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

DIVISION OF
CORPORATION FINANCE

[redacted]

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March 9, 2009

Received SEC

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Washington, DC 20549

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Rule: 14a-8
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Anthony J. Horan
Corporate Secretary
Office of the Secretary
JPMorgan Chase & Co.
270 Park Avenue
New York, NY 10017-2070

Re: JPMorgan Chase & Co.
Incoming letter dated January 9, 2009

Dear Mr. Horan:

This is in response to your letter dated January 9, 2009 concerning the shareholder proposal submitted to JPMorgan Chase by the AFL-CIO Reserve Fund. We also have received a letter on the proponent's behalf dated February 6, 2009. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Heather L. Maples
Senior Special Counsel

Enclosures

cc: Cornish F. Hitchcock
Hitchcock Law Firm PLLC
1200 G Street, NW
Suite 800
Washington, DC 20005

March 9, 2009

Response of the Office of Chief Counsel
<u>Division of Corporation Finance</u>

Re: JPMorgan Chase & Co.
Incoming letter dated January 9, 2009

The proposal urges the board of directors to adopt a policy requiring that the Named Executive Officers retain 75% of the shares acquired through JPMorgan Chase's compensation plans, excluding tax-deferred retirement plans, for two years from the termination of their employment, and to report to shareholders regarding the adoption of the policy. In addition, the proposal states that the policy should prohibit hedging techniques that offset the risk of losses to executives.

There appears to be some basis for your view that JPMorgan Chase may exclude the proposal under rules 14a-8(i)(2) and 14a-8(i)(6) because it may require JPMorgan Chase to impose restrictions on transferability of shares already issued. It appears that this defect could be cured, however, if the proposal were revised to state that it applies only to compensation awards made in the future. Accordingly, unless the proponent provides JPMorgan Chase with a proposal revised in this manner, within seven calendar days after receiving this letter, we will not recommend enforcement action to the Commission if JPMorgan Chase omits the proposal from its proxy materials in reliance on rules 14a-8(i)(2) and 14a-8(i)(6).

We are unable to concur in your view that JPMorgan Chase may exclude the proposal under rule 14a-8(i)(3). Accordingly, we do not believe that JPMorgan Chase may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that JPMorgan Chase may exclude the proposal under rule 14a-8(i)(10). Accordingly, we do not believe that JPMorgan Chase may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Matt S. McNair
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

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CORNISH F. HITCHCOCK
E-MAIL: CONH@HITCHLAW.COM

6 February 2009

Office of the Chief Counsel
Division of Corporation Finance
Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

By courier and e-mail (shareholderproposals@sec.gov)

Dear Counsel:

I have been asked to respond to the letter from counsel for JPMorgan Chase & Co. ("JPM Chase" or the "Company") dated 9 January 2009 that advises the Division of the Company's intent to omit from its 2009 proxy materials a shareholder proposal (the "Proposal") submitted by the AFL-CIO Reserve Fund (the "Fund"). The Proposal and cover letter appear as Exhibit A to the Company's letter.

For the reasons stated below, we submit that JPM Chase has not carried its burden of showing that the Proposal may be excluded from the Company's proxy materials. We are filing six copies of this letter by messenger and submitting it electronically as well. Our fax number for receipt of the Division's response appears above.

The Proposal.

The Proposal urges the Compensation Committee "to adopt a policy requiring the Named Executive Officers ('NEOs') to retain 75% of the shares acquired through the Company's compensation plans, excluding tax-deferred retirement plans, for two years from the termination of their employment (through retirement or otherwise), and to report to shareholders regarding the adoption of this policy before the Company's 2010 annual meeting. The policy also should prohibit hedging techniques that offset the risk of losses to the executive."

The supporting statement, citing the Aspen Principles on corporate governance and a report of the Conference Board, explains that the Proposal is intended to promote a greater focus on the long-term success of the Company and also to better align the interests of senior executives with those of shareholders generally.

In response JP Morgan Chase argues that the proposal (a) is so impermissibly vague and indefinite as to be inherently misleading; (b) has been substantially implemented; (c) would, if implemented cause the Company to violate state law; and (d) is beyond the power of the Company to implement. We respond as follows.

Discussion.

A. Rules 14a-8(i)(3).

JPM Chase's first line of attack is on certain key phrases that are used in the Proposal, which phrases are said to be so indefinite as to materially misleading within the meaning of Rule 14a-8(i)(3). The Company's letter represents a classic attempt to wrench individual words or phrases from their surrounding context, examine them minutely under a jeweler's eye, and declare at the end of the exercise that the object is utterly opaque. As we now explain, the challenged phrases are clear when read in context. Also, despite the plethora of no-action letters cited by the Company, not one of those letters declares that any of the phrases singled out by the Company would warrant omission of the proposal in question. Unfortunately there is no way to answer the Company's objections short of slogging through the Company's laundry list, to which task we now turn.

First, the Company notes that the phrase "hedging techniques that offset the risk of losses" is undefined. This objection is puzzling. JPM Chase seems to be arguing that the word "hedging" is so vague as to be unknown to the Company's shareholders, yet the Company has offered no factual basis for the Division to reach such a conclusion. The Company then professes confusion as to whether the language would bar only "*hedging* techniques" to offset losses (which is what the Proposal says) or whether the language would apply to "*every* technique that could potentially offset the risk of losses?" JPM Chase Letter at 3 (emphases added). The objection is illogical at worst, unexplained at best. At least one definition equates hedging with reducing or avoiding financial risk generally.[1] Moreover, JPM Chase's letter does not identify which *non*-hedging techniques an investor might consider to be covered by the phrase "hedging techniques." The Company's failure to explain

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[1] Hedging: "any technique designed to reduce or eliminate financial risk; for example, taking two positions that will offset each other if prices change." http://wordnetweb.princeton.edu/perl/webwn?s=hedging

Indeed, one may fairly question whether JPMorgan Chase really believes this argument. Later on in its letter, the Company quotes its 2007 proxy statement, which states: "Executives and directors are not permitted to hedge the economic risk of their ownership" of Company stock. JPM Chase Letter at 10 and Ex. D thereto. If JP Morgan Chase did not view this sentence as so vague as violate Rule 14a-9, one is hard pressed to see how such a charge can be leveled at the language in the Proposal.

how its investors might be confused is fatal to this objection.

Second, the Company objects to use of the word "executives" in the sentence in the Resolved clause dealing with hedging. JPM Chase Letter at 3. Here again, context is ignored in an effort to score a point. The rest of the Resolved clause, as well as the Supporting Statement, make it clear that the focus is on senior executives or "NEOs." Specifically, there is a discussion of the compensation that was awarded to NEOs in recent years, citation to a Council of Institutional Investors statement regarding retention of equity by "senior executives," and a statement of belief that NEOs should continue to hold equity awards post retirement so that they share "the upside and downside risk of their actions." In fact, one searches the Proposal in vain for evidence that the focus here is on compensation policy affecting anyone other than NEOs. The objection lacks merits.

Third, JPM Chase argues that the first sentence in the Resolved clause – that NEOs should "retain 75% of the shares acquired through the Company's compensation plans" – is vague as to *which NEOs* might be covered by the Proposal and *which shares* of stock would be affected by the Proposal. The Company constructs an elaborate set of alternatives meanings for each of these two categories (*i.e.*, current NEOs, current and former NEOs since adoption of the policy, current NEOS and former NEOS both before and after the adoption of the policy; shares acquired before and after the policy is adopted; shares acquired after adoption of the policy; shares acquired as of the time employed is terminated). JPM Chase Letter at 4-5.

At the outset, we dispute that the quoted language is materially misleading. The focus of the Proposal is on compensation awarded to senior executives while they are senior executives. That approach is plainly consistent with the Division's interpretation of Rule 14a-8 that compensation of senior executives – not compensation policy generally – is a fit subject for shareholder proposals.

As to the question of which executives are covered, the context is fairly clear that the reference is to equity awards during one's tenure as a NEO. The first paragraph in the Supporting Statement states how equity awards to individual NEOs *while they were NEOs* in the most recent fiscal year accounted for 43% to 75% of total compensation, and how 57% of the total award of $94.9 million made to the five NEOs *while they were NEOs* consisted of stock awards and options.

This point answers as well the Company's related concern that the Proposal is impermissibly vague as to which shares would be covered by the Proposal. The focus of the Proposal is the level of equity awards made *during an executive's tenure as an NEO.* No other interpretation is plausible when the Proposal is read as a whole, rather than if words are plucked out and read in isolation.

The Fund thus submits that its Proposal is sufficiently clear that it cannot be tagged as being "materially false or misleading." Without conceding the point, and should the Division conclude otherwise, the Fund is willing to add this sentence: "This policy would apply only to shares acquired by NEOs pursuant to equity awards made during their tenure as NEOs."

Fourth, JPM Chase returns to the sentence in the Resolved clause discussing "hedging techniques," and it again asks "which shares" would be affected by the prohibition in the Proposal. JPM Chase Letter at 5-6. The point is answered by the discussion in the *Third* point above, which makes it clear that the shares affected by the Proposal are those acquired by NEOs when they are NEOs.

B. Rule 14a-8(i)(10).

JPM Chase's next objection is that the Fund's Proposal has been substantially implemented, citing scattered authority for the proposition that a proposal may be omitted if the company's existing policy would "compare favorably" with what is proposed, *Texaco, Inc.* (28 March 1991), or would achieve the "essential objective" of the proposal. Exchange Act Release No. 40018, § II.E.6 (16 August 1983). JPM Chase Letter at 7-9.

The Company's argument here focuses on the fact that affected executives are required to hold shares *until* they retire or are terminated. That is said to be close enough to accomplish the Proposal's goal that they must hold affected shares for two years *after* they retire. The logic (as explained at p. 9-10) is that executives are likely to hold a significant number of shares until they retire, thus placing a significant percentage of that equity at risk after retirement. In addition, executives are subject to hedging prohibitions while they are employed at the Company (though not afterwards). It is noted as well that when an affected executive retires, he or she may have shares that have not yet vested, thus providing some element of risk and promoting the sort of longer-term thinking advocated by the Fund.

To answer this point, let us begin with a basic point that JPM Chase seeks to obscure: There is no current prohibition on the disposition of equity after a covered executive leaves the firm. It is thus entirely possible under the current regime for an executive to leave the Company on Monday and cash out his or her equity position on Tuesday. That type of stock dumping would not be permitted under the Proposal, and there is a world of difference between the two situations. Indeed, and as Enron shareholders recall all too well, it is not unheard of for senior executives to parachute out of a company just before the stock collapses.

More generally, it defies logic to equate restrictions that exist during one's employment with the lack of comparable restrictions afterwards. Suppose, for example, that a company had a policy prohibiting its CEO from using the corporate jet for personal travel during his tenure as CEO. The existence of such a policy for incumbent executives would not "compare favorably" with the absence of a similar policy for retired executives, to whom such a perk could otherwise be offered. Differently put, a limitation on certain freedoms *during* one's tenure as an executive cannot be equated with a lack of such limitations *after* one's tenure as an executive. JPM Chase cites no authority that, for purposes of Rule 14a-8(i)(10), equates the existence of a pre-retirement policy with the lack of a similar post-retirement policy.

The no-action authorities cited by the Company do not involve anything remotely resembling the present situation. In fact, the Division has routinely rejected claims that proposals advocating a pay-for-superior-performance policy may be omitted as "substantially implemented" just because a company has some kind of performance-based policy on the books. *E.g., The Kroger Co.* (25 February 2008); *ES Corp.* (12 March 2008); *Icel. Energy Inc.* (20 March 2007). Also of relevance is the Division's decision in *Verison Communications, Inc.* (26 February 2007), which rejected the claim that a policy governing post-employment consulting arrangements is substantially the same as a policy on all benefits for senior executive severance agreements, including lump-sum cash payments, gross-ups, stock or option awards and periodic retirement payments. Similarly, in *Wal-Mart Stores, Inc.* (28 March 2008), the Division disagreed with a company's effort to exclude a proposal calling for adoption of an explicit clawback policy, when the company tried to equate to its practice of having retiring executives sign a separation agreement stating that they had adhered to the company's code of ethics.

C. Rule 14a-8(I)(2).

JPM Chase next argues that the Proposal is unlawful because it would cause the Company to violate state law, specifically Del. Gen. Corp. L. § 202(b), which the Company reads as imposing restrictions "with respect to securities issued prior to the adoption of the restriction." JPMorgan Chase Letter at 11-12.

The focus of section 202(b) is fixed firmly on the rear-view mirror and what has happened in the past. Thus, section 202(b) does not affect the board's ability to subject future equity awards to such a condition of the sort proposed here. As a result, JPMorgan Chase could adopt the recommended policy prospectively as to awards made under a new stock option plan or a compensation agreement with its executives.

The Proposal could thus be amended – and the Fund is willing to accept such a change – to apply prospectively to awards made under a new stock option plan or a compensation agreement with its executives. Such an approach would not impinge upon state law limitations or contract rights. Indeed, the Division has taken a similar approach in other cases. *E.g., Citigroup Inc.* (18 February 2003) (allowing a proposal to abolish all stock option programs to be cured by revising the proposal to cover only future compensation agreements).

The Division took this approach last year in *General Electric Co.* (9 January 2008), where GE made essentially the same arguments for exclusion. The proposal there recommended that "the stock ownership and holding requirements as described on page 13 of the GE 2007 proxy material be improved. The improvement is that the holding period is improved from one year to the life of the executive. The executive may earn dividends and bequeath their shares as they choose." GE argued that this proposal could be excluded under Rules 14a-8(I)(2) and (6) because the transfer restriction would violate New York statutory law, as well as cause the company to violate New York contract law by violating the terms of GE's stock option plans. The Division found some basis for that view, but concluded that the defect could be cured "if the proposal was revised to state that it applies only to stock issuable upon exercise of currently unexercised options."

