



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

March 14, 2011

Martin P. Dunn
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006-4001

Re: JPMorgan Chase & Co.
Incoming letter dated January 11, 2011

Dear Mr. Dunn:

This is in response to your letters dated January 11, 2011 and March 10, 2011 concerning the shareholder proposal submitted to JPMorgan Chase by the Board of Pensions of the Presbyterian Church (USA), Walden Asset Management, Catholic Healthcare West, Haymarket People's Fund, Mercy Investment Services, Benedictine Convent of Perpetual Adoration, Funding Exchange, Calvert Asset Management Company, Inc., and the Board of Pensions of the Evangelical Lutheran Church in America. We also have received letters on the proponents' behalf dated February 24, 2011 and February 25, 2011. 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 proponents.

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,

Gregory S. Belliston
Special Counsel

Enclosures

cc: Paul M. Neuhauser
1253 North Basin Lane
Siesta Key
Sarasota, FL 34242

March 14, 2011

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: JPMorgan Chase & Co.
Incoming letter dated January 11, 2011

The proposal requests that the board oversee the development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to both loans owned by the company and those serviced for others, and report policies and results to shareholders.

We are unable to concur in your view that JPMorgan Chase may exclude the proposal under rule 14a-8(i)(3). We are unable to conclude that the proposal is so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company in implementing the proposal, would be able to determine with any reasonable certainty what actions or measures the proposal requires. 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)(7). That provision allows the omission of a proposal that “deals with a matter relating to the company’s ordinary business operations.” In view of the public debate concerning widespread deficiencies in the foreclosure and modification processes for real estate loans and the increasing recognition that these issues raise significant policy considerations, we do not believe that JPMorgan Chase may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Matt S. McNair
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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

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

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



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1934 Act/Rule 14a-8

March 10, 2011

VIA ELECTRONIC MAIL (shareholderproposals@sec.gov)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549 -

Re: JPMorgan Chase & Co.
Shareholder Proposal of the Board of Pensions of the Presbyterian Church (USA)
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

This letter concerns the request dated January 11, 2011 (the "**Initial Request Letter**") that we submitted on behalf of JPMorgan Chase & Co., a Delaware corporation (the "**Company**"), seeking confirmation that the staff (the "**Staff**") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "**Commission**") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "**Exchange Act**"), the Company omits the shareholder proposal (the "**Proposal**") and supporting statement (the "**Supporting Statement**") submitted by the Board of Pensions of the Presbyterian Church (USA)¹ (collectively with the co-filers, the "**Proponent**") from the Company's proxy materials for its 2011 Annual Meeting of Shareholders (the "**2011 Proxy Materials**"). On February 24, 2011, the Proponent submitted a letter to the Staff (the "**First Proponent Letter**"), asserting its view that the Proposal and Supporting Statement are required to be included in the 2011 Proxy Materials. The First Proponent Letter is attached hereto as Exhibit A. On February 25, 2011, the Proponent submitted a second letter to the Staff (the "**Second Proponent Letter**") and, together with the First Proponent Letter, "**Proponent**

¹ Walden Asset Management, Catholic Healthcare West, Haymarket People's Fund, Mercy Investment Services, Benedictine Convent of Perpetual Adoration, the Funding Exchange, Calvert Asset Management, and the Board of Pensions of the Evangelical Lutheran Church in America subsequently submitted identical proposals to the Proposal and have indicated that they wish to serve as co-filers of the Proposal, with the Board of Pensions of the Presbyterian Church (USA) serving as primary contact.

Letters”), reiterating its view that the Proposal and Supporting Statement are required to be included in the 2011 Proxy Materials. The Second Proponent Letter is attached hereto as Exhibit B.

We submit this letter on behalf of the Company to supplement the Initial Request Letter and respond to some of the claims made in the Proponent Letters. The Company also renews its request for confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2011 Proxy Materials in reliance on Rule 14a-8.

I. BACKGROUND

The Proposal requests that the Company’s Board of Directors “oversee development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to both loans owned by the corporation and those serviced for others, subject to valid constraints of pooling and servicing agreements, and report policies and results to shareholders by October 30, 2011.” In the Initial Request Letter, the Company requested no-action relief from the Staff to omit the Proposal in reliance on Rule 14a-8(i)(3) as the Proposal is materially false and misleading and in reliance on Rule 14a-8(i)(7) as it deals with matters relating to the Company’s ordinary business operations.

Relying on Rule 14a-8(i)(3), the Initial Request Letter expressed the view that the phrase “similar loan types” is fundamental to an understanding of the actions the Proposal seeks and that it is vague and indefinite. The Initial Request Letter also argued that the Proposal and Supporting Statement may be excluded under Rule 14a-8(i)(7) because the Proposal concerns ordinary business matters. The Proponent submitted the two Proponent Letters to rebut the Initial Request Letter. The Proponent Letters and the Company’s responses thereto are discussed below.

II. EXCLUSION OF THE PROPOSAL

A. The Proposal May Be Excluded in Reliance on Rule 14a-8(i)(3), as It Is Materially False and Misleading

The Proponent Letters do not address in any way the Company’s specific discussion of its view that the phrase “similar loan types” in the language of the Proposal is fundamental to its understanding and is so inherently vague or indefinite that neither the shareholders in voting on the proposal, nor the Company in implementing it should it be adopted, would be able to determine with reasonable certainty what actions the Proposal requires. The Proponent’s entire response to the Company’s Rule 14a-8(i)(3) argument is confined to a 9-line paragraph in the First Proponent Letter that states in a conclusory fashion that “[t]here is absolutely nothing vague or inherent” in the Proposal. *See* First Proponent Letter at p. 14. This response appears to read the key term “similar loan types” out of the Proposal entirely. Further, this response fails to recognize and address the Company’s view that the Proposal’s mandate can be executed only if

the shareholders, the Board of Directors, and management of the Company understand how the Proposal would have them classify the home loans that the Company services.

In order to treat similar loans similarly, one must be able to identify which loans are to be considered to be "similar" for this purpose. The First Proponent Letter appears to suggest that the 8.52 million loans serviced by the Company are only distinguishable by whether they are owned by the Company or serviced on behalf of investors. As stated in the Initial Request Letter, the home loans that the Company services in its capacity as an owner and a servicer include home purchase loans, second lien loans, home equity loans, refinanced loans, securitized and non-securitized loans, fixed rate loans, a variety of variable interest loans, and many others, with some of these categories overlapping in a single loan. The Proposal offers no parameters or guiding principles on how to classify the loans that are "similar" in a way that would make it possible to apply to them "the same loan modification methods" "uniformly." By definition, a loan modification calls for a careful case-by-case examination of the unique circumstances of each loan and borrower. Factoring the "valid constraints of pooling and servicing agreements," acknowledged in the Proposal, into the modification analysis of serviced loans -- a contractual obligation the Company must observe -- makes the task of identifying "similar" loans for "similar" treatment even more elusive absent clear, objective guidelines. Neither the Proposal nor the Proponent Letters provide any such guidelines. Accordingly, nothing in either of the Proponent Letters addresses or attempts to disprove the legitimacy of the Company's view with regard to the application of Rule 14a-8(i)(3) that was expressed in the Initial Request Letter.

For the reasons set forth in the Initial Request Letter, the Company continues to be of the view that the actions it would take in implementing the Proposal, if adopted, may be materially different from those contemplated by the Company's shareholders in voting on the Proposal. The Company therefore believes that the Proposal may be properly omitted from the 2011 Proxy Materials in reliance on Rule 14a-8(i)(3) as impermissibly vague and indefinite.

B. *The Proposal May Be Excluded in Reliance on Rule 14a-8(i)(7), as It Deals with Matters Relating to the Company's Ordinary Business Operations*

The Company continues to be of the view that the Proposal is excludable under Rule 14a-8(i)(7), and nothing in the Proponent Letters compels a contrary outcome. Even though the Staff, subsequent to the Company's filing of the Initial Request Letter, has stated that "[i]n view of the public debate concerning widespread deficiencies in the foreclosure and modification processes for real estate loans and the increasing recognition that these issues raise significant policy considerations," (see *Citigroup Inc.* (March 2, 2011) ("*Citigroup*")), the Company is of the view that the Proposal does not fall within the purview of the Staff's position in *Citigroup*. Unlike the significant policy issue referenced by the Staff in *Citigroup*, the Proponent fails to articulate a clear, coherent significant policy issue that is at issue in the Proposal. Furthermore, even if it were to be determined that the Proposal involves a significant policy issue, as stated in the Initial Request Letter, the Proposal may still be excluded because it relates directly to ongoing litigation involving the Company.

1. The Proponent Failed to Identify a Coherent "Significant Policy Issue"

The *Citigroup* no-action letter does not control the Proposal because the Proposal fails to state the significant policy issue that was at the heart of *Citigroup*. In fact, the Proposal does not identify any clear significant policy issue at all. The Supporting Statement states that the Company "should carefully examine its servicing, comparing its performance on loans serviced for others to loans held in portfolio, to ensure equal treatment for loans of low income and minority borrowers." The Proponent Letters, on the other hand, have nothing to say about low income and minority borrowers. Instead, the Proponent Letters list a variety of concepts that could be the "significant policy issues" the Proponent seeks to rely upon, including:

- "Bifurcation of treatment of seriously impaired loans" (First Proponent Letter at 7);
- "Preference for foreclosures" (*id.*);
- "Foreclosure crisis...for those who involved in the process of foreclosing mortgages" (*id.*);
- "Chase's foreclosure policies" (*id.* at 8);
- "Predatory lending" by Washington Mutual and Bear Stearns (*id.*);
- "Foreclosure policies of banks" (*id.* at 9); and
- "Failure of the banking industry to provide comparable loan modification policies for serviced loans" (Second Proponent Letter at 2).

It is clear from the language of the Proposal and the Supporting Statement that the Proposal is not focused on the significant policy issue referenced in *Citigroup*. In this regard, we note that neither the *Citigroup* no-action request, the proposal in *Citigroup*, nor the Staff's response in *Citigroup* in any way mentioned or addressed the treatment of loans of low income and minority borrowers, predatory lending, bifurcation of treatment of seriously impaired loans, or the Company's foreclosure policies.

As discussed in the Initial Request Letter, the Staff has consistently agreed with the omission of shareholder proposals that relate to BOTH significant policy issues and ordinary business matters. See, e.g., *Wal-Mart Stores, Inc.* (March 15, 1999) (concurring in the exclusion of a proposal requesting a report on Wal-Mart's actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, child labor or who fail to comply with laws protecting employees' rights in reliance on Rule 14a-8(i)(7) because "paragraph 3 of the description of matters to be included in the report relates to ordinary business operations"); and *General Electric Company* (Feb. 10, 2000) (concurring in the exclusion of a proposal relating to the discontinuation of an accounting method and use of funds related to an executive compensation program in reliance on Rule 14a-8(i)(7) as dealing with both the significant policy issue of senior executive compensation and the ordinary business matter of choice of accounting method). As is clear from the language of the Proposal and confirmed by the various discussions of the focus of the Proposal in the Proponent Letters, the Proposal relates to a number of matters that fall outside of the Staff's position in *Citigroup* and fall within the category of ordinary business matters. As such, the Proposal may be omitted properly in reliance on Rule 14a-8(i)(7).

More than half of the First Proponent Letter's 14-page discussion is dedicated to the unsubstantiated *assumption* that the Company as a servicer has disincentives to offer modifications for loans that it services for other investors because it stands to benefit from foreclosures more than from modifications. The First Proponent Letter and the Supporting Statement also offer some statistics showing a higher proportion of portfolio loans being offered principal forgiveness or forbearance than serviced loans *to infer* that the Company does not assist struggling borrowers of its serviced loans, and that it has "a conflict of interest vis-à-vis both the investor and the victim of predatory lending." First Proponent Letter at 9. The Proponent's and its sources' conclusions are entirely unfounded. Of the first-lien home loans the Company services as an owner and a servicer, 88% are serviced for others, of which 72% are serviced for Government Sponsored Enterprises ("*GSEs*"). The Company does not benefit from the serviced loans becoming delinquent and going into foreclosure; rather, it is precisely the opposite -- contractually, the Company cannot claim its servicing fees from GSEs while the GSE loans are delinquent and will receive GSE loss mitigation solution incentives only when the Company completes a workout solution. Both the investors and the Company are given incentive payments under HAMP (as defined in the Initial Request Letter) only when a permanent HAMP modification is completed and are eligible for additional incentive payments only when the loan stays current under the modification for a defined period of time. The Company from January 2009 through January 2011 has completed 89% more modifications than it has completed foreclosures; if one adds short sales and other foreclosure avoidance assistance to modification solutions and short sales, the Company has avoided almost twice as many foreclosures as it has completed. The Company has numerous incentives, both for its own financial considerations and pursuant to the modification programs in which it participates, to avoid foreclosures and implement mutually beneficial permanent modifications.

Further, the alleged shortage of trained and skilled staff to conduct modification reviews, invoked in a third-party speech to which the First Proponent Letter cites extensively, cannot have any bearing on the alleged disparity between modification rates for portfolio loans and serviced loans. In conducting modification evaluations, the Company simply does not discriminate against serviced loans, and the Company employees do not differentiate between the loans they review for modification by whether they are serviced or owned.

The Company is contractually obligated to follow the terms of the pooling and servicing agreements ("*PSAs*") with its home loan investors (e.g., GSEs or private parties) regarding modification of their serviced loans. When such PSAs allow for participation in HAMP, which involves the large majority of the Company's home loans, the Company first reviews eligible loans, as defined under HAMP, for HAMP modifications; if a HAMP modification is unavailing under the program parameters, the Company reviews the loan for proprietary and other modifications and workout solutions. At the same time, many of the Company's investors' PSAs do not allow modifications with a principal forgiveness component, which explains why the Company's portfolio loans may have a higher rate of principal reductions than serviced loans. Thus, rather than having a bias against modification of serviced loans and wrongfully foreclosing on what would be almost 90% of its home loans, the Company follows the GSE and other investor's guidelines and its fiduciary obligations as a servicer in servicing the loans. The array of various, oftentimes unrelated issues observed in the Supporting Statement and the Proponent

Letters are different from the significant policy issue referenced in *Citigroup*. The Company therefore believes that it may exclude the Proposal from the 2011 Proxy Materials.

2. **The Proposal Relates to the Subject Matter of Ongoing Litigation Involving the Company**

Consistent with Staff precedent, the Company continues to believe that it may exclude the Proposal in reliance on Rule 14a-8(i)(7) because the Proposal directly relates to the subject matter of ongoing litigation involving the Company. Contrary to the conclusions in the First Proponent Letter, the Proposal and the Company's circumstances are consistent with precedent where the Staff has allowed exclusion of a proposal under Rule 14a-8(i)(7) on the basis of ongoing litigation.

First, it is clear, as the First Proponent Letter itself recognizes, that the Company's loan modification practices under HAMP are a central issue in at least one putative class action cited by the Company in the Initial Request Letter. See First Proponent Letter at 12; *Durmic v. J.P. Morgan Chase Bank, N.A.*, No. 10-cv-10380-RGS (D. Mass. 2010) (attached as Exhibit B to the Initial Request Letter). The Company's HAMP modification practices are also directly at issue in *Morales v. Chase Home Financing LLC*, 10-cv-02068-JSW (N.D. Cal. filed May 14, 2010).² In *Durmic*, the putative class challenges "the failure of [the Company] to honor its agreements with borrowers to modify mortgages and prevent foreclosures under the United States Treasury's Home Affordable Modification Program ("HAMP")" and alleges that as a result of the Company's actions, "homeowners are wrongfully being deprived of an opportunity to cure their delinquencies, pay their mortgage loans and save their homes." (*Durmic* Compl. at ¶¶ 1, 5.) In arguing for the predominance of classwide issues in this action, the *Durmic* plaintiffs allege that common questions of law and fact pertain to "the nature, scope and operation of [the Company's] obligations to homeowners under HAMP" and that their "claims are based on form contracts and uniform loan modification processing requirements." (*Id.* at ¶ 93.) The same is true for *Morales*, where among the allegations of illegalities in the Company's administration of loan modifications under HAMP, the putative plaintiff class claims that:

Though Chase entered into a contract obligating it to comply with HAMP and to extend loan modifications to benefit distressed homeowners, Chase has systematically failed to comply with the terms of the HAMP directives and has regularly and repeatedly violated its rules and prohibitions.

Chase has serially extended, delayed, and otherwise hindered the modification processes that it contractually undertook when it accepted billions of dollars from the United States. Chase's obstruction and delay tactics have a common result: homeowners with loans serviced by Chase,

² The First Proponent Letter's claim that *Morales*, as one of "the other two cases mentioned by Chase in footnote 4 (p.8) fail to establish anything at all, since they are not individually described nor is the text of either complaint supplied," is unpersuasive. The *Morales* complaint is publicly available, including from PACER, but is attached hereto as Exhibit C for ease of review.

who meet requirements for participation in the HAMP program, who have entered into trial modifications, and who have complied with all obligations, have not received the permanent loan modifications to which they are entitled.

Chase profits from extending trial periods and from foreclosing rather than modifying loans. Instead of complying with its contracts to enter into permanent modification with individual borrowers and the federal government, Chase has bowed to the many powerful financial incentives for it to delay or avoid permanently modifying the loans it services.

(*Morales* Compl. at ¶¶ 5-7.) The First Proponent Letter, therefore, errs in dismissing HAMP modifications as irrelevant to the Proposal. HAMP applies to the significant majority of the loans the Company services as an owner and servicer. Indeed, as a participant in the Troubled Asset Relief Program, the Company is legally obligated, subject to PSA constraints, to review for HAMP modifications loans that are delinquent or are facing imminent delinquency. Further, by its terms, the Proposal does not in any way distinguish between “development and enforcement of policies” for “loan modifications” under HAMP and any other modification program. In fact, to the extent the Staff were to find that the significant policy issue of “deficiencies in the foreclosure and modification processes for real estate loans” applies to the Proposal, it would necessarily also find that the Proposal directly relates to the subject matter of ongoing litigation regarding the Company’s modification and foreclosure practices under HAMP as alleged in *Durmic* and *Morales*. As a very significant part of loan modification programs administered by the Company, HAMP simply cannot be discounted in this context. The conclusory statement in the First Proponent Letter that “HAMP is irrelevant to the proposal and vice versa” is therefore patently false.

As discussed in the Initial Request Letter, the Staff has consistently agreed with the omission of shareholder proposals that relate to BOTH significant policy issues and ordinary business matters. The Staff has specifically taken this position with regard to the existence of ongoing litigation, even where the subject matter of that existing litigation has been determined to be a significant policy issue for purposes of Rule 14a-8(i)(7). *See, e.g., Philip Morris Companies Inc.* (February 4, 1997) (the Staff stating that it “has taken the position that proposals directed at the manufacture and distribution of tobacco-related products by companies involved in making such products raise issues of significance that do not constitute matters of ordinary business” but that because “the proposal at issue primarily addresses the litigation strategy of the Company, which is viewed as inherently the ordinary business of management to direct,” the company may exclude the proposal); *see also R.J. Reynolds Tobacco Holdings, Inc.* (February 21, 2003). Contrary to the Proponent’s views, the circumstances surrounding the Proposal and the litigation involving the Company are also analogous in all relevant terms to *Reynolds American Inc.* (February 10, 2006) and other no-action letters cited in the Initial Request Letter. Like in *Reynolds*, the Company’s loan modification practices are the subject matter of both ongoing litigation in which it is named as defendant and the Proposal. The gist of the allegations underlying the Supporting Statement and the Proponent Letters and the claims in *Durmic* and *Morales* is the same: the Company has not performed enough permanent loan modifications.

Furthermore, to the extent the Proposal seeks the development and enforcement of loan modification policies that are different from the policies the Company has been implementing to date, such a change could be cited by plaintiffs in *Durmic* and *Morales* as amounting to an implicit admission of improprieties in the Company's loan modification policies and practices and will affect the Company's litigation strategy in *Durmic*, *Morales*, and similar lawsuits. The Proposal's requirement to report the new loan modification policies and results to shareholders by October 30, 2011 also will expose the Company to premature or otherwise improper disclosure of information relevant to the litigation. The HAMP lawsuits against the Company cite statistics regarding the number of loan modifications by the Company as support for their claim that the Company has demonstrated a pattern of refusal to modify loans of struggling homeowners. (See, e.g., *Durmic* Compl. at ¶ 40.) Disclosure of the "results" of the Company's modification policies and practices will entail disclosure of loan level data and statistics that may be directly at issue in the litigation and that may affect the class size and composition, and the viability of the claims against the Company.

The Proponent is also mistaken in its belief that the investigations by state and federal officials into the Company's mortgage servicing practices or the "robo-signing" lawsuits³ against the Company are "totally unrelated" to the Proposal. See First Proponent Letter at 11. The Second Proponent Letter itself demonstrates the Proponent's error. As the Second Proponent Letter and the newspaper article attached thereto explain, the federal regulators and state attorneys general who investigate the robo-signing issue and other foreclosure related practices by the national banks now are said to seek a settlement with the investigated entities, including the Company, that would specifically require loan modifications and write-downs to assist distressed borrowers. See Exhibit A to Second Proponent Letter. In addition, the state and federal investigators examining the Company's foreclosure practices seek information pertaining to the Company's loan servicing processes and procedures. The Company is in an ongoing dialogue with state and federal authorities regarding the evolution of its loan servicing practices, and the actions requested in the Proposal would interfere with the Company's management of this process and its efforts to reach a resolution of the investigations. Far from being "totally unrelated" to the Proposal, the investigations and lawsuits cited in the Initial Request Letter relate directly to the loan modification policies that are the subject of the Proposal.

