



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023-17; Exemption

Application No. D-11963]

Exemption from Certain Prohibited Transaction Restrictions

Involving J.P. Morgan Securities LLC, J.P. Morgan

Investment Management Inc., J.P. Morgan Advisors (formerly,

J.P. Morgan Securities; JPMS Brokerage), and Chase Wealth

Management Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). This exemption involves certain principal trades involving J.P. Morgan Securities LLC (JPMS), J.P. Morgan Investment Management Inc. (JPMIM), J.P. Morgan Advisors (formerly, J.P. Morgan Securities; JPMS Brokerage), and Chase Wealth Management (CWM) (collectively, the Applicants), and certain of their client plans that are subject to Code section 4975 but not covered by Title I of ERISA (the Non-ERISA Plan Clients).¹ These principal transactions resulted in the Non-ERISA Plan

¹ JPMS Brokerage and CWM are lines of business within JPMS.

Clients purchasing or selling securities from or to the Applicants.

DATES: The exemption will be in effect from December 14, 2010, until September 16, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Vaughan of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Applicants requested an individual exemption pursuant to Code section 4975(c)(2) in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, (5 USC App. 1 (1996)) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

On October 15, 2021, the Department published a notice of proposed exemption in the *Federal Register*.² After considering the entire record developed in connection with the Applicants' exemption application, including the information discussed below, the Department has determined to grant the exemption subject to the conditions described below. The exemption provides only the relief specified in

² 86 FR 57446 (October 15, 2021).

its text and does not provide relief from violations of any law other than the prohibited transaction provisions of ERISA expressly stated herein. The Department makes the requisite findings under Code section 4975(c)(2) that the exemption is (1) administratively feasible, (2) in the interest of the plans and their participants and beneficiaries, and (3) protective of the rights of the plans' participants and beneficiaries, so long as all of the exemption conditions are met. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicants. Absent these or similar conditions, the Department would not have granted this exemption.

BACKGROUND

1. As discussed in further detail in the notice of proposed exemption, and described below, JPMS and JPMIM previously caused or executed prohibited principal transactions on behalf of certain plan clients covered by the Employee Retirement Income Security Act of 1974 (ERISA Plan Clients) and on behalf of certain plan clients covered only by the Internal Revenue Code of 1986 (Non-ERISA Plan Clients).³ The Applicants previously corrected the ERISA Plan Client-related prohibited transactions under the

³ 86 FR 57446 (October 15, 2021).

Department's Voluntary Fiduciary Compliance Program (the VFC Program) and received "no action letters."⁴

2. The VFC Program is not available to correct prohibited transactions involving non-ERISA plans. Therefore, the Applicants requested an exemption for JPMS and JPMIM to correct the prohibited principal transactions that involved their Non-ERISA Plan Clients (the Covered Transactions).

The Covered Transactions involving JPMIM⁵

3. A total of 3,989 trades of securities issued by third parties were executed for the Chase Wealth Management line of business (the CWM Wrap Program) on a principal basis. According to the Applicants, 3,985 of the trades were sales by a Non-ERISA Plan Client to a counterparty (a JPM Counterparty) affiliated with JPMorgan Chase & Co. (JPMorgan), with an aggregate sales price of \$2,682,332.34 (the JPMIM Sales Transactions),⁶ and four trades were purchases by a Non-ERISA Plan Client from a JPM Counterparty (the JPMIM Purchase Transactions) with an aggregate purchase price of \$46,940.55. The purchased shares had not been re-sold by the Non-ERISA Plan Client as of the date the transactions were corrected.⁷ The Applicants represent that JPMIM and JPMS endeavored to

⁴ See 67 FR 15062 (March. 28, 2002), as updated at 71 FR 20262 (April 19, 2006).

⁵ As described more fully in the proposed exemption and in Section II, below.

⁶ These trades involved 3,784 Non-ERISA Plan Clients.

⁷ These trades involved two Non-ERISA Plan Clients.

correct the prohibited transactions as quickly as possible in the manner described under the "Covered Transaction Corrections" heading of the proposed exemption.⁸

4. The Applicants represent that the trades did not result in any commissions being paid by the Non-ERISA Plan Clients to JPMIM or its affiliates. Rather, the trades were executed under the CWM Wrap Program, under which all clients pay a wrap fee (i.e., a comprehensive charge) that covered all of the investment advisory-related and transactional services provided by JPMorgan to such accounts. As a result, no additional compensation was paid in connection with either the JPMIM Sales Transactions or the JPMIM Purchase Transactions. The Applicants represent that JPMIM is no longer enabled to execute trades on JPM-X, an "alternative trading system" owned and operated by JPMS.