The Proposal could thus be amended – and the Fund is willing to make such a change – to apply prospectively to awards made under a new equity plan and compensation agreements with JPM Chase senior executives under that plan. Such an approach would not impinge upon state law limitations and is in line with the *Citigroup* and *General Electric* authorities cited above.

D. Rule 14a-8(I)(6).

This objection is cumulative of the others and presents nothing new. JPMorgan Chase Letter at 12. In brief, Rule 14a-8(I)(6) allows companies to exclude proposals that the board lacks the power or authority to implement. JPMorgan Chase claims that its board lacks the ability to implement the supposed vague terms discussed in Part A. Similarly, the Company argues that it lacks the power to implement the provision because the Company would violate Delaware law in the process, as discussed in Part C. Because we have answered these before, we rely on those prior sections for an explanation of how, in fact, the recommended Proposal can be implemented.

Conclusion.

For these reasons, JP Morgan Chase has failed to carry its burden of justifying exclusion of this Proposal, and we respectfully ask the Division to advise the Company that its request for no-action relief is denied.

Thank you for your consideration of these points. Please do not hesitate to contact me if there is any further information that we can provide.

Very truly yours,

Cornish F. Hitchcock

Cornish F. Hitchcock

cc: Anthony J. Horan, Esq.
Amy L. Goodman, Esq.
Dan F. Pedrotty, Esq.

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 AFL-CIO Reserve Fund*
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 AFL-CIO Reserve Fund (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.

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

THE PROPOSAL

The Proposal states:

Resolved, the shareholders of JPMorgan Chase & Co. (the "Company") urge the Board of Directors to adopt a policy requiring the Named Executive Officers ("NEOs") to retain 75% of the shares acquired through the Company's compensation plans, excluding tax-deferred retirement plans, for two years from the termination of their employment (through retirement or otherwise), and to report to shareholders regarding the adoption of this policy before the Company's 2010 annual meeting. The policy also should prohibit hedging techniques that offset the risk of losses to executives.

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)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading;
- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal;
- 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)(3) Because the Proposal Is Impermissibly Vague and Indefinite so as to Be Inherently Misleading.

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. For the reasons discussed below, the Proposal is so vague and indefinite as to be misleading and, therefore, is excludable under Rule 14a-8(i)(3).

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 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 the 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) calling for the board of directors to compile a report "concerning the thinking of the Directors concerning representative payees" as "vague and indefinite"); *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").

In the instant case, the Proposal is so vague and indefinite as to be misleading because it fails to define key terms or otherwise provide guidance as to how the proposal is to be implemented such that neither the shareholders nor the Company can determine exactly what measures the Proposal requires. The operative language of the Proposal contains several undefined terms and phrases that are susceptible to multiple differing interpretations, and the Proposal's supporting statement fails to provide guidance with respect to the meaning of these terms and phrases. The phrase "hedging techniques that offset the risk of losses" is undefined. Is the phrase meant to encompass every technique that could potentially offset the risk of losses?

In addition, the Proposal refers to "executives" with respect to the prohibition on the use of hedging techniques without defining who would be considered an "executive" for this purpose. Moreover, the meaning of this term is made even more ambiguous by the fact that the first sentence of the Proposal refers to "Named Executive Officers" retaining 75% of their equity. It is unclear whether the prohibition of hedging techniques would apply to all of the Company's executives – a group of potentially dozens of employees – or just the NEOs who are subject to the 75% stock retention requirement.

Furthermore, the first sentence of the Proposal is itself so vague and ambiguous that it is impossible to ascertain what the Proposal requires. That sentence provides, in part, for a policy "requiring the Named Executive Officers ("NEOs") to retain 75% of the shares acquired through the Company's compensation plans." This provision is vague and ambiguous with respect to whom the policy would apply and also to which shares of stock the policy would apply. In this regard, the Proposal refers to the "Named Executive Officers," which term is left undefined. Presumably, this refers to the group of employees whose compensation is required to be disclosed in the Company's proxy statement. However, the Proposal does not state which NEOs are covered by the policy. Any attempt to comprehend this provision results in at least three reasonable interpretations of "Named Executive Officers":

- **Interpretation 1**: "Named Executive Officers" means only the Company's current NEOs;
- **Interpretation 2**: "Named Executive Officers" means the Company's current NEOs and former NEOs since the adoption of the policy; or
- **Interpretation 3**: "Named Executive Officers" means the Company's current NEOs and former NEOs both before and after the adoption of the policy.

Interpretation 1 would require only the Company's current NEOs at any given time to be subject to the policy. Employees who are no longer NEOs would not be subject to the policy, meaning that the policy would only apply while the individual is considered an NEO and thus, for up to only one year following the individual's termination or retirement. Interpretation 2 would require the Company's current NEOs and also individuals who were NEOs since the adoption of the policy to be subject to the retention requirement. Employees who are no longer NEOs would continue to be subject to the policy, but the policy would apply only to those individuals who were NEOs since the adoption of the policy. Interpretation 3, similar to Interpretation 2, would require both the Company's current and former NEOs to be subject to the policy, but would include individuals who were NEOs prior to the adoption of the policy. Under Interpretation 3, the policy would apply retroactively. Moreover, apart from the ambiguity of which NEOs are covered, it is also unclear the date for when the current NEOs covered by the policy would be determined. Would the NEOs identified in the last proxy statement be considered the current NEOs or would this determination be made throughout the year on an ongoing basis?

The Staff on several occasions has permitted the exclusion of a shareholder proposal as vague and indefinite because it was unclear to whom the proposal would apply. The Staff permitted the exclusion of a shareholder proposal requesting "that the officers and directors responsible for . . . [the reduced stock dividend] . . . have their pay reduced" as vague and indefinite because the identity of the affected executives was susceptible to multiple interpretations as the proponent failed to provide any guidance as to how the proposal was to be implemented. *See International Business Machines Corp.* (avail. Feb. 2, 2005). The Staff also has permitted the exclusion of a shareholder proposal requesting that future executive salaries be limited as vague as indefinite because, among other reasons, it was unclear who would be considered an "executive" for purposes of the proposal. *See Otter Tail Corp.* (avail. Jan. 12, 2004).

There also are at least three reasonable interpretations of "shares acquired" in the first sentence of the Proposal:

- **Interpretation 1**: "retain 75% of the shares acquired [*before and after* the date of the adoption of this policy] through the Company's compensation plans";

- **Interpretation 2**: "retain 75% of the shares acquired [*after* the date of the adoption of this policy] through the Company's compensation plans"; or

- **Interpretation 3**: "retain 75% of the shares acquired [as of the time they terminate employment or retire] through the Company's compensation plans."

Interpretation 1 would require that employees covered by the policy retain 75% of all shares acquired, regardless of when the shares were acquired. Under this interpretation, the policy would apply retroactively to shares acquired since the individual joined the Company. Interpretation 2 would require that employees covered by the policy retain 75% of only those shares acquired since the date of the policy's adoption. Interpretation 3 would require that employees covered by the policy retain 75% of all shares owned at the time they terminate employment or retire. These interpretations could potentially result in a significant disparity in the amount of shares covered by the policy envisioned by the shareholders voting on the Proposal and the amount of shares covered by the policy as implemented by the Company. Because these various interpretations result in different groups of individuals being subject to the policy for different periods of time with respect to different amounts of shares, neither the shareholders nor the Company can determine precisely what the Proposal requires, and the Company's implementation of the Proposal could be different from what the shareholders voting on the Proposal envisioned. As the Staff has stated on numerous occasions, the Company's shareholders cannot be expected to make an informed decision on the merits of the Proposal without knowing what they are voting on.

Finally, the second sentence of the Proposal is itself so vague and ambiguous that it is impossible to ascertain what the Proposal requires. That sentence provides, in part, for a policy that would "prohibit hedging techniques that offset the risk of losses to executives." In this regard, the Proposal does not refer to which shares the prohibition on hedging techniques would apply. Any attempt to comprehend this provision results in at least three reasonable interpretations:

- **Interpretation 1**: "prohibit hedging techniques that offset the risk of losses to executives [with respect to shares acquired through any means]";

- **Interpretation 2**: "prohibit hedging techniques that offset the risk of losses to executives [with respect to shares acquired through the Company's compensation plans]"; or

- **Interpretation 3**: "prohibit hedging techniques that offset the risk of losses to executives [with respect to shares acquired through the Company's compensation plans and which are subject to the stock retention requirement]."

Interpretation 1 would prohibit hedging techniques against shares the executive acquired by any means, including in the open market. Interpretation 2 would prohibit hedging techniques against shares the executive acquired solely through the Company's compensation plans. Interpretation 3 would prohibit hedging techniques against only those shares that are subject to the Proposal's 75% share retention requirement. These interpretations could potentially result in a significant disparity between the amount of shares covered by the prohibition envisioned by the shareholders voting on the Proposal and the amount of shares covered by the prohibition as implemented by the Company. As a result, neither the shareholders nor the Company can determine precisely what the Proposal requires.

The Staff has permitted the exclusion of several proposals related to executive compensation under Rule 14a-8(i)(3) as vague and indefinite because they failed to define key terms or provide guidance as to how the proposal was to be implemented. *See Verizon Communications Inc.* (avail. Feb. 21, 2008) (concurring with the exclusion of a proposal seeking the adoption of a "new policy for the compensation of the senior executives . . . which would incorporate the [proposal's] criteria for future awards of short and long term incentive compensation" because the proposal failed to define "Industry Peer Group" and "relevant time period"); *Prudential Financial, Inc.* (avail. Feb. 16, 2007) (concurring with the exclusion of a proposal, which was susceptible to a different interpretation if read literally than if read in conjunction with the supporting statement, as vague and indefinite); *International Business Machines Corp.* (avail. Feb. 2, 2005) (discussed above); *Otter Tail Corp.* (avail. Jan. 12, 2004) (discussed above); *Woodward Governor Co.* (avail. Nov. 26, 2003) (concurring with the exclusion of a proposal seeking to implement "a policy for compensation of executives . . . based on stock growth" because the proposal failed to specify whether "compensation" meant all executive compensation or merely stock-based compensation); *Eastman Kodak Co.* (avail. Mar. 3, 2003) (concurring with the exclusion of a proposal seeking to cap executive salaries at $1 million, including "bonus, perks and stock options" because the proposal failed to define various terms, including "perks," and did not indicate how stock options would be valued); *General Electric Co.* (avail. Feb. 5, 2003) (concurring with the exclusion of a proposal seeking "shareholder approval of all compensation for Senior Executives and Board members not to exceed 25 times the average wage of hourly working employees" because the proposal failed to define the terms "compensation" and "average wage" or otherwise provide guidance as to how the proposal would be implemented); *General Electric Co.* (avail. Jan. 23, 2003) (concurring with the exclusion of a proposal seeking "an individual cap on salaries and benefits of one million dollars" because the proposal failed to define the term "benefits").

In addition, the Staff frequently has concurred with the exclusion of proposals similarly susceptible to multiple interpretations as vague and indefinite because the 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). Recently, in *SunTrust Banks, Inc.* (avail. Dec. 31, 2008), the proposal requested that the board implement a series of executive compensation reforms in the event that the company decides to participate in the TARP Program under the Economic Emergency

Stabilization Act. The Staff permitted the exclusion of the proposal under Rule 14a-8(i)(3) as vague and indefinite because based upon subsequent correspondence, it appeared that the proponent intended the reforms to remain in place only for the duration of the company's participation in the TARP Program, but the proposal, on its face, "appears to impose no limitation on the duration of the specified reforms." Also, in *Ford Motor Co.* (avail. Feb. 27, 2008), the proposal requested a report on efforts to increase fuel economy "such that no Ford vehicles will indicate there is a need for any country in the world to buy oil from the Middle East to fuel the new Ford vehicles." Recognizing that the proposal was susceptible to multiple interpretations, ranging from international advocacy for a boycott of oil from the Middle East to recommendations for the design of indicator lights in Ford vehicles, the Staff concurred with the exclusion of the proposal as vague and indefinite. *See also Philadelphia Electric Co.* (avail. Jul. 30, 1992) (noting that the proposal, which was susceptible to multiple interpretations due to ambiguous syntax and grammar, was "so inherently vague and indefinite that neither the shareholders . . . nor the Company . . . would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"). In the instant case, the Proposal similarly is susceptible to multiple alternative interpretations, thus rendering it impossible for either the shareholders or the Company to determine exactly what the proposal requires.

Consistent with the Staff precedent, the Company's shareholders cannot be expected to make an informed decision on the merits of the Proposal if they are unable "to determine with any reasonable certainty exactly what actions or measures the proposal requires." SLB 14B; *see also Verizon Communications Inc.* (avail. Feb. 21, 2008) (excluding an executive compensation-related proposal under Rule 14a-8(i)(3) where the company argued that its shareholders would not "be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires"); *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"). Here, the Proposal contains several undefined key terms and is subject to multiple alternative interpretations. Accordingly, neither the Company's shareholders nor its board would be able to determine with any certainty what actions the Company would be required to take in order to comply with the Proposal. Therefore, we believe that as a result of the vague and indefinite nature of the Proposal, the Proposal is inherently misleading and, thus, excludable in its entirety under Rule 14a-8(i)(3).

