



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

October 31, 2003

Mark G. Cunha, Esq.  
Simpson Thacher & Bartlett  
425 Lexington Avenue  
New York, New York 10017-3954

**Re: J.P. Morgan Securities Inc. – Waiver Request under  
Regulation A and Rule 505 of Regulation D**

Dear Mr. Cunha:

This is in response to your letter dated October 31, 2003, written on behalf of J.P. Morgan Securities Inc. (the "Firm") and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arise by virtue of the entry today of the injunction included in the Final Judgment in *Securities and Exchange Commission v. J.P. Morgan Securities Inc.* (S.D.N.Y.) (the "Final Judgment"). You also requested relief under those provisions from disqualifications that arise by virtue of the entry of an order, judgment or decree of a U.S. state or territorial court addressing the same conduct and based on the same facts as the conduct and facts addressed in the complaint that resulted in the entry of the Final Judgment.

For purposes of this letter, we have assumed as facts the representations set forth in your letter. We also have assumed that the Firm will comply with the Final Judgment and any such state or territorial court order, judgment or decree.

On the basis of your letter, the Commission, pursuant to delegated authority, has determined that you have made a showing of good cause under Rule 262 and Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 of Regulation D by reason of the entry of the Final Judgment or any state or territorial court injunction of the nature described above. Accordingly, the relief described above from the disqualifying provisions of Regulation A and Rule 505 of Regulation D is hereby granted.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mauri Osheroff".

Mauri Osheroff  
Associate Director, Regulatory Policy

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BY FACSIMILE  
BY FEDERAL EXPRESS

October 31, 2003

Re: J.P. Morgan Securities Inc.

Gerald J. Laporte, Esq.  
Chief, Office of Small Business Policy  
Division of Corporate Finance  
Securities and Exchange Commission  
450 Fifth Street, N.W., Room 3501  
Washington, D.C. 20549-0310

Dear Mr. Laporte:

We submit this letter on behalf of our client J.P. Morgan Securities Inc. ("JPMSI") in connection with a settlement agreement (the "Settlement") arising out of a joint investigation by the Securities Exchange Commission (the "Commission"), the New York Stock Exchange, Inc. (the "NYSE"), NASD, Inc. (the "NASD") and various U.S. state and territorial regulatory agencies (the "States") into research analyst conflicts of interest at JPMSI and several other large investment banking firms.

JPMSI below requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Commission promulgated under the Securities Act of 1933 (the "Securities Act"), a waiver of any disqualification from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to JPMSI and any of its affiliates as a result of the entry of the Final Judgment (as defined below) and any related disqualifying order, judgment, or decree of a state or territorial court addressing the same conduct as is addressed in the Complaint (as defined below). JPMSI also requests that these waivers be granted effective upon entry of the Final Judgment or such state or territorial court order, judgment, or decree. It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers by the Division of Corporate Finance.

**BACKGROUND**

The Commission, the NYSE, the NASD and the States have engaged in settlement discussions with JPMSI in connection with the joint investigation described above. As a result of these discussions, the Commission has filed a complaint (the "Complaint") against JPMSI in the United States District Court for the Southern District of

New York (the "District Court") in a civil action captioned *Securities and Exchange Commission v. J.P. Morgan Securities Inc.* JPMSI has executed a consent (the "Consent") in which JPMSI neither admits nor denies any of the allegations in the Complaint, except as to jurisdiction, but consents to the entry of a final judgment against JPMSI by the District Court (the "Final Judgment"). The Final Judgment, among other things, enjoins JPMSI, directly or through its officers, directors, agents and employees, from violating rules cited in the Final Judgment. Additionally, the Final Judgment orders JPMSI to make payments aggregating \$80 million in settlement of the matters addressed in the Final Judgment and to comply with the undertakings incorporated by reference in the Final Judgment.

### DISCUSSION

JPMSI understands that the entry of the Final Judgment could disqualify it and its affiliated entities from participating in certain offerings otherwise exempt under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act, insofar as the Final Judgment may be deemed to cause JPMSI to be subject to an order, judgment or decree of a court of competent jurisdiction enjoining JPMSI from engaging in or continuing to engage in any conduct or practice in connection with the purchase or sale of a security or arising out of the conduct of the business of an underwriter, broker or dealer. The Commission has the authority to waive the Regulation A and Rule 505 of Regulation D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C). JPMSI requests that the Commission waive any disqualifying effects that the Final Judgment may have under Regulation A and Rule 505 of Regulation D with respect to JPMSI or its affiliates on the following grounds:

1. JPMSI's conduct addressed in the Final Judgment and alleged in the Complaint does not relate to offerings under Regulation A or D.
2. JPMSI has undertaken to improve and enhance its compliance policies and procedures in a manner reasonably designed to ensure compliance with the provisions of the Final Judgment as outlined in Addendum A to the Final Judgment ("Term Sheet").
3. The disqualification of JPMSI from the exemptions under Regulation A and Rule 505 of Regulation D would, we believe, have an adverse impact on third parties that have retained or will retain JPMSI and its affiliates in connection with transactions that rely on these exemptions.
4. The disqualification of JPMSI from the exemptions available under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe, given that (i) the Final Judgment relates to

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activity which has already been addressed pursuant to recently adopted rules of the Commission, NYSE, and NASD and pursuant to the Term Sheet; and (ii) the Commission staff has negotiated a settlement with JPMSI and reached a satisfactory conclusion to this matter that will require JPMSI to make payments aggregating \$80 million in settlement of the matters addressed in the Final Judgment and will require JPMSI to make certain structural changes pursuant to the Term Sheet, as well as to make available to JPMSI's customers certain research prepared by third party research providers.

In light of the foregoing, we believe that disqualification is not necessary, in the public interest or for the protection of investors, and that JPMSI has shown good cause that relief should be granted. Accordingly, we respectfully request the Commission, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D, to waive, effective upon entry of the Final Judgment or any related disqualifying order, judgment, or decree of a U.S. state or territorial court based on the same facts and addressing the same conduct as is addressed in the Complaint, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to JPMSI and any of its affiliates as a result of the entry of the Final Judgment and any such order, judgment or decree.<sup>1</sup>

Please do not hesitate to contact me regarding this request.

Sincerely,

  
Mark G. Cunha

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<sup>1</sup> We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. *See, e.g.*, Credit Suisse First Boston Corporation, S.E.C. No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, S.E.C. No-Action Letter (pub. avail. Sept. 27, 2001); Legg Mason Wood Walker, Incorporated, S.E.C. No-Action Letter (pub. avail. June 11, 2001); In the Matter of Certain Market-Making Activities, S.E.C. No-Action Letter (pub. avail. Jan. 11, 1999); Stephens Incorporated, S.E.C. No-Action Letter (pub. avail. Nov. 23, 1998).