NO ACT

PE 2-12-09

DIVISION OF
CORPORATION FINANCE

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

February 12, 2009

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

Act: 1934
Section:
Rule: 14a-8
Public
Availability: 2-12-09

Re: JPMorgan Chase & Co.

Dear Mr. Horan:

This is in regard to your letter dated February 12, 2009 concerning the shareholder proposal submitted by the SEIU Master Trust 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 Your letter indicates that the proponent has withdrawn the proposal, and that JPMorgan Chase therefore withdraws its January 5, 2009 request for a no-action letter from the Division.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: Stephen Abrecht
Executive Director, SEIU Benefit Funds
SEIU Master Trust
1 Dupont Circle, N.W., Ste. 900
Washington, DC 20036-1202

JPMORGAN CHASE & CO.

February 12, 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: *JPMorgan Chase & Co.*
Shareholder Proposal of SEIU Master Trust Exchange Act of 1934—Rule 14a-8

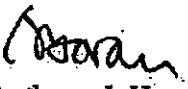
Dear Ladies and Gentlemen:

In a letter dated January 5, 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 SEIU Master Trust (the "Proponent").

Enclosed is a letter from Stephen Abrecht, the Proponents' representative, to the Company dated February 12, 2009, stating that the Proponents voluntarily withdraw 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
Stephen Abrecht, SEIU Master Trust

EXHIBIT A

SEIU
Stronger Together

RECEIVED BY THE
OFFICE OF THE SECRETARY

FEB 12 2009

February 12, 2009

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co.
270 Park Avenue, 35th FL
New York, NY 10017-2070

Anthony.horan@jpmorgan.com
And via facsimile: 212-270-4240

Dear Mr. Horan:

This letter is to inform you that the SEIU Master Trust (the "Trust") is withdrawing the resolution regarding an independent chairman of the board (the "Proposal"), submitted to JPMorgan Chase & Co. (the "Company") on November 26, 2008.

Sincerely,

Stephen Abrecht
Executive Director, SEIU Benefit Funds

SA:TR:th

SERVICE EMPLOYEES
INTERNATIONAL UNION, CLC

SEIU MASTER TRUST
Dupont Circle, N.W., Ste. 900
Washington, DC 20036-1202
202.730.7500
800.458.1010
www.SEIU.org

JPMorgan Chase & Co.

Anthony J. Horan
Corporate Secretary
Office of the Secretary

January 5, 2009

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

Re: *JPMorgan Chase & Co.*
Shareholder Proposal of SEIU Master Trust
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 SEIU Master Trust (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 concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

270 Park Avenue, New York, New York 10017-2070
Telephone 212 270 2122 Facsimile 212 270 4240 anthony.horan@chase.com

THE PROPOSAL

The Proposal states:

> RESOLVED, that pursuant to Section 109 of the Delaware General Corporation Law, the stockholders of JPMorgan Chase & Co. ("JPMC") hereby amend the bylaws to add the following text at the end of section 4.04:
>
> The Chairman shall be a director who is independent from the Corporation. For purposes of this requirement, "independent" has the meaning set forth in the New York Stock Exchange ("NYSE") listing standards, unless the Corporation's common stock ceases to be listed on the NYSE and is listed on another exchange, in which case such exchange's definition of independence shall apply. If the Board determines that a Chairman who was independent at the time he or she was selected is no longer independent, the Board shall select a new Chairman who satisfies this independence requirement within 60 days of such determination. Compliance with this independence requirement shall be excused if no director who qualifies as independent is elected by the stockholders or if no director who is independent is willing to serve as Chairman. This independence requirement shall apply prospectively so as not to violate any contractual obligation of the Corporation in effect when the requirement was adopted.

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 believe that the Proposal may properly be excluded from the 2009 Proxy Materials pursuant to:

- Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate state law; and
- Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

ANALYSIS

I. The Proposal May Be Excluded under Rule 14a-8(i)(2) Because Implementation of the Proposal Would Cause the Company to Violate State Law.

A company may exclude a shareholder proposal under Rule 14a-8(i)(2) if the proposal would, if implemented, "cause the company to violate any state, federal, or foreign law to which it is subject." The Company is incorporated under the laws of the State of Delaware. The Proponent seeks to amend the Company's By-laws (the "By-laws"), to include an additional provision that would conflict with other, pre-existing provisions of the By-laws. For the reasons set forth below and in the legal opinion on Delaware law from Richards, Layton & Finger, P.A., attached hereto as Exhibit B (the "Delaware Law Opinion"), the Company believes that the binding by-law amendment required by the Proposal would be invalid under Delaware law due to this conflict in that it would require the Company to take actions that violate the pre-existing By-law provisions, which the Company is bound to abide by as a matter of Delaware law. Accordingly, the Proposal is excludable under Rule 14a-8(i)(2) because, if implemented, the Proposal would cause the Company to violate state law.

