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

DIVISION OF
CORPORATION FINANCE

[redacted]

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Washington, DC 20549

March 18, 2009

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

Act: 1934
Section:
Rule: 14a-8
Public Availability: 3-18-09

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 Indiana Laborers Pension Fund. We also have received a letter from the proponent dated February 9, 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: Michael J. Short
Secretary-Treasurer
Indiana Laborers Pension Fund
P.O. Box 1587
Terre Haute, IN 47808-1587

March 18, 2009

Response of the Office of Chief Counsel
Division of Corporation Finance

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

The proposal urges, given the company's participation in the Capital Purchase Program established under the Troubled Asset Relief Program, that the board and its compensation committee implement specified executive compensation reforms that impose limitations on senior executive compensation.

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

We are unable to concur in your view that JPMorgan Chase may exclude the proposal under rule 14a-8(i)(2). Accordingly, we do not believe that JPMorgan Chase may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(2).

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)(6). Accordingly, we do not believe that JPMorgan Chase may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(6).

We are unable to concur in your view that JPMorgan Chase may exclude the proposal under rule 14a-8(i)(7). Accordingly, we do not believe that JPMorgan Chase may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

There appears to be some basis for your view that JPMorgan Chase may exclude the proposal under rule 14a-8(i)(11), as substantially duplicative of a proposal previously submitted by the AFL-CIO Reserve Fund. Accordingly, assuming that the previously submitted proposal is included in JPMorgan Chase's 2009 proxy materials, we will not recommend enforcement action to the Commission if JPMorgan Chase omits the proposal from its proxy materials in reliance on rule 14a-8(i)(11).

Sincerely,

Jay Knight
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.

INDIANA LABORERS PENSION FUND

P.O. Box 1587 • Terre Haute, Indiana 47808-1587

Telephone 812-238-2551 • Toll Free 800-962-3158 • Fax 812-238-2553

February 9, 2009

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OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

U.S. Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: JPMorgan Chase & Co.'s No-action Request Regarding the Shareholder Proposal Submitted by the Indiana Laborers Pension Fund

Dear Sir or Madam:

The Indiana Laborers Pension Fund (the "Fund") hereby submits this letter in reply to JPMorgan Chase & Co.'s ("JPMorgan" or "Company") Request for No-Action Advice to the Security and Exchange Commission's Division of Corporation Finance ("Staff") concerning the Fund's Executive Compensation Reforms proposal ("Proposal") and supporting statement submitted to the Company for inclusion in its 2009 proxy materials. The Fund respectfully submits that the Company has failed to satisfy its burden of persuasion and should not be granted permission to exclude the Proposal. Pursuant to Rule 14a-8(k), six paper copies of the Fund's response are hereby included and a copy has been provided to the Company.

The Proposal urges the Board of Directors and its compensation committee to implement a recommended set of reforms that imposes important limitations on senior executive compensation given JPMorgan's decision to participate in the Troubled Asset Relief Program ("TARP") established by the Economic Emergency Stabilization Act ("EESA").

JPMorgan states that it is entitled to exclude the Proposal in reliance on Rules 14a-8(i)(3); 14a-8(c) and 14a-8(f); 14a-8(i)(11), (7), (2) and (6). It is well-established that shareholder proposals concerning the executive compensation of senior executives are appropriate for inclusion in proxy materials and the Company should not be permitted to exclude the Proposal from its 2009 proxy materials.

I. The Proposal Is Neither False Nor Misleading and the Company Should Not Be Permitted to Exclude it Pursuant to Rule 14a-8(i)(3)

Relying on Rule 14a-8(i)(3) the Company contends that the Proposal contains statements that are misleading and vague and therefore may be excluded under Rule 14a-8(i)(3). The Company faces a very high burden when it seeks to exclude the Proposal as false and misleading—a burden the Company fails to meet.[1]

First, the Company contends that the Proposal does not reference the intended duration of the elements of the Proposal and is therefore vague and indefinite, relying on the Staff's recent decision in *SunTrust Banks, Inc.* (Dec. 31, 2008). However, that Staff decision explicitly relied upon language in the proponent's comment in its response to the company's no-action request to glean some apparent vagueness between the proponent's intent and the literal language of the proposal. The Staff stated:

> There appears to be some basis for your view that SunTrust may exclude the proposal under Rule 14a-8(i)(3) as vague and indefinite. In arriving at this position, we note the proponent's statement that the 'intent of the Proposal is that the executive compensation reforms urged in the Proposal remain in effect so long as the company participates in the TARP.' By its terms, however, the proposal appears to impose no limitation on the duration of the specified reforms. Accordingly, we will not recommend enforcement action to the Commission if SunTrust omits the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Unless the reference to the proponent's statement is gratuitous, one must logically conclude it is that very proponent's statement that creates the vagueness and indefiniteness upon which the Staff relied. Otherwise, the Staff would simply have noted that the proposal imposed no limitation on the duration of the specified reforms. The Staff could not so conclude, though, for it is well established that shareholder proposals seeking executive compensation reforms are not required to specify limitations on duration and so are not subject to exclusion under Rule 14a-8(i)(3).

The Proposal seeks a number of reforms that are clearly stated, easy to understand, and would create no confusion for either the Company or shareholders voting on them. It is neither surprising nor grounds for omission that the Proposal does not specify time periods. Neither have innumerable shareholder proposals requesting that companies expense their stock options, reform their executive compensation by establishing pay-for-superior performance, index stock options to peer-group performance, require that future equity compensation grants be performance-vested, or a myriad of other executive compensation proposals. If the Fund's precatory proposal passes and the board chooses to implement the requested reforms, it will exercise its discretion to determine their duration, just as it would have to do were it to implement any other reform requested by shareholders.

Second, JPMorgan cites the Proposal's failure to define the term "senior executive." In making this argument, the Company ignores the long-standing precedent set by the SEC regarding the appropriateness of the term "senior executive." As clarified in Staff Legal Bulletin 14A, since 1992 the Staff has differentiated between shareholder proposals "that

[1] The Company also argues that it may exclude the Proposal under Rule 14a-8(i)(6) because it lacks the power or authority to implement the Proposal. The basis for this argument is the same as the arguments it musters in its discussion under Rule 14a-8(i)(3). For the same reasons we cite in rebutting the Company's 14a-8(i)(3) argument, we submit the Proposal should not be excluded under Rule 14a-8(i)(6).

relate to general employee compensation matters" and those "that concern only <u>senior executive</u> and director compensation. . . ." (emphasis added) In using the term "senior executive," the Proposal thus employs the Staff's own terminology, which has been used repeatedly in the context of shareholder proposals without any resulting ambiguity.

