

on April 24, the Office of the Consumer Advocate argues that discovery in this proceeding had been hampered by certain practices of the Postal Service; that the Service has relied on flawed legal premises regarding appropriate use of Motions to Excuse from Answering; that the Commission should make greater use of its authority to suspend proceedings when the Postal Service fails to comply with discovery requests; and that the Commission should consider initiating a rulemaking proceeding to address problems with the discovery process. Response of the Office of the Consumer Advocate to the Notice of Withdrawal of Request for a Recommended Decision and Motion to Close Docket Pursuant to Presiding Officer's Ruling No. MC97-2/7, April 24, 1997. OCA claims that the difficulties it cites "have occurred in many, if not all, ratemaking and classification proceedings in recent memory[.]" and therefore recommends that the Commission take a "fresh look" at its discovery process, perhaps culminating in a rulemaking proceeding. *Id.* at 22.

The Commission shall grant the Postal Service's motion to terminate this proceeding. In view of postal management's determination to discontinue its efforts in support of the proposals pending before the Commission in this docket—an action which the Board of Governors has specifically authorized—continuing these proceedings would appear to serve no practical purpose.

However, while this docket will be closed, the Commission strongly encourages the Postal Service to supply the Commission and participants with as much material responsive to outstanding Presiding Officer's Information Requests and discovery requests as is feasible at this time. Both the Commission and the participants have invested considerable efforts in exploring the factual bases of the Service's mail classification and rate proposals in this case.³ To the extent

limited purpose. Instead, they request "that the Commission exercise its powers pursuant to 39 U.S.C. § 3623(b) and, on its own motion, initiate a proceeding to consider whether the maximum weight limitation * * * imposed upon mail otherwise eligible for bound printed matter should be increased to 15 pounds, as the Postal Service has proposed in this proceeding." *Id.* at 1. Because the Joint Motion is intended, by its own terms, as a petition for the Commission's initiation of a special-purpose mail classification change proceeding *sua sponte*, it will be considered independently, rather than ruled upon as a pending motion in this docket.

³ OCA's response, *supra*, is indicative of the zealous, but sometimes unavailing, discovery efforts of some participants in this proceeding. In light of the current posture of the case, there is no opportunity to resolve the discovery-related issues

that the Service had undertaken to prepare responses to these discovery efforts prior to the determination to withdraw the Request, failure to produce them would appear wasteful, especially if the same proposals are to likely to be re-litigated in an omnibus rate case or other subsequent proceeding. Consequently, while proceedings will be terminated formally by this order, the Commission urges the Postal Service to provide responses to discovery requests or to outstanding Presiding Officer's Information Requests it might be able to prepare conveniently, in order to avoid needless duplication of effort by the Commission and participants in a putative later proceeding.

The Commission does not believe that terminating proceedings at this time will result in prejudice to the due process rights of any participant. The Complainant in Docket No. C97-1, who moved to hold that proceeding in abeyance pending consideration of the Postal Service's proposed changes in parcel pricing in this case, has resumed prosecution of its Complaint in that docket, and the Commission has granted its request to convene an informal conference to discuss the possibility of settlement. Order No. 1170, Order Granting Request To Schedule Informal Conference, April 18, 1997.⁴ Additionally, as noted earlier, the Commission will consider the joint motion to initiate a new proceeding to consider one proposed mail classification change in the Postal Service's Request—and any other similar motions—independently of this docket.

It is ordered:

1. The Motion of the United States Postal Service to Close Docket No. MC97-2 is granted.
2. In view of the termination of these proceedings, all pending motions in Docket No. MC97-2 are rendered moot.
3. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

raised by OCA. However, the Commission will continue to bear these considerations in mind in adapting its rules to discovery practice in future proceedings.

⁴ The informal conference was held on May 1, 1997. According to a status report subsequently filed by the Postal Service, the consensus of those attending the conference was that there are sufficient grounds for exploring the possibility of settlement, and to that end parties are now engaged in a joint effort to draft a settlement agreement. Status Report Pursuant to Order No. 1170, May 7, 1997.

By the Commission.

Margaret P. Crenshaw,
Secretary.

[FR Doc. 97-12669 Filed 5-13-97; 8:45 am]

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POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: May 5, 1997.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 62 FR 20227, April 25, 1997.

CHANGE: At its meeting on May 5, 1997, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date: Consideration of the Report of the Capital Projects Committee on the Tray Management System.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

Thomas J. Koerber,
Secretary.

