

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
No. 2011030683401**

TO: Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

FROM: J.P. Morgan Securities LLC
CRD No. 79

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, Respondent J.P. Morgan Securities LLC (“JPMS” or the “Firm”) submits this Letter of Acceptance, Waiver and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The Firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

JPMS has been a FINRA member since 1936 and is headquartered in New York, New York. The Firm is a full-service brokerage firm with more than 21,000 registered personnel. Among other things, it provides equity research, sales and trading services, and underwriting services.

RELEVANT DISCIPLINARY HISTORY

In 2003, NASD censured JPMS and other firms as part of the Global Research Settlement and ordered it to pay a total of \$80,000,000 for violating NASD Rules 2110, 2210(d)(1), and 3010, by (1) engaging in acts and practices that created and/or maintained inappropriate influence by investment banking over research analysts, and therefore imposed conflicts of interest on its research analysts, which it failed to manage appropriately; (2) by failing to disclose in offering documents that it made payments for research coverage to other broker-dealers not involved in

an underwriting transaction; and (3) failing to establish and maintain adequate procedures reasonably designed to protect research analysts from conflicts of interest.¹

On December 19, 2011, FINRA censured JPMS and fined it \$150,000 for, among other things, violating NASD Rules 2110 and 2210(d)(1) and FINRA Rule 2711(h)(9) by publishing a research report that downgraded a company due to pending lawsuits without disclosing that a JPMS affiliate was a plaintiff in one of the lawsuits.

OVERVIEW

In April 2010, Toys R Us (“TRU”) and its private equity owners (“Sponsors”) invited JPMS and other broker-dealers to compete for a role in TRU’s planned initial public offering (the “TRU IPO”). To win this investment banking business from TRU, JPMS’ equity research analyst participated in the Firm’s solicitation efforts, and the Firm offered favorable research coverage to TRU. Moreover, JPMS failed to adopt and implement adequate written supervisory procedures governing analyst involvement in investment banking solicitations and offers of favorable research coverage. Therefore, in the context of the TRU IPO, JPMS violated three separate provisions of NASD Rule 2711, the research analyst conflict of interest rule: 2711(c)(4), which prohibits research analysts from participating in efforts to solicit investment banking business; 2711(e), which prohibits firms from directly or indirectly offering favorable research to obtain investment banking business; and 2711(i), which requires firms to adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of NASD Rule 2711.

JPMS allowed its research analyst to participate in the Firm’s solicitation efforts by allowing the analyst to present his views on TRU to TRU’s management and Sponsors during the “solicitation period” – *i.e.*, the period after a company has made known that it intends to proceed with a prospective investment banking services transaction, such as an IPO, and before the company has made a bona fide award of a mandate for the transaction. Before TRU awarded the TRU IPO business, it asked the equity research analysts from the firms competing for the business to make presentations to TRU’s management and Sponsors. TRU provided specific topics for the analysts to address and put the firms on notice that, as part of the underwriter-selection process, it would consider each analyst’s views of the company and whether the analyst’s valuation was consistent with the firm’s investment bankers’ valuation. As described below, JPMS’ research analyst presented to TRU and its Sponsors on May 5, 2010, during the solicitation period, thereby participating in the Firm’s efforts to solicit investment banking business from TRU.

JPMS also offered favorable research to induce TRU to award the Firm its investment banking business. The Firm’s analyst’s presentation to TRU and the Sponsors supported the Firm’s investment banking pitch and offered a positive evaluation of TRU. Moreover, following the analyst’s presentation, TRU asked JPMS to complete a template showing an “Equity

¹In conjunction with Letter of Acceptance, Waiver and Consent No. CAF 030019 (Apr. 24, 2003), JPMS entered into a Final Judgment with the Securities and Exchange Commission (“SEC”) that included, among other things, undertakings with regard to research independence and publication.

Commitment Committee approved]” valuation of TRU, which would include the analyst’s views on TRU’s valuation. TRU and its Sponsors asked the firms to complete the template and provide a Firm-wide valuation that the Firm, including its analyst, would be expected to support after TRU awarded the TRU IPO business, absent unexpected developments. Indeed, TRU told some firms that the purpose of the template was to prevent TRU from being “burned” by an analyst’s decision to adopt a negative view of TRU after the company had awarded its investment banking business to the analyst’s firm. JPMS complied with TRU’s request.

