

**NEW VOLUNTARY INITIATIVE REGARDING IPO ALLOCATIONS**

In connection with the global research settlement with various United States federal and state regulators, a number of major investment banks, including those listed on Appendix A, have recently entered into a Voluntary Initiative Regarding IPO Allocations (the “Voluntary Initiative”).

Pursuant to the Voluntary Initiative, these firms undertook not to allocate initial public offering (“IPO”) shares to the account of an executive officer or director of a public company (or an account beneficially owned in whole or in principal part by his or her immediate family members). In order to comply with that undertaking, certain investment banks are currently asking that investment advisers of private investment funds affirmatively represent that at least one of the following statements is correct:

- No person owns a beneficial interest in excess of 50% of the private investment fund *or any account* of the private investment fund.
- In the event that a person does own a beneficial interest in excess of 50% of such private investment fund, such person is not an executive officer<sup>1</sup> or director (or an immediate family member or any such person) of a U.S. public company or any other company trading publicly, no matter where located.

Note that if *neither* of the above statements can be affirmed, the investment banks, in many cases, are presently asking advisers of private investment funds to notify their appropriate sales representative immediately. We believe that most, if not all, investment banks also will require that, when updating “hot issue” certifications in the future, in addition to the representations required to be made in connection with the NASD’s hot issue rules, affirmative certifications with respect to at least one of the above statements will be required. It is important to note that, with respect to the 50% test set forth above, a private investment fund must calculate such percentage based on the amount of interests or shares owned by investors currently participating in gains and losses attributable to “hot issues,” whether through a separate “hot issue” account, sub-account or other separate memorandum account established for the benefit of such persons.

Private investment funds that wish to participate in IPO allocations through any of the firms adopting the Voluntary Initiative should monitor compliance with the above tests and consider the circulation of a supplemental questionnaire to investors to ascertain the fund’s status with respect to the Voluntary Initiative.

---

<sup>1</sup> An executive officer is defined as a company’s president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the company.

If you have any questions concerning this memorandum, please call Daniel Schloendorn (212-728-8265) or Brendan R. Kalb (212-728-8166).

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our website is located at [www.willkie.com](http://www.willkie.com).

October 23, 2003

Copyright © 2003 by Willkie Farr & Gallagher LLP

All Rights Reserved. This memorandum may not be reproduced or disseminated in any form without the express permission of Willkie Farr & Gallagher LLP. This memorandum is provided for news and information purposes only and does not constitute legal advice or an invitation to an attorney-client relationship. While every effort has been made to ensure the accuracy of the information contained herein, Willkie Farr & Gallagher LLP does not guarantee such accuracy and cannot be held liable for any errors in or any reliance upon this information.

**APPENDIX A**

Bear, Stearns & Co. Inc.

Credit Suisse First Boston LLC

Goldman, Sachs & Co.

Lehman Brothers Inc.

J.P. Morgan Securities Inc.

Merrill Lynch, Pierce, Fenner & Smith, Incorporated

Morgan Stanley & Co. Incorporated

Citigroup Global Markets Inc. f/k/a Salomon Smith Barney Inc.

UBS Warburg LLC

U.S. Bancorp Piper Jaffray Inc.