The Staff has rejected arguments much like the one JPMorgan advances here. In *The AES Corporation* (March 12, 2008), the company argued that a proposal asking the board to adopt an executive compensation plan for senior executives based on a "pay for superior performance" policy (a "pay for superior performance proposal") did not define what a "senior executive" is or which executives of the company would be included within the scope of "senior executives." Similarly, in *Avaya Inc.* (avail. Oct. 18, 2006), Avaya argued that, left undefined, the term "senior executive" in a pay for superior performance proposal could mean: only the named executive officers listed in the company's proxy statement; reporting persons under Section 16 of the Securities Exchange Act of 1934; all employees classified as senior vice president or higher; or all individuals classified as vice presidents or higher. In *SBC Communications, Inc.* (Jan. 18, 2005) and *Emerson Electric Co.* (Oct. 24, 2005) the companies also presented similar arguments about the vagueness of the term "senior executive." In all of these cases the SEC determined that the proposals were appropriate and denied the companies' requests for permission to omit them.

Third, the Company states that the Proposal fails to define the phrase "annual incentive compensation (bonus)." The language of the proposal is straight-forward: annual incentive compensation, also known as bonuses, should be targeted as no more than annual salary. This is neither vague nor misleading, but quite clear.

Fourth, the Company states that the element of the Proposal regarding a "majority of long-term compensation be made in the form of performance-vested equity instruments" is not limited to senior executives. However, the Proposal contains the following preface to all of the bullet points listing the requested reforms:

> [S]hareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

This clearly limits all of the provisions to senior executives.

Fifth, the Company argues that the Proposal is vague because it is not clear how the requested freeze on all stock options except those indexed to peer group performance would interact with the request that a majority of long-term compensation be performance-vested equity instruments. There is nothing inherently contradictory about such provisions. Options indexed to the peer group would qualify as performance-vested equity instruments. To the extent other equity instruments are employed, a majority of them should also be performance-vested.

Sixth, the Company objects to the provision that "senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards." The Company misconstrues the standard it must meet to satisfy its burden of persuasion that a

proposal may be omitted as false and misleading. A proposal need not address every hypothetical question of which a company can conceive. The Company must prove shareholders would not know what action the proposal urges and here the statement is quite clear and not at all difficult for shareholders or the company to understand.
Seventh, the Company claims that the simple statement seeking a "prohibition on accelerated vesting for all unvested equity awards" should allow it to exclude the Proposal since "accelerated vesting" is undefined. Once again, it cites no support for this proposition, nor does it claim that this is a material term of the Proposal. The concept of accelerated vesting is well understood and the detail of how to implement the requested reform is within the purview of the Board and Compensation Committee.

Eight, the Company seeks permission to exclude the Proposal because it fails to specify how severance payments would be calculated. The language of the Proposal could not be more precise: "A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary." Limiting all severance payments means just that and certainly does not create any confusion.

Ninth, the Company considers as vague the requested freeze on additional accruals of retirement benefits under any SERP maintained by the Company for the benefit of senior executives. Again, this is a straight-forward statement representing one provision of a precatory proposal requesting the Board to consider reforms to its senior executive compensation system. Proponent is under no obligation to specify every conceivable detail of how such a proposal should be implemented. In fact, were the Fund to do so we would be subject to a no-action request under 14-8(i)(7) for seeking to "micro-manage" the Company's ordinary business operations.

Finally, the Company restates its argument addressed above regarding a purported failure to specify the duration of the Proposal.

For all these reasons it is clear that the Company fails to meet its burden of persuasion under Rule 14a-8(i)(3) and its request should be denied.

II. The Proposal Does Not Contain Multiple Proposals and the Company Fails to Satisfy Its Burden of Persuasion Under Rule 14a-8(c)

The Company also argues that the Proposal contains multiple proposals in violation of Rule 14a-8(c). The basis for this argument is that the Proposal relates to disparate aspects of executive compensation.

A single proposal made up of several separate components does not constitute more than one proposal if the components "are closely related and essential to a single-well defined unifying concept." *AT&T Wireless Services, Inc.* (avail. Feb. 11, 2004)

In *AT&T Wireless Services, Inc.*, a proposal was submitted requesting the board to replace its system of compensation for senior executives with a "Commonsense Executive Compensation" program. That proposal's resolution provided:

> Resolved, that the shareholders of AT&T Wireless Services Inc. ("Company") request that the Company's Board of Directors and its Executive Compensation Committee replace the current system of compensation for senior executives with the following "Commonsense Executive Compensation" program including the following features:
>
> (1) Salary - The chief executive officer's salary should be targeted at the mean of salaries paid at peer group companies, not to exceed $ 1,000,000 annually. No senior executive should be paid more than the CEO.
>
> (2) Annual Bonus - The annual bonus paid to senior executives should be based on well-defined quantitative (financial) and qualitative (non-financial) performance measures. The maximum level of annual bonus should be a percentage of the executive's salary level, capped at 100% of salary.
>
> (3) Long-Term Equity Compensation - Long-term equity compensation to senior executives should be in the form of restricted shares, not stock options. The restricted share program should utilize justifiable performance criteria and challenging performance benchmarks. It should contain a vesting requirement of at least three years. Executives should be required to hold all shares awarded under the program for the duration of their employment. The value of the restricted share grant should not exceed $1,000,000 on the date of grant.
>
> (4) Severance - The maximum severance payment to a senior executive should be no more than one year's salary and bonus.
>
> (5) Disclosure - Key components of the executive compensation plan should be outlined in the Compensation Committee's report to shareholders, with variances from the Commonsense program explained in detail.
>
> The Commonsense compensation program should be implemented in a manner that does not violate any existing employment agreement or equity compensation plans.

Like the Proposal submitted by the Fund, the "Commonsense" Proposal had multiple components and the company sought to exclude it under Rule 14a-8(c). The company failed in that case, as the Company should here. The proponent noted in *AT&T Wireless Services, Inc.*:

> As the Company acknowledges, our Proposal relates to senior executive compensation. It focuses on all aspects of such compensation, including salary, bonus, long-term equity compensation, severance, and disclosure. That certain compensation is triggered by the severance of employment in no way renders severance payments to senior executives as a distinct topic. Shareholders are concerned about all aspects of senior executive compensation

> and our Proposal properly addresses several different aspects, including severance.

In support of its request, the Company relies in part on Fotoball, Inc. (May 6, 1997). As in *Fotoball*, the Proponent included within its seven requests such concepts as an executive hold requirement and a limitation on the form of executive compensation. However, reviewing *Fotoball* allows one to see that it is easily distinguished and does not provide relevant precedent in the instant case.

In granting the company's request for no-action relief, the Staff observed:

> The proposal has three parts. The first part recommends that all persons elected or appointed to the board beneficially own at least 10,000 shares of the Company's stock excluding shares received for service as a director and shares purchased pursuant to options or warrants. The second part recommends that all directors be paid in the form of common stock or options. The third part recommends that non-employee directors should perform no other services for the Company for compensation.
>
> There appears to be some basis for your view that the proponent has exceeded the one proposal limitation set forth in rule 14a-8(a)(4).

