NO ACT

1-30-09

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-3010

DIVISION OF
CORPORATION FINANCE

[redacted]

09001093

February 2, 2009

Anthony J. Horan
Corporate Secretary
Office of the Secretary
JPMorgan Chase & Co.
270 Park Avenue
New York, NY 10017-2070

Received SEC
FEB 0 2 2009
Washington, DC 20549

Act: 1934
Section:
Rule: 14a-8
Public
Availability: 2-2-09

Re: JPMorgan Chase & Co.

Dear Mr. Horan:

This is in regard to your letter dated January 30, 2009 concerning the shareholder proposal submitted by the Missionary Oblates of Mary Immaculate for inclusion in JPMorgan Chase's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the proponent has withdrawn the proposal, and that JPMorgan Chase therefore withdraws its January 9, 2009 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Sincerely,

Gregory S. Belliston
Special Counsel

cc: Séamus P. Finn, OMI
Director
Justice, Peace and Integrity of Creation Office
Missionary Oblates of Mary Immaculate
391 Michigan Avenue, NE
Washington, DC 20017

JPMORGAN CHASE & CO.

January 30, 2009

Anthony J. Horan
Corporate Secretary
Office of the Secretary

VIA E-MAIL
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Shareholder Proposal of the Missionary Oblates of Mary Immaculate*
Exchange Act of 1934—Rule 14a-8

Dear Ladies and Gentlemen:

In a letter dated January 9, 2009 (the "No-Action Request"), we requested that the staff of the Division of Corporation Finance of the Securities and Exchange Commission concur that JPMorgan Chase & Co. (the "Company") could exclude from the proxy materials for its 2009 Annual Meeting of Shareholders a shareholder proposal and statements in support thereof (the "Proposal") received from the Missionary Oblates of Mary Immaculate (the "Proponent").

Enclosed is a letter from Séamus P. Finn, the Proponent's representative, to the Company dated January 26, 2009, stating that the Proponent voluntarily withdraws the Proposal. *See* Exhibit A. In reliance on this letter, we hereby withdraw the No-Action Request relating to the Company's ability to exclude the Proposal pursuant to Rule 14a-8 of the Securities Exchange Act of 1934.

If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 270-7122.

Sincerely,

Anthony J. Horan

Enclosure

cc: Amy L. Goodman, Gibson, Dunn & Crutcher LLP
Séamus P. Finn, OMI, Missionary Oblates of Mary Immaculate

EXHIBIT A

Missionary Oblates of Mary Immaculate

Justice & Peace / Integrity of Creation Office, United States Province

January 26, 2009

Mr. James Dimon
Chief Executive Officer
J.P. Morgan Chase & Co.
270 Park Avenue
New York, NY 10017-2070

Dear Mr. Dimon:

First of all, I am grateful for the recent opportunity to meet with represenatives of JP MorganChase on the resolution that we submitted to the company with my letter to you of November 25, 2008.

Because we have had an informative and constructive dialogue with representatives of JP MorganChase on the ongoing efforts that dealers are pursuing with the New York fed and with other regulators and because of the company's commitment to continue to meet with us on the issues that are still unresolved with international regulators and the outstanding proposals before the US Congress, I am authorized by the Missionary Oblates of Mary Immaculate withdraw a resolution entitled "Disclosure of Credit Default Swap Trades" for inclusion in the 2009 proxy statement for consideration of the shareholders.

Enclosed is a copy of my letter to the Securities and Exchange Commission.

Sincerely,

Séamus P. Finn, OMI
Director
Justice, Peace and Integrity of Creation Office
Missionary Oblates of Mary Immaculate

391 Michigan Avenue, NE • Washington, DC 20017 • Tel: 202-529-4505 • Fax: 202-529-4572
Website: www.omiusajpic.org

Missionary Oblates of Mary Immaculate

Justice & Peace / Integrity of Creation Office, United States Province

January 26, 2009

Securities and Exchange Commission
Judiciary Plaza
450 Fifth Street, NW
Washington, DC 20549

To Whom It May Concern:

Because we have had an informative and constructive dialogue with representatives of JP MorganChase on the ongoing efforts that dealers are pursuing with the New York fed and with other regulators and because of the company's commitment to continue to meet with us on the issues that are still unresolved with international regulators and the outstanding proposals before the US Congress, I am authorized by the Missionary Oblates of Mary Immaculate withdraw a resolution entitled "Disclosure of Credit Default Swap Trades" for inclusion in the 2009 proxy statement for consideration of the shareholders.

Enclosed is a copy of my letter to Mr. James Dimon, CEO of JP MorganChase.

Sincerely,

Séamus P. Finn o.m.i.

Séamus P. Finn, OMI
Director
Justice, Peace and Integrity of Creation Office
Missionary Oblates of Mary Immaculate

391 Michigan Avenue, NE • Washington, DC 20017 • Tel: 202-529-4505 • Fax: 202-529-4572
Website: www.omiusajpic.org

JPMORGAN CHASE & CO.

Anthony J. Horan
Corporate Secretary
Office of the Secretary

January 9, 2009

VIA E-MAIL
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Shareholder Proposal of the Missionary Oblates of Mary Immaculate Exchange Act of 1934—Rule 14a-8*

Dear Ladies and Gentlemen:

This letter is to inform you that JPMorgan Chase & Co. (the "Company") intends to omit from its proxy statement and form of proxy for its 2009 Annual Meeting of Shareholders (collectively, the "2009 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from the Missionary Oblates of Mary Immaculate (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2009 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> Be it resolved that the shareholders request that our company periodically report publicly both the category of trades and the value of their trades, (but not the names of their counterparties), in over the counter credit default swaps.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2009 Proxy Materials pursuant to:

- Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal;
- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

ANALYSIS

I. The Proposal May Be Excluded under Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. For the reasons set forth below, we request that the Staff concur that the Proposal may be omitted pursuant to Rule 14a-8(i)(10) because the Company will be required to disclose the information that meets the essential objective of the disclosures requested by the Proponent in its financial statements covering all reporting periods ending after November 15, 2008, pursuant to Financial Accounting Standards Board ("FASB") Staff Position No. FAS 133-1 and FIN 45-4 ("FSP FAS 133-1 and FIN 45-4"), attached to this letter as Exhibit B.

Although the original interpretation of Rule 14a-8(i)(10) only permitted the exclusion of proposals where the action requested by the proponent had been "fully effected," in the 1983 amendments to the proxy rules the Commission adopted an interpretative change to permit companies to omit proposals that have been "substantially implemented." Exchange Act Release No. 20091, at § II.E.6 (August 16, 1983) (the "1983 Release"). *See also* Exchange Act Release No. 40018 at n.30 and accompanying text (May 21, 1998) (reaffirming the position that a proposal may be omitted if it has been "substantially implemented) (the "1998 Release"). In adopting this interpretation of Rule 14a-8(i)(10), the Commission stated that "the previous formalistic application of this provision defeated its purpose." 1983 Release. Applying this standard, the Staff has stated "a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures *compare favorably*" with those requested under the proposal, and not on the exact means of implementation. *Texaco, Inc.* (avail. Mar. 28, 1991) (*emphasis added*). In other words, Rule 14a-8(i)(10) permits exclusion of a shareholder proposal where a company has implemented the essential objective of the proposal, even where the manner by which the company implements the proposal does not precisely correspond to the actions sought by a shareholder proponent. *See* 1983 Release; *AMR Corp. (Chevedden)* (avail. Apr. 17, 2000); *Erie Indemnity Co.* (avail. Mar. 15, 1999). Differences between a company's actions and a proposal are permitted so long as the company's actions satisfactorily address the proponent's underlying concern. *See Masco Corp.* (avail. Mar. 29, 1999) (allowing exclusion of a proposal seeking director independence where the company adopted a version of the proposal that included modifications and clarifications).

