
From: Michael Mace <MACEM@pfm.com>
Sent: Monday, February 5, 2018 10:23 AM
To: Brooks, Jody L. - Chief Legal Officer
Subject: Confidential Draft - JPM NDA Comments

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Jody – attached are JP Morgan’s comments to the NDA. Let me know how you’d like to handle any response back to them – either trading drafts directly or through PFM; or via a call with the banks.

Regards
MM

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NON DISCLOSURE AND CONFIDENTIALTY AGREEMENT

This Agreement is made as of February 2, 2018 by and between J.P. Morgan Securities LLC, having its principal place of business at 383 Madison Avenue, New York, NY 10179 (the "COMPANY" or the "**Receiving Party**"), and **JEA**, having its principal place of business at 21 W. Church St., Jacksonville, FL 32202 (the "**Disclosing Party**"), referred to collectively as "**Parties**", and individually as "**Party**."

WHEREAS, the Parties are currently exploring a potential engagement of the Receiving Party to provide financial advisory services to the Disclosing Party in connection with a transaction (the "**Transaction**"). In the course of discussions regarding the Transaction, the Disclosing Party may share sensitive information and exchange information and data which is confidential and proprietary, and in such events the Parties agree that the treatment of such information shall be governed by this Non Disclosure and Confidentiality Agreement ("**Agreement**").

THEREFORE, in consideration of the receipt by the Receiving Party from the Disclosing Party of such Confidential Information (as defined below) in connection with the Transaction, and the mutual covenants contained herein, the Parties hereby agree as follows:

(1) "**Confidential Information**" shall mean all descriptive information, economic, business, technical, engineering, data, or other documents relating to the Transaction, which the Disclosing Party discloses to the Receiving Party"), whether in documentary form, or which a Party discloses orally, but shall not include any information which: (i) at the time of disclosure is or hereafter becomes generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement); (ii) was available to the Receiving Party from a source other than the Disclosing Party, provided that such source is not and was not known by the Receiving Party to be bound by a confidentiality agreement with the Disclosing Party that was applicable to the Confidential Information; or (iii) is or has been independently acquired or developed by the Receiving Party without violating any of its obligations under this Agreement.

(2) Regardless of whether a Transaction is consummated, during the period for which the obligations set forth in this Agreement are in effect, the Receiving Party will keep such Confidential Information confidential and subject to the terms of this Agreement.

(3) Recipient shall employ all reasonable efforts to maintain any Confidential Information received hereunder secret and confidential. Recipient shall not use Confidential Information for any purpose other than to provide financial advisory services to the Disclosing Party for the Transaction (the "Services") without prior approval of the Disclosing Party.

(4) Except as otherwise permitted herein, the Receiving Party shall not, and shall not permit its Representatives (as defined below) at any time to, use, reveal, report, publish, transfer or otherwise disclose to any person, corporation or other entity any Confidential Information without the prior written consent of the Disclosing Party providing the Confidential Information, , provided that the Receiving Party may distribute the Confidential Information to its affiliates and its and their respective directors, officers, employees, professional advisors or consultants (the Receiving Party's "Representatives") who have a need for such information for purposes of

providing the Services, provided that any disclosure by such Representatives in violation of the provisions of this Agreement shall be a breach of this Agreement by the Receiving Party. If selected to act as the Disclosing Party's financial advisor for the Transaction, the Receiving Party may disclose Confidential Information to potential counterparties to a proposed Transaction that have executed confidentiality agreements with or for the benefit of the Disclosing Party in a form reasonably satisfactory to the Disclosing Party.

(5) (a) If the Receiving Party is requested or required or becomes legally compelled (by law, court order, request of governmental or regulatory body, deposition, interrogatories, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, to the extent legally permissible, the Receiving Party shall provide the Disclosing Party with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. The Parties further agree that if, in the absence of a protective order or other remedy not obtained, or that the Disclosing Party waives compliance with the terms hereof, the Receiving Party agrees to provide only that portion of the information that it is advised by counsel is legally required and to exercise its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information (at the Disclosing Party's expense and request). Notwithstanding the foregoing, the Receiving Party shall not be required to provide notice of any disclosures made in connection with any routine regulatory review of the Receiving Party or its affiliates by any governmental or regulatory body with jurisdiction over the Receiving Party or such affiliate, so long as such review is not specifically targeted at the Disclosing Party or the Confidential Information.

(b) The Parties acknowledge that JEA is a body politic and corporate that is subject to Chapter 119, Florida Statutes, and related statutes known as the "Public Records Laws". For the avoidance of doubt, any disclosure by Disclosing Party in compliance with the Public Records Laws shall not be a breach of this Agreement.