So the company was allowed to exclude a proposal that contained provisions unrelated to each other. The Fund's Proposal relates to the reform of senior executive compensation and provides a set of complementary executive compensation changes. The proposed reforms are closely related and essential to the unified concept of senior executive compensation reform. For these reasons, the Company has failed to satisfy its burden under Rule 14a-8(c) and its request should be denied.

III. The Proposal Is Not Substantially Duplicative of a Previously-Submitted Proposal

The company next argues that the Proposal substantially duplicates a proposal submitted by the AFL-CIO Reserve Fund urging the Board of Directors to adopt a policy that named executive officers be required to retain 75% of the shares acquired through the Company's compensation plans for at least two years from the termination of their employment. As the Company notes, the standard for it to prevail requires that it prove the proposals present the same "principal thrust" or "principal focus."

However, it is clear that these two proposals do not have the same principal focus. The Proposal presented by the Fund notes that the Company is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program and therefore urges the Board to adopt a comprehensive set of senior executive compensation reforms focused on "impos[ing] important limitations on senior executive compensation." It proceeds to identify a wide array of limitations united by the goal of limiting such compensation. As the Company notes, the Proposal contains seven such provisions. Contrast this with the other proposal addressing one small element of the requested reform, an equity retention requirement. The Proposal submitted by the Fund does not contain the same focus as that submitted by the AFL-CIO Reserve Fund and the Company's request should be denied.

IV. The Company Fails to Meet Its Burden Under Rule 14a-8(i)(7)

The Company argues that it may exclude the Proposal under Rule 14a-8(i)(7) because the second bullet of the Proposal is not limited to senior executives. As discussed above, the Proposal, by its very terms, is limited to senior executives so this argument must fail.

IV. The Company Fails to Satisfy Its Burden Under Rule 14a-8(i)(2) of Demonstrating That the Proposal Would Cause It to Breach State Law

The Company argues that the Proposal may be excluded for causing it to violate Delaware law by requesting the Company to adopt a policy that would, by unilateral Board action, impose a new transfer restriction on previously issued shares held by senior executives. However, as the Company notes, this is a precatory proposal. If this precatory proposal passes and the Board chooses to implement it, then the Board would obviously do so in a way that satisfies all of its and the Company's legal obligations. The Proposal would not cause the Company to violate state law for nothing the Company has demonstrated proves that the Proposal would require – and indeed it does not – the Board to take unilateral action in violation of any laws.

V. Conclusion

For the foregoing reasons, the Proponent respectfully submits that the Company has failed to satisfy its burden of persuasion and should be denied its request to be allowed to exclude the Proposal.

Should the Staff have any further questions, please contact Ms. Jennifer O'Dell at (202) 942-2359 or via email at jodell@liuna.org.

Sincerely,

Michael J. Short

Michael J. Short
Secretary-Treasurer

Cc: Jennifer O'Dell

JPMorgan Chase & Co.

Anthony J. Horan
Corporate Secretary
Office of the Secretary

January 9, 2009

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

Re: *Shareholder Proposal of the Indiana Laborers' Pension 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 submitted by the Indiana Laborers' Pension 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 concurrently furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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

THE PROPOSAL

The Proposal states:

RESOLVED: Given that JP Morgan Chase & Company ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury, Company shareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior 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 be properly 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(c) and 14a-8(f), because the Proposal contains multiple proposals;
- Rule 14a-8(i)(11) because the Proposal is substantially duplicative of a previously submitted proposal;
- Rule 14a-8(i)(7) because the Proposal pertains to the Company's ordinary business operations;
- 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) allows 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 the making of false or misleading statements in proxy soliciting materials or the omission of any material fact necessary to make statements contained therein not false or misleading, and Rule 14a-5, which requires that information in a proxy statement be "clearly presented." The Staff consistently has taken the position that vague and indefinite shareholder proposals are excludable under Rule 14a-8(i)(3) because "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." Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). Moreover, a proposal is sufficiently vague and indefinite so as to justify exclusion where a company and its shareholders might interpret the proposal differently, such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (avail. Mar. 12, 1991). *See also 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.").

Specifically, the Staff has permitted the exclusion of proposals under Rule 14a-8(i)(3) when the proposal leaves key terms or phrases undefined such that the phrases may be subject to multiple interpretations. In *Bank of America Corp.* (avail. Mar. 10, 2004), the shareholder proposal stated that the company's management had "no mandate going forward to pursue any merger discussions with any major institution." The company argued that the terms "any merger discussions" and "any major institution" were subject to varying interpretations, and thus shareholders could not clearly understand their meanings. The Staff agreed and permitted the company to exclude the proposal under Rule 14a-8(i)(3) because it was impermissibly vague and indefinite. Likewise, 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." 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, and the Staff concurred with the exclusion of the proposal as vague and indefinite. *See also Wendy's International, Inc.* (avail. Feb. 24, 2006) (permitting the exclusion of a proposal as impermissibly vague and indefinite where the company argued that the terms "accelerating" and "development" were undefined).

Recently, the Staff concurred in the exclusion of a proposal substantially similar to the Proposal under Rule 14a-8(i)(3) as vague and indefinite. In *SunTrust Banks, Inc.* (avail. Dec. 31, 2008), the proponent noted the company's potential participation in TARP and urged the company to implement a specific "set of reforms that imposes important limitations on senior executive compensation." The proposal contained a lengthy list of proposed "reforms," including many of the same elements as the Proposal. Absent from the proposal, however, was any statement regarding the duration of the limitations it sought to impose. While the proponent later indicated in its response letter, dated December 16, 2008, that the intent of the proposal was for the reforms to remain in effect so long as the company participated in TARP, the Staff noted that "[b]y its terms, however, the proposal appears to impose no limitation on the duration of the specified reforms," and accordingly, the proposal was excludable in reliance on Rule 14a-8(i)(3). The Proposal here suffers from the same infirmity as the proposal in *SunTrust* in that it fails to specify any duration for the limitations it seeks. In the absence of any statement that these limits will be temporary, some shareholders may assume that the limitations they are being asked to vote on will apply indefinitely or permanently. Other shareholders may assume that since the Proposal references TARP and appears to be motivated by the Company's participation in TARP, these reforms are meant to be imposed only for so long as the Company is a TARP participant. This confusion would lead not only to shareholders not being able determine what they are voting on, but also to the Company not being able to determine what is intended.

