Waterside Enterprises, LLC

Fifth and Final Annual Report to JPMorgan Chase Bank, N.A. On Activities Related to Securities Act Rule 506 of Regulation D

December 11, 2020

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Waterside Enterprises, LLC, the Independent Compliance Consultant ("Waterside" or "ICC") engaged pursuant to a waiver of disqualification granted by the Securities and Exchange Commission ("SEC" or "Commission") in 2015,[1] hereby submits the fifth and final annual review of the JPMorgan Chase Bank, N.A. ("JPMCB" or "Bank") and its subsidiaries, the "Rule 506 Entities,"[2] activities in accordance with Rule 506 of Regulation D under the Securities Act of 1933 ("Securities Act").[3]

Waterside conducted the fifth and final annual comprehensive review of the JPMorgan Chase Bank Wealth Management policies and procedures applicable to compliance with Rule 506, reviewing those policies and procedures in place in 2019 and testing a statistically valid random sampling of transactions conducted in 2019 in reliance on Rule 506 of Regulation D.

In order to accomplish the ICC work as required by the SEC Order for 2019 transactions, Waterside reviewed:

- Requirements of Regulation D;
- Business processes applicable to private placement activity relying on Rule 506 of Regulation D;
- Offering and marketing documents for products within the scope of the Order;
- Written policies and procedures pertaining to the requirements of Regulation D; and
- Transactions within the scope of the Order taking place in 2019.

The Rule 506 Entities act as investment manager, placement agent or issuer in offering hedge funds, private equity funds and structured products that rely on the Rule 506 of Regulation D safe harbor from registration.

I. Background

Under federal securities laws, a company or private fund may not offer or sell securities unless the securities have been registered with the SEC or an exemption or safe harbor from registration is available. Rule 506 of Regulation D is such a safe harbor for the private offering exemption in Section 4(a)(2) of the Securities Act. Companies relying on the Rule 506 safe harbor must meet the following requirements:

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[1] Securities Act of 1933, Release No. 9993, December 18, 2015 ("Order").

[2] In 2019, the Rule 506 Entities were JPMorgan Chase Bank, N.A. including its Singapore, Hong Kong and Paris Branches and two subsidiaries: J.P. Morgan Bank Luxembourg S.A. and J.P. Morgan (Suisse) S.A. J.P. Morgan Securities LLC (a U.S. registered broker/dealer) is not a Rule 506 Entity; therefore its Regulation D placements are out of scope for this review. In addition, placements relying on an exemption from registration offered by Regulation S of the Securities Act are not in scope for this review.

[3] For additional background information on the Order and the ICC review, *See* Appendix A, attached.

1. Companies must decide what information to give to "accredited investors," as long as the information does not violate the antifraud prohibitions of the federal securities laws;[4]
2. The company may sell its securities to an unlimited number of accredited investors and up to 35 other purchasers;[5]
3. The company may use general solicitation or advertising to market the securities only if, among other things, it takes reasonable steps to verify that purchasers are accredited investors;[6]
4. Companies relying on the Rule 506 safe harbor must file an electronic "Form D" with the SEC after they first sell their securities;[7] and
5. Companies must disclose certain regulatory actions and exercise reasonable care that no "Bad Actor" is participating in the Rule 506 offering by, among other things, monitoring the level of client holdings in the offering.[8]

II. Process of the Review

The fifth annual review includes private placement offerings by the Wealth Management area of the Bank that rely on Rule 506 of Regulation D that closed in calendar year 2019 including: private equity funds, hedge funds, Global Access Portfolio or "GAP" funds and structured notes. In 2020, Waterside spoke with members of Compliance, Legal and business department management in order to become aware of any changes to business processes or compliance procedures relevant to the private placement businesses of the Rule 506 Entities.[9]

Waterside examined written policies and procedures relevant to the scope of the Order that were in effect during 2019 including Wealth Management user guides and manuals, training materials, order taking procedures, middle office procedures, subscriber forms and "Frequently Asked Questions" relating to:

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[4] Unlike offerings registered with the SEC in which certain information is required to be disclosed, companies and private funds engaging in exempt offerings to "accredited investors" do not have to make prescribed disclosures. Clients in private placement offerings generally are made aware of information and risks through offering memoranda such as private placement memoranda, limited partnership agreements and marketing documents. The company must be available to answer questions by prospective purchasers and must make financial statements available to potential investors.

[5] According to the SEC, one principal purpose of the accredited investor concept is to identify persons who can bear the economic risk of investing in unregistered securities. An *accredited investor*, in the context of a natural person, includes: anyone who has earned income that exceeded $200,000 (or $300,000 together with a spouse) in each of the prior two years, and reasonably expects the same for the current year, or has a net worth over $1 million, either alone or together with a spouse (excluding the value of the person's primary residence).

[6] In 2013, the SEC adopted amendments to Rule 506 of Regulation D (Release No. 33-9415; No. 34-69959; No. IA-3624; File No. S7-07-12) that, among other things, allow general solicitations of private placements as long as the issuer takes reasonable steps to verify that the purchasers are accredited investors (Rule 506(c) of Regulation D).

[7] Form D is a brief notice filed with the SEC that includes the names and addresses of the company's promoters, executive officers and directors, and some details about the offering, but contains little other information about the company.

[8] Adopted in 2013, this requirement is referred to as the "Bad Actor" provision of Regulation D and describes what a "Disqualifying Event" entails. *See* Release No. 33-9415; No. 34-69959; No. IA-3624; File No. S7-07-12.

