

transactions with, plans covered by the Act.

4. J.P. Morgan Chase & Co. ("J.P. Morgan Chase") is a financial holding company incorporated under Delaware law in 1968 and headquartered in New York, New York. As of December 31, 2001, after giving effect to the merger referred to below, J.P. Morgan Chase was the second largest banking institution in the United States, with approximately \$694 billion in assets and approximately \$41 billion in stockholders' equity. On December 31, 2000, J.P. Morgan & Co. Incorporated merged with and into The Chase Manhattan Corporation. Upon completion of the merger, The Chase Manhattan Corporation changed its name to "J.P. Morgan Chase & Co."

J.P. Morgan Chase is a global financial services firm with operations in over 60 countries, and has as its principal bank subsidiaries: JPMorgan Chase Bank, a New York banking corporation headquartered in New York City, which was formed in November 2001 by the merger of The Chase Manhattan Bank and Morgan Guaranty Trust Company of New York; and Chase Manhattan Bank USA, National Association, headquartered in Delaware.

The principal non-bank subsidiary of J.P. Morgan Chase is its investment bank subsidiary, J.P. Morgan Securities Inc. ("J.P. Morgan Securities"). J.P. Morgan Investment Management Inc. ("JPMIM") is a wholly-owned subsidiary of J.P. Morgan Chase. J.P. Morgan Fleming Asset Management (USA) Inc. (JPMFAM), which was formerly known as Chase Asset Management, Inc., is a wholly-owned subsidiary of JPMorgan Chase Bank.

The activities of J.P. Morgan Chase are internally organized, for management reporting purposes, into five major businesses:

- Investment Banking, which includes securities underwriting and financial advisory, trading, mergers and acquisitions advisory, and corporate lending and syndication businesses;
- Investment Management and Private Banking, which includes an asset management business, including mutual funds; institutional money management and cash management businesses; and a private bank, which provides wealth management solutions for a global client base of individuals and families;
- Treasury & Securities Services, which provides information and transaction processing services, and moves securities and cash daily for its wholesale clients. Treasury & Securities Services includes custody, cash

management, investor and institutional trust service businesses;

- J.P. Morgan Partners, a large and diversified private equity investment firm, with total funds under management in excess of \$30 billion; and
- Retail and Middle Market Financial Services, which serves over 30 million consumers, small business and middle-market customers nationwide. Retail and Middle Market Financial Services offers a wide variety of financial products and services, including consumer banking, credit cards, mortgage services and consumer finance services, through a diverse array of distribution channels, including the internet and branch and ATM networks.

Requested Exemption

5. The Applicants seek to amend existing individual exemptions (*i.e.*, PTE 2000–25 (JP Morgan); PTE 2000–27 (Chase)) and an authorization made pursuant to PTE 96–62 a/k/a/ EXPRO (*i.e.*, FAN 2001–19E (DB)) that deal with the situation where an Asset Manager seeks to purchase securities for an employee benefit plan, in an initial offering, where the Asset Manager's Affiliate is a manager or member of the underwriting syndicate for such securities. Such a transaction is described herein as an Affiliated Underwriter Transaction or "AUT". The amendment proposed by the Applicants would add relief for two other transactions: (i) Where the Asset Manager is related to the trustee of the trust that issued the securities being underwritten or the indenture trustee of securities that are debt securities but its Affiliated Broker-Dealer is not part of the underwriting syndicate (*i.e.*, an Affiliated Trustee Transaction or "ATT"); and (ii) where the Asset Manager is related both to the trustee and to a member or manager of the underwriting syndicate (*i.e.*, both an "AUT" and an "ATT" at the same time).

Therefore, the Applicants represent that the exemption, if granted, could be used in any of the following circumstances:

- (i) Where an Asset Manager seeks to purchase securities (equities, debt, or asset-backed securities, regardless of whether the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is a manager or member of the underwriting syndicate but where, in the case of a debt security or an asset-backed security, the trustee or indenture trustee is an unaffiliated entity;
- (ii) Where an Asset Manager seeks to purchase securities (debt or asset-backed securities, regardless of whether

the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is the trustee or indenture trustee but where no member or manager of the underwriting syndicate is an Affiliate of the Asset Manager; or

(iii) Where an Asset Manager seeks to purchase securities (debt or asset-backed securities, regardless of whether the latter are treated for tax purposes as equity or debt) in an initial offering where an Affiliate of the Asset Manager is both the trustee or indenture trustee and a manager or member of the underwriting syndicate.

In such instances involving an "AUT", the exemption (if granted) would permit an Asset Manager to purchase for its Client Plans, or Pooled Funds, securities in an initial public offering (*i.e.*, an IPO) from underwriting or selling syndicates in which the Affiliated Broker-Dealer participates as a manager or member. In such instances involving an "ATT", DB or JPMorgan Chase Bank or an Affiliate of either, will act as a trustee, indenture trustee, or similar functionary (collectively, a "Trustee") with respect to the issuer of the securities (*i.e.*, a trust). The Applicants state that all such purchases of securities, whether in an "AUT" or "ATT" or both, would be made from an underwriter or broker-dealer other than the Affiliated Broker-Dealer and that the Affiliated Broker-Dealer would not receive any selling concessions with respect to the securities sold to Client Plans. Thus, the proposed exemption would not cover any purchases of securities for a plan by an Asset Manager directly from the Asset Manager's Affiliate.³

6. The Applicants represent that where the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager generally makes purchases of securities for its Client Plans in compliance with part III of PTE 75–1, 40 FR 50845 (October 31, 1975). PTE 75–1, part III, provides a class exemption, under certain conditions, for a plan fiduciary to purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, relief under PTE 75–1 is unavailable if the fiduciary or its affiliate is a manager of the underwriting or selling syndicate.

7. PTE 2000–25, PTE 2000–27 and FAN 2001–19E expanded the relief

³ With respect to possible acquisitions of asset-backed securities that could be made by plans in the secondary market, where the plans' asset manager has an affiliate that acts as a sub-servicer for the issuing trust, *see* DOL Adv. Op. 99–03A (January 25, 1999).