A shareholder proposal may be excluded as substantially implemented when it is made moot by the actions of third parties, such as regulators or other authorities. For example, in *Intel Corp.* (avail. Feb. 14, 2005), the Staff concurred that a proposal seeking that the company expense the cost of future stock options was substantially implemented by the issuance of FASB Statement No. 123 (revised 2004) ("FAS 123R"), which required the company to expense such options. *See also Eastman Kodak Co.* (avail. Feb. 1, 1991) (concurring that a proposal could be excluded under the predecessor to Rule 14a-8(i)(10) where the proposal requested that the company disclose certain environmental compliance information, but the company represented that it already complied fully with Item 103 of Regulation S-K, which required disclosure of substantially similar information).

In the present case, the Proposal requests that the Company periodically report (1) the category of its trades in over the counter credit default swaps and (2) the value of those trades. As discussed below, both elements of the Proposal are substantially satisfied because FSP FAS 133-1 and FIN 45-4 will require the Company to enhance its disclosures about credit derivatives (including credit default swaps) and guarantees to address the potential adverse effects of changes in credit risk on the Company's financial position, financial performance and cash flows in all financial statements covering reporting periods that end after November 15, 2008.

FASB is the designated organization in the private sector for establishing standards of financial accounting and reporting. Those standards comprise "accounting principles generally accepted in the United States of America" ("U.S. GAAP") governing the preparation of financial reports and are officially recognized as authoritative by the Commission. The Commission's rules generally require that public companies file audited financial statements prepared in conformity with U.S. GAAP. *See, e.g.*, Exchange Act Release No. 47743 (Apr. 25, 2003). *See also* Reg. S-X, 17 C.F.R. §210.4-10(a)(1) (2008).

On September 12, 2008, FASB issued FSP FAS 133-1 and FIN 45-4, which will, among other things, require sellers of credit derivatives (including the credit default swaps) that are the subject of the Proposal to disclose in their financial statements, for reporting periods ending after November 15, 2008, the:

- "nature" of the credit derivative,
- the approximate term of the credit derivative,
- the reason(s) for entering into the credit derivative,
- the events or circumstances that would require the seller to perform under the credit derivative, and
- the current status of the payment/performance risk" of the credit derivative.

In addition, the rule requires companies that prepare their financial statements in accordance with U.S. GAAP to report:

- the fair value of the credit derivative as of the date of the financial statements;
- the maximum potential amount of future payments the seller could be required to make under the credit derivative; and
- the nature of (1) any recourse provisions that would enable the Company to recover from third parties any of the amounts paid under the credit derivative, and (2) any assets held either as collateral or by third parties that, upon the occurrence of any specified triggering event or condition under the credit derivative, the Company can obtain and liquidate to recover all or a portion of the amounts paid under the credit derivative.

We believe that the information required to be disclosed pursuant to FSP FAS 133-1 and FIN 45-4 meets the essential objective of the Proposal as stated in the supporting statement to the Proposal: "[enhancing] public disclosure of the number and size of trades in credit default swaps." Even if the Proposal could be interpreted as requesting some disclosure beyond that required by FSP FAS 133-1 and FIN 45-4, the Proposal is nevertheless excludable as it will be substantially implemented. As stated in the 1983 Release, a proposal need not be "fully effected" in order to be excludable as substantially implemented. Instead, the company's actions must compare favorably with the essential objective of the proposal. In the instant case, the disclosures required by FSP FAS 133-1 and FIN 45-4 compare favorably with the disclosure requested in the Proposal. *See* 1983 Release; *Texaco, Inc.* (avail. Mar. 28, 1991). *See also Caterpillar Inc.* (avail. Mar. 11, 2008); *The Dow Chemical Co.* (avail. Mar. 5, 2008); *Johnson & Johnson* (avail. Feb. 22, 2008) (each allowing exclusion under Rule 14a-8(i)(10) of a shareholder proposal requesting the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives).

As a result of FSP FAS 133-1 and FIN 45-4, the Company must implement new reporting requirements in its financial statements to be included in the Form 10-K that it is required to file with the Commission by March 2, 2009. The issuance of FSP FAS 133-1 and FIN 45-4 is comparable to the issuance of FAS 123R requiring stock options to be expensed, which formed the basis for exclusion of the proposal in *Intel Corp.*, cited above. In both instances, a decision by FASB required the company to prepare its financial statements in such a manner as to take the action or require the disclosure requested by the shareholder proposal. In summary, the Company is required to follow FSP FAS 133-1 and FIN 45-4, which will result in the Company disclosing information regarding the Company's trading in credit default swaps, thereby addressing the Proposal's essential objective. Accordingly, we believe that the Proposal may be omitted from the Company's 2009 Proxy Materials pursuant to Rule 14a-8(i)(10).

II. The Proposal May Be Excluded under Rule 14a-8(i)(7) Because the Proposal Deals with Matters Related to the Company's Ordinary Business Operations.

The Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it deals with matters related to the Company's ordinary business operations – the services it offers and internal risk assessment. In the 1998 Release, the Commission stated that the general policy underlying the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." In the 1998 Release, the Commission explained that the ordinary business exclusion rests on two central considerations. The first consideration is the subject matter of the proposal; the 1998 Release provides that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* The second consideration is the degree the proposal attempts to "micro-manage" the company by "probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Such micromanagement may occur where a proposal "seeks to impose specific . . . methods for implementing complex policies." *Id.*

A. The Proposal Involves Ordinary Business Because it Relates to a Particular Service Provided by the Company.

The decision as to whether to offer a particular service to the Company's clients and the manner in which the Company offers those services are precisely the kinds of fundamental, day-to-day operational matters meant to be covered by the ordinary business exclusion under Rule 14a-8(i)(7) and, therefore, the Proposal is excludable on that basis. *See, e.g., H&R Block, Inc.* (Aug. 1, 2006) (concurring in the exclusion of a proposal seeking to restrict the company's issuance of high interest refund anticipation loans). Proposals asking shareholders to make decisions regarding particular products or services are excludable as ordinary business because the "ability to make such decisions is fundamental to management's ability to control the operations" of a company, and therefore should not be "delegated to, or micro-managed by" a company's shareholders. *PetSmart, Inc.* (avail. Apr. 14, 2006) (concurring in the exclusion of a proposal requesting that the company issue a report regarding the sale of pet birds); *Marriott International Inc.* (avail. Feb. 13, 2004) (concurring in the exclusion of a proposal to prohibit the company from selling adult entertainment in its hotels and other facilities).

The fact that the Proponent asks for additional disclosure of a service offered by the Company, rather than direct action, does not change the analysis. The Staff has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the substance of the report is within the ordinary business of the issuer. *See* 1983 Release. In other words, "[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under Rule 14a-8(i)(7)." *Johnson Controls, Inc.* (avail. Oct. 26, 1999). In *PetSmart, Inc.* (avail. Apr. 14, 2006), cited above, the Staff noted, notwithstanding the fact that the proposal sought a report rather than direct action, that the proposal related to "sale of particular goods," and was thus excludable on ordinary business grounds. *See also The Walt Disney Co.* (avail. Nov. 30, 2007) (concurring in the exclusion of a proposal where the company argued that "[t]he limitation of a proposal to a request for a report does not render more acceptable a proposal that deals with matters within the ordinary business judgment of the company"); *Banc One Corp.* (Feb. 25, 1993) (concurring, on ordinary business grounds, with the exclusion of a proposal requesting the company to provide detailed information regarding the company's loans to low-income areas and minority households).

