

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**

**Release No. 9078 / November 4, 2009**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 60928 / November 4, 2009**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-13673**

**In the Matter of**

**J.P. MORGAN SECURITIES INC.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, AND SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against J.P. Morgan Securities Inc. (“J.P. Morgan Securities” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **SUMMARY**

1. This case involves payments by a national broker-dealer to local firms whose principals or employees were friends of Jefferson County, Alabama public officials in connection with \$5 billion in County bond underwriting and interest rate swap agreement business awarded to the broker-dealer. J.P. Morgan Securities Inc. and two of its managing directors, Charles LeCroy and Douglas MacFaddin, agreed at the direction of certain County commissioners to pay more than \$8.2 million in 2002 and 2003 to, in most instances, local broker-dealers. The County officials were instrumental in selecting J.P. Morgan Securities as the underwriter, and its affiliated commercial bank as the swap provider, on County transactions. The broker-dealers had no official role in the transactions and performed few, if any services.

2. J.P. Morgan Securities, LeCroy, and MacFaddin did not disclose any of the payments or the conflicts of interest raised by the agreements with individual commissioners in the swap agreement confirmations or the bond offering documents. J.P. Morgan Securities incorporated certain of the costs of these payments into higher swap interest rates it charged the County, directly increasing the swap transaction costs to the County and its taxpayers. By engaging in the conduct described above and more fully below, J.P. Morgan Securities violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"), Section 15B(c)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), and Municipal Securities Rulemaking Board ("MSRB") Rule G-17.

#### **RESPONDENT**

3. J.P. Morgan Securities is a Delaware corporation with its principal place of business in New York, New York. It has been registered with the Commission as a broker-dealer since 1985 and is also a registered municipal securities broker-dealer. From 2001 to 2003, J.P. Morgan Securities managed or co-managed seven County sewer bond underwritings, of which three are at issue in this complaint. Its affiliated commercial bank entered into eight interest rate swap agreements with the County, of which three are at issue in this complaint.

#### **OTHER RELATED INDIVIDUALS**

4. LeCroy, 55, of Winter Park, Florida, joined J.P. Morgan Securities as a vice president in March 1999. He was subsequently promoted to Managing Director of J.P. Morgan Securities' Southeast Regional office in Orlando. LeCroy left the firm in March 2004. He held Series 7, 24, 53 and 63 securities licenses.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. MacFaddin, 48, of Cos Cob, Connecticut, served as Managing Director and head of J.P. Morgan Securities' Municipal Derivatives Desk from 2001 until March 2008. He holds Series 7, 24, 53 and 63 securities licenses.

## **FACTS**

### **A. County Sewer Bond Offerings And Swap Agreements**

6. Jefferson County's sewer revenue bond offerings began in the 1990s pursuant to a consent decree with the U.S. Environmental Protection Agency and the U.S. Department of Justice to renovate the County's sewer system. To help fund the improvements, the County commission approved issuing more than \$3 billion in auction, variable and fixed interest rate bonds between 2001 and 2003. J.P. Morgan Securities served as lead underwriter for the majority of the auction and variable rate debt.

7. In connection with the bond offerings, the County entered into 18 swap agreements, with a notional amount of \$5.6 billion. An interest rate swap agreement is an agreement between two parties to exchange interest payments on a specified principal amount (referred to as the notional amount) for a specified period of time. J.P. Morgan Securities' affiliated commercial bank served as the largest provider for interest rate swap agreements in 2002 and 2003.

8. This matter concerns conduct and payments in connection with three County bond offerings and three security-based swap agreements between October 2002 and November 2003.

9. The three bond offerings, with a total par value of about \$3 billion, are: (1) an \$839 million sewer bond offering that closed on October 24, 2002 ("the 2002-C bonds"); (2) a \$1.1 billion sewer bond offering that closed on May 1, 2003 ("the 2003-B bonds"); and (3) a \$1.05 billion sewer bond offering that closed on August 7, 2003 ("the 2003-C bonds").

10. The three swap agreements, with a notional amount of about \$2 billion, are: (1) a \$1.1 billion swap agreement executed in connection with the 2003-B bonds ("the 2003-B swap agreement"); (2) a \$789 million swap agreement executed in connection with the 2003-C bonds ("the 2003-C swap agreement"); and (3) a \$111 million swap agreement executed on November 7, 2003 with an effective date of May 1, 2004 ("the November 2003 swap agreement").