In light of the above facts and the Commission's "ongoing litigation" line of no-action letters, the Company believes that the Proposal may be omitted properly in reliance on Rule 14a-8(i)(7).

III. CONCLUSION

For the reasons set forth above and in the Initial Request Letter, the Company previously maintained and continues to believe that the Proposal and the Supporting Statement may be omitted in reliance on Rule 14a-8. The Company therefore renews its request that the Staff

³ See, e.g., *Salinas v. Chase Home Finance, LLC*, 10-cv-09602-VBK (C.D. Cal. filed Feb. 18, 2011) (attached hereto as Exhibits D); *Deutsch v. J.P. Morgan Chase Bank, N.A.*, 08CH4035 (Ill. Cir. Ct. 2008) (attached as Exhibit B to the Initial Request Letter).

concur with the Company's view that the Proposal and Supporting Statement may be omitted from the 2011 Proxy Materials in reliance on Rule 14a-8. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 383-5418.

Sincerely,



Martin P. Dunn
of O'Melveny & Myers LLP

Attachments

cc: Rev. William Somplatsky-Jarman
Coordinator for Social Witness Ministries
Board of Pensions of the Presbyterian Church (USA)

Paul M. Neuhauser
Attorney at Law

Anthony Horan, Esq.
Corporate Secretary
JPMorgan Chase & Co.

*Shareholder Proposal of the Board of Pensions of the Presbyterian Church (USA)
JPMorgan Chase & Co.
Securities Exchange Act of 1934 Rule 14a-8*

EXHIBIT A

PAUL M. NEUHAUSER
Attorney at Law (Admitted New York and Iowa)

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February 24, 2011

Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Att: Heather Maples, Esq.
Special Counsel
Division of Corporation Finance

Via email to shareholderproposals@sec.gov

Re: Shareholder Proposal submitted to JPMorgan Chase & Co.

Dear Sir/Madam:

I have been asked by the Board of Pensions of the Presbyterian Church (USA), the Board of Pensions of the Evangelical Lutheran Church in America, Catholic Healthcare West, Mercy Investment Services, the Benedictine Convent of Perpetual Adoration, Walden Asset Management, Calvert Asset Management, Haymarket People's Fund and the Funding Exchange (hereinafter referred to jointly as the "Proponents"), each of which is a beneficial owner of shares (owning well in excess of 1,600,000) of common stock of JPMorgan Chase & Co. (hereinafter referred to either as "Chase" or the "Company"), and who have jointly submitted a shareholder proposal to Chase, to respond to the letter dated January 11, 2011, sent by O'Melveny & Myers on behalf of Chase to the Securities & Exchange Commission, in which Chase contends that the Proponents' shareholder proposal

may be excluded from the Company's year 2011 proxy statement by virtue of Rules 14a-8(i)(3) and 14a-8(i)(7).

I have reviewed the Proponents' shareholder proposal, as well as the aforesaid letter sent by the Company, and based upon the foregoing, as well as upon a review of Rule 14a-8, it is my opinion that the Proponents' shareholder proposal must be included in Chase's year 2011 proxy statement and that it is not excludable by virtue of either of the cited rules.

The Proponents' shareholder proposal requests the Company to develop uniform loan modification policies so that loans serviced by the Company are treated comparably to loans owned by the Company.

BACKGROUND

The problem sought to be addressed by the Proponents' shareholder proposal can best be understood from the following excerpt from a November 12, 2010, address by a Member of the Board of Governors of the Federal Reserve System (Sarah Bloom Raskin):
(<http://www.federalreserve.gov/newsevents/speech/raskin/20101112a.htm>):

The mortgage servicing industry as we know it is a relatively recent invention, and, undoubtedly, it has never before been tested in a national housing crisis of this magnitude. As the continuing surge in foreclosures suggests, mortgage servicers simply are not doing enough to provide sustainable alternatives to foreclosure. This may be due to the fact that the vast bulk of loan servicing today is done by large servicers, which are either subsidiaries of depository institutions, affiliates of depository institutions, or independent companies focused primarily or exclusively on loan servicing.

Before securitization became commonplace, it was much more likely for a mortgage to be serviced by the same entity that had originated the loan. This simple approach ensured that lenders knew immediately if a homeowner was having payment problems, and could take action to mitigate possible losses. A fair bit of this kind of "portfolio servicing" still takes

place, but as the residential real estate market shifted from an originate-to-hold model to an originate-to-distribute model, an industry of independent third-party entities emerged to service the loans on behalf of the securitization trusts. These trusts, as a requirement for their tax-preferred status, were supposed to be passive, with the management of individual loans left to the servicer. These servicing arrangements are now commonplace in the industry: In fact, the system has matured rapidly and experienced considerable consolidation over the past twenty years.

The benefits to consolidation include significant economies of scale in the collection and disbursement of routine payments. But the kind of time-consuming, involved work that is now needed in the loss mitigation area was not contemplated at anything like this kind of scale, and the payment structures between the servicers and investors may not always be sufficient to support large-scale loan workout activity. Unfortunately, as we are seeing now, there are also dramatically significant drawbacks to this model. Third-party servicers earn money through annual servicing fees, a myriad of other fees, and on float interest, and they maximize profits by keeping their costs down, streamlining processes wherever possible, and by buying servicing rights on pools of loans that they hope will require little hands-on work. Again, for routine payment processing this all leads to economies of scale, and the industry has consolidated significantly in recent years as a result.

But the services needed in the current housing crisis are not one-size-fits-all. Loan servicers likely never anticipated the drastic need for the kind of time-consuming, detailed work that is now required in the loss mitigation area, and the payment structures between the servicers and investors are not sufficient to support large-scale loan workout activity. As it turns out, the structural incentives that influence servicer actions, especially when they are servicing loans for a third party, now run counter to the interests of homeowners and investors.

While an investor's financial interests are tied more or less directly to the performance of a loan, the interests of a third-party servicer are tied to it only indirectly, at best. The servicer makes money, to oversimplify a bit, by maximizing fees earned and minimizing expenses while performing the actions spelled out in its contract with the investor.

In the case, for instance, of a homeowner struggling to make payments, a foreclosure almost always costs the investor money, but may

actually earn money for the servicer in the form of fees. Proactive measures to avoid foreclosure and minimize cost to the investor, on the other hand, may be good for the homeowner, but involve costs that could very well lead to a net loss to the servicer. In the case of a temporary forbearance for a homeowner, for example, the investor and homeowner both could win--if the forbearance allows the homeowner to get back on their feet and avoid foreclosure--but the servicer could well lose money. In the case of a permanent modification, the investor and homeowner could both be considerably better off relative to foreclosure, but the servicer could again lose money.

Why might a servicer lose money in an instance that could be win-win for the borrower and investor? It's because of the amount of work needed, the structure for reimbursing costs to the servicer, and other costs incurred by the servicer on delinquent, but not yet foreclosed upon, borrowers. Loss mitigation options, such as forbearance and loan modification, require individualized case work. Thus, the servicer needs to invest in additional resources, including trained personnel who can deal with often complex one-off transactions. In the case of a private-label security, many of the costs of this work may not be reimbursed by the trust. Other costs result from even temporary forbearance, such as the servicer's requirement, in most cases, to advance principal and interest to the investor every month, even though it has not received payment from the borrower. Even in the case of a servicer who has every best intention of doing "the right thing," the bottom-line incentives are largely misaligned with everyone else involved in the transaction, and most certainly the homeowners themselves.

We don't know yet what the end results will be for homeowners. But the best third-party servicers would have to be diligent and willing to absorb relative losses when the standard business model for the industry would seem to put a thumb on the scale in favor of foreclosure. The most urgent needs of the servicing world today require a sufficient number of personnel with the adequate mix of training, tools, and judgment to deal with problem loans on a large scale--in other words, activities with few economies of scale. The skill set of personnel hired and trained for routine work--efficiency and accuracy in following rules, and little discretion in decision making--is likely a poor match for loss mitigation activities that require constant creativity and case-by-case judgment. Therefore, simply transferring work from one part of a company to another does not achieve much without significant investments in training and retraining. Servicers

have been publicly pledging for several years to increase their servicing capacity, and many have. Unfortunately, there is plenty of evidence to suggest that many servicers' workforces lack the knowledge and capacity to deal with the immensity of the mortgage crisis.

In order to do their jobs well servicers need strong internal procedures and controls. Recent events suggest that servicers may be lacking in this regard, to the detriment of consumers, and, quite possibly, to the detriment of the investors to whom they are contractually obligated to maximize revenue. I recognize that many servicers have stepped up and diligently tried to improve their work; I applaud and encourage them. However, lingering problems remain and I suspect that these may be due to deferred maintenance and investment on a significant scale. In boom times, servicers had the luxury of building out relatively lean systems that efficiently processed the more routine aspects of the business, but they do not appear to have planned for the infrastructure that would be needed during a serious down cycle. As you know, consumers hold the losing end of this stick. . . .

The impact of poor business practices can linger on even after the foreclosure sale. In managing foreclosed properties in lenders' inventories, servicers may be motivated by timeliness measures in PSAs [Pooling and Servicing Agreements] to induce the former homeowner or bona fide tenant to vacate before they are legally required to do so, sometimes under the threat of eviction. Once the properties are vacant, servicers exercise great discretion in deciding whether or not to repair foreclosed property based on the likelihood that the servicer's advances are recoverable from the sale proceeds. With real estate owned (REO) inventories projected to reach one million by the end of 2010, servicer actions will heavily influence the effectiveness of neighborhood stabilization efforts at a time of persistent decline in home values and in fragile markets already weakened by a glut of vacant and abandoned properties, particularly in low-wealth communities.

Ms Raskin concluded her address as follows:

The complex challenges faced by the loan servicing industry right now are emblematic of the problems that emerge in any industry when incentives are fundamentally misaligned, and when the race for short-term profit overwhelms sustainable, long-term goals and practices. Responsible parties within the industry are no doubt already scrambling to fix some of the problems that have surfaced. However, because so much is riding on

getting these systems right, and because consumers have such little measure of individual choice or recourse, reliance on pledges from market participants will not be enough. Many of you have been doing your part for years to point out problems in the industry and to give consumers some protection and redress when wronged. The public sector too is stepping up its efforts to monitor firms' actions and systems. Until a better business model is developed that eliminates the business incentives that can potentially harm consumers, there will be a need for close regulatory scrutiny of these issues and for appropriate enforcement action that addresses them.

Elsewhere in her speech Ms. Raskin states that "right now" (i.e. just three months ago) there were five million loans either in foreclosure or more than 90 days past due (an industry standard indicating a seriously impaired loan, but more "generous" than the definition of "seriously delinquent" of 60 days overdue, which forms the basis of most industry statistics). She also stated that foreclosures had nearly tripled (to 2,800,000) between 2006 and 2009 and that they were continuing in 2010 and 2011 at a rate of about 2, 250,000 per year with 2,000,000 expected in 2012.

According to Chase's letter of 11 January, approximately 68% of the loans that it services are serviced for others (the Company's figures do not quite add up and thus the figure may be slightly higher). Over 80% of the loans on its own books ("portfolio loans") are home equity loans. Thus, it would appear that perhaps as much as 92% of the first mortgage loans serviced by the Company are serviced for others. Whatever the exact percentage may be, it is clear that Chase's servicing business consists overwhelmingly of servicing loans for others (i.e. for vehicles such as CMOs, which did not exist prior to 1983).

Industry wide, it is clear beyond cavil that portfolio loans are treated differently than serviced loans. The Department of the Treasury publishes a quarterly report prepared by two of its constituent agencies, the Controller of the Currency and the Office of Thrift Supervision, entitled the "OCC and OTS Mortgage Metrics Report". The most recent report (December, 2010) (the "OCC and OTS Report") covers the third quarter of 2010 and is available on the web site of the Comptroller of the Currency. The statistics in the OCC and OTS Report are drawn from the reports of several of the largest servicers, who service somewhat under two-thirds of the nation's mortgages.

Table 22 (p.28 in the OCC and OTS Report) shows that for loan modifications under the HAMP program, portfolio loans were almost one hundred times more likely to have their principal reduced than were serviced loans. (36.5% of modifications versus 0.4% for private investor loans). (If Fannie/Freddie/government guaranteed loans are included with private investor loans, the ratio increases to almost 800:1.) The picture is even worse for non-HAMP loans, where portfolio loans were 125 times more likely to have the modification include a principal reduction than were serviced loans. (1,642 times if the agency modifications are included). See Table 21, p. 27 of the OCC and OTS Report.

It is thus clear that with respect to portfolio loans, where the servicer is also the investor, it is frequently in the best interests of both the owner of the loan and the borrower to modify the loan by reducing its principal amount. However, where the bank is merely the servicer this mutually desirable result simply does not happen.

RULE 14a-8(i)(7)

The crux of the problem is described early on in the above quotation from Ms. Raskin's address. For those loans that Chase itself owns, both the bank and the borrower have an incentive to work out the problem via some form forbearance or modification. For those loans that Chase merely services, the investor and the borrower each have those identical incentives. Chase, however, not only has no such incentives to work out the loan, but rather has disincentives to do so. It is therefore not surprising that in the banking world loan modifications occur far less frequently with respect to serviced loans than is the case with respect to bank-owned loans. The Proponents believe that this bifurcation of treatment of seriously impaired loans also exists at Chase. And, as also noted in the above excerpt, this preference for foreclosures, and thus for vacant REO [real estate owned] property, can have severely detrimental effects on neighborhoods as well as on investors and borrowers. We therefore believe that the Proponents' shareholder proposal raises an important social policy issue that transcends ordinary business and is therefore an appropriate matter for shareholders to vote on.

The Proponents believe that it is undisputable that the foreclosure crisis raises an important policy issue for those registrants who are involved in the process of foreclosing mortgages, whether those foreclosures occur in portfolio loans or serviced loans. Actions taken, or not taken, to mitigate the problem, or actions

taken which exacerbate it, generate serious issues for society and for the registrant. This is evident not only from the vast size of the foreclosure crisis, with approximately one out of every eight mortgages in foreclosure or seriously delinquent (defined as 60 or more days overdue) (see the OCC and OTS Report, p. 5.) , but also, as noted in Ms. Raskin's address, because of the impact that foreclosures may have on whole communities, creating neighborhoods of abandoned buildings which become instant, crime infested, slums. In addition, unnecessary foreclosures tend to depress the price of housing, thereby increasing both the risk of additional foreclosures and jeopardizing the finances of additional families. In this connection, we note that The Wall Street Journal (February 23, 2011) reported that in eleven of the twenty cities in the widely followed Case-Shiller home-price index the price of houses hit new lows in December; that the index was down for the fifth consecutive month; and that overall that index had "all but erase[d] the gains in home prices since the recession ended in June, 2009". In other words, as far as foreclosures and home prices are concerned we are looking over the precipice toward a double dip. The ongoing nature of the crisis is also indicated by the fact that new foreclosures in the surveyed group totaled over 1,350,000 in the 12 months ended September, 2010, and that they were up 3.7% in the quarter then ended as compared to the comparable 2009 quarter. OCC and OTS Report, p. 9. Similarly, foreclosures in process were up 10.1% over the year earlier period. *Ibid.*

It should be clear from the foregoing that Chase's foreclosure policies implicate important social policy issues. But there is an additional indicator that those policies transcend day-to-day ordinary business matters. The Proponents believe that the difference between the treatment of modifications of portfolio loans and of serviced loans compounds the underlying unfairness that inhered in the original making of many of the serviced loans. An analysis of the origins of much of the serviced loan portfolio would show that a highly disproportionate number of those loans were predatory loans made by Washington Mutual ("WAMU") and Bear Stearns, firms that merged into Chase at the height of the financial crisis. Those acquired firms were the home base for sub-prime loans and option ARMs. For example, a study commissioned by certain of the proponents revealed that, based on government data, over the period of 2005-2006 approximately 38% of WAMU purchased loans were "high risk" (an interest rate at least 3% over comparable maturity Treasuries), but that in those years only about 9% of Chase's were high risk loans. Most purchased loans would be securitized and it is therefore a reasonable assumption that these WAMU loans ended up in investment vehicles such as CMOs which have Chase (as WAMU's successor) as servicer. Thus the chain continues. Predatory loans are made by

loan brokers and sold to aggregators such as WAMU and Chase. The aggregator securitizes the predatory loan, but retains the servicing on that loan. The buyer defaults and the servicer, which has a conflict of interest *vis-à-vis* both the investor and the victim of predatory lending, refuses to modify the loan in the same fashion as it would with a portfolio loan. We submit that this final link in the chain of events is well within the rationale of the no-action letters which have denied securitizers of predatory loans no-action relief under Rule 14a-8(i)(7). See, e.g., *Bank of America Corporation* (February 23, 2006); *Conseco, Inc.* (April 5, 2001); *Associates First Capital Corporation* (March 13, 2000).

Finally, it should be noted that although in her speech Ms. Raskin indicated that further government regulation is required in order to counteract the inherent incentives to foreclosure existing in the system of loan servicing, it is the Proponents belief that the major servicers, such as Chase, are in a position to take action by themselves to solve the problem via private ordering by applying the same standards and criteria to modification of serviced loans that they apply to portfolio loans.

Company's III.C.1.

We agree that the Proponents' shareholder proposal addresses the ordinary business operations of Chase. The question at issue, however, is whether it *also* is a proposal "focusing on [a] significant social policy issue[]" that "transcend[s] the day-to-day business matters and raise[s] policy issues so significant that it would be appropriate for a shareholder vote". See Release 34-20091 (August 16, 1983). Thus, the crux of the matter is whether the Proponent's shareholder proposal implicates an important social policy issue. Consequently, the nine no-action letters cited by the Company in Section III.C.1. (pp. 6-7) of its letter are irrelevant, since none of them addresses whether the foreclosure policies of banks may implicate an important policy issue.

Company's III.C.2.

The Company's "litigation strategy" argument (Section III.C.2., pp.7-9) is equally flawed. Several of the no-action letters cited by the Company pertained to proposals that the registrant undertake specific litigation activities (see, e.g., the *Merck*, *CMS Energy* and *NetCurrents* letters cited on page 8 of the Company's letter). The remaining letters (three *Reynolds* and one *AT&T*) all requested detailed information about specific policies that were the direct subject of litigation. Thus, in *Reynolds* (February 10, 2006) the proposal requested that the registrant

“undertake a campaign aimed at African Americans appraising them of the unique health hazards to them associated with smoking menthol cigarettes, including data showing the industry descriptors such as ‘light’ and ‘ultralight’ do not mean” that such cigarettes are less dangerous to smoke. Reynolds argued that the proposal could be excluded because it was currently litigating (i) a case “in which one of the plaintiffs’ principal allegations relates to the defendants’ marketing of menthol cigarettes to the African American community and the claim that the use of” such cigarettes by that community “poses unique health hazards” and (ii) multiple cases where the plaintiffs claim that “the use of the terms ‘light’ and ‘ultralight’ in product descriptions is deceptive”. It is therefore quite apparent that the proponent’s proposal concerned the precise subject matter of the litigation and requested the registrant to take actions that would be directly contrary to the position that it was taking in the litigation. n¹ The registrant concluded as follows:

Therefore, the Proposal squarely implicates issues that are the subject matter of multiple lawsuits involving Reynolds Tobacco. In effect, the Proposal recommends that the Company facilitate the goals of the opposing parties in these various lawsuits at the same time that the Company’s operating subsidiary, Reynolds Tobacco, is actively challenging those parties’ legal positions or claims. Being forced either to comply with the Proposal or to take a public position (or no position) in 2006 Proxy Materials with respect to the Proposal would improperly interfere with and otherwise adversely affect Reynolds Tobacco’s litigation strategy in these cases. In fact, the Company’s ability to effectively seek “no action” relief in this letter is limited because any discussion of the issues related to the use of menthol cigarettes by the African American community and “light” and “ultralight” cigarettes must of necessity be limited at this time because Reynolds Tobacco’s litigation strategy and even some of the factual bases for Reynolds Tobacco’s defense have not yet been fully developed and should not be disclosed prematurely to opposing parties. As such, inclusion of the Proposal in 2006 Proxy Materials would permit the Proponents to interfere with and preempt management’s right and duty to determine Reynolds Tobacco’s litigation strategy .

¹ The other three letters cited by the Company are conceptually similar. The *Reynolds* letter of February 6, 2004 equally involved a proposal about the deceptive terms “light” and “ultralight” at a time when the registrant was defending lawsuits alleging that the terms were deceptive. In the *Reynolds* letter of March 6, 2003, the request was for the Board to establish a committee to determine the extent of the registrant’s involvement in smuggling cigarettes at a time when it was engaged in defending lawsuits brought by governmental bodies alleging that very practice. In *AT&T* the proposal requested information about disclosure of customer communications and expenditure on legal fees when the registrant was being sued, as the proponent’s attorney pointed out in his letter to the Staff, in nine of the twelve lawsuits on the matter in which plaintiffs were seeking “billions of dollars”.

