

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101493 / October 31, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6758 / October 31, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22279

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 SECTION 203(e) 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 Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”), against J.P. Morgan Securities LLC (“JP Morgan Securities” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 Section 203(e) 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 finds¹ that

Summary

From at least June 30, 2020 through July 14, 2022 (the "Relevant Period"), JP Morgan Securities, through its registered representatives, recommended certain mutual fund products ("Clone Mutual Funds") to its retail brokerage customers when materially less expensive ETF products that offer the same investment portfolio to investors ("Clone ETFs" and, together with Clone Mutual Funds, the "Clone Pairs") were also available on JP Morgan Securities' platform for recommendation to these customers. In total, approximately 10,516 JP Morgan Securities retail brokerage customers made approximately 17,494 purchases of the more expensive Clone Mutual Funds during the Relevant Period as a result of those recommendations. JP Morgan Securities' actions caused impacted customers to pay higher fees than they would have otherwise paid had they purchased the Clone ETFs instead of the Clone Mutual Funds. Specifically, the impacted JP Morgan Securities retail brokerage customers paid approximately \$14.03 million in higher fees and expenses. When recommending the Clone Mutual Funds, JP Morgan Securities and its registered representatives failed to consider the costs associated with the Clone Mutual Funds as opposed to the less expensive Clone ETFs and failed to have a reasonable basis to believe that the recommendations were in the best interest of JP Morgan Securities retail brokerage customers. Through this conduct, JP Morgan Securities violated the Care Obligation of Regulation Best Interest ("Reg. BI"). JP Morgan Securities also violated Reg. BI's Compliance Obligation by failing to enforce its written policies and procedures reasonably designed to achieve compliance with Reg. BI's Care Obligation. By violating Reg. BI's Care and Compliance Obligations, JP Morgan Securities violated the General Obligation of Reg. BI.

Respondent

1. JP Morgan Securities is a Delaware limited liability company with its principal place of business in New York, New York. It has been dually registered with the Commission as a broker-dealer and investment adviser since December 13, 1985, and April 3, 1965, respectively. In its Form ADV dated March 28, 2024, JP Morgan Securities reports that it has approximately \$249.7 billion in regulatory assets under management. JP Morgan Securities is a wholly-owned subsidiary of JPMorgan Chase & Co., a global financial services firm incorporated in Delaware and headquartered in New York, New York.

Background

The General Obligation of Reg. BI

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2. The General Obligation of Reg. BI, which had a compliance date of June 30, 2020, provides in relevant part that “[a] broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.” Exchange Act Rule 15l-1(a)(1); *see also* Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031, at 45-46, 471 (June 5, 2019) (hereinafter “Adopting Release”).

3. Broker-dealers such as JP Morgan Securities can satisfy the General Obligation only if they comply with four component obligations, including but not limited to: (1) exercising reasonable diligence, care, and skill when recommending any securities transaction or investment strategy involving securities to a retail brokerage customer (“Care Obligation”) and (2) establishing, maintaining, and enforcing policies and procedures reasonably designed to achieve compliance with Reg. BI (“Compliance Obligation”). *See* Exchange Act Rule 15l-1(a)(2). Because all of the component obligations are mandatory, failure to comply with any of them would violate the General Obligation. *See* Adopting Release at 72.

The Care Obligation of Reg. BI

4. The Care Obligation of Reg. BI requires, in relevant part, that a broker-dealer or its associated persons, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, exercise reasonable diligence, care, and skill (A) to understand the potential risks, rewards, and costs associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers and (B) to have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer’s investment profile and the potential risks, rewards, and costs associated with the recommendation and does not place the financial or other interest of the broker-dealer or such associated person ahead of the interest of the retail customer. Exchange Act Rule 15l-1(a)(2)(ii).

The Clone Pairs

5. Mutual funds and ETFs are investment companies that pool money from many investors to invest in securities—such as stocks, bonds, and short-term debt—or other assets. Mutual fund shares are typically purchased from the fund directly or through investment professionals like broker-dealers. ETFs do not sell individual shares directly to retail investors. Instead, ETF shares are traded throughout the day on national stock exchanges. Both mutual funds and ETFs charge investors various fees and expenses.