5. Further, the Applicants represent that there were no identifiable profits received by JPMIM or its affiliates in connection with any of the aforementioned transactions, because the securities traded were liquid securities that JPMorgan and its affiliates regularly hold in inventory, deal in or make a market in. In this regard, because JPMorgan is a market maker in the liquid securities that were traded with the Non-ERISA Plan Clients, JPMorgan keeps a regular inventory of such securities to facilitate the purchase and sale of such securities, as well as other

⁸ 86 FR 57446, 57448.

types of transactions involving such securities, with various counterparties. To illustrate, the Applicants present the following example:

Assume that there was a principal trade between JPMorgan and a Non-ERISA Plan Client involving a sale by JPMorgan of ten shares of a stock (Stock X) to the Non-ERISA Plan Client, at a fair market value of \$50 per share. On the day of the sale, JPMorgan would hold thousands (and likely many times more) of Stock X shares in its inventory, and this inventory would change constantly throughout the day and from day to day as a result of transactions involving Stock X between JPMorgan and various counterparties. When JPMorgan sells ten Stock X shares to the Non-ERISA Plan Client, JPMorgan will deduct 10 Stock X shares from its inventory. However, because all of the Stock X shares in the JPMorgan inventory are the same and are fungible, it does not match the shares sold or disposed of with any previously acquired shares.

6. In the example above, it is not possible to identify the cost to JPMorgan of the specific shares that were sold to the Non-ERISA Plan Client because: (i) the Stock X shares in the JPMorgan inventory were all acquired at different prices and at different times (could be above, below or at \$50 per share), and (ii) JPMorgan does not distinguish the Stock X shares sold to the Non-ERISA Plan Client from the rest of the Stock X shares in the inventory. Therefore, it is not possible to determine whether JPMorgan has earned any profit from the sale of such shares to the Non-ERISA Plan Client at \$50 per share.

The Covered Transactions involving JPMS Brokerage⁹

⁹ As described in the proposed exemption and in Section II, below.

7. According to the Applicants, fifteen (15) trades involving JPMS Brokerage were mistakenly executed on a principal basis, although not on JPM-X. Of the fifteen (15) trades, two (2) were sales of securities¹⁰ by a Non-ERISA Plan Client to a JPM Counterparty (the JPMS Brokerage Sales Transactions) with an aggregate sales price of \$61,854.54, and thirteen (13) trades were purchases of securities by a Non-ERISA Plan Client from a JPM Counterparty (the JPMS Brokerage Purchase Transactions) with an aggregate purchase price of \$557,232.08.¹¹ The purchased securities were subsequently sold by the Non-ERISA Plan Client before the prohibited transactions were discovered. The Applicants state that JPMS Brokerage endeavored to correct the prohibited transactions as quickly as possible in the manner described under the "Covered Transaction Corrections" heading of the proposed exemption.¹²

8. The Applicants represent that the trades in question did not result in any commissions being paid by the Non-ERISA Plan Clients to JPMS or its affiliates. Rather, the trades were executed under a wrap fee program, under which all clients pay a wrap fee (i.e., a comprehensive charge) that covered all of the investment advisory-related and transactional services provided by

¹⁰ These trades involved two non-ERISA Plan Clients.

¹¹ These trades involved seven Non-ERISA Plan Clients.

¹² 86 FR 57446, 57448.

JPMorgan to such accounts.¹³ As a result, no additional compensation was paid in connection with either the JPMS Brokerage Sales Transactions or the JPMS Brokerage Purchase Transactions.

9. Further, the Applicants represent that there were no identifiable profits received by JPMS or its affiliates in connection with any of the aforementioned transactions, because the securities traded were liquid securities that JPMorgan and its affiliates regularly hold in inventory, deal in or make a market in. The Applicants state their explanation above (as to why there were no identifiable profits received by JPMIM or its affiliates with respect to the JPMIM Sales Transactions) also applies here (as to why there were no identifiable profits paid to JPMS with respect to the JPMS Brokerage Sales Transactions and JPMS Brokerage Purchase Transactions).