[FR Doc. 97-12806 Filed 5-12-97; 3:27 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-22656; 813-150]

The BSC Employee Fund, L.P. and BSCGP Inc.; Notice of Application

May 7, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The BSC Employee Fund, L.P. (the "Partnership") and BSCGP Inc. (the "General Partner").

RELEVANT ACT SECTIONS: Order under section 6(b) of the Act for an exemption from all provisions of the Act except sections 7, 8(a), 9, 17 (except for certain provisions of sections 17(a), (d), (f), (g), and (j) as described herein), and 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Partnership, and other partnerships offered to the same class of investors (the "Subsequent Partnerships") (together with the Partnership, the "Partnerships"), to engage in certain

affiliated and joint transactions. Each partnership will be an employees' securities company within the meaning of section 2(a) (13) of the Act. Partnership interests will be offered to eligible employees, officers, and directors of The Bear Stearns Companies Inc. ("BSC") and any entities controlled directly or indirectly by BSC (together with BSC, "Bear Stearns").

FILING DATES: The application was filed on April 17, 1996 and amended on August 16, 1996 and April 18, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 2, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 245 Park Avenue, New York, New York 10167.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942-0571, or Mercer E. Bullard, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. BSC is a holding company that, through its subsidiaries, principally Bear, Stearns & Co. Inc. and Bear, Stearns Securities Corp. ("BSSC"), is a leading U.S. investment banking, securities trading, and brokerage firm serving U.S. and foreign corporations, governments, and institutional and individual investors. Bear, Stearns & Co. Inc. and BSSC are broker-dealers registered under the Securities Exchange Act of 1934 (the "Exchange Act"). Bear, Stearns and Co. Inc. and two other affiliates of BSC are registered as investment advisers under the

Investment Advisers Act of 1940 (the "Advisers Act").

2. From time to time, in the course of its investment banking business, numerous investment opportunities come to the attention of Bear Stearns. Such opportunities may include certain types of closed-end private investment funds that typically are excepted from the definition of "investment company" under section 3(c)(1) or, potentially, section 3(c)(7) of the Act ("Acquisition Funds"). Acquisition Funds typically invest directly in portfolio companies identified by the general partners of the Acquisition Funds (the "Portfolio Companies"). Portfolio Companies may be subject to leveraged buyouts, may require venture financing, or may otherwise require growth capital. Certain of the Acquisition Funds may also make other types of investments, including real estate-related investments and investments in emerging market opportunities.

3. The Partnership currently consists of the General Partner, which is a Delaware corporation and a wholly-owned subsidiary of BSC, and BSC, which is currently acting as the Partnership's sole limited partner. The General Partner has registered as an investment adviser under the Advisers Act. The Partnership is soliciting subscriptions from a number of its employees, officer, and directors ("Eligible Employees," as defined below) to acquire limited partnership interests in the Partnership; however, such Eligible Employees have not yet been admitted to the Partnership as limited partners ("Limited Partners"). Upon the occurrence of certain events, including receipt by the Partnership of the order requested herein, the Eligible Employees will be admitted into the Partnership as Limited Partners (the "Closing"), and, pursuant to the subscription agreements, as such time the Limited Partners will be required to make their initial cash capital contribution to the Partnership, which the Partnership in turn will use to acquire the interests in the Acquisition Funds previously subscribed for by Bear Stearns.¹ Bear Stearns has entered into subscription agreements with respect to seven Acquisition Funds identified for investment by the Partnership. These subscription agreements were entered

¹ Bear Stearns presently has not determined whether Subsequent Partnerships will in fact be formed and offered to Eligible Employees. To the extent that Subsequent Partnerships are formed and offered, it is expected that their purpose, structure, and manner of operation will be substantially similar to the purpose, structure, and manner of operation of the Partnership. Each Subsequent Partnership will observe all of the terms and conditions of the application.

into in the expectation that at the time Eligible Employees are first admitted to the Partnership: (i) all the rights and obligations arising under these subscription agreements will be transferred to the Partnership; (ii) the Partnership will be admitted as a Limited Partner to each of the Acquisition Funds or will otherwise succeed to the economic interest in the Acquisition Funds previously held by Bear Stearns; and (iii) Bear Stearns will be reimbursed by the Partnership for its net cash contribution for any funds previously advanced by Bear Stearns in respect of its subscription agreements with such Acquisition Funds.

