

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ED O'GARA, Individually And On Behalf of All)
Others Similarly Situated,)

Plaintiff,)

v.)

JPMORGAN CHASE & CO. & J.P. MORGAN)
SECURITIES INC.,)

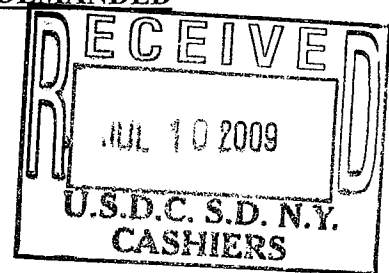
Defendants.)

Civil Action No.

09 CIV 6199

**CLASS ACTION COMPLAINT FOR
VIOLATION OF FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED



1. Plaintiff Ed O’Gara, by his counsel, alleges the following based upon personal knowledge as to his own acts and upon the investigation by his counsel, which includes, among other things, a review of: (a) public statements, sales presentations, and marketing materials by Defendants JPMorgan Chase & Co. (“JPMorgan Chase”) and J.P. Morgan Securities Inc. (“JP Morgan”) (collectively “Defendants”), and their affiliates, agents and employees; (b) Securities and Exchange Commission (“SEC”) filings made by Defendants and other brokerages, financial services firms, and investment companies; (c) public filings and statements in court proceedings and civil government and regulatory investigations involving Defendants and other brokerages, financial services firms, and investment companies; (d) documents believed to be authentic copies of internal emails and other business records of various brokerages, financial services firms, and investment companies obtained from public record sources; (e) securities analysts’ reports, press releases, and media reports; (f) interviews with purchasers of auction rate securities and other knowledgeable individuals; and (g) discussions with consultants. Plaintiff believes that after reasonable opportunity for discovery, substantial evidentiary support will likely exist for the following allegations.

INTRODUCTION

2. Plaintiff brings this class action pursuant to Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) on behalf of a class of investors who, between July 10, 2004 and February 13, 2008, inclusive (the “Class Period”), purchased auction rate securities for which JP Morgan served as sole auction dealer, lead auction dealer, co-lead auction dealer, or joint lead auction dealer (“JPM ARS”), and who were damaged thereby.

3. Auction rate securities are bonds or preferred stocks that pay interest or dividends at rates set at periodic auctions. Auction rate securities allowed issuers to obtain long-term financing at short-term interest rates, because investors reasonably expected to be able to access their principal at each periodic auction.

4. During the Class Period and unbeknownst to investors, JP Morgan engaged in a scheme, practice or course of conduct to manipulate the market for JPM ARS to create the appearance that the securities traded at arm's-length auctions, when in fact the available supply well exceeded the demand for those securities.

5. As part of the scheme to manipulate the market for JPM ARS, JP Morgan maintained a policy of placing or causing the placement of support bids in every auction for which it served as the sole auction dealer, lead auction dealer, co-lead auction dealer, or joint auction dealer, to the extent necessary to create the appearance of stability and liquidity in the auction market, prevent auction failures, and set the rates of interest or dividends paid on those securities.

6. The goal of the scheme was to allow Defendants to underwrite billions of dollars of JPM ARS and to sell those securities, including Defendants' own inventory, at par value when they were worth significantly less. The scheme allowed Defendants to reap hundreds of millions of dollars in underwriting and auction dealer fees at the expense of investors who purchased JPM ARS at inflated prices.

7. Defendants' scheme came to light on February 13, 2008, when the auction rate securities market collapsed after JP Morgan and the other major auction dealers abruptly ended their policy of propping up the market. Since that date, the purported auctions previously managed by JP Morgan have ceased operating, and Defendants have admitted there is no prospect of the purported auctions resuming operations, as there is no demand for JPM ARS. Defendants' withdrawal of "support" for the auction market left Plaintiff and Class members holding billions of dollars in illiquid JPM ARS.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act (15 U.S.C. § 78aa). The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b)

and 78t(a)), and Rule 10b-5 promulgated by the Securities Exchange Commission (“SEC”) (17 C.F.R. 240.10b-5).

9. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §§1391(b), 1337. Defendants maintain offices within this District and many of the acts giving rise to the violations complained of herein took place in this District.

10. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

11. Plaintiff Ed O’Gara, as set forth in his certification attached hereto and incorporated by reference herein, purchased JPM ARS from TD Ameritrade during the Class Period and was damaged thereby. Plaintiff O’Gara continues to hold illiquid JPM ARS.

12. Defendant JPMorgan Chase & Co. (“JPMorgan Chase”) is incorporated in Delaware and its principal executive offices are located in New York, New York. JPMorgan Chase & Co. is one of the world’s leading financial services firms. Through its subsidiaries, JPMorgan Chase offered investment banking, financial services, commercial banking, wealth management and advisory services.