### **B. The 2002-C Bonds**

11. In March 2002, as J.P. Morgan Securities was vying with many firms for the County's next proposed sewer bond deal, LeCroy devised a new plan to earn the County's business. In e-mails, LeCroy described a rival firm's purportedly successful tactic for winning municipal finance business of paying small local firms in unrelated transactions to enlist those firms' political support for the County hiring the rival firm.

12. In the e-mails, LeCroy suggested that J.P. Morgan Securities pay two small local broker-dealers, Gardnyr Michael Capital and ABI Capital Management. LeCroy wrote that the

firms each had a close relationship with a County commissioner and could help win the support of the commissioners. He estimated the typical payments would be \$5,000 to \$25,000 per deal.

13. As discussed in more detail throughout this order, J.P. Morgan Securities made a series of payments to local firms whose principals or employees were close friends of certain County commissioners, but that were unable to participate as auction rate underwriters, or as swap providers under Alabama law. J.P. Morgan Securities did not disclose the payments in the official transaction documents. Far from the \$5,000 to \$25,000 originally discussed, the payments wound up running into the millions of dollars and cost the County because J.P. Morgan Securities incorporated certain of them into the cost of the swap transactions, even though the firms performed virtually no services for the County.

14. In July 2002, LeCroy and MacFaddin solicited the County on behalf of J.P. Morgan Securities for a \$1.4 billion sewer bond deal. LeCroy and MacFaddin knew several County commissioners wanted to complete the transaction before November, when two commissioners would leave office and lose their ability to funnel payments to their supporters' firms. As a result, LeCroy, MacFaddin, and J.P. Morgan Securities specifically targeted their efforts at two commissioners who had just lost primary elections and would leave office in November.

15. On July 15, LeCroy told MacFaddin in a telephone conversation about his efforts to persuade the two commissioners to select J.P. Morgan Securities for the deal. He discussed beating out a rival firm by agreeing J.P. Morgan Securities would pay Gardnyr Michael and ABI Capital, whom one of the commissioners had directed them to pay in order to win his support for J.P. Morgan Securities.

16. Ultimately, the County selected J.P. Morgan Securities as underwriter on the 2002-C transaction, which was an \$839 million deal that used a combination of auction rate bonds and interest rate swap agreements. Neither Gardnyr Michael nor ABI Capital had the ability to underwrite the 2002-C auction rate bonds or serve as an interest rate swap provider under Alabama law.

17. Nevertheless, LeCroy and MacFaddin arranged for J.P. Morgan Securities to pay Gardnyr Michael and ABI Capital on this transaction at the direction of a commissioner. On October 28, 2002, five days after the 2002-C bond offering closed, the two discussed in a telephone conversation that they had agreed with one commissioner to pay \$250,000 each to Gardnyr Michael and ABI Capital for the 2002-C transaction.

18. MacFaddin expressed concern that anyone reviewing the payments would question them because of their size. LeCroy, however, allayed his fears by telling him other County commissioners did not know about the payments.

19. The official documents associated with the 2002-C transaction did not disclose the payments to Gardnyr Michael and ABI Capital. For example, the October 23, 2002 County resolution authorizing issuance of the 2002-C bonds listed the underwriters, swap providers, swap

advisor and remarketing agents selected to serve on the 2002-C transaction, but did not mention Gardnyr Michael or ABI Capital.

20. In its role as managing underwriter, J.P. Morgan Securities offered and sold the 2002-C bonds to investors, and in so doing transmitted the official statement to investors. The official statement disclosed the roles of numerous deal participants, including the underwriters, underwriters' counsel, bond counsel, structuring agent, and the County's financial and swap advisors. It also listed underwriting fees. However, it did not disclose the payments to ABI Capital and Gardnyr Michael.

### **C. The 2003-B Bonds And Swap Agreement**

21. In November 2002, Larry Langford became president of the County commission and head of the commission's finance committee that had significant authority over approval of County bond deals and swap agreements. Early in his administration, Langford made it clear to the County's financial advisor that he wanted William Blount, head of the Montgomery broker-dealer Blount Parrish & Co., involved in every County financing transaction. Langford and Blount were long-time friends and political colleagues.

