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BY FEDERAL EXPRESS

October 8, 2003

Re: In the Matter of Certain Initial Public Offerings and Secondary Offerings, SEC File No. HO-9140
J.P. Morgan Securities Inc.

Douglas J. Scheidt, Esq.
Associate Director and Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Scheidt:

We submit this letter on behalf of our client J.P. Morgan Securities Inc. ("JPMSI") in connection with a settlement (the "Settlement") with the staff of the Division of Enforcement of the Securities and Exchange Commission (the "Commission") related to allocations of stock in certain initial public offerings that JPMSI underwrote.

JPMSI, a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and an investment adviser registered under Section 203 of the Investment Advisers Act of 1940, as amended (the "Advisers Act") seeks the assurance of the staff of the Division of Investment Management ("Staff") that it would not recommend any enforcement action to the Commission under Section 206(4) of the Advisers Act, or Rule 206(4)-3 thereunder (the "Rule"), if an investment adviser pays JPMSI, or any of its associated persons, a cash payment for the solicitation of advisory clients, notwithstanding the existence of the Final Judgment (as defined below). While the Final Judgment in question will not operate to prohibit or suspend JPMSI or any of its associated persons from acting as or being associated with an investment adviser and does not relate to solicitation activities on behalf of investment advisers, it may affect the ability of JPMSI and its associated persons to receive payments of the nature described above. The staff of the Division of Enforcement has informed JPMSI that they do not object to the grant of the requested waivers by the Division of Investment Management.

BACKGROUND

JPMSI has engaged in settlement discussions with the staff of the Division of Enforcement in connection with the matters described above. As a result of these discussions, the Commission filed a complaint (the “Complaint”) against JPMSI in the United States District Court for the District of Columbia (“the District Court”). JPMSI has consented to the entry of a final judgment enjoining JPMSI from violating Rule 101 of Regulation M [17 C.F.R. §242.101] under the Securities Exchange Act of 1934 and Conduct Rule 2110 of NASD Inc. (“NASD”). Under the terms of the consent, JPMSI neither admitted nor denied any of the allegations in the Complaint, except as to jurisdiction, but consented to the entry of an injunction by the District Court (the “Final Judgment”). In addition to the injunction, JPMSI agreed to make a payment of \$25 million as a penalty.

DISCUSSION

The Rule prohibits an investment adviser from paying a cash fee to any solicitor that has been temporarily or permanently enjoined by an order, judgment or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Entry of the Final Judgment could cause JPMSI or its associated persons to be disqualified under the Rule, and accordingly, absent no-action relief, JPMSI or its associated persons may 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.”¹ 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 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. 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

¹ See Requirements Governing Payments of Cash Referral Fees by Investment Advisers, Inv. Adv. Act Rel. No. 688 (July 12, 1979), 17 S.E.C. Docket (CCH) 1293, 1295, at note 10.

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.²

The Final Judgment does not bar, suspend, or limit JPMSI or its associated persons from acting in any capacity under the federal securities laws. The conduct alleged in the complaint does not relate to JPMSI's activities as an investment adviser or to solicitation of advisory clients.³ Accordingly, consistent with the Commission's reasoning, there does not appear to be any reason to prohibit an adviser from paying JPMSI or its associated persons for engaging in solicitation activities under the Rule.

The Staff previously has granted numerous requests for no-action relief from the disqualification provisions of the Rule to individuals and entities found by the Commission to have violated a wide range of federal securities laws and rules thereunder and the rules of self-regulatory organizations or that were 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.⁴

² 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.

³ JPMSI additionally notes that it has not violated, or aided and abetted another person in violation of, the Rule, nor have individuals performing solicitation activities been personally disqualified under the Rule.

⁴ See, e.g., Dougherty & Company LLC, SEC No-Action Letter (pub. avail. July 3, 2003); Prime Advisors, Inc., SEC No-Action Letter (pub. avail. Nov. 8, 2001); Legg Mason Wood Walker, Inc., SEC No-Action Letter (pub. avail. June 11, 2001); Dreyfus Corp., SEC No-Action Letter (pub. avail. March 9, 2001); Prudential Securities Inc., SEC No-Action Letter (pub. avail. Feb. 7, 2001); Tucker Anthony Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2000); J.B. Hanauer & Co., SEC No-Action Letter (pub. avail. Dec. 12, 2000); Founders Asset Management LLC, SEC No-Action Letter (pub. avail. Nov. 8, 2000); Credit Suisse First Boston Corp., SEC No-Action Letter (pub. avail. Aug. 24, 2000); Janney Montgomery Scott LLC, SEC No-Action Letter (pub. avail. July 18, 2000); Aeltus Investment Management, Inc., SEC No-Action Letter (pub. avail. July 17, 2000); William R. Hough & Co., SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Municipal Bond Refundings, SEC No-Action Letter (pub. avail. Apr. 13, 2000); In the Matter of Certain Market Making Activities on NASDAQ, SEC No-Action Letter (pub. avail. Jan. 11, 1999); Paine Webber, Inc., SEC No-Action Letter (pub. avail. Dec. 22, 1998); NationsBanc Investments, Inc., SEC No-Action Letter (pub. avail. May 6, 1998); Morgan Keegan & Co., Inc., SEC No-Action Letter (pub. avail. Jan. 9, 1998); Merrill Lynch, Pierce, Fenner & Smith, Inc., SEC No-Action Letter (pub. avail. Aug. 7, 1997); Gruntal & Co., SEC No-Action Letter (pub. avail. July 17, 1996); Carnegie Asset Management, SEC No-Action Letter (pub. avail. July 11, 1994); Salomon Brothers Inc., SEC No-Action Letter (pub. avail. Jan. 26, 1994); BT Securities Corporation, SEC No-Action Letter (pub. avail. Mar. 30, 1992); Kidder Peabody & Co. Inc., SEC No-Action Letter (Oct. 11, 1990); First City Capital Corp., SEC No-Action Letter (pub. avail. Feb. 9, 1990); RNC Capital Management Co., SEC No-Action Letter (pub. avail. Feb. 7, 1989); and Stein Roe & Farnham, Inc., SEC No-Action Letter (pub. avail. Aug. 25, 1988).

UNDERTAKINGS

In connection with this request, JPMSI undertakes:

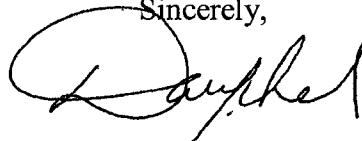
1. to conduct any cash solicitation arrangement in compliance with the terms of Rule 206(4)-3 except for the investment adviser's payment of cash solicitation fees to JPMSI, which is subject to the Final Judgment;
2. to comply with the terms of the Final Judgment, including, but not limited to, the payment of any disgorgement, pre-judgment interest, civil or administrative penalties and fines; and
3. that for ten years from the date of the entry of the Final Judgment, JPMSI or any investment adviser with which it has a solicitation arrangement subject to Rule 206(4)-3 will disclose the Final Judgment in a written document that is delivered to each person whom JPMSI 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 a contract, if the person has the right to terminate such contract without penalty within 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 JPMSI, or any of its associated persons, a cash payment for the solicitation of advisory clients, notwithstanding the Final Judgment.

Please do not hesitate to contact me regarding this request.

Sincerely,



David W. Ichel