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

In the alternative, we believe the Company has substantially implemented the Proposal, and the Proposal is excludable pursuant to Rule 14a-8(i)(10). The Proposal calls for the Company to adopt a policy requiring the NEOs to retain 75% of the shares acquired through the Company's compensation plans for two years from the termination of their employment. In this regard, the Company already has in place policies and practices that compare favorably with the Proposal's essential objectives.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has substantially implemented the proposal. Although the original interpretation of

Rule 14a-8(i)(10) permitted exclusion of proposals only where the action requested by the proposal 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 (Aug. 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 <u>compare favorably</u>" 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 <u>essential objective</u> 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); *see also Honeywell International Inc.* (avail. Jan. 31, 2007); *Sun Microsystems, Inc.* (avail. Sept. 12, 2006); *General Motors Corp.* (avail. Apr. 5, 2006); *Tiffany & Co.* (avail. Mar. 14, 2006); *The Boeing Co.* (avail. Mar. 9, 2005); *The Home Depot, Inc.* (avail. Mar. 7, 2005) (each allowing exclusion under Rule 14a-8(i)(10) of a shareholder proposal requesting that any future poison pill be put to a shareholder vote "as soon as possible" or "within 4-months" where the company had a poison pill policy in place that required a shareholder vote on any future poison pill within one year); *Schering-Plough Corp.* (avail. Feb. 2, 2006); *Northrop Grumman Corp.* (avail. Mar. 22, 2005); *Southwest Airlines Co.* (avail. Feb. 10, 2005) (each permitting exclusion of a shareholder proposal seeking declassification of the company's board of directors "in the most expeditious manner possible" where the company planned to phase in declassification of the board of directors such that the directors were elected to one-year terms as their current terms expired). Thus, in determining whether a proposal has been substantially implemented under Rule 14a-8(i)(10), the Staff has evaluated whether the relevant policies, practices and procedures of the company "compare favorably" with what would be achieved under the proposal.

Applying this framework to the Proposal, the Company has substantially implemented the Proposal. The Proposal requests the Company's Board "to adopt a policy requiring the Named Executive Officers ("NEOs") to retain 75% of the shares acquired through the Company's compensation plans . . . for two years from the termination of their employment . . . [and] should prohibit hedging techniques that offset the risk of losses to executives." According to the Proposal's supporting statement, requiring executives to hold a significant percentage of equity for two years after termination of employment "would tie their economic interests to the long-term success of the Company, and motivate them to focus on the Company's long-term business objectives and better align their interests with that of shareholders," and without this requirement, the executives may "unduly focus their decisions and actions towards generating short-term financial results at the expense of the Company's long-term success." Thus, the Proposal's "essential objective" is for the Company to implement a policy that aligns the long-term interests of NEOs with that of shareholders by (1) requiring the NEOs to hold a significant percentage of equity until retirement, (2) placing a significant percentage of their equity at risk for a period after retirement, and (3) prohibiting the use of hedging techniques to offset the risk of losses. The Company's policies and practices already require the NEOs to hold a significant percentage of equity until retirement, place a significant portion of their equity at risk past retirement and prohibit hedging, and thus "compare favorably" with the essential objective of the Proposal.

First, as disclosed on page 13 of its 2008 Proxy Statement in the Compensation Discussion and Analysis ("CD&A"), attached hereto as Exhibit B, the Company has in place a stock retention policy that requires covered employees to retain 75% of shares received from equity-based awards. The 75% retention requirement applies to shares of the Company received from all equity-based awards (including, but not limited to, stock options, stock appreciation rights, and restricted stock units) pursuant to all of the Company's compensation plans, including option exercises, after deduction for option exercise costs and taxes. The current policy uses the same 75% requirement requested by the Proposal. Moreover, the Company's current policy is significantly broader than the policy requested by the Proposal as it covers all members of the Company's Executive Committee, a committee of 48 senior executives (including the NEOs).

The Company's current policy excludes from the retention requirement shares received from restricted stock units granted in excess of 50% of an executive's total incentive compensation. As disclosed on page 14 of its 2008 Proxy Statement in the CD&A, only two of the Company's NEOs received grants of restricted stock units in excess of 50% of their total incentive compensation awarded in 2008. *See* Exhibit B. As discussed above, Commission statements and Staff precedent with respect to Rule 14a-8(i)(10) confirm that the standard for exclusion is that a shareholder proposal be substantially implemented, not fully effected. In other words, Rule 14a-8(i)(10) permits exclusion of a shareholder proposal when a company has implemented the proposal's essential objective, even when the manner by which the company implements the proposal does not correspond precisely to the actions sought by the shareholder proponent. *See* 1983 Release; *see also 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). In the instant case, the Company's current policy compares favorably with the Proposal's essential objective that the NEOs hold a significant percentage of equity until retirement.

Second, in terms of the essential objective of the Proposal, the vesting provisions of the Company's equity awards render a significant portion of the equity compensation of the NEOs at risk for a period after retirement. As disclosed on page 10 of its 2008 Proxy Statement in the CD&A, the Company's current practice is to grant annual stock awards to employees in the form of restricted stock units that vest 50% two years after the date of grant and the remaining 50% three years after the date of grant. *See* Exhibit B. Pursuant to the terms of the form of restricted stock unit award agreement filed as an exhibit to the Company's fiscal 2007 Annual Report filed on Form 10-K, attached hereto as Exhibit C, upon the employee's termination of employment by the Company without cause or the employee's retirement or disability, these awards continue to vest according to the same three-year schedule. Thus, the awards remain at risk for potentially up to three years past retirement depending on when the awards were granted. In addition, as disclosed on page 16 of its 2008 Proxy Statement in the CD&A, the Company makes periodic grants of equity awards in the form of stock-settled stock appreciation rights. *See* Exhibit B. With respect to the awards granted in 2008 to each of the NEOs, no shares may be disposed of prior to five years from the grant date, and thus such shares remain at risk for potentially up to five years past retirement depending on when the awards were granted. The vesting provisions of the Company's equity awards thus render a significant portion of equity compensation at risk past retirement.

Finally, the Proposal requests that the Company "prohibit hedging techniques that offset the risk of losses to executives." However, the Company already has in place policies that prohibit the use of hedging techniques. Members of the Executive Committee, including the NEOs, are prohibited from short selling, entering into derivative contracts, or otherwise hedging their positions with respect to transactions in the Company's stock. Moreover, as disclosed on page 14 of the Company's 2007 Proxy Statement, attached hereto as Exhibit D, "[e]xecutives and directors are not permitted to hedge the economic risk of their ownership" of Company stock.

With respect to the Proposal's request that the Company report to shareholders regarding the adoption of the stock retention policy before the Company's 2010 annual meeting, the Company has already disclosed its stock retention policy to shareholders on page 13 of its 2008 Proxy Statement in the CD&A. *See* Exhibit B.

The Staff has concurred, on numerous occasions, with the exclusion of shareholder proposals related to executive compensation under Rule 14a-8(i)(10) because the companies' policies and practices compared favorably with the practices requested in the proposals. In *Cisco Systems Inc. (Moravan)* (avail. Aug. 11, 2003), the proposal requested that the board "implement a performance-based senior executive officers compensation plan that aligns executive pay with shareholders long-term interests, including frugal use of stock options." Recognizing that the company already had in place an overall performance-based compensation structure, and senior executives received stock option grants in the previous fiscal year that were relatively modest from the perspectives of shareholder dilution and internal pay equity, the Staff concurred with the exclusion of the proposal as substantially implemented. *See also Allegheny Energy, Inc. (Premoshis)* (avail. Feb. 20, 2008) (concurring with the exclusion of a proposal as substantially implemented where the proposal requested that the board adopt a policy whereby "a significant portion of future stock option grants to senior executives shall be performance-based"); *Autonation Inc.* (avail. Feb. 16, 2005) (concurring with the exclusion of a proposal as substantially implemented where the proposal requested that the board "seek shareholder approval for future golden parachutes for senior executives"); *Delta Airlines Inc.* (avail. Jan. 26, 2004) (concurring with the exclusion of a proposal as substantially implemented where the proposal requested that the board "adopt a policy of excluding net pension income in calculating net income for purposes of determining incentive compensation awards for senior executives"); *Raytheon Co.* (avail. Feb. 26, 2001) (concurring with the exclusion of a proposal as substantially implemented where the proposal requested that the board incorporate measures of human capital in establishing and administering standards for use in awarding performance-based executive compensation).

In the instant case, the Company's current policies and practices regarding the retention of shares acquired from equity awards compare favorably to the practices requested in the proposal. *See Texaco, Inc.* (avail. Mar. 28, 1991) (discussed above). As stated above, the Proposal's "essential objective" is for the Company to implement a policy that aligns the long-term interests of NEOs with that of shareholders by (1) requiring the NEOs to hold a significant percentage of equity until retirement, (2) placing a significant percentage of their equity at risk for a period after retirement, and (3) prohibiting the use of hedging techniques to offset the risk of losses. The Company's current policies and practices compare favorably to each part of the Proposal's essential objective. The Company already has in place a stock retention policy with a 75% retention requirement that requires NEOs to hold a significant percentage of equity until retirement. The vesting provisions of the Company's equity awards already render a significant percentage of the equity compensation of NEOs at risk for a period past retirement. Finally, the Company's current policies already prohibit the use of hedging techniques to offset the risk of losses. Accordingly, the Company has satisfactorily addressed all three parts of the essential objective of the Proposal as its practices compare favorably with the practices requested in the Proposal. As a result, the Company has substantially implemented the Proposal, and therefore the Proposal is excludable under Rule 14a-8(i)(10).

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

Rule 14a-8(i)(2) permits a company to exclude a shareholder proposal if implementation of the proposal would 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. For the reasons set forth in the legal opinion regarding Delaware law from Richards, Layton & Finger, P.A., attached hereto as Exhibit E (the "Delaware Law Opinion"), the Company believes that the Proposal is excludable under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate the Delaware General Corporation Law (the "DGCL").

We note that, although the Proposal "urges" the Company to adopt a stock retention policy, even a precatory proposal is excludable if the action called for by the proposal would violate state, federal or foreign law. *See, e.g., Gencorp Inc.* (avail. Dec. 20, 2004) (concurring that a proposal requesting amendment of the company's governing instruments to require implementation of all shareholder proposals receiving a majority vote is excludable under Rule 14a-8(i)(2)). *See also Badger Paper Mills, Inc.* (avail. Mar. 15, 2000); *Pennzoil Corporation* (avail. Mar. 22, 1993).

The Proposal requests that the Company adopt a policy requiring the NEOs to retain 75% of the shares acquired through the Company's compensation plans for two years following the termination of their employment. It is assumed, for purposes of Section III, that this restriction would apply to shares of stock held by the NEOs at the time of the adoption of the Proposal. Such shares are currently not subject to the restriction on transfer contemplated by the Proposal.

As discussed in the Delaware Law Opinion, the Proposal violates the DGCL because it requests the Company to adopt a policy that would, by unilateral action of the Board of Directors, impose a new transfer restriction on previously issued and currently outstanding shares of common stock held by the NEOs. Section 202(b) of the DGCL provides that no "restriction on the transfer . . . of securities of a corporation . . . shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction." Yet, the Proposal seeks to impose a restriction on previously issued securities without the consent of the security holders. Thus, as supported by the Delaware Law Opinion, implementation of the Proposal would violate state law because it would cause the Company to impose a new transfer restriction on the shares held by the NEOs without their consent. Accordingly, the Proposal is excludable pursuant to Rule 14a-8(i)(2).

IV. 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 Company lacks the power and authority to implement the Proposal and the Proposal can be excluded under Rule 14a-8(i)(6) both because: (a) the Proposal "is so vague and indefinite that [the Company] would be unable to determine what action should be taken," *see International Business Machines Corp.* (avail. Jan. 14, 1992) (applying predecessor Rule 14a-8(c)(6)), and (b) the Proposal seeks action contrary to state law, *see, e.g., Schering-Plough Corp.* (avail. Mar. 27, 2008); *Bank of America Corp.* (avail. Feb. 26, 2008); *PG&E Corp.* (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6)); *The Boeing Co.* (avail. Feb. 19, 2008).

As discussed in Section I above, the Proposal is vague and indefinite because it contains several undefined key terms and is subject to multiple alternative interpretations. Accordingly, for substantially the same reasons that the Proposal may be excluded under Rule 14a-8(i)(3) as impermissibly vague and indefinite, it also is excludable under Rule 14a-8(i)(6) as beyond the Company's power to implement.

As discussed in Section III above, the Proposal's implementation would violate the DGCL. Specifically, Delaware law provides that new transfer restrictions may only be validly imposed on previously-issued securities with the consent of the holders of those securities. Accordingly, for substantially the same reasons that the Proposal may be excluded under Rule 14a-8(i)(2) as violating state law, it is also excludable under Rule 14a-8(i)(6) as beyond the Company's power to implement.

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,

Horan

Anthony J. Horan

AJB/akb
Enclosures

cc: Amy L. Goodman, Gibson, Dunn & Crutcher LLP
Daniel F. Pedrotty, AFL-CIO

100580012_14.DOC

EXHIBIT A

Facsimile Transmittal

RECEIVED BY THE
OFFICE OF THE SECRETARY

NOV 24 2008

Date: November 24, 2008

To: Anthony Horan, Secretary
JPMorgan Chase & Co.

Fax: 212-270-4240

From: Daniel Pedrotty

Pages: 3 (including cover page)

Attached is our shareholder proposal for the 2009 annual meeting.

AFL-CIO Office of Investment
815 16th Street, NW
Washington, DC 20006
Phone: (202) 637-3900
Fax: (202) 508-6992

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000
www.aflcio.org

November 24, 2008

Sent by FAX and UPS Next Day Air

Mr. Anthony J. Horan, Secretary
JPMorgan Chase & Co.
270 Park Avenue
New York, New York 10017-2070

Dear Mr. Horan:

On behalf of the AFL-CIO Reserve Fund (the "Fund"), I write to give notice that pursuant to the 2008 proxy statement of JPMorgan Chase & Co. (the "Company"), the Fund intends to present the attached proposal (the "Proposal") at the 2009 annual meeting of shareholders (the "Annual Meeting"). The Fund requests that the Company include the Proposal in the Company's proxy statement for the Annual Meeting. The Fund is the beneficial owner of 2,515 shares of voting common stock (the "Shares") of the Company and has held the Shares for over one year. In addition, the Fund intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Fund or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Fund has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to me at (202) 637-5379.

