundation, the funding will not be released. After a grant agreement is executed, funds will be awarded in installments contingent upon performance and actual expenses, not to exceed the grant amount.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

— against —

BEAR, STEARNS & CO. INC.,

Defendant.
-----X
-----X

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

— against —

JACK BENJAMIN GRUBMAN,

Defendant.
-----X
-----X

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

— against —

J.P. MORGAN SECURITIES INC.,

Defendant.
-----X

D/F

Civil Action No.

03 Civ. 2937 (WHP)

#211

[PROPOSED] ORDER
REGARDING UNEXPENDED
DISTRIBUTION FUNDS

Civil Action No.

03 Civ. 2938 (WHP)

Civil Action No.

03 Civ. 2939 (WHP)

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

LEHMAN BROTHERS, INC., :

Defendant. :

Civil Action No. :

03 Civ. 2940 (WHP) :

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, :

Defendant. :

Civil Action No. :

03 Civ. 2941 (WHP) :

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

U.S. BANCORP PIPER JAFFRAY, INC., :

Defendant. :

Civil Action No. :

03 Civ. 2942 (WHP) :

-----X

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

UBS WARBURG LLC, :

Defendant. :

Civil Action No. :

03 Civ. 2943 (WHP) :

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

GOLDMAN SACHS & CO., :

Defendant. :

Civil Action No. :

03 Civ. 2944 (WHP) :

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - :

CITIGROUP GLOBAL MARKETS, INC., F/K/A
SALOMON SMITH BARNEY INC., :

Defendant. :

Civil Action No. :

03 Civ. 2945 (WHP) :

-----X

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

— against — :

CREDIT SUISSE FIRST BOSTON LLC, :
F/K/A CREDIT SUISSE FIRST BOSTON :
CORPORATION, :

Defendant. :

Civil Action No. :

03 Civ. 2946 (WHP) :

-----X
-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

— against — :

HENRY McKELVEY BLODGET, :

Defendant. :

Civil Action No. :

03 Civ. 2947 (WHP) :

-----X
-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

— against — :

MORGAN STANLEY & CO. INCORPORATED, :

Defendant. :

Civil Action No. :

03 Civ. 2948 (WHP) :

-----X
-----X
SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

Civil Action No. :

-- against --	:	04 Civ. 6909 (WHP)
DEUTSCHE BANK SECURITIES INC.,	:	
Defendant.	:	
-----X	:	
-----X	:	
SECURITIES AND EXCHANGE COMMISSION,	:	Civil Action No.
Plaintiff,	:	
-----X	:	04 Civ. 6910 (WHP)
-----X	:	
THOMAS WEISEL PARTNERS LLC,	:	
Defendant.	:	
-----X	:	

WILLIAM H. PAULEY III, District Judge:

On April 22, 2005, this Court approved the distribution fund administrator's plan proposed by Francis McGovern. Pursuant to that plan, as of May 15, 2006, approximately \$282.8 million of the distribution fund has been disbursed to eligible claimants. The remaining funds are approximately \$172 million, including accrued interest and uncashed checks. On May 23, 2006, this Court directed the distribution fund administrator to make a proposal regarding the disbursement of the remaining funds, and also directed the SEC and defendants to submit proposals. On July 7, 2006, this Court held a hearing regarding the proposals.

The SEC, in consultation with the distribution fund administrator, has requested that the Court approve certain options proposed by the distribution fund administrator that relate to the eligible claimants already identified in the above-captioned cases. This Order provides for the

payment of late claims, additional outreach efforts to reach eligible investors who have not responded, and payment of pre-judgment and post judgment interest to eligible claimants. In addition, this Order provides that administrative expenses of the distribution fund administrator incurred after July 7, 2006 shall be paid from interest accrued on the distribution funds.

1. The distribution fund administrator shall pay late claims, consisting of those claims filed between July 29, 2005 and September 30, 2005.

2. The distribution fund administrator shall engage in additional outreach efforts to obtain responses and claims from eligible investors who have not responded to prior notices and mailings made by the distribution fund administrator.

3. Eligible claimants, as defined by the plan approved by this Court on April 22, 2005, including those who have already received payments, shall be paid pre-judgment and post-judgment interest on the payments. The interest period shall be calculated beginning with the relevant loss date of the relevant equity security and ending with the date of the payment check. The rate of interest shall be the statutory post-judgment interest rate set forth at 28 U.S.C. 1961, compounded annually.

4. The administrative expenses incurred by the distribution fund administrator after July 7, 2006 shall be paid from interest accrued on the distribution accounts on deposit at the Federal Reserve Bank of New York. Payments from each distribution account shall be made according to the same proportionate share calculation set forth in Section IV.B of the Final Judgments entered against defendants.

5. Should any distribution funds remain after steps 1-3 above are completed the distribution fund administrator, after consultation with the SEC, shall submit a proposal to the Court for disposition of remaining funds.

6. The Court denies the requests for funds made by the research firm of Credit Sights and the Investor Protection Clinics, as the distribution funds are intended for eligible claimants and funds for the goals of independent research and investor education have been adequately provided for by other portions of the settlements in the above-captioned matters.

Dated: New York, New York
_____, 2006

WILLIAM H. PAULEY III
UNITED STATES DISTRICT JUDGE

D/P

#209

Luis R. Mejia
Chief Litigation Counsel
Telephone: (202) 551-4481
Facsimile: (202) 772-9245
E-Mail: MejiaL@sec.gov

September 11, 2006

Honorable William H. Pauley III
United States District Judge, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2210
New York, New York 10007

Filed in

Re: *Research Analyst Conflict of Interest Cases, Nos. 03 Civ. 2937 - 03 Civ. 2948; 04 Civ. 6909 - 04 Civ. 6910*

Dear Judge Pauley:

After consultation with Francis McGovern, the Distribution Fund Administrator in the above-captioned matter, the SEC requests that the Court issue an Order to permit Professor McGovern to begin the following steps as they relate to the distribution of unexpended distribution funds:

1. Payment of late claims, consisting of those claims filed between July 29, 2005 and September 30, 2005.
2. Additional outreach efforts to reach investors who did not respond to previous mailings.
3. Payment of pre-judgment and post-judgment interest to claimants, at the statutory post-judgment rate compounded annually.

The administrative expenses incurred by Professor McGovern after July 7, 2006 should be allocated to and paid from accrued interest in each separate settlement fund. A proposed Order is attached. Should funds remain in any fund after these steps are completed the SEC will consult with Professor McGovern regarding the submission of a plan to the Court for the disposition of such funds.

Respectfully,

Luis R. Mejia

cc: Francis McGovern, Counsel Of Record