(c) Upon the Disclosing Party's request, the Receiving Party shall destroy or return all Returnable Confidential Information (as hereinafter defined) of the Disclosing Party, except for that portion of such Returnable Confidential Information that may be found in analyses prepared by, or for, the Receiving Party (collectively, "Analyses"), and the Receiving Party and its Representatives shall not retain any copies of such Returnable Confidential Information, except as otherwise permitted by this paragraph. The portion of Returnable Confidential Information that may be found in Analyses prepared by, or for, the returning Party, and any Returnable Confidential Information furnished by the Disclosing Party not so requested or returned, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed. For purposes hereof, the term "Returnable Confidential Information" means: (i) written Confidential Information that is marked by the Disclosing Party "Confidential - Subject to Confidentiality Agreement" (such legend shall be stamped on the first page and on each succeeding page which contains Confidential Information subject to this Agreement) and (ii) oral Confidential Information that is indicated by the Disclosing Party at the time of disclosure, by providing to the Receiving Party a written statement identifying the date and nature of the disclosure, the persons present when the disclosure was made, and is marked with the written statement "Confidential - Subject to Confidentiality Agreement." Notwithstanding the foregoing, the Receiving Party may retain any materials as may be required by applicable law, rule, regulation or its internal

document retention policies or which are maintained in electronic backup storage or similar systems which are not readily accessible.

(d) In the event that the Disclosing Party determines to pursue a sale of all or a portion of its assets, securities or businesses, and if the Receiving Party is not engaged to act as the Disclosing Party's financial advisor in connection therewith, the employees of the Receiving Party and its affiliates who have received Confidential Information may provide investment banking and commercial banking services to potential purchasers, and may use for such purpose any Residuals (as defined below), so long as (i) such potential purchasers have been invited by the Disclosing Party to participate in such sale process and have executed confidentiality agreements with or at the direction of the Disclosing Party and (ii) such the Receiving Party employees have destroyed or returned all written Confidential Information in their possession or control, subject to the terms of Section 5(c). As used herein, the term "Residuals" shall mean information in non-tangible form, which may be unintentionally retained in the unaided memory of individuals who have had access to the Confidential Information.

(6) For the avoidance of doubt, nothing contained herein shall eliminate the Receiving Party's right to use: (i) any information disclosed to it by a third party so long as the Receiving Party does not know or have reason to know if such third party acquired that information directly or indirectly from the Disclosing Party; or (ii) any information developed by employees or agents of the Receiving Party without any direct or indirect use of or reliance upon the Confidential Information.

(7) This Agreement and the Parties' obligations hereunder shall terminate two (2) years after the date hereof.

(8) The Parties agree that in the event of a breach of this Agreement, the Disclosing Party providing the Confidential Information shall be entitled to seek equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity.

(9) This Agreement shall be interpreted, governed and construed under the law of the State of Florida.

(10) This Agreement shall in no way be construed to establish any relationship between COMPANY and JEA with respect to the Transaction that is the subject of this Agreement.

(11) This Agreement sets forth the full and complete understanding of the Parties to this Agreement and supersedes any prior understanding and confidentiality or other similar provisions or agreements (whether in the form of a disclaimer, "click-through" or otherwise) with respect to the subject matter hereof). No amendments or modifications hereof shall be valid unless evidenced in writing and executed on behalf of both of the Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

J.P. MORGAN SECURITIES LLC

By: _____
Title: _____
Date: _____

JEA

By: _____
Title: _____
Date: _____

NON DISCLOSURE AND CONFIDENTIALTY AGREEMENT

This Agreement is made as of February ~~____~~, 2, 2018 by and between ~~_____~~, J.P. Morgan Securities LLC, having its principal place of business at ~~_____~~, 383 Madison Avenue, New York, NY 10179 (the "COMPANY") or the "**Receiving Party**"), and **JEA**, having its principal place of business at 21 W. Church St., Jacksonville, FL 32202, ~~(the "Disclosing Party")~~, referred to collectively as "**Parties**", and individually as "**Party**."

WHEREAS, the Parties are currently exploring a potential engagement ~~related of the~~ Receiving Party to provide financial advisory services to the Disclosing Party in connection with a transaction (the "**Transaction**"). In the course of discussions regarding the Transaction, the ~~Parties~~ Disclosing Party may share sensitive information and exchange information and data which is confidential and proprietary, and in such events the Parties agree that ~~this Transaction~~ the treatment of such information shall be governed by this Non Disclosure and Confidentiality Agreement ("**Agreement**").