Sincerely,

Daniel F. Pedrotty
Director
Office of Investment

DFP/ms
opeiu #2, afl-cio

Attachment

Resolved, the shareholders of JPMorgan Chase & Co. (the "Company") urge the Board of Directors to adopt a policy requiring the Named Executive Officers ("NEOs") to retain 75% of the shares acquired through the Company's compensation plans, excluding tax-deferred retirement plans, for two years from the termination of their employment (through retirement or otherwise), and to report to shareholders regarding the adoption of this policy before the Company's 2010 annual meeting. The policy also should prohibit hedging techniques that offset the risk of losses to executives.

SUPPORTING STATEMENT

Equity-based compensation is an important component of the senior executive compensation program at our Company. According to the Company's 2008 proxy statement, equity-based awards, including stock and stock option awards, accounted for between 43% and 75% of the total compensation for the NEOs during fiscal 2007. Of the $94.9 million in compensation earned by the five NEOs, $54.5 million, or 57%, came from stock awards and stock options.

Requiring senior executives to hold a significant portion of the shares acquired through the Company's compensation plans for at least two years after their termination of employment would tie their economic interests to the long-term success of the Company, and motivate them to focus on the Company's long-term business objectives and better align their interests with that of shareholders. The absence of such a requirement may enable these executives to unduly focus their decisions and actions towards generating short-term financial results at the expense of the Company's long-term success. The current financial crisis has made it imperative for companies to reconsider and reshape executive compensation policies and practices to discourage excessive risk-taking and promote long-term, sustainable value creation.

Several well-regarded business organizations support "hold past retirement" policies. The Aspen Principles, endorsed by the U.S. Chamber of Commerce, Business Roundtable and the Council of Institutional Investors, recommend that "senior executives hold a significant portion of their equity-based compensation for a period beyond their tenure."

Further, a 2002 report by The Conference Board endorsed a holding requirement, stating that the long-term focus promoted thereby "may help prevent companies from artificially propping up stock prices over the short-term to cash out options and making other potentially negative short-term decisions."

Our Company requires senior executives to hold at least 75% of the equity awarded to them during their employment. We believe that the NEOs should be required to hold equity awards for at least two years after termination to ensure they share in both the upside and downside risk of their actions while at the Company.

We urge shareholders to vote for this proposal.

RECEIVED BY THE
OFFICE OF THE SECRETARY

NOV 26 2008

One West Monroe
Chicago, Illinois 60603-5301
Fax 312/267-8775

AMALGATRUST
A division of Amalgamated Bank of Chicago

November 25, 2008

Mr. Anthony J. Horan, Secretary
JPMorgan Chase & Co.
270 Park Avenue
New York, New York 10017-2070

Re: JPMorgan Chase & Co.

Dear Sir/Madam:

AmalgaTrust, a division of Amalgamated Bank of Chicago, is the record owner of 2,515 shares of common stock (the "Shares") of JPMorgan Chase & Co., beneficially owned by the AFL-CIO Reserve Fund. The shares are held by AmalgaTrust at the Depository Trust Company in our participant account . The AFL-CIO Reserve Fund has held the Shares continuously for over one year and continues to hold the Shares as of the date set forth above.

If you have any questions concerning this matter, please do not hesitate to contact me at (312) 822-3220.

Sincerely,

Lawrence M. Kaplan
Vice President

cc: Daniel F. Pedrotty
Director, Office of Investment

JPMORGAN CHASE & CO.

Anthony J. Horan
Corporate Secretary
Office of the Secretary

November 25, 2008

Mr. Daniel F. Pedrotty, Director
Office of Investment
AFL-CIO
815 Sixteenth Street, N.W.
Washington, DC 20006

Dear Mr. Pedrotty:

This will acknowledge receipt of the letter dated November 24, 2008, advising JPMorgan Chase & Co. of the intention of the AFL-CIO Reserve Fund (Fund), to submit a proposal to be voted upon at our 2009 Annual Meeting. The proposal requests adoption of a policy requiring the Named Executive Officers to retain 75% of shares acquired through compensation plans for two years from the termination of their employment.

We also acknowledge receipt of the letter dated November 25, 2008, from AmalgaTrust, verifying that the Fund is the beneficial owner 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.

EXHIBIT B

Compensation Discussion and Analysis

Summary

The business results discussed in the Management's Discussion and Analysis (MD&A) section of our 2007 Annual Report, along with the discussion of our strategies and challenges, are a starting point for how the Compensation & Management Development Committee (the Compensation Committee) ultimately decided to compensate our CEO, CFO and other Named Executive Officers. Each of the Named Executive Officers is a member of the Operating Committee, the Firm's most senior management committee. Members of our Operating Committee are the executive officers of the Firm and include Mr. Dimon, the CEOs of our six major businesses and the heads of principal functional areas.

As evidenced by the MD&A, there are many factors that we weigh in determining compensation, especially in a firm and industry as complex as ours. The benefits of our business mix and strategies, including attention to the balance sheet, capital management and risk management, became more apparent over the course of the year. The diversified nature of our business across multiple geographies and the six core operating units helped us weather a difficult operating environment and allowed us to produce balanced, positive results relative to our peers.

The Compensation Committee and Board considered a number of qualitative and quantitative factors in determining 2007 compensation, including quality of earnings, progress on key growth initiatives, improvements in systems and technology, and market leadership positions.

Summarized below are some of the key quantitative factors considered:

- The Firm reported a second consecutive year of record earnings and revenue.
- Income from continuing operations increased by $1.7 billion (13%) to $15.4 billion.
- Total net revenue grew $9.4 billion (15%) to $71.4 billion.
- Tier 1 capital ratio remained strong at 8.4%.
- Results were achieved even as credit reserves were increased by $2.3 billion to more than $10.1 billion.
- Total shareholder return (TSR) over the last 3 years was 23.6% compared to an average 16.4% for the core competitors listed in the table on page 12. However, more recent TSR comparisons indicate better absolute and relative performance against the same group, with TSR over the last 2 years of 16.9% versus 2.3% and a decline of 6.9% versus a 20.8% decline for these competitors in 2007.

Our primary compensation element is an annual incentive award that is delivered in a mix of cash and equity. The Compensation Committee believes that because the amount of total incentive compensation awarded is based on several integrated performance criteria, a significant set of performance requirements is already embedded in the entire incentive amount. Once the incentive amount is decided, what remains is determining the mix between cash and equity awards. Equity awards are granted in lieu of cash to tie the value of incentive compensation to the Firm's long-term performance and stock price and to add the risk of forfeiture if the executive does not remain with the company.

Also, the Compensation Committee looks for sustained performance at the highest levels and across multiple factors. In light of the performance results achieved in 2007, the Compensation Committee believes that the overall level of compensation was appropriate and well aligned with both the short- and longer-term performance of the Firm.

Compensation program

Shareholders should expect the Firm to use its compensation resources wisely and resourcefully to build long-term value creation. We believe that our compensation philosophy and program approach are consistent with this expectation. The success of our compensation program should be measured by the long-term performance of JPMorgan Chase since the program is intended to reinforce strong and sustainable financial performance, operational discipline and shareholder value creation.

Elements of executive compensation

The key components of our executive compensation program operate in concert to deliver the appropriate level of total compensation. We believe that the mix of cash and equity compensation and the balance of current and long-term incentives help achieve the Firm's objectives. Current compensation includes base salary and the cash portion of annual incentive compensation. Long-term compensation includes the equity portion of annual incentive compensation and any periodic equity awards. The Firm minimizes the use of perquisites and generally does not provide dues for private clubs, car allowances, financial planning, tax gross-ups and similar executive perquisites. The CEO is required to use Firm aircraft and automobiles whenever feasible for business and personal travel and the Firm augments other security measures for the CEO. A list of the compensation and benefits elements as they relate to senior executives of the Firm is found in the following table.

Compensation element	*Description*	*Other features*
Base salary	On average less than 5% of total compensation for members of the Operating Committee. Provides a measure of certainty and predictability to meet certain living and other financial commitments.	Reviewed annually and subject to increase if, among other reasons, the executive acquires material additional responsibilities, or the market changes substantially.
Annual incentive compensation	Performance based incentive which can vary significantly from year to year. The cash portion is paid and the equity portion is awarded in January following the performance year. The equity portion is awarded in the form of RSUs determined by a formula representing a portion of the entire incentive award – for 2007, RSUs for the Operating Committee represented at least 50% of their incentive award.	50% of the RSU portion of the award vests on the second anniversary of the grant and 50% vests on the third anniversary of the grant. Shares received upon vesting are subject to the 75% retention requirement described at page 13.
Periodic equity awards	Periodically the Firm grants special equity awards to select senior officers to reward and encourage leadership, including awards in 2007 made in the form of stock appreciation rights to be settled in shares only.	Become exercisable ratably on each of the first five anniversaries of grant and must be held for at least 5 years after the grant. Shares received upon exercise are subject to the 75% retention requirement described at page 13.
Deferred compensation	Senior executives can voluntarily defer up to the lesser of 90% of their annual cash incentive or $1,000,000.	Beginning in 2005 a lifetime $10,000,000 cap on future cash deferrals was instituted. Deferred amounts are credited to various unfunded hypothetical investment options, generally index funds, at the executive's election.
Pension and retirement	Firm-wide qualified cash balance pension plan based on first $225,000 of base salary only (in 2007). Non-qualified excess pension plan based on base salary in excess of $225,000 up to $1 million. Voluntary 401(k) plan.	Incentive awards not eligible for pension credits. Officers with a base salary and cash incentives equal to or greater than $250,000, including all Operating Committee members, receive no Firm matching contribution in the 401(k) plan. Paid in lump sum or annuity following retirement.
Health and Welfare benefits	Firm-wide benefits such as life insurance, medical and dental coverage, and disability insurance.	No special programs for senior executives. In medical and dental plans, the higher the employee's compensation, the higher the employee's portion of the premium.
Severance plan	Firm-wide severance pay plan providing up to 65 weeks of base salary, based on years of service. Benefits paid in periodic installments following termination of employment, contingent on release of claims and restrictive covenants.	Continued eligibility for certain welfare plan benefits during severance pay period.

Philosophy and approach

Our long-term success as a premier financial services firm depends in large measure on the talents of our employees. Our compensation system plays a significant role in our ability to attract, retain and motivate the highest quality workforce. The principal underpinnings of that system are an acute focus on performance, shareholder alignment, a sensitivity to the relevant market place, and a long-term orientation.

Performance – For senior level employees, a significant portion of compensation should be, and is, variable, and the Firm seeks real differentiation in compensation among our most senior employees based on their accomplishments.

As a general matter, in assessing performance, we consider:

- Performance of the individual employee, the relevant line of business, and the Firm as a whole.
- Performance that is based on measurable and sustained financial results through the business cycle.
- Performance that is both relative and absolute, in that each year's performance is compared not just to our own prior performance or achievement of current goals, but also to appropriately chosen comparison companies that compete in similar markets and provide similar financial products and services. Those comparison companies are disclosed below under the discussion of our relevant market place.

The performance criteria we use include a robust set of quantitative and qualitative factors focused on financial performance, management effectiveness, growth, people development and risk/control management. While specific factors will differ from business to business and function to function, among the most important factors that commonly apply are:

Quantitative criteria

- Operating earnings
- Credit and risk management
- Revenue growth
- Expense management
- Contribution across business lines
- Return on capital
- Investing for growth – business expansion and technology
- Improving client satisfaction
- Executing other major projects
- Improving operational efficiency
- Capital and liquidity management

Qualitative criteria

- Quality of earnings
- Establishing, refining and executing long-term strategic plans
- Achieving and maintaining market leadership positions in key businesses
- Attracting, developing and retaining highly effective and diverse leaders
- Executing acquisition integration tasks
- Building an inclusive culture
- Thinking beyond your own business
- Maintaining compliance and controls
- Protecting the integrity and reputation of the Firm
- Supporting the Firm's values
- Supporting and strengthening the communities we serve worldwide

The Compensation Committee considers these factors in total. While our approach is disciplined, it is not formulaic. We rely on our business judgment to determine the most appropriate compensation to recognize the contributions and potential of our leaders. In view of the wide variety and complexity of factors considered in connection with its evaluation of the Firm, business and individual executive performance, the Compensation Committee does not find it useful, and does not attempt, to rank or otherwise assign relative weight to these factors. Executive performance must be sustained at the highest levels over multiple time periods, and superior performance must be achieved across multiple factors to be considered outstanding. In considering the factors described above, individual members of the Compensation Committee and the Board of Directors may have given different weight to different factors.

Shareholder-alignment – We believe that an ownership stake in the Firm best aligns our employees' interests with those of our shareholders. Our compensation programs are designed to annually deliver a meaningful portion of total compensation in equity to employees who can have the greatest impact on the bottom line and to increase the significance to our most senior employees of the equity portion of their compensation to strengthen their alignment with shareholders. JPMorgan Chase pays a larger portion of our executive compensation in equity-based long-term incentives when compared to many in our comparison group companies. Employees whose incentive compensation is $20,000 receive 10% in the form of RSUs. The percentage awarded as RSUs increases as compensation increases. That enhanced alignment to shareholder interests is deliberate and focuses executive activities and decisions on those areas that increase shareholder value. We further believe that competitive, annual equity awards subject to multi-year vesting and termination/forfeiture provisions effectively emphasize the long-term view of our business and bolster the retention of our top talent.

