

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

_____	)	
FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 4:08-cv-338
	)	
EMC MORTGAGE CORPORATION,	)	
a Delaware corporation, and	)	
THE BEAR STEARNS COMPANIES LLC,	)	
a Delaware limited liability company,	)	
	)	
Defendants.	)	
_____	)	

**STIPULATED FINAL JUDGMENT AND ORDER**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed a Complaint for Permanent Injunction and Other Equitable Relief, pursuant to Sections 5(a) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 53(b).

The Complaint alleges that defendants EMC Mortgage Corporation and The Bear Stearns Companies LLC (“defendants”) have violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); Sections 806, 807, 808 and 809 of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692d, 1692e, 1692f and 1692g; Section 623(a)(3) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s-2(a)(3); and Sections 226.18 and 226.20 of the Truth in Lending Act’s (“TILA”) implementing Regulation Z, 12 C.F.R. §§ 226.18 and 226.20.

The parties, by and through their respective counsel, have agreed to entry of this Stipulated Final Judgment and Order (“Order”) by this Court, without trial or adjudication of any issue of fact or law. Notwithstanding anything to the contrary herein, the parties agree that this

Order shall not apply to JPMorgan Chase Bank, NA or any other “Bank” as defined herein. The parties having requested the Court to enter this Order, it is therefore ORDERED, ADJUDGED, AND DECREED as follows:

### FINDINGS

1. This Court has jurisdiction over defendants and the subject matter of this action. Venue in the Eastern District of Texas is proper.
2. The Complaint states a claim upon which relief may be granted against defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b); the FDCPA, 15 U.S.C. § 1692 *et seq.*, as amended; the FCRA, 15 U.S.C. § 1681 *et seq.*, as amended; and the TILA’s implementing Regulation Z, 12 C.F.R. § 226, as amended.
3. The activities of defendants are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendants have not admitted any of the allegations of wrongdoing set forth in the Complaint, and entry of this Order is not an admission of any such allegations of wrongdoing or violation of law. Nonetheless, defendants stipulate and agree to entry of this Order in order to settle and resolve these disputes.
5. Plaintiff and defendants waive all rights to seek judicial review or otherwise challenge or contest the validity of this Order, and defendants waive any right that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.
6. Entry of this Order is in the public interest.
7. The Plaintiff and Defendants, by and through their counsel, have agreed that entry of this Order resolves all matters in dispute between them arising from the facts and

circumstances alleged in the Complaint in this action, up to the date of entry of this Order.

## **ORDER**

### **DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

- a. “Bank” shall mean a bank that is exempt from the FTC’s jurisdiction pursuant to Section 5(a)(2) of the FTC Act, 15 U.S.C. § 45(a)(2). “Bank” shall not include any person or entity controlled directly or indirectly by a bank and that is not itself a bank, such as an operating subsidiary or affiliate of a bank that is not itself a bank;
- b. “Bear Stearns” shall mean The Bear Stearns Companies LLC, f/d/b/a The Bear Stearns Companies, Inc., a Delaware corporation, and its successors and assigns, by whatever names they might be known, but not including any bank;
- c. “Clear and prominent” or “clearly and prominently” shall mean that information is displayed in a manner that is readily noticeable, readable, and understandable;
- d. “Competent and reliable evidence” shall mean tests, analyses, research, studies, or other evidence, including a data integrity program that complies with Section VII of this Order, based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

- e. "Defendants" shall mean, collectively, EMC and Bear Stearns;
- f. "EMC" shall mean EMC Mortgage Corporation, a Delaware corporation, and its successors and assigns, by whatever names they might be known, but not including any bank;
- g. "FCRA" shall mean the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x, as amended;
- h. "FDCPA" shall mean the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601-1692, as amended;
- i. "FTC Act" shall mean the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, as amended;
- j. "Fees" shall mean all fees, charges, and penalties, including but not limited to fees for late payments, property inspections, broker's price opinions, appraisals, legal services, reinstatement, modification, and any other fees or charges that a consumer is or was assessed by defendants or any other person in connection with the servicing of any loan;
- k. "Loan" shall mean a residential mortgage loan, *i.e.*, a loan secured by a lien on real property taken as security for the repayment of the loan;
- l. "Loan instruments" shall mean the mortgage deed and/or promissory note signed by the consumer to consummate his or her loan;
- m. "Person" shall mean any individual, group, unincorporated association, limited or general partnership, corporation, trust, or other business entity;
- n. "Property inspection" shall mean an inspection of the property securing a

- loan to determine the property's physical condition and occupancy status;
- o. "Servicing" shall mean receiving any payments from (or for) a consumer pursuant to the terms of any loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from (or for) the consumer as may be required pursuant to the terms of the loan. "Servicing" shall also include any related loan servicing activity such as the administration of loan accounts, sending periodic billing statements to a consumer, maintaining records of the status of the consumer's loan accounts, providing information to and resolving disputes with the consumer regarding loan accounts, the collection of loan payments, the foreclosure of real property, the use of consumer reports and the furnishing of information to consumer reporting agencies, and the collection or imposition of fees in relation to any of the foregoing; and
- p. "TILA" shall mean the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended.