THEREFORE, in consideration of the receipt by the ~~Parties~~ Receiving Party from ~~each other~~ the Disclosing Party of such Confidential Information ~~for their mutual benefit~~ (as defined below) in connection with the Transaction, and the mutual covenants contained herein, the Parties hereby agree as follows:

(1) "**Confidential Information**" shall mean all descriptive information, economic, business, technical, engineering, data, or other documents relating to the "~~Transaction~~", which ~~one Party~~ (the "Disclosing Party") discloses to the ~~other Party~~ (the "Receiving Party"), ~~whether in documentary form, or which a Party discloses orally, identifies as being confidential, or at the time of disclosure, except but shall not include any portion of such Confidential Information~~ information which: (i) at the time of disclosure is or hereafter becomes generally available to the public (other than as a result of a disclosure by any Party in violation of this Agreement); (ii) was available to ~~any~~ the Receiving Party ~~on a non-confidential basis~~ from a source other than the Disclosing Party ~~hereto providing the Confidential Information~~, provided that such source is not and was not known by the Receiving Party to be bound by a confidentiality agreement with the Disclosing Party that was applicable to the Confidential Information; or (iii) is or has been independently acquired or developed by ~~any~~ the Receiving Party without violating any of its obligations under this Agreement.

(2) Regardless of whether a Transaction is consummated, during the period for which the obligations set forth in this Agreement are in effect, the ~~Parties~~ Receiving Party will keep such Confidential Information confidential and subject to the terms of this Agreement.

(3) Recipient shall employ all reasonable efforts to maintain any ~~information~~ Confidential Information received hereunder secret and confidential. Recipient shall not use Confidential Information for any purpose other than ~~that set forth in Paragraph 1 above to~~ provide financial advisory services to the Disclosing Party for the Transaction (the "Services") without prior approval of the Disclosing Party.

(4) ~~No~~ Except as otherwise permitted herein, the Receiving Party shall ~~itself, or not,~~ and shall not permit its ~~employees or agents~~ Representatives (as defined below) at any time to,

use, reveal, report, publish, transfer or otherwise disclose to any person, corporation or other entity any Confidential Information without the prior written consent of the Disclosing Party providing the Confidential Information, ~~except a~~, provided that the Receiving Party may distribute the ~~information, subject~~ Confidential Information to ~~any specific measures directed against such disclosure in Paragraph 3, to its~~ affiliates and its and their respective directors, officers, employees, professional advisors or consultants ~~of~~ (the Receiving Party's "Representatives") who have a need for such information for purposes of ~~evaluating~~ providing the ~~Transaction Services~~, provided that any disclosure by such ~~officers, employees or consultants~~ Representatives in violation of the provisions of this Agreement shall be a breach of this Agreement by the Receiving Party. If selected to act as the Disclosing Party's financial advisor for the Transaction, the Receiving Party may disclose Confidential Information to potential counterparties to a proposed Transaction that have executed confidentiality agreements with or for the benefit of the Disclosing Party in a form reasonably satisfactory to the Disclosing Party.

(5) (a) If ~~JEA~~ the Receiving Party is requested or required or becomes legally compelled (by law, court order, request of governmental or regulatory body, deposition, interrogatories, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, ~~JEA~~ to the extent legally permissible, the Receiving Party shall provide ~~COMPANY~~ the Disclosing Party with prompt notice of such request(s) so that ~~COMPANY~~ the Disclosing Party may seek an appropriate protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. The Parties further agree that if, in the absence of a protective order or other remedy not obtained, or that ~~COMPANY~~ the Disclosing Party waives compliance with the terms hereof, ~~JEA~~ the Receiving Party agrees to provide only that ~~limited~~ portion of the information that it is advised by ~~written opinion of~~ counsel is legally required and to exercise its ~~best~~ commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. ~~— (at the Disclosing Party's expense and request).~~ Notwithstanding the foregoing, the Receiving Party shall not be required to provide notice of any disclosures made in connection with any routine regulatory review of the Receiving Party or its affiliates by any governmental or regulatory body with jurisdiction over the Receiving Party or such affiliate, so long as such review is not specifically targeted at the Disclosing Party or the Confidential Information.