22. Prior to Langford involving Blount in County bond and swap deals, Blount Parrish had not received any County business from 1997 through 2002. However, Langford was able to ensure Blount's selection because his positions as commission president and head of the finance committee effectively allowed him to control the selection process for underwriters and swap providers.

23. From January until May 1, 2003, J.P. Morgan Securities solicited the County, and Langford in particular, to hire the firm as underwriter on a new sewer bond offering and to enter into another swap agreement. During that period, LeCroy met several times with Langford and/or Blount regarding this deal, which became the 2003-B transaction. Because Blount Parrish could not serve as a swap provider under Alabama law, Blount solicited Langford to select Goldman Sachs Capital Markets Inc. to participate in the 2003-B swap transaction because Blount Parrish had a consulting agreement with Goldman Sachs.

24. Goldman Sachs and another New York-based broker-dealer were also pitching swap deals to the County. To prevent Goldman Sachs and the other firm from executing their own swap transactions with the County and ensure the County selected J.P. Morgan Securities instead, LeCroy and MacFaddin agreed to Langford's request that J.P. Morgan Securities make payments to Goldman Sachs and the other firm.

25. On February 25, 2003, Langford and the County commission approved a resolution authorizing the \$1.1 billion 2003-B bond offering. J.P. Morgan Securities would serve as lead underwriter, and its affiliated commercial bank would serve as swap provider for the corresponding \$1.1 billion swap agreement. The swap agreement was executed on March 28, 2003, with an effective date of May 1, 2003 to coincide with the bond offering.

26. In connection with the bond deal and swap agreement, LeCroy and MacFaddin agreed in their negotiations with Langford to pay Goldman Sachs \$3 million, and the other firm \$1.4 million. In turn, Goldman Sachs agreed to pay Blount-Parrish, its consultant, \$300,000.

27. Neither Goldman Sachs nor the other firm entered into a swap agreement with the County, or served as an advisor to the County on this transaction. J.P. Morgan Securities ultimately negotiated a separate swap agreement between its affiliated bank and Goldman Sachs as a mechanism to make the \$3 million payment.

28. The official documents related to the bond offering and the swap agreement did not disclose the payments from J.P. Morgan Securities to Goldman Sachs and the other firm, or the payment from Goldman Sachs to Blount Parrish. For example, the February 25 County resolution listed the bond underwriter, swap provider, County financial advisor, bond counsel, and underwriter's counsel selected to serve on the 2003-B transaction. It did not mention Goldman Sachs, Blount Parrish, or the other firm.

29. In its role as managing underwriter, J.P. Morgan Securities offered and sold the 2003-B bonds to investors, and in doing so, transmitted the official statement to investors. The official statement listed and defined the identities and roles of numerous deal participants, including the underwriters, bond counsel, underwriters' counsel, and the County's financial advisor. But it did not mention the three firms receiving payments.

30. The swap agreement confirmation contained an itemized fee section that listed three fees J.P. Morgan Securities was paying at the County's direction. However, J.P. Morgan Securities omitted from the confirmation the \$3 million payment to Goldman Sachs and the \$1.4 million payment to the other firm.

31. MacFaddin did set forth the latter two payments in a separate letter he sent only to Langford on March 28, 2003 – after the swap agreement had been executed. The letter did not describe any services Goldman Sachs or the other firm performed on the 2003-B deal.

32. MacFaddin's letter did not disclose Goldman Sachs' payment to Blount Parrish. Goldman Sachs wrote separately to Langford about Blount Parrish's payment in a letter also dated March 28, 2003. The letter recommended that the payment to Blount Parrish be disclosed to the County's bond counsel. Such a disclosure was not made.

#### **D. The 2003-C Bonds And Swap Agreement**

33. On May 1, 2003, the day the 2003-B bond transaction closed, LeCroy began proposing a new bond offering and swap transaction to Langford. The next day, LeCroy told MacFaddin in a telephone call that Langford was in favor of the transaction, but suggested that J.P. Morgan Securities pay Blount directly to avoid a competing firm enlisting Blount's support. According to LeCroy, Langford told him J.P. Morgan Securities might have to pay other local firms as well. LeCroy agreed the firm should pay Blount to avoid having him represent a competing firm.