Over-the-counter credit default swaps comprise just one category out of the very large number of products and services offered by the Company, and are therefore unsuitable for direct shareholder oversight. The Proposal is similar to the proposals excluded in *Banc One Corp.* and *PetSmart, Inc.* (both cited above), because in all three instances the company was asked to provide specific disclosures regarding a particular product offered or service performed as part of the company's core business. *See also Bank of America Corp.* (avail. Feb. 27, 2008) (concurring, on ordinary business grounds, with the exclusion of a proposal requesting a report disclosing the company's policies and practices regarding the issuance of credit cards because such a report would relate to "credit policies, loan underwriting and customer relations"). Because the disclosure sought by the Proponent relates to management's decisions regarding a particular financial service, the Proposal may be excluded as a matter of ordinary business.

B. The Proposal Is Excludable Because It Involves an Internal Evaluation of the Risks the Company Faces as a Result of Its Operations.

The Proposal is excludable pursuant to well established Staff precedent concurring that proposals requesting an internal assessment of risk arising out of a company's operations constitute ordinary business. In Staff Legal Bulletin No. 14C (June 28, 2005) ("SLB 14C"), the Staff stated:

> To the extent that a proposal and supporting statement focus on the company engaging in an internal assessment of the risks or liabilities that the company faces as a result of its operations that may adversely affect the environment or the public's health, we concur with the company's view that there is a basis for it to exclude the proposal under rule 14a-8(i)(7) as relating to an evaluation of risk.

Although the language cited above specifically addresses proposals related to the environment or public health, the Staff has applied the same reasoning to other proposals seeking an assessment of risks arising from a company's operations. For example, in *JPMorgan Chase & Co.* (avail. Feb. 28, 2001) the Staff concurred in the exclusion of a proposal that requested a discussion on the risks of inflation and deflation on the company's performance because the proposal involved an "evaluation of risk." *See also Union Pacific Corp.* (avail. Feb. 21, 2007) (concurring in the exclusion of a proposal asking for a report on the company's efforts to safeguard operations and minimize financial risk from a terrorist attack or other homeland security incident).

Other recent precedent affirms the Staff's long-held position that shareholder proposals requesting an evaluation of risk are excludable under Rule 14a-8(i)(7) because they deal with ordinary business operations. In a no-action letter addressing a proposal asking a company to disclose its "collateral and other credit risk management policy" for and exposure in structured investment vehicles, structured securities and conduits, the Staff noted that the proposal was excludable as ordinary business because it involved the "evaluation of risk." *Merrill Lynch & Co., Inc.* (avail. Feb. 19, 2008). *See also The Travelers Group, Inc.* (avail. Mar. 13, 1998) (concurring under Rule 14a-8(i)(7) in the exclusion of a proposal recommending that the board of directors adopt certain FASB rules for accounting for derivative financial instruments before such rules become mandatory); *Johnson Controls, Inc.* (avail. Oct. 26, 1999) (concurring on ordinary business grounds with the exclusion of a proposal requesting the company to specifically identify the true value of shareholders' equity).

The Company's core business operations involve the assumption and management of business risk and the development and implementation of risk management policies. The current

Proposal seeks to micro-manage the Company's operations by subjecting to direct shareholder oversight internal management decisions regarding the quantity and category of a particular financial service that the Company offers its clients.

In the "whereas" clauses preceding the Proposal, the Proponent repeatedly refers to the need to better evaluate, disclose, and manage risk. The "whereas" clauses contain quotations calling for improvements to "risk management practices" and the reduction of "operational risk and infrastructure failures." This type of assessment of financial risks is a fundamental part of management's obligation to run the Company on a day-to-day basis because, as a broad-based financial institution, the Company must evaluate risks in determining whether to provide particular financial services and how to provide them.

Pursuant to Staff precedent, proposals need not explicitly request an "evaluation of risk" to be excludable on that basis under Rule 14a-8(i)(7). Rather, the Staff looks beyond whether a proposal refers specifically to an assessment of risk, and instead looks to a proposal's underlying focus. As a result, even though the Proposal does not specifically ask the Company for a "risk assessment," it does ask for information about the Company's risk exposure arising from its involvement in the credit default swap market. This is similar to the situation in several other no-action letters where the Staff has granted relief. *See The Bear Stearns Companies Inc.* (avail. Feb. 5, 2008); *Washington Mutual, Inc.* (avail. Feb. 5, 2008) (in each case, concurring in the exclusion of a proposal that requested a report discussing the company's potential financial exposure as a result of the mortgage securities crisis); *General Electric Co. (Bugzavich)* (avail. Jan. 9, 2008) (concurring in the exclusion of a proposal that requested a report on the potential damage to the company's brand name and reputation as a result of sourcing of products and services from the People's Republic of China); *Great Plains Energy Inc.* (avail. Feb. 10, 2007) (concurring in the exclusion of proposal that the company prepare a "financial analysis . . . of the impact" of a carbon dioxide emissions tax); *Hewlett-Packard Co. (Free Enterprise Action Fund)* (avail. Jan. 22, 2007) (concurring in the exclusion of a proposal that requested a report on the development and "costs and benefits" of a greenhouse gas emissions policy); *The Dow Chemical Co. (Free Enterprise Action Fund)* (avail. Feb. 23, 2005) (concurring in the exclusion of a proposal that requested a report describing the reputational and financial impact of the company's response to pending litigation); *American International Group, Inc. (Boston Common Asset Management)* (avail. Feb. 19, 2004) (concurring in the exclusion of a proposal that requested a report on "the economic effects of HIV/AIDS, tuberculosis and malaria pandemics on the company's business strategy").

We recognize that the Commission has stated that certain operations-related proposals may focus on sufficiently significant social policy issues so as to preclude exclusion as ordinary business in certain circumstances. *See* SLB 14C Section D(1). But the manner of disclosing trades in credit default swaps has never been considered a significant policy issue beyond the realm of the Company's ordinary business operations. On the contrary, in *The Travelers Group, Inc.* (Mar. 13, 1998), the Staff declined to apply the "significant social policy issue" exception to a proposal seeking enhanced disclosure of derivative financial instruments. *See also Merrill Lynch & Co., Inc.* (avail. Feb. 19, 2008) (concurring on ordinary business grounds in the exclusion of a proposal requesting that the company disclose its exposure in structured investment vehicles, structured securities and conduits). Similarly, the Proposal does not focus on a significant social policy, as its primary focus is the Company's reporting of its sales of a particular financial service to its clients.

Furthermore, the Proposal is distinguishable from proposals that may not be excluded because they focus on the company acting to alter or eliminate activities that have an adverse effect on the environment or that have other significant social policy implications. For example, in *3M Co.* (avail. Mar. 7, 2006), a proposal which requested the board to implement and/or increase activity on specific principles relating to human and labor rights in the People's Republic of China could not be excluded. In contrast, rather than focusing on the Company eliminating or changing its sales of credit default swaps, the Proposal focuses on disclosure of the risks and benefits the Company faces as a result of its participation in the credit default market. Thus, the Proposal is comparable to the proposal at issue in *Newmont Mining Corp.* (avail. Jan. 12, 2006), in which the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a shareowner proposal requesting that management review operations in Indonesia and referencing "potential financial and reputational risks incurred by the company as an outgrowth of these operations" because the proposal related to "evaluation of risk."

As with the letters addressed in SLB 14C and the no-action letters cited above, in requesting disclosure related to one of many financial services offered by the Company, the Proposal focuses on an internal assessment of the risks the Company faces as part of its day-to-day operating decisions. Accordingly, the Proposal is excludable because it addresses the Company's internal assessment of risks, which is a matter of ordinary business.

