

review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 4 of Regulatory Guide 1.101, "Emergency Planning and Preparedness for Nuclear Power Reactors," provides guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the NRC's regulations for emergency response plans and preparedness at nuclear power reactors.

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(5 U.S.C. 552(a))

Dated at Rockville, MD, this 28th day of July, 2003.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Office of Nuclear Regulatory Research.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26141; 812-12991]

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

July 28, 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 Chase & Co. ("JPMC") on July 28, 2003 by the United States District Court for the Southern District of Texas (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, J.P. Morgan Fleming Asset Management (USA) Inc., J.P. Morgan Investment Management Inc., and Robert Fleming Inc. (together, the "Applicants").<sup>1</sup>

**FILING DATES:** The application was filed on July 28, 2003.

**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 August 25, 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

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

20549-0609. Applicants, c/o Mark E. Segall, Esq., J.P. Morgan Chase & Co., Legal Department, One Chase Manhattan Plaza, New York, NY 10081.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Riegel, Senior Counsel, or Todd F. Kuehl, 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. JPMC is a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, banking and related products and services on a global basis. JPMC is the ultimate parent company of the Applicants, each of which is an investment adviser registered under the Investment Advisers Act of 1940. Each Applicant serves as investment adviser or sub-adviser to certain registered investment companies ("Funds").

2. On July 28, 2003, the United States District Court for the Southern District of Texas entered the Injunction against JPMC in a matter brought by the Commission.<sup>2</sup> The Commission alleged in the complaint ("Complaint") that JPMC aided and abetted violations of section 10(b) of the Securities Exchange Act of 1934 and rule 10b-5 thereunder by Enron Corp. ("Enron"). The alleged violations occurred in connection with Enron's financial statement disclosure of transactions with one or more affiliates of JPMC between 1997 and 2001. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, JPMC consented to the entry of the Injunction as well as the payment of disgorgement, civil penalties and interest.

### 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

<sup>2</sup> *Securities and Exchange Commission v. J.P. Morgan Chase & Co.*, No. H-03-2877 (S.D. Tx. filed July 28, 2003).

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 JPMC 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 current or former 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. Certain Funds held securities issued by Enron at the time of the conduct underlying the Injunction. Applicants state that as far as they are aware, none of the officers, portfolio managers or any other investment personnel employed by Applicants had any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Injunction. Applicants further state that they had, and continue to have, policies and procedures in place designed to prohibit or restrict communications with other JPMC employees.

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 "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. 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 state that they have not received any orders under section 9(c) of the Act in the past. Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.<sup>3</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, Applicants, 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

<sup>3</sup> J.P. Morgan Securities Inc. *et al.*, File No. 812-12959.

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.

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48229; File No. SR-BSE-2003-04]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Creation of Boston Option Exchange Regulation, L.L.C.

July 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 17, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 25, 2003, the Exchange amended the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to create a new options regulatory subsidiary, Boston Option Exchange Regulation, L.L.C. ("BOXR"). The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

\* \* \* \* \*

#### Rules of the Board of Governors

\* \* \* \* \*

#### Chapter XXXVI

##### SEC. 1 Delegation, Authority and Access

(a) *The Boston Stock Exchange, Inc., delegates to its subsidiary (Boston Options Exchange Regulation, L.L.C.,*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See facsimile from John Boese, Vice President, Legal and Compliance, Exchange, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1"). Amendment No. 1 supersedes and replaces the proposed rule change in its entirety.