34. Over the next two months, LeCroy met several times with Langford and Blount concerning the \$1.05 billion 2003-C sewer bond offering and the corresponding \$789 million swap agreement. As the negotiations progressed during the first two weeks of June, LeCroy had several telephone conversations with a J.P. Morgan Securities associate about the payments to Blount Parrish and other firms. In one conversation, he referred to the payments as “free money.” In another, he referred to having to “pay off” firms. And he described Blount’s role in the transaction as “not messing with us” and “keeping every other firm out of this deal.” Later, in July, he described the payments as “the price of doing business.”

35. Ultimately, the County commission approved a resolution on July 1, 2003 that authorized the issuance of \$1.05 billion in bonds, with J.P. Morgan Securities serving as lead underwriter. The bond offering closed on August 7, 2003. The resolution also authorized a swap transaction in connection with the offering, which turned into the \$789 million swap agreement. The parties executed that agreement on July 14, 2003, with the effective date also being August 7.

36. J.P. Morgan Securities paid Blount Parrish \$2.6 million – more than any other participant in the deal made except J.P. Morgan Securities itself. The firm also paid \$250,000 each to Gardnyr Michael and ABI Capital at the direction of another commissioner. Both firms had hired as a “consultant” a long-time friend of that commissioner.

37. The official documents related to this transaction did not disclose the payments to Blount Parrish, Gardnyr Michael, and ABI Capital. For example, the July 1 County resolution specifically listed the underwriters, swap providers, County advisors, legal counsel and remarketing agents selected to serve on the 2003-C bond offering and swap agreement, but did not mention the three firms J.P. Morgan Securities was paying.

38. In its role as managing underwriter, J.P. Morgan Securities offered and sold the 2003-C bonds to investors, and in doing so, transmitted the official statement to investors. The official statement listed the roles of all participants the County had selected, including the underwriters, bond counsel, the underwriters’ counsel and the County’s financial advisor. But the official statement omitted mentioning payments to Blount Parrish and the other two firms.

39. The swap agreement confirmation, dated July 14, 2003, also did not disclose the fees or the fact that J.P. Morgan Securities was incorporating them into the pricing of the swap. It contained an itemized fee section listing payments J.P. Morgan Securities was making to the County’s swap advisor, legal counsel, and financial advisor, but omitted the Blount Parrish, Gardnyr Michael and ABI Capital payments. Furthermore, LeCroy was specifically asked about fees J.P. Morgan Securities was paying at the July 14 swap closing, but did not mention the payments to the three firms.

40. Two weeks after the 2003-C swap transaction closed, J.P. Morgan Securities sent a letter signed by LeCroy only to Langford, listing the payments to Blount Parrish, Gardnyr Michael and ABI Capital. The letter noted J.P. Morgan Securities was making the payments even though the firms could not act as an underwriter or swap provider on this transaction. The letter also said

J.P. Morgan Securities was incorporating the payments to the three firms into the pricing of the swap, thus reducing the amount of money the County would receive from the swap.

### **E. The November 2003 Swap Agreement**

41. Even before the 2003-C transaction closed, LeCroy solicited Langford for another swap deal. LeCroy told MacFaddin in a July 30, 2003 telephone call that Langford had told him J.P. Morgan Securities might have to pay some local firms.

42. On November 7, 2003, J.P. Morgan Securities' affiliated commercial bank and the County executed a \$111 million swap agreement with an effective date of May 1, 2004. In connection with this transaction, J.P. Morgan Securities agreed to pay Blount Parrish \$225,000 and \$75,000 to Gardnyr Michael.

43. During the November 7, 2003 closing, LeCroy was asked specifically about fees J.P. Morgan Securities was paying. Although fees to the County's swap, legal, and financial advisors were discussed, LeCroy did not disclose the payments to Blount Parrish and Gardnyr Michael. The swap confirmation also did not mention those payments, or the fact that J.P. Morgan Securities was incorporating them into the pricing of the swap.