Chase can make no comparable claim. Chase's claim that the Proponents' shareholder proposal relates to ongoing litigation is as follows (first paragraph, Section III.C.2., bottom p.7):

State and federal officials have announced investigations into the procedures followed by mortgage servicing companies and banks, including the Company, relating to residential foreclosures. Additional, there have been numerous putative class action lawsuits filed against the Company . . . asserting claims related to the Company's loan modification and foreclosure practices. [These pending actions challenge] the Company's practices, procedures, compliance, or performance under HAMP [the Federal Home Affordable Modification Program, which was created by an allocation of funds from the U.S. Treasury's Troubled Asset Relief Program, the TARP] and other loan modification programs, as well as its practices, procedures and compliance with law in executing documents in connection with foreclosure actions.

This paragraph makes three claims that the Proponents' proposal relates to ongoing litigation involving the Company. First, as far as the state and federal investigations are concerned, the claim presumably relates to "robo signing" and other forms of perjury involved in some foreclosure procedures. However, it is impossible to know what the Company is claiming, since there is no further description of any such investigation nor is any attempt made to say how any such investigation would be impacted by the Proponents' shareholder proposal. In addition, the Proponents' proposal makes no reference to the matters that are presumably the subject of the governmental investigations. Therefore, Chase has abysmally failed to carry its burden of establishing that the Proponents' proposal in any way relates to any ongoing purported governmental investigation.

Similarly, the Company's third claim is that there is litigation pertaining to its "practices, procedures and compliance with law in executing documents in connection with foreclosure actions". Again, although not further explicated in the Company's argument, this apparently also relates solely to "robo signing", a practice totally unrelated to the Proponents' proposal, which deals exclusively with establishing a policy of treating owned and serviced loans identically.

The second claim appears to relate only to litigation concerning the Company's performance under HAMP (despite the reference to unspecified "other loan modification programs"). The Federal District Court in the *Durmic* case, one

of the two whose complaints are set forth in Company's Exhibit B to its no-action letter request, summarized that complaint as follows (see **Durmic v. J.P. Morgan Chase Bank, NA, 2010 U.S. Dist. LEXIS 131069**):

The following background note is extracted from the court's November 24, 2010 Memorandum and Order denying Chase's motion to dismiss and plaintiffs' motion for a preliminary injunction. After being persuaded to participate in the Obama Administration's Home Affordable Modification Program (HAMP), Chase solicited some of its customers who were having difficulty staying current with their mortgages to apply for a loan modification to make their monthly payments more affordable. In other cases, borrowers who independently learned of HAMP initiated the request for a modification. Under the HAMP guidelines, before any applicant receives a mortgage modification, the lender is required to conduct a Net Present Value (NPV) test to determine whether it is more profitable to modify the homeowner's loan or to allow it to go into foreclosure. If the borrower appears to qualify under the HAMP guidelines, he or she is given a document entitled "Home Affordable Modification Trial Period Plan" (TPP). The TPP is a Fannie Mae Freddie Mac "Uniform Instrument" that has the appearances of a contract. After setting out a series of good faith representations required of the borrower and obligating the borrower to submit proof of current income, the TPP then lists individualized payment terms for a three-month trial period.

After successfully passing the NPV test and meeting other HAMP criteria, each of the named plaintiffs received a TPP, which they signed and returned to Chase. Each of the plaintiffs submitted the required proof of income and made the three required payments (although the timeliness of some of the payments by named plaintiffs is contested). None of the named plaintiffs, however, received an executed copy of the TPP or a permanent loan modification.

Plaintiffs seek certification of a class consisting of all Massachusetts borrowers who entered into a written TPP Agreement with Chase and who made the three required payments, other than borrowers to whom Chase sent either a Home Affordable Modification Agreement (HAMA) prior to the date of class certification or a written denial of eligibility on or before the Modification Effective Date set out in the TPP Agreement. Plaintiffs estimate the proposed class to consist of approximately 1,875 members.

It is thus readily apparent that the *Durmic* litigation pertains exclusively to Chase's actions under HAMP. However, the Proponent's shareholder proposal makes no reference to HAMP and the requested policy, if actually adopted by the Company, couldn't possibly have any material effect on the litigation. To the contrary, HAMP is irrelevant to the proposal and *vice versa*.

The second litigation relied upon by Chase to buttress its contention that the shareholder proposal would interfere with litigation strategy is the *Deutsch* case, also found in Exhibit B to the Company's no-action letter request. That case involves a foreclosure action by Chase in which the borrower counterclaimed alleging that Chase had filed false affidavits. The Proponents' shareholder proposal is totally unrelated to this "robo signing" litigation and could not possibly have any effect on it if implemented by the Company.

Finally, the other two cases mentioned by Chase in footnote 4 (p. 8) fail to establish anything at all, since they are not individually described nor is the text of either complaint supplied.

In summary, Chase has failed to carry its burden of establishing that the Proponents' shareholder proposal would impact its litigation strategy. On the contrary, there is not one scintilla of evidence to support any such claim. The fact that the Proponents' proposal pertains to the way the Company modifies mortgages that it services provides no support for contending that it would impact unrelated litigation that also happens to concern mortgages.

Company's III.C.3

The Company argues that even if the proposal raises a significant policy issue, it is nevertheless excludable because, Chase contends, it also deals with matters that are ordinary business. However, this is simply a rehash of its III.C.1 argument. Of course the matters dealt with are "ordinary business", but they also are significant policy issues. See Release 34-20091 (August 16, 1983), quoted above. The no-action letters cited by the Company are inapposite since in each case the problem with the proposal was that not that it related both to ordinary business matters and significant policy issues, but rather that *only* some *parts* of the proposal related to significant policy issues but that other parts of the proposal (e.g. compensation of the general workforce) did not raise any significant policy issue whatever. In contrast, the Proponents' shareholder proposal is unitary and if, as it clearly does, it raises an important policy issue, that issue is relevant to the entire proposal, not simply one part of it.

For the foregoing reasons, Rule 14a-8(i)(7) is inapplicable to the Proponents' shareholder proposal.

RULE 14a-8(i)(3)

The request is so simple that Chase's shareholders and members of its Board will have zero difficulty understanding what is being requested and how to implement the proposal. The Proponents' shareholder proposal asks that when loans are considered for modification that no distinction be made between those loans that are Company owned and those that the Company services. It is simple to implement the concept: simply don't treat serviced loans any differently than owned loans. There is absolutely nothing vague or inherent in that request. Consequently, Rule 14a-8(i)(3) cannot conceivably apply to the Proponents' shareholder proposal.

In conclusion, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no action request. We would appreciate your telephoning the undersigned at 941-349-6164 with respect to any questions in connection with this matter or if the staff wishes any further information. Faxes can be received at the same number. Please also note that the undersigned may be reached by mail or express delivery at the letterhead address (or via the email address).

Very truly yours,

Paul M. Neuhauser
Attorney at Law

cc: Martin P. Dunn
Rev. William Somplatsky-Jarman
Fr. Seamus Finn
John Lind
Laura Berry

Shareholder Proposal of the Board of Pensions of the Presbyterian Church (USA)
JPMorgan Chase & Co.
Securities Exchange Act of 1934 Rule 14a-8

EXHIBIT B

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February 25, 2011

Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Att: Gregory Belliston, Esq.
Special Counsel
Division of Corporation Finance

Via email to shareholderproposals@sec.gov

Re: Shareholder Proposal submitted to JPMorgan Chase & Co.

Dear Sir/Madam:

This letter is a supplement my letter dated 24 February sent to the Commission with respect to the shareholder proposal to JPMorgan Chase & Co. ("Chase") concerning uniformity in mortgage loan modification policies that has been submitted to Chase by the Board of Pensions of the Presbyterian Church (USA), the Board of Pensions of the Evangelical Lutheran Church in America, Catholic Healthcare West, Mercy Investment Services, the Benedictine Convent of Perpetual Adoration, Walden Asset Management, Calvert Asset Management, Haymarket People's Fund and the Funding Exchange (hereinafter referred to jointly as the "Proponents").

The purpose of this letter is to supplement the argument concern the alleged applicability of Rule 14a-8(i)(7) to the Proponents' proposal, and more specifically the argument previously made by the Proponents establishing the fact that the Proponents' shareholder proposal implicates important social policy issues. (See pages 7-9 of my letter of 24 February.)

Specifically, we call your attention to the article in today's The Wall Street Journal (February 25, 2011) entitled "Banks Bristle at Mortgage-Loan Plan". (A copy of the entire article is annexed hereto as Exhibit A.)

The article describes the reaction of the banking industry to an anticipated Administration proposal that would require that banks modify certain serviced loans by writing down the principal of those loans. The article states:

The proposal is the Obama administration's latest effort to revamp the way mortgage companies help troubled borrowers and address concerns that past initiatives didn't go far enough to help troubled borrowers. . . .

"The administration's ongoing review is focused on getting to the bottom of the problems in the foreclosure process and holding appropriate parties accountable," said a spokeswoman for the Department of Housing and Urban Development. "Doing so will help homeowners, the housing market and our economy, and any suggestions to the contrary are simply wrong." . . .

The push for write-downs likely would focus on loans that banks service on behalf of other parties, and not for loans that they hold on their books. The settlement would require servicers to comply with existing investor contracts, and some of those contracts could complicate efforts because they give investors authority to reject reductions of loan balances.

We believe that this push by the United States government for the further regulation of the modification of serviced loans provides additional support for the Proponents' proposition that the failure of the banking industry to provide comparable loan modification policies for serviced loans raises an important social policy issue.

For the additional reason set forth above, Rule 14a-8(i)(7) is inapplicable to the Proponents' shareholder proposal.

In conclusion, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no action request. We would appreciate your telephoning the undersigned at 941-349-6164 with respect to any questions in connection with this matter or if the staff wishes any further information. Faxes can be received at the same number. Please also note that the undersigned may be reached by mail or express delivery at the letterhead address (or via the email address).

Very truly yours,

Paul M. Neuhauser
Attorney at Law

cc: Martin P. Dunn
Rev. William Somplatsky-Jarman
Fr. Seamus Finn
John Lind
Laura Berry

EXHIBIT A

Banks Bristle at Mortgage-Loan Plan

By NICK TIMIRAOS, DAN FITZPATRICK And RUTH SIMON

The banking industry privately knocked the Obama administration's nascent proposal to force banks to modify mortgage loans, saying the plan won't help solve problems facing troubled borrowers.

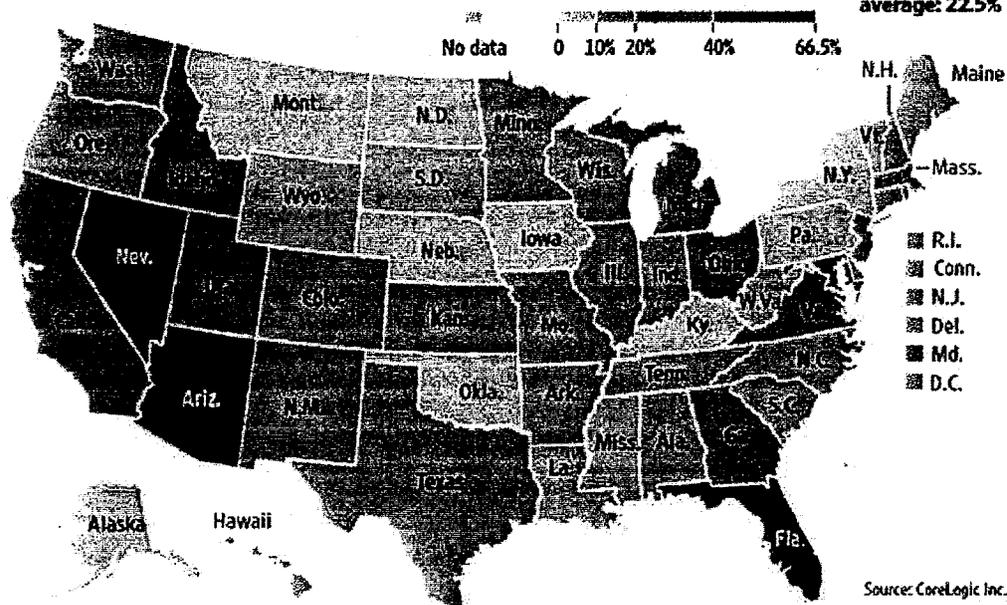
The nation's largest banks haven't yet seen a proposal that is designed to help resolve mortgage-servicing errors that affected troubled borrowers. But industry executives are bristling at the administration's new approach, disagreeing that principal reductions will help borrowers and, in turn, the broader housing market.

Though a unified settlement is uncertain and would have to appease regulators, banks and state attorneys general, some officials are pushing for banks to pay more than \$20 billion in civil fines or to fund a comparable amount of loan modifications for distressed borrowers.

Keeping Afloat

Percentage by state of mortgage holders who are underwater as of third-quarter 2010

National average: 22.5%



The proposal "would bring with it enormous costs that would far outweigh any potential benefits," Chris Flanagan, a Bank of America Corp. mortgage strategist, said in a research note Thursday.

Even an amount of \$20 billion "would accomplish little" in addressing borrowers who currently owe \$744 billion more on their mortgages than their homes are worth, Mr. Flanagan added.

Asking servicers to assume the costs of all write-downs is unfair unless the administration can pinpoint the "source of harm," said Bob Davis, executive vice president of the American Bankers Association. If the loans are going bad because of economic conditions and job loss, "it's not clear why servicers would bear the brunt because it's outside their control."

The pushback is the latest symptom of the warring interests in the housing market and the difficulty fixing problems that existed long before the foreclosure-paperwork crisis erupted last fall. Economists have said that the U.S. economy's recovery is threatened the longer the foreclosure process is delayed.

The proposal is the Obama administration's latest effort to revamp the way mortgage companies help troubled borrowers and address concerns that past initiatives didn't go far enough to help troubled borrowers.

The administration's signature Home Affordable Modification Program, or HAMP, helped more than 500,000 borrowers lower their monthly payments through interest-rate reductions. But it has fallen short of ambitious goals to modify millions of loans since its introduction two years ago. Last year, the White House unveiled new measures to encourage banks to write down loan balances, but they haven't been widely used.

Given the banks' track record in reworking loans, some attorneys who represent borrowers in foreclosure question whether the administration's proposal could work. "Requiring banks to eat the loss, and at the same time allowing them to administer the program, is a recipe for a program that will not do anything except raise people's expectations and frustrate them," said Gloria Einstein, an attorney at Jacksonville Legal Aid Inc. She said an independent third party should administer the program.

Banks have resisted reducing loan balances in part because of concerns that it could encourage more borrowers to stop making payments in order to receive a smaller loan.

The plan also may face some resistance on Capitol Hill. House Republicans on Thursday said they would prepare bills next week to terminate HAMP and similar programs. The administration's proposal appeared to be a ploy to "revamp" the HAMP program, said U.S. Rep. Patrick McHenry (R., N.C.). "If this is their attempt to create HAMP 2, then I find it deeply troubling."

The White House declined to comment.

"The administration's ongoing review is focused on getting to the bottom of the problems in the foreclosure process and holding appropriate parties accountable," said a spokeswoman for the Department of Housing and Urban Development. "Doing so will help homeowners, the housing market and our economy, and any suggestions to the contrary are simply wrong."

Any settlement that includes loan write-downs would require banks such as Bank of America Corp., Wells Fargo & Co. and J.P. Morgan Chase & Co. to complete modifications within one year from the settlement's date, said people familiar with the matter. Banks could face additional fines if they don't comply with the terms of the settlement, and they would have to hire independent auditors to provide monthly updates on their progress and compliance with the terms.

Penalties could be assessed depending on the volume of loans that are 90 days or more delinquent in each bank's servicing portfolio, and by the extent of any deficiencies uncovered by bank examiners, these people said.

Any settlement that includes loan write-downs would require banks such as Bank of America, Wells Fargo and J.P. Morgan Chase to complete modifications within one year from the settlement's date, said people familiar with the matter.

Elizabeth Warren of the Consumer Financial Protection Bureau has floated a figure of about \$25 billion for a unified settlement, according to people familiar with the situation.

The push for write-downs likely would focus on loans that banks service on behalf of other parties, and not for loans that they hold on their books. The settlement would require servicers to comply with existing investor contracts, and some of those contracts could complicate efforts because they give investors authority to reject reductions of loan balances.

Banks consider their mortgage-servicing problems as technical matters, such as the filing of foreclosure documents that were never verified by so-called robo-signers, say people familiar with the situation. Bank executives also want any penalties to reflect the fact that few borrowers have been improperly ejected from homes, these people say.

But some state attorneys' general and federal regulators are pushing for as high a figure as possible, arguing that mortgage servicers have chronically underinvested in their operations, making it difficult for borrowers to get timely, effective help before falling further behind on their mortgages.

Susan Wachter, a real-estate finance professor at the University of Pennsylvania, said the proposed settlement would provide "disincentives for wrongful behavior" by mortgage servicers.

—Robin Sidel contributed to this article.

Shareholder Proposal of the Board of Pensions of the Presbyterian Church (USA)
JPMorgan Chase & Co.
Securities Exchange Act of 1934 Rule 14a-8

EXHIBIT C

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15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

18 HERMINIA MORALES and MICHAEL
19 SURANOFSKY, individually and on behalf of
all others similarly situated,

20 Plaintiffs,

21 v.

22 CHASE HOME FINANCE LLC, a Delaware
23 limited liability company; CHASE HOME
FINANCE INC., a Delaware corporation;
24 JPMORGAN CHASE BANK, N.A., a national
banking association; JPMORGAN CHASE &
25 CO., a Delaware corporation; and Does 1-100,

26 Defendants.

Case No.: **CV 10 2068**

CLASS ACTION

**COMPLAINT FOR BREACH OF
CONTRACT, BREACH OF COVENANT
OF GOOD FAITH AND FAIR DEALING,
PROMISSORY ESTOPPEL (IN THE
ALTERNATIVE), VIOLATIONS OF
ROSENTHAL FAIR DEBT
COLLECTIONS PRACTICES ACT,
VIOLATIONS OF CALIFORNIA'S
UNFAIR COMPETITION LAW**

DEMAND FOR JURY TRIAL

E-filing

ORIGINAL
FILED
MAY 14 2010
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LB

INTRODUCTION

1
2 1. Plaintiffs Herminia Morales and Michelle Suranofsky (hereinafter "Plaintiffs") bring
3 this case as a class action to challenge Defendants failure to comply with its obligations under federal
4 programs designed to modify mortgages to allow thousands of California residents to make affordable
5 payments on their mortgages rather than lose their homes.

6 2. On October 28, 2008, Defendant JPMorgan Chase & Co. ("Chase") accepted \$25
7 billion in funds from the United States government as part of the Troubled Assets Relief Program, 12
8 U.S.C. § 5211 *et seq.* ("TARP"). By accepting this payment, Chase agreed that it would participate in
9 one or more programs that TARP authorized the Secretary of the Treasury Department ("Treasury") to
10 establish in order to minimize foreclosures.

11 3. Consistent with the TARP mandate, the Treasury implemented the Home Affordable
12 Modification Program ("HAMP") a detailed program designed to stem the foreclosure crisis by
13 providing affordable mortgage loan modifications and other alternatives to foreclosure to eligible
14 borrowers. Companies that accepted money under TARP are subject to mandatory inclusion in
15 HAMP.

16 4. Chase began its participation in the HAMP program in April, 2009, and signed a
17 contract with the Treasury on July 31, 2009¹ agreeing to comply with the HAMP requirements and to
18 perform loan modification and other foreclosure prevention services as prescribed by the program
19 guidelines. Guidelines issued by the Treasury set forth a detailed process whereby a participating
20 servicer such as Chase must, among other things:

- 21 • identify loans that are subject to modification under the HAMP program, both
22 through its own review and in response to requests for modification from
individual homeowners;
- 23 • collect financial and other personal information from homeowners to evaluate
24 whether homeowners are eligible for a loan modification under HAMP;
- 25 • institute a modified loan with a reduced payment amount set by a mandated
26 formula, which then is effective for a three-month trial period for eligible
homeowners;

27
28 ¹ July 31, 2009 Servicer Participation Agreement, available at
<http://www.financialstability.gov/docs/agreements/JP%20Morgan%20Chase%20Bank%20Servicer%20Participation%20Agreement.pdf> (last visited May 14, 2010).

- 1 • provide a permanently modified loan to those homeowners who comply with the requirements during the trial period; and
- 2 • send explanation letters to borrowers whose applications are denied within ten
- 3 days of the denial and allow borrowers to dispute the denial under certain
- 4 circumstances.

5 5. Though Chase entered into a contract obligating it to comply with HAMP and to
6 extend loan modifications to benefit distressed homeowners, Chase has systematically failed to
7 comply with the terms of the HAMP directives and has regularly and repeatedly violated its rules and
8 prohibitions.

9 6. Chase has serially extended, delayed, and otherwise hindered the modification
10 processes that it contractually undertook when it accepted billions of dollars from the United States.
11 Chase's obstruction and delay tactics have a common result: homeowners with loans serviced by
12 Chase, who meet requirements for participation in the HAMP program, who have entered into trial
13 modifications, and who have complied with all obligations, have not received the permanent loan
14 modifications to which they are entitled.