[9] Due to the global pandemic, Waterside conducted all interviews with Bank personnel via phone calls or video calls.

- Communications and Marketing Materials for Private Placements of Private Equity Funds and Hedge Funds;
- Alternative Investment Procedures for Onboarding and Offering Private Equity Funds and Hedge Funds;
- Order Taking and Middle Office Procedures, including processing and reconciling client transactions;
- Pre Review Processes, Accredited Investor Attestations, including Subscriber Information Forms, Instructions to Subscribe and the Electronic Subscriber Information Form User Guide and Post Review Procedures;
- Compliance Manual with respect to the Global Access Portfolios;
- Procedures for Monitoring Compliance with the Bad Actor Rule;
- Discretionary Account Investments in Hedge Funds; and
- Hedge Funds and Private Equity Funds Conflicts Policy.

Waterside discussed with management the due diligence, marketing, onboarding and business acceptance processes that are followed when (a) Wealth Management forms a comingled investment vehicle for purposes of clients' accessing either a third party fund or an affiliate fund (each, an "Internal Vehicle") or (b) Wealth Management facilitates the offering of a third party fund or an affiliate fund to clients for which such clients review the offering materials developed and provided by the third party or affiliate issuer and determine to invest directly with such issuer (each, a "Direct Fund").

After file review, Waterside interviewed middle office personnel in New York City responsible for reviewing subscription documents for private equity funds. Waterside also interviewed middle office and compliance personnel in Geneva, Switzerland and Edinburgh, Scotland who have responsibility for processing hedge fund transactions. In these interviews, Waterside discussed the application of various middle office processes that included control points, review practices, and systems used for compliance with the requirements of Regulation D.

Waterside conducted testing, as required by the Order (and described more fully in Appendix B), of a statistically valid random sample of private equity fund transactions and all hedge fund transactions to help ascertain whether the policies and procedures were reasonably designed to achieve their stated purpose, namely, compliance with Rule 506 of Regulation D.

The private placements relying on Rule 506 of Regulation D in scope for this review include:

Private Equity Funds – Waterside was provided a population of 1,383 Wealth Management transactions in 23 different private equity funds that closed in 2019 and for which the Rule 506 Entities served as placement agent.[10] Waterside applied a statistically valid random sampling process, described in more detail in Appendix B, to the 1,383 private equity fund transactions. From that sampling methodology, Waterside selected 397 transaction files to review and also reviewed an additional six (6) private equity fund files (to include at least one transaction from

[10] One private equity fund was a Direct Fund preferred stock offering with a single transaction within scope.

each of the 23 funds and to ensure adequate statistical representation of each fund) bringing the client transaction files reviewed to 403.

Hedge Funds – The hedge funds offered in 2019 within the scope of the Order were developed by non-affiliated hedge fund managers and offered by Rule 506 Entities serving as placement agents. During 2019, the Bank had four hedge fund offerings that were made in reliance on Rule 506 of Regulation D in which 278 client transactions closed. Due to the limited number of transactions, Waterside reviewed information for each transaction file, which were in both brokerage accounts and investment management accounts.

Global Access Portfolio Funds – The GAP private placement offerings consist of a variety of hedge funds or fund(s) of funds designed to meet broad investment criteria for accredited investors depending on their investment risk tolerance. In 2019, there were three GAP funds (one offshore and two onshore funds) for which the Bank served as Investment Manager, and that offered the products in reliance on Rule 506 of Regulation D. For these offerings, Waterside reviewed policies and procedures as well as marketing documents, subscription agreements and placement agent agreements for compliance with the requirements of Regulation D. These offerings were made exclusively to U.S. persons residing in the U.S. via J.P. Morgan Securities LLC, an entity outside the scope of the Order, or to non-U.S. persons outside the U.S. under Regulation S, so none of those client transaction files were in scope for this review.

Structured Notes – Generally, structured bank notes are securities whose returns are based on, among other things, an index or indices based on the market performance of equity securities, a basket of equity securities, interest rates, commodities, and/or foreign currencies. Each investment's return is linked to the performance of a selected set of reference assets or indices. In 2019, the Rule 506 Entities issued four structured notes in reliance on Rule 506 of Regulation D. The notes were developed for and marketed by intermediaries that were not Rule 506 Entities.

For each of the four structured products in 2019, JPMCB served as Issuer. Waterside reviewed policies and procedures, marketing and offering information as well as intermediary agreements, but did no review of client transaction information since the Rule 506 Entities did not act as placement agent for the products and thus were out of scope for this review.

III. Findings/Conclusions/Recommendations

As discussed above, requirements of Rule 506 of Regulation D relevant to this review briefly include:

- Complying with the anti-fraud requirements of the Securities Act;
- Limiting sales of unregistered products to accredited investors;
- Not engaging in general solicitations of sales for the unregistered products;
- Filing a Form D when sales commence and periodically thereafter; and
- Complying with the Bad Actor provisions of the Rule.

A. Complying with the Anti-Fraud Requirements of the Securities Act

Waterside reviewed private placement offering memoranda and marketing documents describing private equity funds, hedge funds, Global Access Portfolio funds and structured notes for compliance with the anti-fraud prohibitions of the Securities Act. The funds were routinely described as speculative with a high degree of risk, such as counter-party risk, credit risk, and market risk, and the investments were described as offering limited or no liquidity in resale. Further, each subscription and marketing document made it clear there was no assurance that the investment objectives of the fund would be met. The offering documents also explained that the funds and structured notes had not been registered with the SEC and that they were being offered as unregistered private placements, in reliance on Regulation D.