In analyzing the Proposal for purposes of this letter, we have assumed that the Company would take only those actions specifically called for by the language of the Proposal. *See* Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("In analyzing an opinion of counsel . . . we consider the extent to which the opinion makes assumptions about the operation of the proposal that are not called for by the language of the proposal.").

The Proposal would amend the By-laws to require that the Chairman of the Board be a director who is "independent" from the Company, as defined by the New York Stock Exchange ("NYSE") listing standards. Section 303A.02 of the NYSE Listed Company Manual provides, in relevant part, that "[n]o director qualifies as 'independent' unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company)" and further provides that "a director is not independent if [such] director is, or has been within the last three years, an employee of the listed company." Commentary to the NYSE rule makes clear that employment as chairman or chief executive officer or other executive officer on other than an interim basis will disqualify a director from being considered independent under the rule. Commentary to the rule also states that, in assessing director independence, "the concern is independence from management."

The By-laws specifically designate the Chairman of the Board as an officer of the Company, and the Proposal does not seek to amend this provision. Section 4.01 of the By-laws, which is entitled "Officers," provides that "[t]he officers of the [Company] shall be (a) a Chairman of the Board . . ." In addition, Section 4.04 of the By-laws, which is entitled

"Chairman of the Board," specifically grants to the Chairman of the Board the same powers as the Chief Executive Officer. In this regard, Section 4.04 of the By-laws states that "[t]he Chairman of the Board shall have the same power to perform any act on behalf of the [Company] and to sign for the [Company] as is prescribed in these By-laws for the Chief Executive Officer." Under the By-laws, the Chief Executive Officer, among other things, "shall have, subject to the control of the Board, general supervision and direction of the business and affairs of the [Company] and of its several officers." The Proposal does not seek to amend this language.

The Proposal adds additional qualifications for the Chairman of the Board to Section 4.04 of the By-laws that would directly conflict with the existing language of Sections 4.01 and 4.04. By requiring that the Chairman of the Board be "independent," Section 4.04, if amended by the Proposal, would disallow the Chairman of the Board from serving as an officer (since current employees and executive officers are per se not independent under the NYSE rule) even though Section 4.01 specifically designates the Chairman of the Board as an officer. In addition, Section 4.04, as amended by the Proposal, would contradict the explicit, existing grant of authority to the Chairman of the Board in that section. Because Section 4.04 gives the Chairman of the Board the same authority as the Chief Executive Officer to manage the business and affairs of the Company, the Chairman of the Board has the authority to perform management functions. Accordingly, the Chairman of the Board cannot be considered "independent from management" in the manner described in the Commentary to NYSE Rule 303A.02 and therefore is not independent under the rule. Adoption of the proposed by-law amendment therefore would lead to internal inconsistencies in the By-laws, and any implementation of the Proposal that attempts to honor amended Section 4.04 would force the Company to violate existing Sections 4.01 and 4.04.

As discussed in the Delaware Law Opinion, by-laws "set down rules and procedures that bind a corporation's board and its shareholders." *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227, 234 (Del. 2008). The Company is therefore bound to abide by the terms of Section 4.01 of the By-laws, which requires the Chairman of the Board to be an officer of the Company and Section 4.04 of the By-laws, which grants to the Chairman of the Board the same power and authority as the Chief Executive Officer. *See H.C. Johnston & Co. v. Great W. Fin. Corp.*, C.A. No. 15650, slip op. at 9 (Del. Ch. Apr. 25, 1997) ("Where the shareholders or the directors, by adopting a by-law, command the performance of a certain act, to hold that coercive relief cannot be had to enforce that command would violate basic concepts of corporate governance."). If the proposed by-law amendment is adopted, the Chairman of the Board could no longer serve as an officer of the Company, in direct contravention of the By-laws. Moreover, the Chairman of the Board could no longer have "the same power to perform any act on behalf of the [Company] . . . as is prescribed in these By-laws for the Chief Executive Officer," in direct contravention of the By-laws. Thus, as reflected in the Delaware Law Opinion, the Proposal's amended by-law would be invalid under Delaware law because it would cause the Company to violate Sections 4.01 and 4.04 of the By-laws.