15 7. Chase profits from extending trial periods and from foreclosing rather than modifying
16 loans. Instead of complying with its contracts to enter into permanent mortgage modification with
17 individual borrowers and the federal government, Chase has bowed to the many powerful financial
18 incentives for it to delay or avoid permanently modifying the loans that it services. For example, fees
19 that Chase charges its borrowers who are in default and unpaid interest are often added to the principal
20 of the loan, thereby increasing the balance on the pools of loans Chase services and the fees it charges
21 to the holders of the loans.

22 8. As a result, hundreds, if not thousands, of California homeowners are wrongfully
23 deprived of an opportunity to cure their delinquencies, pay their mortgage loans, and save their homes.
24 By failing to live up to its obligations under the terms of the contract it entered into with the Treasury,
25 and the terms of the contracts it formed with individual borrowers, Chase has left thousands of
26 homeowners in a state of limbo – often worse off than they were before they sought a modification
27 from Chase. Chase's actions violate its contractual obligations, thwart the purpose of HAMP, and are
28 illegal under California law.

9. Chase entered into written contracts with Plaintiffs for temporary trial modifications.

1 Although Plaintiffs performed their obligations under the contracts by submitting the required
2 documentation and making timely payments, Chase failed to fulfill its end of the bargain and has
3 ignored its contractual obligation to permanently modify Plaintiffs' loans at the close of the trial
4 modification period.

5 10. Plaintiffs Herminia Morales and Michelle Suranofsky bring this suit on behalf of
6 themselves and a Class of similarly situated California residents to challenge the failure of Chase to
7 honor the terms of its contract under HAMP, intended for their benefit, and its failure to comply with
8 contracts it has directly with Plaintiffs to modify mortgages to make them affordable and sustainable.

9 **JURISDICTION AND VENUE**

10 11. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1332(d)
11 in that the claims alleged herein arise under the laws of the United States, and the Plaintiffs are
12 citizens of a state other than Defendants' state of citizenship. This Court has supplemental
13 jurisdiction pursuant to 28 U.S.C. § 1367 to hear and determine Plaintiffs' state law claims because
14 those claims are related to Plaintiffs' federal claims and arise out of a common nucleus of operative
15 facts and form part of the same case or controversy under Article III of the United States Constitution.

16 12. This Court has personal jurisdiction over Chase because the unlawful conduct that
17 gave rise to these claims occurred in California and because Chase is authorized to and regularly
18 conducts business in California.

19 13. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
20 § 1391(b)(2) in that the unlawful conduct that gave rise to these claims occurred within the Northern
21 District of California.

22 **INTRA-DISTRICT ASSIGNMENT**

23 14. Intra-district assignment in San Francisco, California is proper because the unlawful
24 conduct that gives rise to the alleged claims occurred in San Mateo County and Santa Clara County.

25 **PARTIES**

26 15. Plaintiff Herminia Morales is an individual and at all relevant times herein was a
27 resident of San Mateo County, California.

28 16. Plaintiff Michelle Suranofsky is an individual and at all relevant times herein was

1 resident of Santa Clara County, California.

2 17. Defendant Chase Home Finance LLC is a limited liability company organized under
3 the laws of the state of Delaware. Chase Home Finance is one of the world's largest providers of
4 mortgages and home equity loans. Chase Home Finance LLC is a wholly owned subsidiary of
5 Defendant Chase Home Finance Inc.

6 18. Defendant Chase Home Finance Inc. is corporation organized under the laws of the
7 state of Delaware. Chase Home Finance Inc. is a wholly owned subsidiary of Defendant JPMorgan
8 Chase & Co.

9 19. Defendant JPMorgan Chase Bank, N.A. is a national banking association with
10 branches in 23 states, including California. JPMorgan Chase Bank, N.A. is a wholly owned
11 subsidiary of Defendant JPMorgan Chase & Co.

12 20. Defendant JPMorgan Chase & Co. is a financial holding company incorporated under
13 the laws of Delaware and headquartered in New York City, New York. JPMorgan Chase is one of the
14 largest banking institutions in the United States of America, with \$2.0 trillion in assets, \$165.4 billion
15 in stockholders' equity and operations in more than 60 countries. (Hereafter, Defendants Chase Home
16 Finance LLC, Chase Home Finance Inc., JPMorgan Chase Bank, N.A., and JPMorgan Chase & Co.
17 will be collectively referred to as "Chase" or "Defendants".)

18 21. Defendants Does 1 through 100 are persons or entities whose true names and
19 identities are now unknown to Plaintiffs, and who therefore are sued by such fictitious names.
20 Plaintiffs will amend this complaint to allege the true names and capacities of these fictitiously named
21 defendants when they are ascertained. Each of the fictitiously named defendants is responsible for the
22 conduct alleged in this complaint, and Plaintiffs' damages and the damages of the Plaintiff Class were
23 actually and proximately caused by the conduct of the fictitiously named defendants.

24 22. At all times mentioned herein, each defendant acted as an authorized agent, employee
25 or other representative of each other defendant. Each act of each defendant complained of herein was
26 committed within the scope of said agency, employment or other representation, and/or each act was
27 ratified by each other defendant. Each defendant is liable, in whole or in part, for the damages and
28 injuries Plaintiffs suffered.

FACTUAL BACKGROUND

1
2 23. For the past three years, the United States has been in a foreclosure crisis. In late
3 2009, one in eight U.S. mortgages was in foreclosure or default, and 2.8 million homeowners received
4 foreclosure notices in 2009.²

5 24. California has been one of the states hardest hit by this crisis. California had the
6 highest number of foreclosures in the United States for all of 2009. RealtyTrac reports that the
7 number of total California properties with foreclosure filings in 2009 was 632,573.³ This represents a
8 nearly 21% increase over 2008 and a 153% increase from 2007.⁴ In the first quarter of 2010,
9 California posted the nation's fourth highest foreclosure rate; during that period, California accounted
10 for 23% of the nation's total foreclosure activity.⁵

11 25. The foreclosure crisis "continues unabated," as a Congressional oversight panel stated
12 in April 2010.⁶

13 **THE HOME AFFORDABLE MODIFICATION PROGRAM.**

14 26. Congress passed the Emergency Economic Stabilization Act of 2008, 12 U.S.C.
15 § 5201 *et seq.*, on October 3, 2008 and amended it with the American Recovery and Reinvestment Act
16 of 2009, Pub. L. No. 111-5, 123 Stat. 115, on February 17, 2009 (together, the "Act").

17 27. The purpose of the Act is to grant the Secretary of the Treasury the authority to
18 restore liquidity and stability to the financial system, and to ensure that such authority is used in a
19 manner that "protects home values" and "preserves homeownership." 12 U.S.C. § 5201.

20
21 ² See Congressional Oversight Panel, *April Oversight Report – Evaluating Progress on*
22 *TARP Foreclosure Mitigation Programs*, Apr. 14, 2010 ("April 2010 Congressional Oversight
Report") at 3, available at <http://cop.senate.gov/documents/cop-041410-report.pdf> (last visited May
13, 2010).

23 ³ RealtyTrac, *RealtyTrac Year-End Report Shows Record 2.8 Million U.S. Properties*
24 *with Foreclosure Filings in 2009*, Jan. 14, 2010,
25 <http://www.realtytrac.com/contentmanagement/pressrelease.aspx?itemid=8333> (last visited May 13,
2010).

26 ⁴ *Id.*

27 ⁵ RealtyTrac, *Foreclosure Activity Increases 7 Percent in First Quarter*, Apr. 15, 2010,
28 <http://www.realtytrac.com/contentmanagement/pressrelease.aspx?itemid=8927> (last visited May 13,
2010).

⁶ See April 2010 Congressional Oversight Report, *supra*, at 5.

1 28. The Act grants the Secretary of the Treasury the authority to establish the Troubled
2 Asset Relief Program, or TARP. 12 U.S.C. § 5211 *et seq.* Under TARP, the Secretary may purchase
3 or make commitments to purchase troubled assets from financial institutions. *Id.* Congress allocated
4 up to \$700 billion to the Treasury for TARP. 12 U.S.C. § 5225.

5 29. The Act further mandates, with regard to any assets acquired by the Secretary of the
6 Treasury that are backed by residential real estate, that the Secretary “shall implement a plan that
7 seeks to maximize assistance for homeowners” and use the Secretary’s authority over servicers to
8 encourage them to take advantage of programs to “minimize foreclosures.” 12 U.S.C. § 5219. The
9 Act grants authority to the Secretary of the Treasury to use credit enhancement and loan guarantees to
10 “facilitate loan modifications to prevent avoidable foreclosures.” *Id.*

11 30. On February 18, 2009, pursuant to their authority under the Act, the Treasury
12 Secretary and the Director of the Federal Housing Finance Agency created the Making Home
13 Affordable initiative to help at-risk homeowners avoid foreclosure by restructuring their mortgages.

14 31. The Home Affordable Modification Program, or HAMP, is the portion of the Making
15 Home Affordable initiative, which provides mandatory directives for implementation, with which
16 Chase has not complied.⁷ HAMP creates a uniform loan modification protocol, and provides
17 financial incentives for participating servicers to modify loans. The Treasury Department has
18 allocated at least \$75 billion in federal funds to HAMP, of which at least \$50 billion is TARP money,
19 to keep up to “3 to 4 million homeowners” in their homes by 2012.⁸

20 **CHASE’S DUTIES UNDER HAMP.**

21 32. Because Chase accepted \$25 billion in federal funds and additional loan guarantees, it
22 was required to participate in HAMP for the loans on which it functions as a loan “servicer.” Chase
23 announced it would participate in HAMP, and begun processing loans under the HAMP Program on
24 April 6, 2009. On July 31, 2009, Chase entered into a “Servicer Participation Agreement” (the
25

26 ⁷ The other subprogram of the Making Home Affordable Program, the Home
27 Affordable Refinance Program or HARP, is not at issue in this case.

28 ⁸ Making Home Affordable.gov About Page,
<http://makinghomeaffordable.gov/about.html> (last visited May 13, 2010).

1 “SPA”) with the federal government.⁹ Chase entered into an “Amended and Restated” SPA on March
 2 24, 2010. (A copy of the March 2010 SPA is attached hereto as Exhibit 1 and incorporated by
 3 reference.)

4 33. The SPA Chase entered into incorporates supplemental documentation and guidance
 5 about the duties of Participating Servicers issued by the Treasury, Fannie Mae, or Freddie Mac –
 6 collectively known as the “Program Documentation.” (SPA § 1.A.) Fannie Mae issued the first
 7 “Supplemental Directive” (“SD 09-01”) in April, 2009.¹⁰ That Directive, together with others issued
 8 since, sets out the activities Chase must perform “for all mortgage loans it services.” (SPA § 2.A.)

9 34. First, Chase must evaluate all borrowers who are 60 or more days in default, in
 10 “imminent default,” or who request a loan modification to see if the loan and borrower meet basic
 11 eligibility criteria. (SD 09-01 at 1-2, 3-4.)¹¹

12 35. Next, the servicer is required to calculate whether, by taking certain modification
 13

14 ⁹ July 31, 2009 Servicer Participation Agreement, available at
 15 <http://www.financialstability.gov/docs/agreements/JP%20Morgan%20Chase%20Bank%20Servicer%20Participation%20Agreement.pdf> (last visited May 14, 2010).

16 ¹⁰ The Program Documentation also includes: Supplemental Directive 09-01 (“SD 09-
 17 01”), Apr. 6, 2009, https://www.hmpadmin.com/portal/docs/hamp_servicer/sd0901.pdf;
 Supplemental Directive 09-07 (“SD 09-07”), Oct. 8, 2009,
 18 https://www.hmpadmin.com/portal/docs/hamp_servicer/sd0907.pdf; Supplemental Directive 09-08
 (“SD 09-08”), Nov. 3, 2009, https://www.hmpadmin.com/portal/docs/hamp_servicer/sd0908.pdf;
 Supplemental Directive 10-01 (“SD 10-01”), Jan. 28, 2010,
 19 https://www.hmpadmin.com/portal/docs/hamp_servicer/sd1001.pdf; Supplemental Documentation –
 Frequently Asked Questions – Home Affordable Modification Program (“HAMP FAQs”), Apr. 2,
 20 2010, https://www.hmpadmin.com/portal/docs/hamp_servicer/hampfaqs.pdf; Supplemental
 Documentation – Frequently Asked Questions – Home Affordable Modification Program 2009-2010
 Conversion Campaign (“HAMP Conversion FAQs”), Jan. 8, 2010,
 21 https://www.hmpadmin.com/portal/docs/hamp_servicer/hampconversionfaqs.pdf; Checklist for
 Getting Started and Participating in HAMP for Non-GSE Loans, Guidance Effective
 22 for Verified Trial Period Plans, Feb. 22, 2010 (“HAMP Checklist”),
 23 https://www.hmpadmin.com/portal/docs/hamp_servicer/hampchecklistverified.pdf; and Home
 Affordable Modification Program Base Net Present Value (NPV) Model Specifications (“NPV
 24 Overview”), Jun. 11, 2009,
 25 https://www.hmpadmin.com/portal/docs/hamp_servicer/npvoverview.pdf (all last visited May 13,
 2010). These documents together describe the basic activities required under HAMP.

26 ¹¹ Aside from criteria that require that the loan be a first lien mortgage originated before
 27 2009, that the property be occupied, and that it be the borrower’s principal residence, the most
 salient conditions are that the loan must be delinquent or that default is reasonably foreseeable; that
 the borrower document a financial hardship, as defined in the Program Documentation, and that the
 28 “borrower has a monthly mortgage payment ratio of greater than 31 percent” of the borrower’s
 monthly income. (SD 09-01 at 1-2.)

1 steps such as reducing the interest rate or extending the term of the loan, the borrower's total housing
2 payment can be reduced to 31% of the borrower's monthly income. (SD 09-01 at 8-10; HAMP
3 Checklist at 6.) Finally, the servicer must perform a "net present value" (hereinafter "NPV") analysis,
4 comparing the net present value of cash flow from these modified loan terms to the NPV of the loan
5 without modification. (SD 09-01 at 4-5; NPV Overview; HAMP FAQs at 27-29, Q2314.)

6 36. If the NPV test yields a "positive" outcome (*i.e.*, the value of a performing modified
7 loan exceeds the value of foreclosing the property), the servicer is required to offer a trial
8 modification, or "Trial Period Plan," (hereinafter "TPP") under HAMP. (SD 09-01 at 4, 14-15.) If
9 the NPV test yields a "negative" outcome, the servicer is required to consider the borrower for other
10 foreclosure prevention measures. (SD 09-01 at 4; SD 09-08 at 2-3.)

11 37. The TPP consists of a three-month period in which the homeowner makes mortgage
12 payments based on adjusted loan terms derived from steps followed by the servicer under HAMP.
13 (SD 09-01 at 17-18; SD 10-01 at 8.)

14 38. Chase offers TPPs to eligible homeowners through a TPP Contract, which describes
15 the homeowner's duties and obligations. The TPP Contract promises a permanent HAMP
16 modification for those homeowners who make the required payments under the plan and fulfill the
17 documentation requirements.

18 39. If the homeowner makes all the TPP monthly payments and complies with
19 documentation requirements, then the second stage of the HAMP process is triggered and the
20 homeowner must be offered a permanent modification. (SD 09-01 at 18; SD 10-01 at 8.)

21 **CHASE IMPLEMENTATION OF HAMP.**

22 40. Chase has routinely failed to comply with its requirements and responsibilities under
23 HAMP and its TPP Contracts.

24 41. Chase regularly fails to evaluate borrowers' eligibility for the HAMP program or
25 perform an NPV test before placing borrowers into a TPP. Instead, it waits to underwrite the loan and
26 evaluate borrowers' eligibility until months after it has offered, and the homeowner has accepted, the
27 TPP Contract. Homeowners thus make months of TPP payments (and comply with stressful and
28 burdensome documentation requirements), without any assurance that Chase will comply with the

1 TPP and offer a permanent modification.

2 42. Throughout homeowners' TPP, Chase repeatedly and inappropriately demands that
3 borrowers update their application materials, while warning homeowners that their modification is at
4 risk and threatening to deny the modification if they fail to comply with the request. Typically, Chase
5 requests the same document(s) over and over. In other instances, it requests documentation that is
6 irrational or impossible to obtain – such as W-2 forms for elderly individuals surviving on social
7 security, or self-employment profit and loss statements for wage-earning employees. Chase's
8 demands that borrowers submit duplicative or unnecessary documentation creates opportunities for
9 Chase to reject otherwise eligible borrowers for permanent modifications. The requests for documents
10 are unnecessary, duplicative, burdensome, and harassing.

11 43. Chase has routinely failed to comply with the TPP Contract and offer permanent
12 modifications to homeowners, instead stringing them along for months and months in trial
13 modifications. In April, 2010 the Treasury reported that Chase had 431,341 HAMP-eligible loans in
14 its servicing portfolio. Trial periods have started on only 186,769 of these loans. Of those, just
15 31,460 have resulted in permanent modification (only 16% of the started Trial modifications and 7%
16 of the eligible pool) even though many more homeowners had made the payments and submitted the
17 documentation required by the TPP Contract.¹²

18 44. Chase has routinely failed to comply with the requirement that it give borrowers
19 written notification when they are denied a HAMP modification. Within ten days of the date of
20 determination that an official HAMP modification will not be offered, Chase must send a Borrower
21 Notice that explains the primary reason for the denial in clear, non-technical language, and set out any
22 other alternatives to foreclosure to which the borrower may be eligible. (SD 09-08 at 2-3.) If the
23 borrower was not approved because the result of the NPV test was negative, the borrower is entitled to
24 request the NPV values used and to dispute those values if they are incorrect. (*Id.*) The denial letter,
25 therefore, provides the sole formal opportunity for borrowers denied a modification to dispute or
26

27 ¹² The Treasury Report, *Making Home Affordable Program – Servicer Performance*
28 *Report through March 2010* is available at
<http://www.makinghomeaffordable.gov/docs/Mar%20MHA%20Public%20041410%20TO%20CLEAR.PDF> (last visited May 13, 2010).

1 appeal the denial.

2 **REMAINING IN LENGTHY OR INDEFINITE TRIAL MODIFICATIONS CAUSES**
3 **HOMEOWNERS HARDSHIPS.**

4 45. Chase's failure to comply with its obligations under its TPP Contracts and timely
5 convert TPPs into permanent modifications has serious consequences for borrowers.

6 46. A homeowner's total unpaid balance increases each month that he or she is in a TPP.
7 TPP payments are less than the amount ordinarily due under the mortgage. The rest of the amount
8 that would ordinarily be due – in most cases, primarily interest – is not waived. Instead, the remainder
9 of the ordinarily payment is "recapitalized" or added to the unpaid loan balance the end of the trial
10 period. If the trial period lasts three months, only three months' worth of the difference between the
11 trial and regular payments are added to the unpaid balance. If the trial period continues longer than
12 three months, however, homeowners may find that six, seven, eight or more months' differential is
13 added to the loan balance. The more Chase delays, the more the homeowners owe.

14 47. Each payment under a TPP has negative credit consequences. Although borrowers
15 are paying all that Chase is asking them to pay – and an amount that will match their payments under
16 a permanent modification – their accounts are not reported as current to credit scoring agencies. The
17 HAMP directives require Chase to report borrowers who were previously delinquent "in such a
18 manner that accurately reflects the borrower's delinquency and workout status." (SD 09-01 at 22.)
19 The more months a borrower spends in a TPP, rather than a permanent modification, the more months
20 they are reported as delinquent, the more months they have derogatory credit reporting.

21 48. Chase's failure to honor the TPP Contracts leaves homeowners in long-term limbo,
22 unsure if they can save their homes, and unable to make rational decisions about the future. Money
23 that could be used to fund bankruptcy plans, relocation costs, short sales, or other means of curing
24 their default continued to go toward TPPs that stretch on indefinitely.

25 **PLAINTIFF HERMINIA MORALES**

26 49. Herminia and Conrado Morales purchased their home at 127 Francisco Drive in
27 South San Francisco, California in May, 2002. In February, 2007, after Mr. Morales became seriously
28 ill and incurred substantial medical bills, the Morales family refinanced their home, replacing their

1 \$436,000 mortgage with a \$607,750 mortgage in Herminia Morales's name from Washington Mutual,
2 now Chase. Ms. Morales's mortgage payments were \$3,798.85.

3 50. Ms. Morales could not afford and did not make her mortgage payment in February,
4 2009.

5 51. She first applied to Chase for a modification in March, 2009. Her application was
6 denied in May, 2009, purportedly because documentation was missing from her application.

7 52. On June 16, 2009, Ms. Morales again applied for a loan modification to Chase. She
8 submitted her own paystubs, documentation of boarder income, and both contribution letters and
9 income documentation from each of her five sons living with her. On or about June 20, 2009, Chase
10 called to tell Mrs. Morales that her application had been denied because her expenses were too high,
11 but instructed her to reapply by submitting an updated financial information form and income
12 documentation.

13 53. On or about July 8, 2009, Mrs. Morales submitted an updated form -- showing the
14 same expenses -- and updated income documentation. This documentation showed that she had a
15 gross income of \$2,704 per month, \$500 per month from her boarder, \$751 in Social Security
16 benefits, and monthly mortgage contributions from her sons of \$2,700, for a total gross income of
17 \$6,555.

18 54. On July 24, 2009, a Chase representative informed Elizabeth Letcher of Housing and
19 Economic Rights Advocates by electronic mail that Ms. Morales had been approved for a trial
20 modification under HAMP. She received the modification papers on July 30, 2009.