III. The Proposal May Be Excluded under Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite so as To Be Inherently Misleading.

If the Staff does not concur that the Company has substantially implemented the Proposal, as set forth in Section I above, then we believe that the Proposal's failure to define key terms renders it so vague and indefinite that it may properly be excluded under Rule 14a-8(i)(3) as being in violation of Rule 14a-9. Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because shareholders cannot make an informed decision on the merits of a proposal without at least knowing what they are voting on. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B") (noting that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.").

Moreover, the Staff has concurred, on numerous occasions, that a shareholder proposal was sufficiently misleading so as to justify its exclusion where a company and its shareholders might interpret the proposal differently, such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (avail. Mar. 12, 1991). *See also Bank of America Corp.* (avail. June 18, 2007) (concurring with the exclusion of a shareholder proposal in reliance on Rule 14a-8(i)(3) where the proposal called for the board of directors to compile a report "concerning the thinking of the Directors concerning representative payees"); *Puget Energy, Inc.* (avail. Mar. 7, 2002) (permitting exclusion of a proposal requesting that the company's board of directors "take the necessary steps to implement a policy of improved corporate governance").

Here, the Proposal seeks disclosure of the "category" and "value" of the credit default swaps entered into by the Company but does not define either term or otherwise specify the type of information that the category or value of credit default swaps might comprise. The term "category" could conceivably refer to any distinguishing feature of the various types of credit default swaps, including, without limitation, (i) whether such swaps relate to a single reference entity or an index of reference entities, (ii) whether such swaps relate to exposure to an entire index of reference entities or only a slice or "tranche" of exposure under such an index, (iii) whether such swaps are agreed on the basis of standard industry documentation or on a one off or "bespoke" basis, (iv) if such swaps relate to an index of reference entities, whether the index is the most current or "on the run" index or whether such index has been superseded by more current versions, (v) whether such swaps are with a dealer counterparty or a non dealer counterparty, (vi) the industry, geographic location, credit rating (*i.e.*, investment grade vs. high yield) of the reference entity or entities that are the subject of such swaps, or (vii) whether the obligations of the protection buyer under such swaps have been prepaid or are payable over time. Similarly, the "value" of a credit default swap could potentially mean the price for which the financial instrument was sold, the market value of the credit default swap at the time of disclosure, or the risk potential incurred by one party to a swap (or avoided by the other party). In this sense, the Proposal is similar to the proposal addressed in *Dyer v. SEC* because it is so indefinite "as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."[1] *See* 287 F.2d at 781. *See also The Boeing Corp.* (avail. Feb. 10, 2004) (excluding a proposal under Rule 14a-8(i)(3) where the company argued that its shareholders "cannot be expected to make an informed decision on the merits of the Proposal without at least knowing what they are voting on."); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (excluding a proposal under Rule 14a-8(i)(3) where the company argued that its shareholders "would not know with any certainty what they are voting either for or against."). If the Proposal were adopted, the Company's consequent disclosure of the "category" and "value" of its trades in credit default swaps could be significantly different from the information shareholders had envisioned the Company would report.

Accordingly, because the Proposal is impermissibly vague and indefinite so as to be inherently misleading, it is excludable under Rule 14a-8(i)(3).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2009 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject.

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1 In contrast to the Proposal, FSP FAS 133-1 and FIN 45-4 provides a detailed description of the type of information that must be reported regarding trades in credit derivatives (including credit default swaps). Companies subject to FSP FAS 133-1 and FIN 45-4 (including the Company) must report the "the approximate term of the credit derivative, the reason(s) for entering into the credit derivative, the events or circumstances that would require the [company] to perform under the credit derivative and the current status of the payment/performance risk" of the credit derivative. In addition, such companies must report the fair value of the credit derivative as of the date of the financial statement and the maximum potential amount of future payments the seller could be required to make under the credit derivative.

If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 270-7122 or Amy L. Goodman of Gibson, Dunn & Crutcher LLP at (202) 955-8653.

Sincerely,

AHoran

Anthony J. Horan

AJH/als
Enclosures

cc: Amy L. Goodman, Gibson, Dunn & Crutcher LLP
Rev. Seamus P. Finn, OMI, Missionary Oblates of Mary Immaculate

100580311_11.DOC

EXHIBIT A

RECEIVED BY THE SECRETARY
DEC 0 1 2008

Missionary Oblates of Mary Immaculate

Justice & Peace / Integrity of Creation Office, United States Province

November 25, 2008

Mr. James Dimon, CEO
JPMorganChase & Co.
270 Park Avenue
New York, NY 10017-2070

Dear Mr. Dimon,

The Missionary Oblates, along with other members of the Interfaith Center on Corporate Responsibility (ICCR), have worked with financial institutions to address the needs of the poor to obtain access to capital for sustainable development, affordable housing in the U.S. and responsible lending in developing countries. ICCR is a coalition of nearly 300 faith-based institutional investors, representing over $100 billion in invested capital. We have also brought before financial institutions concerns about disclosure and transparency in relation to new investment tools.

We agree with the recent statement of SEC Chairman Cox: "Transparency is a powerful antidote for what ails our capital markets." Given our Company's leading position in financial markets, we request our Company take additional steps toward transparency, and with the enclosed shareholder proposal, direct our concerns to the over-the-counter credit default swap market.

The Missionary Oblates of Mary Immaculate are the beneficial owners of 10,275 shares of JPMorganChase and have held the shares continuously for over one year and intend to hold them until after the annual meeting. A letter of verification of ownership is enclosed.

I am hereby authorized to notify you of our intention to present the enclosed proposal for consideration and action by the stockholders at the next annual meeting, and I thereby submit it for inclusion in the proxy statement in accordance with Rule 14-a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934.

I will serve as the contact person for this resolution, and look forward to discussing this issue with you at your earliest convenience.

Sincerely,

Rev. Seamus P. Finn, OMI, Director
Justice, Peace and Integrity of Creation Office
Missionary Oblates of Mary Immaculate

Disclosure of Credit Default Swap Trades

Whereas the Financial Stability Forum (group consisting of finance ministries, central bankers, and international financial bodies. Founded in 1999), has stated that "enhanced disclosure by financial firms of more meaningful and consistent quantitative and qualitative information about risk exposures, valuations, off-balance sheet entities and related policies would be very useful in restoring market confidence." (Report Resilience, April 2008)

Whereas President Bush's Working Group on financial markets (comprising of the Treasury Secretary, the chairs of the Board of Governors of the Federal Reserve, the Securities and Exchange Commission, the Commodities Future Trading Commission) has stated that U.S. banking regulators and the SEC should promptly assess current guidance and develop common guidance to address the risk management weaknesses revealed by the recent market turmoil, including improvements to:

- management information systems, including procedures that ensure aggregation of exposures across all business lines and ensure rigorous valuations of instruments and exposures;
- concentration risk management, liquidity risk management, stress testing and other risk management practices that are necessary to ensure that liquidity and capital cushions are sufficiently robust to absorb extreme system-wide shocks; and
- governance of the risk management and control framework, including the development of, and adherence to, practices that address incentive problems in compensation policies.

And further recommends that:

- U.S. authorities should encourage other supervisors of global firms to make complementary efforts to develop guidance along the same lines.

Whereas in May 2006 the chair of the New York Federal Reserve Bank, warned that "it is very important that the major dealers make the investments necessary to improve the operational infrastructure that underpins the credit derivatives and broader OTC derivatives market. Operational risk and infrastructure failures have played a prominent role in past financial crises, and the infrastructure weaknesses that have characterized the credit derivatives markets since their inception are an ongoing source of concern" (May 2006 Stern School of Business)

Whereas SEC Chair Christopher Cox has called for legislation that would make credit default swaps more transparent and give regulators "the power to rein in fraudulent or manipulative trading practices and help everyone better assess the risks involved".