~~_____~~ (b) ~~The Parties acknowledge that JEA is a body politic and corporate that is subject to Chapter 119, Florida Statutes, and related statutes known as the "Public Records Laws". If a request is made to view Confidential Information, JEA will notify COMPANY of such request and the date that such records will be released to the requester unless COMPANY obtains a court order enjoining such disclosure. If COMPANY fails to obtain that court order enjoining disclosure, JEA will release the requested Confidential Information on the date specified. Such release shall be deemed to be made with COMPANY's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copyright or other intellectual property. For the avoidance of doubt, any disclosure by Disclosing Party in compliance with the Public Records Laws shall not be a breach of this Agreement.~~

~~_____~~ (c) Upon ~~at~~ the Disclosing Party's request, the ~~other~~ Receiving Party shall destroy or return all Returnable Confidential Information (as hereinafter defined) of the

~~requesting~~Disclosing Party, except for that portion of such Returnable Confidential Information that may be found in analyses prepared by, or for, the ~~returning~~Receiving Party (collectively, "Analyses"), and the ~~returning~~Receiving Party and its Representatives shall not retain any copies of such Returnable Confidential Information, except as otherwise permitted by this paragraph. The portion of Returnable Confidential Information that may be found in Analyses prepared by, or for, the returning Party, and any Returnable Confidential Information furnished by the ~~Requesting~~Disclosing Party not so requested or returned, will be held by the ~~returning~~Receiving Party and kept subject to the terms of this Agreement or destroyed. For purposes hereof, the term "Returnable Confidential Information" means: (i) written Confidential Information that is marked by the ~~disclosing~~Disclosing Party "Confidential - Subject to Confidentiality Agreement."~~Such~~ (such legend shall be stamped on the first page and on each succeeding page which contains Confidential Information subject to this Agreement) and (ii) oral Confidential Information that is indicated by the ~~disclosing~~Disclosing Party at the time of disclosure, by providing to the ~~receiving~~Receiving Party a written statement identifying the date and nature of the disclosure, the persons present when the disclosure was made, and is marked with the written statement "Confidential - Subject to Confidentiality Agreement." Notwithstanding the foregoing, the Receiving Party may retain any materials as may be required by applicable law, rule, regulation or its internal document retention policies or which are maintained in electronic backup storage or similar systems which are not readily accessible.

~~_____ (6) _____~~ ~~Nothing~~ (d) In the event that the Disclosing Party determines to pursue a sale of all or a portion of its assets, securities or businesses, and if the Receiving Party is not engaged to act as the Disclosing Party's financial advisor in connection therewith, the employees of the Receiving Party and its affiliates who have received Confidential Information may provide investment banking and commercial banking services to potential purchasers, and may use for such purpose any Residuals (as defined below), so long as (i) such potential purchasers have been invited by the Disclosing Party to participate in such sale process and have executed confidentiality agreements with or at the direction of the Disclosing Party and (ii) such the Receiving Party employees have destroyed or returned all written Confidential Information in their possession or control, subject to the terms of Section 5(c). As used herein, the term "Residuals" shall mean information in non-tangible form, which may be unintentionally retained in the unaided memory of individuals who have had access to the Confidential Information.

(6) For the avoidance of doubt, nothing contained herein shall eliminate the Receiving Party's right to use: (i) any information disclosed to it by a third party so long as the Receiving Party does not know or have reason to know if such third party acquired that information directly or indirectly from the Disclosing Party; or (ii) any information developed by employees or agents of the Receiving Party without any direct or indirect use of or reliance upon the Confidential Information.

~~_____ (7) _____~~ ~~The Parties'~~This Agreement and the Parties' obligations ~~concerning non-disclosure and use of Confidential Information contained in this Agreement hereunder~~ shall ~~continue for~~terminate two (2) years ~~from~~after the date ~~of each disclosure, and then terminate~~hereof.

(8) The Parties agree that in the event of a breach of this Agreement, the Disclosing Party providing the Confidential Information shall be entitled to seek equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity.

(9) This Agreement shall be interpreted, governed and construed under the law of the State of Florida.

(10) This Agreement shall in no way be construed to establish any relationship between COMPANY and JEA with respect to the Transaction that is the subject of this Agreement.

(11) This Agreement sets forth the full and complete understanding of the Parties to this Agreement and ~~there are no other representations, covenants or agreements, expressed or implied, other than those expressly set forth herein.~~ supersedes any prior understanding and confidentiality or other similar provisions or agreements (whether in the form of a disclaimer, “click-through” or otherwise) with respect to the subject matter hereof. No amendments or modifications hereof shall be valid unless evidenced in writing and executed on behalf of both of the Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

COMPANY
J.P. MORGAN SECURITIES LLC

By: _____

Title: _____

Date: _____

JEA

By: _____

Title: _____

Date: _____