No Intent to Profit from Trades

10. The Applicants represent that JPMorgan did not cause the principal trades in question with the Non-ERISA Plan Clients with an intent to profit from such trades. The Applicants represent that the trades were executed by mistake and the execution was not motivated by the receipt of any profit or other compensation by JPMorgan.

¹³ The Applicant notes that the Covered Transactions involving JPMS Brokerage were technically executed under a different wrap fee program that does not have an official name but is similar to the CWM Wrap Program.

11. The Applicants state that all principal trades with the Non-ERISA Plan Clients were executed at fair market value and achieved best execution, and, as a result of the correction process that JPMorgan undertook, all of the affected Non-ERISA Plan Clients were restored economically to the positions that they would have been in had the principal trades not occurred (or, in certain cases, to positions that are more economically favorable than the positions they would have been in).

12. In addition, the Applicants represent that with respect to the trades executed by JPM-X, which represented the vast majority of the principal trades in question, JPM-X was set up structurally so that all executions must be at or within the National Best Bid and Offer (NBBO) and there was a less than 1% chance (based on volume of shares traded) that any execution would be against a JPMorgan principal account, further indicating that there was no intention on the part of JPMorgan to take advantage of the Non-ERISA Plan Clients in connection with these trades.

The Proposed Exemption

13. On October 15, 2021, the Department of Labor (the Department) published a proposed exemption that would permit the Covered Transactions if the conditions therein were met.¹⁴ Among these conditions, the Applicants were required to apply the same conditions to correct the

¹⁴ 86 FR 57446.

Covered Transactions that they applied to correct the transactions involving their ERISA Plan Clients under the VFC Program. In addition, an independent fiduciary, Evercore Trust Company, N.A. (Evercore),¹⁵ was required to determine that that the correction methodologies utilized to correct the transactions: (a) were sufficient to return each affected Non-ERISA Plan Client to at least the position it would have been in had the Covered Transaction not occurred; (b) provided Non-ERISA Plan Clients with a greater benefit than other correction methodology alternatives, consistent with the VFC Program; and (c) were properly applied based on a review of a representative sample of the corrections selected at random by Evercore.

14. The proposed exemption invited all interested persons, including current participants and beneficiaries of the Plans, to submit comments or requests for a hearing to the Department within 90 days of the date of publication. The Applicants agreed to provide notice to interested persons (NTIP) by U.S. mail to the beneficial owner of each Non-ERISA Plan Client affected by the Covered Transactions, as defined in Section II, below, within 60 days of the publication of the notice of proposed exemption in the Federal Register (Notice of Proposed Exemption) and that the NTIP would include a copy of the Notice of

¹⁵ Evercore sold its institutional trust and independent fiduciary business to Newport Group Inc. and its subsidiary, Newport Trust Company (NTC). Since October 19, 2017, NTC has served as the independent fiduciary in connection with this proposed exemption.

Proposed Exemption. Throughout the comment period, the Department received several requests from the recipients of the NTIP to explain the proposed transactions. It was during these conversations that the Department was informed that the Notice of Proposed Exemption had not been included in the NTIP. The Department contacted the Applicants who confirmed that there was an error in the mailing which excluded the Notice of Proposed Exemption from the NTIP.

15. To ensure interested persons would receive full notice and have sufficient time to provide their comments to the Department, the Applicants agreed that a second notice to interested persons (the Second NTIP) would be delivered to all Non-ERISA Plan Clients along with a copy of the Notice of Proposed Exemption. On March 22, 2022, the Applicants informed the Department that the Second NTIP dated March 14, 2022, was mailed via U.S. first-class mail to the beneficial owner of each Non-ERISA Plan Client affected by the Covered Transactions.¹⁶ Accordingly, the Department extended the comment period through April 18, 2022.¹⁷

COMMENTS

¹⁶ The Department considers the Second NTIP delivery to be completed three days following the March 14, 2022, mailing via U.S. first-class mail.

¹⁷ Because the requisite 30-day comment period would end on the weekend (Saturday, March 16, 2022), the Department added an additional two days to the comment period to ensure that interested persons had a sufficient opportunity to comment.

