

deposit margin with FCMs under rule 17f-6 in connection with those transactions. Commission staff estimates that each fund uses and deposits margin with 2 different FCMs in connection with its commodity transactions.<sup>2</sup> Approximately 179 FCMs are eligible to hold fund margin under the rule.<sup>3</sup>

The Commission estimates that each of the 2,154 funds spend an average of 1 hour annually complying with the contract requirements of the rule (e.g., executing contracts that contain the requisite provisions with additional FCMs), for a total of 2,154 burden hours. The estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered "collections of information," the burden hours for compliance are already included in other PRA submissions or are *de minimis*.<sup>4</sup> The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. If an FCM furnishes records pertaining to a fund's assets at the request of the Commission or its staff, the records will be kept confidential to the extent permitted by relevant statutory or regulatory provisions. The rule does not require these records be retained for any specific period of time. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and

Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days after this notice.

Dated: October 8, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-26097 Filed 10-15-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26205; 812-13023]

### JF International Management Inc., et al.; Notice of Application and Temporary Order

October 8, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against J.P. Morgan Securities Inc. ("JPMSI") on October 8, 2003 by the United States District Court for the District of Columbia (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

*Applicants:* JF International Management Inc., J.P. Morgan Alternative Asset Management Inc., J.P. Morgan Fleming Asset Management (London) Limited, and J.P. Morgan Investment Management Inc. (together, the "Applicants").<sup>1</sup>

*Filing Dates:* The application was filed on October 1, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a

hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 3, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Scott G. Campbell, Esq., J.P. Morgan Chase & Co., Legal Department, One Chase Manhattan Plaza, New York, NY 10081.

**FOR FURTHER INFORMATION CONTACT:** Keith A. Gregory, Senior Counsel, or Mary Kay Frech, Branch Chief, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

### Applicants' Representations

1. Each Applicant is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act") and an indirect subsidiary of J.P. Morgan Chase & Co. ("JPMC"), a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, banking and related products and services on a global basis. JPMC also is the ultimate parent company of JPMSI. JPMSI, a Delaware corporation, is a full service investment-banking firm and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act") and as an investment adviser under the Advisers Act. Each Applicant serves as investment adviser or sub-adviser to certain registered investment companies ("Funds").

2. On October 8, 2003, the United States District Court for the District of Columbia entered the Injunction against JPMSI in a matter brought by the Commission.<sup>2</sup> The Commission alleged

<sup>2</sup> This estimate is based on information conversations with representatives of the fund industry.

<sup>3</sup> Commodity Futures Trading Commission, Annual Report (2002).

<sup>4</sup> The rule requires a contract with the FCM to contain three provisions. Two of the provisions require the FCM to comply with existing requirements under the CEA and rules adopted under that Act. Thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the Commodity Futures Trading Commission for its rules. The third contract provision requires that the FCM produce records or other information requested by the Commission or its staff. Commission staff has requested this type of information from an FCM so infrequently in the past that the annual burden hours are *de minimis*.

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to JPMSI and any other existing company of which JPMSI is an affiliated person within the meaning of section 2(a)(3) of the Act and to any other company of which JPMSI may become an affiliated person in the future (together with Applicants, "Covered Persons").

<sup>2</sup> *Securities and Exchange Commission v. J.P. Morgan Securities Inc.*, Final Judgment Against J.P. Morgan Securities Inc., 03-CV 02028 (ESH) (D.D.C., filed October 8, 2003).

in the complaint ("Complaint") that JPMSI violated Rule 101 of Regulation M under the Exchange Act by attempting to induce certain institutional customers to place orders for shares in the aftermarket for certain initial public offerings ("IPOs") it underwrote during the restricted period of such IPOs. In addition, the Complaint alleged that JPMSI violated NASD Conduct Rule 2110 by persuading one or more institutional customers to take an allocation of a "cold" IPO by promising to reward the customer with an allocation of an upcoming "hot" IPO. The alleged violations occurred in connection with certain IPOs underwritten by JPMSI from March 1999 through August 2000. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, JPMSI consented to the entry of the Injunction as well as the payment of a civil penalty of \$25 million.

#### Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that because JPMSI and the Applicants are under common control of JPMC, JPMSI is an "affiliated person" of each of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section

9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their officers or employees who are engaged in the provision of investment advisory services to the Funds participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising and subadvising Funds. Applicants recently applied for, and received, an order of exemption pursuant to section 9(c) of the Act for conduct relating to Enron Corp.'s financial statement disclosure of transactions with affiliates of JPMC.<sup>3</sup> In addition, Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to

<sup>3</sup> JF International Management Inc., *et al.*, Investment Company Act Release Nos. 26141 (July 28, 2003)(notice and temporary order) and 26168 (August 26, 2003)(permanent order).

certain research analysts' conflicts of interest.<sup>4</sup>

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

#### Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [68 FR 58728, October 10, 2003]

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Thursday, October 16, 2003 at 10 a.m.

**CHANGE IN THE MEETING:** Additional item.

The following item has been added to the closed meeting of Thursday, October 16, 2003: Litigation matter.

Commissioner Campos, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

<sup>4</sup> J.P. Morgan Securities Inc. *et al.*, File No. 812-12959.