44. More than two weeks after the transaction closed, J.P. Morgan Securities sent a letter dated November 24, 2003, addressed only to Langford, describing the payments to Blount Parrish and Gardnyr Michael. The letter represented that the County required the payments as a condition for approving the transaction.

### **F. Status of County Sewer Bonds**

45. In January 2008, ratings agencies downgraded the County's sewer bond insurers, and shortly thereafter, also downgraded the County's approximately \$3.2 billion of sewer bonds. In February 2008, the auction market failed for the County's auction-rate sewer bonds. J.P. Morgan Securities' affiliated commercial bank and other sewer debt-related creditors entered into a series of forbearance agreements with the County starting in March 2008 to defer the County's principal and certain other payments on its variable-rate demand sewer bonds and swap agreements.

46. On March 3, 2009, the interest rate swap agreements with the County bearing reference numbers 470385, 470392, 700404, 8958034, 700157, and 7001880 (collectively, the "Swap Agreements") were terminated. On March 6, 2009, J.P. Morgan Securities' affiliated commercial bank notified the County that it owed \$647,804,118.00 as the result of the termination of the Swap Agreements. Since then, J.P. Morgan Securities' affiliated commercial bank has continued to forbear from taking action in respect of its claim for payments due as a result of termination of the Swap Agreements.

47. Since March 2008, the County has engaged in negotiations with J.P. Morgan Securities and other sewer debt-related creditors and third parties, seeking a refinancing or other



restructuring of the sewer debt in an effort to achieve such a refinancing or other restructuring and avoid the County filing for bankruptcy. The Commission understands that J.P. Morgan Securities intends to continue to pursue discussions with the County and such other creditors and third parties in an attempt to resolve these issues.

### **VIOLATIONS**

48. As a result of the conduct described above, J.P. Morgan Securities willfully<sup>2</sup> violated Section 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from obtaining money “by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading” or engaging “in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser” in the offer or sale of securities or security-based swap agreements.

49. Also as a result of the conduct described above, J.P. Morgan Securities willfully violated Section 15B(c)(1) of the Exchange Act, which makes it unlawful for any broker, dealer or municipal securities dealer to “make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of” the Municipal Securities Rulemaking Board (“MSRB”).

50. Pursuant to Section 15B(b)(2) of the Exchange Act, the MSRB proposes and adopts rules governing the conduct of brokers and dealers and municipal securities dealers in connection with municipal securities. Pursuant to Section 21(d)(1) of the Exchange Act, the Commission is charged with enforcing the MSRB rules.

51. As a result of the conduct described above, J.P. Morgan Securities willfully violated MSRB Rule G-17, which states that in the conduct of its municipal securities business, every “broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.”

### **UNDERTAKINGS**

J.P. Morgan Securities has undertaken to do the following within five business days of the entry of this Order:

52. Make a \$50,000,000.00 payment to and for the benefit of Jefferson County, Alabama, for the purpose of assisting displaced County employees, residents, and sewer ratepayers.

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<sup>2</sup> A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

53. Terminate any and all obligations of the County to make any payments to JPMorgan Chase Bank, N.A. under the Swap Agreements.

In determining whether to accept the Offer, the Commission has considered these undertakings. Respondent agrees that if the Division of Enforcement believes that Respondent has not satisfied these undertakings, it may petition the Commission to reopen this matter to determine whether additional sanctions are appropriate.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in J.P. Morgan Securities' Offer.

Accordingly, pursuant to Section 8A of the Securities Act, and Sections 15(b), 21B and 21C of the Exchange Act, it is hereby ORDERED that:

A. J.P. Morgan Securities cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 15B(c)(1) of the Exchange Act and MSRB Rule G-17.

B. J.P. Morgan Securities is censured.

C. J.P. Morgan Securities shall, within five business days of the entry of this Order, pay disgorgement of \$1.00 and a civil money penalty in the amount of \$25,000,000.00 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies J.P. Morgan Securities as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Teresa J. Verges, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement and penalties referenced in paragraph C above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, J.P. Morgan Securities agrees that it shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction of any part of J.P. Morgan Securities' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, J.P. Morgan Securities agrees that it shall, within 30 days after entry of a final order

granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change

the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy  
Secretary