

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re :
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MANHATTAN INVESTMENT FUND LTD., : 00-10922 (BRL)
et al., : 00-10921 (BRL)
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Debtors. : Jointly Administered
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BEAR, STEARNS SECURITIES CORP., :
 :
 : Adv. Pro. 01-02606
Defendant-Appellant, :
Cross-Appellee, : Civil Action No. 07-02511 (NRB)
vs. :
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 :
HELEN GREDD, Chapter 11 Trustee for :
MANHATTAN INVESTMENT FUND LTD., :
 :
 :
Plaintiff-Appellee, :
Cross-Appellant. :
 :
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**MOTION FOR LEAVE TO FILE BRIEF OF INTERNATIONAL
SWAPS AND DERIVATIVES ASSOCIATION, INC. AND
FINANCIAL MARKETS LAWYERS GROUP AS *AMICI CURIAE*
IN SUPPORT OF DEFENDANT-APPELLANT AND REVERSAL**

WACHTELL, LIPTON, ROSEN & KATZ
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Financial Markets Lawyers Group

The International Swaps and Derivatives Association, Inc. (“ISDA”) and the Financial Markets Lawyers Group (“FMLG”) (collectively, “*Amici*”) respectfully move for leave to file the “Brief of International Swaps and Derivatives Association, Inc. and Financial Markets Lawyers Group as *Amici Curiae* in Support of Defendant-Appellant and Reversal,” annexed hereto as Exhibit A, and in support thereof state as follows:

This is an appeal from a decision holding Bear, Stearns Securities Corp. (“Bear Stearns”) liable to creditors of the Manhattan Investment Fund Ltd. (the “Fund”) for amounts that the Fund deposited in its Bear Stearns brokerage account, and subsequently lost in the stock market, during the year prior to the Fund’s bankruptcy filing. The Bankruptcy Court concluded that the Fund was conducting a Ponzi scheme, such that all of its transfers, including deposits into its own account, were presumptively intended to defraud creditors. *Gredd v. Bear Stearns Securities Corp. (In re Manhattan Inv. Fund Ltd.)*, 359 B.R. 510, 2007 WL 60843, at *4-5 (Bankr. S.D.N.Y. Jan. 9, 2007). The Bankruptcy Court further concluded that Bear Stearns is liable for such deposits as their “initial transferee” under section 550(a)(1) of Title 11 of the United States Code (the “Bankruptcy Code”). *Id.* at *6-9.

Amici respectfully seek leave to file an amicus brief in order to have the views of their members heard with respect to this appeal. ISDA is the largest financial trade association in the world, representing leading participants in the derivatives industry. It was chartered in 1985, and comprises more than 780 member institutions from 54 countries on six continents. Since its inception, ISDA has pioneered efforts to identify and reduce the sources of risk in the derivatives and risk management business, including by publishing Master Agreements that serve as the contractual foundation for more than 90% of derivatives transactions globally. FMLG is sponsored by but independent of the Federal Reserve Bank of New York, and is composed of lawyers who support foreign exchange and other financial markets trading in

leading worldwide financial institutions. FMLG's objectives include compiling trade documentation, offering best practices recommendations, and submitting legal briefs, comment letters, and policy papers relating to financial markets developments.

ISDA and FMLG respectfully submit that consideration of the annexed amicus brief will assist the Court in this case given both (i) the critical importance of the legal issues presented, and (ii) the potentially vast negative consequences of the Bankruptcy Court's decision, which will extend far beyond the scope of this particular dispute. At least one of the legal issues presented to this Court—whether a financial intermediary such as Bear Stearns is properly subject to “initial transferee” liability under section 550(a)(1) of the Bankruptcy Code—is an important issue of bankruptcy law that has not yet been addressed in this Circuit. The annexed amicus brief both (i) analyzes section 550(a)(1) by reference to the underlying purposes of fraudulent transfer law, and (ii) attempts to identify guiding principles that can be used by courts to determine whether a party with limited rights over transferred property should be considered its “initial transferee.”

As representatives of the derivatives, swaps, and foreign exchange industries, ISDA and FMLG are also well-positioned to highlight the significant and lasting effects that the Bankruptcy Court's decision, if permitted to stand, will likely have on the financial markets. ISDA and FMLG believe that, if Bear Stearns is held liable for the Fund's trading losses because of its limited, contingent rights in the Fund's accounts, financial intermediaries could, *inter alia*, (i) face potential liabilities that exceed their own proprietary firm capital, (ii) face unprecedented pressure to monitor and investigate their customers' trading activities, and (iii) shy away from servicing customers whose financial condition is subject to any doubt. Since the financial markets trading industry is based largely in this jurisdiction, the industry frequently looks to this Court for guidance on issues that affect its business. Here, the industry is concerned that

financial intermediaries with no discretion over or proprietary stake in their customers' trades can nonetheless be forced to serve as guarantors of those trades when their customers file for bankruptcy protection. However the Court decides this appeal, hearing the perspective of leading industry representatives can only benefit the Court's decision-making process.

In bankruptcy appeals to district courts, Rule 29 of the Federal Rules of Appellate Procedure has been applied by analogy to determine the procedures to be followed by parties filing amicus briefs. *See Triad Int'l Maintenance Corp. v. Southern Air Transport, Inc.*, No. 2:04-CV-1200, 2005 WL 1917512, at *1 (S.D. Ohio Aug. 10, 2005); *In re Dow Corning Corp.*, 255 B.R. 445, 464 (E.D. Mich. 2000). Bear Stearns has consented to the filing of this amicus brief, but the Trustee for the Fund has not. Thus, under Rule 29(a) of the Federal Rules of Appellate Procedure, ISDA and FMLG respectfully request leave to file their amicus brief.

WHEREFORE, ISDA and FMLG respectfully request that this Court enter an order in the form annexed hereto as Exhibit B granting *Amici* leave to file the amicus brief annexed hereto as Exhibit A, together with such other or further relief as may be just.

Dated: New York, New York
April 30, 2007

Respectfully submitted,

WACHTELL, LIPTON, ROSEN & KATZ

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