Supervisory personnel at JPMS were aware that TRU had asked the Firm’s research analyst to make a presentation to TRU that was not part of the analyst’s due diligence, that TRU would take the presentation into account when awarding the underwriting mandate in the TRU IPO, that the presentation would include the analyst’s favorable views of the company, and that TRU wanted a final valuation that the entire Firm, including its analyst, would support if selected as an underwriter. Nevertheless, the Firm’s supervisory personnel allowed the analyst to make the presentation. Accordingly, JPMS failed to adopt and implement written supervisory procedures reasonably designed to ensure compliance with NASD Rule 2711.

TRU and the Sponsors selected JPMS as an active bookrunner for the TRU IPO. TRU, however, eventually decided not to proceed with the offering.

FACTS AND VIOLATIVE CONDUCT

I. JPMS Violated NASD Rule 2711(c)(4) by Allowing Its Research Analyst to Participate In the Solicitation of Investment Banking Business.

NASD Rule 2711, the research analyst conflict of interest rule, is designed to insulate research analysts from a myriad of conflicts that could impair their impartiality. Taken together, the various provisions of the rule play a critical role in protecting analysts from improper influences and promoting their independent role providing research and analysis to investors. NASD Rule 2711(c)(4) is a key component of the rule that is designed to preclude analysts from participating in efforts to obtain investment banking business from issuers given that analysts typically initiate coverage of issuers when their firms play a role in bringing the issuer public.

NASD Rule 2711(c)(4) states, at the outset, that “[n]o research analyst may participate in efforts to solicit investment banking business.” The rule clarifies this broad prohibition by stating further that “no research analyst may, among other things, participate in any ‘pitches’ for investment banking business to prospective investment banking clients or have other communications with companies for the purpose of soliciting investment banking business.” Thus, the rule prohibits a research analyst from being part of the deal team seeking to win investment banking business.

Under NASD Rule 2711(c)(4), an analyst may communicate with an issuer during the solicitation period as part of the analyst’s due diligence efforts to gather information about the company, but may not communicate with the issuer in furtherance of soliciting a role for his investment bank in the underwriting. In the context of a meeting requested by an issuer during the solicitation period for the purpose of obtaining an analyst’s views as part of the underwriter selection process, as occurred in the TRU IPO, an analyst from a soliciting investment bank may

not communicate to the issuer his views about the issuer or the issuer's industry, such as his views about valuation or comparable companies.

In April 2010, TRU and the Sponsors notified several investment banking firms of their interest in bringing the company public through an initial public offering. On April 23, 2010, TRU telephoned several firms and invited them to bid for a role in the TRU IPO and scheduled a "bakeoff" with each firm's investment bankers for April 30, 2010. TRU also notified the firms that, as part of the process of selecting underwriters, it wanted to hear the views of each firm's analyst who would cover the company following the TRU IPO. Each firm understood that TRU would consider the firm's analyst's views in determining whether the firm would receive an underwriting role in the TRU IPO. TRU gave the firms a list of topics it wished the analysts to cover, including the retail industry outlook, valuation, and comparables. TRU scheduled meetings with the analysts for May 4 and May 5, 2010.

On May 4, 2010, TRU and the Sponsors met with the equity research analysts from the firms competing for the TRU IPO business and provided background and financial information on the company for purposes of the analysts' due diligence.

On May 5, 2010, each firm's analyst made a separate presentation to TRU and the Sponsors. Under the circumstances, the analysts' presentations on May 5 constituted part of each firm's pitch for the TRU IPO and therefore violated NASD Rule 2711(c)(4). The presentations occurred during the solicitation period for the TRU IPO. TRU made clear to each firm that its analyst's presentation would be a factor in TRU's determination of whether the firm would be awarded a role in the IPO. Each analyst presentation was structured so that the analyst spoke and TRU management and Sponsors asked questions. These meetings were not designed to provide information to the analyst that the analyst could use to "vet" the proposed transaction.