Relevant market place – We operate in a very competitive market for talent. We use comparison groups, or benchmarking, to understand market practices and trends, to evaluate the competitiveness of our programs and to assess the efficiency of these programs. Each of our lines of business operates under our overall compensation framework, but uses compensation programs appropriate to its competitive environment. Given the diversity of our businesses, our global operations and the complexity of the products and services we provide, our comparison group is also diverse, global and complex. As a result, the Compensation Committee reviews actual compensation levels, generally from public data, for companies that either directly compete with us for business and/or talent or are global organizations with similar scope, size or other characteristics to JPMorgan Chase. The Compensation Committee did not engage the services of a compensation consultant in 2007. Comparative compensation data was provided to the Compensation Committee by the Executive Compensation unit of Corporate Human Resources.

Accordingly, our businesses generally benchmark against direct business competitors, while functional areas benchmark against a blend of financial services and large, globally integrated businesses. We view benchmarking as important for an understanding of the market, but we use market factors to inform, not override, our focus on pay for performance. Each element of executive compensation is combined for comparison purposes using a total compensation approach, but the Compensation Committee does not attempt to mirror any particular company's approach to delivering compensation. Assessments are then made between comparison company compensation and JPMorgan Chase's total compensation with an additional assessment of our mix of compensation between base salary, annual cash incentives and long-term incentives (annual and periodic grants). Because we view our executive officers as highly talented executives capable of rotating among the leadership positions of our businesses and key functions, we also place importance on the internal pay relationships among members of our Operating Committee.

The core comparison companies are:

Company	*CEO, CFO and Functional Staff*	*Investment Bank*	*Asset Management*	*Retail Financial Services*	*Card Services*	*Commercial Banking*	*Treasury & Securities Services*
American Express	✓				✓		
Bank of America	✓	✓	✓	✓	✓	✓	✓
Citi	✓	✓	✓	✓	✓	✓	✓
Goldman Sachs	✓	✓	✓				
Lehman Brothers	✓	✓	✓				
Merrill Lynch	✓	✓	✓				
Morgan Stanley	✓	✓	✓				
Wachovia	✓			✓		✓	✓
Wells Fargo	✓			✓	✓	✓	

Additional comparison companies are:

CEO, CFO and Functional Staff: Bear Stearns, Credit Suisse, Deutsche Bank and UBS. For functional heads we also review relevant positions at the following large multinational companies: Dupont, General Electric, HP, IBM, Johnson & Johnson, Merck, 3M, Procter & Gamble, Time Warner and Walt Disney.

Investment Bank: Bear Stearns, Credit Suisse, Deutsche Bank and UBS.

Asset Management: Credit Suisse, Deutsche Bank and UBS. We also review Alliance Capital, Blackrock, Eaton Vance, Franklin Templeton Investments, Legg Mason, Federated Investors, Northern Trust, Nuveen Investments, Putnam Investments, Schroders, T. Rowe Price, US Trust and Wellington Management.

Retail Financial Services: Countrywide Financial and Washington Mutual.

Card Services: Capital One, Discover, HSBC and Washington Mutual.

Commercial Banking: Fifth Third, Key Corp. and SunTrust.

Treasury & Securities Services: ABN Amro, Bank of New York Mellon, State Street and Northern Trust.

Long-term orientation – We strive for a long-term orientation both in the way we assess performance and in the way we structure compensation. The aim of our compensation programs and policies is to motivate all employees at JPMorgan Chase to attain strong and sustained performance, both on an absolute and relative basis. We achieve this through processes and tools that are clear, transparent and effective at driving behaviors that expand the depth and breadth of our positive impact on clients. Our goal is to significantly differentiate executive compensation through the annual compensation process and through periodic equity awards to appropriately recognize outstanding performance.

Certain features of our compensation programs are targeted to help us achieve individual objectives, and other elements help us achieve multiple objectives simultaneously. Our vesting periods for stock awards generally provide that one-half vests after two years and the balance vests after three years. As a result of these awards, employees share the same interest in the Firm's long-term success as other shareholders, and we believe that such ownership is a positive factor in retaining key employees. We also use these features to focus executives across all lines of business on longer-term strategy and the overall results of the Firm, particularly at more senior levels where executives can have a greater influence on our long-term success.

Compensation review processes

Compensation of Operating Committee members depends not only on how they as individuals perform, but also on how the Firm as a whole performs. We assess their specific performance based on short-, medium- and longer-term objectives tailored to specific lines of business and functional areas.

Our disciplined compensation processes involve a series of reviews and assessments by successive levels of management within lines of business, the Operating Committee, the CEO, the Compensation Committee and the Board of Directors. The CEO presents his assessment of individual performance and a recommended set of compensation actions for the other Operating Committee members to the Compensation Committee for their consideration. The CEO does not make any recommendation regarding his own compensation. The Compensation Committee discusses the CEO's compensation entirely in their independent executive session and seeks full Board ratification of their determinations. No member of the Operating Committee other than the CEO has a role in making a recommendation to the Compensation Committee as to the compensation of any member of the Operating Committee.

Compensation governance practices

The Firm and Compensation Committee also rely on other governance practices summarized below in seeking appropriate decisions and shareholder aligned outcomes.

Authorities and responsibilities – In addition to approving compensation for Operating Committee members, the Compensation Committee approves the formula, pool calculation and performance goals for the Key Executive Performance Plan as required by Section 162(m) of the Internal Revenue Code (KEPP), reviews line of business total incentive accruals versus performance throughout the year, approves final aggregate incentive funding, and approves total equity grants under the Firm's long-term incentive plan and the terms and conditions for each type of award. The Compensation Committee has delegated authority to the Director Human Resources to administer the compensation and benefits programs. The Director Human Resources, with concurrence of an Operating Committee member, may approve awards under the Firm's long-term incentive plan to prospective hires and to current officers who are not Section 16 officers for retention purposes.

Bonus recoupment policy – In 2006, we formalized a bonus recoupment policy that enables us to recover previous incentives paid to executives in the event those incentives were the result of misconduct that leads to a material restatement of financial information. This policy can be found on our Web site at www.jpmorganchase.com under Governance.

Deductibility of executive compensation – To maintain flexibility in compensating executive officers, the Compensation Committee does not require all compensation to be awarded in a tax-deductible manner, but it is their intent to do so to the fullest extent possible and consistent with overall corporate goals. To that end, shareholders have approved KEPP, which covers all executive officers, including the Named Executive Officers, and their annual cash incentive awards and RSUs are delivered under the plan.

A proposal has been included on page 30 of the proxy statement recommending reapproval of KEPP.

Equity grant practices – Equity grants are awarded as part of the annual compensation process, as periodic long-term awards and as part of employment offers for new hires. In each case, the grant price is the average of the high and the low prices of JPMorgan Chase common stock on the grant date. Grants made as part of the annual compensation process are generally awarded in January after earnings are released and generally in the form of RSUs. RSUs carry no voting rights; however, dividend equivalents are paid on units at the time actual dividends are paid on shares of JPMorgan Chase common stock. Stock options granted by Bank One in 2002 and earlier included a feature that provided for the issuance of restorative options that will remain in effect until expiration of the original option. The Firm no longer grants options with restoration rights. The Firm prohibits repricing of stock options and SARs.

A proposal has been included on page 26 of the proxy statement recommending an amendment to the 2005 Long-Term Incentive Plan to extend the term and increase the number of shares available under the plan.

Continued equity ownership – Our policies require share ownership for directors and executive officers and encourage continued ownership for others. Senior executives are expected to establish and maintain a significant level of direct ownership. Mr. Dimon and other members of the Operating Committee and the Executive Committee (a management committee of 48 senior executives that includes members of the Operating Committee) are required to retain at least 75% of the shares they receive from equity-based awards, including options, after deduction for option exercise costs and taxes. In January 2008, certain executives received more than 50% of their incentive compensation in the form of RSUs. The retention requirement will not apply to the excess over 50% when such RSUs vest.

Shareholdings of directors and executive officers are shown in the table at page 8.

Compensation of the Named Executive Officers

Overview of performance – The Compensation Committee reviewed 2007 performance against results for previous years and determined that we performed well on key operating metrics. Our actual results compared to our 2006 and 2005 results on several metrics were as follows:

(dollars in millions except per share data)

Business	*Performance metric*	*2007*	*2006*	*2005*
Firm-wide	Net Revenue	$71,372	$61,999	$54,248
	Net Income (1)	$15,365	$13,649	$8,254
	EPS (Fully Diluted) (1)	$4.38/share	$3.82/share	$2.32/share
	ROE - GW (1)(2)	21%	20%	13%
	Tier 1 Capital Ratio	8.4%	8.7%	8.5%
Investment Bank	Net Revenue	$18,170	$18,833	$15,110
	Net Income	$3,139	$3,674	$3,673
	ROE	15%	18%	18%
Asset Management	Net Revenue	$8,635	$6,787	$5,664
	Net Income	$1,966	$1,409	$1,216
	ROE	51%	40%	51%
	Pretax Margin	36%	33%	33%
Retail Financial Services	Net Revenue	$17,479	$14,825	$14,830
	Net Income	$3,035	$3,213	$3,427
	ROE	19%	22%	26%
Card Services	Net Revenue	$15,235	$14,745	$15,366
	Net Income	$2,919	$3,206	$1,907
	ROE	21%	23%	16%
Commercial Banking	Net Revenue	$4,103	$3,800	$3,488
	Net Income	$1,134	$1,010	$951
	ROE	17%	18%	28%
Treasury & Securities Services	Net Revenue	$6,945	$6,109	$5,539
	Net Income	$1,397	$1,090	$863
	ROE	47%	48%	57%
	Pretax Margin	32%	28%	24%

Note: All data presented on a reported basis except for Card Services which is presented on a managed basis.

1 From continuing operations.

2 Return on equity net of goodwill.

Compensation actions – The following table shows salary in 2007 and annual incentive compensation awarded in January 2008 for 2007 performance which reflects the Compensation Committee's view of its annual compensation actions for 2007. The table also shows periodic equity awards granted in January 2008 that are separate from annual compensation. The Summary compensation table (SCT) required by the SEC is at page 16.

Annual and periodic compensation

		Annual compensation					*Periodic equity awards*
			Incentive compensation				
Name and principal position	*Year*	*Salary ($) (1)*	*Cash ($)*	*RSUs ($)*	*Total ($)*	*Change from prior year (%)*	*Special SARs (#) (2)*
James Dimon	2007	$1,000,000	$14,500,000	$14,500,000	$30,000,000	11%	2,000,000
Chairman and CEO	2006	1,000,000	13,000,000	13,000,000	27,000,000		0
Michael J. Cavanagh	2007	500,000	3,750,000	3,750,000	8,000,000	23	300,000
Chief Financial Officer	2006	500,000	3,000,000	3,000,000	6,500,000		200,000
Steven D. Black	2007	400,000	4,900,000	14,700,000	20,000,000	(5)	400,000
Co-CEO Investment Bank	2006	400,000	10,300,000	10,300,000	21,000,000		0
James E. Staley	2007	400,000	8,800,000	8,800,000	18,000,000	64	400,000
CEO Asset Management	2006	400,000	5,300,000	5,300,000	11,000,000		0
William T. Winters (3)	2007	564,379	4,900,000	14,700,000	20,164,379	(5)	400,000
Co-CEO Investment Bank	2006	519,150	10,300,000	10,300,000	21,119,150		0

1 The base salaries for Messrs. Black and Staley were increased from $400,000 to $500,000 effective February 1, 2008, based on the Compensation Committee's internal equity review of Operating Committee salaries.

2 The Compensation Committee awarded special Stock Appreciation Rights (SARs) to the CEO, CFO and other Named Executive Officers effective January 22, 2008, at a grant price of $39.83 which were not part of regular annual compensation. The terms of the SARs are described under Periodic equity awards on page 16.

3 Mr. Winters is located in London and his annual salary is designated as £282,400, paid monthly. The blended applicable spot rate used to convert Mr. Winters' salary to U.S. dollars on the twelve monthly payroll dates in 2007 was 1.999 and in 2006 was 1.838 U.S. dollars per pound sterling respectively.

The above table is presented to show how the Compensation Committee viewed compensation actions, but it differs substantially from the SCT required by the SEC and is not a substitute for the information required by the SCT on page 16.

The SCT shows compensation information in a format required by the SEC. One major difference between the SCT and this 2007 table is that the Stock awards and Option awards columns in the SCT report the expense recognized for financial statement reporting purposes with respect to 2007 in accordance with SFAS 123R and applicable SEC rules. The above table includes for 2007 equity grants made in January 2008 for the 2007 performance year but excludes grants made in 2007 for performance years prior to that. The SCT, on the other hand, includes all or part of equity grants made in a number of different years based on the amounts we expensed for accounting purposes during 2007. Also, due to the Firm's adoption of SFAS 123R on January 1, 2006, the accounting treatment of equity awards varies substantially among our Named Executive Officers, depending upon their eligibility for vesting of equity awards as described in note 2 to the SCT.

CEO compensation – Mr. Dimon's performance for 2007 was reviewed and evaluated by the Compensation Committee and the Board as described below. These reviews focused on a number of criteria, both quantitative and qualitative, including several key quantitative criteria highlighted in the table on page 11.

The Compensation Committee also reviewed our performance relative to the comparison group, as indicated on page 12, over one, two and three-year time frames. The Compensation Committee concluded that we had achieved strong performance relative to the financial services companies in the comparison group in the current year and two-year time frames that represented Mr. Dimon's tenure as CEO.