The Staff recently has concurred with a company's request to exclude a shareholder proposal substantially similar to the Proposal. In *The Home Depot, Inc.* (avail. Feb. 12, 2008), the company argued that a binding by-law shareholder proposal that would have amended the company's by-laws to provide for an independent chairman would conflict with the company's charter and other provisions of its by-laws, and therefore would be "contrary to Delaware law." The Staff permitted Home Depot to exclude the proposal under Rule 14a-8(i)(2), noting that "in the opinion of [Home Depot's] counsel, implementation of the proposal would cause Home Depot to violate state law."

Accordingly, for the reasons set forth above and as supported by the Delaware Law Opinion, the Company believes the Proposal is excludable pursuant to Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate state law.

II. The Proposal May Be Excluded under Rule 14a-8(i)(6) Because the Company Lacks the Power or Authority to Implement the Proposal.

Pursuant to Rule 14a-8(i)(6), a company may exclude a proposal "if the company would lack the power or authority to implement the proposal." The Proposal is excludable under Rule 14a-8(i)(6) because the Company lacks the legal power and authority to implement it. The Staff on numerous occasions has permitted exclusion under Rule 14a-8(i)(6) of proposals seeking action contrary to state law. *See, e.g., Schering-Plough Corp.* (avail. Mar. 27, 2008); *Bank of America Corp.* (avail. Feb. 26, 2008); *The Boeing Co. (Olson)* (avail. Feb. 19, 2008).

As discussed above and reflected in the Delaware Law Opinion, adoption and implementation of the Proposal would result in inconsistent by-law provisions that the Company could not simultaneously honor. The amendment to Section 4.04 of the By-laws required by the Proposal (requiring an "independent" Chairman of the Board) would cause the Company to violate the requirements of Section 4.01 (designating the Chairman of the Board as an officer of the Company) and Section 4.04 (granting the Chairman of the Board the same powers and authority as the Chief Executive Officer), and as such, the amended by-law would be invalid under Delaware law. Accordingly, the Company is without the legal power and authority to implement the Proposal, and the Proposal is properly excludable under Rule 14a-8(i)(6).

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.

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,

Anthony I. Horan

AIH/als
Enclosures

cc: Amy L. Goodman, Gibson, Dunn & Crutcher LLP
Stephen Abrecht, SEIU Master Trust

EXHIBIT A

Office of the Secretary

Anthony Horan/JPMCHASE
11/26/2008 04:14 PM

To Irma R. Caracciolo/jpmchase@jpmchase, Carin S Reddish/jpmchase@jpmchase
cc
bcc
Subject Fw: Shareholder Proposal #11

Anthony J. Horan, Corporate Secretary | JPMorgan Chase, 270 Park Avenue, New York, NY 10017 | W: 212 270-7122 | Cell: 917 881-2602 | Fax: 212-270-4240
—— Forwarded by Anthony Horan/JPMCHASE on 11/26/2008 04:14 PM ——

"Brenda Hildenberger" <Brenda.Hildenberger@seiu.org>
11/26/2008 04:06 PM

To <anthony.horan@jpmorgan.com>
cc "Stephen Abrecht" <Stephen.Abrecht@seiu.org>, "Tracey Rembert" <Tracey.Rembert@seiu.org>
Subject Shareholder Proposal

Dear Mr. Horan:

Attached is a PDF of a letter from Stephen Abrecht as well as a copy of the shareholder proposal for inclusion at the next annual meeting. This has also been faxed to you and the original will follow via UPS 2nd Day Airmail.

Brenda Hildenberger
Admin Assistant
SEIU Benefit Funds
11 Dupont Circle - Suite 900
Washington DC 20036
Phone: 202-730-7520
Fax: 202-842-0046
Email: Brenda.Hildenberger@seiu.org

JPMC Indep Chair Proposal.pdf

November 26, 2008

Anthony J. Horan
Secretary
JPMorgan Chase and Co.
270 Park Avenue, 35th Floor
New York, NY 10017-2070

Also via Email: anthony.horan@jpmorgan.com
And via Facsimile: 212-270-4240

Dear Mr. Horan:

On behalf of the SEIU Master Trust ("the Trust"), I write to give notice that, pursuant to the 2008 proxy statement of JPMorgan Chase and Co. (the "Company"), the Trust intends to present the attached proposal (the "Proposal") at the 2009 annual meeting of shareholders (the "Annual Meeting"). The Trust requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting. The Trust has owned the requisite number of JPMorgan Chase shares for the requisite time period. The Trust intends to hold these shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Trust or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. A proof of share ownership letter is being sent to you, under separate cover, following this filing. Please contact me at (202)730-7051 if you have any questions.