4. The purpose of the Partnership is to enable certain key personnel of Bear Stearns to pool their investment resources and to receive the benefit of investing in a portfolio of Acquisition Funds, without the necessity of each investor seeking to identify such opportunities and to analyze their investment merit. In addition, the pooling of resources should allow the investors to participate in investment opportunities that ordinarily would not be available to them as individual investors. The Partnership will seek to reward and retain current key personnel and, through the potential formation of Subsequent Partnerships, to attract other individuals to Bear Stearns.

5. Interests in the Partnership will be offered without registration under a claim of exemption under section 4(2) of the Securities Act of 1933 ("Securities Act")² and will be offered and sold only to Eligible Employees of Bear Stearns or trusts established for their benefit or for the benefit of their immediate family. To be an Eligible Employee, an individual must be at the time of subscription a managing director or senior managing director of Bear Stearns (which represent the two most senior categories of professional employees within Bear Stearns) or a Bear Stearns director or senior officer, and such individual must also be an "accredited investor" meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the Securities Act.³ All Eligible Employees

² Section 4(2) exempts transactions by an issuer not involving any public offering from the Securities Act's registration requirement.

³ The sole exception to these offering and eligibility requirements is that three BSC employees who are not accredited investors but who have been intimately involved in the organization of the Partnership and the investment program contemplated thereby will be offered the opportunity to invest in the Partnership. Each employee who is not an accredited investor pursuant to the income requirements set forth in rule 501(a)(6) of Regulation D will have had reportable income from all sources (including any profit shares or bonus) in the calendar year

will be offered interests in the Partnership, but no Eligible Employee will be required to invest in the Partnership.

6. The management and control of the Partnership, including all investment decisions to be made on a going-forward basis, will be vested exclusively in the General Partner, and the Limited Partners will have no part in the management and control of the Partnership and will have no authority or right to act on behalf of the Partnership in connection with any matter. The business and affairs will be managed by or under the direction of the board of directors of the General Partner (the "Board"); thus, the Board indirectly will manage and control the Partnership. The Board will, among other things, act as the advisory committee of the Partnership responsible for approving all investment decisions. The Board is composed exclusively of senior officers of BSC or one of its principal operating subsidiaries. Each member of the Board qualifies as an Eligible Employee, and each initial member of the Board will invest as a Limited Partner.

7. Except with respect to the reimbursement of expenses, the General Partner will not receive any form of management fee or other form of compensation for acting as the General Partner. Instead, it, or any other entity within Bear Stearns incurring such expenses, will be reimbursed for actual organization expenses up to a specified amount and for normal operating expenses, including rent, salaries of its personnel, expenses incurred by its personnel in investigating investment opportunities, communications and travel expenses, and an allocated share of corporate overhead, subject to a ceiling of 0.5% of Total Commitments (as defined below) each year. The Partnership also will pay certain enumerated expenses of the General partner and the Partnership incurred in connection with the operation and dissolution of the Partnership. The nature of the General Partner's interest in the Partnership (which is expected to represent at least a 1.0% Percentage Interest, as defined below), will not entitle it to a carried interest or other special or preferred distribution rights. The General Partner will be entitled to distributions from the Partnership solely in accordance with its Percentage Interest.

immediately preceding such person's admission as a Limited Partner in excess of \$120,000 and will have a reasonable expectation of reportable income in the years in which such person will be required to make capital contributions of at least \$150,000.

8. Pursuant to subscription agreements to be entered into by the General Partner and each of the Limited Partners (together, the "Partners"), a maximum total commitment ("Total Commitment") will be established for each Partner in connection with that Partner's investment in the Partnership. Each Limited Partner's Total Commitment will consist of (i) a capital commitment ("Capital Commitment") equal to 50% of the Limited Partner's Total Commitment and (ii) an equal amount of debt of the Partnership (other than amounts attributable to accrued and unpaid interest) outstanding under a credit agreement to be entered into between Bear Stearns and the Partnership ("BSC Credit Facility"). The Total Commitment for all Partners will represent an amount sufficient to fund the purchase price payable by the partnership for the purchase of interests in the previously identified Acquisition Funds, the aggregate unpaid capital commitments made in respect of the Partnership's subscription agreements with the Acquisition Funds, as well as organization and ongoing administrative expenses.⁴

9. Concurrently with the Closing, the partnership will enter into an agreement with Bear Stearns creating the BSC Credit Facility, a line of credit with a maximum availability equal to the sum of (i) 50% of the aggregate Total Commitment of each Limited Partner and (ii) accrued and unpaid interest thereon. Indebtedness under the BSC Credit Facility will be debt of the Partnership and without recourse to the Partners. Because the Partners may not share in the debt proportionately, indebtedness under the BSC Credit Facility will be allocated to each Partner separately, and each Partner's share of interest expense and cash distributions from the Partnership will be calculated separately to reflect that Partner's allocable share of that indebtedness.