6. Many mutual funds offer different types of shares, known as classes. Each mutual fund share class invests in the same pool (or investment portfolio) of securities, but each class may have different fees and expenses.

7. Asset management companies sometimes sponsor a Clone Pair, namely a mutual fund and an ETF with identical investment strategies. A Clone ETF and Clone Mutual Fund both offer the same investment portfolio to investors but differ in terms of cost and legal structure, which generates some differences between the two products. For example, mutual funds are priced once per day at their net asset value, whereas ETFs are priced throughout the day at a fluctuating market price.

JP Morgan Securities Recommends More Expensive Clone Mutual Funds Without a Reasonable Basis

8. JP Morgan Securities recommended certain mutual fund products to its retail brokerage customers when less expensive Clone ETF products that offer the same investment portfolio to investors were also available on JP Morgan Securities' platform for recommendation to these customers.

9. By March 2019, JP Morgan Securities had onboarded both a Clone Mutual Fund ("First Clone Mutual Fund") and a Clone ETF ("First Clone ETF" and, together with First Clone Mutual Fund, the "First Clone Pair") to its full-service brokerage platform for its registered representatives to recommend to retail brokerage customers.² The First Clone Pair was offered by the same issuer, offered investors the same investment portfolio, and were marketed as such. All share classes of the First Clone Mutual Fund available for recommendation to JP Morgan Securities retail brokerage customers had significantly higher fees and expenses than the First Clone ETF. As a result, the First Clone ETF was less expensive overall than the First Clone Mutual Fund share classes that were available on JP Morgan Securities' platform for brokerage recommendations.

10. By February 2021, JP Morgan Securities had onboarded a second Clone Mutual Fund ("Second Clone Mutual Fund") and a Clone ETF ("Second Clone ETF" and, together with Second Clone Mutual Fund, the "Second Clone Pair") to its full-service brokerage platform for its registered representatives to recommend to retail brokerage customers. Once again, the Second Clone Pair was offered by the same issuer, offered investors the same investment portfolio, and were marketed as such. All share classes of the Second Clone Mutual Fund available for recommendation to JP Morgan Securities retail brokerage customers had significantly higher fees and expenses than the Second Clone ETF. As a result, the Second Clone ETF was less expensive overall than the Second Clone Mutual Fund share classes that were available on JP Morgan Securities' platform for brokerage recommendations.

² Recommendations of the First Clone Mutual Fund and First Clone ETF became subject to Reg. BI as of June 30, 2020, the regulation's compliance date.

11. During the Relevant Period, JP Morgan Securities recommended the First and Second Clone Mutual Funds to its retail brokerage customers without considering whether these products were materially more expensive than the corresponding Clone ETFs. Specifically, between June 30, 2020 and July 14, 2022, approximately 10,516 JP Morgan Securities customers made approximately 17,494 purchases of the more expensive First and Second Clone Mutual Funds as a result of those recommendations. JP Morgan Securities' actions caused impacted customers to pay higher fees than they would have otherwise paid had they instead purchased the First and Second Clone ETFs. As a result of these recommendations, retail brokerage customers paid approximately \$14.03 million more in fees and expenses than they would have paid if they had instead purchased the less expensive First and Second Clone ETFs.

12. When recommending the First and Second Clone Mutual Funds, JP Morgan Securities and its registered representatives failed to consider the costs associated with the Clone Mutual Funds as compared to the less expensive Clone ETFs, and therefore failed to have a reasonable basis to believe that the recommendations were in the best interest of JP Morgan Securities retail brokerage customers.

JP Morgan Securities Failed to Enforce Written Policies and Procedures Reasonably Designed to Achieve Compliance with Reg. BI

13. Reg. BI's Compliance Obligation requires a broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg. BI. Exchange Act Rule 15l-1(a)(2)(iv). These policies and procedures must address, among other things, compliance with a broker-dealer's Care Obligation. *See* Adopting Release at 16.

