

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9993 / December 18, 2015

In the Matter of

JPMorgan Chase Bank, N.A.

Respondent.

**ORDER UNDER RULE 506(d) OF THE
SECURITIES ACT OF 1933 GRANTING
A WAIVER OF THE RULE 506(d)(1)(iii)
DISQUALIFICATION PROVISION**

I.

JPMorgan Chase Bank, N.A. (“JPMCB”) submitted a letter dated December 11, 2015 requesting that the Securities and Exchange Commission (the “Commission”) grant a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933 (the “Securities Act”).

II.

On December 18, 2015, the U.S. Commodity Futures Trading Commission (the “CFTC”) entered order CFTC Docket No. 16-05 (the “CFTC Order”) instituting proceedings pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, making findings and imposing remedial sanctions as a result of JPMCB’s failure to adequately disclose certain conflicts of interest to clients.

III.

Rule 506(d)(2)(ii) of Regulation D provides that disqualification “shall not apply. . . upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied.” The Commission has determined that as part of the Rule 506(d)(2)(ii) showing of good cause, JPMCB will comply with the following:

- A. Retain, at JPMCB’s expense and within sixty (60) days of the issuance of this Order, a qualified independent compliance consultant (the “Consultant”) not unacceptable to Commission staff. JPMCB shall require the Consultant to conduct a comprehensive review of the policies and procedures relating to compliance with Rule 506 of Regulation D by JPMCB, including but not limited to policies and procedures relating to JPMCB’s activities as an investment manager and placement agent to private funds relying on Rule

506 of Regulation D, and the subsidiaries of JPMCB conducting any activities that would otherwise be disqualified pursuant to the CFTC Order (together with JPMCB, the “Rule 506 Entities”).

- B. Cooperate fully with the Consultant, including providing the Consultant with access to the Rule 506 Entities’ files, books, records, and personnel as reasonably requested for the review, obtaining the cooperation of employees or other persons under JPMCB’s control, and permitting the Consultant to engage such assistance (whether clerical, legal, technological, or of any other expert nature) as necessary to achieve the purposes of the retention.
- C. Require the Consultant to complete its review and submit a written report (the “Annual Report”) to JPMCB, including its principal executive officer and principal legal officer, on an annual basis for a period of five years after the issuance of this Order. JPMCB shall require that the Consultant test the Rule 506 Entities’ policies and procedures relating to Rule 506 of Regulation D by conducting a statistically valid random sampling of transactions conducted in reliance on Rule 506 of Regulation D.
- D. The Consultant shall certify annually in the Annual Report that JPMCB’s policies and procedures designed to ensure compliance by the Rule 506 Entities with their obligations under Rule 506 of Regulation D are reasonably designed to achieve their stated purpose.
- E. Require JPMCB’s principal executive officer and principal legal officer to certify in writing annually that they reviewed the Annual Report and to submit a copy of the certification and the Annual Report to Commission staff for public dissemination.
- F. Require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Rule 506 Entities, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which the Consultant is affiliated or of which the Consultant is a member, and any person engaged to assist the Consultant in performance of the Consultant’s duties under this Order shall not, without prior written consent of Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Rule 506 Entities, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- G. To ensure the independence of the Consultant, JPMCB shall not have the authority to terminate the Consultant without prior written approval of

Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

- H. With respect to any aspect of the Consultant's review or testing of (including recommendations relating to) policies and procedures that a Rule 506 Entity considers unduly burdensome, impractical or inappropriate, JPMCB shall propose in writing to the Consultant and the Commission staff an alternative approach designed to achieve the same objective or purpose. JPMCB and the Consultant shall attempt in good faith to reach an agreement within 30 days of such written proposal. Within 15 days after the conclusion of the discussion, JPMCB shall require that the Consultant inform JPMCB and the Commission staff in writing of the Consultant's final determination concerning any aspect of the Consultant's review, testing or recommendations that JPMCB considers to be unduly burdensome, impractical or inappropriate. JPMCB shall abide by the determination of the Consultant. For good cause shown, the Commission staff may extend any of the procedural dates relating to the conditions in this Order. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

IV.

Based on the foregoing and the facts and representations in JPMCB's request for a waiver of disqualification, and assuming that JPMCB complies with the CFTC Order and this Order, the Commission has determined that JPMCB has made a showing of good cause under Rule 506(d)(2)(ii) that it is not necessary under the circumstances to deny reliance on Rule 506 of Regulation D by reason of the entry of the CFTC Order. Any different facts from those represented or failure to comply with the terms of the CFTC Order or this Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. Further, for a period of five years from the date of this Order, if JPMCB is the subject of any action that triggers "ineligible issuer" status in Rule 405 of the Securities Act, disqualification under Section 9(a) of the Investment Company Act of 1940 or disqualification under Rule 506(d) of Regulation D, the Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances. In that event, JPMCB shall first be notified and have the opportunity to present to the Commission staff an analysis supporting why this waiver should not be revoked or further conditioned.

Accordingly, **IT IS ORDERED**, pursuant to Rule 506(d) of Regulation D under the Securities Act, that a waiver from the application of the disqualification provision of Rule 506(d)(1)(iii) under the Securities Act resulting from the entry of the CFTC Order is hereby granted to JPMCB.

By the Commission.

Brent J. Fields
Secretary