10. Advances from Bear Stearns under the BSC Credit Facility will bear interest based on prevailing LIBOR rates plus an applicable margin (initially expected to be 100 basis points). The terms of the BSC Credit Facility will be no less favorable to the Limited Partners than those that generally would be obtained

⁴ Acquisition Funds tend to make capital calls on their limited partners periodically on an as-needed basis in connection with particular investment in one or more Portfolio Companies. To accommodate anticipated liquidity concerns of the Limited Partners and to avoid drawing their capital substantially in advance of the funding requirements established by the Acquisition Funds, the partnership has determined to draw down the Limited Partners' capital over time, roughly in parallel fashion to capital calls issued by the Acquisition Funds.

by the Limited Partners on an arm's length basis.

11. The Partnership will not be permitted to make investments other than investments in (i) Acquisition Funds, (ii) temporary investments in specified short-term government securities, certificates of deposit, commercial paper and similar securities, as well as money market funds (including funds managed, sponsored, or underwritten by Bear Stearns) that invest in such securities ("Temporary Investments"),⁵ or (iii) securities or other property that may be distributed by Acquisition Funds to their limited partners (including securities for which securities so distributed may be exchanged or into which securities so distributed may be converted).

12. No Bear Stearns Related Person (as defined below) other than the Partnership is making an investment in any of the Acquisition Funds that have been identified for transfer to the Partnership as of the Closing Date and, except as described below, a Bear Stearns Related Person will not, at any time a Partnership is not fully invested, be permitted to make investments in Acquisition Funds without having first offering the opportunity to make the investment to the Partnership ("obligation to offer"). A "Bear Stearns Related Person" means the General Partner, The Bear Stearns Companies Inc., and any other person in which at least 80% of the ownership interest is beneficially owned directly or indirectly by The Bear Stearns Companies Inc., as well as any investment fund managed by any of the foregoing.

13. Certain investments are not subject to the "obligation to offer." These investments include (i) An investment made by a Bear Stearns Related Person pursuant to an offer made only to BSC or one of its subsidiaries, (ii) an investment that constitutes compensation for providing investment banking or other services, (iii) an investment made by any Bear Stearns Related Person in its underwriting capacity or in connection with broker-dealer activities, or (iv) an investment made in connection with the purchase of a portfolio of securities from another entity.⁶

⁵ The Partnership will not acquire any security issued by a registered investment company if immediately after such acquisition the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

⁶ Applicants expect that there may be co-investments by the Partnership with one or more of its affiliated entities. For example, the Partnership and a Bear Stearns Related Person may co-invest in

14. Any transactions involving Bear Stearns, an Acquisition Fund, affiliates of Acquisition Funds, any Portfolio Company, or any Partner or person or entity related to any Partner must be on terms no less favorable to the Partnership than generally are afforded to unrelated third parties in comparable transactions. Such transactions may include the purchase or sale by the Partnership of an investment from or to any Bear Stearns affiliate, acting as principal, or borrowings of the Partnership pursuant to the BSC Credit Facility. With respect to any investment purchased by the Partnership from Bear Stearns, acting as principal, the Partnership will acquire the investment for no more than Bear Stearns' net cash contribution, plus carrying costs and certain organizational expenses. The Partnership does not presently expect that it will acquire investments from Bear Stearns, acting as principal, other than in connection with acquisitions of interests in Acquisition Funds that previously have been acquired by Bear Stearns and designated by Bear Stearns and the General Partner at the time of acquisition for resale to the Partnership, and, potentially, in connection with the purchase of Temporary Investments.

15. Bear Stearns may provide investment banking or management or other services to, and receive related fees or other compensation and expense reimbursement from, entities in which a Partnership makes an investment or competitors of such entities. Such fees or other compensation may include, without limitation, advisory fees, organization or success fees, financing fees, management fees, performance-based fees, fees for brokerage and clearing services, and compensation in the form of carried interests entitling Bear Stearns to share disproportionately in income or capital gains or similar compensation.