14. JP Morgan Securities maintains various written policies and procedures ("WPPs") for when its financial professionals, including registered representatives, make mutual fund recommendations. During the Relevant Period, JP Morgan Securities' WPPs stated that "careful attention must be paid to recommending [mutual funds] when a comparable ETF is available" and to "consider alternatives within the same product-type or asset class."

15. During the Relevant Period, JP Morgan Securities failed to comply with its WPPs in that certain registered representatives recommended the First and Second Clone Mutual Funds to retail brokerage customers without considering the less expensive First and Second Clone ETFs with identical investment strategies as an alternative within the same product-type or asset class.

Violations

16. As a result of the conduct described above, JP Morgan Securities willfully violated Rule 15l-1(a) under the Exchange Act.³

³ *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (upholding the Commission's determination that, for the purpose of Section 15, "willfulness" requires only "that the

JP Morgan Securities' Self-Reporting, Cooperation and Remedial Efforts

17. In determining to accept the Offer, the Commission considered self-reporting and remedial acts promptly undertaken by Respondent and the cooperation afforded the Commission staff. JP Morgan Securities self-reported the conduct to the Commission staff and conducted an investigation. JP Morgan Securities remediated the conduct by repaying impacted customers plus interest. JP Morgan Securities also converted impacted customers into a lower-priced share class of the Clone Mutual Funds, which the impacted customers were not otherwise eligible to purchase, to approximate the lower fees of the Clone ETFs and minimize customer impact.

18. Upon becoming aware of the issue, JP Morgan Securities restricted all future purchases (both new positions and additions to existing positions) by full service brokerage accounts of the First and Second Clone Mutual Fund share classes that had higher fees than the First and Second Clone ETFs, respectively.

19. JP Morgan Securities self-reported the issue to the Commission staff, undertook an investigation to confirm that there were no other Clone Pairs available for recommendation on its platform to retail brokerage customers and provided timely updates to the Commission staff and voluntarily produced documents, reports and other materials.

20. JP Morgan Securities updated its written procedures for adding new actively-managed mutual fund and ETF strategies and vehicles to its full-service brokerage platform to prevent future occurrences of Clone Pairs with materially different expense ratios being available for JP Morgan Securities' registered representatives to recommend to its retail brokerage customers.

21. JP Morgan Securities voluntarily identified the impacted customers who purchased First and Second Clone Mutual Fund share classes that had higher fees than the First and Second Clone ETFs during the Relevant Period, and has completed full remediation for those customers, including reimbursement of certain transactions that were not subject to Reg. BI because they occurred before Reg. BI's compliance date and/or were not recommended by JP Morgan Securities. JP Morgan Securities identified approximately 10,516 impacted customers that paid a total of approximately \$14.03 million in up-front sales charges, contingent deferred sales charges, and higher ongoing fees and expenses from purchases of the First and Second Clone Mutual Funds recommended by JP Morgan Securities and its registered representatives. JP Morgan Securities issued payments (including interest) totaling approximately \$15.21 million to approximately 10,906 accounts attributable to purchases recommended by JP Morgan Securities and its registered representatives, by crediting the accounts of current customers and mailing reimbursement checks or otherwise directing payments as instructed by former customers. The \$15.21 million that JP Morgan Securities paid to impacted customers who made

person charged with the duty knows what he is doing. It does not mean that, in addition, he must suppose that he is breaking the law.” (internal quotation marks omitted)).

recommended purchases also included approximately \$1.18 million to account for potential tax implications and the greater of interest or lost performance. JP Morgan Securities' conversion of positions to a lower fee share class of the First and Second Clone Mutual Funds with an expense ratio approximately that of the First and Second Clone ETFs was undertaken at no cost to the customers. In addition to the remediation described above, JP Morgan Securities also remediated JP Morgan Securities retail brokerage customers who made unsolicited purchases during the Relevant Period of the First and Second Clone Mutual Fund share classes that had higher fees than the First and Second Clone ETFs. In total, JPMS paid approximately \$15.9 million to remediate impacted customers.

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 Section 203(e) 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 15c-1 under the Exchange Act.

B. Respondent is censured.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its self-report, its cooperation in a Commission investigation, and its remediation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary