

III.

The Commission finds the following:

A. Summary

From at least 2008 through August 2015 (the “Relevant Period”), JPMCB failed to disclose certain conflicts of interest to discretionary managed account clients of the U.S.-based wealth management business, J.P. Morgan Private Bank, thereby violating the non-scienter provisions, Section 4o(1)(B) of the Act and Commission Regulation 4.41(a)(2). Specifically, JPMCB failed to fully disclose its preferences for investing certain discretionary portfolio assets in certain commodity pools or exempt pools, namely investment funds operated by JPMorgan Asset Management (“Proprietary Funds”) and third-party-managed hedge funds that shared management and/or performance fees with a JPMCB affiliate. As a result, Respondent JPMCB did not satisfy its disclosure duty to certain of its high net worth and ultra-high net worth clients who invested through discretionary accounts.

B. Respondent

JPMorgan Chase Bank, N.A. (“JPMCB”), a wholly-owned subsidiary of JPMorgan Chase & Co., is a nationally-chartered bank, incorporated in 1824, and headquartered in New York, New York. JPMCB acts as the investment manager for certain discretionary portfolios offered primarily to clients of JPM U.S. Private Bank, the marketing name for JPMorgan’s business unit that provides banking and investment services to high net worth and ultra-high net worth clients.

C. Other Relevant Entities and Lines of Business

JPMorgan Chase & Co. (“JPMorgan”) is a Delaware corporation headquartered in New York, New York. JPMorgan is a global financial services firm and bank with \$2.6 trillion in assets as of December 31, 2014.

JPMorgan Asset Management (“JPMAM”) is one of JPMorgan’s primary business units and oversees, among other businesses, JPM U.S. Private Bank and JPMorgan’s Proprietary Funds business. As of December 31, 2014, JPMAM had \$1.7 trillion in assets under management.

J.P. Morgan’s U.S. Private Bank (“JPM U.S. Private Bank”) is the marketing name of a business unit within JPMAM that operates within the U.S. and provides banking and investment management services to high net worth and ultra-high net worth individuals through JPMCB. As of December 31, 2014, JPM U.S. Private Bank had approximately \$207 billion in assets under management (excluding Proprietary Funds purchased in self-directed brokerage accounts). Hereinafter, reference to JPMCB will encompass both JPMCB and JPM U.S. Private Bank.

D. Facts

As set out more fully below, during the relevant period, JPMCB failed to adequately disclose certain conflicts of interest to its clients.

1. JPMCB Failed to Disclose its Preference for Proprietary Funds

JPMCB provides wealth management services to clients with three progressively higher levels of wealth: affluent, high net worth, and ultra-high net worth. Through JPM U.S. Private Bank, JPMCB serves high net worth and ultra-high net worth clients. JPMCB serves as the fiduciary investment manager for discretionary, diversified, risk-adjusted investment management accounts (“IM accounts”) that can hold, among other investments, mutual funds and hedge funds.

JPMCB also serves as investment manager to certain private funds, known as the Global Access Portfolios (“GAP”), that offer to JPM U.S. Private Bank clients diversified portfolios comprised of, among other investments, mutual funds and/or hedge funds. The GAP private funds may be held in an IM account (“GAP IM Holdings”).

JPMCB prefers to invest IM account or GAP private fund assets in Proprietary Funds and expects that a significant percentage of relevant portfolio assets will be invested in Proprietary Funds. For example, in early 2011, JPMCB had invested 47% of mutual fund assets and 35% of hedge fund assets in JPMCB IM client accounts in Proprietary Funds.