The Staff also has applied its long line of Rule 14a-8(i)(3) precedent to shareholder proposals concerning other compensation practices, and regularly has concurred with the exclusion of such proposals under Rule 14a-8(i)(3) where aspects of the proposals created ambiguities that resulted in the proposals being vague or indefinite. For example, in *Otter Tail Corp.* (avail. Jan. 12, 2004), the Staff concurred in the exclusion of a proposal that would have changed "[f]uture executive salary and stock option plans . . . to limit any benefits for either salary or stock options for 5 years," but failed to define certain terms or to address the scope and methods of implementing such changes. Likewise, in *Eastman Kodak Co. (Kuklo)* (avail. Mar. 3, 2003), the Staff concurred in the exclusion of a proposal that would have capped executive salaries at $1 million "to include bonus, perks [and] stock options," but gave no indication of how options were to be valued and failed to define various terms or otherwise provide guidance on implementation of the proposal. *See also General Electric Co. (Newby)* (avail. Feb. 5, 2003) (concurring in the exclusion of a proposal requiring shareholder approval for "all compensation for Senior Executives and Board members not to exceed more than 25 times the average wage of hourly working employees," but failing to define terms such as "compensation" or "average wage" or otherwise provide guidance on implementation of the proposal); *General Electric Co.* (avail. Jan. 23, 2003) (concurring in the exclusion of a proposal seeking "an individual cap on salaries and benefits of one million dollars for G.E. officers and directors," but failing to define terms such as "benefits" or otherwise provide guidance on implementation of the proposal).

As with the precedent cited above, the Proposal may be excluded under Rule 14a-8(i)(3) because it leaves key terms and phrases open to multiple interpretations. Each of the Proposal's seven elements contain terms that are inherently vague and indefinite such that neither the shareholders nor the Company can determine with reasonable certainty exactly what is required or how the demands could or would be implemented. For example:

- The term "senior executive" is not defined. This is a term that is used in a variety of statutory and regulatory contexts, including in Staff Legal Bulletin No. 14A (July 13, 2001) concerning shareholder proposals, and is subject to a variety of interpretations. In the context of the Proposal, which is premised on participation by the Company in TARP, the term might be intended to mean a "Senior Executive Officer" ("SEO") as defined for purposes of TARP. If so, we note that for certain purposes, the term SEO as used in TARP may refer to the named executive officers in a company's proxy statement for the year of reference, while for other purposes it may refer to the named executive officers in the company's proxy statement for the prior year. Also, for certain purposes a person who is at any time an SEO would be required to be treated as an SEO for future periods, whereas for other purposes a person may be an SEO in one year and not in the next. Alternatively, the term "senior executive" could mean the Company's executive officers as specified in the Company's Form 10-K. As a further alternative, the term might be intended to include the Company's Executive Committee, a management committee of approximately 50 senior executives referred to in the Company's 2008 proxy statement.

- The Proposal seeks to limit the amount of "target annual incentive compensation (bonus)" that the Company could pay to its senior executives to an amount no greater than one times the executive's annual salary. The phrase "annual incentive compensation (bonus)" is not defined. Item 402 of Regulation S-K requires disclosure in the Summary Compensation Table of "Bonus" compensation and of "Non-Equity Incentive Plan Compensation" and separately requires disclosure of "Grants of Plan Based Awards" consisting of stock awards and option awards. The phrase "target annual incentive compensation (bonus)" might be intended to refer to the total of all such amounts or only to amounts disclosed as "bonus." Further, in some arrangements for executive compensation, a "target" for compensation can be intended to mean an amount that may be paid if certain performance parameters are achieved, but which may be increased or decreased within defined limits if performance is better or worse than the parameters associated with the "target." It is unclear what the Proposal intends.

- The Proposal seeks to cause the Company to award "a majority" of long-term compensation in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares. As discussed in Section IV below, this element is not limited to "senior executives," and thus appears to be intended to apply to all employees. In addition, it is unclear whether the phrase "long-term compensation" is intended to apply to all awards in whatever form if they are not immediately paid or vested, or whether it would only apply to a subset of compensation, such as compensation in the form of equity awards.

- The Proposal seeks to cause the Company to grant only stock options that "are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded." The Proposal is inherently vague insofar as it is not possible to determine how this element is intended to operate in conjunction with the prior element that would require that a majority of long-term compensation be awarded in the form of performance-vested equity instruments. The prior element would appear to permit the Company to award some long-term compensation in a form other than performance-vested equity instruments, including stock options, yet this element would appear to preclude such awards.

- The Proposal seeks to impose "[a] strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards." The Proposal is vague and indefinite insofar as it is not clear, for example, whether: shares that are withheld to pay taxes or to pay the exercise price of options are required to be counted as part of the number of shares "obtained through equity awards"; the 75% standard is intended to apply to all shares, whenever obtained, or possibly to just those shares obtained from awards received after an individual became a "senior executive"; shares that might be held in a margin account, whether or not there were outstanding debit balances, would be deemed to be held for purposes of the limitation.

- The Proposal seeks to institute a prohibition on "accelerated vesting" for all unvested equity awards held by senior executives. The Proposal is vague and indefinite insofar as it is not clear, for example, whether this is intended to refer only to a change in the terms of an outstanding award or also to the terms of an award that is already earned. As examples of the latter, an award might provide for accelerated vesting upon the death or disability of an employee, or a performance linked award of shares might provide that the award would vest at a specified time but could vest earlier if defined performance metrics were achieved.

- The Proposal seeks to impose limits on severance payments to an amount no greater than one times the executives' annual salary. The Proposal is vague and indefinite insofar as it does not define the term "severance payments." It therefore is not clear whether continued medical insurance benefits, deferred compensation payable on a separation from service or outplacement services would be treated as "severance payments." In contrast, regulations promulgated by the U. S. Treasury regarding the TARP Capital Purchase Program deal in detail with certain payments made on account of an applicable severance from employment. *See* 31 CFR Part 30.

- The Proposal seeks to require a freeze on additional accruals of retirement benefits under any supplemental executive retirement plan ("SERP") maintained by the Company for the benefit of senior executives. The Proposal is vague and indefinite insofar as it is unclear whether the freeze would apply only to programs for which only "senior executives" were eligible or whether it would apply to any SERP in which "senior executives" might participate along with other eligible employees who were not "senior executives." For example, the Company has a non-qualified excess pension plan based on base salary in excess of $225,000 up to a limit of $1 million. It is not clear whether the freeze would apply to such plan, and if so, whether it would apply to all eligible employees or only to "senior executives" who participate in the plan.

- The Proposal does not specify for how long the proposed limitations would apply. The Proposal refers to TARP and an infusion of capital from the U.S. Treasury. The Proposal is vague and indefinite insofar as it is unclear whether the proposed limitations are intended to apply only until such capital has been redeemed or whether some other period was intended.

In sum, the Proposal is subject to alternative interpretations with respect to its intended duration and ambiguous as to a number of other key terms and phrases. Moreover, several of the Proposal's elements appear to be inconsistent with each other, and implementing some elements would directly violate others. 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. As the Staff has found on numerous occasions, the Company's shareholders cannot be expected to make an informed decision on the merits of the Proposal without at least knowing what they are voting on. Accordingly, we believe that the Proposal is impermissibly misleading as a result of its vague and indefinite nature and, thus, is excludable under Rule 14a-8(i)(3).