We reviewed written policies, procedures and guidelines outlining requirements for marketing documents, as well as onboarding procedures. Accordingly, Waterside was satisfied that marketing, onboarding and offering policies, procedures and guidelines were designed to ensure compliance with the anti-fraud requirements of Rule 506 of Regulation D.

B. Limiting Sales of Unregistered Products to Accredited Investors

Key to compliance with the requirements of Rule 506 of Regulation D is developing and following procedures to establish a reasonable belief that clients subscribing to the unregistered offerings are accredited investors.

Private Equity Fund Transactions

For private equity funds, the Rule 506 Entities served as placement agent and Waterside reviewed 403 client transaction files of the 1,383 transactions that closed in 2019. For brokerage transactions, policies require a valid Subscriber Information Form ("SIF")[11] and a subscription agreement that includes certain attestations, representations and warranties by authorized persons, whether individuals or authorized representatives of legal entities.

[11] The SIF is used to determine whether a client who is a prospective investor for an interest in a hedge fund, private equity fund or other private investment company is an accredited investor and is otherwise eligible to invest in a fund. By completing and signing the SIF, a prospective subscriber is representing and warranting that the information in the form is accurate and complete as of the date of the signature and that the subscriber will notify the Rule 506 Entity promptly of any change in information. Each SIF form is valid for a year following the first of the month after the date of the client's signature, and a single signed SIF will suffice for all subscriptions entered into within the 12-month period. Part A of the SIF requires certain subscriber information (i.e., name, contact information, ownership type and tax information); Part B defines accredited investor status and requires subscribers to attest whether they meet the qualification requirements for natural persons or for entities. The SIF includes a signature page on which the signer represents, warrants and covenants that the information contained in the form is accurate and complete. An individual is required to print his/her name and the name of any joint subscriber and sign and date the form. An entity representative must print the name of the subscriber, sign and date the form as an authorized signatory, and print the name of the authorized signatory. In February 2017, the SIF was revamped to consolidate previous U.S. and non-U.S. person forms.

For each private equity fund, Waterside reviewed for language in the subscription agreement stating clearly that the client represents and warrants that it is indeed an accredited investor and meets specified suitability standards to purchase the fund in question. For several of the private equity funds for which the Bank acted as placement agent, Wealth Management developed a separate legal vehicle for onshore and offshore clients to purchase a share in the fund. Waterside found that these private equity funds' subscription agreements contain all of the required Regulation D disclosures.

In cases where the Bank facilitates offerings of Direct Funds without creating a separate investment vehicle, JPMCB utilizes the issuers' offering and marketing documents for sales to its clients. For these private equity Direct Funds, the Regulation D disclosures can generally be found in the subscription agreement, in the Limited Partnership Agreement or in the Offering Memorandum from the third-party issuer. With these Direct Funds, Wealth Management generally prepares its own Administrative Matters Agreement ("AMA") that contains additional disclosures from the Bank and may be used with the Direct Fund issuer's offering documents.

Policies and procedures for sales of private equity funds require that brokerage clients sign and submit the subscription agreement and SIF for each transaction (unless the client already has a valid SIF on file). The Wealth Management front-office procedures for offshore transactions also call for client signatures to be verified to assure authenticity and authorization. Waterside interviewed a supervisor in the Account Control Team ("ACT") and saw a demonstration of the Account Maintenance Request tool ("AMR") that is used to perform the signature verification process.

Waterside took a statistically random sample of the private equity funds that closed in 2019 and reviewed those client transaction files to ascertain that a valid SIF and subscription agreement with the client's signature was evident.[12] Waterside noted a number of private equity fund brokerage transactions that required additional clarification from either the Rule 506 Entities or outside counsel that reviewed the transactions for the funds or the fund issuers, and most of our questions were answered satisfactorily.[13]

Waterside found two issues related to Direct Fund private equity funds that we discussed with Compliance and management. First, with the information we were initially provided, three transactions for a Direct Fund appeared to close two weeks before the dates on the signed subscription agreements. Compliance explained that the fund's closing date reported in the system was actually a "place holder" reflecting the date that all signed documents were due from clients and the closing date had actually occurred at the end of the month within which the

[12] Transactions in two Direct Fund offerings did not include the JPMCB SIF: in the preferred stock offering, Waterside was assured by management that the offering was sold to an institutional investor who was previously vetted as an accredited investor; and the other Direct Fund's subscription agreement included accredited investor attestations.

[13] Generally, follow-up questions for private equity fund transactions were related to missing pages, indecipherable signatures, lack of signature verification documentation or out of date forms.

subscription agreements had been signed.[14] Second, two Direct Fund transactions did not have valid SIFs in effect at the time of the sale, and upon further review, Compliance noted that front office personnel had erroneously sent in two expired SIFs to the third-party issuer. Due to these observations, Waterside recommends in this report that training or communications be provided to front office personnel regarding documents required to be sent to Direct Fund issuers to avoid these errors in the future.

For the most part, Waterside found that the paperwork for the 403 private equity fund transactions reviewed was in good order, with signed and dated SIFs and subscription agreements in place for each transaction. Subscribers were required to attest that they met the accredited investor monetary thresholds and to keep the issuer updated should their status change.

