

RECEIVED

FEB 07 2018

OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15507

In the Matter of

JPMorgan Chase & Co.,

Respondent.

MOTION TO AMEND
PLAN OF DISTRIBUTION

AllianceBernstein LP (together with affiliates, "AB"), through its undersigned counsel, hereby moves to amend the Plan of Distribution for the JPMorgan Chase & Co. ("JPM") Non-Disclosure Fair Fund (the "Fund") established by the SEC in the above-referenced matter. This motion is made pursuant to Paragraph 74 of the Plan of Distribution.

I. Summary of Relief Sought

On behalf of its clients, AB attempted to submit timely claims for participation in the distribution of the Fund. However, due to a technology error by a third-party service provider, over five thousand accounts were dropped from AB's submission. AB discovered the error and then acted with diligence to correct the issue, but those claims were determined to be untimely by the Administrator. Given the equities of the situation, AB seeks to amend the Plan of Distribution in order to allow these clients to participate in any further distributions of monies from the Fund after the reissue and reconciliation provisions reflected in Paragraphs 61-76 of the Plan of Distribution. To the extent monies remain for further distribution after this reissue and reconciliation process, AB requests that its clients' claims be recognized and given priority over

(1) further distributions to Eligible Claimants who have already received recoveries under the terms of the Plan of Distribution, or (2) the transfer of monies left in any residual fund to the U.S. Treasury pursuant to Paragraph 66 of the Plan of Distribution. These accounts would have been entitled to recover approximately \$1.9 million had they participated in the original distribution from the Fund.

II. Standing to Make the Motion

This motion is made pursuant to Paragraph 74 of the Plan of Distribution, which states: “[t]he Distribution Plan may be amended upon motion by any party, the Administrator, or upon the Commission’s own motion.” (emphasis added). We understand from discussions with Staff that it is the SEC’s position that the reference to “any party” within Paragraph 74 may not include persons impacted by the Plan of Distribution, such as AB. Any such interpretation is incorrect.

“Party” is not a defined term in the Plan of Distribution, and thus should be given its plain meaning. If “any party” did not include potentially impacted investors, the primary beneficiaries of the Fair Fund, it is not clear what else those terms refer to. For example, “any party” cannot refer to the Commission or the Administrator, as both are separately conferred rights to make such a motion under the express terms of Paragraph 74. Nor would it make sense for “any party” to refer to the Respondent in the underlying enforcement action (JP Morgan), as the Respondent is not a party to the Plan of Distribution. Even if Respondent were a party to the Plan, it would make no sense: (1) to refer to a single Respondent as “any party” rather than using the term “Respondent,” or (2) to give the Respondent greater rights under the Fair Fund than the investors for whose benefit the Fund was created. Finally, “Party” is defined in the Rules of Practice and Rules on Fair Fund and Disgorgement Plans at Rule 101(a)(8) to include “any

person seeking Commission review of a decision.” That is precisely what AB seeks in this motion.

Therefore, “any party” in Paragraph 74 includes AB and its clients as potential Eligible Claimants, and thus AB has standing to bring this motion.

III. Relevant Facts and Background

A. The Fund

The Fund was established by the SEC to distribute the \$200 million in penalties paid by JPM to investors harmed by JPM’s failure to disclose the true amount of trading losses it suffered during the first quarter of 2012, as well as failing to describe accurately the effectiveness of its disclosure controls and procedures. The Fund is intended to compensate investors who purchased JPM common stock through a U.S. securities exchange between April 13, 2012 and May 20, 2012, and suffered harm pursuant to the Plan of Distribution approved by the SEC on February 4, 2015. Claim forms for potential inclusion in the distribution of the Fund were due on September 4, 2015. On August 11, 2017, the Commission issued an order approving distribution of the Fund.