The Compensation Committee considered our second consecutive year of a record level of earnings and revenue, particularly in a difficult environment while building credit reserves by $2.3 billion to $10.1 billion and maintaining a strong Tier 1 capital ratio of 8.4%. Additionally, the Compensation Committee focused on the fact that we continued to invest in all businesses. In addition to the investments noted below in our Investment Bank and Asset Management businesses, other investments included adding more than 2,000 personal bankers and opening 127 new branch offices in Retail Financial Services, marketing and reward programs in Card Services, new offices inside and outside the United States in Commercial Banking and business acquisitions and enhancements of technology in Treasury & Securities Services. The Compensation Committee also noted Mr. Dimon's close attention to risk management. He continues to skillfully lead the Firm through a very challenging financial and credit environment and enhanced the Firm's leadership with the hiring of the CEO of Card Services and the Chief Risk Officer.

As a result of this performance, the Board approved an annual incentive of $29 million for Mr. Dimon. This incentive, in addition to his salary, produced total annual compensation of $30 million, which represents an 11% increase from 2006. (See the table above for the Compensation Committee's view of annual compensation actions and differences from the Summary compensation table.)

Other Named Executive Officers' compensation – As the CFO of the Firm, Mr. Cavanagh's incentive compensation for 2007 was affected by the Firm's overall attainment of the financial results described above, including record revenues and earnings for the second consecutive year. The Compensation Committee also recognized his role in ensuring that necessary discipline was in place to assist the lines of business in planning and achieving their financial objectives, as well as the significant role he played with respect to the Firm's management of risk, financial controls and compliance. The Firm maintained a strong capital ratio and strong liquidity throughout the year. As a result of these considerations, Mr. Cavanagh's 2007 compensation increased 23% from 2006.

Messrs. Black and Winters are co-heads of the Investment Bank, and their compensation is based upon the performance of their business unit as well as upon the overall performance of the Firm. The financial performance of the Investment Bank declined slightly from the prior year with revenues down 4% and net income down 15%. Results for the year included the effect of mark-downs on leveraged loans and subprime mortgage assets. However, the Investment Bank also had record advisory fees and record results in fixed income and equity markets. Additionally, good progress was made on three key areas of focus in 2007 which will continue as a focus in 2008: growth initiatives including build-out of commodities, emerging markets and Asia; and managing the business with discipline. The Compensation Committee concluded that the overall performance of the Investment Bank was quite good on a relative basis in a difficult environment, but satisfactory on an absolute basis. Considering the balance of both absolute and relative financial performance and progress on key initiatives, Messrs. Black's and Winters' compensation was reduced by 5% from 2006 (as reflected in the table above). Also, for all members of the senior management team in the Investment Bank, including Messrs. Black and Winters, the percentage of incentive compensation awarded as RSUs rather than cash was increased to 75% from 50% for this year's grant to increase the proportion of their compensation directly tied to the Firm's share price performance.

Mr. Staley is head of our Asset Management business, and his compensation is also based upon the performance of his business unit as well as upon the overall performance of the Firm. The financial performance of the Asset Management unit included record net income and revenue, increasing by 40% and 27%, respectively, from the prior year. Assets under management grew by 18%, driven substantially by new inflows. Additionally, Mr. Staley oversaw significant investments in the business, including the addition of over 200 client advisors, the establishment of more than 100 new funds, and the continued expansion outside the United States, including China. He also exceeded the business target goal of a 35% pretax margin. These results reflected significant increases from 2006. Additionally, the Compensation Committee believed that the performance in 2007 reflected the successful execution of business planning and development that extended over a period of years. As a result, Mr. Staley received a 64% increase in total compensation from 2006 (as reflected in the table above).

For each of Messrs. Black, Staley and Winters, the Compensation Committee also considered comparative compensation data and desired to move their compensation closer to the level of key competitors.

Periodic equity awards – In January 2008, the Named Executive Officers were awarded periodic equity awards in the form of stock settled SARs which were separate from annual compensation and are intended to further motivate the executives to focus on the Firm's long-term success by providing greater ownership opportunity and to reinforce the partnerships that will help produce that success. SARs were awarded rather than RSUs to provide a compensation opportunity based solely on increases in the share price from the date of grant.

Mr. Dimon was awarded 2,000,000 special SARs that are not part of his regular annual compensation and will not be awarded on a regularly recurring basis. In making this special grant, the Board considered the importance of Mr. Dimon's continuing, long-term stewardship in realizing the Firm's potential as a premier financial institution and the extremely competitive environment for leadership talent. These are the first options awarded to Mr. Dimon since he became the Firm's CEO at the start of 2006. The terms of the grant are distinct from, and more restrictive than, other equity grants regularly awarded by the Firm. These options, which have a ten-year term, will become exercisable no earlier than January 22, 2013, or five years after the effective date of January 22, 2008 (the Effective Date). Moreover, the number of options that will become exercisable (ranging anywhere from none to the full 2,000,000 options granted) and their exercisability date or dates will be determined by the Compensation Committee, subject to ratification by the Board, based on an assessment of the performance of Mr. Dimon and the Firm. That assessment will be made by the Compensation Committee in the year prior to the fifth anniversary of the Effective Date, relying on such factors that in its sole discretion the Compensation Committee deems appropriate. Any remaining options not deemed exercisable will be canceled.

Messrs. Cavanagh, Black, Staley and Winters were awarded a periodic equity award in the form of SARs as shown in the above table. These SARs will become exercisable 20% per year over the five-year period from the date of grant. All shares obtained upon exercise must be held until the fifth year and thereafter become subject to the Firm's 75% retention requirement.

Executive compensation tables

The following tables and related narratives present the compensation for our Named Executive Officers in the format specified by the SEC.

I. Summary compensation table (SCT)

Name and principal position	*Year*	*Salary ($)*	*Bonus ($) (1)*	*Stock awards ($) (2)*	*Option awards ($) (2)(3)*	*Change in pension value and nonqualified deferred compensation earnings ($) (4)*	*All other compensation ($) (5)*	*Total ($)*
James Dimon	2007	$1,000,000	$14,500,000	$10,666,688	$ 1,243,055	$ 31,202	$356,330	$27,797,275
Chairman and CEO	2006	1,000,000	13,000,000	7,165,705	17,353,321	46,445	487,858	39,053,329
Michael J. Cavanagh	2007	500,000	3,750,000	2,183,370	1,846,952	6,017	–	8,286,339
Chief Financial Officer	2006	500,000	3,000,000	1,407,365	2,221,760	23,380	–	7,152,505
Steven D. Black	2007	400,000	4,900,000	14,637,594	912,426	14,435	–	20,864,455
Co-CEO Investment Bank	2006	400,000	10,300,000	17,499,603	1,416,564	18,974	–	29,635,141
James E. Staley	2007	400,000	8,800,000	6,795,979	651,733	99,852	–	16,747,564
CEO Asset Management	2006	400,000	5,300,000	9,447,546	940,992	179,060	–	16,267,598
William T. Winters (6)	2007	564,379	4,900,000	14,631,761	912,426	190,778	–	21,199,344
Co-CEO Investment Bank	2006	519,150	10,300,000	17,626,693	1,722,349	160,362	–	30,328,554

1 Includes amounts awarded, whether paid or deferred. We award annual cash incentives under a shareholder-approved plan designed to permit JPMorgan Chase to deduct the compensation paid. The plan allows the Compensation Committee substantial discretion, which the Compensation Committee uses consistently in establishing compensation following the completion of a fiscal year. Accordingly, we report amounts paid under this plan as "bonus" and not "non-equity incentive compensation".

2 The Firm's accounting for employee stock-based incentives is described in Note 10 to the Firm's financial statements in the 2007 Annual Report, including how the Firm recognizes compensation expense pursuant to SFAS 123R for equity awards granted to employees eligible for continued vesting under specific age and service or service-related provisions (full career eligible employees). Generally, such expenses will be recognized over an award's stated service period for employees who are not so eligible, or from the grant date until the eligibility date for employees who will become so eligible before the end of the stated service period. For full career eligible employees, the Firm accrues during the performance year the estimated cost of stock awards expected to be granted at the next January grant date.

3 Includes the following amounts recognized for restorative options issued in 2006 to Messrs. Dimon and Cavanagh under options originally granted under Bank One programs in 2002 and earlier: Mr. Dimon, $10,772,495 and $2,893,087 for a total of $13,665,582; and Mr. Cavanagh, $133,240 and $579,805 for a total of $713,045. The issuance of such options did not require Board approval and was not discretionary, but was as a result of their exercise of previously granted options with restoration terms. Stock options granted by Bank One in 2002 and earlier included a feature that provided for the issuance of options, called restorative options, upon exercise of the original option and upon later exercise of the restorative options. The restorative feature allows a grantee who exercises a stock option during the grantee's employment, and who pays the exercise price with shares of the Firm's common stock held for at least six months, to receive a restorative option to purchase the number of shares of common stock used to pay the exercise price and, for new options granted in 2001 and 2002, tax withholding obligations related to the option exercise. Restorative options become exercisable six months after issuance. The expiration date of a restorative option is the expiration date of the original stock option to which it relates, and the exercise price, is equal to the closing price of the Firm's common stock on the date prior to the date the restorative option is issued. Restorative options enable the holder to exercise an option while retaining after the exercise the same potential gain as if the original option had been held to maturity. The total number of shares issued under an option with a restorative feature never exceeds the number covered by the original grant.

4 For 2007, amounts shown include the aggregate change in the actuarial present value of the accumulated benefits under all defined benefit and actuarial pension plans (including supplemental plans) from December 31, 2006, to December 31, 2007: Mr. Dimon, $31,202; Mr. Cavanagh, $6,017; Mr. Black, $14,435; Mr. Staley, $99,852; and Mr. Winters, $10,238. Amounts shown also include earnings during 2007 in excess of 120% of the applicable federal rate on deferred compensation balances where the rate of return is not calculated in the same or in a similar manner as earnings on hypothetical investments available under the Firm's qualified plans: Mr. Winters, $180,540.

For 2006, amounts shown include the aggregate change in the actuarial present value of the accumulated benefits under all defined benefit and actuarial pension plans (including supplemental plans) from December 31, 2005, to December 31, 2006: Mr. Dimon, $46,445; Mr. Cavanagh, $23,380; Mr. Black, $18,974; Mr. Staley $179,060; and Mr. Winters, $42,653. Amounts shown also include earnings during 2006 in excess of 120% of the applicable federal rate on deferred compensation balances where the rate of return is not calculated in the same or in a similar manner as earnings on hypothetical investments available under the Firm's qualified plans: Mr. Winters, $117,709.

5 The following table describes each component of the All other compensation column:

All other compensation

Name	*Personal use of aircraft ($)*	*Personal use of cars ($)*	*Security protection ($)*	*Other ($)*	*Total ($)*
James Dimon	$211,182	$68,019	$74,964	$2,165	$356,330

In connection with the merger with Bank One Corporation, certain executives residing in Chicago relocated their place of business to New York, including Mr. Dimon. Mr. Dimon and his family resided in Chicago at the time of the merger and planned to keep Chicago as their home while their children completed high school. Mr. Dimon also continued to work in Chicago a portion of his time. The family relocated to New York during 2007. Although the Firm believes that most of Mr. Dimon's travel between Chicago and New York would properly be characterized as business, all of such flights have been treated as personal commutation and $115,843 is included in the above table for such flights. The Firm does not reimburse taxes associated with imputed income arising out of the personal use of company aircraft or cars.

Incremental costs are determined as follows:

– Aircraft: operating cost per flight hour for the aircraft type used developed by an independent reference source, including fuel, fuel additives and lubricants; landing and parking fees; crew expenses; small supplies and catering; maintenance labor and parts; engine restoration costs; and a maintenance service plan.

– Cars: annual lease valuation of the assigned car; annual insurance premiums; fuel expense; estimated annual maintenance; and annual driver compensation, including salary, overtime, benefits and bonus. The resulting total is allocated between personal and business use based on mileage.

– Security: direct expenditures by the Firm.

– Other: includes $1,098 for the cost of life insurance premiums paid by the Firm; this amount is for basic life insurance coverage equal to one times salary. Also includes $1,067 for the cost of non-business meals based on the estimated cost of comparable meals in local restaurants.

6 Mr. Winters is located in London and his annual salary is designated as £282,400, paid monthly. The blended applicable spot rate used to convert Mr. Winters' salary to U.S. dollars on the twelve monthly payroll dates in 2007 was 1.999 and in 2006 was 1.838 U.S. dollars per pound sterling respectively.

EXHIBIT C

Exhibit 10.28

JPMORGAN CHASE & CO. 2005 LONG-TERM INCENTIVE PLAN

FORM OF TERMS AND CONDITIONS OF JANUARY 22, 2008 RESTRICTED STOCK UNIT AWARD

Award Agreement

These terms and conditions are made part of the Award Agreement dated as of January 22, 2008 ("Grant Date") awarding restricted stock units pursuant to the terms of the JPMorgan Chase & Co. 2005 Long-Term Incentive Plan ("Plan"). To the extent the terms of the Award Agreement (all references to which will include these terms and conditions) conflict with the Plan, the Plan will govern.

The Award Agreement, the Plan and Prospectus supercede any other agreement, whether written or oral, that may have been entered into by the Firm and you relating to this award.

The grant of this award is contingent upon your acceptance of this Award Agreement. **Unless you decline by the deadline and in the manner specified in the Award Agreement, you will have accepted this award and be bound by these terms and conditions, effective as of the Grant Date.** If you decline the award, it will not become effective and will be cancelled as of the Grant Date.

Capitalized terms that are not defined in the Award Agreement will have the same meaning as set forth in the Plan.

JPMorgan Chase & Co. will be referred to throughout the Award Agreement as "JPMorgan Chase," and together with its subsidiaries as the "Firm."