Hedge Fund Transactions

The requirements for hedge fund transactions in brokerage accounts are similar to those for private equity funds – there must be a valid SIF as well as a signed subscription agreement (and an "Instruction to Subscribe" document in Switzerland) on file with attestations as to the accredited investor status of the client.[15] For hedge fund brokerage transactions, procedures also call for the JPMCB investor or on-boarding team to verify the client's signature.

In two hedge funds, Waterside noted that updates to the subscription agreements appeared to require a representation that U.S. persons were accredited investors and suitable to purchase the hedge fund, but were silent as to the accredited investor status for non-U.S. investors. All of the hedge fund transactions within the scope of this review take place with non-U.S. persons and we called management's attention to the language in the revisions. The Bank stated that going forward it would use a defined protocol to make sure that future changes to subscription agreements would include the appropriate disclosure language and showed Waterside a revised document during the course of the review.

With regard to hedge fund transactions in managed (discretionary) accounts, the requirements are that each client must meet certain accredited investor and client suitability standards and must enter into an Investment Adviser agreement with the Rule 506 Entity to open a discretionary or managed account. Once a client has agreed to the terms of the managed account, individual transactions in hedge funds are entered into at the direction and discretion of the investment manager. In 2019, investment managers were using Electronic SIFs ("ESIFs") where the investment manager attests to the fact that the client is an accredited investor and submits an electronic record (ESIF) into the system.[16]

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[14] Waterside also received a letter attesting to the actual closing dates from a representative of the Investment Adviser for the Direct Fund.

[15] The Instruction to Subscribe form used in EMEA was replaced or supplemented in 2017 with a requirement to use a SIF as well as a subscription agreement. Switzerland is the only jurisdiction that still requires an Instruction to Subscribe from brokerage clients.

[16] In 2018, use of the paper SIF was transitioned to an Electronic SIF for managed hedge fund accounts. In this review all investment management transactions utilized the ESIF

Waterside reviewed all 278 hedge fund transactions[17] from 2019 and had questions about dates of input, review and approval of ESIFs in selected hedge fund transactions. As in prior years, we were able to review additional documentation and hold discussions with appropriate personnel, which allowed us to clarify open issues.

We also received updates about progress in making the system-related improvements that we recommended in last year's report. In the fourth review, Waterside had recommended system modifications to clarify timing of documents received in different time zones; additional controls regarding over-writing critical information in files; and retention of PDF copies of documents. Waterside reviewed system output that demonstrated that the enhancements had been implemented in response to the recommendations.

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To summarize, Waterside reviewed written policies and procedures related to the accredited investor status of prospective clients for private placements including private equity funds and hedge funds. We reviewed subscription documents, marketing materials and subscriber identification forms used by the Bank, and we tested transactions as required by the Order. Waterside is making a recommendation regarding consistency of disclosures in documents facing clients, as well as a recommendation that training or communication be provided to front office personnel regarding documents required to be sent to Direct Fund issuers to avoid errors in the future. In this review, Waterside found compliance with the accredited investor requirements and we believe that written policies and procedures are being followed and are reasonably designed to assure compliance with the accredited investor portion of Rule 506 of Regulation D.

C. General Solicitations for Unregistered Products

Waterside found that marketing documents for private placements generally included language to make prospective subscribers aware that the funds were unregistered and were being offered only to known prospects without a general or public solicitation of sales. Since 2013, Rule 506(c) permits the use of general solicitation and advertising if all purchasers are accredited investors and the unregistered fund has taken reasonable steps to verify that all purchasers are accredited investors. When the Rule 506 Entities act as placement agent or issuer of private placements and rely on the safe harbor offered in Regulation D, they do not avail themselves of that particular subsection.

In this review, Waterside noted that one of the Direct Fund private equity funds that the Bank offered for sale to its clients did not include language specifying that the fund was not being

[17] Using the statistically valid random sampling methodology and table found in Appendix B, sampling for the 2019 population of 278 hedge fund transactions within the scope of the Order for this review, Waterside could either sample 186 hedge fund transactions or review all of them. We elected to review all transactions rather than use the sampling approach.

offered via a general solicitation in its client-facing documents,[18] but as the Rule 506 Entities were acting as placement agents to the fund, all of its clients were accredited investors and accordingly the offering for the Direct Fund was made in compliance with the requirements of Regulation D.

In our third annual review, Waterside noted that the Global Access Portfolio funds' subscription agreements contained appropriate language regarding subscribers being accredited investors, but the documents were silent with regard to the funds being marketed via a general solicitation and we recommended that the language be amended going forward to include such language. During the fourth review, the Bank provided Waterside with GAP offering documents that had been developed in 2019 and contain the "no general solicitation" language. Compliance also commented that business management committed to add the "no general solicitation" language to any new subscription documents developed by the Bank.

Since Waterside noted that one new Direct Fund private equity fund did not disclose that no general solicitation was used to market the fund, Waterside recommends in this report that going forward, if the Bank drafts an Administrative Matters Agreement for Direct Funds, the AMA should include all the usual Regulation D language that JPMCB clients are used to seeing when purchasing private funds, i.e., the purchaser is an accredited investor, there was no general solicitation for the issue, and the Bank disclosed its "disqualifying events" or Bad Actor items.