II. The Proposal May Be Excluded under Rule 14a-8(c) and Rule 14a-8(f) Because It Consists of Multiple Proposals.

The Company also may exclude the Proposal from its 2009 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proponent has attempted to combine seven different demands into a single proposal, in violation of Rule 14a-8(c). The Proposal was received by the Company on November 25, 2008. By letter dated December 9, 2008 (the "Deficiency Notice"), the Company notified the Proponent that its submission violated Rule 14a-8(c) and advised that if the Proponent wished to resubmit a single proposal, the Proponent could respond within fourteen days from receipt of the Deficiency Notice. *See* Exhibit B. Federal Express records confirm that the Proponent received the Deficiency Notice at 8:44 a.m. on December 10, 2008. *See* Exhibit C. As of the date of this letter, the Company has not received a response from the Proponent.

The Staff consistently has enforced the requirement that a Proponent be limited to one proposal, and that a Proponent may not bundle multiple unrelated proposals requiring different standards or actions under a broad heading without a precise, unifying concept in an attempt to evade this requirement. *See, e.g., HealthSouth Corp.* (avail. March 28, 2006) (concurring in the exclusion of a submission containing proposals to (i) grant shareholders the power to increase the size of the board, and (ii) fill any director vacancies created by such an increase, where the proponent claimed that the proposals were related to the single concept of giving the shareholder the power to add directors of their own choosing); *American Electric Power* (avail. Jan. 2, 2001) (finding that a shareholder proposal seeking to (i) limit the number of years a director may serve, (ii) require at least one full board of directors meeting on-site each month, and (iii) increase the annual retainer payable to a director in respect of his service, did not constitute a single proposal as required by Rule 14a-8(c), where the proponent claimed that the proposals were all aimed at the governance of the company); *IGEN International, Inc.* (avail. Jul. 3, 2000) (concurring in the exclusion of a seven-pronged proposal that, among other things, would require the size of the company's board of directors to be increased to eight members, require monthly board meetings and permit any shareholder owning five percent or more the company's outstanding stock to call a shareholders' meeting); *Electronic Data Systems Corp.* (avail. Mar. 10, 1998) (concurring in the exclusion of a proposal seeking to (i) eliminate the company's classified board of directors, and (ii) appoint an independent lead director). *But see Meadow Valley Corp.* (avail. Mar. 30, 2007) (finding that a proposal providing for (i) liquidation and (ii) distribution of the proceeds to shareholders was a single proposal).

In the Proposal, the Proponent attempts to address a range of distinct issues on the premise that they all relate to compensation. The breadth and disparate nature of the various elements of the Proposal belie any attempt to characterize the Proposal as presenting a precise, unifying concept, particularly given their inherent vagueness. The various elements of the Proposal attempt to restrict or regulate (i) cash compensation, (ii) equity compensation, (iii) retirement benefits, (iv) short-term incentive compensation, (v) long-term incentive compensation, (vi) severance compensation, (vii) the design of retention elements of compensation, and (viii) finally, what can be done with compensation after it is earned and paid. These different elements cannot be lumped together and treated as a single package, because they each serve very different purposes for the Company in connection with its efforts to recruit, compensate and retain employees. By bundling the various elements of the Proposal together, the Proponent would force shareholders to choose between voting for or against all of its components, even though many shareholders will clearly view the individual components as differing greatly in terms of whether they reflect good corporate policy. Requiring shareholders to take a single position as to all of these different elements of the Company's compensation structure, in the aggregate, effectively takes away the ability of shareholders to distinguish among them. In addition, the Company would have no way of knowing what a "for" or "against" vote on the Proposal meant because the Company would be unable to determine which elements of the Proposal shareholders approved or disapproved of.

The Staff has permitted the exclusion of multiple unrelated proposals that lack a unifying concept under similar circumstances, including several that deal with compensation matters. For example, in *Downey Financial Corp.* (avail. Dec. 27, 2004), the proponent submitted a proposal to (i) eliminate of the directors retirement plan, and (ii) require that a portion of the directors' compensation be paid in restricted stock. The Staff concurred in exclusion "because the proponent exceeded the one-proposal limitation in rule 14a-8(c)." *See also Fotoball, Inc.* (avail. May 6, 1997) (concurring in the exclusion of a submission that included proposals setting forth minimum stock ownership requirements, recommending that directors be paid in equity compensation and prohibiting non-employee directors from performing other services for the company for compensation); *USLIFE Corp.* (avail. Jan. 28, 1993) (concurring in the exclusion under the predecessor to Rule 14a-8(c) of a submission containing proposals to (i) cap the salary and bonuses of the company's chief executive officer, (ii) condition payment of bonuses for officers on certain performance metrics, and (iii) allow shareholders to nominate director candidates).

Even if the Staff were to view elements (i) through (vii) of the Proposal as sufficiently related to constitute a single proposal, element (viii) presents a concept that differs because it does not address the magnitude or conditions under which compensation is granted, but instead focuses on retention of compensation that has been received, regardless of its amount. Element (viii) requires senior executives to retain for the full term of their employment at least 75% of the shares of Company stock obtained through equity awards. This element of the Proposal does not appear to be driven by the same considerations which motivate the rest of the Proposal; considerations that the supporting statement describes as "ever-escalating levels of executive compensation unjustified by corporate performance levels" and "improv[ing] the pay-for-performance features of the Company's [compensation] plan." Instead, this element attempts to restrict the executive's ability to fully enjoy compensation that has already been paid, as opposed to attempting to limit the size or types of compensation that Company executives may receive. Thus, while the Company believes that each element of the Proposal is itself a separate proposal, there are, at minimum, two conceptually different proposals here, and, accordingly, the entire Proposal should be excludable. *See Occidental Petroleum Corporation* (Feb. 23, 1998) (concurring in exclusion because the proposal exceeded the one proposal limitation and noting that "while it does not necessarily agree with the Company's assertion that the proposal contains five separate proposals, we believe that that the proposal does contain more than one proposal.").

Thus, the Proposal constitutes multiple proposals, and the Proponent has failed to cure this deficiency despite proper notice from the Company. Accordingly, the Proposal may be excluded from the 2009 Proxy Materials pursuant to Rule 14a-8(c).

III. The Proposal May Be Excluded under Rule 14a-8(i)(11) as Substantially Duplicative of a Previously Submitted Proposal.

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it "substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting." The Commission has stated that "[t]he purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976).

On November 24, 2008, the Company received by facsimile from the AFL-CIO Reserve Fund a proposal (the "Prior Proposal") urging the Board of Directors to, among other things, adopt a policy requiring the "Named Executive Officers" of the Company to retain 75% of the shares acquired through the Company's compensation plans for at least two years from the termination of their employment. The Prior Proposal, a copy of which is attached as Exhibit D, reads:

> Resolved, the shareholders of JP Morgan 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.