Form and Purpose of Award

Each restricted stock unit represents a non-transferable right to receive one share of Common Stock following the applicable vesting date.

The purpose of this award is to motivate your future performance and to align your interests with those of the Firm and its shareholders.

Dividend Equivalents

If dividends are paid on Common Stock while restricted stock units under this award are outstanding, you will be paid an amount equal to the dividend paid on one share of Common Stock, multiplied by the number of restricted stock units outstanding to you.

Vesting Dates/ Vesting Periods

This award will vest according to the schedule on your Award Agreement, provided that you are continuously employed by the Firm, or you meet the requirements for continued vesting described below, through the relevant vesting date. The period from the Grant Date to each vesting date will be a separate "vesting period."

Termination of Employment

Except as explicitly set forth below under "Job Elimination" "Full Career Eligibility," "Total Disability," and "Death," any restricted stock units outstanding under this award will be cancelled effective on the date your employment with the Firm terminates for any reason.

Job Elimination, Full Career Eligibility, Disability

Subject to your compliance with the terms and conditions of this Award Agreement, you will be eligible to continue to vest in your outstanding restricted stock units following the termination of your employment if one of the following circumstances applies to you.

Job Elimination:
Your award will continue to vest on the original schedule following termination of employment in the event that:

- the Director Human Resources of the Firm or his nominee in his sole discretion determines that the Firm terminated your employment because your job was eliminated, and
- after you are notified that your job will be eliminated, you provide such services as requested by the Firm in a cooperative and professional manner.

Full Career Eligibility:
Your award will continue to vest on the original schedule following termination of employment in the event that:

- you leave the Firm voluntarily, have completed at least five years of continuous service with the Firm immediately preceding your termination date, and: (a) the sum of your age and Recognized Service (as defined below) on your date of termination equals or exceeds 60, and
- you provide at least 90 days advance written notice to the Firm of your intention to voluntarily terminate your employment under this provision during which notice period you provide such services as requested by the Firm in a cooperative and professional manner and you do not perform any services for any other employer, and
- for the remainder of the relevant vesting period, you do not (i) perform services in any capacity (including self-employment) for a Financial Services Company or (ii) work in your profession (whether or not for a non-Financial Services Company); provided that you may work for a government, education or Not-for-Profit Organization (as defined below).

After receipt of such advance written notice, the Firm may choose to have you continue to provide services during such 90-day period, or may place you on a paid leave for all or a part of the 90-day period. You and the Firm may mutually agree to shorten the length of the 90-day notice period, but to a date no earlier than the date you would otherwise meet the age and service requirement.

Additional advance notice requirements may apply in certain business units (or equivalent organizational unit or department). (See "Special Notice Period" below.)

Total Disability:
In the event your employment terminates as a result of your permanent and total disability as defined in the JPMorgan Chase & Co. Long Term Disability Plan (or for non-U.S. employees the equivalent local country plan), your outstanding units will continue to vest on the original schedule during such period of disability provided that you remain unemployed for such period.

For both Full Career Eligibility and Disability, you must notify JPMorgan Chase in writing if you perform services for any party or if you are self-employed during the vesting periods.

Release/ Certification

In order to qualify for continued vesting after termination of your employment under any of the foregoing circumstances:

- you must timely execute and deliver a release of claims in favor of the Firm, having such form and terms as the Firm shall specify,
- with respect to Full Career Eligibility, prior to the termination of your employment, you must confirm with management that you meet the eligibility criteria (including providing at least 90 days advance written notification) and advise that you are seeking to be treated as an individual eligible for Full Career Eligibility, and
- other than in the case of a job elimination, it is your responsibility to take the appropriate steps to certify to the Firm prior to each vesting date on the authorized form of the Firm that you have complied with the employment restrictions applicable to you (as described above) throughout the vesting period and otherwise complied with all other terms of the Award Agreement. (See "Your Obligations.")

Death

If you die while you are eligible to vest in your outstanding units, the units will immediately vest and will be distributed in shares of Common Stock (after applicable tax withholding) to your designated beneficiary on file with the Firm's Stock Administration Department, or if no beneficiary has been designated or survives you, then to your estate. Any shares will be distributed by the later of the end of the calendar year in which you die or the 15th day of the third month following your date of death.

Termination for Cause

In the event that your employment is terminated for Cause (as defined below), or in the event that JPMC determines after the termination of your employment that your employment should have been terminated for Cause, your outstanding restricted stock units as of your termination date shall be forfeited and you may be required to return to the Firm the value of certain shares previously delivered to you. See "Remedies" for additional information.

Your Obligations

As consideration for the grant of this award, you agree to comply with and be bound by the following:

- **Non-Solicitation of Employees and Customers**

During your employment by the Firm and for one year following the termination of your employment, or if longer, during all remaining vesting periods if you continue to vest after your employment with the Firm terminates, you will not directly or indirectly, whether on your own behalf or on behalf of any other party, without the prior written consent of the Director Human Resources of JPMorgan Chase: (i) solicit, induce or encourage any of the Firm's then current employees to leave the Firm or to apply for employment elsewhere; (ii) hire any employee or former employee who was employed by the Firm at the date your employment terminated, unless the individual's employment terminated more than six months before the date of hire or because his or her job was eliminated; or (iii) solicit or induce or attempt to induce to leave the Firm, or divert or attempt to divert from doing business with the Firm, any then current customers, suppliers or other persons or entities that were serviced by you or whose names became known to you by virtue of your employment with the Firm, or otherwise interfere with the relationship between the Firm and such customers, suppliers or other persons or entities. This does not apply to publicly known institutional customers that you service after your employment with the Firm without the use of the Firm's confidential or proprietary information.

These restrictions do not apply to authorized actions you take in the normal course of your employment with the Firm, such as employment decisions with respect to employees you supervise or business referrals in accordance with the Firm's policies.

- **Confidential Information:** You may not, either during your employment with the Firm or thereafter, directly or indirectly use or disclose to anyone any confidential information related to the Firm's business, except as explicitly permitted by the JPMorgan Chase Code of Conduct and applicable policies or law or legal process. "Confidential information" shall have the same meaning for the Award Agreement as it has in the JPMorgan Chase Code of Conduct.

- **Non-Disparagement:** You may not, either during your employment with the Firm or thereafter, make or encourage others to make any public statement or release any information that is intended to, or reasonably could be foreseen to, embarrass or criticize the Firm or its employees, directors or shareholders as a group. This shall not preclude you from reporting to the Firm's management or directors or to the government or a regulator conduct you believe to be in violation of the law or the Firm's Code of Conduct or responding truthfully to questions or requests for information to the government, a regulator or in a court of law in connection with a legal or regulatory investigation or proceeding.

- **Compliance with Award Agreement:** You agree that you will provide the Firm with any information reasonably requested to determine compliance with the Award Agreement, and you authorize the Firm to disclose the terms of the Award Agreement to any third party who might be affected thereby, including your prospective employer.

- **Special Notice Period:** If you are a managing director, executive director or vice president (or comparable title) of a business unit or equivalent organizational unit or department ("business unit") that requires as a condition of your continued employment that you provide advance written notice ("Special Notice Period") of your intention to terminate your employment for any reason, then as consideration for this Award, you shall provide the Firm advance written notice of your election to terminate your employment as specified by such business unit. In business units that require this Special Notice Period, the current notice period is 90 days for managing directors (or comparable title), 60 days for executive directors (or comparable title) and 30 days for vice presidents (or comparable title). Please note that in some cases, individuals may have specific agreements providing for longer notice periods than those stated above. In those cases, the longer notice period shall apply.

After receipt of such notice, the Firm may choose to have you continue to provide services during the applicable Special Notice Period or may place you on a paid leave for all or part of the applicable Special Notice Period. During the Special Notice Period, you shall continue to devote your full time and loyalty to the Firm by providing services in a cooperative and professional manner and not perform any services for any other employer and shall receive your base salary and certain benefits until your employment terminates.

You and the Firm may mutually agree to waive or modify the length of the Special Notice Period. Notwithstanding the foregoing, regardless of your title, you must comply with the 90-day advance notice period in the event you wish to terminate employment under the Full Career Eligibility provision.

Remedies

- **Cancellation**

In addition to the provisions described under "Termination of Employment" and "Termination for Cause", your outstanding restricted stock units will be cancelled if:

- the Firm in its sole discretion determines that you are not in compliance with any of the advance notice/cooperation requirements and/or employment restrictions applicable to your termination of employment, or
- you fail to return the required forms specified under "Release/Certification" within the specified deadline, including the certification required immediately prior to a vesting date under Full Career Eligibility and Disability, or
- you violate any of the provisions as set forth above in "Your Obligations."

- **Damages**

In addition, you will be required to pay the Firm as liquidated damages an amount equal to the Fair Market Value (determined as of the vesting date) of the net number of shares of Common Stock distributed to you under this award as follows:

- shares distributed within the one year period prior to your violation of any of the provisions as set forth above in "Your Obligations;"
- shares distributed at any time following termination of employment when you were not in compliance with the employment restrictions then applicable to you during the vesting period, and
- shares distributed within the one year period immediately preceding your termination for Cause (as described under "Termination for Cause").

Payment may be made in shares of Common Stock or in cash. You agree that this payment will be liquidated damages and is not to be construed in any manner as a penalty. You acknowledge that a violation or attempted violation of the obligations set forth herein will cause immediate and irreparable damage to the Firm, and therefore agree that the Firm shall be entitled as a matter of right to an injunction, from any court of competent jurisdiction, restraining any violation or further violation of such obligations; such right to an injunction, however, shall be cumulative and in addition to whatever other remedies the Firm may have under law or equity. In any action or proceeding by the Firm to enforce the terms and conditions of this Award Agreement where the Firm is the prevailing party, the Firm shall be entitled to recover from you its reasonable attorneys' fees and expenses incurred in such action or proceeding.

Withholding Taxes	The Firm will retain from each distribution the number of shares of Common Stock required to satisfy applicable tax obligations (including, to the extent legally permissible, recovery by the Firm of fringe benefit taxes). For U.S. tax purposes, dividend equivalents are treated as wages and subject to tax withholding when paid. If, according to local country tax regulations, a withholding tax liability arises at a time after the date of exercise, JPMorgan Chase may implement any procedures necessary to ensure that the withholding obligation is fully satisfied, including but not to, restricting transferability of the shares.
Administrative Provisions	**No Ownership Rights**: Restricted stock units do not convey the rights of ownership of Common Stock and do not carry voting rights. No shares of Common Stock will be issued to you until after the restricted stock units have vested and all applicable restrictions have lapsed. Shares will be issued in accordance with JPMorgan Chase's procedures for issuing stock. JPMorgan Chase's obligation hereunder is unfunded.

Binding Agreement: The Award Agreement will be binding upon any successor in interest to JPMorgan Chase, by merger or otherwise.

Not a Contract of Employment: Nothing contained in the Award Agreement constitutes a contract of employment or continued employment. Employment is at-will and may be terminated by either you or JPMorgan Chase for any reason at any time. This award does not confer any right or entitlement to, nor does the award impose any obligation on the Firm to provide, the same or any similar award in the future.

Section 409A Compliance. Notwithstanding anything herein to the contrary, if you (i) are subject to taxation under the United States Internal Revenue Code ("Code"), (ii) are a specified employee as defined in the JPMorgan Chase 2005 Deferred Compensation Plan and (iii) have incurred a separation from service and if any shares under this award represent deferred compensation as defined in Section 409A and are distributable to you as a result your separation from service, then those shares will be delivered to you on first business day of the first calendar month after the expiration of six full months from date of your separation from service. Further, for purposes of Section 409A, a vesting date shall be a payment date. The provisions set forth in this subsection also amend agreements with respect to awards that were not vested on, or made after, December 31, 2004.

Change in Outstanding Shares: In the event of any change in the outstanding shares of Common Stock by reason of any stock dividend or split, recapitalization, issuance of a new class of common stock, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to stockholders of Common Stock other than regular cash dividends, the Committee will make an equitable substitution or proportionate adjustment, in the number or kind of shares of Common Stock or other securities issued or reserved for issuance pursuant to the Plan and to any Restricted Stock Units outstanding under this award for such corporate events.

Interpretation/Administration: The Director Human Resources has sole and complete authority to interpret and administer this Award Agreement, including, without limitation, the power to (i) interpret the Plan and the terms of this Award Agreement; (ii) determine the reason for termination of employment and application of the post-employment obligations; (iii) decide all claims arising with respect to this Award; and (iv) delegate such authority as he deems appropriate. Any determination by the Director Human Resources shall be binding on all parties.

Notwithstanding anything herein to the contrary, the Firm's determinations under the Plan and the Award Agreements are not required to be uniform. By way of clarification, the Firm shall be entitled to make non-uniform and selective determinations and modifications under Award Agreements and the Plan.

Amendment: The Firm by action of its Director Human Resources reserves the right to amend this Award Agreement at any time and for any reason before a change in control of JPMorgan Chase, as such term is defined by the Board from time to time. After a change in control of JPMorgan Chase, this Award Agreement may not be amended in any way that is adverse to your interests without your prior written consent. This Award Agreement may not be amended except in writing signed by the Director Human Resources of JPMorgan Chase.

Severability: If any portion of the Award Agreement is determined by the Firm to be unenforceable in any jurisdiction, any court of competent jurisdiction or the Director Human Resources may reform the relevant provisions (e.g., as to length of service, time, geographical area or scope) to the extent the Firm considers necessary to make the provision enforceable under applicable law.

Governing Law: By accepting this award, you are agreeing (i) to the extent not preempted by federal law, the laws of the state of New York (without reference to conflict of law principles) will apply to the award and the Plan, and (ii) to waive the right to a jury trial with respect to any judicial proceeding brought in connection with this award.

