May 20, 2015

Jonathan S. Pressman

+1 212 230 8846 (t)
+1 212 230 8888 (f)
jonathan.pressman@wilmerhale.com

BY FEDERAL EXPRESS AND EMAIL

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0506

Re: United States of America v. JPMorgan Chase & Co.

Dear Mr. Scheidt:

We submit this letter on behalf of our client, JPMorgan Chase & Co. ("JPMC") in connection with the above captioned proceeding.

JPMC seeks the assurance of the staff of the Division of Investment Management (the "Staff") that it would not recommend enforcement action to the U.S. Securities and Exchange Commission (the "Commission") under Section 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") and/or Rule 206(4)-3 thereunder (the "Rule"), if any investment adviser that is required to be registered pursuant to Section 203 of the Advisers Act pays JPMC, or any of its associated persons as defined in Section 202(a)(17) of the Advisers Act, a cash payment, directly or indirectly, for the solicitation of advisory clients, notwithstanding the existence of the entry of the Guilty Plea described below.[1] While the Plea Agreement pursuant to which the Guilty Plea was entered does not operate to prohibit or suspend JPMC or any of its associated persons from being associated with or acting as an investment adviser (except as provided in Section 9(a) of the Investment Company Act of 1940 (the "Investment Company Act"), from which relief has been separately requested as described in footnote 2) and does not relate to solicitation activities on behalf of any investment adviser, it will, by operation of the Rule, affect the ability of JPMC and its associated persons to receive such payments.[2] The Staff in many other instances has granted no-action relief under the Rule in similar circumstances.

---

[1] United States of America v. JPMorgan Chase & Co., Case No. 3:15-cr-79 (SRU) (D. Conn. May 20, 2015).

[2] Under Section 9(a) of the Investment Company Act, JPMC (the settling defendant), and its affiliated persons as defined in section 2(a)(3) of the Investment Company Act ("Affiliated Persons") will, as a result of the Guilty Plea, be prohibited from serving or acting as, among other things, an investment adviser or depositor of any registered investment company or principal underwriter for any registered open-end investment company or registered unit investment trust. JPMC and its Affiliated Persons who act in the capacities set forth in Section 9(a) of the Investment Company Act filed an application under Section 9(c) of the Investment Company Act requesting the Commission to issue both temporary and permanent orders exempting them, any existing company of which JPMC is an affiliated person within the meaning of section 2(a)(3) of the Investment Company Act, and to any other company of which JPMC may become an affiliated person in the future, from the restrictions of Section

BACKGROUND

On May 20, 2015, the U.S. Department of Justice (the "Department of Justice") filed a criminal information in the District Court for the District of Connecticut (the "District Court") charging JPMC with a one-count violation of the Sherman Antitrust Act, 15 U.S.C. § 1 (the "Information"). The Information charges that, from July 2010 until at least January 2013, JPMC, through one of its euro/U.S. dollar ("EUR/USD") traders, entered into and engaged in a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the U.S. and elsewhere (the "Conduct"). The Conduct involved near daily conversations, some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders, including the EUR/USD trader employed by JPMC.

JPMC has agreed to resolve the action brought through a plea agreement presented to the District Court on May 20, 2015 (the "Plea Agreement"). Under the Plea Agreement, JPMC agreed to enter a plea of guilty to the charge set out in the Information (the "Guilty Plea"). In addition, JPMC will make an admission of guilt to the District Court. Applicants expect that the District Court will enter a judgment against JPMC that will require remedies that are materially the same as set forth in the Plea Agreement.

According to the Plea Agreement, JPMC agrees that the District Court shall order a term of probation and be subject to certain conditions. In addition, JPMC agreed to pay a criminal fine of $550 million.

DISCUSSION

The Rule prohibits an investment adviser that is required to be registered under the Advisers Act from paying a cash fee, directly or indirectly, to any solicitor that has been convicted within the previous ten years of any felony or misdemeanor involving the conduct described in Section 203(e)(2)(A)-(D) of the Advisers Act. Section 202(a)(6) of the Advisers Act defines "convicted" to include, among other things, a "plea of guilty." Entry of the Guilty Plea would cause JPMC to be disqualified under the Rule because it was convicted of a felony arising

---

9(a). The applicants believe that they meet the standards for exemptive relief under Section 9(c), and they expect that the Commission will issue a permanent order in due course. In no event will JPMC or any of its Affiliated Persons act in any capacity enumerated in Section 9(a) unless and until the Commission issues an order pursuant to Section 9(c) of the Investment Company Act exempting them from the prohibitions of Section 9(a) of the Investment Company Act resulting from the Guilty Plea. On May 20, 2015, the Commission issued a temporary order (SEC Release No. IC-31613) effective as of the date of the Guilty Plea, and the applicants expect the Commission will issue a permanent order in due course.

out of conduct of a bank and, accordingly, absent no-action relief, JPMC and its associated persons would be unable to receive cash payments for the solicitation of advisory clients.