Sincerely,

Stephen Abrecht
Executive Director of Benefit Funds

SERVICE EMPLOYEES
INTERNATIONAL UNION, CLC

SEIU MASTER TRUST
Dupont Circle, N.W. Ste. 900
Washington, DC 20036-1202
202.730.7500
800.458.1010
www.SEIU.org

INDEPENDENT CHAIRMAN OF THE BOARD

RESOLVED, that pursuant to Section 109 of the Delaware General Corporation Law, the stockholders of JPMorgan Chase & Co. ("JPMC") hereby amend the bylaws to add the following text at the end of section 4.04:

"The Chairman shall be a director who is independent from the Corporation. For purposes of this requirement, "independent" has the meaning set forth in the New York Stock Exchange ("NYSE") listing standards, unless the Corporation's common stock ceases to be listed on the NYSE and is listed on another exchange, in which case such exchange's definition of independence shall apply. If the Board determines that a Chairman who was independent at the time he or she was selected is no longer independent, the Board shall select a new Chairman who satisfies this independence requirement within 60 days of such determination. Compliance with this independence requirement shall be excused if no director who qualifies as independent is elected by the stockholders or if no director who is independent is willing to serve as Chairman. This independence requirement shall apply prospectively so as not to violate any contractual obligation of the Corporation in effect when the requirement was adopted."

SUPPORTING STATEMENT

CEO James Dimon currently also serves as chairman of JPMC's Board of Directors. This Proposal would require that the Chairman be a director who is independent from JPMC.

We believe the role of Chairman should meet high standards of independence to ensure proper oversight of senior executives, and to increase accountability by management to the entire Board of Directors—something that is difficult to accomplish when management oversees the Board. An independent Chairman would also likely promote more objective evaluation and compensation of our CEO and other senior executives, and would help facilitate a robust CEO succession plan and overall Board agenda.

Though our Company designated a rotating Presiding Director in December 2006, we believe that position, and its duties, do not go far enough to ensure independent thought and oversight by the Board. Instead, the position seems to be one of liaison between the CEO and the rest of the Board.

We further believe CEOs, particularly in the financial sector, are often encouraged to take substantial risks, and an independent chairman serves as a practical check on the overall risk appetite of the CEO and the corporate-wide level of risk being undertaken.

When the chief executive also heads the Board, the Company is doubly impacted with a CEO's departure—usually during a crisis—since it loses its chairman and top manager simultaneously. And 82% of Chief Financial Officers support separating the Chairman and CEO roles, according to a Grant Thornton national survey (*3/08*).

Meanwhile, many shareholders have been frustrated by skyrocketing executive compensation—*especially* in the financial sector—and independent board leadership helps counterbalance the incentives that encourage executives to take on excessive short-term risk in order to boost personal compensation.

We urge shareholders to vote FOR this Proposal.

BENEFIT FUNDS OFFICE of the
Service Employees International Union
11 Dupont Circle ♦ Washington, DC 20036
Phone: (202) 730-7500 Fax: (202) 842-0046

SEIU Master Trust:
SEIU National Industry Pension Fund
SEIU Affiliates' Officers & Employees Pension Fund
SEIU Staff Pension Fund

Fax

To:	ANTHONY J. HORAN	**From:**	STEPHEN ABRECHT
Fax:	212-270-4240	**Pages:**	3 , including cover sheet
Phone:		**Date:**	11/26/2008
Re:	SHAREHOLDER SUBMISSION	**CC:**	

• Comments:

THE ATTACHED SUBMISSION FOR THE 2009 ANNUAL MEETING OF SHAREHOLDERS HAS ALSO BEEN SENT TO YOU BY EMAIL AND BY UPS 2ND DAY AIR.

SEIU
Stronger Together

November 26, 2008

Anthony J. Horan
Secretary
JPMorgan Chase and Co.
270 Park Avenue, 35th Floor
New York, NY 10017-2070

Also via Email: anthony.horan@jpmorgan.com
And via Facsimile: 212-270-4240

Dear Mr. Horan:

On behalf of the SEIU Master Trust ("the Trust"), I write to give notice that, pursuant to the 2008 proxy statement of JPMorgan Chase and Co. (the "Company"), the Trust intends to present the attached proposal (the "Proposal") at the 2009 annual meeting of shareholders (the "Annual Meeting"). The Trust requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting. The Trust has owned the requisite number of JPMorgan Chase shares for the requisite time period. The Trust intends to hold these shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Trust or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. A proof of share ownership letter is being sent to you, under separate cover, following this filing. Please contact me at (202)730-7051 if you have any questions.