D. Filing Form D with the SEC

The Bank produced several of the required Form D filings for private placements within scope for this review. For the other funds, Waterside checked with the SEC database and found all of the required forms.[19] Waterside also reviewed the policies and procedures that require the filing of a Form D and believes that the Bank is complying with this requirement of Rule 506 of Regulation D.

E. Compliance with the "Bad Actor" Provision of Regulation D

Waterside found that appropriate disclosures regarding the Rule 506 Entities' regulatory actions had been included in marketing and subscription documents for private placements in 2019. We noted that in every case where the Rule 506 Entities acted as placement agents, appropriate disclosures regarding the Rule 506 Entities' regulatory actions had been appropriately disclosed, within the subscription agreement (or its exhibits), in the Private Placement Memorandum, the Limited Partnership Agreement or in the AMA included with Direct Fund offerings.

In Waterside's third review, we noted that not all subscription agreements included language to put the subscriber on notice of the 20% threshold ownership level that is the trigger for disclosing or investigating whether a "disqualifying event" had taken place as described in the Bad Actor provision of Rule 506 of Regulation D. We recommended that for all newly

[18] The Engagement Letter between the Direct Fund issuer and the Bank as placement agent did specify that JPMCB would not be using a general solicitation in its marketing efforts.
[19] For one Direct Fund private equity fund, Waterside found the Form D had been filed in 2020 rather than 2019.

developed subscription agreements, language be included to put clients on notice of the disqualifying event disclosure requirements. The Bank agreed with this recommendation and Waterside found in this review that all subscription agreements developed by the Bank from 2019 included the language.

The Bank's written policies and procedures appropriately reflect the requirements of the Bad Actor provision of the SEC rules, and the policies and procedures appear to be reasonably designed and are being followed.

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Summary of Prior Recommendations

In the first annual review of policies and procedures and testing of transactions made in 2015, Waterside made recommendations for changes to existing policies and procedures, primarily regarding consistency across various jurisdictions. Bank management accepted all of the recommendations for changes to the policies and procedures, and acted to implement amendments prior to year-end 2016.

During the second annual review, Waterside recommended that the Bank enhance oversight of new business acceptance processes for private placement transactions to improve quality and consistency of transaction files. Management accepted our recommendations from the second review and enhanced its processes for signatures by implementing a new signatory template and holding training for U.S. and international trade order review teams. Additionally, JPMCB took steps to enhance its data identification and reconciliation processes.

In the third annual review, Waterside identified three areas for enhancement: include language in subscription agreements to describe a "disqualifying event" for the Bad Actor provision of Regulation D; develop policies and procedures for institutional business in any jurisdiction where a fund is relying on the exemption from registration under Regulation D; and include "no general solicitation" language in GAP subscription agreements. The Bank agreed with all recommendations during the review, and the Bank provided Waterside documents that addressed our recommendations.

In the fourth annual review, Waterside made systems-related recommendations with regard to select hedge fund transactions.[20] Waterside also made a recommendation to make middle office procedures checking for signature verifications on client private equity fund and hedge fund documents more consistent. While evidence of signature verification is not technically a Rule 506 requirement and thus not an element in determining the validity of Regulation D compliance in our statistical review, Waterside believes that it is a valuable business procedure. We noted in

[20] Waterside recommended that system-related improvements (reference to time zones or an international date; system controls regarding over-writing critical information in files; and retention of PDF copies of appropriate documents) be implemented as promptly as practicable. We were provided evidence that these system changes had been made.

that review that 2018 written policies and procedures in EMEA (including Geneva) and APAC required signature verifications on subscription agreements for hedge funds and private equity funds.

We noted at the time that the iATOM team in Edinburgh reviewed for signature verification for hedge funds and captured such evidence in a system, but that the U.S. law firms and NYC ATOM team did not review for evidence of signature verifications for private equity funds, hence our recommendation to align procedures or change the underlying requirements.

During this review, we asked to see evidence of the recommendation being implemented and we were provided documentation in September 2020. With regard to our recommendation to align procedures between different review processes or change the underlying requirement to obtain signature verifications, JPMCB chose a third alternative – to have clients send Internal Vehicle subscription documents to their sales associates (Investors) who would submit the documentation to the ACT onboarding team which would perform signature verifications. Afterwards the client documents would flow to the NYC ATOM desk or law firm for review and acceptance. Waterside spoke with staff from the ACT desk and reviewed the process of signature verifications.

JPMCB offered an additional response to last year's recommendation and noted that control testing was performed to assess the effectiveness of the new procedural requirements. This review identified an area for improvement in EMEA front office controls. As a result, an Action Plan is being opened to develop, on a going forward basis, a process to identify documents that have not been signature verified. The intent of the Action Plan is to ensure that the signature verification is obtained and properly stored as part of the client file. The Bank's response indicates that they believe this approach is appropriate and represents an improved control in accepting these contracts and Waterside concurs with this rationale.

Current Recommendations

- Waterside recommends that JPMCB's Wealth Management update their written onboarding procedures to assure that newly drafted client facing agreements for hedge funds and private equity funds (subscription agreements or Administrative Matter Agreements) include the specific Regulation D language that JPMCB clients are used to seeing when purchasing private funds from the Bank, i.e., the purchaser is an accredited investor, there was no general solicitation for the issue, and the Bank discloses its "disqualifying events" or Bad Actor items.