In the release adopting the Rule, the Commission stated that it "would entertain, and be prepared to grant in appropriate circumstances, requests for permission to engage as a solicitor a person subject to a statutory bar."[3] We respectfully submit that the circumstances present in this case are precisely the sort that warrant a grant of no-action relief.

The Rule's proposing and adopting releases explain the Commission's purpose in including the disqualification provisions in the Rule. The purpose was to prevent an investment adviser required to be registered under the Advisers Act from hiring as a solicitor a person whom the adviser was not permitted to hire as an employee, thus doing indirectly what the adviser could not do directly.[4] In the proposing release, the Commission stated that:

> [b]ecause it would be inappropriate for an investment adviser to be permitted to employ indirectly, as a solicitor, someone whom it might not be able to hire as an employee, the Rule prohibits payment of a referral fee to someone who ... has engaged in any of the conduct set forth in Section 203(e) of the [Advisers] Act ... and therefore could be the subject of a Commission order barring or suspending the right of such person to be associated with an investment adviser.[5]

The Plea Agreement does not by its terms bar, suspend, or limit JPMC or any person associated with JPMC from acting in any capacity under the federal securities laws (except as provided in Section 9(a) of the Investment Company Act).[6] JPMC and its associated persons have not been sanctioned for conduct in connection with the solicitation of advisory clients for investment advisers. Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit any investment adviser from paying JPMC or its associated persons for engaging in solicitation activities under the Rule.

---

3 *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Advisers Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295.

4 *Id.*

5 *See* Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 615 (Feb. 2, 1978), 14 S.E.C. Docket (CCH) 89, 91.

6 *See supra* note 2.

The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities that have violated a wide range of federal securities laws and rules thereunder, or permanently enjoined by courts of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.[7] We submit that the reasoning underlying these letters equally applies when, as here, a party has pled guilty to a felony or misdemeanor arising out of its conduct as the business of a bank. We acknowledge that the facts outlined above do not line up with those set out in Dougherty & Company LLC, SEC No-Action Letter (July 3, 2003).

UNDERTAKINGS

In connection with this request, JPMC undertakes that:

1. it or any person associated with it will conduct any cash solicitation arrangement entered into with any investment adviser registered or required to be registered under Section 203 of the Advisers Act in compliance with the terms of Rule 206(4)-3 as if JPMC was not a disqualified person for purposes of the Rule by virtue of the Guilty Plea;

2. it will comply with the terms of the Plea Agreement, including, but not limited to, payment of a fine; and

3. for ten (10) years from the date of the entry of the Guilty Plea, JPMC and any person associated with it or any investment adviser with which JPMC or any person associated with it have a solicitation arrangement subject to the Rule will disclose the Plea Agreement and Guilty Plea in a written document that is delivered to each person whom JPMC or its associated persons solicits (a) not less than 48 hours before the person enters into a written or oral investment advisory contract with the investment adviser or (b) at the time the person enters into such

---

[7] *See, e.g.*, Royal Bank of Canada, SEC No-Action Letter (pub. avail. Dec. 19, 2014); Bank of America, N.A., SEC No-Action Letter (pub. avail. Nov. 25, 2014); Credit Suisse AG, SEC No-Action Letter (pub. avail. May 20, 2014); RBS Securities, Inc., SEC No-Action Letter (pub. avail. Nov. 26, 2013); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. July 15, 2013); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. Jan. 9, 2013); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. September 21, 2012); J.P. Turner & Company, L.L.C., et al, SEC No-Action Letter (pub. avail. Sept. 10, 2012); GE Funding Capital Market Services, Inc., SEC No-Acton Letter (pub. avail. Jan. 25, 2012); Wells Fargo Bank, N.A., SEC No-Action Letter (pub. avail. Sept. 21, 2012); J.P. Turner and Company, L.L.C. et al., SEC No-Action Letter (pub. avail. Sept. 10, 2012); GE Funding Capital Market Services, Inc., SEC No-Action Letter (pub. avail. Jan. 25, 2012); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. July 11, 2011); J.P. Morgan Securities LLC, SEC No-Action Letter (pub. avail. June 29, 2011); UBS Financial Services Inc., SEC No-Action Letter (pub. avail. May 9, 2011); and Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 22, 2010).

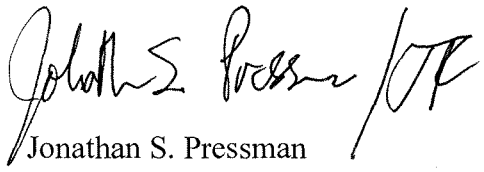
a contract, if the person has the right to terminate such contract without penalty within five (5) business days after entering into the contract.

* * *

CONCLUSION

We respectfully request the Staff to advise us that it will not recommend enforcement action to the Commission if an investment adviser that is required to be registered with the Commission pays JPMC or any of its associated persons a cash payment for the solicitation of advisory clients, notwithstanding the Guilty Plea.

Sincerely,



Jonathan S. Pressman