16. During the comment period, the Department received one written comment from the Applicants that requested certain changes to the proposed exemption's operative language and Summary of Facts and Representations. The Applicants' comments and the Department's responses thereto are discussed below. The Department did not receive any requests for a public hearing.

Applicants' Requested Revisions to Operative Language

17. Requested Clarification and Change to Section I of the Proposed Exemption. On page 57450 of the proposed exemption, the first sentence of Section I states that: "If the proposed exemption is granted, the sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1)(A), (D) and (E), shall not apply, effective December 14, 2010, until September 16, 2013, to certain principal trades involving J.P. Morgan Securities LLC (JPMS), J.P. Morgan Investment Management Inc. (JPMIM), J.P. Morgan Securities (JPMS Brokerage), and Chase Wealth Management (CWM) (collectively, the Applicants), and certain of their client plans that are subject to Code section 4975 but covered by not Title I of ERISA (the Non-ERISA Plan Clients)."¹⁸

¹⁸ 86 FR 57446,57450. Please note that all references to page numbers of the proposed exemption refer to the version that was published in the Federal Register on October 15, 2021.

The Applicants request that the Department clarify that JPMS Brokerage and CWM are lines of business within JPMS to be consistent with how JPMS Brokerage and CWM are introduced in the proposed exemption's Summary of Facts and Representations. Further, the Applicants request that the phrase: "but covered by not Title I of ERISA" be changed to read: "but not covered by Title I of ERISA," for clarity.

Department's Response: After considering the Applicants' comments, the Department has revised Section I of the grant notice as requested.

18. Requested Change to Section II of the Proposed Exemption. On page 57450 of the proposed exemption, the first sentence of Section II(a) states that: "For purposes of this proposed exemption, the term "Covered Transaction means: . . .," and then lists a series of transactions.

The Applicants suggest changing the term, "Covered Transaction" in the sentence, which is the introductory paragraph of this section, to "Covered Transactions" (i.e., from singular to plural), because there was more than one transaction.

Department's Response: After considering the Applicants' comment, the Department has made a corresponding revision to the introductory paragraph of Section II of the grant notice as requested.

19. Requested Change to Section II(a) of the Proposed Exemption. On page 57450 of the proposed exemption, the

first sentence of Section II(a) states: "3,989 trades of securities issued by third-parties that were executed on a principal basis for certain JPMS-sponsored wrap fee programs under the Chase Wealth Management line of business (i.e., the CWM Wrap Program) on or about July 27 and July 30, 2012."

The Applicants request changing the phrase: "on or about" to the word: "on," as the dates listed are the exact dates on which the transactions occurred.

Department's Response: After considering the Applicant's request, the Department has revised Section II(a) of the grant notice to reflect this change.

20. Requested Change to Section III(g) of the Proposed Exemption. On page 57450 of the proposed exemption, Section III(g) states: "The Covered Transactions were conducted using trading systems and procedures designed to result in trades being conducted at prices that are as favorable as possible to the Non-ERISA Plan Clients under prevailing market conditions, and were in fact conducted at terms and prices no less favorable to the Non-ERISA Plan Clients than the prices the financial advisers could have obtained for the Non-ERISA Plan Clients by conducting trades in arm's-length transactions with third-party market participants;. . ."

The Applicants suggest changing the phrase in Section III(g) of the proposal that reads "than the prices the

financial advisers" to the phrase: "than [the prices] the Applicants" to be more precise.

Department's Response: After considering the Applicants' comment, the Department has revised Section III(g) of the grant notice to reflect this change as requested.

21. Change to Section IV of the Proposed Exemption. The Applicants and the Department discussed making certain changes to the recordkeeping provision in Section IV of this exemption, which requires the Applicants to maintain, or cause to be maintained, for a period of six (6) years from the date of any Covered Transaction, such records as are necessary to enable the persons described in Section IV(b) to determine whether the conditions of this exemption have been met. Specifically, the Applicants requested a modification to the verb tense in Section IV of the proposed exemption to reflect that, in their view, the recordkeeping period had passed. In response, the Department informed the Applicants that it intended to modify Section IV so that the recordkeeping requirement would be effective for six (6) years from the publication date of the exemption.

