

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95367 / July 27, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6073 / July 27, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20936

In the Matter of

**J.P. MORGAN
SECURITIES LLC,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS, PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934 AND
SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the “Advisers Act”), against J.P. Morgan Securities LLC (“Respondent” or “JPMS”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of

1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

1. These proceedings arise out of JPMS’s failure to adequately develop and implement a written identity theft prevention program as required by Rule 201 of Regulation S-ID (17 C.F.R. § 248.201).

2. JPMS is a broker-dealer and investment adviser registered with the Commission. From at least January 1, 2017, through December 31, 2019 (the “Relevant Period”), JPMS violated Rule 201 of Regulation S-ID because its written identity theft prevention programs for the applicable lines of business (the “Programs”) failed to include reasonable policies and procedures to (i) identify relevant red flags for the covered accounts that JPMS offered or maintained, and incorporate those red flags into the Programs, (ii) respond appropriately to detected red flags to prevent and mitigate identity theft, and (iii) ensure that each Program was updated periodically to reflect changes in identity theft risks to customers.

3. JPMS also violated Rule 201 of Regulation S-ID during the Relevant Period because it did not provide for the continued administration of its Programs by failing to (i) exercise appropriate and effective oversight of all service provider arrangements; and (ii) train staff under one of its lines of business, as necessary, to effectively implement the Program in 2017.

Respondent

4. J.P. Morgan Securities LLC is a Delaware limited liability company with its principal place of business in New York, New York. It has been a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act since December 13, 1985, and an investment adviser registered with the Commission pursuant to Section 203 of the Advisers Act since April 3, 1965. It is a wholly-owned subsidiary of JPMorgan Chase & Co. (“JPMC”), a global financial services firm incorporated in Delaware and headquartered in New York, New York.

Background

5. During the Relevant Period, JPMS’s Programs failed to comply with the requirements of Regulation S-ID.

6. Regulation S-ID requires financial institutions, including broker-dealers and investment advisers registered with the Commission that offer or maintain one or more covered accounts, to develop and implement a written identity theft prevention program “that is designed to detect, prevent, and mitigate identity theft” in connection with the opening of a covered account or

any existing covered account.¹ The program “must be appropriate to the size and complexity of the financial institution...and the nature and scope of its activities.”²

7. Under Regulation S-ID, an identity theft prevention program must include reasonable policies and procedures to: (i) identify relevant “red flags”³ for the covered accounts and incorporate them into the program; (ii) detect the red flags that have been incorporated into the program; (iii) respond appropriately to any red flags that are detected pursuant to the program; and (iv) ensure that the program is updated periodically to reflect changes in risks to customers and to the safety and soundness of the firm from identity theft.⁴

8. A written identity theft prevention program may incorporate by reference policies outside of the program in order to satisfy the requirements of Regulation S-ID, but such incorporation by reference must be explicit.⁵

9. With respect to the identification of relevant red flags, Regulation S-ID requires firms to consider several factors specific to the firm in order to identify red flags that are relevant to the firm’s business and the nature and scope of its activities, such as the types of covered accounts it offers or maintains, methods it provides to open covered accounts, methods it provides to access covered accounts, and its previous experiences with identity theft.⁶

10. Appendix A to Regulation S-ID, which contains guidelines intended to assist firms in the formulation and maintenance of an identity theft prevention program that satisfies the requirements of Regulation S-ID, lists categories of red flags that a firm should consider incorporating in its program “as appropriate.”⁷ Supplement A to Appendix A further provides a non-comprehensive list of examples of red flags from each of these categories that the firm “may consider incorporating into its Program, whether singly or in combination...in connection with

¹ 17 C.F.R. § 248.201(d)(1). The rule defines “identity theft” as a fraud committed or attempted using the identifying information of another person without authority. 17 C.F.R. § 248.201(b)(9).

² 17 C.F.R. § 248.201(d)(1).

³ “Red flags” are defined as “a pattern, practice, or specific activity that indicates the possible existence of identity theft.” 17 C.F.R. § 248.201(b)(10).

⁴ 17 C.F.R. § 248.201(d)(2)(i)-(iv).

⁵ 17 C.F.R. § 248.201 Appendix A, Section I.

⁶ 17 C.F.R. § 248.201, Appendix A, Section II(a).

⁷ These categories are: (i) alerts, notifications, or warnings received from consumer reporting agencies; (ii) suspicious documents, such as documents that appear to have been altered or forged; (iii) suspicious personal identifying information, such as a suspicious address change; (iv) unusual use of, or other suspicious activity related to, a covered account; and (v) notice from customers, victims of identity theft, or law enforcement authorities. 17 C.F.R. § 248.201, Appendix A, Section II(c).

covered accounts.”⁸ The firm must consider these examples of red flags and include in its identity theft prevention program those that are appropriate.⁹

11. With respect to responding to detected red flags in order to prevent and mitigate identity theft, Regulation S-ID requires an identity theft prevention program to include policies and procedures that “provide for appropriate responses” to detected red flags “that are commensurate with the degree of risk posed.”¹⁰ In determining an appropriate response, a firm “should consider aggravating factors that may heighten the risk of identity theft, such as a data security incident that results in unauthorized access to a customer’s account records . . . or notice that a customer provided account information” to someone under false pretenses.¹¹