## **INJUNCTIVE RELIEF**

### **Prohibited Business Practices**

#### **I.**

IT IS THEREFORE ORDERED that defendants, and each of them, their officers, employees, agents, representatives, and all other persons or entities in active concert or

participation with them who receive actual notice of this Order by personal service or otherwise, directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined, in connection with the servicing of any loan, from:

- A. Misrepresenting, expressly or by implication, the amount of any payment or fee due on a loan;
- B. Misrepresenting, expressly or by implication, that any payment or fee due on a loan is allowed under the loan instruments or permitted by law;
- C. Misrepresenting, expressly or by implication, the amount, nature, or terms of any fee or other condition or requirement of any loan; and
- D. Making any representation, expressly or by implication, about the amount of any payment or fee, the date that any payment or fee is due, or any other information regarding the terms, conditions, or status of a loan, unless, at the time of making such representation, such persons possess and rely on competent and reliable evidence that substantiates the representation.

## II.

IT IS FURTHER ORDERED that defendants, and each of them, their officers, employees, agents, representatives, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined, in connection with the servicing of any loan, from assessing and/or collecting any fee unless it is for services actually rendered and is a) expressly authorized, and clearly and prominently disclosed, by the loan instruments and not prohibited by law;

b) expressly permitted by law and not prohibited by the loan instruments; or c) a reasonable fee for a specific service requested by a consumer that is assessed and/or collected only after clear and prominent disclosure of the fee is provided to the consumer and explicit consent is obtained from the consumer to pay the fee in exchange for the service, and such fee is not otherwise prohibited by law or the loan instruments.

**III.**

IT IS FURTHER ORDERED that, for five (5) years after the date of entry of this Order, defendants, and each of them, their officers, employees, agents, representatives, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined, in connection with the servicing of any loan, from assessing and/or collecting fees for property inspections, *provided that* defendants may impose reasonable fees for property inspections actually performed if: (1) the consumer's loan payment has not been received within forty-five (45) calendar days of the due date; and (2) the inspections are limited to the initial inspection and to additional inspections during the period of continued delinquency not more frequent than every thirty (30) calendar days. *Provided, however*, that defendants may charge fees for property inspections actually performed if those inspections are otherwise required by law or regulation, or required by written handbook requirements issued by the Department of Housing and Urban Development ("HUD").

**IV.**

IT IS FURTHER ORDERED that defendants, and each of them, their officers, employees, agents, representatives, and all other persons or entities in active concert or

participation with them who receive actual notice of this Order by personal service or otherwise, directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined, in connection with the servicing of any loan that was in default at the time it was obtained by defendants, from:

- A. Using conduct the natural consequence of which is to harass, oppress, or abuse any person, in violation of Section 806 of the FDCPA, 15 U.S.C. § 1692d, including but not limited to: (1) causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number, in violation of Section 806(5) of the FDCPA, 15 U.S.C. § 1692d(5); and (2) the placement of telephone calls without meaningful disclosure of the caller's identity in violation of Section 806(6) of the FDCPA, 15 U.S.C. § 1692d(6);
- B. Using any false, deceptive, or misleading representation or means in connection with the collection of any debt, in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692e, including but not limited to: (1) falsely representing the character, amount, or legal status of a debt, or any services rendered or compensation which may be lawfully received by a debt collector for collection of a debt, in violation of Sections 807(2)(A) and (B) of the FDCPA, 15 U.S.C. §§ 1692e(2)(A) and (B); (2) communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed, in violation of Section 807(8) of the FDCPA, 15 U.S.C. § 1692e(8); (3) using false representations or

deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer, in violation of Section 807(10) of the FDCPA, 15 U.S.C. § 1692e(10); and (4) failing to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, in violation of Section 807(11) of the FDCPA, 15 U.S.C.

§ 1692e(11);

- C. Using any unfair means to collect or attempt to collect a debt, including but not limited to collecting amounts (including any interest, fee, charge, or expense incidental to the principal obligation) not authorized by the agreement creating the debt or permitted by law, in violation of Section 808(1) of the FDCPA, 15 U.S.C. § 1692f(1);
- D. Failing to notify consumers of their right to dispute and obtain verification of their debts and to obtain the name of the original creditor, either in the initial communication with consumers by defendants, or within five days thereafter, in violation of Section 809(a) of the FDCPA, 15 U.S.C. § 1692g(a); and
- E. Failing to comply in any other respect with the FDCPA, as amended, or as it may be amended in the future.

