

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

**SECURITIES ACT OF 1933**  
**Release No. 10741 / January 9, 2020**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 87919 / January 9, 2020**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5429 / January 9, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19639**

**In the Matter of**

**J.P. MORGAN SECURITIES  
LLC,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND  
CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933, SECTION  
15(b) OF THE SECURITIES  
EXCHANGE ACT OF 1934, AND  
SECTION 203(e) OF THE INVESTMENT  
ADVISERS ACT OF 1940, 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”), Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”), against J.P. Morgan Securities LLC (“JPMS” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, JPMS 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, JPMS consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, and Section 203(e) of the Investment Advisers Act of 1940, 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 that:

#### Summary

1. From at least January 2010 through December 2015 (the “Relevant Period”), JPMS disadvantaged certain retirement plan and charitable organization brokerage customers who maintained accounts at JPMS (“Eligible Customers”)<sup>1</sup> by failing to ascertain that they were eligible for a less expensive share class, and recommending and selling them more expensive share classes in certain open-end registered investment companies (“mutual funds”) when less expensive share classes were available. JPMS did so without disclosing that it would receive greater compensation from the Eligible Customers’ purchases of the more expensive share classes. Eligible Customers did not have sufficient information to understand that JPMS had a conflict of interest resulting from compensation it received for selling the more expensive share classes. Specifically, JPMS recommended and sold these Eligible Customers Class A shares with an up-front sales charge, or Class B or Class C shares with a back-end contingent deferred sales charge (“CDSC”) (a deferred sales charge the purchaser pays if the purchaser sells the shares during a specified time period following the purchase) and higher ongoing fees and expenses, when these Eligible Customers were eligible to purchase load-waived Class A shares. JPMS omitted material information concerning its compensation when it recommended the more expensive share classes. JPMS also did not disclose that the purchase of the more expensive share classes would negatively impact the overall return on the Eligible Customers’ investments, in light of the different fee structures for the different fund share classes.

2. In making those recommendations of more expensive share classes while omitting material facts, JPMS violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. These provisions prohibit, respectively, in the offer or sale of securities, obtaining money or property by means of an omission to state a material fact necessary to make statements made not misleading, and engaging in a course of business which operates as a fraud or deceit on the purchaser.

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<sup>1</sup> The term “Eligible Customers” may include, among other things, customers that held the following type of retirement accounts: 401(k) plans, profit-sharing plans, defined benefit plans, and certain employer-sponsored IRA accounts. Eligible Customers also include accounts held by tax-exempt, non-profit organizations.

## **Respondent**

3. **J.P. Morgan Securities LLC**, a Delaware limited liability company headquartered in New York, New York, is registered with the Commission as a broker-dealer and an investment adviser. JPMS is a wholly-owned subsidiary of JPMorgan Chase & Co., a global financial services firm incorporated in Delaware and headquartered in New York, New York.

## **Background**

4. Mutual funds often offer different fund share classes that each represent a common interest in an investment portfolio, but differ in the amount and types of sales charges and fees a fund investor may incur. For funds that have sales charges or sales “loads,” the timing and amount of sales loads typically vary between share classes. These sales charges are normally assessed as a percentage of an investor’s investment. For example, Class A shares often are subject to an up-front sales charge in addition to ongoing marketing and distribution fees, known as Rule 12b-1 fees. Class B and Class C shares often do not have an up-front sales charge, but have higher Rule 12b-1 fees.

5. Many mutual funds provide sales-load waivers for Class A shares to qualified retirement and charitable accounts. Such waivers are important to investors because they allow investors to buy shares at the fund’s current net asset value. Eligibility requirements for load-waived Class A shares vary from fund to fund, and are disclosed in the prospectus and statement of additional information for each relevant fund.

6. The sales charges and fees associated with different share classes affect mutual fund shareholders’ returns. A mutual fund investor eligible for a sales charge waiver in Class A shares will likely obtain a higher return by investing in Class A shares than incurring the ongoing sales-related costs associated with Class B and Class C shares in the same fund.

7. Sales charges and fees associated with different share classes also affect a broker-dealer’s revenue earned from selling mutual fund shares. Broker-dealers typically receive all or a portion of the sales charges and Rule 12b-1 fees charged to their customers. For example, broker-dealers generally receive higher ongoing fees when their customers hold Class B and Class C shares as compared to Class A shares. Broker-dealers therefore may earn more compensation when recommending a share class to customers if the customer’s purchase of that share class will increase a broker-dealer’s revenue when compared to another share class in the same fund that the broker-dealer could recommend to the customer.