21 55. Chase sent and Ms. Morales executed and returned a standard form contract entitled
22 "Home Affordable Modification Trial Period Plan (Step One of Two-Step Documentation Process)"
23 (the "TPP Contract"). The first sentence stated:

24 If I am in compliance with this Trial Period Plan (the "Plan") and my representations
25 in Section 1 continue to be true in all material respects, then the Lender will provide
26 me with a Home Affordable Modification Agreement ("Modification Agreement") as
set forth in Section 3, that would amend and supplement (1) the Mortgage on the
Property, and (2) the Note secured by the Mortgage.

27 56. The representations in Section 1 were that: she was unable to make her regular
28 payments and was in default, that the property was her principal residence; there had been no change

1 in ownership of the property, that she had provided documentation for all income she was receiving;
2 and the documentation she provided was true and correct. Section 3 of the TPP Contract repeated that
3 if she made timely payments and the representations in Section 1 continued to be true, “the Lender
4 will send me a Modification Agreement” which will become a permanent modification of the loan.
5 (A partially redacted copy of Ms. Morales’ TPP Contract is attached hereto as Exhibit 2 and
6 incorporated by reference.)

7 57. The TPP Contract provided that Mrs. Morales should make three trial period
8 payments of \$1,960.44.

9 58. Ms. Morales timely executed the TPP Contract and returned it by overnight mail on
10 July 30, 2009, along with all the documentation requested in the packet.

11 59. Ms. Morales timely made the August 1, 2009 payment by sending a cashier’s check
12 for \$1,960.44 by overnight mail with her executed TPP Contract. She timely made the September 1,
13 2009 and October 1, 2009 payments as well.

14 60. On October 3, 2009, Chase sent Ms. Morales a letter headed “YOUR
15 MODIFICATION IS AT RISK – URGENT RESPONSE NEEDED!” The letter stated that Chase
16 was “still missing documentation necessary to evaluate” her modification request, and that Chase’s
17 “records reflect that you have not yet provided some or all of the documents listed below.” It
18 requested income documentation, proof that Ms. Morales occupied the home as her primary residence,
19 a signed IRS Form 4506-T, and a signed Hardship Affidavit.

20 61. While Ms. Morales was gathering the updated information, Chase sent another
21 request for documentation on October 14, 2009 – this one stating that Chase had received some of the
22 documents needed, but still needed a signed Hardship Affidavit and a completed and signed IRS Form
23 4506-T, with lines 1-9 completed. On October 16, 2009, Chase sent another “YOUR
24 MODIFICATION IS AT RISK” letter, again requesting income documentation, proof of occupancy,
25 IRS Form 4506-T, and a signed Hardship Affidavit.

26 62. Ms. Morales fully complied with the request for information by sending income
27 documentation, utility bills, checking account statements, a completed IRS Form 4506-T, and a
28 hardship letter on October 19, 2009.

1 63. Chase did not offer Ms. Morales a permanent modification at the end of October,
2 2009, which was the end of the originally identified Trial Period. Instead, she was asked to continue
3 to make trial period payments.

4 64. Over the next months, Ms. Morales received, at least, another eight demands for
5 updated information – which she provided on every occasion. She was asked seven times for income
6 documentation, three times for a third party authorization form, four times for a new IRS Form 4506-
7 T, and four times for a hardship letter. Each letter asking for information repeated that her
8 modification was “at risk” if she did not respond. Each time she provided Chase with the complete,
9 and virtually identical, responsive information.

10 65. Chase’s demands for income documentation continuously shifted. In November,
11 2009, Chase asked for and Ms. Morales submitted updated pay stubs. In December, 2009, Chase
12 asked for and Ms. Morales submitted her social security award letter and updated letters from her sons
13 stating the amount of their monthly contribution to the mortgage. In January, 2010, Chase demanded
14 proof of the contributions in the form of the last six months’ copies of canceled contribution checks
15 from each of her sons. Ms. Morales had to go to several banks with her sons to get electronic copies
16 of the checks, which she submitted in January and February, 2010. By letter dated January 31, 2010,
17 Chase again requested updated income documentation, and she submitted updated pay stubs and
18 checking account statements in early February.

19 66. On February 19, 2010, Chase wrote Ms. Morales “to confirm receipt of your recently
20 submitted documentation” and stating that she would be contacted “in the near future with a decision
21 on your modification request. In the meantime, please continue to make your trial period payments on
22 time.”

23 67. Ms. Morales timely made each of the payments required by the TPP Contract for
24 August, September, and October, 2009. She also continued to make payments in November 2009,
25 December 2009, January 2010, February 2010, March 2010, and April, 2010. Chase accepted each of
26 these payments.

27 68. Despite her compliance in all respects with the terms of the TPP Contract,
28 Ms. Morales was never offered a HAMP final modification – nor did Chase send her a written denial.

1 69. By letter dated March 11, 2010, she was offered a loan modification making her loan
2 interest-only for the next ten years, then principal and interest payments amortized over a term longer
3 than the life of the loan, and a balloon payment of \$399,766.63 at the end of the loan term. This
4 March 11, 2010 modification was not a modification under HAMP. A HAMP loan modification
5 would have modified her loan terms so that her total housing payments, including principal, interest,
6 property tax, and insurance were equal to 31% of Ms. Morales' income – that is, approximately the
7 amount of the \$1,960 trial period payments – for the first five years of the loan. Over the next five
8 years, the interest rate on the loan would gradually increase until it reached the Freddie Mac Survey
9 Rate at the date of the modification (on March 11, 2010, that rate was 4.95%).

10 70. Instead, the March 11, 2010 modification offered her demanded initial payments of
11 \$2,431.42, which would increase to payments that would top \$4,000 per month. The initial payment
12 was unaffordable to Ms. Morales.

13 71. Ms. Morales invested her limited resources in TPP payments for seven months, in
14 reliance on the representation that doing so would result in a permanent loan modification. Chase has
15 failed to live up to its end of the bargain.

16 72. Chase reported to credit reporting agencies that Ms. Morales's mortgage payments
17 from July, 2009 to January, 2010 were "180 days past due," and did not report that she was paying
18 under a modified payment contract.

19 **PLAINTIFF MICHELLE SURANOFSKY**

20 73. Michelle Suranofsky is a single mother working as a part-time manager of a small
21 business. She purchased her home at 108 Sierra Linda, Los Gatos, California from the Town of Los
22 Gatos through the Town's "below market rate" program. Under that program, the Town sells
23 properties to qualified buyers at below market rate, but records restrictions on the deed that give the
24 Town a right of first refusal on resale, and sets a maximum resale price in order to maintain a supply
25 of affordable housing. As of March, 2010, the allowable resale price was the same as the purchase
26 price, \$237,000.

27 74. In 2006, Ms. Suranofsky refinanced her mortgage loan with a \$190,000 loan at 8.25%
28 interest from Long Beach Mortgage, an affiliate of the Washington Mutual family of companies.

1 Chase, as successor in interest to Washington Mutual, services her loan.

2 75. Ms. Suranofsky lost her job in July 2008. During her period of unemployment, she
3 fell behind on her mortgage, making payments some months but not others. Although she found new
4 employment, she was unable to catch up on her mortgage. She tried several times to apply for a loan
5 modification in early 2009, but was denied because documents were purportedly missing from her
6 loan modification application. Each time, she was instructed to resubmit an application.

7 76. In July, 2009, Ms. Suranofsky sought the help of Project Sentinel, a housing
8 counseling agency approved by the Department of Housing and Urban Development. Ms. Suranofsky
9 submitted an application for a HAMP modification through a housing counselor.¹³

10 77. On or about July 31, 2009, Chase informed Ms. Suranofsky's representative that she
11 had been offered a Trial Period Plan under HAMP to begin August 1, 2009.

12 78. On August 3, 2009, Ms. Suranofsky received a Trial Period Plan packet from Chase.
13 Page 1, Step 2 of the packet stated, "Please let us know, no later than AUGUST 29, 2009 that you
14 accept the Trial Period Plan by returning the signed Trial Period Plan, along with the required
15 documents and first payment."

16 79. Ms. Suranofsky's packet included the standard TPP Contract entitled "Home
17 Affordable Modification Trial Period Plan (Step One of Two-Step Documentation Process)"
18 (the "TPP Contract"). Again, the first sentence of the TPP Contract stated:

19 If I am in compliance with this Trial Period Plan (the "Plan") and my representations
20 in Section 1 continue to be true in all material respects, then the Lender will provide
21 me with a Home Affordable Modification Agreement ("Modification Agreement") as
set forth in Section 3, that would amend and supplement (1) the Mortgage on the
Property, and (2) the Note secured by the Mortgage.

22 Section 3 of the TPP Contract repeated that if she made timely payments and the representations in
23 Section 1 continued to be true, "the Lender will send me a Modification Agreement" which will
24 ultimately become a permanent modification of the loan. (A partially redacted copy of Ms.
25 Suranofsky's TPP Contract is attached hereto as Exhibit 3.)

26 80. The TPP Contract provided that Ms. Suranofsky would make three trial period
27

28 ¹³ Most of Ms. Suranofsky's further dealings with Chase were made through her
representatives, either the housing counselor or a legal advocate.

1 payments of \$613.00. Those payments were due on August 1, 2009, September 1, 2009, and October
2 1, 2009.

3 81. Ms. Suranofsky executed the TPP Contract on August 6, 2009 and returned it on
4 August 15, 2009 by overnight mail, along with a cashier's check for \$613.00 and all the
5 documentation Chase requested: a Hardship affidavit and letter, signed IRS Form 4506-T, a 2008 tax
6 return, and pay stubs from May and June, 2009 showing an average \$2,740 per month gross income.

7 82. Ms. Suranofsky timely made her September 2009 payment to Chase on August 28,
8 2009 and her October 2009 payment on September 29, 2009.

9 83. On October 3, 9, and 16, 2009 Chase sent Ms. Suranofsky letters headed "YOUR
10 MODIFICATION IS AT RISK – URGENT RESPONSE NEEDED!" The letters stated that Chase
11 was "still missing documentation necessary to evaluate" her modification request. "Our records
12 reflect that you have not yet provided some or all of the documents listed below," and requested
13 income documentation, proof that Ms. Suranofsky occupied the home as her primary residence, a
14 signed IRS Form 4506-T, and a signed Hardship Affidavit.

15 84. On or about October 19, 2009, Ms. Suranofsky sent Chase the documentation
16 requested. Her average gross monthly income had risen slightly – from approximately \$2,740 to
17 \$2,850 per month – but otherwise, the information remained exactly the same.

18 85. On October 20, 2009, a Chase representative named "Greg" called Ms. Suranofsky
19 and informed her that she had been approved for a final modification and that her packet would be
20 sent within 30-60 days. He also told her that her monthly payment would be "within \$100" of her
21 trial period payment amount. The representative told her that she should, in the meantime, continue to
22 make payments under her Trial Period Plan. He sent her additional TPP coupons for November 2009,
23 December 2009, and January 2010.

24 86. In December, 2009, a real estate agent from Coldwell Banker came to
25 Ms. Suranofsky's house, informing her that a foreclosure had taken place the previous day and she
26 would be required to move. Ms. Suranofsky sought the assistance of Project Sentinel, who contacted
27 Chase in early January, 2010. A Chase representative informed her that Ms. Suranofsky had been
28 denied a modification in November, 2009 because her income was insufficient, but invited her to

1 reapply. No foreclosure sale had actually occurred.

2 87. Chase informed Ms. Suranofsky's representative that she was being denied a
3 permanent modification. Despite her compliance in all respects with the terms of the TPP Contract,
4 Ms. Suranofsky was not offered a HAMP final modification at the end of the trial period, nor did
5 Chase send her a written denial.

6 88. On January 21, 2010, Ms. Suranofsky resubmitted her loan modification application,
7 complete with her financial information, hardship letter, hardship affidavit, pay stubs and summary of
8 tips, recent checking account transaction history, IRS Form 4506-T, 2008 tax return, and a recent
9 utility bill. This submission showed an average gross income of \$3,022 per month.

10 89. During this time, Chase instructed Ms. Suranofsky to continue making TPP
11 payments. She timely made November 2009, December, 2009, January, 2010, February, and March,
12 2010. Chase accepted each of these payments.

13 90. On March 13, 2010, Chase informed Ms. Suranofsky's representative that she was
14 being denied a permanent modification because of insufficient income. To date, Ms. Suranofsky has
15 not received a written denial from Chase that would give her the opportunity to review and, if
16 necessary, correct any errors in the income figures Chase used to evaluate her for a modification.

17 91. Chase representatives later stated that Ms. Suranofsky had been denied both because
18 her income was insufficient and because she had "too much equity" – her loan amount was only
19 31.49% of the market value of the home.

20 92. Ms. Suranofsky complied in all respects with the terms of the TPP Contract. She
21 made timely trial period payments not only for the three month trial period set out in the contract, but
22 for an additional five months. She invested her limited resources in TPP payments for eight months,
23 based on the promise that doing so would result in a permanent loan modification. Instead, she has
24 purportedly been denied a permanent modification.

25 93. Chase has reported to credit reporting agencies that Ms. Suranofsky is making her
26 mortgage payments under a partial or modified payment contract, but also that her payments are 180
27 days past due for November, 2009 through (at least) February, 2010.

28

CLASS ACTION ALLEGATIONS

1
2 94. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs Morales and
3 Suranofsky bring this action as a class action on behalf of themselves and all others similarly situated
4 as members of a proposed California class. This putative class (hereinafter the "Plaintiff Class") is
5 defined as follows:

6 All California homeowners whose loans have been serviced by Defendants and who
7 have complied with their obligations under a written Home Affordable Modification
8 Program ("HAMP") Trial Period Plan Contract, but who have not received a
9 permanent HAMP modification.

9 95. This action may properly be maintained as a class action pursuant to California Civil
10 Code section 1781 and Fed. R. Civ. P. 23.

11 96. All members of the class have been subject to and affected by the same conduct. The
12 Trial Period Plan contracts (the "TPP Contract") entered into by Plaintiffs and the members of the
13 Plaintiff Class were standard form contracts which contained the same terms and representations,
14 differing only as to the amounts of the trial period payments and the dates those payments were due.

15 97. All members of the class have been subject to and affected by Chase's uniform failure
16 to implement the SPA contracts. The claims are based on the terms of a contract between Fannie
17 Mae, acting as agent for the United States Treasury, and Chase, acting for the benefit of the Plaintiff
18 Class. The contract between Fannie Mae and Chase set out standardized steps and processes for
19 temporary and permanent loan modifications.

20 98. Plaintiffs are informed and believe and on that basis allege that the Plaintiff Class is
21 so numerous that joinder of the individual claims is impracticable. The precise number of the Plaintiff
22 Class and the identities of the members are ascertainable from the business records of Defendants.

23 99. Questions of law and fact common to the Plaintiff Class exist and predominate over
24 questions affecting only individual class members. These common legal and factual questions
25 include, but are not limited to:

26 a. Whether Chase breached the TPP Contract with Plaintiffs and members of the
27 Plaintiff Class by failing to offer Plaintiffs and members of the Plaintiff Class permanent HAMP
28 modifications at the close of their trial periods.

1 b. Whether Chase has violated the duty of good faith and fair dealing, inherent in
2 all contracts, including whether the failure to provide permanent HAMP modifications constitutes a
3 breach of the covenant of good faith and fair dealing;

4 c. Whether Chase breached its duties under the HAMP SPA that were intended
5 for the benefit of class members;

6 d. Whether Chase made representations that Plaintiffs and members of the
7 Plaintiff Class would receive a permanent HAMP modification, upon which Plaintiffs and members of
8 the Plaintiff Class reasonably relied to their detriment;

9 e. Whether Chase violated the Rosenthal Fair Debt Collection Practices Act, Cal.
10 Civ. Code § 1788 *et seq.* (Rosenthal Act”) by, without limitation, making false, deceptive or
11 misleading representation or means in connection with the collection of any debt, making false
12 representation or deceptive means to collect or attempt to collect on any debt, and making unfair or
13 unconscionable means to collect or attempt to collect any debt;

14 f. Whether Chase’s acts described above are unlawful, unfair, and fraudulent
15 business practices in violation of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*
16 (“UCL”); and

17 g. The nature and extent of relief to Plaintiffs and the Plaintiff Class, including
18 declaratory judgment, accounting, injunctive relief, restitution, and other remedies to which Plaintiffs
19 and the other members of the Plaintiff Class are entitled.

20 100. Plaintiffs’ claims are typical of the claims of the Plaintiff Class as the claims arise
21 from the same course of conduct by Chase, and the relief sought is common. Each of the members of
22 the Plaintiff Class entered into the same TPP Contract and met with the same failure to provide a
23 permanent modification. Each of the members of the Plaintiff Class has the same or substantially
24 similar claims to Plaintiffs for relief against these practices. As described above and below, the claims
25 arise from the same course of conduct by Chase, and the relief sought is common.

26 101. Plaintiffs are adequate representatives of the Plaintiff Class because: (a) their
27 interests do not conflict with the interests of the individual members of the Plaintiff Class they seek to
28 represent; (b) they have retained counsel who are competent and experienced in complex class action

1 litigation; and (c) they intend to prosecute this action vigorously. The interests of the members of the
2 Plaintiff Class will be fairly and adequately protected by Plaintiffs and their counsel.

3 102. The class action device is superior to other available means for the fair and efficient
4 adjudication of the claims of Plaintiffs and the Plaintiff Class. Furthermore, because the economic
5 damages suffered by the individual class members may be relatively modest, albeit significant,
6 compared to the expense and burden of individual litigation, it would be impracticable for members of
7 the Plaintiff Class to seek redress individually for the wrongful conduct alleged herein. There will be
8 no undue difficulty in the management of this litigation as a class action. Plaintiffs' and the Plaintiff
9 Class members' common claims can be economically adjudicated only in a class action proceeding,
10 thus promoting judicial efficiency and avoiding multiple trials and inconsistent judgments.

11 **FIRST CLAIM**
12 **BREACH OF CONTRACT**
13 **(Breach of TPP Contract by Plaintiffs Individually and on**
14 **Behalf of the Plaintiff Class Against All Defendants)**

15 103. Plaintiffs individually, and on behalf of the Plaintiff Class, reallege each and every
16 allegation above as if fully set forth in this Claim.

17 104. The TPP Contracts are contracts accepted by Plaintiffs and the Plaintiff Class when
18 they executed the TPP Contracts, and/or when they made payments under the Trial Period Plan.
19 Payments in accordance with the TPP Contracts constitute consideration. In the alternative, the TPP

20 Contracts, coupled with Plaintiffs' payments under the TPP Contracts, constitute implied contracts.

21 105. Chase failed to perform under the TPP Contract with Plaintiffs and members of the
22 Plaintiff Class. Chase's refusal to perform its duties under the TPP Contract was unlawful, without
23 justification and/or excuse, and constituted a total and material breach of the TPP Contract between
24 the parties.

25 106. Chase breached the TPP Contract with Plaintiffs and members of the Plaintiff Class
26 by failing to offer Plaintiffs and members of the Plaintiff Class permanent HAMP modifications at the
27 close of their Trial Periods.

28 107. Plaintiffs and all members of the Plaintiff Class gave consideration that was fair and
reasonable, and have performed all conditions, covenants, and promises required to be performed

1 under their contracts with Chase.

2 108. As a result of Chase's breach of the TPP Contract, Plaintiffs and members of the
3 Plaintiff Class suffered and will continue to suffer reasonable and foreseeable consequential damages
4 resulting from such breaches, including payment of increased interest, longer loan payoff times,
5 higher principle balances, deterrence from seeking other remedies to address their default and/or
6 unaffordable mortgage payments, damage to their credit, additional income tax liability, costs and
7 expenses incurred to prevent or fight foreclosure, and other damages for breach of contract.

8 109. Plaintiffs and the Plaintiff Class have been damaged by Chase's breach of the TPP
9 Contracts in an amount to be proven at trial.

10 110. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are entitled to
11 recover their reasonable attorney's fees, costs, and expenses incurred in bringing this action.

12 **SECOND CLAIM**
13 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**
14 **(Breach of Covenant of Good Faith and Fair Dealing by Plaintiffs Individually and on**
15 **Behalf of the Plaintiff Class Against All Defendants)**

16 111. Plaintiffs individually, and on behalf of the Plaintiff Class, reallege each and every
17 allegation above as if fully set forth in this Claim.

18 112. Under common law, a covenant of good faith and fair dealing is implied in every
19 contract, including the TPP Contracts, which prevents one contracting party from unfairly frustrating
20 the other party's right to receive the benefits of the contract. Chase is obligated to act in good faith
21 and deal fairly with each borrower who entered into a TPP Contract.

22 113. Chase has violated and continues to violate this covenant of good faith and fair
23 dealing in its TPP Contracts with Plaintiffs and members of the Plaintiff Class by doing, inter alia, the
24 following:

25 a. Failing to perform loan servicing functions consistent with its responsibilities
26 to Plaintiffs;

27 b. Failing to properly supervise its agents and employees, including without
28 limitation, its loss mitigation and collection personnel, foreclosure personnel, and personnel
implementing its modification programs;

1 c. Failing to permanently modify loans and/or provide alternatives to foreclosure
2 and using unfair means to keep Plaintiffs and the Plaintiff Class in temporary modification contracts,
3 including, without limitations, routinely demanding information it already has and failing to
4 communicate accurately or consistently with borrowers about the status of their loan modification
5 applications; and

6 d. Making inaccurate calculations and determinations of Plaintiffs' eligibility for
7 permanent modifications.