The Proposal and the Prior Proposal both request that certain Company executives be subject to a basic requirement of retaining at least 75% of the shares of Company stock they acquire through equity compensation awards. The Proposal's 75% share retention requirement would run "for the full term of [the senior executive's] employment," while the Prior Proposal's requirement would run "for two years from the terminations of [the Named Executive Officer's] employment." Thus, implementation of either the Proposal or the Prior Proposal would result in certain of the Company's executives becoming subject to a requirement to retain at least 75% of their shares for the full term of their employment with the Company. Asking the Company's shareholders to vote separately on the same issue may confuse shareholders and could result in a situation where the Board of Directors is unable to determine the shareholders' will.

When a company receives two substantially duplicative proposals, the Staff has indicated that the company must include in its proxy materials the proposal it received first, unless that proposal may otherwise be excluded. *See Atlantic Richfield Co.* (avail. Jan. 11, 1982); *see also Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas & Electric Co.* (avail. Jan. 6, 1994). The Company received the Prior Proposal on November 24, 2008, one day before it received the Proposal on November 25, 2008. Accordingly, if the Staff does not concur with the exclusion of the Prior Proposal for the reasons addressed in a separate no-action request, then the Company intends to include the Prior Proposal in its 2009 Proxy Materials. In that event, the Company intends to exclude the Proposal as substantially duplicative of the Prior Proposal.

Pursuant to Staff precedent, the standard applied in determining whether proposals are substantially duplicative is whether the proposals present the same "principal thrust" or "principal focus." *See Pacific Gas & Electric Co.* (avail. Feb. 1, 1993) (comparing the "principal thrust" of a subsequently submitted proposal with the "principal focus" of a previously submitted proposal in the context of Rule 14a-8(i)(11)). Proposals need not be identical in order for a company to exclude a subsequently submitted proposal from its proxy statement in reliance on Rule 14a-8(i)(11). *See, e.g.*, *International Paper Co.* (avail. Feb. 19, 2008) (concurring in the exclusion of a proposal asking that the board remove supermajority vote requirements from the company's charter as substantially duplicative of a proposal asking that the board adopt simple majority vote requirements in the company's charter and bylaws); *General Motors Corp. (Catholic Healthcare West)* (avail. Apr. 5, 2007) (concurring in the exclusion of a proposal requesting an annual statement of each contribution made with respect to a political campaign, political party, or attempt to influence legislation as substantially duplicative of proposal requesting a report outlining the company's political contribution policy along with a statement of non-deductible political contributions made during the year); *Qwest Communications International, Inc.* (avail. Mar. 8, 2006) (concurring in the exclusion of a proposal to amend the company's governance documents to provide that directors be elected by a majority vote as substantially duplicative of a proposal requesting that the board amend the bylaws to provide that directors be elected by majority vote in uncontested elections and by plurality vote in contested elections). In the instant case, the Proposal and the Prior Proposal have the same principal thrust and focus because each seeks to require senior executives of the Company to retain, for the full term of their employment, at least 75% of the shares they acquire through equity compensation awards.

The Staff consistently has taken the position that proposals may differ in their terms or scope and still be deemed substantially duplicative for the purposes of Rule 14a-8(i)(11), as long as the proposals have the same principal thrust or focus. For example, in *Merck & Co., Inc.* (avail. Jan. 10, 2006), the Staff concurred with the company's view that a proposal seeking adoption of a policy making a significant portion of future stock option grants to senior executives performance-based was substantially duplicative of an earlier proposal asking that the board take the steps needed to see that the company did not award any new stock options or reprice or renew current stock options. Although not identical, both proposals sought future limitations on grants of stock options, and therefore, the principal thrust and focus of the proposals was the same. *See also Pacific Gas & Electric Co.* (avail. Feb. 1, 1993) (concurring with company's view that a proposal asking the company to link the chief executive officer's total compensation to company performance was substantially duplicative of two other proposals asking the company to: (1) tie all executive compensation other than salary to performance indicators; and (2) impose ceilings on future total compensation of officers and directors in order to reduce their compensation). Similarly, here, while the Proposal and the Prior Proposal contain slightly different wording and terms, the principal thrust of both proposals is to require senior executives to retain significant amounts of Company stock during their employment with the Company. For example, the Proposal applies the 75% requirement to "senior executives" during the term of their employment, while the Prior Proposal uses the term "Named Executive Officers" and applies both during employment and for two years following termination, but these differences do not alter the similar focus of both proposals.

The fact that the Proposal also addresses other topics not related to a share retention requirement does not alter this analysis, as the Staff previously has concurred that Rule 14a-8(i)(11) is available even when one proposal touches upon matters not addressed in the other proposal. For example, in *Constellation Energy Group* (avail. Feb. 19, 2004), the Staff concurred that a proposal requesting that the company develop a performance-based equity grant program for executive officers substantially duplicated a previously submitted proposal that requested the company to implement a "commonsense executive compensation program" containing a range of features, one of which related to equity compensation design. *See also Wal-Mart Stores, Inc. (Gerson)* (avail. Apr. 3, 2002) (concurring with exclusion under Rule 14a-8(i)(11) of a proposal requesting a report on gender equality because the company had previously received and intended to include in its proxy materials a proposal requesting a report on gender and race equality).

A primary rationale behind Rule 14a-8(i)(11) and the "principal thrust" / "principal focus" concept is that the inclusion in a single proxy statement of multiple proposals addressing the same issue in different terms may confuse shareholders and place a company and its board of directors in a position where they are unable to determine the shareholders' will. If the Company were to include both the Proposal and the Prior Proposal in its 2009 Proxy Materials, this would create confusion for shareholders because both proposals ask them to vote on the same subject matter – whether to require Company executives to retain shares acquired through equity compensation awards. If the Prior Proposal passed and the Proposal failed, or vice versa, the Company would be unable to determine the shareholders' will, and it would be difficult for the Company to decide what course of action it should take with respect to any share retention requirements for senior executives. Likewise, if the Proposal and the Prior Proposal were approved by shareholders, the Company would have no way of determining which proposal's specific terms to implement and might be unable to implement both proposals fully.

If the Staff does not concur that the Prior Proposal is excludable for the reasons addressed in a separate no-action request, the Company intends to include the Prior Proposal in its 2009 Proxy Materials. In that event, the Company believes that the Proposal may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the previously submitted Prior Proposal.

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

The Proposal is properly excludable pursuant to Rule 14a-8(i)(7) because the Proposal pertains to matters of the Company's ordinary business operations, namely general compensation matters. Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission's Release accompanying the 1998 amendments to Rule 14a-8, the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board or directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission described the two "central considerations" for the ordinary business exclusion. The first was that certain tasks were "so fundamental to management's ability to run a company on a day-to-day basis" that they could not be subject to direct shareholder oversight. The second consideration related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Pursuant to this administrative history, the Staff has permitted the exclusion of shareholder proposals under Rule 14a-8(i)(7) if they concern "general employee compensation issues." Staff Legal Bulletin No. 14A (July 12, 2002) ("SLB 14A"). In SLB 14A, the Staff stated, "[s]ince 1992, we have applied a bright-line analysis to proposals concerning equity or cash compensation .... We agree with the view of companies that they may exclude proposals that relate to general employee compensation matters in reliance on rule 14a-8(i)(7)."