Sincerely,

Stephen Abrecht
Executive Director of Benefit Funds

SERVICE EMPLOYEES
INTERNATIONAL UNION, CLC

SEIU MASTER TRUST
Dupont Circle, N.W. Ste. 900
Washington, DC 20036-1202
202.730.7500
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INDEPENDENT CHAIRMAN OF THE BOARD

RESOLVED, that pursuant to Section 109 of the Delaware General Corporation Law, the stockholders of JPMorgan Chase & Co. ("JPMC") hereby amend the bylaws to add the following text at the end of section 4.04:

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SUPPORTING STATEMENT

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We believe the role of Chairman should meet high standards of independence to ensure proper oversight of senior executives, and to increase accountability by management to the entire Board of Directors—something that is difficult to accomplish when management oversees the Board. An independent Chairman would also likely promote more objective evaluation and compensation of our CEO and other senior executives, and would help facilitate a robust CEO succession plan and overall Board agenda.

Though our Company designated a rotating Presiding Director in December 2006, we believe that position, and its duties, do not go far enough to ensure independent thought and oversight by the Board. Instead, the position seems to be one of liaison between the CEO and the rest of the Board.

We further believe CEOs, particularly in the financial sector, are often encouraged to take substantial risks, and an independent chairman serves as a practical check on the overall risk appetite of the CEO and the corporate-wide level of risk being undertaken.

When the chief executive also heads the Board, the Company is doubly impacted with a CEO's departure—usually during a crisis—since it loses its chairman and top manager simultaneously. And 82% of Chief Financial Officers support separating the Chairman and CEO roles, according to a Grant Thornton national survey (*3/08*).

Meanwhile, many shareholders have been frustrated by skyrocketing executive compensation—*especially* in the financial sector—and independent board leadership helps counterbalance the incentives that encourage executives to take on excessive short-term risk in order to boost personal compensation.

We urge shareholders to vote FOR this Proposal.

JPMorgan Chase & Co.

Anthony J. Horan
Corporate Secretary
Office of the Secretary

December 2, 2008

Mr. Steven Abrecht
Executive Director of Benefit Trusts
SEIU Master Trust
Dupont Circle, NW
Ste.900
Washington DC 20036-1202

Dear Mr. Abrecht

This will acknowledge receipt of the letter dated November 26, 2008, advising JPMorgan Chase & Co. of the intention of the SEIU Master Trust (Trust) to submit a proposal to be voted upon at our 2009 Annual Meeting. The proposal is entitled "Carbon Principles Report."

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that each shareholder proponent must submit sufficient proof that he has continuously held at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company's stock records do not indicate that the Trust is the record owner of sufficient shares to satisfy this requirement and we did not receive proof from the Trust that it has satisfied Rule 14a-8's ownership requirements as of the date that the proposal was submitted to JPM.

To remedy this defect, you must submit sufficient proof of the Trust's ownership of JPM shares. As explained in Rule 14a-8(b), sufficient proof may be in the form of:

- a written statement from the "record" holder of the Trust's shares (usually a broker or a bank) verifying that, as of the date the proposal was submitted, it continuously held the requisite number of JPM shares for at least one year; or

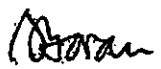
- if it have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting its ownership of JPM shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that it continuously held the required number of shares for the one-year period.

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

The rules of the SEC require that a response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 270 Park Avenue, 38th Floor, New York NY 10017. Alternatively, you may transmit any response by facsimile to me at 212-270-4240. For your reference, please find enclosed a copy of SEC Rule 14a-8.

If you have any questions with respect to the foregoing, please contact me.

Sincerely,



Enclosure: Rule 14a-8 of the Securities Exchange Act of 1934

Rule 14a-8 of the Securities Exchange Act of 1934

Shareholder proposals

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* **What is a proposal?**

A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* **Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?**

(1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d–101), Schedule 13G (§240.13d–102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* **How many proposals may I submit?**

Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* **How long can my proposal be?**

The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* **What is the deadline for submitting a proposal?**

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* **What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?**

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a–8 and provide you with a copy under Question 10 below, §240.14a–8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* **Who has the burden of persuading the Commission or its staff that my proposal can be excluded?**

Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* **Must I appear personally at the shareholders' meeting to present the proposal?**

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a

qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph(i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph(i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Relates to election:* If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election;

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph(i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions:* If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) ***Question 10:*** **What procedures must the company follow if it intends to exclude my proposal?**

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) ***Question 11:*** **May I submit my own statement to the Commission responding to the company's arguments?**

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* **What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?**

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a–9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a–6.