Whereas Chairman Cox has further stated that, "Transparency is a powerful antidote for what ails our capital markets."

Be it resolved that the shareholders request that our company periodically report publicly both the category of trades and the value of their trades, (but not the names of their counterparties), in over the counter credit default swaps.

Supporting Statement

The sustained turmoil in global financial markets highlights a serious lack of trust and confidence that is systemic in nature and extends to individual institutions, active in financial markets. Enhanced public disclosure of the number and size of trades in credit default swaps can make an important contribution to restoring trust and allowing credit markets to function smoothly. By agreeing to such disclosure, our Company can play a key role in this rebuilding process and restore the confidence of shareholders and stakeholders.

M&T Investment Group

M&T Bank, 25 South Charles Street, P.O. Box 1596, Baltimore, MD 21203-1596
410 545 2719 toll-free 888 848 0383 fax 410 545 2762

October 27, 2008

Rev. Seamus P. Finn
Missionary Oblates of Mary Immaculate
Justice and Peace Office – United States Province
391 Michigan Avenue, NE
Washington, DC 20017-1516

Dear Father Finn:

The United States Province of Missionary Oblates of Mary Immaculate owns 10,725 shares of JPMorgan Chase & Company and has owned these shares for at least one year.

Please don't hesitate to call me with any questions.

Very truly yours,

S Bernadette Greaver
Trust Officer – Custody Administration
M & T Bank MD2-CSMM
25 S Charles Street
Baltimore, Md 21201
410-545-2765
fax 410-545-2762
sgreaver@mtb.com

JPMORGAN CHASE & CO.

Anthony J. Horan
Corporate Secretary
Office of the Secretary

December 2, 2008

Father Seamus P. Finn, OMI
Director
Missionary Oblates of Mary Immaculate
391 Michigan Avenue, NE
Washington, DC 20017

Dear Father Finn:

This will acknowledge receipt of the letter dated November 25, 2008 advising JPMorgan Chase & Co. of the intention of the Missionary Oblates of Mary Immaculate to submit a proposal to be voted upon at our 2009 Annual Meeting. The proposal is entitled "Disclosure of Credit Default Swap Trades."

We also acknowledge receipt of the letter dated October 27, 2008 from M&T Investment Group, verifying that the Missionary Oblates of Mary Immaculate are the beneficial owners of shares of JPMorgan Chase common stock with a market value of at least $2,000.00 in accordance with Rule 14a-8(b)(2) of the Securities and Exchange Commission.

Sincerely,

270 Park Avenue, New York, New York 10017-2070
Telephone 212 270 7122   Facsimile 212 270 4240   anthony.horan@chase.com

JPMorgan Chase & Co.

Office of the Secretary - Tel 212-270-5836 Fax 212-270-4240

Lisa M Wells/JPMCHASE
12/16/2008 02:47 PM

To "Seamus" <seamus@omiusa.org>
cc Don Thompson/JPMCHASE@JPMCHASE, Anthony Horan/JPMCHASE@JPMCHASE
bcc Irma R. Caracciolo/JPMCHASE
Subject Re: Call

Seamus,

I am attaching a letter from Don Thompson, a senior attorney in the Investment Bank who is very knowledgeable about our disclosure in the area you're interested in. Could I ask you to forward it to the other members of your group, please?
If you'd like to come in to talk about this we'd be happy to do that, as Don notes in his letter. If you will give me an idea of when that might be possible, we'll make every effort to accommodate your schedule.

I look forward to speaking with you.
Lisa

Document.pdf

"Seamus" <seamus@omiusa.org>

"Seamus"
<seamus@omiusa.org>
12/15/2008 07:30 AM

To <Lisa.M.Wells@chase.com>
cc
Subject Call

Lisa,

Received your phone call. Will get back to you today or tomorrow.

Séamus

Rev Séamus P. Finn OMI
Director
Justice, Peace & Integrity of Creation
Missionary Oblates
391 Michigan Ave.
Washington DC 20017

PH: 202-269-6715
FX: 202-529-4572

seamus@omiusa.org

JPMorganChase

Don Thompson
Managing Director and
Associate General Counsel
Legal Department

December 11, 2008

Rev. Séamus P. Finn, OMI, Director
Justice, Peace and Integrity of Creation Office
Missionary Oblates of Mary Immaculate
391 Michigan Avenue, NE
Washington, DC 20017

Dear Reverend Finn:

Thank you for your letter dated November 25, 2008 (the "Letter") concerning transparency in the over the counter credit default swap market. We share your view that increased transparency in the CDS market is desirable and wanted to provide you with information regarding a number of steps we have been taking to increase transparency in the CDS market.

JPMorgan has been an industry leader in a variety of efforts to increase transparency in the CDS market. These steps include:

We have been working closely with the Federal Reserve Bank of New York, with participation from the SEC, the CFTC and other CDS dealers in the CDS market on numerous initiatives to reduce systemic and operational risk, strengthen market infrastructure, and reduce counterparty risk through the development of a central clearinghouse, reductions in outstanding trade volume, and establishment of ongoing operational benchmark requirements.

You can access more information about this at the following link:
http://www.ny.frb.org/newsevents/otc_derivative.html

DTCC is the live warehouse of credit derivative transactions that most market participants use to store information on live credit default swaps. We have worked actively with other CDS dealers to make it possible for DTCC to provide detailed information on the CDS market to regulators and to the general public. Weekly updates on live CDS trades are posted on DTCC's website and are accessible for free to anyone who logs onto DTCC's website.

You can access more information about this at the following link:
http://www.dtcc.com/products/derivserv/data/index.php?lpos=home_splash_promo&lid=index.php

We also call your attention to FASB Staff Position, FSP FAS 133-b and FIN 45-c— Disclosures about Credit Derivatives and Certain Guarantees: Amendment of FASB Statement No. 133 (SFAS 133) and FASB Interpretation No. 45 (FIN 45) (the "FSP"). The objective of the FSP is to improve disclosure concerning credit derivatives and guarantees. The FSP will expand the disclosure requirements of FAS 133 for sellers of all credit derivatives to include the following:

523339

JPMorgan Chase & Co. • 245 Park Avenue, New York, NY 10167-0001
Telephone 212 648 0322 • Facsimile 646 534 6307
thompson_don@jpmorgan.com

a. The nature of the credit derivatives, including the approximate term of the credit derivative, the reasons for entering into the credit derivative, and the events or circumstances that would require the seller to perform under the credit derivative and the current status of the payment/performance risk of the credit derivative.

b. The maximum potential amount of future payments (undiscounted) the seller could be required to make under the credit derivative.

c. The fair value of the credit derivative.

JPMorgan will be presenting these disclosures in the Management Discussion and Analysis section of its 2008 Annual Report.

You can access more information about this at the following links:

New Credit Derivatives disclosure - effective for 2008 annual reports
http://www.fasb.org/pdf/fsp_fas133-1&fin45-4.pdf

New Derivatives disclosure - effective for first quarter 2009 10-Qs
http://www.fasb.org/pdf/aop_FAS161.pdf

Dear CFO letters - March & September (Mortgage enhancements were requested in March)
http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0908.htm
http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0308.htm

In light of the various steps we have taken to improve transparency in the CDS market, we believe that the objectives of your shareholder proposal have already been met. We would be happy to meet with you and other representatives of your group to discuss with you the many concrete steps we are taking to make the CDS market more transparent.