16. Upon admission into the Partnership, each participant will become a Limited Partner and, as such, will participate *pro rata* with other Limited Partners in making Partnership investments and paying Partnership expenses (other than interest on borrowing from Bear Stearns, as discussed above). Each Limited Partner will also be entitled to a *pro rata* share of Partnership allocations and distributions. Distributions of amounts received from the Acquisition Funds will be made, and items of income, gain,

loss, and deduction attributable to the Acquisition Funds will be allocated ratably among the Partners in accordance with their percentage interests, which will equal each Partner's Total Commitment as a percentage of all Total Commitments of the Partners ("Percentage Interests").

17. For a Limited Partner who is an employee of Bear Stearns at the time of distributions, the Limited Partner's Percentage Interest of available cash, net of expenses, will be applied in the following order: (i) To fund aggregate distributions each year equal to the combined federal, New York State, and New York City income tax on items of income of the Partnership calculated at the highest rates applicable to individuals for the type of income at issue ("Tax Distributions"); (ii) to pay in full the Limited Partner's share of accrued interest on any outstanding indebtedness under the BSC Credit Facility; (iii) to repay the Limited Partner's share of the principal amount of any outstanding indebtedness under the BSC Credit Facility; and (iv) to fund distributions to the Partner.

18. A Limited Partner whose employment with Bear Stearns is terminated for other than death, disability, or retirement and who honors his or her obligation to fund Capital Commitments as described below will no longer share in the 50% portion of the post-termination distributions corresponding to the portion of the investment that was initially funded with the proceeds of the BSC Credit Facility, but otherwise will be treated as a Limited Partner who remains employed by Bear Stearns. To achieve this result, such a Limited Partner's Percentage Interest of available cash, net of expenses, will be applied in the following order: (i) To fund Tax Distributions to the Limited Partner; (ii) to fund Tax Distributions to Bear Stearns in respect of the 50% portion of the distribution not paid to the Limited Partner; (iii) to pay in full the Limited Partner's share of accrued interest on any outstanding indebtedness under the BSC Credit Facility; (iv) to repay the Limited Partner's share of the principal amount of any outstanding indebtedness under the BSC Credit Facility; (v) to fund a distribution to the Limited Partner equal to such Limited Partner's "Catch-Up Amount," as defined below; and (vi) to fund distributions 50% to the Limited Partner and 50% to Bear Stearns.⁷

⁷ The Catch-Up Amount of a Limited Partner shall equal an amount based on the assumption that the distributions to such Limited Partner were determined for such period without regard to

19. If a Limited Partner's employment with Bear Stearns is terminated by reason of the disability or retirement of the Limited Partner, the Limited Partner will retain his or her entire Interest following the termination as though he or she were still an employee. In the case of the death of the Limited Partner, (i) the Limited Partner's estate will receive the economic rights of such Interest but will not be admitted to the Partnership as a Limited Partner, without the consent of the General Partner, and (ii) the estate of the Limited Partners will have the option to cease making capital contributions, in which case the estate's Interest will relate solely to assets of the Acquisition Funds at the time of death, and (iii) the estate will have the right to receive cash from the General Partner in an amount equal to the fair market value of the Limited Partner's Interest in the Partnership, as determined by the General Partner.

20. If a Limited Partner ceases to be employed by Bear Stearns for any reason other than death, disability, or retirement, and at that time all Capital Commitments of the Limited Partner have been fully funded, the Limited Partner will retain, following the termination of employment, his or her entire interest in assets of the Partnership acquired with his or her Capital Commitments, but will not retain any interest in assets of the Partnership acquired with the proceeds of the BSC Credit Facility. If a Limited Partner's employment with Bear Stearns is terminated other than for death, disability, or retirement, and at that time the Limited Partner has an unfunded Capital Commitment, the Limited Partner will be required to make a capital contribution to the Partnership equal to the Limited Partner's undrawn Total Commitment. Amounts contributed upon termination will be

distributions made to cover payments of interest on and principal of indebtedness under the BSC Credit Facility, and taxes on distributions not made to the Limited Partner. The Catch-Up Amount is intended to reverse the effects of using the investment return to repay the attributable share of the BSC Credit Facility of a Limited Partner who has ceased to be employed by Bear Stearns. Cash for each investment is provided to the Partnership 50% from the Limited Partner's Capital Commitment and 50% from BSC Credit Facility proceeds. All distributions, after funding tax distributions, are first applied to pay principal and interest on the BSC Credit Facility. After the BSC Credit Facility is repaid, for a Limited Partner who has ceased to be employed by Bear Stearns, additional proceeds from the entire investment are first distributed to the Limited Partner through the Catch-Up Amount provision (up to the amount applied to make payments on the BSC Credit Facility) and then are distributed 50% to the Limited Partner and 50% to Bear Stearns. The effect is generally to put the Limited Partner in the same position in which he or she would have been had the investment not been leveraged in the first place.