### **JPMS Omitted Material Facts When Recommending Class A, Class B, and Class C Mutual Fund Shares to Eligible Customers**

8. During the Relevant Period, JPMS did not have adequate systems and controls in place to determine whether Eligible Customers were eligible to purchase load-waived Class A shares. As a result, JPMS failed to provide available sales charge waivers in at least 58,000 transactions involving approximately 16,734 Eligible Customer accounts. These were transactions in which Eligible Customers could have purchased load-waived Class A shares, but JPMS recommended and sold them Class A shares with an up-front sales charge or Class B or

Class C shares with a CDSC and higher ongoing fees and expenses than the load-waived Class A shares. In connection with all of these recommendations, JPMS omitted to state to Eligible Customers that it would earn more revenue from customer purchases of Class A shares with an up-front sales charge or Class B or Class C shares with a CDSC and higher ongoing expenses as compared to load-waived Class A shares for which the customers were eligible. JPMS omitted material information concerning its compensation when it recommended the more expensive share classes. JPMS also omitted to state to the Eligible Customers that their purchases of the more expensive shares would negatively impact the customers' overall investment returns. In the context of multiple-share-class mutual funds, in which the only reason for the differences in rate of return among classes is the cost structure of the different classes, information about this cost structure would accordingly be important to a reasonable investor.

### **JPMS's Remedial Efforts**

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by JPMS and cooperation afforded the Commission staff, including that JPMS voluntarily identified and converted Eligible Customers into a lower-priced share class, and repaid Eligible Customers, including through reimbursement of transactions outside the Relevant Period.

10. JPMS voluntarily identified the Eligible Customers who purchased more expensive shares than those shares for which they were eligible, and has completed full remediation for those customers JPMS could locate and/or contact using reasonable efforts. JPMS identified approximately 16,734 Eligible Customers that paid a total of \$16,283,277 in up-front sales charges, CDSCs, and higher ongoing fees and expenses from purchases of mutual fund share classes for which they did not receive an applicable sales charge waiver or did not otherwise receive the most cost-effective share class for which they were eligible that was available on JPMS's platform. JPMS has issued payments (including interest) to approximately 16,335 accounts, representing approximately 98% of Eligible Customers, by crediting the accounts of current customers and mailing reimbursement checks or otherwise directing payments as instructed by former customers.<sup>2</sup> JPMS's reimbursement payments include a total of \$7,296,085 relating to transactions during the applicable statutory limitations period,<sup>3</sup> and a total of \$8,736,110 before that period. JPMS also has converted all Eligible Customers holding Class B and Class C shares to Class A shares with the lowest expenses for which they are eligible, at no cost to the customers.

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<sup>2</sup> Despite reasonable efforts, JPMS is unable to locate and/or contact 399 former JPMS account holders, representing \$251,083 in remediation proceeds.

<sup>3</sup> The applicable limitations period under 28 U.S.C. § 2462 in this matter runs from June 2012 forward.

## Violations

11. As a result of the conduct described above, JPMS willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person, in the offer or sale of securities, from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make statements made not misleading, and from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, respectively.<sup>4</sup> Negligence is sufficient to establish violations of Sections 17(a)(2) and (3) of the Securities Act. *See Aaron v. SEC*, 446 U.S. 680, 696-97 (1980). JPMS omitted to state to Eligible Customers that JPMS would earn greater compensation in recommending Class A shares with an up-front sales charge, or Class B or Class C shares with a CDSC and higher ongoing fees and expenses, because these share classes would generate additional revenue for JPMS compared to other less expensive share classes available to Eligible Customers. Thus, Eligible Customers did not have sufficient information to understand that JPMS had a conflict of interest resulting from sales of the more expensive share classes. JPMS also omitted to state to the Eligible Customers that the purchase of these more expensive shares would negatively impact the customers' overall investment returns, in light of the different fee structures for the different fund share classes. As a result, Eligible Customers incurred up-front sales charges, CDSCs, and higher ongoing fees and expenses, and JPMS received additional revenue.

## IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b)(4) of the Exchange Act, and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent JPMS 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.
- B. Respondent JPMS is censured.
- C. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of

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<sup>4</sup> "Willfully," for purposes of imposing relief under Section 15(b) of the Securities Act and Section 203(e) of the Advisers Act, "means no more than 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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

\$251,083, prejudgment interest of \$71,355, and civil penalties of \$1,500,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent JPMS may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent JPMS may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent JPMS may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying J.P. Morgan Securities LLC as a Respondent in these proceedings, and the file number of these proceedings. A copy of the cover letter and check or money order must be simultaneously sent to C. Dabney O'Riordan, Co-Chief, Asset Management Unit, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071, or such other person or address as the Commission staff may provide.

D. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent 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 Securities and Exchange Commission. 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 these proceedings. 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 these proceedings.

By the Commission.

Vanessa A. Countryman  
Secretary