http://www.kirkland.com/siteFiles/Publications/FB41A87BC266FE9E2B64283AFB214A5A.pdf

28 Aug

Tuesday, August 28, 2007 Email To Friend Print Version

By Tiffany Kary

NEW YORK, USA (Bloomberg): A US federal judge has refused to grant permanent protection from US lawsuits for Bear Stearns Cos.' two bankrupt hedge funds, questioning whether the Cayman Islands should be the principal site of their liquidation.

Simon Whicker, liquidator of Bear Stearns' Cayman Islands hedge funds

US Bankruptcy Judge Burton Lifland in New York on Monday said he "will issue a decision in the next week to 10 days" on whether Bear Stearns picked the proper jurisdiction for the funds, whose assets are mostly located in New York. He banned any suits against the funds while he deliberates.

Bear Stearns, the fifth-largest US investment firm by market value, sought bankruptcy protection for the funds July 31 in the Cayman Islands' Grand Court. The funds, managed in New York and incorporated in the Cayman Islands, invested in home-mortgage securities. The funds collapsed amid rising subprime defaults.

The investment firm closed the funds after granting $1.6 billion in emergency financing in June. The attempted bailout was the biggest since the collapse of Long-Term Capital Management LP in 1998.

Bear Stearns asked for the protection under Chapter 15 of the US bankruptcy law, which bars creditors from suing in US courts while foreign bankruptcies proceed. The funds are Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd and Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Master Fund Ltd.

Under Chapter 15 law, a bankrupt company must show a foreign liquidation is a "center of main interest" to qualify in some cases for a ban on lawsuits in the US. Bear Stearns failed to prove that in today's hearing, Lifland said.

"If the center of main interest is anywhere, it would be in the Southern District of New York," Lifland said.

Lifland said today that while Bear Stearns didn't receive any official objections to its motion for Chapter 15 protection, comments from creditor Merrill Lynch & Co. "could be considered a quasi objection."

He added that many creditors, also large US-based funds with offshore operations, could have a vested interest in not objecting to Bear Stearns's use of a Cayman Islands liquidation.

"It may be there is a reticence to appear here based on their own meriting from offshore entities," Lifland said.

He said offshore entities give the parent company "a parochial interest in lying low."

they are registered there," Lifland wrote in a ruling in New York, noting that most assets were originally in the U.S. The hedge funds were first granted the preliminary injunction on Aug. 9.

"There are no employees or managers in the Cayman Islands, the investment manager for the funds is located in New York, the administrator that runs the back-office operations of the funds is in the United States along with the funds' books and records, and prior to the commencement of the foreign proceeding, all of the funds' liquid assets were located in the United States," Lifland wrote.

Merrill Lynch argued in court documents filed August 24 that a finding that the funds' center of main interest is in the Cayman Islands shouldn't prevent their liquidators from making claims related to money transferred out of them just prior to the bankruptcy filings.

Fred Hodara, a lawyer for the bankrupt funds, noted that a recent decision involving Sphinx Ltd could be a precedent. In Sphinx, also a Cayman Islands-based fund, a judge found that though the Cayman liquidation was not a foreign main proceeding, Sphinx was able to keep US Chapter 15 protection with the Caymans designated as "non-main" proceedings.

Simon Whicker, a liquidator for Bear Stearns' Cayman Islands-based proceedings testified on Monday that, based on preliminary estimates, the enhanced fund could recover as much as $50 million for creditors, and the other fund could recover as much as $25 million. He also said that the enhanced fund held $7.5 million, while the other fund "has no available cash balance."

"We're trying to assess the implications of what the judge said and wait for the judge's decision to come," Whicker said in an interview.