- Waterside recommends that JPMCB roll out appropriate Wealth Management training or communications to front office personnel so that transactions in Direct Fund private equity funds include required client documentation.

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For this Fifth Annual Report, Waterside conducted a comprehensive review of the policies and procedures relating to compliance with Rule 506 of Regulation D including but not limited to, policies and procedures relating to the Rule 506 Entities' activities as investment manager and placement agent to private funds relying on Rule 506 of Regulation D for transactions that closed in 2019. Waterside tested the Rule 506 Entities' policies and procedures relating to Rule 506 of Regulation D by conducting a statistically valid random sampling of transactions conducted in reliance on Rule 506 of Regulation D that closed in calendar year 2019.

Waterside hereby certifies that:

"JPMCB's policies and procedures designed to ensure compliance by the Rule 506 Entities with their obligations under Rule 506 of Regulation D are reasonably designed to achieve their stated purpose."

Appendix A

Background

On December 18, 2015, the Securities and Exchange Commission granted a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933 at the request of JPMorgan Chase Bank, N.A.. The waiver of disqualification was requested because on the same date, the U.S. Commodity Futures Trading Commission ("CFTC") instituted proceedings pursuant to Sections 6(c) and (d) of the Commodity Exchange Act making findings and imposing remedial sanctions as a result of JPMCB's failure to adequately disclose certain conflicts of interest to clients.[21] Because of the CFTC proceedings, JPMCB requested and received a waiver of disqualification pursuant to Rule 506(d) of Regulation D by the SEC for JPMCB and its subsidiaries, the Rule 506 Entities.

Rule 506(d)(2)(ii) of Regulation D provides that disqualification from certain regulated activities, in this instance, participation in private placements of select unregistered offerings, "shall not apply…upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is necessary under the circumstances that an exemption be denied."

In granting the waiver, the Commission determined that as part of the Rule 506(d)(2)(ii) showing of good cause, JPMCB would retain a qualified independent compliance consultant "not unacceptable to Commission staff,[22] to conduct a comprehensive review of the policies and procedures relating to compliance with Rule 506 of Regulation D. The ICC is required to complete its review and submit a written report to JPMCB on an annual basis for a period of five years following the Order. This is the fifth and final annual review pursuant to the requirements of the Order.

The ICC is charged with reviewing policies and procedures by the Rule 506 Entities including but not limited to, activities as investment manager and placement agent to private funds relying on Rule 506 of Regulation D. According to the Order, JPMCB must require the ICC to test the Rule 506 Entities' policies and procedures relating to compliance with Rule 506 of Regulation D by conducting a statistically valid random sampling of transactions conducted in reliance on Rule 506 of Regulation D. If the Consultant finds that Rule 506 Entities' policies and procedures have been reasonably designed to achieve compliance with their obligations under Rule 506 of Regulation D, then the ICC shall certify annually to that finding.

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[21] CFTC Docket No. 16-05, December 18, 2015.

[22] In addition, the Order requires the Consultant to enter into an agreement that provides for the period of the engagement and for a period of two years from completion of the agreement, the ICC shall not enter into any other professional relationship with the Rule 506 Entities.

Waterside Enterprises, LLC was engaged as the Consultant in March 2016. Waterside is a Financial Services consulting firm established in 2003 by its two principals, Paul Bruce and Beth Weimer. Paul and Beth have over 75 years combined experience in the securities and insurance industries including working for regulators (SEC and FINRA [NASD]), and working as Chief Compliance Officers, corporate officers and regulatory and compliance consultants. For this engagement, Waterside also retained two experienced independent consultants (Michael Raney and Robert Arndt) who have many years of broad financial services experience and who have worked with Waterside on other engagements.

According to the terms of the Order, in 2016 Waterside conducted the first annual comprehensive review of the policies and procedures in place in 2015 applicable to compliance with Rule 506 of Regulation D by the Rule 506 Entities. The first annual report was submitted to JPMCB in December 2016 and after review and acceptance, JPMCB submitted the report to the SEC. The SEC published the first annual report on March 14, 2017.[23]

Subsequently, in 2017, 2018 and 2019 Waterside conducted the second, third and fourth annual reviews of policies and procedures applicable to compliance with Rule 506 of Regulation D. The annual reports were submitted to JPMCB in December of each year and after review and acceptance, JPMCB submitted the reports to the SEC.[24]

In 2020, Waterside has completed the fifth and final annual review of compliance with Regulation D and the description of the process of the review as well as findings and recommendations are presented in the body of the report.

[23] https://www.sec.gov/divisions/corpfin/cf-noaction/2017/jpmorgan-chase-na-waterside-report-031417.pdf.
[24] The 2017 Annual Report was published at https://www.sec.gov/divisions/corpfin/cf-noaction/2018/jpmorgan-chase-na-waterside-report-121317.pdf. The 2018 and 2019 Annual Reports can be found at https://www.sec.gov/corpfin/corpfin-no-action-letters (Search for Regulation 506, JPMorgan Chase Bank, N.A. or Waterside Enterprises.)

Appendix B

Statistical Sampling Methodology for 2019 Rule 506 Transactions

Language in the Order states "JPMCB shall require that the Consultant test the Rule 506 Entities' policies and procedures relating to Rule 506 of Regulation D by conducting a statistically valid random sampling of transactions conducted in reliance on Rule 506 of Regulation D."

There are two types of Regulation D transactions that fall within the scope of our review for statistical analysis purposes: private equity funds and hedge funds.