12. With respect to periodically updating a written identity theft prevention program, Appendix A provides that firms should consider factors such as: (i) the firm’s experiences with identity theft; (ii) changes in methods of identity theft; (iii) changes in methods to detect, prevent or mitigate identity theft; (iv) changes in the types of accounts offered or maintained; and (v) changes in the firm’s structure or service provider arrangements.¹²

13. Regulation S-ID also requires firms to provide for the continued administration of the written identity theft prevention program by training staff, as necessary, to effectively implement the program, and by exercising appropriate and effective oversight of service provider arrangements.¹³ With respect to the oversight of service provider arrangements in connection with one or more covered accounts, the firm should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft.¹⁴

JPMS’s Identity Theft Prevention Program

14. JPMS is a registered broker-dealer and investment adviser that offers and maintains “covered accounts,” which are accounts offered or maintained primarily for personal, family, or household purposes that involve or are designed to permit multiple payments or transactions.¹⁵ Accordingly, JPMS is required to develop and implement a written identity theft prevention program in accordance with the requirements of Rule 201 of Regulation S-ID.

⁸ 17 C.F.R. § 248.201, Appendix A, Supplement A.

⁹ 17 C.F.R. § 248.201(f).

¹⁰ 17 C.F.R. § 248.201(d)(2)(iii).

¹¹ 17 C.F.R. § 248.201, Appendix A, Section IV.

¹² 17 C.F.R. § 248.201, Appendix A, Section V.

¹³ 17 C.F.R. § 248.201(e)(3)-(4).

¹⁴ 17 C.F.R. § 248.201, Appendix A, Section VI(c).

¹⁵ 17 C.F.R. § 248.201(b)(3).

15. During the Relevant Period, JPMS offered covered accounts under two lines of business, each of which maintained an identity theft prevention program.

16. During the Relevant Period, the Programs contained substantial deficiencies and thus failed to comply with the requirements of Regulation S-ID.

17. During the Relevant Period, neither Program incorporated policies or procedures that described how identity theft red flags were to be identified or appropriately responded to once they were detected. Rather, both Programs merely (i) restated the general legal requirements (such as “identify relevant red flags” and “respond appropriately to any red flags that are detected to prevent and mitigate identity theft”), (ii) listed verbatim all the illustrative examples of identity theft red flags provided in Appendix A to Regulation S-ID, and (iii) listed various firmwide policies and business procedures that were incorporated into the Programs. None of the incorporated policies and procedures listed in either Program explained how JPMS was to identify any of the enumerated red flags or to respond to the red flags in order to prevent and mitigate identity theft. Although JPMS did take actions to detect and respond to potential and actual incidents of identity theft, the procedures describing those actions were not included or incorporated by reference in either Program.

18. During the Relevant Period, neither Program incorporated reasonable policies or procedures to ensure the Programs were updated periodically, including identifying any new red flags based on customers’ actual experiences or changes in methodology. As a result, JPMS failed to update its procedures, or provide in the Programs a written process for determining whether any such updates were necessary as a result of JPMS’s own experiences with identity theft or changes in the manner in which brokerage accounts could be opened.

19. During the Relevant Period, JPMS failed to exercise appropriate and effective oversight of all of its service provider arrangements under the Programs. The Programs required JPMS (i) to assess all service providers annually and (ii) to ensure that the service providers that possessed customer information and were in a position to identify red flags had language in their contracts requiring those service providers to detect identity theft red flags and either report the red flags to JPMC or respond to the red flags themselves. JPMS failed to satisfy this requirement because it did not follow its own policies and procedures to assess all service providers annually and to ensure that all the relevant service provider agreements had the required red flag contractual language. Accordingly, JPMS did not appropriately monitor all of its service providers to ensure that their activities were being conducted in accordance with policies and procedures designed to detect, prevent and mitigate identity theft.

20. From at least January 1, 2017 through December 31, 2017, JPMS failed to provide any identity theft prevention program-specific training to staff as necessary to effectively implement one of the Programs.

Violation

21. As a result of the conduct described above, Respondent willfully¹⁶ violated Rule 201 of Regulation S-ID (17 C.F.R. § 248.201), which requires registered broker-dealers and investment advisers that offer or maintain covered accounts to, among other things, develop and implement a written identity theft prevention program that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account, and provide for the continued administration of the identity theft prevention program.

JPMS's Remedial Efforts

22. JPMS has undertaken substantial remedial acts, including auditing and revising its identity theft prevention program.

23. Among other things, JPMS adopted improved applicable policies and procedures for identifying, detecting, and responding to red flags, and periodically updating its program. JPMS also revised its program to provide greater oversight over JPMS's service provider arrangements and to improve training of staff. JPMS, in addition, made detailed presentations to the Commission's staff.

24. In determining to accept the Offer, the Commission considered the remedial acts undertaken by Respondent.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Rule 201 of Regulation S-ID (17 C.F.R. § 248.201).

¹⁶ "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

B. Respondent is censured.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$1,200,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the Commission website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying J.P. Morgan Securities LLC as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Carolyn Welshhans, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based

on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary