



Issue Date: 12 April 2016

Case Number: 2016-SOX-00028

In the Matter of:

**JOSEPH S. FITZGERALD,
Complainant,**

v.

**JP MORGAN CHASE, N.A.,
Respondent.**

**ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINT**

This proceeding arises under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley (“SOX”) Act of 2002, 18 U.S.C. §1514A (“Sarbanes-Oxley”), and the applicable regulations issued thereunder at 29 C.F.R. Part 1980, and Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“CFP”) of 2010, 12 U.S.C. § 5567, and the applicable regulations issued thereunder at 29 C.F.R. Part 1985. It is not yet scheduled for hearing. The parties have informed the undersigned that the matter has settled,¹ submitting an executed Confidential Settlement Agreement and General Release (Settlement) for my review and requesting the case be dismissed.²

The SOX and CFP, and their respective implementing regulations, provide that proceedings may be terminated on the basis of a settlement if either the Secretary or the Administrative Law Judge approves the settlement. 29 C.F.R. § 1980.111(d)(2); 29 C.F.R. § 1985.111(d)(2). Under the SOX and CFP, a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. Consistent with this required review, the regulations direct the parties to file a

¹ 29 C.F.R. § 1980.111(d)(2) and 29 C.F.R. § 1985.111(d)(2) state that at any time after the filing of objections to the Assistant Secretary’s findings and preliminary order, the case may be settled, and, if the case is before an administrative law judge, the settlement is contingent upon the approval of the administrative law judge.

² The parties have asked that the financial terms of the settlement will be treated as confidential. The parties are afforded the right to request that information be treated as confidential commercial information where, as here, they are required to submit information involuntarily. 20 C.F.R. § 70.26(b) (2016). The DOL is then required to take steps to preserve the confidentiality of that information, and must provide the parties with predislosure notification if a FOIA request is received seeking release of that information. Accordingly, an unredacted copy of the Settlement in this matter will be placed in an envelope marked “PREDISCLOSURE NOTIFICATION MATERIALS.” Consequently, before any information in this unredacted file is disclosed pursuant to a FOIA request, the DOL is required to notify the parties to permit them to file any objections to disclosure. *See* 29 C.F.R. § 70.26 (2016). Furthermore, the undersigned will refrain from discussing specific terms or dollar amounts contained in the Settlement.

copy of the settlement “with the ALJ or the Administrative Review Board, [United States Department of Labor], as the case may be.” 29 C.F.R. 1980.111(d)(2); 29 C.F.R. § 1985.111(d)(2). Any settlement approved by the Assistant Secretary, the ALJ or the ARB constitutes the final order of the Secretary and may be enforced pursuant to § 1980.113 and 1985.113. 29 C.F.R. § 1980.111(e); 29 C.F.R. § 1985.111(e).

Having reviewed the settlement agreement and its provisions, which includes dismissal of the complaint with prejudice, I find the terms, obligations, and conditions fair, adequate and reasonable, and in the public interest.³ Accordingly, I approve the parties’ settlement and dismissal of the complaint with prejudice. The parties shall implement the terms of the approved settlement as specifically stated in their agreement.⁴

ORDER

The settlement agreement is APPROVED and the matter is DISMISSED with prejudice.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

³ Some of the provisions in the settlement agreement appear to extend to claims beyond the scope of the Act. Consequently, I limit my review to the Sarbanes-Oxley Act and Consumer Financial Protection Act claims only; anything beyond that exceeds this Office’s jurisdiction and the scope of my review. To the extent that the agreement could be construed as a waiver by Complainant of any causes of action he may have which arise in the future, I interpret such provision as limited to the right to sue in the future on claims or causes of action for violations of SOX and CFP arising out of facts or any set of facts occurring through the date of the agreement. *See McCoy v. Utah Power*, 1994-CAA-1 and 6 (Sec’y Aug. 1, 1994); *Armijo v Wackenhut Services, Inc.*, 1994-ERA-7 (Sec’y Aug. 22, 1994).

⁴ To the extent that the agreement purports to require the parties to agree to confidential arbitration in the event any dispute related to the terms, meaning or enforcement of the agreement arises, SOX provides that the rights and remedies provided for under Section 1514A may not be waived by any agreement, including by a predispute arbitration agreement and that no predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section. 18 U.S.C. § 1514A(e). The same unenforceability of a predispute arbitration agreement is similarly contained in the Dodd-Frank Act. 12 U.S.C. § 5567(d)(1) and (2).

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(a). Your Petition should identify the legal conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

When you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original

and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1980.109(e) and 1980.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1980.110(b).