JPMS understood that its research analyst's views could influence what underwriting role, if any, it received in the TRU IPO. Shortly before it was invited to pitch to TRU and the Sponsors, a JPMS investment banker received an email from one of the Sponsors stating: "beauty contest next Friday [April 30, 2010]. Open field. Focus on ipo and also will ask people to commit to new [asset backed loan] . . . *Research will matter as well.*" (Emphasis added.) A few hours later, JPMS investment bankers received an invitation to the pitch along with related materials, including a PowerPoint Presentation specifically for research analysts.

Over the next several days, via chaperoned emails and telephone calls, JPMS' investment banking team discussed their pitch with the analyst. The JPMS research analyst also received a call from a person representing the company. The call came the day before the investment banking pitch and, during the call, the analyst received instructions on the specific topics that TRU and its Sponsors expected him to address at the meeting on May 5. The topics included: "the valuation environment, and the TRU investment case (value drivers, positioning, key comparables, potential marketing messages, positioning of strength)."

The same day, a JPMS banker emailed banking colleagues about a call he had with one of the Sponsors: "Impt that we show well tomorrow, *analyst vetting supports our views* and that we make a very compelling case for our equity markets leadership and execution of last 24 mos."

(Emphasis added.) After the Firm’s investment bankers made their pitch to TRU and the Sponsors on April 30, 2010, they briefed the Firm’s analyst on their pitch.

On May 5, 2010, the JPMS research analyst presented to TRU and the Sponsors. During his presentation, the research analyst reviewed his own experience, discussed JPMS’s research strengths, presented his views on the retail sector, generally, and explained how he believed investors would perceive TRU. For example:

- In talking points that accompanied his presentation, the analyst described JPMS’ research capabilities, telling TRU and the Sponsors that he was “Institutional Investor ranked” and that the JPMS “retail and consumer franchise is the best on the street. There are 14 consumer sectors . . . and we rank in 10 of them, with a 20% market share, a significant level.”
- He also explained in the talking points that his presentation addressed the points TRU had identified, with each slide building on the prior to make points that “become more relevant as we focus on valuation and our view of the best Toys R Us positioning.”
- While noting some countervailing trends, he stated in his presentation that the retail sector had outperformed the S&P 500 Index.
- He identified the specific comparable companies that he would use in valuing TRU and provided valuations for each.
- He identified issues that potential investors might raise in considering an investment in TRU and then suggested responses to those concerns, including that Toys:
 - is a “Trusted Brand;”
 - provides “Growth Opportunities;” and
 - has “Proven Management.”

Additionally, JPMS complied with TRU’s request that the Firm provide a valuation encompassing the research analyst’s views.

As a result of the foregoing, JPMS violated NASD Rule 2711(c)(4) and FINRA Rule 2010.

II. JPMS Violated NASD Rule 2711(e) by Offering Favorable Research Coverage to Induce Receipt of TRU’s Investment Banking Business.

NASD Rule 2711 recognizes that a firm can create a conflict for an analyst and compromise the analyst’s independence if it promises favorable research coverage in an effort to win investment banking business. Therefore, NASD Rule 2711 contains a broad prohibition against directly or indirectly offering favorable research: “No member may directly or indirectly offer favorable research, a specific rating, or a specific price target . . . to a company as consideration or inducement for the receipt of business or compensation.” Accordingly, in the context of a solicitation period where the issuer has stated that it will consider an analyst’s views as part of the underwriter selection process, a firm cannot indicate to a prospective investment banking

III. JPMS Violated NASD Rule 2711(i) Because It Failed to Adopt and Implement Policies and Procedures Reasonably Designed to Prevent Violations of NASD Rule 2711.

NASD Rule 2711(i) provides supervision requirements that specify a firm's obligations to develop effective policies and procedures to oversee research analyst conflicts of interest. Specifically, the rule states, "Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule"

Communications between an analyst and an issuer during the solicitation period present a risk that the analyst will become part of the firm's effort to solicit investment banking business from the issuer and/or offer favorable research to induce receipt of the issuer's investment banking business. JPMS failed to adopt and implement written supervisory procedures reasonably designed to ensure compliance with Rule 2711 so as to avoid conduct that, under the circumstances constituted (a) participation by its research analyst in the solicitation of a role in the TRU IPO, and (b) an offer of favorable research.