Prior to February 2011, JPMCB disclosed its preference for investment of relevant IM account assets in certain Proprietary Funds, namely mutual funds, in what was entitled “JPMorgan general investment principles regarding the use of JPMorgan funds and external managers” (the “Investment Principles”). The Investment Principles were distributed to relevant clients through various means including the incorporation into the JPMorgan Fund Disclosure Statement (“FDS”), a document provided to new IM account clients (including those with GAP IM Holdings), and to such clients with existing holdings in an annual mailing. However, from at least 2008 through January 2014, JPMCB did not disclose its preference for investment of relevant IM account assets in certain other Proprietary Funds, namely hedge funds, operated by JPMAM. In January 2011, for reasons unrelated to the language concerning JPMCB’s preference for Proprietary Funds, JPMCB removed the Investment Principles (including the language stating “we prefer to use JPMorgan-affiliated managers”) from the FDS. Therefore, JPMCB did not disclose in account documentation its preference for certain Proprietary Funds, namely mutual funds, from February 2011 to January 2014 and its preference for certain other Proprietary Funds, namely hedge funds, from at least 2008 to January 2014.

JPMCB disclosed that it had a conflict of interest when it invested its clients’ discretionary portfolio assets in Proprietary Funds (because such investments increased revenue to JPMCB affiliates). In addition, clients were informed of which funds were included within their discretionary portfolios, as well as the amount of assets held in each fund by means of, for example, periodic account statements and client reviews. However, no account opening document or marketing material disclosed to IM account clients (including those with GAP IM Holdings) JPMCB’s preference to invest client assets in certain Proprietary Funds, namely

mutual funds, from February 2011 to January 2014, or in certain other Proprietary Funds, namely hedge funds, from at least 2008 to January 2014.

Beginning in January 2014, language providing that “[a]s a general matter, we prefer” Proprietary Funds was incorporated into account opening documentation, the FDS, account statements, marketing materials, and other documentation used with IM account clients (including those with GAP IM Holdings).

2. *JPMCB Failed to Disclose its Preference for Retrocession-Paying Third-Party Hedge Fund Managers*

For the IM accounts and GAP private funds, JPMCB uses the investment funds on what is known as the “Private Bank Platform.” With respect to most of the private hedge funds on the Private Bank Platform, a broker-dealer affiliate of JPMCB acts as the placement agent and earns fees for placement, shareholder servicing and other ongoing services. These placement agent fees are typically referred to as “retrocessions” and are usually a portion of the private hedge fund managers’ management and/or performance fees earned on relevant client assets. The standard retrocession that the broker-dealer affiliate of JPMCB receives from a third-party hedge fund is approximately 1.0% of the market value of relevant client assets invested, paid on an annual basis.

Retrocessions are not additional fees paid by JPM U.S. Private Bank clients; rather, the retrocessions are paid by the hedge funds and/or their sponsors to JPMCB affiliates.

Since at least 2005, JPMCB sought retrocessions from third-party hedge fund managers that were under consideration for inclusion on the Private Bank Platform. During introductory meetings, the third-party hedge fund managers were typically asked about their willingness to pay retrocessions. If a manager declined to pay retrocessions, an alternative manager with a similar investment strategy that would pay retrocessions was typically sought. Currently all but one of the third-party-managed hedge funds on the Private Bank Platform and available for direct investment in IM accounts pay retrocessions to JPMCB affiliates.

JPMCB disclosed to its IM account clients (including those with GAP IM Holdings) that its affiliates may receive retrocessions in connection with investments in third-party hedge funds and informed some clients that retrocessions lowered client fees by reducing the clients’ total costs to access the hedge funds on the Private Bank Platform. However, JPMCB did not disclose its preference for retrocession-paying third-party hedge fund managers in IM accounts and GAP IM Holdings until August 2015, when it added additional language to certain client documentation regarding the extent to which such hedge funds are used in certain discretionary portfolios.

IV.

LEGAL DISCUSSION

A. Respondent Violated Section 4o(1)(B) and Commission Regulation 4.41(a)(2)

Section 4o(1)(B) of the Act prohibits a Commodity Trading Advisor (“CTA”) from engaging, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly in “any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.” 7 U.S.C. § 6o(1)(B).

Section 4.41(a)(2) of the Regulations prohibits a CTA or principal thereof from advertising in a manner which “operates as a fraud or deceit upon any client or participant or prospective client or participant.” 17 C.F.R. § 4.41(a)(2).