523334

EXHIBIT B

FASB STAFF POSITION

No. FAS 133-1 and FIN 45-4

Title: Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45; and Clarification of the Effective Date of FASB Statement No. 161

Date Issued: September 12, 2008

Objective

1. The credit derivatives market has expanded significantly over the past few years. Financial statement users and others have expressed concerns that the current disclosure requirements for derivative instruments and certain guarantees do not adequately address the potential adverse effects of changes in credit risk on the financial position, financial performance, and cash flows of the sellers of credit derivatives and certain guarantees. This FSP amends FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities,* to require disclosures by sellers of credit derivatives, including credit derivatives embedded in a hybrid instrument. This FSP also amends FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others,* to require an additional disclosure about the current status of the payment/performance risk of a guarantee. Further, this FSP clarifies the Board's intent about the effective date of FASB Statement No. 161, *Disclosures about Derivative Instruments and Hedging Activities.*

All paragraphs in the FSP have equal authority.
Paragraphs in bold set out the main principles.

FASB Staff Position

Disclosures about Credit Derivatives and Certain Guarantees

Scope

2. **This FSP applies to credit derivatives within the scope of Statement 133, hybrid instruments that have embedded credit derivatives, and guarantees within the scope of Interpretation 45.** A credit derivative is a derivative instrument (a) in which one or more of its underlyings are related to the credit risk of a specified entity (or a group of entities) or an index based on the credit risk of a group of entities and (b) that exposes the seller to potential loss from credit-risk-related events specified in the contract. Examples of credit derivatives within the scope of this FSP include, but are not limited to, credit default swaps, credit spread options, and credit index products.

3. This FSP's amendment to Statement 133 also pertains to hybrid instruments that have embedded credit derivatives (for example, credit-linked notes).

Amendment to Disclosure Requirements of Statement 133

4. **A seller of credit derivatives shall disclose information about its credit derivatives and hybrid instruments that have embedded credit derivatives to enable users of financial statements to assess their potential effect on its financial position, financial performance, and cash flows.** The term *seller* refers to the party that assumes credit risk, which could be a guarantor in a guarantee-type contract, and any party that provides the credit protection in an option-type contract, a credit default swap, or any other credit derivative contract. A seller is also sometimes referred to as a writer of the contract.

5. For each statement of financial position presented, the seller of a credit derivative shall disclose the following information for each credit derivative, or each group of similar credit derivatives, even if the likelihood of the seller's having to make any payments under the credit derivative is remote. One way to present the information for groups of similar credit derivatives would be first to segregate the disclosures by major types of contracts (for example, single-name credit default swaps, traded indexes, other portfolio products, and swaptions) and then, for each major type, provide additional subgroups for major types of referenced/underlying asset classes (for example, corporate debt, sovereign debt, and structured finance).

a. The nature of the credit derivative, including the approximate term of the credit derivative, the reason(s) for entering into the credit derivative, the events or circumstances that would require the seller to perform under the credit derivative, and the current status (that is, as of the date of the statement of financial position) of the payment/performance risk of the credit derivative. For example, the current status of the payment/performance risk of a credit derivative could be based on either recently issued external credit ratings or current internal groupings used by the seller to manage its risk. An entity that uses internal groupings shall disclose how those groupings are determined and used for managing risk.
b. The maximum potential amount of future payments (undiscounted) the seller could be required to make under the credit derivative. That maximum potential amount of future payments shall not be reduced by the effect of any amounts that may possibly be recovered under recourse or collateralization provisions in the credit derivative (which are addressed under (d) below). If the terms of the credit derivative provide for no limitation to the maximum potential future payments under the contract, that fact shall be disclosed. If the seller is unable to develop an estimate of the maximum potential amount of future payments under the credit derivative, the seller shall disclose the reasons why it cannot estimate the maximum potential amount.
c. The fair value of the credit derivative as of the date of the statement of financial position.
d. The nature of (1) any recourse provisions that would enable the seller to recover from third parties any of the amounts paid under the credit derivative and (2) any assets held either as collateral or by third parties that, upon the occurrence of any specified triggering event or condition under the credit derivative, the seller can obtain and liquidate to recover all or a portion of the amounts paid under the credit derivative. The seller shall indicate, if estimable, the approximate extent to which the proceeds from liquidation of those assets would be expected to cover the maximum potential amount of future payments under the credit derivative. In its estimate of potential recoveries, the seller of credit protection shall consider the effect of any purchased credit protection with identical underlying(s).

6. With respect to hybrid instruments that have embedded credit derivatives, the seller of the embedded credit derivative shall disclose the required information for the entire hybrid instrument, not just the embedded credit derivatives.

Amendment to Disclosure Requirements of Interpretation 45

7. The disclosures for sellers of credit derivatives are substantially similar to those currently required for guarantors under paragraph 13 of Interpretation 45 except for the disclosure about the current status of the payment/performance risk of the credit derivative. To have similar disclosures for instruments with similar risks and rewards, this FSP amends paragraph 13(a) of Interpretation 45 to require disclosure of the current status of the payment/performance risk of the guarantee. For example, the current status of the payment/performance risk of a credit-risk-related guarantee could be based on either recently issued external credit ratings or current internal groupings used by the guarantor to manage its risk. An entity that uses internal groupings shall disclose how those groupings are determined and used for managing risk.

Effective Date and Transition

8. The provisions of this FSP that amend Statement 133 and Interpretation 45 shall be effective for reporting periods (annual or interim) ending after November 15, 2008.

9. This FSP encourages that the amendments to Statement 133 and Interpretation 45 be applied in periods earlier than the effective date to facilitate comparisons at initial adoption. In periods after initial adoption, this FSP requires comparative disclosures only for periods ending subsequent to initial adoption.

Clarification of the Effective Date of Statement 161

Background

10. Paragraph 7 of Statement 161 states, "This Statement shall be effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. Early application is encouraged."

11. In deciding on the effective date for Statement 161, the Board intended that entities begin providing the additional disclosures for the first reporting period beginning after November 15, 2008. However, the use of the terms *fiscal years* and *interim periods* in paragraph 7 of Statement 161 has raised questions about whether the disclosures are required in the 2009 annual financial statements (for example, in the 10-K filings) for entities with non-calendar year-ends (for example, March 31, 2009), because an annual report (such as a 10-K filing) generally does not include separate financial statements for the fourth-quarter interim period.

Clarification

12. This FSP clarifies the Board's intent that the disclosures required by Statement 161 should be provided for any reporting period (annual or quarterly interim) beginning after November 15, 2008. For example, an entity with a March 31 fiscal year-end shall provide the disclosures for its fourth quarter interim period ending March 31, 2009, in its 2009 annual financial statements.

13. This clarification of the effective date of Statement 161 is effective upon issuance of this FSP.

The provisions of this FSP need not be applied to immaterial items.