As a result of the foregoing, JPMS violated NASD Rule 2711(i) and FINRA Rule 2010.

B. The Firm also consents to the imposition of the following sanctions:

- a censure; and
- a fine in the amount of \$5,000,000.

JPMS agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. JPMS has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

JPMS specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

JPMS specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

client its analyst's positive views of the company or the company's prospects, even if honestly held, or the positive prospective valuation the analyst may give the company.

Under the circumstances of the TRU IPO, JPMS offered favorable research coverage to induce receipt of investment banking business. The JPMS research analyst expressed favorable views about TRU during his presentation on May 5, 2010, as noted above. Additionally, JPMS offered favorable coverage by completing and submitting to TRU, during the solicitation period, a valuation template requested by TRU and the Sponsors.

On May 6, 2010, TRU notified the firms that it would be sending a template to each firm to complete as part of the underwriter-selection process. TRU explained that, in order to be selected as an underwriter, each firm had to provide the requested valuation. TRU and the Sponsors wanted to ensure that, if a firm was selected as an underwriter, its analyst's views would be consistent with the valuation provided by its investment bankers.

Later that day, TRU sent the template to each of the firms along with a cover email. The template asked each firm to provide projected EBITDA and net income for 2010 and 2011, the corresponding valuation multiple for 2010 and 2011, and identify up to five comparable companies used for valuation. In the cover email accompanying the template, TRU wrote that, before selecting underwriters, it wanted each firm to provide (1) "Equity Commitment Committee approval of a definitive equity valuation range," and (2) "what company or companies you would choose for the purpose of determining comparative values, and why." TRU stated that if a firm was selected as an underwriter, the firm, including its analyst, would be expected to stand behind the valuation provided in the template. If the valuation changed, the firm would be expected to show that the change was "directly traceable to unexpected findings during due diligence or unexpected changes in exogenous factors." The templates were due on May 10, 2010.

The Firm understood that TRU and the Sponsors wanted a final valuation that the entire Firm, including its analyst, would support if selected as an underwriter.

JPMS, through its investments bankers, emailed the completed template to TRU early. The Firm provided all of the information TRU requested and attached the template to an email in which it stated: "we presented our overall Firm views last Friday on the Toys "R" Us IPO and related debt considerations. I have confirmed these views and commitments with each of my partners here at J.P. Morgan Given the coordination and conviction of our initial views, we are happy to send you the requested Template . . . in advance of your . . . deadline." The JPMS bankers did not state or suggest in any way that the template excluded the views of Firm's research analyst. Shortly thereafter, TRU and the Sponsors selected JPMS as an active bookrunner for the TRU IPO.

By including favorable views of TRU in the analyst's presentation and providing TRU the unified valuation it sought, JPMS indicated to TRU that post-IPO research coverage would be positive and aligned with investment banking.

As a result of the foregoing, JPMS violated NASD Rule 2711(e) and FINRA Rule 2010.

- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council (“NAC”) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, JPMS specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person’s or body’s participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

JPMS further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person’s or body’s participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

JPMS understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
- C. If accepted:
 - 1. this AWC will become part of JPMS’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 2. this AWC will be made available through FINRA’s public disclosure program in response to public inquiries about the Firm’s disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. JPMS may not take any action or make or permit to be made any public

statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. JPMS may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. JPMS may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

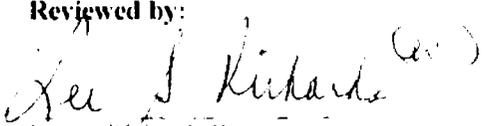
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it

Date: 12/8/2014

J.P. Morgan Securities LLC

By: 
Elizabeth Myers
Managing Director

Reviewed by:

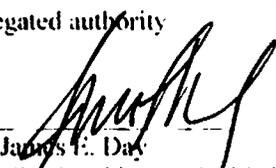


Lee S. Richards III
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Counsel for Respondent

Accepted by FINRA:

Date: 12/10/14

Signed on behalf of the Director of ODA, by
delegated authority

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