BENEFIT FUNDS OFFICE of the
Service Employees International Union
11 Dupont Circle ♦ Washington, DC 20036
Phone: (202) 730-7500 Fax: (202) 842-0046

SEIU Master Trust:
SEIU National Industry Pension Fund
SEIU Affiliates' Officers & Employees Pension Fund
SEIU Staff Pension Fund

Fax

To:	**ANTHONY J. HORAN**	**From:**	**STEVE ABRECHT**
Fax:	212-270-4240	**Pages:**	3 including cover sheet
Phone:		**Date:**	12/10/2008
Re:	**PROOF OF HOLDINGS**	**cc:**	

• **Comments:**

ATTACHED, PLEASE FIND A COPY OF PROOF OF STOCK OWNERSHIP FROM AMALGAMATED BANK. THIS HAS ALSO BEEN SENT VIA EMAIL AND THE ORIGINAL WILL FOLLOW BY UPS OVERNIGHT.

SEIU
Stronger Together

December 10, 2008

Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co.
270 Park Avenue, 35th Floor
New York, NY 10017-2070

Also via Email: anthony.horan@jpmorgan.com
And via Facsimile: 212-270-4240

Dear Mr. Horan:

In compliance with Rule 14a-8(b)(2), enclosed please find a "Proof of Ownership" letter from Amalgamated Bank dated November 26, 2008.

If you have any questions or need any additional information you can contact me at 202-730-7051.

Sincerely,

Stephen Abrecht
Executive Director of Benefit Funds

SA:TR:bh
Enclosure

SERVICE EMPLOYEES
INTERNATIONAL UNION, CLC

SEIU MASTER TRUST
Dupont Circle, N.W., Ste. 900
Washington, DC 20036-1202
202.730.7500
800.458.1010
www.SEIU.org

AMALGAMATED BANK.

November 26, 2008

Mr. Steve Abrecht
Executive Director of Benefit Funds
SEIU Master Trust
11 Du Pont Circle
9th Floor
Washington, DC 20036

Re: J.P. Morgan Chase & Co Proof of Ownership, Cusip 46625H100

Dear Mr. Abrecht,

Amalgamated Bank is the record owner of 28,800 shares of common stock of J.P Morgan Chase & Co, beneficially owned by SEIU Master Trust. The shares are held by Amalgamated Bank at the Depository Trust Company in our participant account # . SEIU Master Trust had held the Shares continuously for at least one year on 11/26/2008 and continues to hold the Shares as of the date set forth above

If you have any questions or need anything further, please do not hesitate to call me at (212) 895-4909.

Very truly yours,

Niall J. Kenny
Vice President
Amalgamated Bank

NJK/nk

EXHIBIT B

RICHARDS LAYTON & FINGER

December 30, 2008

JPMorgan Chase & Co.
270 Park Avenue
New York, NY 10017

Re: Stockholder Proposal of SEIU Master Trust

Ladies and Gentlemen:

We have acted as special Delaware counsel to JPMorgan Chase & Co., a Delaware corporation (the "Company"), in connection with a proposal (the "Proposal") submitted by SEIU Master Trust (the "Proponent") that the Proponent intends to present at the Company's 2009 annual meeting of stockholders (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the General Corporation Law of the State of Delaware (the "General Corporation Law").

For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents:

(i) the Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware (the "Secretary of State") on April 5, 2006, as amended by the Certificate of Ownership and Merger as filed with the Secretary of State on December 21, 2007, the Certificate of Designations as filed with the Secretary of State on April 23, 2008, the Certificates of Designations as filed with the Secretary of State on July 1, 2008, the Certificate of Designations as filed with the Secretary of State on August 21, 2008 and the Certificate of Designations as filed with the Secretary of State on October 27, 2008;

(ii) the By-laws of the Company, as amended (the "By-laws"); and

(iii) the Proposal and its supporting statement.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and the legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for

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www.rlf.com

our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

The Proposal

The Proposal states the following:

> RESOLVED, that pursuant to Section 109 of the Delaware General Corporation Law, the stockholders of JPMorgan Chase & Co. ("JPMC") hereby amend the bylaws to add the following text at the end of section 4.04:
>
> "The Chairman shall be a director who is independent from the Corporation. For purposes of this requirement, "independent" has the meaning set forth in the New York Stock Exchange ("NYSE") listing standards, unless the Corporation's common stock ceases to be listed on the NYSE and is listed on another exchange, in which case such exchange's definition of independence shall apply. If the Board determines that a Chairman who was independent at the time he or she was selected is no longer independent, the Board shall select a new Chairman who satisfies this independence requirement within 60 days of such determination. Compliance with this independence requirement shall be excused if no director who qualifies as independent is elected by the stockholders or if no director who is independent is willing to serve as Chairman. This independence requirement shall apply prospectively so as not to violate any contractual obligation of the Corporation in effect when the requirement was adopted."