Private Equity Fund Transactions

From the population of client transactions that closed in 2019, Waterside applied the following statistical review approach to select a random sample of private equity fund purchases. The generally accepted purpose of utilizing a statistically valid random sampling process is to be able to review an abbreviated subset of a population and use the results of that review to draw conclusions about the entire population. To comply with the statistically valid random sampling requirements of the Order, Waterside used a methodology that was intended to optimize the sample size while maintaining statistical integrity.[25] The approach we chose is based on a normal approximation to a binomial distribution and the Central Limit Theorem, adjusted for a finite population.

For any given population, a Central Limit Theorem approach states that regardless of the distribution of the underlying population, any set of sufficiently large samples reviewed will follow an approximately normal distribution. Even if we do not know the distribution of the underlying population, this approach should routinely produce a valid sample. The method used allows us to determine a sample size for a given population based on three key criteria:

- Confidence Level relative to the standard normal distribution;
- Population Proportion estimate; and
- Margin of Error.

[25] Any number of statistical sampling approaches may be applied. Based on the education, training and experience of the Waterside review team, we selected a standard approach from a 1970 article by Krejcie and Morgan and documented in the Penn State University online course website under course 414/415: "Estimating a Proportion for a Small, Finite Population."

I. Confidence Level or Interval

A confidence interval gives an estimated range of values that are likely to include an unknown population parameter, the estimated range being calculated from a given set of sample data. The confidence level is the probability value associated with a confidence interval.[26] Relative to statistical sampling and sampling distributions of population proportions, a 95% confidence level means that 95% of confidence intervals constructed from samples of a given size (n), will contain the true population proportion parameter. This implies that only 5% of confidence intervals constructed with the specified criteria will not contain the true population proportion. This also equates to an assumption that the population parameter being tested falls within two standard deviations of the predicted value of the parameter.

II. Population Proportion

If we know nothing about the underlying population vis-a-vis the criteria for which we are sampling, we need to use a population proportion estimate, ("P") of 0.5. This is a common approach for situations such as election sampling where we anticipate about a 50/50 response for each of two candidates. Using the example of a coin toss, where we define a "heads" result as positive ("P") and a "tails" result as negative, this P of 0.5 leads to the largest sample size, since for every sample data element selected, e.g., heads or tails, we are unable to predict a positive result with a higher level of certainty than the positive or negative result.

If, however, we know or believe the population is skewed in one direction or another, in other words, we expect a clear majority of the items in the sample will be either positive or negative, we can select a more informed estimate of P and reduce the sample size while maintaining the accuracy and integrity of the sampling process. An example of this would be to roll a standard six-sided die and declare that rolling a "one" would be a negative result and all other results are positive. We now know that 5/6 of the time we would expect a positive result. In other words, the better we can predict the population parameter for which we are testing, the smaller the required sample size.

For our purposes and to meet the terms of the Order, we reviewed the firm's policies and procedures, conducted interviews and discussed control points applicable to the private placement business of Rule 506 Entities relying on Rule 506 of Regulation D within the scope of our review. We also applied our experience in brokerage and other client focused businesses in which we see that if policies and procedures are reasonably designed to achieve their stated purposes, we generally find files containing the appropriate documents, disclosures and signatures well in excess of 90% of the time. In addition, we are informed by the results of our transaction sampling from prior years of this review.

[26] Definitions of confidence interval and confidence level are from Valerie J. Easton and John H. McColl's Statistics Glossary v 1.1. (Available at: http://www.stats.gla.ac.uk/steps/glossary/confidence_intervals.html.)

Based on our review of the Rule 506 Entities' policies, procedures and control points, including documents, interviews, observation and prior experience in performing this review, we concluded that those policies, procedures and processes would lead to similarly accurate and complete transaction files.

Using these inputs, we set our estimated sampling population proportion at 0.90. The ultimate test of that assumption is whether our sampling results demonstrate that at least 90% of the sampled files met the criteria above. If so, it should indicate that our population proportion assumption was appropriate.

III. Margin of Error

The next key sampling criteria is Margin of Error. In other words, how predictive are our results? To refer to election polling sampling, we often see a result that is noted to be accurate within "plus or minus" 2%, 3% or 4%. This is the margin of error for that poll. Waterside decided to use a margin of error of 2.5%, which is a margin of error among a common range of selection (2%-4%) that leads to a fairly conservative (larger) sample size. Thus, a result of 95% of files in good order in a sample would be indicative of an assumed population accuracy rate within the interval 92.5% to 97.5%.

IV. Using these criteria to set a sample size

Accordingly, for the purpose of this review, to test compliance with written policies and procedures as they pertain to the requirements of Rule 506 of Regulation D, we predicted (based on the discussion above in this Appendix) that the required paperwork for at least 90% (Population Proportion) of the client transactions reviewed would be "in good order" (defined here as signed and dated by an appropriately authorized party and containing assertions that the client is an accredited investor, and that appropriate relevant disclosures were made to each investor). Additionally, we selected a Confidence Level for the population of "in good order" transactions of 95% with a 2.5% Margin of Error.

V. The population and sampling results

Using that population of 1,383 private equity fund transactions that closed in 2019, Waterside used the criteria described above, and the following table, to reach a minimum sample size of 396. The table below clearly illustrates that for very large population sizes we see the most optimum leveraging abilities of statistical sampling. However, a population of 1,383 still lends itself to providing the benefits of random sampling.