B. AB’s Clients and AB’s Diligence

AB clients had significant positions in JPM common stock during the relevant period. Upon learning of the creation of the Fund, AB took steps to analyze how many accounts were potentially implicated, and determined that approximately 36,351 accounts were eligible to participate in the Fund. On June 29, 2015, two months before claims were due, AB sent the relevant transaction data for all of these impacted accounts to Institutional Shareholder Services (“ISS”), a third party with which AB has contracted to submit claims in Fair Funds and class actions recoveries. That transmission included transaction data for all 36,351 AB-advised

accounts potentially eligible to participate in the Fund. However, due to what we understand to be a technology error on ISS's part, ISS timely filed claim forms with the Administrator for only 11,583 of these accounts. In other words, ISS failed to submit the data for over 24,000 AB-advised accounts. We understand that 5,592 of these missing accounts would have been eligible to participate in a distribution from the Fund had ISS timely submitted them to the Administrator.¹

In May 2017, ISS provided AB with documentation relating to those accounts for which a claim form had been timely submitted. AB's review of this documentation uncovered that certain AB accounts were not included and AB immediately followed up with ISS to determine the status of these other accounts. At that point, the technology error was admitted by ISS, and AB was informed that the 5,592 accounts were not included in the previous claim form submission. AB immediately instructed ISS to submit claim forms for these accounts. Those claims were submitted after the initial deadline established by the Plan of Distribution, but still before any distributions were made from the Fund. On June 6, 2017, AB learned from ISS that the claims related to those accounts had been rejected as untimely.

AB and ISS have had several conversations with the Staff in an attempt to explore potential ways to allow these 5,592 accounts to participate in the Fair Fund. During the last conversation in December of 2017, the Staff instructed AB to follow up in early 2018 to see if there were any monies left for further distribution following the initial distribution from the Fund.

¹ The remaining accounts may not have been entitled to a distribution because of the timing of the buys/sells in the accounts, or the losses did not exceed the \$10 minimum. (See Paragraph 52 of the Plan of Distribution).

According to AB's calculations, the 5,592 accounts in question would have been able to recover approximately \$1.9 million from the Fund but for ISS's error. Most of these losses were in mutual funds managed by AB.

IV. Amendment of the Plan of Distribution is Required on Equitable Grounds

The basis for relief sought in this motion is principles of equity and fairness. The primary purpose of the Fund was to compensate defrauded investors in JPM stock. AB's clients were collectively one of the largest such investors. We understand that the Administrator reviewed 127,000 claims for eligibility to participate in the Fund – and thus AB's 5,592 clients made up a substantial portion of the total population of impacted investors. To exclude these 5,592 accounts from any distribution would be contrary to the purposes of the Fund.

AB took appropriate steps to ensure that all of its clients could participate in the Fund. The only reason claim forms were not timely submitted for 5,592 of its clients is because of a technology glitch at a third-party vendor. AB could not have discovered the error earlier, and once the error was discovered, it acted with the utmost diligence. AB took immediate steps in an attempt to correct the error, resubmitting those claims.

Under the circumstances, the fair and equitable approach would be to allow AB's clients to participate in any further distributions or to pay its claims (in whole or in part) out of any residual monies. Precedent exists for the Commission to amend a Plan of Distribution for a Fair Fund when substantial claims are identified after the initial distribution. For example, in *In re Invesco Funds Group, Inc.*, SEC Release No. 64472, 2011 WL 1790485 (May 11, 2011), the Commission amended a Plan of Distribution to allow impacted investors to participate in the Fair Fund after the initial distribution had been made. There, impacted investors were not able to participate in an initial distribution because a third-party intermediary that was responsible for

handling the omnibus account of those investors could not identify the underlying beneficial account holders at the time – a technical failing not unlike the one at issue here. After the initial distribution, the intermediary performed a different search of its records that potentially would yield the necessary information and allow the impacted investors to participate. The Commission ordered the Distribution Plan amended to allow these investors to participate in the Fair Fund’s residual monies. The Commission specifically noted that the amendment of the Plan was “[c]onsistent with the Plan’s primary object to distribute funds to affected investors.” *See also In re Smith Barney Fund Management LLC and Citigroup Global Markets Inc.*, SEC Release No. 65460, 2011 WL 4526127 (Sept. 30, 2011) (amending a Plan of Distribution to allow for a disbursement of over \$600,000 after it was discovered that mutual funds missed out on payments in an initial distribution due to an oversight on the part of fund advisers).