Section 4o(1)(B) and Commission Regulation 4.41(a)(2) apply to persons who fit the definition of a commodity trading advisor, whether such persons are required to be registered but are not, are registered, or are exempt from registration. *See CFTC v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985).

Section 4o(1)(B) and Commission Regulation 4.41(a)(2) do not require proof of scienter to establish a violation. *See In re Kolter*, [1994-1996 Transfer Binder], Comm. Fut. L. Rep. (CCH) 26,262, at 42,198 (CFTC Nov. 8, 1994); *see also Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988); *CFTC v. Savage*, 611 F.2d 270, 285 (9th Cir. 1979).

JPMCB advised its clients regarding their investment portfolios and acted as a fiduciary to those clients. As a fiduciary, JPMCB had a duty to disclose material facts concerning investments it made on behalf of its clients. *See, e.g., In re Commodities International Corp.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,943 at 44,566 (CFTC January 14, 1997).

During the Relevant Period, JPMCB preferred to invest IM account and GAP private fund assets in Proprietary Funds, and third-party-managed hedge funds that paid retrocessions to a JPMCB affiliate. JPMCB failed to fully disclose these preferences to relevant clients. JPMCB, therefore, violated Section 4o(1)(B) of the Act and Commission Regulation 4.41(a)(2).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that during the Relevant Period Respondent violated Section 4o(1)(B) of the Act, 7 U.S.C § 6o(1)(B) and Commission Regulation 4.41(a)(2), 17 C.F.R. § 4.41(a)(2).

VI.

OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Admits to the facts set forth above in Section III.D and acknowledges that its conduct violated the CEA and/or related Regulations.
- D. Waives:
 - 1. the filing and service of a complaint and notice of hearing;
 - 2. a hearing;
 - 3. all post-hearing procedures;
 - 4. judicial review by any court;
 - 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2013), relating to, or arising from, this proceeding;
 - 7. any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 - 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- E. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- F. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. makes findings by the Commission that Respondent violated Section 4o(1)(B) of

the Act, 7 U.S.C § 6o(1)(B) and Commission Regulation 4.41(a)(2), 17 C.F.R. § 4.41(a)(2);

2. orders Respondent to cease and desist from violating Section 4o(1)(B) and Commission Regulation 4.41(a)(2);
3. orders Respondent to pay a civil monetary penalty of forty million dollars (\$40,000,000);
4. orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in this Order.

Upon consideration, the Commission has determined to accept Respondent's Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4o(1)(B) of the Act, 7 U.S.C § 6o(1)(B) and Commission Regulation 4.41(a)(2), 17 C.F.R. § 4.41(a)(2).
- B. Respondent shall pay a civil monetary penalty of forty million dollars (\$40,000,000) within fourteen (14) days of the date of entry of this Order (the "CMP Obligation"). Should Respondent not satisfy its CMP Obligation in full within fourteen (14) days of the date of entry of this Order, post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall

fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and to the Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Disgorgement: Respondent agrees to pay disgorgement in the amount of sixty million dollars (\$60,000,000) within fourteen (14) days of the date of entry of this Order (“Disgorgement Obligation”). Should Respondent not satisfy its Disgorgement Obligation in full within fourteen (14) days of the date of entry of this Order, post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961. Any disgorgement payments made by Respondent or affiliates, such as J.P. Morgan Securities LLC, to the U.S. Securities and Exchange Commission pursuant to the Order promulgated in the matter of JPMorgan Chase Bank, N.A. and J.P. Morgan Securities LLC by the U.S. Securities and Exchange Commission on this date shall offset (dollar for dollar) Respondent's disgorgement obligation identified herein.

Respondent shall pay the Disgorgement Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

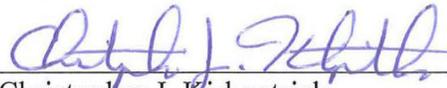
If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment

instructions and shall fully comply with those instructions. Respondent shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

2. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
3. Partial Satisfaction: Respondent understands that any acceptance by the Commission of partial payment of Respondent's Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order or a waiver of the Commission's right to seek to compel payment of any remaining balance.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its Disgorgement Obligation or CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 18, 2015