The second bullet of the Proposal asks for a "requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares." This element of the Proposal, unlike the other elements, is not, by its terms, limited to "senior executives." The Staff consistently has concurred in the exclusion of proposals seeking to alter the terms of a company's equity compensation to non-executive employees on the grounds that they relate to general compensation matters. *See Pfizer Inc. (Davis)* (avail. Jan. 29, 2007) (concurring in the exclusion of a proposal requesting that the board cease to grant stock options to any employees); *Amazon.com, Inc.* (avail. Mar. 7, 2005) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting that the board adopt and disclose a new policy on equity compensation, and cancel a certain equity compensation plan potentially affecting all employees); *Plexus Corp.* (avail. Nov. 4, 2004) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting discontinuation of stock options for all employees and associates); *Woodward Governor Co.* (avail. Sept. 29, 2004) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting discontinuation of all stock option grants); *ConAgra Foods, Inc.* (avail. June 8, 2001) (concurring that a proposal seeking to amend the exercise price, vesting and other terms of the company's stock plan could be excluded because it related to general compensation issues); *Shiva Corp.* (avail. Mar. 10, 1998) (concurring in exclusion of a proposal mandating that the company bylaws be amended to prohibit repricing of stock options because the proposal related to ordinary business operations). The Proposal, like the proposals in the precedent cited above, concerns general compensation matters because it addresses the granting of equity compensation to non-executive employees.

Pursuant to longstanding Staff precedent, a proposal may be excluded in its entirety when it addresses both ordinary and non-ordinary business matters. For example, in *Peregrine Pharmaceuticals Inc.* (avail. July 31, 2007), the Staff concurred with the exclusion under

Rule 14a-8(i)(7) of a proposal recommending that the board appoint a committee of independent directors to evaluate the strategic direction of the company and the performance of the management team. The Staff noted "that the proposal appears to relate to both extraordinary transactions and non-extraordinary transactions. Accordingly, we will not recommend enforcement action to the Commission if Peregrine omits the proposal from its proxy materials." In *General Electric Co.* (avail. Feb 10, 2000), the Staff noted that "a portion of the proposal related to ordinary business operations," and therefore concurred with the exclusion of a proposal requesting that the company (i) discontinue an accounting technique, (ii) not use funds from the GE Pension Trust to determine executive compensation, and (iii) use funds from the trust only as intended. *See also Medallion Financial Corp.* (avail. May 11, 2004) (concurring with the exclusion of a proposal requesting that the company consult an investment bank to evaluate ways to increase shareholder value, and noting that it "appears to relate to both extraordinary transactions and non-extraordinary transactions"); *Wal-Mart Stores, Inc.* (avail. Mar. 15, 1999) (concurring with the exclusion of a proposal requesting a report to ensure that the company did not purchase goods from suppliers using unfair labor practices because the proposal also requested that the report address ordinary business matters).

Thus, consistent with the precedent cited above, the Proposal may be excluded in its entirety because it relates to the Company's ordinary business matters, even if separate elements of the Proposal relate to a non-ordinary business matter.

V. 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 implement certain executive compensation reforms, 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 implement a "strong equity retention requirement mandating that senior executives hold for the full term of their employment at least

75% of the shares of stock obtained through equity awards." It is assumed, for purposes of Section V, that this restriction would apply to shares of stock held by senior executives at the time of the adoption of the Proposal. To the extent that the term "senior executives" includes executive officers in addition to members of the Company's Executive Committee, the shares held by such officers 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 senior executives. 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 senior executives without their consent. Accordingly, the Proposal is excludable pursuant to Rule 14a-8(i)(2).

VI. 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) 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 leaves key terms and phrases open to multiple interpretations, and neither the shareholders nor the Company can determine with reasonable certainty exactly what the Proposal requires or how it could be implemented. 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 V 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

AJH/als
Enclosures

cc: Amy L. Goodman, Gibson, Dunn & Crutcher LLP
Jennifer O'Dell, Laborers' International Union of North America Corporate Governance Project

100581771_8.DOC

EXHIBIT A

INDIANA LABORERS PENSION FUND

P.O. Box 1587 • Terre Haute, Indiana 47808-1587
Telephone 812-238-2551 • Toll Free 800-962-3158 • Fax 812-238-2553

FAX TRANSMISSION

Date: November 25, 2008

Attn: Mr. Anthony Horan, Corporate Secretary

From: Janetta England

A total of 4 pages (including this page) have been sent.

If you have not received this correct number of pages, please call (812) 232-8971 or fax to (812) 238-0801

Thank you,
Janetta England

INDIANA LABORERS PENSION FUND

P.O. Box 1587 • Terre Haute, Indiana 47808-1587
Telephone 812-238-2551 • Toll Free 800-962-3158 • Fax 812-238-2553

Sent Via Fax 212-270-4240

RECEIVED BY THE
OFFICE OF THE SECRETARY

NOV 25 2008

November 24, 2008

Mr. Anthony Horan
Corporate Secretary
JP Morgan Chase & Company
270 Park Avenue
New York, NY 10017

Dear Mr. Horan:

On behalf of the Indiana Laborers' Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the JP Morgan Chase & Company ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14a-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

The Fund is the beneficial owner of approximately 10,922 shares of the Company's common stock, which have been held continuously for more than a year prior to this date of submission. The Proposal is submitted in order to promote a governance system at the Company that enables the Board and senior management to manage the Company for the long-term. Maximizing the Company's wealth generating capacity over the long-term will best serve the interests of the Company shareholders and other important constituents of the Company.

The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact Ms. Jennifer O'Dell, Assistant Director of the LIUNA Department of Corporate Affairs at (202) 942-2359. Copies of correspondence or a request for a "no-action" letter should be forwarded to Ms. O'Dell in care of the Laborers' International Union of North America Corporate Governance Project, 905 16th Street, NW, Washington, DC 20006.

Sincerely,

Michael J. Short
Secretary-Treasurer

cc: Jennifer O'Dell
Enclosure

Resolved: Given that JP Morgan Chase & Company ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury, Company shareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:

- A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
- A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;
- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior executives.

Supporting Statement: Many Company shareholders are experiencing serious financial losses related to the problems afflicting our nation's credit markets and economy. The Company's financial and stock price performance has been challenged by these credit market events and their impact on the nation's economy. The Company's participation in the Stabilization Act's TARP is the result of these broad capital market pressures and decisions made by Company senior executives.