an Acquisition Fund. In all events, transactions to which the Partnership is a party that would otherwise be prohibited by section 17(d) of the Act and rule 17d-1 thereunder will be effected only in compliance with the conditions applicable to such transactions that are specified below.

invested in Temporary Investments, pending investment in the Acquisition Funds. All income or loss from such Temporary Investments will be allocated, and cash (net of expenses and reserves for future expenses) produced by such investments will be distributed, to that Limited Partner, but otherwise such a Limited Partner will be treated as if his or her Capital Commitment had been fully funded at the termination of employment. If the Limited Partner fails to make such required capital contribution, the Partnership may then immediately redeem such Limited Partner's Interest at a price equal to the lesser of (i) the amount of such Limited Partner's capital account as reflected on the books and records of the Partnership, and (ii) the fair value of such Limited Partner's Interest (as determined by the General Partner), in each case measured as of the date of termination of such Limited Partner. Except as the Partnership and the Limited Partner may otherwise agree, the redemption price will be paid in the form of a note from the Partnership, bearing interest at three-month LIBOR, that will mature upon dissolution of the Partnership. Interest on the note will accrue and be payable at maturity.⁸ To avoid unfairly disadvantaging departing Limited Partners who honor their Capital Commitments as compared to those who do not, the amount payable under the note will in no event exceed the amounts that would have been payable in respect of a Limited Partner's Interest (after giving effect to amounts advanced by Bear Stearns in respect of any unfunded Capital Commitment) had such Limited Partner made the required capital contribution upon his or her termination.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former

employees of such employers; or by members of the immediate family of such employees, persons on retainer, or former employees.

2. Applicants request an order under section 6(b) of the Act granting an exemption from all provisions of the Act, except section 7, 8(a), 9, 17 (except for certain provisions of sections 17 (a), (d), (f), (g), and (j) as described herein), and 36 through 53, and the rules and regulations thereunder. Applicants assert that the order requested pursuant to section 6(b) of the Act is consistent with the protection of investors. Applicants believe that a substantial community of economic and other interests exists among Bear Stearns, the members of the Board, the officers of the General Partner, and the Limited Partners, taking into consideration the form of organization of the Partnership and the absence of any public investors. Applicants note that the capital structure of the Partnership will be such that the General Partner will contribute substantial capital to the Partnership but will not receive any special or preferred distribution rights with respect to its interest in the Partnership; indeed, neither the General Partner nor any Bear Stearns affiliate will receive any form of sales load or management or advisory fee from the Partnership or any of the Limited Partners. Applicants state that the community of interest between Bear Stearns and the Partnership will be enhanced further by the existence of the BSC Credit Facility, since Bear Stearns will bear a substantial portion of the risk of loans made thereunder, given that such loans will be nonrecourse to the Partners and payable only out of the assets of the Partnership. Finally, applicants believe Bear Stearns will have a substantial stake in the success of the Partnership given the concern of Bear Stearns with the morale of its key personnel, a substantial number of which are expected to invest in the Partnership.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other such property. Applicants request an exemption from section 17(a) of the Act to the extent necessary to permit a Partnership to: (a) Acquire interests in Acquisition Funds from Bear Stearns on a principal basis; (b) purchase interests in an Acquisition Fund in which Bear Stearns already owns an interest or where such Acquisition Fund (or, in certain circumstances, one of its

Portfolio Companies) is otherwise affiliated with Bear Stearns or a Partnership; (c) sell, put or tender, or grant options in securities or interests in a company or other investment vehicle back to such entity, where such entity is affiliated with Bear Stearns; (d) participate as a selling security holder in a public offering that is underwritten by Bear Stearns or in which Bear Stearns acts as a member of the underwriting group; and (e) make money market fund or other short-term investments.