V.

IT IS FURTHER ORDERED that defendants, and each of them, their officers, employees, agents, representatives, and all other persons or entities in active concert or

participation with them who receive actual notice of this Order by personal service or otherwise, directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined, in connection with the servicing of any loan, from:

- A. Failing to report accounts as “disputed” to consumer reporting agencies, as required by Section 623(a)(3) of the FCRA, 15 U.S.C. § 1681s-2(a)(3), when consumers dispute the completeness or accuracy of any information furnished to a consumer reporting agency either in writing, orally, or by electronic means; and
- B. Failing to comply in any other respect with the FCRA, as amended, or as it may be amended in the future.

**VI.**

IT IS FURTHER ORDERED that defendants, and each of them, their officers, employees, agents, representatives, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined from:

- A. Failing to make required TILA disclosures before consummating a consumer credit transaction, including but not limited to in connection with a loan modification or other loan workout that constitutes a refinancing under Sections 226.18 and 226.20 of the TILA’s implementing Regulation Z, 12 C.F.R. §§ 226.18 and 226.20; and
- B. Failing to comply in any other respect with the TILA and Regulation Z, as amended, or as they may be amended in the future.

**Data Integrity Requirements**

**VII.**

IT IS FURTHER ORDERED that defendants, in connection with the acquisition, transfer, or servicing of any loan, shall, no later than ninety (90) days after the date of entry of this Order, establish and implement, and thereafter maintain at EMC, a comprehensive data integrity program that is reasonably designed to ensure the accuracy and completeness of data and other information that EMC obtains about consumers' loan accounts, prior to servicing such accounts ("data integrity program"). Such data integrity program, the content and implementation of which must be fully documented in writing, shall be appropriate to the nature, size, complexity, and scope of defendants' activities, and shall include:

- A. the designation of an employee or employees to coordinate and be accountable for the data integrity program;
- B. the regular testing or monitoring of the effectiveness of the data integrity program; and
- C. the evaluation and adjustment of the data integrity program in light of the results of the testing and monitoring required by subparagraph VII.B, any material changes to defendants' operations or business arrangements, or any other circumstances that defendants know or have reason to know may have a material impact on the effectiveness of the data integrity program.

**VIII.**

IT IS FURTHER ORDERED that defendants obtain an assessment and report (an "Assessment") from a qualified, objective, independent third-party professional, using

procedures and standards generally accepted in the profession, within one hundred and eighty (180) days after the date of entry of the Order, and biennially thereafter for eight (8) years after entry of the Order, that:

- A. sets forth the specific data integrity program that defendants have implemented and maintained during the reporting period;
- B. explains how such data integrity program is appropriate to defendants' size and complexity, and the nature and scope of defendants' activities; and
- C. explains how the data integrity program meets or exceeds the protections required by Section VII of this Order.

Defendants shall provide the first Assessment, as well as all: plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, whether prepared by or on behalf of defendants, relied upon to prepare such Assessment, to the Commission, within ten (10) days after the Assessment is delivered to defendants. All subsequent biennial Assessments shall be retained by defendants and provided to the Commission within ten (10) days of request.

#### IX.

IT IS FURTHER ORDERED that, for eight (8) years after the date of entry of this Order, defendants, and each of them, their officers, employees, agents, representatives, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, directly or through any corporation, subsidiary, division, or other device, are hereby permanently restrained and enjoined, in connection with the servicing of any loan, from initiating a foreclosure action, or assessing fees in connection with an actual or threatened foreclosure action, until the defendants have: a) reviewed all available records

pertaining to the consumer's loan to verify that the consumer is in material default under the terms of the loan instruments; b) confirmed that defendants have not subjected the consumer to any of the acts or practices prohibited by this Order, the loan instruments, or law, or if such acts or practices have occurred, that defendants have remedied them; and c) investigated any disputes by the consumer and informed the consumer of the results of the investigation. Defendants shall maintain records sufficient to document the steps they take to investigate and conclude each dispute.

### **MONETARY RELIEF**

#### **X.**

IT IS FURTHER ORDERED that:

- A. Defendants, jointly and severally, shall pay the amount of twenty-eight million dollars (\$28,000,000.00) to remedy the violations of law alleged by the FTC. This amount constitutes redress paid for the benefit of consumers, and does not constitute a civil penalty. On or before five (5) business days after the date of entry of this Order, defendants shall wire transfer the sum of twenty-eight million dollars (\$28,000,000.00) to the Commission or such agent as the Commission may direct, pursuant to instructions provided by the Commission. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of the redress program. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the

Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited as equitable disgorgement into the United States Treasury. Defendants shall have no right to challenge the FTC's choice of remedies under this Section.