WHEREFORE, AB respectfully requests that the Commission amend the Plan of Distribution in a form that would allow AB’s clients to participate in any further distributions from the Fund, or grant such other relief as is just and proper under the circumstances.

DATED: January 24, 2018

Respectfully submitted,



Sean M. Murphy
Milbank Tweed Hadley & McCloy LLP
28 Liberty Street
New York, NY 10005
(212) 530-5688

Counsel to AllianceBernstein LP

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15507

In the Matter of

JPMorgan Chase & Co.,

Respondent.

CERTIFICATE OF SERVICE

I, Sean M. Murphy, hereby certify that on January 24, 2018, I caused to be sent, by certified mail, copies of the Notice of Appearance of Sean M. Murphy as counsel to AllianceBernstein LP and the Motion by AllianceBernstein LP to Amend the Plan of Distribution to the following:

RCB Fund Services, LLC
JPM Fair Fund
P.O. Box 6976
Syracuse, NY 13217-6976

Susan Pecaro
Division of Enforcement, Office of Distributions
100 F Street NE
Washington, D.C. 20549

DATED: January 24, 2018

Respectfully submitted,



Sean M. Murphy
Milbank Tweed Hadley & McCloy LLP
28 Liberty Street
New York, NY 10005
(212) 530-5688

Counsel to AllianceBernstein LP

MILBANK, TWEED, HADLEY & McCLOY LLP

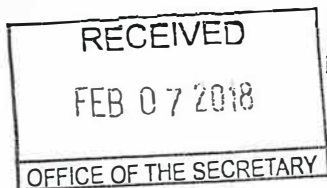
LOS ANGELES
213-892-4000
FAX: 213-629-5063

WASHINGTON, D.C.
202-835-7500
FAX: 202-835-7586

LONDON
44-20-7615-3000
FAX: 44-20-7615-3100

FRANKFURT
49-69-71914-3400
FAX: 49-69-71914-3500

MUNICH
49-89-25559-3600
FAX: 49-89-25559-3700



28 LIBERTY STREET
NEW YORK, NY 10005

212-530-5000
FAX: 212-530-5219

Sean M. Murphy
Partner
DIRECT DIAL NUMBER
212-530-5688
Fax: 212-822-5688
E-MAIL: smurphy@milbank.com

January 24, 2018

BEIJING
8610-5969-2700
FAX: 8610-5969-2707

HONG KONG
852-2971-4888
FAX: 852-2840-0792

SEOUL
822-6137-2600
FAX: 822-6137-2626

SINGAPORE
65-6428-2400
FAX: 65-6428-2500

TOKYO
813-5410-2801
FAX: 813-5410-2891

SÃO PAULO
55-11-3927-7700
FAX: 55-11-3927-7777

VIA CERTIFIED MAIL

Brent Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: JPMorgan Chase & Co., File No. 3-15507 – Fair Fund Distribution

Dear Mr. Fields,

Enclosed for Commission action please find a notice of appearance and a Motion to Amend the Plan of Distribution in the above-referenced Fair Fund proceeding, together with a Certificate of Service. Please contact me if you have any questions. Thank you for your attention.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Sean M. Murphy".

Sean M. Murphy

Cc (via certified mail with enclosures):

RCB Fund Services, LLC
JPM Fair Fund
P.O. Box 6976
Syracuse, NY 13217-6976

Susan Pecaro
Division of Enforcement, Office of Distributions
100 F Street NE
Washington, D.C. 20549