This FSP was adopted by the unanimous vote of the five members of the Financial Accounting Standards Board:

Robert H. Herz, *Chairman*
George J. Batavick
Thomas J. Linsmeier
Leslie F. Seidman
Lawrence W. Smith

Appendix A

AMENDMENTS TO STATEMENT 133 AND INTERPRETATION 45 AND CLARIFICATION OF THE EFFECTIVE DATE OF STATEMENT 161

Amendment to Statement 133

A1. Statement 133 is amended as follows: [Added text is underlined.]

a. Paragraph 44DD is added as follows:

<u>For the purpose of this paragraph, a credit derivative is a derivative instrument (1) in which one or more of its underlyings are related to the credit risk of a specified entity (or a group of entities) or an index based on the credit risk of a group of entities and (2) that exposes the seller to potential loss from credit-risk-related events specified in the contract. Examples of credit derivatives within the scope of this paragraph include, but are not limited to, credit default swaps, credit spread options, and credit index products. This paragraph's scope also includes a hybrid instrument that has an embedded credit derivative (for example, a credit-linked note). A seller of credit derivatives shall disclose information about its credit derivatives and hybrid instruments that have embedded credit derivatives to enable users of financial statements to assess their potential effect on its financial position, financial performance, and cash flows. (The term *seller* refers to the party that assumes credit risk, which could be a guarantor in a guarantee-type contract, and any party that provides the credit protection in an option-type contract, a credit default swap, or any other credit derivative contract. A seller is also sometimes referred to as a writer of the contract.) With respect to hybrid instruments that have embedded credit derivatives, the seller of the embedded credit derivative shall disclose the required information for the entire hybrid instrument, not just the embedded credit derivatives. For each statement of financial position presented, the seller of a credit derivative shall disclose the following information for each credit derivative, or each group of similar credit derivatives, even if the likelihood of the seller's having to make any payments under the credit derivative is remote. One way to present the information for groups of similar credit derivatives would be first to segregate the disclosures by major types of contracts (for example, single-name credit default swaps, traded indexes, other portfolio products, and swaptions) and then, for each major type, provide additional subgroups for major types of referenced/underlying asset classes (for example, corporate debt, sovereign debt, and structured finance).</u>

a. The nature of the credit derivative, including the approximate term of the credit derivative, the reason(s) for entering into the credit derivative, the events or circumstances that would require the seller to perform under the credit derivative, and the current status (that is, as of the date of the statement of financial position) of the payment/performance risk of the credit derivative. For example, the current status of the payment/performance risk of a credit derivative could be based on either recently issued external credit ratings or current internal groupings used by the seller to manage its risk. An entity that uses internal groupings shall disclose how those groupings are determined and used for managing risk.
b. The maximum potential amount of future payments (undiscounted) the seller could be required to make under the credit derivative. That maximum potential amount of future payments shall not be reduced by the effect of any amounts that may possibly be recovered under recourse or collateralization provisions in the credit derivative (which are addressed under (d) below). If the terms of the credit derivative provide for no limitation to the maximum potential future payments under the contract, that fact shall be disclosed. If the seller is unable to develop an estimate of the maximum potential amount of future payments under the credit derivative, the seller shall disclose the reasons why it cannot estimate the maximum potential amount.
c. The fair value of the credit derivative as of the date of the statement of financial position.
d. The nature of (1) any recourse provisions that would enable the seller to recover from third parties any of the amounts paid under the credit derivative and (2) any assets held either as collateral or by third parties that, upon the occurrence of any specified triggering event or condition under the credit derivative, the seller can obtain and liquidate to recover all or a portion of the amounts paid under the credit derivative. The seller shall indicate, if estimable, the approximate extent to which the proceeds from liquidation of those assets would be expected to cover the maximum potential amount of future payments under the credit derivative. In its estimate of potential recoveries, the seller of credit protection shall consider the effect of any purchased credit protection with identical underlying(s).

Amendments to Interpretation 45

A2. Interpretation 45 is amended as follows: [Added text is underlined and deleted text is ~~struck out~~.]

a. Paragraph 6(h) is added as follows:

   A guarantee that is accounted for as a credit derivative instrument at fair value under Statement 133, as described in paragraph 44DD of Statement 133.

b. Paragraph 7(a):

   A guarantee, other than a credit derivative as described in paragraph 44DD of Statement 133, that is accounted for as a derivative instrument at fair value under Statement 133.

c. Paragraph 13(a):

   The nature of the guarantee, including the approximate term of the guarantee, how the guarantee arose, ~~and~~ the events or circumstances that would require the guarantor to perform under the guarantee, and the current status (that is, as of the date of the statement of financial position) of the payment/performance risk of the guarantee. For example, the current status of the payment/performance risk of a credit-risk-related guarantee could be based on either recently issued external credit ratings or current internal groupings used by the guarantor to manage its risk. An entity that uses internal groupings shall disclose how those groupings are determined and used for managing risk.

Clarification of the Effective Date of Statement 161

A3. Paragraph 7 of Statement 161 is amended as follows:

This Statement shall be effective for ~~financial statements issued for fiscal years and~~ quarterly interim periods beginning after November 15, 2008~~.~~, and fiscal years that include those quarterly interim periods. In the first fiscal year that this Statement is applied, the disclosures may omit information related to quarterly interim periods that began on or before November 15, 2008. An entity shall clearly identify the periods covered by these disclosures. For example, an entity with a March 31 fiscal year-end shall provide the disclosures for its fourth quarter interim period ending March 31, 2009, in its 2009 annual financial statements. Early application is encouraged.

Appendix B

BACKGROUND INFORMATION AND BASIS FOR CONCLUSIONS

Introduction

B1. Proposed FSP FAS 133-b and FIN 45-c, *Disclosures about Credit Derivatives and Certain Guarantees: An Amendment of FASB Statement No. 133 and FASB Interpretation No. 45*, was issued for public comment in May 2008. The Board received 16 comment letters and redeliberated the substantive issues raised in those letters at a public meeting in August 2008.

B2. This appendix summarizes the Board's considerations in reaching the conclusions in this FSP. It includes reasons why the Board accepted particular approaches and rejected others. Individual Board members gave greater weight to some factors than to others.

Background Information

B3. Over the past few years, credit default swaps have become the most dominant product of the credit derivatives market. According to the "Year-End 2007 Market Survey" by the International Swaps and Derivatives Association, the estimated notional amount of outstanding credit default swaps was $62.2 trillion in December 2007, up from $34.4 trillion in December 2006 and $17.1 trillion in December 2005.[1]

B4. The credit default swaps market has become the focus of attention for market participants and regulators because of the turmoil in credit markets during 2007 and 2008. Some sellers of credit derivatives have been faced with severe adverse conditions because a large number of the obligations that are referenced in the credit default swaps are facing actual or potential defaults. As a result, the sellers of credit default swaps may have large liabilities associated with those actual and potential defaults. In addition, due to the potential effects those defaults may have on their financial position, some sellers of these

[1]International Swaps and Derivatives Association, http://www.isda.org/statistics/recent.html (accessed May 2008).

instruments are facing the potential of a credit downgrade or already have been downgraded by one or more credit-rating agencies.

B5. Some financial statement users have expressed concerns that the disclosure requirements in Statement 133 do not adequately address the potential adverse effects of changes in credit risk on the financial position, financial performance, and cash flows of the sellers of credit derivatives. In March 2008, the Board added a short-term project to its agenda to improve disclosures about credit derivatives.

Scope

B6. In the proposed FSP, the Board decided to limit the scope of the proposed credit risk disclosures to sellers of credit derivatives that are subject to the requirements of Statement 133. Some respondents to the proposed FSP said that instead of issuing piecemeal disclosure guidance for specific financial instruments, the FASB should address disclosure for all financial instruments comprehensively and completely in a single project that would also address convergence with international financial reporting standards. The Board agreed with those respondents that risk-related disclosure requirements for all financial instruments would be an improvement; however, it decided to limit the scope of this FSP to sellers of credit derivatives to address, in the near-term, the lack of disclosures about the potential exposure to, and cash flow effects associated with, credit derivatives. Similarly, the Board decided not to specifically address in this project disclosures by buyers of credit derivatives because (a) the relevant risks to buyers such as counterparty risk and concentration risk, are inherent in all derivatives and financial instruments, not just credit derivatives, and (b) FASB Statement No. 107, *Disclosures about Fair Value of Financial Instruments,* currently requires disclosures relating to these risks for all financial instruments.

