UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:	)	
	)	
J.P. MORGAN SECURITIES LLC,	)	**CFTC Docket No. 17-04**
	)	
Respondent.	)	

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that J.P. Morgan Securities LLC ("JPMS" or "Respondent") has violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2015). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether JPMS has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, JPMS has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, JPMS consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.[1]

1 Respondent consents to the entry of this Order and the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions consented to in this Order, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions consented to in the Offer or this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

During the period 2010 to 2014 ("relevant period"), JPMS failed to diligently supervise its officers', employees', and agents' processing of exchange and clearing fees ("exchange fees") invoiced to JPMS by exchanges and charged by JPMS to certain customers in connection with futures and options transactions, in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2015).

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In accepting JPMS' Offer, the Commission recognizes the Respondent's significant cooperation during the CFTC's Division of Enforcement's ("Division") investigation of this matter, which included self-reporting JPMS' internal findings of overcharges to the Commission and providing important information and analysis to the Division that helped the Division efficiently and effectively undertake its investigation.

B. RESPONDENT

J.P. Morgan Securities LLC is a Delaware limited liability company with its principal place of business in New York, New York. It is a wholly owned subsidiary of JPMorgan Chase & Co. JPMS (or its predecessor entities) has been registered with the Commission as a futures commission merchant ("FCM") since 1982 and as a swap dealer since 2012. JPMS is also registered with the Securities and Exchange Commission as a broker-dealer.

C. FACTS

Customer transactions executed on exchanges are subject to payment of exchange and clearing fees that are applied to each transaction in the normal course of business. FCMs such as JPMS receive invoices for these fees from the exchange clearinghouses, and the FCMs typically assess these fees to their customers. The fees charged by exchanges vary based upon, among other things, the different memberships held by customers. In addition, the exchanges have instituted various incentive programs which provide fee discounts or rebates based on, among other things, monthly trading volumes in certain contracts. Exchanges rely upon FCMs to operationally administer these programs. Although FCMs assess fees to their customers on a transaction-by-transaction basis, the amounts due to customers under the incentive and rebate programs generally are not determined until the end of each month, when the total trading volume for customers across all FCMs for the past month is known. At that point, FCMs engage in a variety of traditionally manual processes to compute discounts and credit them to their customer accounts. The process is typically complicated because of the myriad applicable rates, surcharges and fee structures.

During the relevant period, JPMS failed to implement and maintain adequate systems for reconciling invoices from exchanges and clearinghouses with the amounts of fees actually charged to its customers through its back-office accounting software. JPMS also failed to implement and maintain adequate policies and procedures regarding reconciliation of exchange and clearing fees, including failing to draft adequate procedures and to adequately train staff on how to complete the reconciliations.

As a result, JPMS' reconciliation process for identifying and correcting discrepancies between invoices from the CME Group and certain other exchanges (collectively, "Exchanges") and the amounts charged to customers for transactions on these Exchanges was inaccurate and faulty.

Specifically, JPMS lacked automated systems capable of reconciling its customers' exchange and clearing fees for transactions on the Exchanges. During the relevant period, JPMS' fee reconciliation process was largely manual and carried out by only one employee at the end of the month using three different JPMS systems. These systems, which included the firm's commission and fee schedule repository, back-office processing software, and exchange and clearing fee management information system, were dependent on manual input of exchange fee and other data by JPMS employees. In addition to insufficient staff to complete the fee reconciliation process accurately, JPMS did not have adequate written policies and procedures in place regarding its clearing and exchange fee reconciliations.

Issues with JPMS' clearing and exchange fee reconciliation processes and procedures ("fee procedures") came to light in early 2014 after the firm discovered that it had failed to rebate a combined six-figure amount to three customers for CME Group trading activity in 2012, 2013, and 2014. In early 2014, JPMS initiated a review of exchange rebates owed to customers to confirm problems in its fee procedures that needed to be addressed through dedicated project management resources. Following JPMS' 2014 exchange fee rebates review, the firm self-reported JPMS' initial findings of overcharges to the Commission at the end of 2014. In January 2015, JPMS retained an outside consultant for advisory services related to JPMS' fee procedures. The consultant reviewed JPMS's calculations and confirmed that JPMS had failed to pay out a total of $7,831,464 in exchange fee rebates for transactions on the Exchanges during the relevant period. The consultant also worked with JPMS to review the firm's proprietary fee and commission calculation system and fee reconciliation procedures.

In January 2016, JPMS rolled out its new proprietary fee and commission calculation system and related reconciliation tool, which replaced the fee-related functionality of the firm's existing systems. Through the creation of these new systems, JPMS has streamlined and automated aspects of its clearing and exchange fee reconciliation process and combined all exchange and clearing fee reference data into one system. JPMS also engaged a data provider to global financial institutions in mid-2016 to provide exchange fee rates from the Exchanges in electronic form and automatically upload them into the firm's new fee and commission calculation system. JPMS is also migrating clients to new pricing arrangements in which exchange and clearing fees are incorporated into an agreed rate, which does not change unless and until clients are notified of a change.