Discussion

You have asked for our opinion whether implementation of the Proposal would violate Delaware law. Assuming that the Company takes only those actions specifically called for by the Proposal – that is, amending Section 4.04 of the By-laws to provide that the Chairman of the Board shall be a director who is independent – in our opinion, implementation of the Proposal would violate the General Corporation Law. The bases of our opinion are discussed below.

Because the bylaw contemplated by the Proposal, if adopted, would conflict with a separate, pre-existing provision of the By-laws that would continue in force following the adoption of such bylaw, such bylaw would be invalid under the General Corporation Law. The Proposal would amend Section 4.04 of the By-laws to provide that "[t]he Chairman [of the Board] shall be a director who is independent from the Corporation." The Proposal provides that the definition of "independent" shall be as set forth in the New York Stock Exchange (the "NYSE") listing standards, unless the Company's common stock ceases to be listed on the NYSE and is listed on another exchange, in which case the definition of "independent director" under the rules of such other exchange shall apply. The Company's common stock is presently listed on the NYSE.

The applicable listing standards for determining whether a director qualifies as "independent" are set forth in Section 303A.02 of the NYSE Listed Company Manual. See New York Stock Exchange Listed Company Manual § 303A.02 (1983) (last modified September 11, 2008). That section provides, in relevant part, that "[n]o director qualifies as 'independent' unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company)" and further provides that "a director is not independent if [such] director is, or has been within the last three years, an employee of the listed company." Id. The commentary to Section 303A.02(a) of the NYSE Listed Company Manual makes clear that a person who has been employed as a chairman or chief executive officer or other executive officer on other than an interim basis cannot be considered independent under the rule. Commentary to the rule also states that, in assessing director independence, "the concern is independence from management." Accordingly, for purposes of this opinion, we have assumed that any director appointed to an elected officer position under the By-laws would be deemed an executive officer employed by the Company and, thus, would not satisfy the relevant "independence" criteria established in Section 303A.02 of the NYSE Listed Company Manual. We have also assumed, for purposes of this opinion, that any director charged with managing the day-to-day operations of the Company would not satisfy the relevant "independence" criteria established in Section 303A.02 of the NYSE Listed Company Manual.

Section 4.01 of the By-laws provides that "[t]he officers of the Corporation shall be (a) a Chairman of the Board. . . ." Thus, the By-laws currently require that the Chairman of the Board be an officer of the Company, and the Proposal does not seek to amend this requirement. The Proposal, however, would amend Section 4.04 of the By-laws in a manner that clearly conflicts with Section 4.01. Specifically, proposed Section 4.04 of the By-laws would require the Chairman of the Board to be director who is "independent" (and therefore not an elected officer of the Company), while Section 4.01 would continue to require that the Chairman of the Board be an elected officer of the Company. As a result, implementation of the Proposal would cause the Company to violate Section 4.01 of the By-laws.

As the Delaware Supreme Court recently noted, "[b]ylaws, by their very nature, set down rules and procedures that bind a corporation's board and its shareholders." CA, Inc. v.

AFSCME Employees Pension Plan, 953 A.2d 227, 234 (Del. 2008). See also Nevins v. Bryan, 885 A.2d 233 (Del. Ch. 2005); Lofland v. Di Sabatino, 1991 WL 138505 (Del. Ch. July 25, 1991). Section 4.01 is one of the "rules and procedures" that currently governs the Company—and one that would continue to govern the Company following the adoption of the bylaw contemplated by the Proposal. Section 4.01 commands the Board of Directors of the Company (the "Board") to appoint a Chairman of the Board and specifies that the Chairman shall be an officer. Unless Section 4.01 is properly amended to eliminate the requirement that the Chairman of the Board be an officer, the Company is bound to abide by the terms thereof. See H.F. Ahmanson & Co. v. Great W. Fin. Corp., 1997 WL 225696, at *3 (Del. Ch. Apr. 25, 1997) (holding that "[w]here the shareholders or the directors, by adopting a by-law, command the performance of a certain act, to hold that coercive relief cannot be had to enforce that command would violate basic concepts of corporate governance"). Because the bylaw contemplated by the Proposal would direct the Company to violate that requirement, it would be invalid.