8 114. Plaintiffs remain ready, willing, and able to enter into permanent HAMP
9 modifications.

10 115. As a result of Chase's breach of this implied covenant, Plaintiffs and members of the
11 Plaintiff Class suffered and will continue to suffer reasonable and foreseeable consequential damages
12 resulting from such breaches, including payment of increased interest, longer loan payoff times,
13 higher principle balances, and other damages for breach of contract.

14 116. Plaintiffs and the Plaintiff Class have been damaged by Chase's breach of the implied
15 covenant of good faith and fair dealing in an amount to be proven at trial.

16 117. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are entitled to
17 recover their reasonable attorney's fees, costs, and expenses incurred in bringing this action.

18 **THIRD CLAIM**
19 **BREACH OF CONTRACT**
20 **(Breach of SPA Contract by Plaintiffs Individually and on**
21 **Behalf of the Plaintiff Class Against All Defendants)**

22 118. Plaintiffs individually, and on behalf of the Plaintiff Class, reallege each and every
23 allegation above as if fully set forth in this Claim.

24 119. On July 31, 2009, Chase and the United States (through Fannie Mae acting as
25 Financial Agent of the United States) entered into the Servicer Participation Agreement ("SPA")
26 which is a valid and enforceable contract.

27 120. Plaintiffs and members of the Plaintiff Class are intended third-party beneficiaries
28 under the SPA and the SPA states the express intention that "homeowners who are in default and . . .
who are at imminent risk of default" be granted modification to reduce "monthly payments to

1 sustainable levels.” (SD 09-01 at 1.) Plaintiffs and members of the Plaintiff Class were intended
2 beneficiaries of the contract.

3 121. By entering into the SPA, Chase agreed to comply with the requirements set forth in
4 the SPA and the Program Documentation incorporated by reference into the SPA. In exchange,
5 Treasury agreed to pay certain amounts set forth in the SPA and the Program Documentation to Chase
6 in consideration of its compliance with the SPA.

7 122. The central purpose of the SPA is to ensure that borrowers whose loans are serviced
8 by Chase and who are eligible for loan modifications under HAMP are properly considered for
9 modification in compliance with the Program Documentation requirements incorporated in the SPA.

10 123. Chase failed to perform under its SPA contracts in a manner that directly impacts
11 Plaintiffs and members of the Plaintiff Class. Chase’s refusal to perform the SPA contracts was
12 unlawful, without justification and/or excuse, and constituted a total and material breach.

13 124. Chase breached the SPA by doing, inter alia, the following:

14 a. Failing to properly determine whether Plaintiffs and members of the Plaintiff
15 Class qualify for HAMP modifications by checking investor restrictions and/or performing an NPV
16 test before placing them into TPP Contracts;

17 b. Imposing requirements on Plaintiffs and the Plaintiff Class not permitted
18 under the SPA and Program Documentation;

19 c. Failing to follow the process required to determine eligibility for
20 modifications, including, without limitations, failing to consider documentation properly submitted in
21 support of their HAMP applications, and demanding documentation that is not required;

22 d. Failing to obtain waivers or approvals from the investor, if necessary, to carry
23 out modifications under HAMP; and

24 e. Failing to timely convert temporary modifications into permanent
25 modifications in the manner required by the SPA.

26 125. As a result of Chase’s breach of the SPAs, Plaintiffs and members of the Plaintiff
27 Class suffered and will continue to suffer reasonable and foreseeable consequential damages resulting
28 from such breaches, including payment of increased interest, longer loan payoff times, higher

1 principle balances, deterrence from seeking other remedies to address their default and/or
2 unaffordable mortgage payments, damage to their credit, additional income tax liability, costs and
3 expenses incurred to prevent or fight foreclosure, and other damages for breach of contract.

4 126. Plaintiffs and the Plaintiff Class have been damaged by Chase's breach of the SPA
5 contract in an amount to be proven at trial.

6 127. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are entitled to
7 recover their reasonable attorney's fees, costs, and expenses incurred in bringing this action.

8 **FOURTH CLAIM**
9 **PROMISSORY ESTOPPEL, IN THE ALTERNATIVE**
10 **(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Defendants)**

11 128. Plaintiffs individually, and on behalf of the Plaintiff Class, reallege each and every
12 allegation above as if fully set forth in this Claim.

13 129. Chase, by way of its TPP Contracts, made a representation to Plaintiffs that if they
14 returned the TPP Contract executed and with supporting documentation, and made their TPP
15 payments, they would receive a permanent HAMP modification.

16 130. Chase's TPP Contract was intended to induce Plaintiffs to rely on it and make
17 monthly TPP payments and Plaintiffs did, indeed, rely on Chase's representation, by submitting TPP
18 payments. Plaintiffs' reliance was reasonable.

19 131. Plaintiffs' reliance was to their detriment. For example, those who complied with the
20 TPP Contract but were denied a permanent modification lost the opportunity to pursue other strategies
21 and those plaintiffs who have yet to receive permanent HAMP modifications and are still making TPP
22 payments have lost the opportunity to fund other strategies to deal with their default and avoid
23 foreclosure.

24 132. Plaintiffs and the Plaintiff class have been damaged by Chase's actions and
25 representations in an amount to be proven at trial.

26 133. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are entitled to
27 recover their reasonable attorney's fees, costs, and expenses incurred in bringing this action.

28 //

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FIFTH CLAIM
VIOLATION OF STATE FAIR DEBT COLLECTION ACT
(Violation of the Rosenthal Fair Debt Collection Practices Act,
Cal. Civ. Code § 1788 *et seq.* by Plaintiffs Individually
and on Behalf of the Plaintiff Class Against All Defendants)

1
2
3
4 134. Plaintiffs individually, and on behalf of the Plaintiff Class, reallege each and every
5 allegation above as if fully set forth in this Claim.

6 135. Chase is a “debt collector” within the meaning of Cal. Civil Code §1788.2(c). The
7 monies allegedly owed by the members of the proposed classes are “debts” within the meaning of Cal.
8 Civil Code §1788.2(d).

9 136. California’s Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et*
10 *seq.* (“Rosenthal Act”), incorporates by reference, and requires compliance with, the provisions of the
11 federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* Cal. Civ. Code § 1788.17.

12 137. By the acts and practices described herein Chase has violated these laws, as follows,
13 without limitations:

- 14 • Making false, deceptive, or misleading representation or means in connection
15 with the collection of any debt, 15 U.S.C. § 1692e;
16 • Making false representation or deceptive means to collect or attempt to collect
17 on any debt, 15 U.S.C. § 1692e(10); and
18 • Making unfair or unconscionable means to collect or attempt to collect any
19 debt, 15 U.S.C. § 1692f.

20 138. Pursuant to California Civil Code §§ 1788.30 and 1788.17, Plaintiffs and the Plaintiff
21 Class are entitled to recover actual damages sustained as a result of Chase’s violations of the
22 Rosenthal Act. Such damages include, without limitation, monetary losses and damages, and
23 emotional distress suffered, which damages are in an amount to be proven at trial. In addition,
24 pursuant to California Civil Code §§ 1788.30 and 1788.17, because Chase’s violations of the
25 Rosenthal Act were committed willingly and knowingly, Plaintiffs and the Plaintiff Class are entitled
26 to recover penalties of at least \$1,000 per violation as provided for in the Act.

27 139. Pursuant to California Civil Code §§ 1788.30 and 1788.17, Plaintiffs and the Plaintiff
28 Class are entitled to recover all attorney’s fees, costs, and expenses incurred in the bringing of this

1 action pursuant to Civil Code § 1788.30(c).

2 **SIXTH CLAIM**
3 **VIOLATION OF THE UNFAIR COMPETITION LAW**
4 **(For Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200 *et seq.***
5 **by Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Defendants)**

6 140. Plaintiffs individually, and on behalf of the Plaintiff Class, reallege each and every
7 allegation above as if fully set forth in this Claim.

8 141. The California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*
9 (“UCL”), defines unfair competition to include any “unlawful,” “unfair,” or “deceptive” business act
10 or practice. Cal. Bus. & Prof. Code § 17200. The UCL authorizes this Court to issue whatever orders
11 or judgments may be necessary to prevent unfair or unlawful practices, or to “restore to any person in
12 interest any money or property, real or personal, which may have been acquired by means of such
13 unfair competition.” *Id.* § 17203.

14 142. Chase’s acts and practices alleged herein are unlawful business practices in that they
15 violate state law prohibiting breach of contract, breach of the covenant of good faith and fair dealing,
16 and violations of the Rosenthal Act, as alleged in this Complaint.

17 143. Chase’s acts and practices alleged herein constitute unfair business practices,
18 including, without limitation, the following practices:

19 a. Failing to perform loan servicing functions consistent with its responsibilities
20 to Plaintiffs and the Plaintiff Class and its responsibilities under HAMP;

21 b. Failing to properly supervise its agents and employees, including without
22 limitation, its loss mitigation and collection personnel, foreclosure personnel, and personnel
23 implementing its modification programs;

24 c. Failing to permanently modify loans and/or provide alternative to foreclosure
25 and using unfair means to keep Plaintiffs and the Plaintiff Class in temporary modification contracts,
26 including, without limitations, routinely demanding information it already has and failing to
27 communicate accurately or consistently with borrowers about the status of their loan modification
28 applications;

d. Making inaccurate calculations and determinations of Plaintiffs’ eligibility for

1 permanent modifications; and

2 e. Engaging in acts and practices that prolong of the HAMP trial period.

3 144. Chase's acts and practices alleged herein constitute fraudulent business practices,
4 including, without limitation, the following practices:

5 a. Chase has made and continues to make misrepresentations and omissions of
6 material fact that induce Plaintiffs and members of the Plaintiff Class to enter TPP Contracts in order
7 to obtain a permanent modification;

8 b. Chase has made and continues to make misrepresentations and omissions of
9 material fact regarding the status of Plaintiffs and members of the Plaintiff Class's loan modifications
10 and loan payments;

11 c. Chase's misrepresentations and omissions are likely to deceive the reasonable
12 consumer;

13 d. Chase's misrepresentations are objectively material to the reasonable
14 consumer, and therefore reliance upon such representations may be presumed as a matter of law; and

15 e. Plaintiffs and members of the Plaintiff Class reasonably and justifiably relied
16 on such misrepresentations.

17 145. As a result of these violations and unlawful, unfair, and fraudulent business practices,
18 Plaintiffs suffered injury in fact and lost money and property, including but not limited to, payment of
19 increased interest, longer loan payoff times, higher principle balances, and payment of other charges
20 collected by Chase.

21 146. Pursuant to California Business and Professions Code section 17200 *et seq.*, Plaintiffs
22 the Plaintiff Class are entitled to enjoin the practice of unfairly denying and failing to enter into
23 permanent loan modifications for homeowners who have complied with the contractual obligations in
24 Paragraph 1 of the TPP Contract, and grant such other and further relief as the Court may deem proper
25 and just.

26 147. Pursuant to Code of Civil Procedure § 1021.5, Plaintiffs are entitled to recover their
27 reasonable attorney's fees, costs, and expenses incurred in bringing this action.

28

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

3 1. The Court find and issue an order certifying the Plaintiff Class under Federal Rules of
4 Civil Procedure, rule 23 and appointing the named Plaintiffs to be class representatives and their
5 counsel to be class counsel;

6 2. The Court grant a temporary restraining order preventing foreclosure of Plaintiffs'
7 property;

8 3. The Court enter a judgment declaring Chase's acts and practices complained of herein
9 to constitute a breach of contract and a breach of the covenant of good faith and fair dealing and to be
10 unlawful, unfair, and fraudulent, as well as a declaration that Chase is required by the doctrine of
11 promissory estoppel to offer permanent modifications to class members;

12 4. That this Court award Plaintiffs and Plaintiff Class actual and statutory damages in an
13 amount according to proof for Chase's violations of the Rosenthal Act, breach of contract, breach of
14 covenant of good faith and fair dealing, and promissory estoppel or, in the alternative, that Chase be
15 ordered to make restitution to Plaintiffs and members of the Plaintiff Class pursuant to California
16 Business and Professions Code § 17203;

17 5. The Court grant a permanent order enjoining Chase's agents and employees, affiliates
18 and subsidiaries, from continuing to harm Plaintiffs and the members of the Class from engaging in
19 the unlawful, unfair and fraudulent practices alleged herein and order specific performance of
20 Defendants' contractual obligations, under the TPP Contract and SPA, together with other relief
21 required by contract and law;

22 6. The Court award Plaintiffs the costs of this action, including the fees and costs of
23 experts, together with reasonable attorney's fees, cost and expenses under Cal. Civ. Proc. Code §
24 1021.5, Cal. Civ. Code §§ 1788.17 and 1788.30(c);

25 7. The Court grant Plaintiffs and members of the Plaintiff Class pre-judgment interest on
26 all sums collected;

27 8. The Court grant Plaintiffs and the Plaintiff Class such other and further relief as this
28 Court finds necessary and proper.

DEMAND FOR JURY TRIAL

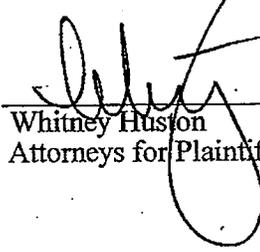
Plaintiffs hereby demand a trial by jury of each and every claim so triable.

Dated: May 14, 2010

HOUSING AND ECONOMIC RIGHTS ADVOCATES

THE STURDEVANT LAW FIRM
A Professional Corporation

By:

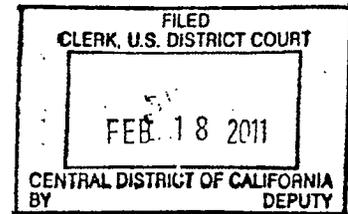


Whitney Huston
Attorneys for Plaintiffs and the Putative Plaintiff Class

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*Shareholder Proposal of the Board of Pensions of the Presbyterian Church (USA)
JPMorgan Chase & Co.
Securities Exchange Act of 1934 Rule 14a-8*

EXHIBIT D



1 BOHM, MATSEN, KEGEL & AGUILERA, LLP
2 A. Eric Aguilera, Esq. (Bar No. 192390)
3 695 Town Center Drive, Suite 700
4 Costa Mesa, CA 92626
5 (714) 384-6500 (tel)
6 (714) 384-6501 (fax)

7 Attorneys for Plaintiff VERONICA SALINAS, individually and on behalf
8 of all other similarly situated.

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 VERONICA SALINAS, individually,) Case No. 10-CV-09602-CAS(VBKx)
12 and on Behalf of All Others Similarly) Assigned for all Purposes To:
13 Situated,) Hon. Christina A. Snyder
14)
15 Plaintiff,) PLAINTIFF'S FIRST AMENDED
16) CLASS ACTION COMPLAINT FOR:
17)
18 v.) 1. FRAUD AND DECEIT (CIVIL
19) CODE SECTIONS 1572, 1710);
20 CHASE HOME FINANCE, LLC , a)
21 Delaware corporation, and DOES 1) 2. NEGLIGENT
22 through 50, inclusive,) MISREPRESENTATION; AND
23)
24 Defendants.) 3. VIOLATION OF BUS. & PROF.
25) CODE SECTION 17200 ET SEQ.;
26)
27)
28)

24 Plaintiff, VERONICA SALINAS, individually, and on Behalf of All Others
25 Similarly Situated (hereinafter collectively referred to as "Plaintiff"), demands a trial
26 by jury and pleads as follows:

27
28 ///

1 **JURISDICTION**

2 1. The Court has jurisdiction pursuant to California Code of Civil Procedure
3 section 410.10 because the acts complained of were performed within the county of
4 Los Angeles in the State of California.

5 **VENUE**

6 2. Venue as to each Defendant is proper in this judicial district pursuant to
7 California Code of Civil Procedure sections 395(a) and 395.5, because some of the acts
8 complained of occurred in Los Angeles County, California, the damages occurred in
9 Los Angeles County, California and Defendants and each of them do business within
10 the county of Los Angeles.

11 **PARTIES**

12 3. Plaintiff VERONICA SALINAS and on behalf of all others similarly
13 situated ("Plaintiff California Class"), is a resident of Los Angeles County.

14 4. Defendant CHASE HOME FINANCE, LLC ("Chase" or "Defendant")
15 is a Delaware corporation, with its principle place of business in the state of Ohio, in
16 the city of Columbus. Chase is a banking corporation that engages in extensive
17 home loan services across the United States, including the State of California.

18 5. The true names and capacities, whether individual, corporate, associate,
19 or otherwise, of the Defendants named herein as DOES 1 through 50 inclusive, are
20 unknown to Plaintiff who therefore sues said Defendants by such fictitious names
21 pursuant to the Code of Civil Procedure § 474. Plaintiff will amend this Complaint
22 to show their true names and capacities when the same have been ascertained.

23 6. Plaintiff is informed and believes, and upon such information and belief
24 alleges, that at only some of the times alleged herein, Defendants, and each of them,
25 including DOES 1 through 50 inclusive, are and were at all relevant times the
26 agents, servants, employees, partners, joint venturers, subsidiaries, parent
27 corporations, sureties and successors-in-interest of each of the remaining
28 Defendants, and were acting within the course, scope, and purpose of such agency,

1 employment, partnership, joint venture, subsidiary-parent relationship, sureties, and
2 succession with the knowledge, consent, approval and ratification of the remaining
3 Defendants and each of them.

4 **GENERAL ALLEGATIONS**

5 **A. Chase's Fraudulent "Robo-Signing" Scheme And Unlawful**
6 **Conduct.**

7 7. The recession has made it tougher for people to pay their mortgages, and
8 crashing home prices have left many borrowers underwater, unable to sell or
9 refinance their way out of trouble. In fact, according to a First American CoreLogic
10 report, one of every five mortgage holders now has a home worth less than the
11 mortgage on it. Of the twenty Zip codes with the highest share of underwater loans,
12 seven are in California.

13 8. American banks have also felt the brunt of the foreclosure burden with
14 some of its largest losses resulting from the foreclosure crisis. Due to the immense
15 losses being taken by the American banking system, a number of banks have
16 instituted a practice known as "robo-signing."

17 9. "Robo-signing" is the practice wherein banks and loan servicers use false
18 documents and signatures to justify hundreds of thousands of foreclosures. Recently,
19 attorneys general from all 50 states said they've banded together to open an
20 investigation into whether banks and loan servicers used "robo-signing" to justify
21 their foreclosures. In response to this inquiry, lenders including Ally Financial Inc.,
22 Bank of America Corp. and JPMorgan Chase & Co. have suspended some
23 foreclosures while they review their paperwork.

24 10. Chase advertises itself as one of the world's largest providers of
25 mortgages and home equity loans and part of the JPMorgan Chase global investment
26 and commercial bank with a history that can be traced back to 1799. This perceived
27 credibility facilitates its ability to utilize "robo-signing", which it has perpetrated over
28 its California foreclosure victims over the last four years.

1 11. Specifically, in California, Chase has a standard practice of utilizing
2 false documents in order to expedite the foreclosure process thereby sacrificing the
3 consumer protections afforded to its customers by the State of California. Moreover,
4 thousands of citizens of California have been wrongfully evicted from their
5 residences.

6 **B. Plaintiff Was A Victim Of Defendant's Fraudulent Scheme**

7 12. On or about May 25, 2006, Plaintiff borrowed five hundred twenty-
8 eight thousand and 00/100 (\$528,000.00) from WMC Mortgage Corp. to purchase
9 her property. As evidence of the loan transaction, Plaintiff signed and delivered to
10 WMC Mortgage Corp. a written promissory note.

11 13. To secure payment of the promissory note, Plaintiff signed and
12 delivered to WMC Mortgage Corp. a deed of trust dated May 25, 2006, in which
13 Plaintiff (as trustor) conveyed to Westwood Associates (as trustee) an interest in the
14 Property as security for payment of the promissory note to WMC Mortgage Corp (as
15 beneficiary).

16 14. On or about June 02, 2006, the deed of trust was recorded in the
17 Official Records of Los Angeles County, California.

18 15. Plaintiff is informed and believes and based thereon alleges that
19 Defendant Chase began to service Plaintiff's loan shortly after the deed of trust was
20 recorded.

21 16. After approximately two years of payment, the Plaintiff experienced
22 trouble paying the loan. Fearing foreclosure, Plaintiff hired an attorney to avoid
23 foreclosure. On or about September 05, 2008, Plaintiff's legal counsel spoke with
24 Chase employee Mark Washington ("Mr. Washington") by telephone to request a
25 Civil Code 2923.5 good faith discussion of options so that Plaintiff could avoid
26 foreclosure.

27 17. At that time, Plaintiff's counsel was informed that a Notice of Default
28

1 had been filed against Plaintiff's Property on or about June 02, 2008, and that Mr.
2 Washington was unaware of any law requiring a good faith discussion.

3 18. With the Notice of Default, Chase represented that it had acquired the
4 deed of trust and was now the legal owner of Plaintiff's trust deed. This
5 representation was not true as Chase had not yet acquired the trust deed to Plaintiff's
6 property.

7 19. Foreclosure is currently pending on Plaintiff's property.

8 **CALIFORNIA CLASS ALLEGATIONS**

9 20. This action may be maintained as a class action pursuant to Code of
10 Civil Procedure section 382.