- B. In the event that defendants default on any obligation to make any payment set forth in this Order, which default continues for ten (10) days beyond the due date of the payment, the entire unpaid amount together with interest, computed pursuant to 28 U.S.C. § 1961(a) from the date of default to the date of payment, shall immediately become due and payable. Notwithstanding any other provision of this Order, defendants agree that if they fail to meet any payment obligations set forth in this Order, defendants shall pay the costs and attorneys' fees incurred by the Commission or its agents in any attempts to collect amounts due pursuant to this Order. For the purpose of any subsequent proceedings to enforce payments required by this Section of this Order, including but not limited to, a nondischargeability action filed in a bankruptcy proceeding, the defendants waive any right to contest the allegations in the Commission's Complaint.

**DATA**

**XI.**

IT IS FURTHER ORDERED that to facilitate redress under Section X above, the defendants shall provide the Commission and/or its designated agent, within thirty (30) calendar

days after receiving a written request by the Commission or its designated agent, with all information reasonably required to administer redress. Defendants shall provide a complete electronically stored data set in a compatible format (as reasonably determined by the FTC and/or its agent).

## COMPLIANCE MONITORING

### XII.

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- A. Within twenty (20) days of receipt of written notice from a representative of the Commission, defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the business operation, *provided* that defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed. R. Civ. P. 26(c);
- B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45; and
- C. Defendants shall permit representatives of the Commission to interview any

employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## COMPLIANCE REPORTING

### XIII.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order, defendants shall notify the Commission of any changes in defendants' corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided that*, with respect to any proposed change in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, defendant shall notify

the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order, defendants each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to:

- (1) Any changes required to be reported pursuant to subparagraph (A) above;  
and
- (2) A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section XVI.

C. For the purposes of this Order, defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Re: *FTC v. EMC Mortgage Corporation, et al.*

#### **RECORD KEEPING PROVISIONS**

#### **XIV.**

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, defendants, and each of them, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined, in connection with the servicing of any loan, from failing to create and

retain, for a period of three (3) years after the date of preparation of the record, the following records:

- A. Accounting records that reflect the cost of loans acquired and/or sold; revenues generated from servicing fees and/or fees paid by and/or imposed on consumers; and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Customer files containing the names, addresses, telephone numbers (if available), dollar amounts paid, and description of fees or other charges imposed;
- D. Complaints, disputes, and requests from consumers (whether received directly, indirectly or through any third party) and any responses to those complaints, disputes, or requests;
- E. Copies of all training materials and policy manuals; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Section XVI, and all reports submitted to the FTC pursuant to Section XIII.

**DISTRIBUTION OF ORDER BY DEFENDANTS**

**XV.**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, defendants shall deliver copies of the Order as directed below:

- A. Defendants shall deliver a copy of this Order to all principals, officers, directors, managers, employees, agents, and representatives having supervisory responsibility with respect to the subject matter of this Order. For current personnel, delivery shall be within thirty (30) days of service of this Order upon defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities.
- B. Defendants must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

**ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS**

**XVI.**

IT IS FURTHER ORDERED that each defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

**RETENTION OF JURISDICTION**

**XVII.**

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

**FINAL JUDGMENT AND ORDER**

**XVIII.**

The Parties hereby consent to entry of the foregoing Order, which shall constitute a final judgment and order, each Party to bear its own costs and attorneys' fees incurred in connection with this action.

SO ORDERED this 9 day of September, 2008.

  
UNITED STATES DISTRICT JUDGE

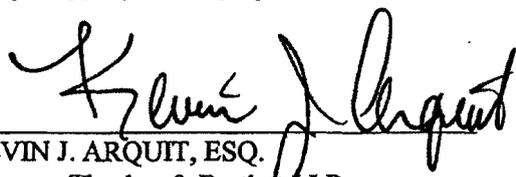
**SO STIPULATED AND AGREED:**

**FOR DEFENDANT EMC MORTGAGE CORPORATION**

  
\_\_\_\_\_  
Mary Haggerty, Chief Executive Officer (Acting)

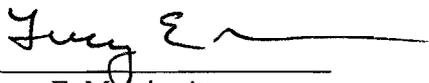
**FOR DEFENDANT THE BEAR STEARNS COMPANIES LLC**

  
\_\_\_\_\_  
Mary Haggerty, Managing Director

  
\_\_\_\_\_  
KEVIN J. ARQUIT, ESQ.  
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**FOR THE PLAINTIFF FEDERAL TRADE COMMISSION**

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