

## Public Statements & Remarks

### Joint Statement of Concurrence of Commissioners Dawn D. Stump and Rostin Behnam Regarding JPMorgan Chase & Co., et al.

September 29, 2020

We concur with the Commission's decision to accept the Offer of Settlement from JPMorgan Chase Bank, N.A.; J.P. Morgan Securities LLC; and JPMorgan Chase & Co. (the "Respondents"). We concur with the Commission's findings that the Respondents engaged in unlawful spoofing, manipulation, and attempted manipulation in precious metals and treasuries markets, and that Respondent J.P. Morgan Securities LLC further breached its duty of diligent supervision, all in violation of the Commodity Exchange Act ("CEA") and the Commission's regulations.

The Respondents' violations detailed in the Commission's Order were vast, and are fully deserving of the substantial sanctions imposed by the Order. We commend the Division of Enforcement, working cooperatively with the Department of Justice and the Securities and Exchange Commission ("SEC"), for their perseverance in bringing Respondents' misconduct to light. Today's Order will go far towards achieving the Commission's objectives of deterring similar misconduct by others, instilling a culture of compliance among those who participate in our markets, and protecting the integrity of the marketplace.

Unfortunately, though, the Order also presents a troubling – and wholly collateral – issue. Pursuant to rules adopted by the SEC, the findings of our Order will result in the disqualification of Respondents from certain exemptions relating to the registration of securities offerings under Regulations A and D of the SEC's regulations (a "Reg A/D disqualification").<sup>[1]</sup> However, the SEC's regulations also provide that such disqualification "shall not apply" if the CFTC "advises in writing" that disqualification "should not arise as a consequence of such order."<sup>[2]</sup> The Order issued today includes this advice.

Although they may have been well-intentioned, these SEC rules (which were not mandated by statute) have put the CFTC in a difficult position in cases such as this one. As often happens, the Respondents will not agree to settle the CFTC's enforcement action absent a waiver of the resulting Reg A/D disqualification. SEC rules provide that the SEC may waive the disqualification upon a showing of good cause,<sup>[3]</sup> but waiting for such an SEC waiver intolerably subjects the CFTC's enforcement program to the vagaries of when the SEC makes time to consider the Respondents' request. In order to efficiently perform our responsibility to enforce the CEA and the Commission's regulations, therefore, we decide whether to advise, as set forth in the SEC's rules, that the Reg A/D disqualification provisions of the securities laws should not apply – a decision that is more appropriately one for securities regulators to make.

This is not a new issue; we have wrestled with this conundrum several times since we joined the Commission in September 2017 and September 2018. Indeed, this is not the first time that CFTC Commissioners publicly have raised concerns regarding this issue.<sup>[4]</sup> We are aware that CFTC and SEC representatives have been seeking a resolution that would permit the CFTC to effectively enforce the CEA and CFTC regulations while allowing the SEC to more appropriately determine whether a Reg A/D disqualification resulting from a CFTC enforcement action should be waived. We appreciate these efforts and the progress that we understand has been made to date. But the fact that this case has arisen and yet this issue still has not been resolved prompts us to write together to emphasize the urgency of finding a remedy from the SEC to avoid further hindering the CFTC's enforcement program and consuming valuable time of our Commission.

The CFTC and SEC have an admirable record of cooperative enforcement efforts that – as reflected in the resolution of our respective charges against the Respondents in this case – have served the public interest well. But the public interest is not being well served by the current circumstances regarding Reg A/D disqualifications created by the SEC’s rules. Resolving this issue must be a top priority.

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[1] See Rule 262(a)(3)(ii) of Regulation A and Rule 506(d)(1)(iii) of Regulation D of the SEC, 17 C.F.R. §§ 230.262(a)(3)(ii), 230.506(d)(1)(iii) (2019).

[2] See Rule 262(b)(3) of Regulation A and Rule 506(d)(2)(iii) of Regulation D of the SEC, 17 C.F.R. §§ 230.262(b)(3), 230.506(d)(2)(iii) (2019).

[3] See Rule 262(b)(2) of Regulation A and Rule 506(d)(2)(ii) of Regulation D of the SEC, 17 C.F.R. §§ 230.262(b)(3), 230.506(d)(2)(ii) (2019).

[4] See, e.g., <https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement110719>.

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