13. Defendant J.P. Morgan Securities Inc. (“JP Morgan”) is incorporated in Delaware and its principal executive offices are located in New York, New York. J.P. Morgan Securities Inc., a wholly-owned subsidiary of JPMorgan Chase, is registered with the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the Financial Industry Regulatory Authority (“FINRA”). According to JPMorgan Chase’s 2008 Annual Report, “JPMorgan Chase’s principal nonbank subsidiary is J.P. Morgan Securities Inc., the Firm’s U.S. investment banking firm.” The 2008 Annual Report additionally states that JP Morgan is JPMorgan Chase’s principal broker-dealer subsidiary in the United States. JP Morgan

underwrote, managed auctions for, and sold auction rate securities, including JPM ARS, to Class members during the Class Period.

14. Unless specifically noted, “Defendants” refers collectively to defendants JPMorgan Chase & Co. and J.P. Morgan Securities Inc.

PLAINTIFF’S CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all persons or entities that, between July 10, 2004 and February 13, 2008 (the “Class Period”), inclusive, purchased auction rate securities for which JP Morgan served as sole auction dealer, lead auction dealer, co-lead auction dealer, or joint lead auction dealer (the “Class”), and were damaged thereby.

16. Excluded from the Class are Defendants; the subsidiaries and affiliates of any Defendant; any person or entity who is a partner, officer, director, employee, or controlling person of any Defendant; members of Defendants’ immediate families and their legal representatives, heirs, successors, or assigns; and any entity in which any Defendant has or had a controlling interest.

17. The members of the Class are so numerous that joinder of all members is impracticable.

18. Prior to the collapse of the auction rate securities market, JP Morgan served as one of the largest managers of auction rate securities. During the Class Period, investors purchased billions of dollars of auction rate securities in auctions that JP Morgan managed.

19. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members of the proposed Class who hold billions of dollars in outstanding JPM ARS.

20. Record owners and other members of the Class may be identified from records maintained by Defendants and other brokerage firms and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

21. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether the federal securities laws were violated by Defendants' acts as alleged herein;
- (b) Whether Defendants joined, directed, participated in, or otherwise engaged in a scheme to defraud purchasers of JPM ARS during the Class Period;
- (c) Whether Defendants manipulated the market for JPM ARS during the Class Period; and
- (d) Whether Class members have sustained damages and the proper measure of damages.

22. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

23. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

24. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiff's claims. The damages suffered by individual Class members are relatively small given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class to individually redress the wrongs done to them.

25. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, is in fact manageable, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. The benefits of adjudicating this controversy as a class action far outweigh any difficulties in managing the Class.

26. In the alternative, the Class may be certified under the provisions of Fed. R. Civ.

P. 23(b)(1), 23(b)(2) and/or 23(c)(4) because:

- (a) The prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendants;
- (b) The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests;
- (c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole; and
- (d) The claims of Class members are comprised of common issues that are appropriate for certification under Rule 23(c)(4).

FACTUAL ALLEGATIONS

A. Background

i. Auction Rate Securities

27. Auction rate securities were long-term or perpetual variable-rate equity or debt instruments that paid interest or dividends at rates set at periodic “auctions.”

28. Auction rate securities were issued by closed-end preferred funds; states, state agencies, municipalities, or other governmental authorities; public or private student loan originators and lenders; and other corporations and entities.

29. The market for auction rate securities experienced dramatic growth since the securities were first introduced in 1984. At the end of 2005, approximately \$263 billion of auction rate securities were outstanding. In the subsequent 26 months, the auction rate securities market grew by nearly 25 percent. By February 2008, the market for auction rate securities exceeded \$330 billion.

30. When auction rate securities were first introduced in the mid-1980s, they were available only to highly sophisticated institutional investors with required minimum purchases of \$250,000 or more. Prior to the beginning of the Class Period, issuers and underwriters lowered

the minimum investment to \$25,000. The reduced minimum investment enabled sellers to market auction rate securities to retail investors including individuals, charities, and small businesses.

ii. The Auction Process

31. Prior to February 2008, auction rate securities typically traded at par value through periodic “Dutch” auctions generally held every 7, 28, 35, or 49 days. The auctions determined which investors would own the securities as well as the “clearing rate,” the rate of interest or dividends paid on those securities until the next periodic auction. Auction procedures typically allowed participants to submit orders to buy, sell, or hold auction rate securities.

32. Auction rate securities allowed issuers to obtain long-term financing at less expensive, short-term rates. Auction rate securities purchasers were willing to accept short-term rates because they reasonably believed that auction rate securities could readily be disposed of at par through the periodic auctions.

33. Issuers of auction rate securities selected and paid firms, including JP Morgan, to act as the dealer through which investors submitted orders at auctions for the issuers’ securities. The firm selected to receive bids was called an “auction dealer,” “broker-dealer,” or “auction manager,” and was said to “participate” in auctions.¹ Investors also could place orders at auctions through other designated brokerages, often referred to as “remarketing agents” or “distributing firms,” which then would transmit those orders to the auction dealer. The firm that underwrote an issuance of auction rate securities typically served as auction dealer for those securities.

34. In a successful auction, the number of shares bid for purchase at a particular rate was equal to or greater than the number of shares offered for sale at that rate. All shares for sale were purchased, and the clearing rate, i.e., the lowest interest or dividend rate at which all sale

¹ The term “auction dealer,” as used in this Complaint, is intended to be synonymous with the terms, “broker-dealer” and/or “auction manager.”

orders could be fulfilled, applied to all securities sold until the next auction. An auction failed if the number of shares offered for sale exceeded the number of shares bid for purchase.