Generous executive compensation plans that produce ever-escalating levels of executive compensation unjustified by corporate performance levels are major factors undermining investor confidence in the markets and corporate leadership. Establishing renewed investor confidence in the markets and corporate leadership is a critical challenge. Congress enacted executive compensation requirements for those companies participating in the Stabilization Act's TARP. Unfortunately, we believe these executive compensation restrictions fail to adequately address the serious shortcomings of many executive compensation plans. This proposal calls for a set of more rigorous executive compensation reforms that we believe will significantly improve the pay-for-performance features of the Company's plan and help restore investor confidence. Should existing employment agreements with Company senior executives limit the Board's ability to implement any of these reforms, the Board and its compensation committee is urged to implement the proposed reforms to the greatest extent possible. At this critically important time for the Company and our nation's economy, the benefits afforded the Company from participation in the TARP justify these important executive compensation reforms.

JPMORGAN CHASE & CO.

Anthony J. Horan
Corporate Secretary
Office of the Secretary

November 25, 2008

Ms. Jennifer O'Dell
c/o Laborers' International Union of North America
Corporate Governance Project
905 16th Street, NW
Washington DC 20006

Dear Ms. O'Dell:

This will acknowledge receipt of the letter dated November 24, 2008, from Mr. Michael J. Short, advising JPMorgan Chase & Co. of the intention of the Indiana Laborers Pension Fund (Fund), to submit a proposal to be voted upon at our 2009 Annual Meeting. The proposal requests implementation of "compensation reforms that impose limitations on senior executive compensation."

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

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

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

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

The rules of the SEC require that a response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please

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

address any response to me at 270 Park Avenue, 38th Floor, New York, NY 10017. Alternatively, you may transmit any response by facsimile to me at 212-270-4240. For your reference, please find enclosed a copy of SEC Rule 14a-8.

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

Sincerely,

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

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

Shareholder proposals

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

(a) Question 1: What is a proposal?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

usbank

Institutional Trust & Custody
PO Box 387, Mail Code SL-MO-T3IT
St. Louis, MO 63166-0387

Sent Via Fax 212-270-4240

December 3, 2008

Mr. Anthony Horan
Corporate Secretary
JP Morgan Chase & Company
270 Park Avenue
New York, NY 10017

Re: Certification of Shareholding in JP Morgan Chase & Company - cusip 46625H100 for Indiana Laborers Pension Fund

Dear Mr. Horan,

US Bank is the record holder for 40952 shares of JP Morgan Chase & Company ("Company") common stock held for the benefit of the Indiana Laborers Pension Fund ("Fund"). The Fund has been a beneficial owner of at least 1% or $2,000 in market value of the Company's common stock continuously for at least one year prior to November 20, 2008, the date of submission of the shareholder proposal submitted by the Fund pursuant to Rule 14a-8 of the Securities and Exchange Commission rules and regulations. The Fund continues to hold the shares of Company stock.

Sincerely,

Linda J. Lockwood
Senior Vice President
(314) 418-8435

EXHIBIT B

JPMORGAN CHASE & CO.

Anthony J. Horan
Corporate Secretary
Office of the Secretary

December 9, 2008

Ms. Jennifer O'Dell
c/o Laborers' International Union of North America
Corporate Governance Project
905 16th Street, NW
Washington DC 20006

Dear Ms. O'Dell:

This is a second letter noting a procedural deficiency, as set forth below, with the proposal submitted by the Indiana Laborers Pension Fund ("Proposal"), which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention.

The Proposal contains more than one proposal in violation of the proxy rules. Rule 14a-8(c) under the Securities Exchange Act of 1934, as amended, provides that each shareholder proponent may submit no more than one proposal to a company for a particular shareholders' meeting.

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

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

Sincerely,

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

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

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

Shareholder proposals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT D

Facsimile Transmittal

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.

EXHIBIT E

RICHARDS LAYTON & FINGER

January 9, 2009

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

Re: Stockholder Proposal of the Indiana Laborers' Pension 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 Indiana Laborers' Pension 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:** Given that JP Morgan Chase & Company ("Company") is a participant in the Capital Purchase Program established under the Troubled Asset Relief Program ("TARP") of the Economic Emergency Stabilization Act of 2008 ("Stabilization Act") and has received an infusion of capital from the U.S. Treasury, Company shareholders urge the Board of Directors and its compensation committee to implement the following set of executive compensation reforms that impose important limitations on senior executive compensation:
>
> - A limit on senior executive target annual incentive compensation (bonus) to an amount no greater than one times the executive's annual salary;
> - A requirement that a majority of long-term compensation be awarded in the form of performance-vested equity instruments, such as performance shares or performance-vested restricted shares;

- A freeze on new stock option awards to senior executives, unless the options are indexed to peer group performance so that relative, not absolute, future stock price improvements are rewarded;
- A strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards;
- A prohibition on accelerated vesting for all unvested equity awards held by senior executives;
- A limit on all senior executive severance payments to an amount no greater than one times the executive's annual salary; and
- A freeze on senior executives' accrual of retirement benefits under any supplemental executive retirement plan (SERP) maintained by the Company for the benefit of senior 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, among other things, the Company's Board of Directors (the "Board") and its compensation committee (the "Committee") to "impose important limitations on senior executive compensation," through the adoption of resolutions or policies, "mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards." For purposes of this opinion, we have assumed that the reference to "shares of stock obtained through equity awards" would include shares obtained pursuant to awards made under the Company's Key Executive Performance Plan and its Long-Term Incentive Plan. Those plans authorize the Company to provide stock awards to its senior executive officers. The Company has made stock awards to its senior executive officers under those plans, and such officers currently hold shares of common stock that they obtained through equity awards made under those plans. To the extent that the term "senior executives" includes executive officers in addition to members of the Company's Executive Committee, the shares held by such officers 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 shares of "stock obtained through equity awards" following the adoption of the Proposal, but would include any such shares currently outstanding and held by senior executives. Were the

Proposal implemented, it would impose a transfer restriction on shares of the Company's common stock that were obtained by the Company's senior executives through equity awards under the Company's compensation plans, which shares 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 require each senior officer "to hold for the full term of [such officer's] employment at least 75% of the shares of stock obtained through equity awards" and would therefore prohibit transfers of such shares prior to the end of the relevant officer's employment term. See Leonard Loventhal Account v. Hilton Hotels Corp., 2000 WL 1528909, at *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, at *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:

> 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, at *6 (Del. Ch. June 29, 1999), the Court explained that the purpose of this limitation "is to

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[1] See Capital Group Companies, Inc. v. Armour, 2005 WL 678564, at *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 senior executives 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").

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 and the Committee, on previously issued and currently outstanding shares of common stock. But Section 202(b) provides the Board and the Committee 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 senior executives are currently holding shares they obtained through equity awards under 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 or the Committee. Accordingly, it is our opinion that the Proposal, if implemented, would require the Board or the Committee to adopt a resolution or 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

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

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