B7. During the redeliberation process, some Board members requested that the FASB staff perform research to assess the feasibility of expanding the scope of this FSP to include any guarantee that (a) exposes the guarantor to significant potential loss from credit-risk-related events specified in the contract and (b) is outside the scope of Statement

133, FASB Statement No. 163, *Accounting for Financial Guarantee Insurance Contracts,* and Interpretation 45.

B8. The FASB staff's research identified certain insurance contracts that are outside the scope of this FSP but may be similar to the credit-risk-related guarantees that are within the scope of this FSP. Examples of those insurance contracts include private mortgage insurance, credit insurance on trade receivables, and surety insurance. Insurance contracts generally are excluded from the scope of both Statement 133 and Interpretation 45. The Board decided that the scope of this FSP should not be expanded to include insurance contracts with similar credit risk exposures that currently are subject to the accounting and disclosure requirements of generally accepted accounting principles for insurance contracts. The International Accounting Standards Board has a project on its agenda to consider accounting for insurance contracts, and, accordingly, the Board may consider in the future a project to address accounting and disclosures for insurance contracts.

B9. The proposed FSP stated that credit derivatives generally are contracts in which the underlying is related to the credit risk of a specified entity (or a group of entities) or an index based on a group of entities. Some respondents recommended that the final FSP include a formal definition of a credit derivative, and others suggested clarifying the scope with respect to derivatives that have multiple underlyings. The Board agreed with those respondents and decided to include in this FSP additional language to clarify the scope. For example, the Board decided to clarify that a derivative with multiple underlyings would be within the scope of this FSP if it exposes the seller to potential loss from credit-risk-related events specified in the contract.

B10. Some respondents requested that the final FSP clarify the scope with respect to embedded credit derivatives. The Board agreed with those respondents and, therefore, clarified that this FSP's scope includes both (a) embedded credit derivatives that are bifurcated from the host contract and accounted for separately as required by Statement 133 and (b) hybrid instruments that have nonbifurcated embedded credit derivatives (such as credit-linked notes). This FSP also clarifies that with respect to hybrid instruments that are within its scope, the required disclosures should be provided for the entire hybrid instrument, not for the nonbifurcated embedded credit derivative.

Disclosures about Credit Derivatives and Certain Guarantees

B11. Many credit derivatives and financial guarantee contracts provide similar support upon default of a specified obligation. A financial guarantee contract generally refers to circumstances in which the guaranteed party owns the guaranteed obligation. In contrast, for many credit derivatives, the purchaser of the credit protection does not necessarily own the assets that are being referenced in the derivative contract. Regardless of this differentiating feature, the risks and rewards of a financial guarantee or a credit derivative are substantially similar.

B12. Although many credit derivatives are similar to many guarantees, the disclosure requirements in Interpretation 45 apply to some, but not all, sellers of credit derivatives. For example, credit derivatives that require the buyer of credit protection to own the underlying referenced obligation are within the scope of Interpretation 45, while credit derivatives that do not have such a requirement are generally outside the scope of Interpretation 45. The Board believes that instruments with similar risks and rewards should have similar disclosures; therefore, the disclosures in Interpretation 45 should apply to the sellers of all credit derivatives. The Board noted that the buyer's ownership of the underlying referenced obligation does not affect the risks to the seller or the guarantor.

B13. The Board believes that in addition to the guarantor's disclosures currently required for guarantees under Interpretation 45, the disclosure about the current status of the payment/performance risk of the guarantee or the credit derivative would be relevant to financial statement users. Information about management's assessment of the probability of payment/performance is helpful to understand the effect of these instruments on the financial statements. Accordingly, this FSP amends Interpretation 45 to add that disclosure requirement to guarantees that are subject to its disclosure requirements.

B14. A majority of the respondents generally agreed with the proposed disclosures for credit derivatives and guarantees; however, they suggested that the Board clarify certain issues so as to improve the consistency of the application of this FSP in practice. The Board agreed with many of those suggestions, and, accordingly, this FSP includes revisions and clarifications to improve its practical implementation. For example, this FSP includes guidance about how an entity may determine groups of similar credit derivatives.

B15. With respect to the disclosure about the current status of the payment/performance risk of the credit derivative, some respondents questioned whether the proposed FSP would require entities to use external credit ratings, when available, even though internal groupings may be more relevant. They indicated that external credit ratings may not be current and, therefore, not as relevant as internal groupings. The Board did not intend to assign a higher level in a hierarchy to external credit ratings when compared with internal groupings. Accordingly, this FSP does not express any preference for the use of external credit ratings. However, an entity that uses internal groupings shall disclose how those groupings are determined and used for managing risk.

Effective Date

B16. The Board proposed that this FSP would be effective for fiscal years and interim periods ending after November 15, 2008. The proposed effective date was earlier than that for Statement 161, which is effective for fiscal years and interim periods beginning after November 15, 2008. The Board believes that because of the large size of the credit derivatives market and the importance of having similar disclosures for similar instruments, the effective date for this FSP should be as soon as practicable. The Board reasoned that an early effective date could be practicable because the proposed disclosures for all credit derivatives within the scope of Statement 133 are similar to those already being provided for certain credit derivatives that are within the scope of Interpretation 45 (other than the disclosure about the current status of the payment/performance risk).

B17. A majority of the respondents disagreed with the proposed effective date for this FSP. They said that the FSP should be effective at the same time as Statement 161. Many preparers said that an identical effective date for both Statement 161 and this FSP is appropriate to facilitate an efficient and effective implementation because both standards address disclosures about derivative instruments and, as such, an identical effective date would reduce the overall cost of required system changes.

B18. The Board, however, disagreed with those respondents because it believes that sellers of credit derivatives already should have the information necessary to comply with the requirements of this FSP (for example, the maximum potential future payments or the contract's notional amount) if the seller manages its risks. The Board also noted that the disclosures required by this FSP are different from those required by Statement 161 and, therefore, the two disclosures need not have the same effective date. The Board believes that financial statement users need the additional information required by this FSP as soon as possible and that the effective date of this FSP is appropriate to meet user needs.

Benefit-Cost Considerations

B19. The objective of financial reporting is to provide information that is useful to present and potential investors, creditors, donors, and other capital market participants in making rational investment, credit, and similar resource allocation decisions. However, the benefits of providing information for that purpose should justify the related costs. Current and potential investors, creditors, donors, and other users of financial information benefit from the improvements in financial reporting, while the costs to implement a new standard are borne primarily by current investors. The Board's assessment of the costs and benefits of issuing an accounting standard is unavoidably more qualitative than quantitative because there is no method to objectively measure the costs to implement an accounting standard or to quantify the value of improved information in financial statements.

Benefits

B20. Financial statements users who responded to both this proposed FSP and the FASB staff's earlier request for input during the project's research phase generally agree with the Board's view that the proposed disclosures by sellers of credit derivatives are useful and needed. This FSP's amendment of Interpretation 45 to require disclosure about the current status of the payment/performance risk of guarantees also will be useful to financial statement users. In addition, some of the respondents who are financial statement preparers said that the proposed disclosures will improve the transparency of financial reporting.

Costs

B21. With respect to the costs of compiling the proposed disclosures, financial statement preparers were divided in their views. Some preparers said that the required disclosures would be, at least initially, burdensome, while some other preparers said that the disclosures will not be burdensome because they already provide similar disclosures for guarantees within the scope of Interpretation 45 (other than the new disclosure about the current status of the payment/performance risk).

B22. On balance, based on the input received from the respondents and because this FSP does not require retroactive application for periods before the effective date, the Board believes that the benefits of the disclosures exceed their compilation costs.