35. If the auction failed, then none of the current holders could sell their shares, as auction rate securities have no “put” feature guaranteeing that an investor can either sell the securities back to the auction dealer on demand at par value or force the issuer to redeem the securities. If an auction failed, however, the holder of an auction rate security was entitled to collect dividends or interest at a predetermined rate until the next auction. The predetermined rate of interest that was paid in the event of a failed auction was typically referred to as the “maximum rate.”

36. The maximum rate was intended to ensure that the auction rate security remained liquid if the auction failed, by attracting new buyers or prompting the issuer to refinance. If the maximum rate was insufficient to attract liquidity in the event of an auction failure, however, the risk characteristics of the auction rate security were fundamentally altered. An auction rate security that carried a low maximum rate was entirely dependent on the auction dealer’s intervention and “support” for the periodic auctions to ensure liquidity, and in the absence of the auction dealer’s support, any auction failure would render the security illiquid, as the maximum rate could not be counted on to attract new buyers or prompt the issuer to refinance.

B. Defendants Engaged In A Scheme To Defraud Purchasers Of JPM ARS

37. Defendants were actively involved in the auction rate securities market throughout the Class Period. JP Morgan served as an underwriter for auction rate securities and served as the sole auction dealer in “sole-managed” auctions (where only one auction dealer was signed up to participate), and as a lead auction dealer, co-lead auction dealer, or joint lead auction dealer in “multi-dealer” auctions (where multiple auction dealers were signed up to participate).

38. During the Class Period, JP Morgan underwrote billions of dollars of auction rate securities, placing additional supply in an already saturated market. To accommodate the demands of issuers and obtain high credit ratings even as underwriting standards deteriorated

over the course of the Class Period, JPM ARS were issued with maximum rates that were capped at insufficient levels to attract liquidity in the event of an auction failure. Therefore, JP Morgan needed to suppress auction failures to prevent these low maximum rates from becoming widely known to auction rate securities investors.

39. Throughout the Class Period, Defendants engaged in deceptive and manipulative tactics directed at auction rate securities investors to create the appearance of a functioning auction market in which auction rate securities traded in accordance with actual supply and demand. Defendants' manipulative conduct included: (1) maintaining a policy of intervening in every auction for which JP Morgan served as the sole or lead auction dealer, to the extent necessary to prevent the auction from failing, to create the appearance of stability in the auction rate securities market and to mask the inherent illiquidity of JPM ARS; (2) routinely intervening in auctions to set the rates of interest or dividends paid on those securities and deprive investors of the information necessary to assess the risk and volatility of JPM ARS; and (3) making false and misleading statements and incomplete disclosures about the liquidity of JPM ARS and JP Morgan's role in propping up the auction rate securities market.

40. The scheme began to unravel when auction dealers allowed a discrete segment of the auction rate securities market to fail, as credit markets weakened in the summer and fall of 2007. When these auctions failed, many institutional investors began liquidating their positions in auction rate securities, and the overall deterioration in credit markets led to further selling pressure from corporate and retail holders of auction rate securities. In response, JP Morgan expanded the range and extent of its manipulative practices in an attempt to simultaneously prop up the remainder of the auction rate securities market, conceal the liquidity characteristics of JPM ARS, and protect Defendants from the consequences of their policy of intervening in the auctions.

i. JP Morgan Maintained A Practice Of Intervening In Every Auction For Which It Was The Sole Or Lead Auction Dealer, If Necessary To Prevent The Auction From Failing, To Create The Appearance Of Stability And Liquidity

41. Throughout the Class Period, JP Morgan used its own capital to place “support bids” in auctions in which it served as the sole auction dealer or as the lead auction dealer in multi-dealer auctions. The placement of such support bids was done pursuant to a tacit understanding among JP Morgan and the issuers of JPM ARS that the auction dealer would act to prevent auction failures.

42. Through the placement of these support bids, JP Morgan purchased JPM ARS for its own account when the auctions otherwise would have failed due to lack of sufficient demand.

43. Until around February 13, 2008, JP Morgan followed a uniform policy of placing support bids, if needed to prevent auction failures, in every auction for which it was sole or lead auction dealer.

44. JP Morgan was able to place support bids and prevent auctions from failing, because it was aware of the other bids in the auctions and could place its own bids after the bidding deadline for other investors.

45. JP Morgan failed to disclose to investors that it invariably placed support bids in every auction for which it was the sole or lead auction dealer during the Class Period as necessary to prevent auction failures, that it did so pursuant to a tacit agreement with the issuer that it would suppress auction failures, and that the impact of its extensive and sustained interventions created the outward appearance that JPM ARS were readily liquid investments and that the auction market functioned by the natural interplay of supply and demand.

46. By intervening to prevent auction failures, JP Morgan masked the liquidity risks inherent to JPM ARS. Due to the lack of transparency in the auction market, Class members had no way of knowing the extent to which JP Morgan’s interventions were needed to sustain the auction rate market and ensure that auctions continued to clear.