Illustration of required minimum sample sizes based on: (1) Confidence Level, (2) Population Proportion estimate and (3) Margin of Error:

Estimated Population Proportion, $\hat{P}$ =			90%			$\hat{P}$ =	50%	
		Confidence Level =	95%			95%		
			Margin of Error, E =			Margin of Error, E =		
		Population Size N =	3.0%	2.5%	1.0%	3.0%	2.5%	1.0%
		50	45	46	50	48	49	50
		250	152	173	234	203	216	244
	HF	278	162	**186**	258	221	236	271
		500	218	263	437	341	378	476
		1,000	278	357	776	517	607	906
	PE	1,383	301	**396**	989	603	729	1,210
		10,000	370	525	2,570	965	1,333	4,900
		25,000	379	542	3,038	1,024	1,448	6,939
		100,000	383	551	3,342	1,056	1,514	8,763
		1,000,000	384	553	3,446	1,066	1,535	9,513
		Very Large	385	554	3,458	1,068	1,537	9,604

Using the results of this table, we numbered the 1,383 private equity transaction files from 1 to 1,383 and proceeded to select a sample of 396 transactions. To start the sample selection process, we utilized a random number generator to select a number between 0 and 3.4924 (the ratio of 1,383 to 396 which is the ratio of the population to the minimum sample size). The result of that selection was the number 0.93. To establish our sample to test, we added 3.49 to that starting point repeatedly, and in each case, rounded the result to the nearest integer.

Since we truncated the actual ratio of 3.4924 to 3.49, and used that to add repeatedly to the beginning random number, our process actually produced a random sample of 397 rather than 396.

Accordingly, we selected file numbers (using standard rules of rounding):

- 1 (closest to 0.93),
- 4 (closest to 4.42),
- 8 (closest to 7.91),
- 11 (closest to 11.40),
- 15 (closest to 14.89), and so forth, until we had identified a sample of 397, one more than the minimum sample size required for a statistically valid random sample, as described above.

Once we selected our random sample of 397, we reviewed that sample for adequate representation of the population. Through this process, we added six transactions to the sample to enhance coverage of all private equity funds. In three instances, we added the sole transaction in a fund if it was not selected via our random sampling approach. The three other additions

were in funds where our random sampling process produced transaction dollar amounts well below the mean for the fund population. By adding these six additional transactions we were satisfied that our sample provided adequate coverage of all private equity funds.

Accordingly, we have a general population of 1,383 Wealth Management private equity fund transactions of which we reviewed 403:

Beginning Population	1,383
Random Sample Selected	397
Additional Selections	6
Total Transactions Reviewed	403

We subsequently made the following observations regarding the sample set: at the culmination of the transactional review of private equity fund files, we found 17 files (or about 4% of the files reviewed) for which we had questions that required follow-up with JPMCB. We thus noted that using these criteria, over 90% of the files were in good order, i.e., complying with policies and procedures reflecting Regulation D control points. Ultimately, all but two of the files for which we had questions have subsequently been resolved via additional documentation and discussions with JPMCB to Waterside's satisfaction, bringing the 'in good order' percentage to 99.5%.

Finding all of the files in the sample in good order allows us to make the same conclusion about the population from which the sample was drawn, i.e., that we would expect to find a statistically significant percentage of any files we might select to be in good order.

Hedge Fund Transactions

In each of the prior years of this review, the volume of hedge fund transactions in scope was low enough to provide little to no real advantage for statistical sampling, so we reviewed the entire population of transactions. For 2019, there were 278 hedge fund transactions in scope, which was at the higher end of the years of our review. Using the same statistical sampling table that we used to determine the private equity fund transaction sample, but using the line for a population of 278 (see table above), we concluded that there was limited value in going through the process of generating a random sample. So instead of "de-selecting" about one third of the hedge fund transactions, Waterside reviewed each hedge fund file. We can therefore treat the 278 hedge fund transactions as our sample as well as our population.

As a result of our hedge fund transaction file review, we had follow-up questions on 14 individual hedge fund transaction files. Via discussions and additional documentation we were able to resolve all open issues for these 14 files. 14 of 278 represents a 5% rate where Waterside required some form of follow-up, which is well under our 10% statistical threshold, and with all issues resolved, we can clearly state that the statistical testing of the hedge fund client files indicates all files were in good order.

CERTIFICATION

I am the principal legal officer of JPMorgan Chase Bank, N.A. Pursuant to Section III.E of the Order under Rule 506(d) of the Securities Act of 1933 Granting a Waiver of the Rule 506(d)(1)(iii) Disqualification Provision issued by the Securities and Exchange Commission on December 18, 2015, I certify that I have reviewed the written report of Waterside Enterprises LLC, dated December 11, 2020.

Stacey Friedman
General Counsel
JPMorgan Chase Bank, N.A.

Date: 12/17/2020

CERTIFICATION

I am the principal executive officer of JPMorgan Chase Bank, N.A. Pursuant to Section III.E of the Order under Rule 506(d) of the Securities Act of 1933 Granting a Waiver of the Rule 506(d)(1)(iii) Disqualification Provision issued by the Securities and Exchange Commission on December 18, 2015, I certify that I have reviewed the written report of Waterside Enterprises LLC, dated December 11, 2020.

James Dimon
Chief Executive Officer and President
JPMorgan Chase Bank, N.A.

Date: 12/17/2020