Definitions

"Cause" means a determination by the Firm that your employment terminated as a result of your (i) violation of any law, rule or regulation (including rules of self-regulatory bodies) related to the Firm's business; (ii) indictment or conviction of a felony; (iii) commission of a fraudulent act; (iv) violation of the JPMorgan Code of Conduct or other Firm policies or misconduct related to your duties to the Firm (other than immaterial and inadvertent violations or misconduct); (v) failure to perform satisfactorily the duties associated with your job function or to follow reasonable directives of your manager; or (vi) any act or failure to act that is or might reasonably be expected to be injurious to the interests of the Firm or its relationship with a customer, client or employee.

"Financial Services Company" means a business enterprise that employs you in any capacity (as an employee, contractor, consultant, advisor, self-employed individual, etc. whether paid or unpaid) and engages in:

- commercial or retail banking, including, but not limited to, commercial, institutional and personal trust, custody and/or lending and processing services, originating and servicing mortgages, issuing and servicing credit cards;
- insurance , including but not limited to, guaranteeing against loss,

harm damage, illness, disability or death, providing and issuing annuities, acting as principal, agent or broker for purpose of the forgoing;

- financial, investment or economic advisory services, including but not limited to, investment banking services (such as advising on mergers or dispositions, underwriting, dealing in, or making a market in securities or other similar activities), brokerage services, investment management services, asset management services, and hedge funds;
- issuing, trading or selling instruments representing interests in pools of assets or in derivatives instruments;
- advising on, or investing in, private equity or real estate, or
- any similar activities that JPMorgan Chase determines in its sole discretion constitute financial services.

"Not-for-Profit Organization" means an entity exempt from tax under state law and under Section 501(c)(3) of the Internal Revenue Code. Section 501(c)(3) includes entities organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals.

"Recognized Service" means the period of service as an employee set forth in the Firm's applicable service-related policies.

EXHIBIT D

RSUs carry no voting rights; however, dividend equivalents are paid on units at the time actual dividends are paid on shares of JPMorgan Chase common stock. The Firm may grant equity awards to new executives in connection with their hire. Such grants are generally made on the date of hire. Stock options granted by Bank One in 2002 and earlier included a feature that provided for the issuance of restorative options. See note 5 to Table I.C., Summary compensation table. The Firm prohibits repricing of stock options and SARs.

Continued equity ownership – Our policies require share ownership for directors and executive officers and encourage continued ownership for others. Senior executives are expected to establish and maintain a significant level of direct ownership. Mr. Dimon and other members of the Operating Committee are required to retain at least 75% of the shares they receive from equity-based awards including options, after deduction for option exercise costs and taxes. Other executives responsible for major operations or staff areas (the Firm's Executive Committee) are also subject to the 75% share ownership requirements. Directors pledge that they will retain all of the shares they receive pursuant to their service as a Board member. Executives and directors are subject to these retention requirements during their service with the Firm; any exceptions would be subject to approval by the CEO for executives and by the Governance Committee for directors. Executives and directors are not permitted to hedge the economic risk of their ownership of our shares.

Benefits – We seek to differentiate employee compensation through the annual compensation process and periodic awards rather than through benefits and perquisites. Under our current plans, senior executives participate in the same basic benefit plans, with the same choices, as other employees. Benefits are generally consistent across the Firm and managed to be competitive, but vary internationally due to local statutory requirements.

- **Basic programs** – We provide all salaried employees with an array of employee benefit programs, some with automatic participation, e.g., basic life insurance coverage equal to one times base salary, and retirement plan participation; and some at the election of employees, e.g., 401(k) or other savings plans, and medical and dental coverage. These programs are intended to provide a baseline of security and are evaluated periodically for market competitiveness and appropriateness. Our general approach is to have employees who are more highly compensated contribute a greater portion toward the cost of their basic benefits. Individuals earning $250,000 or more in cash compensation (base salary plus cash incentive award) are not eligible to receive Firm-paid matching contributions to their 401(k) account and individuals earning $150,000 or more are not eligible to participate in the Firm's matching-gift program for charitable contributions. In addition, the employee's share of premiums for medical plan coverage increases as cash compensation increases.
- **Deferred compensation** – The JPMorgan Chase 2005 Deferred Compensation Plan (Deferred Compensation Plan) allows eligible participants to defer their annual cash compensation award on a before-tax basis up to a maximum of $1 million. A lifetime $10 million cap applies to deferrals of cash made after December 31, 2005. Participation in the Deferred Compensation Plan is offered to United States dollar-paid employees who receive cash compensation at or above the IRS qualified plan limit ($220,000 in 2006) and is intended to encourage retirement savings and provide our employees with market-competitive programs. The Deferred Compensation Plan allows participants to direct their deferrals among several deemed investment choices. The currently available choices, as well as choices no longer open to new deferrals, are described at Table VI, 2006 Non-qualified deferred compensation table.
- **Pension benefits** – The Named Executive Officers (our five executive officers named in Table I.C., Summary compensation table) participate in a Retirement Plan and an Excess Retirement Plan available to United States dollar-paid employees. These plans apply to base salary, up to a maximum of $1 million, and do not apply to incentive compensation. The plans provide participants with a cash balance pension with escalating pension credits from 3% to 9% as years of service increase. Higher crediting rates and other retirement plans that had been adopted by heritage organizations are closed to new participants but remain applicable to employees receiving credits under such plans. See Table V, 2006 Pension benefits, for further details.
- **Perquisites** – The Firm minimizes the use of perquisites, and generally does not provide dues for private clubs, car allowances, financial planning, tax gross-ups or other similar executive perquisites.The Board of Directors requires Mr. Dimon, and in 2006 required Mr. Harrison, to use company aircraft and automobiles whenever feasible for all business and personal travel as a security measure. We also provided in 2006 additional personal security measures to augment security measures already in place for them. Both security measures were recommended by a security consultant.

Change in control provisions – None of the Named Executive Officers is covered by any change-in-control provisions.

Severance and termination provisions – Under the terms of our executive severance policy, the Named Executive Officers are eligible upon involuntary termination without cause to severance in an amount equal to two times current base salary, a further amount, if any, determined at the discretion of the Firm and continued eligibility for medical, dental and life insurance benefits at employee rates for two years following termination. Benefits upon involuntary termination without cause or for disability are generally subject to execution of a release in favor of JPMorgan Chase and certain post-termination employment restrictions for at least one year after termination. Any discretionary payment made as part of the executive severance policy would be made in consideration of the circumstances of the executive's leaving, including contributions to furthering the objectives of the Firm. If Messrs. Cavanagh, Black or Winters were involuntarily terminated by the Firm without cause or their

EXHIBIT E

RICHARDS LAYTON & FINGER

January 7, 2009

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

Re: Stockholder Proposal of the AFL-CIO Reserve Fund

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 the AFL-CIO Reserve Fund (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 Certificate 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;

(iii) the Company's Key Executive Performance Plan, as amended and restated effective January 1, 1999 and as further amended effective January 1, 2005 (the "Key Executive Performance Plan");

(iv) the Company's 2005 Long-Term Incentive Plan, as amended and restated effective March 28, 2008 (the "Long-Term Incentive Plan"); and

(v) 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 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, the shareholders of JPMorgan Chase & Co. (the "Company") urge the Board of Directors to adopt a policy requiring the Named Executive Officers ("NEOs") to retain 75% of the shares acquired through the Company's compensation plans, excluding tax-deferred retirement plans, for two years from the termination of their employment (through retirement or otherwise), and to report to shareholders regarding the adoption of this policy before the Company's 2010 annual meeting. The policy should prohibit hedging transactions that offset the risk of losses to executives.

Discussion

You have asked for our opinion whether implementation of the Proposal would violate Delaware law. For the reasons set forth below, in our opinion, the Proposal, if adopted and implemented, would violate the General Corporation Law.

The Proposal, if implemented, would require the Company's Board of Directors (the "Board") to adopt a policy requiring any "Named Executive Officer" to retain 75% of the shares acquired by such officer through the Company's "compensation plans" for two years following such officer's termination of employment, through retirement or otherwise. For purposes of this opinion, we have assumed that the reference to "compensation plans" in the Proposal would include the Company's Key Executive Performance Plan and its Long-Term Incentive Plan. Those plans authorize the Company to provide stock and stock-based awards to key executives, including the Named Executive Officers, and other employees of the Company. The Company has made stock and stock-based awards to its Named Executive Officers under those plans, and such officers currently hold shares of common stock that they acquired through those plans. Such shares are currently not subject to the restriction on transfer contemplated by the Proposal.

For purposes of this opinion, we assume that the Proposal is not limited solely to stock and stock-based awards issued under the Company's compensation plans following the adoption of the Proposal. Were the Proposal implemented, it would impose a transfer restriction on shares of the Company's capital stock that were acquired by the Company's Named Executive Officers through the Company's compensation plans and that are currently outstanding and otherwise unrestricted. The restriction contemplated by the Proposal would be considered a "restriction on transfer" governed by Section 202 of the General Corporation Law, as it would prohibit transfers of such shares prior to the end of the two-year period following the relevant officer's termination of employment. See Leonard Loventhal Account v. Hilton Hotels Corp., 2000 WL 1528909, *7 (Del. Ch. Oct. 10, 2000) (citations omitted) ("Statutorily speaking, 8 Del. C. § 202 defines what constitutes a transfer restriction on stock under Delaware law. More generally, one set of commentators has defined transfer restrictions as 'provisions which prevent or establish preconditions for the disposition by stockholders of their stock or other securities.'"); see also Moran v. Household Int'l, Inc., 490 A.2d 1059, 1079 (Del. Ch. 1985); Williams v. Geier, 1987 WL 11285, *4 (Del. Ch. May 20, 1987).

Section 202 of the General Corporation Law governs the manner in which transfer restrictions may be validly imposed on a corporation's securities,[1] including shares of its capital stock.[2] With respect to the imposition of transfer restrictions on previously issued securities, Section 202(b) provides, in relevant part:

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[1] See Capital Group Companies, Inc. v. Armour, 2005 WL 678564, *5 (Del. Ch. Mar. 15, 2005) ("The transfer restrictions [at issue] are governed by 8 Del. C. § 202, which sets forth the requirements for a valid restriction on the transfer of securities.").

[2] The shares that the Named Executive Officers have acquired through the Company's compensation plans and that are currently outstanding would be considered "securities" within the meaning of Section 202(b). See Joseph E. Seagram & Sons, Inc., 519 F. Supp. at 512 (indicating that the term "securities" as used in Section 202(b) includes "capital shares"); RFE Capital Partners, L.P. v. Weskar, Inc., 652 A.2d 1093, 1095 (Del. Super. Ct. 1994) (same); Ernest L. Folk, III, The Delaware General Corporation Law: A Commentary and Analysis, at 197 (1972) (noting that the term "security" includes "stock").

> A restriction on the transfer . . . of securities of a corporation . . . may be imposed by the certificate of incorporation or by the bylaws or by an agreement among any number of security holders or among such holders and the corporation. No restrictions so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

8 Del. C. § 202(b) (emphasis added). In Di Loreto v. Tiber Holding Corp., 1999 WL 1261450, *6 (Del. Ch. June 29, 1999), the Court explained that the purpose of this limitation "is to protect a shareholder's investment from diminishment through post-purchase restrictions placed on the shareholder's shares by the corporation or its other shareholders" and noted that, without such limitation, "others might circumscribe the shareholder's ability to transfer his or her shares, reducing the investment's liquidity and value." Thus, Section 202(b) provides that a board of directors may not impose transfer restrictions on securities issued prior to the adoption of the transfer restriction without the consent of the holders of the securities, either in the form of an agreement or a vote in favor of the restriction. See Joseph E. Seagram & Sons, Inc. v. Conoco, Inc., 519 F. Supp. 506, 513 (D. Del. 1981) (stating that a board of directors may not "unilaterally . . . impose stock transfer restrictions, which might be of significant economic consequence, on existing shares without the consent of the corporation's shareholders"); Geier, 1987 WL 11285, at *4; 1 R. Franklin Balotti & Jesse A. Finkelstein, Delaware Law of Corporations & Business Organizations, § 6.6 (3d ed., 2008 supp.) (stating that Section 202(b) "provides that the holders of securities outstanding at the time a restriction is imposed are not bound by the restriction unless they assent to it");[3] 1 Edward P. Welch, Andrew J. Turezyn & Robert S. Saunders, Folk on the Delaware General Corporation Law, 202.6 (5th Ed. 2007) ("A restriction, however imposed, is not retroactive in effect except as to consenting security holders, that is, those who are parties to an agreement or who voted in favor of a restriction . . .").

As indicated above, the Proposal would require the restriction contemplated thereby to be imposed, by unilateral action of the Board, on previously issued and currently outstanding shares of common stock. But Section 202(b) provides the Board may not validly impose any such transfer restriction on previously issued and currently outstanding shares unless the holder of those shares has consented to or voted in favor of the restriction. See 8 Del. C. § 202(b); Conoco, Inc., 519 F. Supp. at 513; Di Loreto, 1999 WL 1261450, at *6; Geier, 1987 WL 11285, at *4. Because the Named Executive Officers are currently holding shares they acquired through the Company's compensation plans—and because such shares are presently not subject to the restriction on transfer contemplated by the Proposal—the restriction contemplated by the Proposal cannot now be validly imposed on such shares by unilateral action of the Board. Accordingly, it is our opinion that the Proposal, if implemented, would require the Board to

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[3] Messrs. Balotti and Finkelstein are members of this firm.

adopt a policy that would violate Section 202 of the General Corporation Law and that the implementation of the Proposal would therefore cause the Company to violate Delaware law.

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