The Proposal fails to follow the proper procedural sequence that would otherwise be required to adopt a bylaw providing that the Chairman of the Board be an "independent" director. In order for the proposed amendment to Section 4.04 to be valid, Section 4.01 must be amended, at or prior to the adoption of the proposed amendment to Section 4.04, to eliminate the requirement that the Chairman of the Board be an officer. The Delaware courts have indicated that it is necessary to follow this procedural sequence to ensure that a proposed action does not violate the bylaws. In Frankino v. Gleason, 1999 WL 1032773, *1 (Del. Ch. Nov. 5, 1999), for example, the holder of 55% of the corporation's outstanding voting stock acted by written consent to amend the corporation's bylaws as follows: first, to eliminate the 80% supermajority vote required to amend certain provisions of the bylaws and replace it with a simple majority vote requirement; and second, to amend the provisions relating to the board of the corporation. The Court indicated that, without following this sequence (i.e., without first eliminating the supermajority vote provision), the stockholder's subsequent amendments to the other provisions of the bylaws could not have been effected. Id. at *2. Similarly, the proposed amendment to Section 4.04 would be invalid unless Section 4.01 is previously or simultaneously amended in a manner that would resolve the conflict between those sections.

Moreover, the Proposal, if implemented, would not result in Section 4.01 being amended by implication. Under Delaware law, the doctrine of amendment by implication has a limited application. That doctrine has been described as follows:

> a corporate by-law may be amended by implication and without any formal action being taken by clear proof of a definite and uniform custom or usage, not in accord with the by-laws regularly adopted, and by acquiescence therein; but usually the course of conduct relied on to effect the change must have continued for such a period of time as will justify the inference that the stockholders had knowledge thereof and impliedly consented thereto.

In re Ivey & Ellington, 42 A.2d 508 (Del. Ch. 1945). Thus, the doctrine of amendment by implication applies to circumstances where the corporation's longstanding custom and practice has the practical effect of amending a particular "rule or procedure" embodied in its bylaws. See In re Osteopathic Hosp. Ass'n of Del., 195 A.2d 759 (Del. 1963); Dousman v. Kobus, 2002 WL 1335621 (Del. Ch. June 6, 2002); Belle Isle Corp. v. MacBean, 49 A.2d 5, 9 (Del. Ch. 1946). The doctrine does not apply to later-enacted bylaws that conflict with separate, pre-existing bylaws that otherwise continue in force. Thus, the mere adoption of Section 4.04 would not have the effect of superseding, supplanting or modifying, by implication or otherwise, the requirement of Section 4.01.

In addition, the Proposal, if implemented, would conflict with the existing first paragraph of Section 4.04 of the By-laws, which would continue in force following the adoption of the bylaw contemplated by the Proposal. That paragraph provides, in relevant part, that the "Chairman of the Board shall have the same power to perform any act on behalf of the Corporation and to sign for the Corporation as is prescribed in these By-laws for the Chief Executive Officer." Section 4.05 of the By-laws, which describes the powers of the Chief Executive Officer, provides, in relevant part, that the "Chief Executive Officer shall be the chief executive officer of the Corporation and shall have, subject to the control of the Board, general supervision and direction of the business and affairs of the Corporation and of its several officers." Thus, under Section 4.05, the Chief Executive Officer is charged with managing the day-to-day operations of the Company, subject to the Board's general oversight. Accordingly, under the existing first paragraph of Section 4.04 of the By-laws (read together with Section 4.05), the Chairman of the Board would likewise be charged with managing the day-to-day operations of the Company. The Proposal, however, would add the requirement that the Chairman of the Board be independent, and thus not have the power to manage the day-to-day operations of the Company. Thus, the implementation of the Proposal would also cause the Company to violate the existing first paragraph of Section 4.04 of the By-laws (as read in conjunction with existing Section 4.05).

For the same reasons set forth above, in order for the Proposal to be valid, the existing first paragraph of Section 4.04 of the By-laws must be amended at, or prior to, the adoption of the new paragraph of Section 4.04 in order to eliminate the day-to-day management power granted to the Chairman of the Board. As explained above, the adoption of the new paragraph of Section 4.04 of the By-laws would not have the effect of amending, by implication or otherwise, the provisions of the existing first paragraph of Section 4.04 granting such day-to-day management power to the Chairman of the Board. In the absence of such an amendment, the implementation of the Proposal would conflict with the existing first paragraph of Section 4.04 of the By-laws.

CONCLUSION

Based upon and subject to the foregoing, and subject to the limitations stated herein, it is our opinion that the Proposal, if adopted and implemented, would be invalid under the General Corporation Law.

The foregoing opinion is limited to the General Corporation Law. We have not considered and express no opinion on any other laws or the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the SEC in connection with the matters addressed herein and that you may refer to it in your proxy statement for the Annual Meeting, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

MG/JMZ

END