

Accordingly,  
*It is hereby ordered*, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

By the Commission.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26239; 812-12959]

### J.P. Morgan Securities Inc., et al.; Notice of Application and Temporary Order

October 31, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

**SUMMARY OF APPLICATION:** Applicants have received a temporary order exempting Covered Persons (as defined below) from section 9(a) of the Act, with respect to an injunction entered against J.P. Morgan Securities Inc. ("JPMSI") on October 31, 2003 by the U.S. District Court for the Southern District of New York (the "Federal Injunction"), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

**APPLICANTS:** JPMSI, JF International Management Inc., J.P. Morgan Alternative Asset Management, Inc., J.P. Morgan Fleming Asset Management (London) Limited and J.P. Morgan Investment Management Inc. (together, the "Applicants").<sup>1</sup>

**FILING DATES:** The application was filed on April 28, 2003, and amended on June 12, 2003 and on August 26, 2003. Applicants have agreed to file an amendment during the notice period,

the substance of which is reflected in this notice. Applicants have also agreed to file additional amendments to the application reflecting the issuance of each State Injunction (as defined below).

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Scott G. Campbell, J.P. Morgan Chase & Co., One Chase Manhattan Plaza, New York, NY 10081.

**FOR FURTHER INFORMATION CONTACT:** Stacy L. Fuller, Senior Counsel, or Todd F. Kuehl, Branch Chief, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

### Applicants' Representations

1. JPMSI, a Delaware corporation, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. Certain Applicants serve as investment adviser or subadviser for one or more registered investment companies ("Funds"). Certain Applicants may in the future act as the depositor or principal underwriter for Funds.<sup>2</sup>

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal

Injunction against JPMSI in a matter brought by the Commission.<sup>3</sup> The Commission alleged in the complaint ("Complaint") that JPMSI violated certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules") by engaging in acts and practices that created or maintained inappropriate influence by JPMSI's investment banking business (the "Investment Banking Department") over the research analysts in JPMSI's research department (the "Research Department"). The Federal Injunction enjoined JPMSI directly or through its officers, directors, agents and employees, from violating the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, JPMSI consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by JPMSI to adopt and implement policies and procedures relating to certain research activities. Applicants state that JPMSI expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a "State Injunction," and, together with the Federal Injunction, the "Injunctions"). Applicants request that this application cover any disqualifications of Covered Persons under section 9(a) resulting from the Injunctions.

### Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which JPMSI is, or hereafter becomes, an affiliated person within the meaning of section 2(a)(3) of the Act (together with Applicants, "Covered Persons").

<sup>2</sup> Any registered unit investment trusts ("UIT") or registered face amount certificate company for which Applicants may serve as principal underwriter or depositor are also included in the defined term Funds.

<sup>3</sup> *Securities and Exchange Commission v. J.P. Morgan Securities Inc.*, 03 CV 2939 (WHP) (S.D.N.Y., filed April 28, 2003).