11 21. **Class Definition.** All individuals who received a Notice of Default
12 from Defendant Chase for any real property located in California from October 15,
13 2006 to the date of trial in this action. Such persons shall hereinafter be referred to as
14 the "Plaintiff California Class."

15 22. **Ascertainable Class:** The proposed Plaintiff California Class is
16 ascertainable in that its members can be identified using information contained in
17 Defendant's business records.

18 23. **Common Questions of Law or Fact:** There are common questions of
19 law and fact that are common to all of the Plaintiff National Class members,
20 including:

21 a. Whether Defendant's practice of misrepresenting to borrowers
22 that it had acquired title to a property and could commence foreclosure proceedings
23 even though they had yet to receive an assignment of the title constituted fraud;

24 b. Whether Defendant's practice of negligently misrepresenting to
25 borrowers that it had acquired title to a property and could commence foreclosure
26 proceedings even though they had yet to receive an assignment of the title was
27 negligent;

28 c. Whether Defendant's practice of misrepresenting to borrowers

1 that it had acquired title to a property and could commence foreclosure proceedings
2 even though they had yet to receive an assignment of the title is an unfair business
3 practice under California Business & Professions Code § 17200 et seq.

4 d. Whether each member of the Plaintiff California Class was
5 harmed by Defendant's uniform practice of practice of misrepresenting to borrowers
6 that it had acquired title to a property and could commence foreclosure proceedings
7 even though they had yet to receive an assignment of the title .

8 24. **Predomination:** Common questions of law and fact predominate in
9 this case, and a class action is the only appropriate method for the complete
10 adjudication of this controversy for the following reasons, among others:

11 a. The costs of individual suits would unreasonably consume the
12 amounts that would be recovered; and

13 b. Individual actions would create a risk of inconsistent results and
14 would be unnecessary and duplicative of this litigation.

15 25. **Numerosity:** The Plaintiff California Class is so numerous that the
16 individual joinder of all members is impractical under the circumstances of this case.
17 While the exact number of Class members is unknown to Plaintiff at this time,
18 Plaintiff is informed and believes and thereon alleges that the Plaintiff California
19 Class consists of well over 10,000 persons.

20 26. **Typicality:** Plaintiff's claims against Defendants are typical of the
21 claims of the Plaintiff California Class members. Plaintiff is like other Plaintiff
22 California Class members because Plaintiff has suffered the same injuries as those
23 suffered by the Plaintiff California Class.

24 27. **Adequacy:** Plaintiff seeks no relief that is antagonistic or adverse to
25 the members of the Plaintiff California Class and the infringement of her rights and
26 the harms she has suffered are typical of all other members of the Plaintiff California
27 Class. Plaintiff has retained counsel who are able and experienced in class action
28 litigation.

1 28. **Superiority:** The nature of this action and the nature of laws available
2 to Plaintiff and the Plaintiff California Class make use of the class action format a
3 particularly efficient and appropriate procedure to afford relief to Plaintiff and the
4 Plaintiff California Class for the wrongs alleged. Further, this claim involves one
5 large corporate Defendant (Chase Home Finance, LLC) and a large number of
6 individual persons (Plaintiff and the Plaintiff California Class) with many relatively
7 small claims with common issues of law and fact. If each person were required to
8 file an individual lawsuit, the corporate Defendant would necessarily gain an
9 unconscionable advantage since it would be able to exploit and overwhelm the
10 limited resources of each individual Plaintiff with its vastly superior financial and
11 legal resources. Proof of a common business practice or factual pattern, which the
12 named Plaintiff experienced, is representative of that experienced by the Plaintiff
13 California Class and will establish the right of each of the Plaintiff California Class
14 members to recover on the causes of action alleged.

15 29. The prosecution of separate actions by the individual Plaintiff Class
16 members, even if possible, would create a substantial risk of inconsistent or varying
17 verdicts or adjudications against Defendants. The individual prosecutions could
18 establish potentially incompatible standards of conduct for Defendants, and/or legal
19 determinations with respect to individual Plaintiff California Class members which
20 would, as a practical matter, be dispositive of the interests of the other Plaintiff
21 California Class members not parties to the adjudications. These individual actions
22 would substantially impair or impede the ability of the Plaintiff California Class
23 members to protect their interests. Further, the claims of the individual members of
24 the Plaintiff California Class are not sufficiently large to warrant the expense of
25 vigorous individual prosecution.

26 30. Notice to the members of the Plaintiff California Class may be made by
27 first-class mail addressed to all persons who have been individually identified by
28 Defendants, through access to Defendant's corporate books and records.

1 Alternatively, if Defendants cannot produce a list of Plaintiff California Class
2 members' names and addresses, the members of the Plaintiff California Class may
3 be notified by publication in the appropriate newspapers, and by posting notices in
4 Defendant's service bills.

5 **CLASS CLAIMS FOR RELIEF**

6 **FIRST CLASS CAUSE OF ACTION FOR FRAUD AND DECEIT**

7 **PURSUANT TO CIVIL CODE SECTIONS 1572 AND 1710**

8 **(By Plaintiff Class Representative Salinas Against All Defendants and Does 1 -**
9 **50)**

10 31. Plaintiff, individually and on behalf of the Plaintiff California Class,
11 realleges and incorporates by reference Paragraphs 1 through 30 of this Complaint as
12 though fully set forth herein.

13 32. Plaintiff and the Plaintiff California Class allege that Defendant Chase,
14 acting individually and through its officers, partners, agents and/or employees, and
15 at times acting within the scope of their employment, falsely and fraudulently, and
16 with the intent to deceive and defraud Plaintiff and the Plaintiff California Class,
17 uniformly and unvaryingly affirmatively and identically misrepresented to its
18 customers that it had acquired title to a property and could commence foreclosure
19 proceedings even though they had yet to receive an assignment of the title..

20 33. These same material misrepresentations were communicated to Plaintiff
21 herein and each and every class member of the Plaintiff California Class.

22 34. Defendant's representations were false and misleading, and it knew
23 them to be false and misleading and in violation of Business and Professions Code
24 sections 17200, 17500 & 17530 since Defendant Chase utilized "robo-signing" and
25 had not actually satisfied California's requirements prior to commencing a
26 foreclosure action.

27 35. Each false and misleading representation was material to each Plaintiff
28 and to the Plaintiff California Class and accordingly, Plaintiff herein and each and

1 every class member of the Plaintiff California Class relied on said representations.

2 36. Such false and misleading misrepresentations and omissions were made
3 by Defendant for the sole purpose of inducing Plaintiff and the Plaintiff California
4 Class to allow Defendant Chase to short-cut the foreclosure process in violation of
5 its customers' consumer protections.

6 37. Plaintiff and the Plaintiff California Class were unaware that
7 Defendant's representations were false and misleading representations, and they
8 justifiably believed and relied on them.

9 38. Only within the last few months, have Plaintiff and the Plaintiff
10 California Class discovered the intentional fraud and deceit practiced upon them by
11 Defendant. Plaintiff and the Plaintiff California Class believe many of Defendant's
12 current customers are still ignorant of Defendant's misrepresentations and omissions
13 contained herein.

14 39. Defendant committed the wrongful acts alleged in this Complaint
15 maliciously, fraudulently and oppressively with the intent of injuring Plaintiff and
16 the Plaintiff California Class members. Defendant's actions arose from an improper
17 and evil motive amounting to malice and were undertaken in conscious disregard of
18 Plaintiff 's and the Plaintiff California Class members' rights. Plaintiff and the
19 Plaintiff California Class are entitled to punitive damages from Defendant.

20 **SECOND CLASS CAUSE OF ACTION FOR**

21 **NEGLIGENT MISREPRESENTATION**

22 **(By Plaintiff Class Representative Salinas Against All Defendants Including**
23 **Does 1 - 50)**

24 40. Plaintiff, individually and on behalf of the Plaintiff California Class,
25 realleges and incorporates by reference Paragraphs 1 through 39 of this Complaint as
26 though fully set forth herein.

27 41. As a consequence of its service relationship with Plaintiff and the
28 Plaintiff California Class members, Defendant assumed an obligation of due care

1 with respect to each of them.

2 42. Defendant knew or should have known that its failure to exercise due
3 care in its relationship with Plaintiff and the Plaintiff California Class would cause
4 the latter to suffer damages.

5 43. By the wrongful acts and omissions alleged herein, Defendant, acting
6 individually and through its officers, partners, agents and/or employees, and acting
7 within the scope of its employment, breached its duty of due care toward Plaintiff
8 and the Plaintiff California Class. Specifically, Defendant breached its duty of care
9 toward Plaintiff and the Plaintiff California Class by, including but not limited to,
10 the following: making the uniform misrepresentation to its customers that it had
11 acquired title to a property and could commence foreclosure proceedings even
12 thought they had yet to receive an assignment of the title.

13 44. Defendant's representations to Plaintiff and the Plaintiff California
14 Class members were untrue and misleading and Defendant knew or should have
15 known them to be untrue and misleading. Defendant's misrepresentations were
16 made to allow Defendant Chase to short-cut the foreclosure process in violation of
17 its customers' consumer protections.

18 45. Plaintiff and the Plaintiff California Class members were unaware of
19 Defendant's negligent misrepresentations, and they justifiably believed and relied
20 upon them.

21 46. Plaintiff and the Plaintiff California Class discovered Defendant's
22 misrepresentations within the last few months.

23 47. As a direct and proximate result of Defendant's negligent
24 misrepresentations, the Plaintiff and each Plaintiff California Class member have
25 suffered losses, thereby entitling each to recover compensatory damages.

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**THIRD CLASS CAUSE OF ACTION FOR VIOLATIONS OF
BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

**(By Plaintiff Class Representative Salinas Against All Defendants Including
Does 1 - 50)**

48. Plaintiff, individually and on behalf of the Plaintiff California Class, realleges and incorporates by reference Paragraphs 1 through 48 of this Complaint as though fully set forth herein.

49. Beginning at an exact date unknown to Plaintiff and the Plaintiff California Class but at least since 2006, Defendant has committed acts of unfair competition as defined by Business & Professions Code sections 17200, *et seq.* In particular, Defendant's actions violate section 17200 regarding fraudulent acts as defined by Business & Professions Code sections 17200, *et seq.*

50. Plaintiff and each Plaintiff California Class member allege that Defendant has engaged in unfair business practices in California by fraudulently misrepresenting, among other things, to its customers that it had acquired title to a property and could commence foreclosure proceedings even though they had yet to receive an assignment of the title

51. Overall, and when compared, the utility of this conduct is outweighed by the harm caused thereby to both the Plaintiff and Plaintiff California Class.

52. Defendant's misrepresentations, misstatements, omissions and statutory violations constitute an unfair and deceptive business practice, unfair competition, and provide an unfair advantage over their competitors. Plaintiff and the Plaintiff California Class Members seek full restitution of said monies from Defendant, as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendant by means of the unfair business practices alleged. In addition, Plaintiff and the Plaintiff California Class Members seek restitution and seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendant. The restitution includes all monies paid as a result of

1 the unfair business practices plus interest. These illegal acts have been ongoing
2 since at least 2006.

3 53. Plaintiff and the Plaintiff California Class further seek an order
4 requiring Defendant to identify by full name, and tax identification number and last
5 known address, all individuals who it started foreclosure proceedings against from
6 October 15, 2006 to the present. Plaintiff and the Plaintiff California Class seek an
7 order requiring Defendant to timely pay restitution to current and former customers,
8 including interest, attorneys' fees according to law and costs.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, for all of the above and foregoing reasons, Plaintiff and the
11 Plaintiff Classes, pray for judgment against Defendant as follows:

12 **FOR THE CLASS ACTION**

- 13 1. For an Order requiring and certifying this case to be a class action;
14 2. For an Order requiring Defendant to identify by name, address,
15 telephone number and social security number, each person who is a member of the
16 certified classes; and
17 3. For all appropriate declaratory and equitable relief.

18 **FOR THE FIRST CLASS CAUSE OF ACTION**

- 19 1. For general damages according to proof;
20 2. For Plaintiff and the Plaintiff Class's costs herein incurred;
21 3. For all special damages according to proof;
22 4. For pre-judgment interest
23 5. For punitive damages according to proof; and
24 6. For all appropriate declaratory and equitable relief.

25 **FOR THE SECOND CLASS CAUSE OF ACTION**

- 26 1. For general damages according to proof;
27 2. For Plaintiff and the Plaintiff Class's costs herein incurred;
28 3. For all special damages according to proof;

- 1 4. For pre-judgment interest; and
- 2 5. For all appropriate declaratory and equitable relief.

FOR THE THIRD CLASS CAUSE OF ACTION

- 4 1. For Defendant to show why it should not be preliminarily and
- 5 permanently enjoined as hereinafter set forth;
- 6 2. For a Temporary Restraining Order, a Preliminary Injunction and a
- 7 Permanent Injunction, enjoining Defendant, its agents, servants, employees and all
- 8 persons acting under, in concert with, or for it, from acts or unfair competition;
- 9 3. For restitution;
- 10 4. For costs of suit incurred herein;
- 11 5. For pre-judgment interest;
- 12 6. For attorneys' fees; and
- 13 7. For such other and further relief as the Court deems just and proper.

ON ALL CAUSES OF ACTION

- 15 1. Such further and other relief as the Court may deem just and proper.

17 Dated: February 11, 2011 **BOHM, MATSEN, KEGEL & AGUILERA, LLP**

19
20 By: _____



A. Eric Aguilera, attorneys for
Plaintiff, VERONICA SALINAS,
individually, and on Behalf of All
Others Similarly Situated

23 First Amended Complaint-This One Kym.docx

PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Costa Mesa, County of Orange in the State of California. I am over the age of 18 and am not a party to the within action. My business address is 695 Town Center Drive, Suite 700, Costa Mesa, California 92626. On February 18, 2011, I served the documents named below on the parties in this action as follows:

DOCUMENT(S) SERVED: PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT FOR: (1) FRAUD AND DECEIT (CIVIL CODE SECTIONS 1572, 1710); (2) NEGLIGENT MISREPRESENTATION; AND (3) VIOLATION OF BUS. & PROF. CODE SECTION 17200 ET SEQ.;

SERVED UPON: SEE ATTACHED SERVICE LIST



(BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Costa Mesa, California. I am readily familiar with the practice of the Law Offices of Bohm, Matsen, Kegel, & Aguilera LLP. for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.



(BY ELECTRONIC FILING WITH THE U.S. DISTRICT COURT) By submitting said documents for Electronic Case Filing on said date pursuant to Local Rule 5-4 and General Order 45, at Bohm, Matsen, Kegel & Aguilera, LLP at 695 Town Center Drive, Suite 700, Costa Mesa, 92626.



(BY PERSONAL SERVICE) I caused the above-referenced documents to be personally delivered on the date listed below.



(BY FEDERAL EXPRESS) I am readily familiar with the practice of the Law Offices of Bohm Matsen, Kegel & Aguilera, LLP. for the collection and processing of correspondence for overnight delivery and known that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.



(BY FACSIMILE WHERE INDICATED) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error. Pursuant to C.R.C. 2009(1), I caused the transmitting facsimile machine to issue properly a transmission report, a copy of which is attached to this Declaration.



(FEDERAL) I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on February 18, 2011, at Costa Mesa, California.

Kym Smith

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SERVICE LIST
Veronica Salinas v.
Chase Home Finance, LLC et al.
United States District Court – Central District of California
Case No. 2:10-CV-09602-CAS-VBK

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Email: pmneuhauser@aol.com

February 25, 2011

Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Att: Gregory Belliston, Esq.
Special Counsel
Division of Corporation Finance

Via email to shareholderproposals@sec.gov

Re: Shareholder Proposal submitted to JPMorgan Chase & Co.

Dear Sir/Madam:

This letter is a supplement my letter dated 24 February sent to the Commission with respect to the shareholder proposal to JPMorgan Chase & Co. ("Chase") concerning uniformity in mortgage loan modification policies that has been submitted to Chase by the Board of Pensions of the Presbyterian Church (USA), the Board of Pensions of the Evangelical Lutheran Church in America, Catholic Healthcare West, Mercy Investment Services, the Benedictine Convent of Perpetual Adoration, Walden Asset Management, Calvert Asset Management, Haymarket People's Fund and the Funding Exchange (hereinafter referred to jointly as the "Proponents").

The purpose of this letter is to supplement the argument concern the alleged applicability of Rule 14a-8(i)(7) to the Proponents' proposal, and more specifically the argument previously made by the Proponents establishing the fact that the Proponents' shareholder proposal implicates important social policy issues. (See pages 7-9 of my letter of 24 February.)

Specifically, we call your attention to the article in today's The Wall Street Journal (February 25, 2011) entitled "Banks Bristle at Mortgage-Loan Plan". (A copy of the entire article is annexed hereto as Exhibit A.)

The article describes the reaction of the banking industry to an anticipated Administration proposal that would require that banks modify certain serviced loans by writing down the principal of those loans. The article states:

The proposal is the Obama administration's latest effort to revamp the way mortgage companies help troubled borrowers and address concerns that past initiatives didn't go far enough to help troubled borrowers. . . .

"The administration's ongoing review is focused on getting to the bottom of the problems in the foreclosure process and holding appropriate parties accountable," said a spokeswoman for the Department of Housing and Urban Development. "Doing so will help homeowners, the housing market and our economy, and any suggestions to the contrary are simply wrong." . . .

The push for write-downs likely would focus on loans that banks service on behalf of other parties, and not for loans that they hold on their books. The settlement would require servicers to comply with existing investor contracts, and some of those contracts could complicate efforts because they give investors authority to reject reductions of loan balances.

We believe that this push by the United States government for the further regulation of the modification of serviced loans provides additional support for the Proponents' proposition that the failure of the banking industry to provide comparable loan modification policies for serviced loans raises an important social policy issue.

For the additional reason set forth above, Rule 14a-8(i)(7) is inapplicable to the Proponents' shareholder proposal.

In conclusion, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no action request. We would appreciate your telephoning the undersigned at 941-349-6164 with respect to any questions in connection with this matter or if the staff wishes any further information. Faxes can be received at the same number. Please also note that the undersigned may be reached by mail or express delivery at the letterhead address (or via the email address).

Very truly yours,

Paul M. Neuhauser
Attorney at Law

cc: Martin P. Dunn
Rev. William Somplatsky-Jarman
Fr. Seamus Finn
John Lind
Laura Berry

EXHIBIT A

Banks Bristle at Mortgage-Loan Plan

By NICK TIMIRAOS, DAN FITZPATRICK And RUTH SIMON

The banking industry privately knocked the Obama administration's nascent proposal to force banks to modify mortgage loans, saying the plan won't help solve problems facing troubled borrowers.

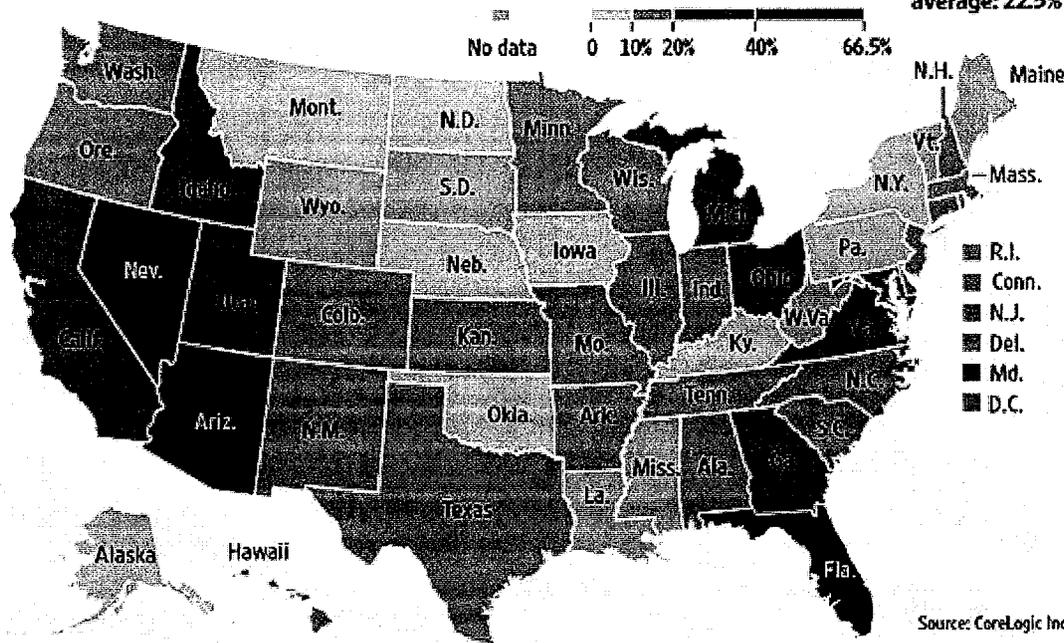
The nation's largest banks haven't yet seen a proposal that is designed to help resolve mortgage-servicing errors that affected troubled borrowers. But industry executives are bristling at the administration's new approach, disagreeing that principal reductions will help borrowers and, in turn, the broader housing market.

Though a unified settlement is uncertain and would have to appease regulators, banks and state attorneys general, some officials are pushing for banks to pay more than \$20 billion in civil fines or to fund a comparable amount of loan modifications for distressed borrowers.