The Applicants raised several concerns in response, including that the Applicants may not have all the records required under Section IV, because of the passage of time between the Covered Transactions and the publication date

of the exemption. In this regard, the Applicants were not aware such records would be required to be maintained for a longer period than is required in similar, prior granted retroactive exemptions, which is typically six (6) years from the date of the covered transactions. Nor did the Applicants learn about the Department's intended modification until after the Applicants submitted their comment during the comment period. Finally, the Applicants state that most of the individuals who are familiar with the records associated with the Covered Transactions are no longer employed with the Applicants, and it would be logistically challenging to locate and retrieve such records as more time progresses.

In light of the Department's intent for the recordkeeping period to begin on the publication date of the exemption, the Applicants request that Section IV(a) be modified slightly to require the Applicants to "use commercially reasonable efforts to (i) identify such records, to the extent they are available to the Applicants as of the date of publication of this final exemption in the *Federal Register*, as are necessary to enable the persons described in Section IV(b)(1) to determine whether the conditions of this exemption have been met and (ii) maintain, or cause to be maintained (including on behalf of the Applicants by any agent, advisor or other service provider to the Applicants) such records, for a period of

six (6) years from the date this final exemption is published in the *Federal Register*." Furthermore, the Applicants request that the exemption requires that record requests be made "upon reasonable advance request," due to the logistical challenges the Applicant may confront in making such records available for review.

Department's Response: The Department views the change to the recordkeeping requirement in Section IV, requiring the Applicants to maintain such records for six (6) years beginning on the publication date of the exemption, as necessary to allow the individuals referenced in Section IV(b) to verify the Applicants' compliance with the exemption conditions and their representations submitted to support the application. The present-tense language in Section IV of the proposed exemption could have had the effect of rendering the recordkeeping requirement meaningless and frustrated the ability of the parties described in Section IV(b)(1) to verify that the Applicants have adhered to the exemption conditions.

However, the Department is also cognizant that the Applicants may not have retained all of the records referenced in Section IV(a) due solely to the passage of time since the Covered Transactions occurred, and that the Applicants did not anticipate the Department would include a recordkeeping requirement that would extend the period the records were required to be maintained from the

publication date of the final exemption rather than the date the Covered Transactions covered transactions occurred.

Based on conversations with NTC, the independent fiduciary in connection with the exemption, the Department understands that NTC has retained the records it relied on to review the Applicants' corrections of the Covered Transactions and make any determinations required under the exemption.¹⁹ Based upon this understanding, as well as representations by the Applicants regarding the challenges they confronted in maintaining the records several years after the Covered Transactions occurred, the Department views the Applicants' proposed change of the recordkeeping provision as a reasonable modification to the proposed exemption, provided that, if the Applicants do not themselves possess any records necessary to comply with Section IV of the exemption, the Applicants will obtain such records from the independent fiduciary.

Other Requested Revisions

22. Minor Revisions. At the Applicants' request, the Department made several minor, non-substantive revisions to the proposed exemption's title and Summary of Facts and Representations. The Department does not discuss the

¹⁹ NTC confirmed to the Department that it has maintained the records associated with the services it provided to the Applicants in accordance with its own record retention policies and procedures and would provide them to the Applicants if necessary to satisfy the exemption conditions.

revisions in this grant notice but notes that the requested revisions may be found in the exemption application file which is available through the Department's Public Disclosure Office.²⁰

23. Other Clarifications. On its own motion, the Department made several minor and non-substantive revisions that are intended to clarify the operative language of the exemption.

24. Accordingly, after considering the entire record developed in connection with the Applicant's exemption request, and in consideration of: (a) the exemption's protective conditions; (b) the corrective payments made to the Non-ERISA Plan Clients; and (c) Evercore's review of the corrections to the Covered Transactions, the Department has determined to grant this exemption consistent with the requirements of Code section 4975(c)(2).

25. The complete application file (D-11963) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the

²⁰ The complete application file (D-11963) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

notice of proposed exemption published on October 15, 2021, at 86 FR 57446.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c) (2) does not relieve a fiduciary or other party in interest or disqualified person from certain requirements of other ERISA and/or Code provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA section 404(a) (1) (B); nor does it affect the requirement of Code section 401(a) that requires plans to operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) As required by ERISA section 408(a) and/or Code section 4975(c) (2), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of the affected plan and its participants and beneficiaries; and (c) protective of the rights of the participants and beneficiaries of such plan.