Between 2010 and 2014, JPMS accrued, but failed to pay out $7,831,464 in exchange fee rebates for various Exchange-traded products. JPMS has fully refunded nearly all of the affected customers.[2] JPMS represents that its buildout and pricing agreements have improved the accuracy of its fee procedures and JPMS continues to work to improve its process.

IV.

LEGAL DISCUSSION

Regulation 166.3, 17 C.F.R. § 166.3 (2015), requires that every Commission registrant (except associated persons who have no supervisory duties) diligently supervise the handling by its partners, employees and agents of all activities relating to its business as a registrant. Regulation 166.3 imposes upon registrants an affirmative duty to supervise their employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance programs. In order to prove a violation of Regulation 166.3, the Commission must demonstrate that either: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities,* [1994-1996 Transfer Binder] Comm. Fut. L Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re Paragon Futures Assoc.,* [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992); *Bunch v. First Commodity Corp. of Boston*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,352 at 39,168-69 (CFTC Aug. 5, 1992). A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See In re FCStone, LLC*, No. 13-24, at 8 (CFTC May 29, 2013); *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH), 27,194 at 45,744 (CFTC Dec. 10, 1997).

Throughout the relevant period, in failing to timely pay rebates with respect to various exchange traded products, JPMS failed to supervise and implement adequate systems and procedures capable of preparing, handling and processing exchange fees charged to its customers in violation of Regulation 166.3. JPMS was required to ensure the accuracy of the exchange fees charged to customers; instead, JPMS allowed its officers, agents and employees to establish and maintain exchange fee reconciliations that were inaccurate and faulty. JPMS also failed to detect the fact that it had been overcharging certain customers exchange fees and that its fee reconciliations were inaccurate and faulty until 2014. JPMS should have monitored its officers, employees and agents responsible for the fee reconciliations more closely to ensure that the reconciliations were being done accurately and that the employees conducting and supervising the conduct of the reconciliations were adequately trained and had sufficient systems and procedures in place.

Evidence of violations that "should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly" is probative of a failure to supervise. *Paragon Futures*, ¶ 25,266 at 38,850. By such acts, JPMS violated Regulation 166.3, 17 C.F.R. § 166.3 (2015). *See also In re Merrill Lynch, Pierce,*

[2] Of the $7,831,464 owed to customers, $7,419,051 has been credited to customers, $109,142 is expected to be credited to customers pending customer approval, $303,271 will be considered for escheatment to the state in instances where the customer is no longer a recognized legal entity or the customer has declined the credit.

Fenner & Smith, Inc., CFTC Docket No. 14-22 (CFTC Aug. 26, 2014) (In consent order, CFTC found that FCM's fee reconciliation process for identifying and correcting discrepancies between the invoices from the exchange clearinghouses and the amounts charged its customers had been faulty for more than two years and ordered FCM to pay a $1.2 million civil monetary penalty), and *In re Barclays Capital, Inc.* (CFTC Docket No. 16-25, Aug. 4, 2016) (In consent order, CFTC found that FCM's fee reconciliation process had been inaccurate and faulty for nearly four years and ordered FCM to pay an $800,000 civil monetary penalty).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds during the relevant period Respondent violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2015).

VI.

OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, without admitting or denying the findings and conclusions herein:

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. 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 (2006), 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 (2015), 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;

D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which JPMS has consented in the Offer;

E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order, that:

1. makes findings by the Commission that JPMS violated Regulation 166.3, 17 C.F.R. § 166.3 (2015);

2. orders JPMS to cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2015);

3. orders JPMS to pay a civil monetary penalty in the amount of nine-hundred thousand dollars ($900,000), plus post-judgment interest; and

4. orders JPMS and its successors and assigns, to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. JPMS shall cease and desist from violating Commission Regulation 166.3, 17 C.F.R. § 166.3 (2015);

B. Civil Monetary Penalty: JPMS shall pay a civil monetary penalty in the amount of nine-hundred thousand dollars ($900,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order (the "CMP Obligation"). Should JPMS not satisfy its CMP Obligation within ten (10) 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. JPMS shall pay this penalty 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 by other than electronic funds transfer, 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 by electronic funds transfer is chosen, JPMS shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. JPMS shall accompany payment of the penalty with a cover letter that identifies JPMS and the name and docket number of this proceeding. JPMS shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581, (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, at the same address, and (3) Regional Counsel, Commodity Futures Trading Commission, Chicago Regional Office, 525 West Monroe, 11th Floor, Chicago, IL 60661. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if this amount is not paid in full within fifteen (15) days of the due date, JPMS shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty, with interest thereon to the date of the payment, has been made.

C. JPMS and its successors and assigns shall comply with the following undertaking set forth in its Offer:

1. Public Statements: JPMS agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect JPMS': (i) testimonial obligations or (ii) right to take legal positions in other proceedings to which the Commission is not a party. JPMS and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or

employees under its authority or control understand and comply with this agreement.

2. Cooperation with the Commission: JPMS 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: JPMS understands and agrees that any acceptance by the Commission of partial payment of JPMS' 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 JPMS satisfies in full its CMP Obligation as set forth in this Order, JPMS 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 on this date.

By the Commission.

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

Dated: January 11, 2017