4. Applicants assert that, without the requested relief, the Partnerships would be precluded from acquiring interests in Acquisition Funds previously subscribed for by Bear Stearns. Applicants note that following commencement of the offering of Interests to Limited Partners by the delivery of offering materials, there will be no discretion regarding which interests in Acquisition Funds previously acquired by Bear Stearns will be sold to the Partnership the Acquisition Funds described in the offering materials have been designated for sale to the Partnership since the time the investments were made, and will be sold for a price not to exceed Bear Stearns' net cash contribution plus carrying costs and certain organizational expenses. Applicants argue that this arrangement should ensure the fairness and reasonableness of the purchase of interests in the Acquisition Funds.

5. Applicants state that relief is also requested to permit a Partnership the flexibility to deal with its portfolio of Acquisition Funds, and, in particular, securities in Portfolio Companies that may be distributed from time to time by the Acquisition Funds to their limited partners, in the manner the General Partner deems most advantageous. Applicants contend that relief from section 17(a) is necessary since underwritten public offerings typically involve purchases of each underwriter, on several basis, from each selling security hold of a portion of the securities sold by each such security holder. Applicants expect that the short-term investments described above may be purchased from, or sold to, Bear Stearns at market value without payment of fees by the Partnership. In connection with money market fund investments in funds advised or administered by Bear Stearns, applicants state that the assets will be subject to an advisory and/or administrative fee on the same basis as those charged to and paid by unaffiliated persons participating in the same fund or transactions.

⁸ Applicants believe that deferring maturity of the note until dissolution of the Partnership is consistent with the protection of investors because the timing of the dissolution of the Partnership is outside the control of Bear Stearns and Bear Stearns has no incentive to defer dissolution of the Partnership, and the holders of the notes are not being treated any differently from other Limited Partners, who also will await dissolution for their final distributions.

6. Applicants represent that the Partners will have been fully informed of the possible extent of the dealings by the Partnership, the Acquisition Funds, and the Portfolio Companies with Bear Stearns. Applicants assert that, as professionals employed in the securities business, the Partners will be able to understand and evaluate the attendant risks. Applicants believe that the community of interest among the Partners, on the one hand, and Bear Stearns, on the other hand, is the best safeguard against any risk of abuse in this regard.

7. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such company, or a company controlled by such company, is a joint or joint and several participants with the affiliated person in contravention of SEC rules. Rule 17d-1 provides that the SEC may approve a transaction subject to section 17(d) after considering whether the participation of such registered company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

8. Applicants request an order under section 17(d) and rule 17d-1 to the extent necessary to permit the Partnerships to engage in transactions in which affiliated persons of the Partnerships may also be participants. Applicants believe that the concern that permitting joint investments with BSC or another Bear Stearns vehicle and/or an affiliate of either of them on the one hand, and a Partnership on the other, might lead to disadvantageous treatment of the Partnership will be mitigated by the fact that Bear Stearns is acutely concerned with its relationship with the key employees who are expected to invest in the Partnership.

9. In addition, applicants believe the agreement of Bear Stearns to lend substantial funds to the Partnership creates opportunities for the Limited Partners to leverage their investment capital to a greater degree than would be possible normally in transactions organized by non-affiliated third parties. Applicants note that the nonrecourse loans from Bear Stearns to the Partnership will provide the Partnership with the ability to make a greater number of investments or larger investments than would be possible if the Partnership has only its own equity capital to invest. Applicants state that Bear Stearns will bear a substantial portion of the risk of repayment of such loans since the loans will be (i) nonrecourse to the Partners, (ii)

generally payable prior to maturity only out of 50% of the Partnership's cash available for distribution after repayment of accrued interest and taxes and certain other expenses, and (iii) payable at maturity only out of the Partnership's assets. Applicants contend that all of the foregoing factors suggest that the policy considerations underpinning section 17(d) are not present here.

10. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Rule 17f-1 under the Act specifies the requirements that must be satisfied for a registered management investment company to use a broker-dealer as custodian. Applicants request an exemption from section 17(f) and rule 17f-1 to the extent necessary to permit Bear Stearns to act as custodian without a written contract. Applicants believe that, because there is such a close association between the Partnership and Bear Stearns, requiring a detailed written contract would subject the Partnership to unnecessary burden and exposure. Applicants also request an exemption from the terms of rule 17f-1(b)(4), which requires an independent accountant to periodically verify by actual examination the securities and investments of a registered management investment company using a broker-dealer as custodian. Applicants do not believe the expense of retaining an accountant to conduct such verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

11. Section 17(g) and rule 17g-1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request an exemption from section 17(g) and rule 17g-1 to the extent necessary to permit the Partnership to comply with rule 17g-1 without the necessity of having a majority of the members of the Board who are not "interested persons," as that term is defined in section 2(a)(19) of the Act, take such actions and make such approvals as are set forth in the 17g-1. Applicants state that, because all the members of the related Board will be affiliated persons, a Partnership could not comply with rule 17g-1 without the requested relief.