(3) This exemption is supplemental to, and not in derogation of, any other applicable ERISA and/or Code provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption are true and accurate at all times.

Accordingly, the Department grants the following exemption under the authority of Code section 4975(c)(2) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

EXEMPTION

SECTION I. COVERED TRANSACTIONS

The sanctions resulting from the application of Code section 4975, by reason of Code section 4975(c)(1)(A), (D) and (E), shall not apply, effective December 14, 2010, until September 16, 2013, to certain principal trades

involving J.P. Morgan Securities LLC (JPMS), J.P. Morgan Investment Management Inc. (JPMIM), J.P. Morgan Advisors (formerly, J.P. Morgan Securities; JPMS Brokerage), and Chase Wealth Management (CWM) (collectively, the Applicants), and certain of their client plans that are subject to Code section 4975 but not covered by Title I of ERISA (the Non-ERISA Plan Clients).²¹ These principal transactions resulted in the Non-ERISA Plan Clients purchasing or selling securities from or to the Applicants (the Covered Transactions, as defined in Section II, below).

This exemption is subject to the conditions set forth below in Sections III and IV.

SECTION II. DEFINITION OF COVERED TRANSACTIONS

For purposes of this proposed exemption, the term "Covered Transactions" means:

(a) 3,989 trades of securities issued by third parties that were executed on a principal basis for certain JPMS-sponsored wrap fee programs under the Chase Wealth Management line of business (i.e., the CWM Wrap Program) on July 27 and July 30, 2012. Of these trades: (1) 3,985 of the trades involved sales by a Non-ERISA Plan Client to a counterparty affiliated with JPMorgan Chase & Co. (a JPM Counterparty), with an aggregate sales price of

²¹ JPMS Brokerage and CWM are lines of business within JPMS.

\$2,682,332.34 (i.e., the JPMIM Sales Transactions); and (2) four (4) of the trades involved purchases by a Non-ERISA Plan Client from a JPM Counterparty (i.e. the JPMIM Purchase Transactions) and the purchased shares, with an aggregate purchase price of \$46,940.55, had not been re-sold by the Non-ERISA Plan Client as of the date the transactions were corrected; and

(b) fifteen (15) trades involving JPMS Brokerage that were executed on a principal basis on December 14, 2010, January 13, 2011, February 3, 2012, December 31, 2012, August 22, 2013, and September 16, 2013. Of these trades: (1) two (2) involved sales of securities with an aggregate sales price of \$61,854.54 by a Non-ERISA Plan Client to a JPM Counterparty (i.e., the JPMS Brokerage Sales Transactions); and (2) thirteen (13) involved purchases of securities by a Non-ERISA Plan Client from a JPM Counterparty (i.e., the JPMS Brokerage Purchase Transactions), with an aggregate purchase price of \$557,232.08, that were purchased and subsequently sold by the Non-ERISA Plan Client before the prohibited transactions were discovered.

SECTION III. SPECIFIC CONDITIONS

(a) The Applicants corrected the Covered Transactions in a manner that was: (1) consistent with the relevant requirements set forth in the Department's Voluntary

Fiduciary Correction Program (the VFC Program); and (2) consistent with the Applicants' corrections of similar prohibited transactions involving its ERISA plan clients, as described in their VFC Program applications, dated December 31, 2014 (the VFC Program Applications);

(b) The Applicants received "no action letters" from the Department in connection with their VFC Program Applications;

(c) An independent fiduciary, Evercore Trust Company, N.A. (Evercore), reviewed the Applicants' corrections of the Covered Transactions;

(d) Evercore confirmed that the methods utilized to correct the Covered Transactions were properly applied to the Covered Transactions and sufficient to return each affected Non-ERISA Plan Client to at least the same position it would have been in had the Covered Transactions not occurred;

(e) The Non-ERISA Plan Clients did not pay any additional compensation with respect to the Covered Transactions, because such transactions were executed under a wrap program under which all clients pay a comprehensive wrap fee covering all the investment advisory-related and transactional services provided to such accounts (the Wrap Program);

(f) The Applicants promptly credited or issued a check to each Non-ERISA Plan Client to whom a corrective payment was due after discovering the Covered Transactions;