12. Section 17(j) and rule 17j-1 require every registered investment company, its adviser, and its principal underwriter to adopt a written code of

ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Section 17(j) and paragraph (a) of rule 17j-1 also make it unlawful for certain persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of a security held or to be acquired by an investment company. Applicants request an exemption from section 17(j) and rule 17j-1 (except rule 17j-1(a)) because the requirements contained therein are burdensome and unnecessary. Applicants believe that requiring each Partnership to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners of such Partnership by virtue of their common association in Bear Stearns and the substantial and largely overlapping protection afforded by the conditions with which such Partnerships have agreed to comply.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d-1 to which a Partnership is party (the "Section 17 Transactions") will be effected only if the Board, through the General Partner, determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners, the Partnership's organizational documents, and the Partnership's reports to its Partners. In addition, the General Partner will record and preserve a description of such affiliated transactions, the Board's findings, the information or materials upon which the board's findings are based, and the basis therefor. All such records will be maintained for the life of such Partnership and at least two years thereafter, and will be subject to examination by the SEC and its staff.⁹

2. In connection with Section 17 Transactions, the Board, through the General Partner, will adopt, and

⁹ The Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partners, and each annual report of the Partnership required to be sent to the Partners, and agree that all such records will be subject to examination by the SEC and its staff.¹⁰

4. The General Partner will send to each person who was a Partner at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. In addition, within 90 days after the end of each fiscal year of the Partnership or as soon as practicable thereafter, the General Partner shall send a report to each person who was a Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Partner of his or its federal and state income tax returns and a report of the investment activities of the Partnership during such year. To the extent that a valuation of any interest in the Partnership is required by the terms of the Partnership Agreement or otherwise, such valuation will be made by the General Partner or by independent third parties appointed by the General Partner and deemed qualified by the General Partner to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets, and liabilities of the Partnership as the General Partner or the independent third party, as the case may be, may reasonably determine and, in the case of the General Partner, consistent with its fiduciary duty to the Limited Partners.

5. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in such entity by a Bear Stearns advisory director, director,

officer, or employee, such individual will not participate in the Partnership's determination of whether or not to effect such purchase or sale.

6. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a "Co-Investor," as defined below, has acquired or proposes to acquire an investment in the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which such Partnership and the Co-Investor are participants, unless such Co-Investor, prior to disposing of all or part of its investment, (a) gives such General Partner sufficient, but not less than one day, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Partnership has the opportunity to dispose of such Partnership's investment prior to or concurrently with, on the same terms as, and *pro rata* with, the Co-Investor. The term "Co-Investor," with respect to any Partnership, means any person who is: (a) an "affiliated person" (as such term is defined in the Act) of such Partnership; (b) an entity within Bear Stearns; (c) an officer or director of an entity within Bear Stearns; or (d) a company in which the General Partner of such Partnership acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of such Co-Investor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2-1 thereunder.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-12548 Filed 5-13-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Green Oasis Environmental, Inc.; Order of Suspension of Trading

May 9, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Green Oasis Environmental, Inc. ("Green Oasis"), a Charleston, South Carolina based company purportedly engaged in the business of developing and selling equipment to process waste motor oil into more valuable fuels, because of questions regarding, among other things, Green Oasis' press releases concerning (1) the development of Green Oasis' products; (2) Green Oasis' business operations, including the testing of its equipment; (3) relationships between Green Oasis and a financial analyst who recommended purchase of its shares; and (4) the commercial viability to the contracts Green Oasis has announced it received to purchase its equipment.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, May 9, 1997 through 11:59 p.m. EDT, on May 22, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-12636 Filed 5-9-97; 4:05 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38582; File No. SR-DCC-97-05]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Addition of Adams, Viner, and Mosler, Ltd. as an Interdealer Broker for Delta Clearing Corp.'s Repurchase Agreement Clearance System

May 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

¹⁰The Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.