(g) The Covered Transactions were conducted using trading systems and procedures designed to result in trades being conducted at prices that are as favorable as possible to the Non-ERISA Plan Clients under prevailing market conditions, and were in fact conducted at terms and prices no less favorable to the Non-ERISA Plan Clients than the prices the Applicants could have obtained for the Non-ERISA Plan Clients by conducting trades in arm's-length transactions with third-party market participants;

(h) The Covered Transactions were not part of an agreement, arrangement or understanding designed to benefit a disqualified person as defined in Code section 4975(e)(2);

(i) The Applicants did not take advantage of the relief provided by the VFC Program and Prohibited Transaction Exemption 2002-51 for three (3) years before the date the Applicants' submitted the VFC Program Applications;²²

(j) The Applicants and their affiliates did not receive any additional direct or indirect fee or commission

²² PTE 2002-51 Section II. F(1) provides that "[w]ith respect to any transaction described in Section I., the applicant has not taken advantage of the relief provided by the VFC Program and this exemption for a similar type of transaction(s) identified in the current application during the period which is three years prior to submission of the current application". 67 FR 70623 (November 25, 2002), as amended, 71 FR 20135 (April 19, 2006).

in connection with the Covered Transactions, because such transactions were executed under a Wrap Program;

(k) The JPM Counterparties to the Non-ERISA Plan Clients did not receive any identifiable direct or indirect profit or compensation from the Covered Transactions;

(l) The Covered Transactions were inadvertent, executed at fair market value, and achieved best execution, and were not motivated by the receipt of any profit or other compensation;

(m) All of the securities traded were liquid securities that JPMorgan and its affiliates regularly held in inventory, dealt in, or made a market in;

(n) No contractual provisions purported to give Evercore or Newport Trust Company (i.e., NTC) a right to indemnification, in whole or part, by a party related to the Applicants, for negligence or breach of federal or state law responsibilities by Evercore or NTC, with respect to any task performed by Evercore or NTC pursuant to the Applicants' exemption request; and

(o) All of the facts and representations set forth in the Summary of Facts and Representations are true and accurate.

SECTION IV. GENERAL CONDITIONS

(a) The Applicants shall use commercially reasonable efforts to (i) identify such records as are necessary to

enable the persons described in Section IV(b) (1) to determine whether the conditions of this exemption have been met, to the extent such records are available to the Applicants or NTC, the independent fiduciary, as of the date of publication of this final exemption in the *Federal Register*, and (ii) maintain, or cause to be maintained (including to be maintained on behalf of the Applicants by any agent, advisor or other service provider to the Applicants), such records for a period of six (6) years from the date of publication of this final exemption in the *Federal Register*, except that:

(1) A separate prohibited transaction shall not be considered to have occurred if the records identified in Section IV(a) are lost or destroyed before the end of the six-year period due to circumstances beyond the control of Applicants; and

(2) No disqualified person with respect to a Non-ERISA Plan Client, other than the Applicants, is subject to excise taxes imposed by Code section 4975 if such records are not maintained or made available for examination as required by section IV(b) (1).

(b) (1) Except as provided in section IV(b) (2), the records referred to in section IV(a) are unconditionally available upon reasonable advance request at their customary location for examination during normal business hours by:

(A) any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission;

(B) any fiduciary of any Non-ERISA Plan Client that engaged in a Covered Transaction, or any duly authorized employee or representative of such fiduciary; or

(C) any owner or beneficiary of a Non-ERISA Plan Client that engaged in a Covered Transaction or a representative of such owner or beneficiary.

(2) None of the persons described in sections IV(b) (1) (B) and (C) shall be authorized to examine the Applicants' trade secrets or privileged or confidential commercial and financial information.

(3) If the Applicants refuse to disclose records referred to in section IV(a) to any persons described in sections IV(b) (1) (B), and (C) on the basis that such information is exempt from disclosure, the Applicants shall provide a written notice advising such persons of the reasons for the refusal and that the Department may request such information within 30 days after their request.

EFFECTIVE DATE: This exemption is in effect from December 14, 2010, until September 16, 2013.

Signed at Washington, D.C., this 24th day of July 2023.

George Christopher Cosby,
Director,
Office of Exemption
Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.

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