Keeping Afloat

Percentage by state of mortgage holders who are underwater as of third-quarter 2010

National average: 22.5%



The proposal "would bring with it enormous costs that would far outweigh any potential benefits," Chris Flanagan, a Bank of America Corp. mortgage strategist, said in a research note Thursday.

Even an amount of \$20 billion "would accomplish little" in addressing borrowers who currently owe \$744 billion more on their mortgages than their homes are worth, Mr. Flanagan added.

Asking servicers to assume the costs of all write-downs is unfair unless the administration can pinpoint the "source of harm," said Bob Davis, executive vice president of the American Bankers Association. If the loans are going bad because of economic conditions and job loss, "it's not clear why servicers would bear the brunt because it's outside their control."

The pushback is the latest symptom of the warring interests in the housing market and the difficulty fixing problems that existed long before the foreclosure-paperwork crisis erupted last fall. Economists have said that the U.S. economy's recovery is threatened the longer the foreclosure process is delayed.

The proposal is the Obama administration's latest effort to revamp the way mortgage companies help troubled borrowers and address concerns that past initiatives didn't go far enough to help troubled borrowers.

The administration's signature Home Affordable Modification Program, or HAMP, helped more than 500,000 borrowers lower their monthly payments through interest-rate reductions. But it has fallen short of ambitious goals to modify millions of loans since its introduction two years ago. Last year, the White House unveiled new measures to encourage banks to write down loan balances, but they haven't been widely used.

Given the banks' track record in reworking loans, some attorneys who represent borrowers in foreclosure question whether the administration's proposal could work. "Requiring banks to eat the loss, and at the same time allowing them to administer the program, is a recipe for a program that will not do anything except raise people's expectations and frustrate them," said Gloria Einstein, an attorney at Jacksonville Legal Aid Inc. She said an independent third party should administer the program.

Banks have resisted reducing loan balances in part because of concerns that it could encourage more borrowers to stop making payments in order to receive a smaller loan.

The plan also may face some resistance on Capitol Hill. House Republicans on Thursday said they would prepare bills next week to terminate HAMP and similar programs. The administration's proposal appeared to be a ploy to "revamp" the HAMP program, said U.S. Rep. Patrick McHenry (R., N.C.). "If this is their attempt to create HAMP 2, then I find it deeply troubling."

The White House declined to comment.

"The administration's ongoing review is focused on getting to the bottom of the problems in the foreclosure process and holding appropriate parties accountable," said a spokeswoman for the Department of Housing and Urban Development. "Doing so will help homeowners, the housing market and our economy, and any suggestions to the contrary are simply wrong."

Any settlement that includes loan write-downs would require banks such as Bank of America Corp., Wells Fargo & Co. and J.P. Morgan Chase & Co. to complete modifications within one year from the settlement's date, said people familiar with the matter. Banks could face additional fines if they don't comply with the terms of the settlement, and they would have to hire independent auditors to provide monthly updates on their progress and compliance with the terms.

Penalties could be assessed depending on the volume of loans that are 90 days or more delinquent in each bank's servicing portfolio, and by the extent of any deficiencies uncovered by bank examiners, these people said.

Any settlement that includes loan write-downs would require banks such as Bank of America, Wells Fargo and J.P. Morgan Chase to complete modifications within one year from the settlement's date, said people familiar with the matter.

Elizabeth Warren of the Consumer Financial Protection Bureau has floated a figure of about \$25 billion for a unified settlement, according to people familiar with the situation.

The push for write-downs likely would focus on loans that banks service on behalf of other parties, and not for loans that they hold on their books. The settlement would require servicers to comply with existing investor contracts, and some of those contracts could complicate efforts because they give investors authority to reject reductions of loan balances.

Banks consider their mortgage-servicing problems as technical matters, such as the filing of foreclosure documents that were never verified by so-called robo-signers, say people familiar with the situation. Bank executives also want any penalties to reflect the fact that few borrowers have been improperly ejected from homes, these people say.

But some state attorneys' general and federal regulators are pushing for as high a figure as possible, arguing that mortgage servicers have chronically underinvested in their operations, making it difficult for borrowers to get timely, effective help before falling further behind on their mortgages.

Susan Wachter, a real-estate finance professor at the University of Pennsylvania, said the proposed settlement would provide "disincentives for wrongful behavior" by mortgage servicers.

—Robin Sidel contributed to this article.

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February 24, 2011

Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Att: Heather Maples, Esq.
Special Counsel
Division of Corporation Finance

Via email to shareholderproposals@sec.gov

Re: Shareholder Proposal submitted to JPMorgan Chase & Co.

Dear Sir/Madam:

I have been asked by the Board of Pensions of the Presbyterian Church (USA), the Board of Pensions of the Evangelical Lutheran Church in America, Catholic Healthcare West, Mercy Investment Services, the Benedictine Convent of Perpetual Adoration, Walden Asset Management, Calvert Asset Management, Haymarket People's Fund and the Funding Exchange (hereinafter referred to jointly as the "Proponents"), each of which is a beneficial of shares (owning well in excess of 1,600,000) of common stock of JPMorgan Chase & Co. (hereinafter referred to either as "Chase" or the "Company"), and who have jointly submitted a shareholder proposal to Chase, to respond to the letter dated January 11, 2011, sent by O'Melveny & Myers on behalf of Chase to the Securities & Exchange Commission, in which Chase contends that the Proponents' shareholder proposal

may be excluded from the Company's year 2011 proxy statement by virtue of Rules 14a-8(i)(3) and 14a-8(i)(7).

I have reviewed the Proponents' shareholder proposal, as well as the aforesaid letter sent by the Company, and based upon the foregoing, as well as upon a review of Rule 14a-8, it is my opinion that the Proponents' shareholder proposal must be included in Chase's year 2011 proxy statement and that it is not excludable by virtue of either of the cited rules.

The Proponents' shareholder proposal requests the Company to develop uniform loan modification policies so that loans serviced by the Company are treated comparably to loans owned by the Company.

BACKGROUND

The problem sought to be addressed by the Proponents' shareholder proposal can best be understood from the following excerpt from a November 12, 2010, address by a Member of the Board of Governors of the Federal Reserve System (Sarah Bloom Raskin):
(<http://www.federalreserve.gov/newsevents/speech/raskin/20101112a.htm>):

The mortgage servicing industry as we know it is a relatively recent invention, and, undoubtedly, it has never before been tested in a national housing crisis of this magnitude. As the continuing surge in foreclosures suggests, mortgage servicers simply are not doing enough to provide sustainable alternatives to foreclosure. This may be due to the fact that the vast bulk of loan servicing today is done by large servicers, which are either subsidiaries of depository institutions, affiliates of depository institutions, or independent companies focused primarily or exclusively on loan servicing.

Before securitization became commonplace, it was much more likely for a mortgage to be serviced by the same entity that had originated the loan. This simple approach ensured that lenders knew immediately if a homeowner was having payment problems, and could take action to mitigate possible losses. A fair bit of this kind of "portfolio servicing" still takes

place, but as the residential real estate market shifted from an originate-to-hold model to an originate-to-distribute model, an industry of independent third-party entities emerged to service the loans on behalf of the securitization trusts. These trusts, as a requirement for their tax-preferred status, were supposed to be passive, with the management of individual loans left to the servicer. These servicing arrangements are now commonplace in the industry: In fact, the system has matured rapidly and experienced considerable consolidation over the past twenty years.

The benefits to consolidation include significant economies of scale in the collection and disbursement of routine payments. But the kind of time-consuming, involved work that is now needed in the loss mitigation area was not contemplated at anything like this kind of scale, and the payment structures between the servicers and investors may not always be sufficient to support large-scale loan workout activity. Unfortunately, as we are seeing now, there are also dramatically significant drawbacks to this model. Third-party servicers earn money through annual servicing fees, a myriad of other fees, and on float interest, and they maximize profits by keeping their costs down, streamlining processes wherever possible, and by buying servicing rights on pools of loans that they hope will require little hands-on work. Again, for routine payment processing this all leads to economies of scale, and the industry has consolidated significantly in recent years as a result.

But the services needed in the current housing crisis are not one-size-fits-all. Loan servicers likely never anticipated the drastic need for the kind of time-consuming, detailed work that is now required in the loss mitigation area, and the payment structures between the servicers and investors are not sufficient to support large-scale loan workout activity. As it turns out, the structural incentives that influence servicer actions, especially when they are servicing loans for a third party, now run counter to the interests of homeowners and investors.

While an investor's financial interests are tied more or less directly to the performance of a loan, the interests of a third-party servicer are tied to it only indirectly, at best. The servicer makes money, to oversimplify a bit, by maximizing fees earned and minimizing expenses while performing the actions spelled out in its contract with the investor.

In the case, for instance, of a homeowner struggling to make payments, a foreclosure almost always costs the investor money, but may

actually earn money for the servicer in the form of fees. Proactive measures to avoid foreclosure and minimize cost to the investor, on the other hand, may be good for the homeowner, but involve costs that could very well lead to a net loss to the servicer. In the case of a temporary forbearance for a homeowner, for example, the investor and homeowner both could win--if the forbearance allows the homeowner to get back on their feet and avoid foreclosure--but the servicer could well lose money. In the case of a permanent modification, the investor and homeowner could both be considerably better off relative to foreclosure, but the servicer could again lose money.

Why might a servicer lose money in an instance that could be win-win for the borrower and investor? It's because of the amount of work needed, the structure for reimbursing costs to the servicer, and other costs incurred by the servicer on delinquent, but not yet foreclosed upon, borrowers. Loss mitigation options, such as forbearance and loan modification, require individualized case work. Thus, the servicer needs to invest in additional resources, including trained personnel who can deal with often complex one-off transactions. In the case of a private-label security, many of the costs of this work may not be reimbursed by the trust. Other costs result from even temporary forbearance, such as the servicer's requirement, in most cases, to advance principal and interest to the investor every month, even though it has not received payment from the borrower. Even in the case of a servicer who has every best intention of doing "the right thing," the bottom-line incentives are largely misaligned with everyone else involved in the transaction, and most certainly the homeowners themselves.

We don't know yet what the end results will be for homeowners. But the best third-party servicers would have to be diligent and willing to absorb relative losses when the standard business model for the industry would seem to put a thumb on the scale in favor of foreclosure. The most urgent needs of the servicing world today require a sufficient number of personnel with the adequate mix of training, tools, and judgment to deal with problem loans on a large scale--in other words, activities with few economies of scale. The skill set of personnel hired and trained for routine work--efficiency and accuracy in following rules, and little discretion in decision making--is likely a poor match for loss mitigation activities that require constant creativity and case-by-case judgment. Therefore, simply transferring work from one part of a company to another does not achieve much without significant investments in training and retraining. Servicers

have been publicly pledging for several years to increase their servicing capacity, and many have. Unfortunately, there is plenty of evidence to suggest that many servicers' workforces lack the knowledge and capacity to deal with the immensity of the mortgage crisis.

In order to do their jobs well servicers need strong internal procedures and controls. Recent events suggest that servicers may be lacking in this regard, to the detriment of consumers, and, quite possibly, to the detriment of the investors to whom they are contractually obligated to maximize revenue. I recognize that many servicers have stepped up and diligently tried to improve their work; I applaud and encourage them. However, lingering problems remain and I suspect that these may be due to deferred maintenance and investment on a significant scale. In boom times, servicers had the luxury of building out relatively lean systems that efficiently processed the more routine aspects of the business, but they do not appear to have planned for the infrastructure that would be needed during a serious down cycle. As you know, consumers hold the losing end of this stick. . . .

The impact of poor business practices can linger on even after the foreclosure sale. In managing foreclosed properties in lenders' inventories, servicers may be motivated by timeliness measures in PSAs [Pooling and Servicing Agreements] to induce the former homeowner or bona fide tenant to vacate before they are legally required to do so, sometimes under the threat of eviction. Once the properties are vacant, servicers exercise great discretion in deciding whether or not to repair foreclosed property based on the likelihood that the servicer's advances are recoverable from the sale proceeds. With real estate owned (REO) inventories projected to reach one million by the end of 2010, servicer actions will heavily influence the effectiveness of neighborhood stabilization efforts at a time of persistent decline in home values and in fragile markets already weakened by a glut of vacant and abandoned properties, particularly in low-wealth communities.

Ms Raskin concluded her address as follows:

The complex challenges faced by the loan servicing industry right now are emblematic of the problems that emerge in any industry when incentives are fundamentally misaligned, and when the race for short-term profit overwhelms sustainable, long-term goals and practices. Responsible parties within the industry are no doubt already scrambling to fix some of the problems that have surfaced. However, because so much is riding on

getting these systems right, and because consumers have such little measure of individual choice or recourse, reliance on pledges from market participants will not be enough. Many of you have been doing your part for years to point out problems in the industry and to give consumers some protection and redress when wronged. The public sector too is stepping up its efforts to monitor firms' actions and systems. Until a better business model is developed that eliminates the business incentives that can potentially harm consumers, there will be a need for close regulatory scrutiny of these issues and for appropriate enforcement action that addresses them.

Elsewhere in her speech Ms. Raskin states that "right now" (i.e. just three months ago) there were five million loans either in foreclosure or more than 90 days past due (an industry standard indicating a seriously impaired loan, but more "generous" than the definition of "seriously delinquent" of 60 days overdue, which forms the basis of most industry statistics). She also stated that foreclosures had nearly tripled (to 2,800,000) between 2006 and 2009 and that they were continuing in 2010 and 2011 at a rate of about 2, 250,000 per year with 2,000,000 expected in 2012.

According to Chase's letter of 11 January, approximately 68% of the loans that it services are serviced for others (the Company's figures do not quite add up and thus the figure may be slightly higher). Over 80% of the loans on its own books ("portfolio loans") are home equity loans. Thus, it would appear that perhaps as much as 92% of the first mortgage loans serviced by the Company are serviced for others. Whatever the exact percentage may be, it is clear that Chase's servicing business consists overwhelmingly of servicing loans for others (i.e. for vehicles such as CMOs, which did not exist prior to 1983).

Industry wide, it is clear beyond cavil that portfolio loans are treated differently than serviced loans. The Department of the Treasury publishes a quarterly report prepared by two of its constituent agencies, the Controller of the Currency and the Office of Thrift Supervision, entitled the "OCC and OTS Mortgage Metrics Report". The most recent report (December, 2010) (the "OCC and OTS Report") covers the third quarter of 2010 and is available on the web site of the Comptroller of the Currency. The statistics in the OCC and OTS Report are drawn from the reports of several of the largest servicers, who service somewhat under two-thirds of the nation's mortgages.

Table 22 (p.28 in the OCC and OTS Report) shows that for loan modifications under the HAMP program, portfolio loans were almost one hundred times more likely to have their principal reduced than were serviced loans. (36.5% of modifications versus 0.4% for private investor loans). (If Fannie/Freddie/government guaranteed loans are included with private investor loans, the ratio increases to almost 800:1.) The picture is even worse for non-HAMP loans, where portfolio loans were 125 times more likely to have the modification include a principal reduction than were serviced loans. (1,642 times if the agency modifications are included). See Table 21, p. 27 of the OCC and OTS Report.

It is thus clear that with respect to portfolio loans, where the servicer is also the investor, it is frequently in the best interests of both the owner of the loan and the borrower to modify the loan by reducing its principal amount. However, where the bank is merely the servicer this mutually desirable result simply does not happen.

RULE 14a-8(i)(7)

The crux of the problem is described early on in the above quotation from Ms. Raskin's address. For those loans that Chase itself owns, both the bank and the borrower have an incentive to work out the problem via some form forbearance or modification. For those loans that Chase merely services, the investor and the borrower each have those identical incentives. Chase, however, not only has no such incentives to work out the loan, but rather has disincentives to do so. It is therefore not surprising that in the banking world loan modifications occur far less frequently with respect to serviced loans than is the case with respect to bank-owned loans. The Proponents believe that this bifurcation of treatment of seriously impaired loans also exists at Chase. And, as also noted in the above excerpt, this preference for foreclosures, and thus for vacant REO [real estate owned] property, can have severely detrimental effects on neighborhoods as well as on investors and borrowers. We therefore believe that the Proponents' shareholder proposal raises an important social policy issue that transcends ordinary business and is therefore an appropriate matter for shareholders to vote on.

The Proponents believe that it is undisputable that the foreclosure crisis raises an import policy issue for those registrants who are involved in the process of foreclosing mortgages, whether those foreclosures occur in portfolio loans or serviced loans. Actions taken, or not taken, to mitigate the problem, or actions

taken which exacerbate it, generate serious issues for society and for the registrant. This is evident not only from the vast size of the foreclosure crisis, with approximately one out of every eight mortgages in foreclosure or seriously delinquent (defined as 60 or more days overdue) (see the OCC and OTS Report, p. 5.) , but also, as noted in Ms. Raskin's address, because of the impact that foreclosures may have on whole communities, creating neighborhoods of abandoned buildings which become instant, crime infested, slums. In addition, unnecessary foreclosures tend to depress the price of housing, thereby increasing both the risk of additional foreclosures and jeopardizing the finances of additional families. In this connection, we note that The Wall Street Journal (February 23, 2011) reported that in eleven of the twenty cities in the widely followed Case-Shiller home-price index the price of houses hit new lows in December; that the index was down for the fifth consecutive month; and that overall that index had "all but erase[d] the gains in home prices since the recession ended in June, 2009". In other words, as far as foreclosures and home prices are concerned we are looking over the precipice toward a double dip. The ongoing nature of the crisis is also indicated by the fact that new foreclosures in the surveyed group totaled over 1,350,000 in the 12 months ended September, 2010, and that they were up 3.7% in the quarter then ended as compared to the comparable 2009 quarter. OCC and OTS Report, p. 9. Similarly, foreclosures in process were up 10.1% over the year earlier period. *Ibid.*

It should be clear from the foregoing that Chase's foreclosure policies implicate important social policy issues. But there is an additional indicator that those policies transcend day-to-day ordinary business matters. The Proponents believe that the difference between the treatment of modifications of portfolio loans and of serviced loans compounds the underlying unfairness that inhered in the original making of many of the serviced loans. An analysis of the origins of much of the serviced loan portfolio would show that a highly disproportionate number of those loans were predatory loans made by Washington Mutual ("WAMU") and Bear Stearns, firms that merged into Chase at the height of the financial crisis. Those acquired firms were the home base for sub-prime loans and option ARMs. For example, a study commissioned by certain of the proponents revealed that, based on government data, over the period of 2005-2006 approximately 38% of WAMU purchased loans were "high risk" (an interest rate at least 3% over comparable maturity Treasuries), but that in those years only about 9% of Chase's were high risk loans. Most purchased loans would be securitized and it is therefore a reasonable assumption that these WAMU loans ended up in investment vehicles such as CMOs which have Chase (as WAMU's successor) as servicer. Thus the chain continues. Predatory loans are made by

loan brokers and sold to aggregators such as WAMU and Chase. The aggregator securitizes the predatory loan, but retains the servicing on that loan. The buyer defaults and the servicer, which has a conflict of interest *vis-à-vis* both the investor and the victim of predatory lending, refuses to modify the loan in the same fashion as it would with a portfolio loan. We submit that this final link in the chain of events is well within the rationale of the no-action letters which have denied securitizers of predatory loans no-action relief under Rule 14a-8(i)(7). See, e.g., *Bank of America Corporation* (February 23, 2006); *Conseco, Inc.* (April 5, 2001); *Associates First Capital Corporation* (March 13, 2000).

Finally, it should be noted that although in her speech Ms. Raskin indicated that further government regulation is required in order to counteract the inherent incentives to foreclosure existing in the system of loan servicing, it is the Proponents belief that the major servicers, such as Chase, are in a position to take action by themselves to solve the problem via private ordering by applying the same standards and criteria to modification of serviced loans that they apply to portfolio loans.

Company's III.C.1.

We agree that the Proponents' shareholder proposal addresses the ordinary business operations of Chase. The question at issue, however, is whether it *also* is a proposal "focusing on [a] significant social policy issue[]" that "transcend[s] the day-to-day business matters and raise[s] policy issues so significant that it would be appropriate for a shareholder vote". See Release 34-20091 (August 16, 1983). Thus, the crux of the matter is whether the Proponent's shareholder proposal implicates an important social policy issue. Consequently, the nine no-action letters cited by the Company in Section III.C.1. (pp. 6-7) of its letter are irrelevant, since none of them addresses whether the foreclosure policies of banks may implicate an important policy issue.

Company's III.C.2.

The Company's "litigation strategy" argument (Section III.C.2., pp.7-9) is equally flawed. Several of the no-action letters cited by the Company pertained to proposals that the registrant undertake specific litigation activities (see, e.g., the *Merck*, *CMS Energy* and *NetCurrents* letters cited on page 8 of the Company's letter). The remaining letters (three *Reynolds* and one *AT&T*) all requested detailed information about specific policies that were the direct subject of litigation. Thus, in *Reynolds* (February 10, 2006) the proposal requested that the registrant

“undertake a campaign aimed at African Americans appraising them of the unique health hazards to them associated with smoking menthol cigarettes, including data showing the industry descriptors such as ‘light’ and ‘ultralight’ do not mean” that such cigarettes are less dangerous to smoke. Reynolds argued that the proposal could be excluded because it was currently litigating (i) a case “in which one of the plaintiffs’ principal allegations relates to the defendants’ marketing of menthol cigarettes to the African American community and the claim that the use of” such cigarettes by that community “poses unique health hazards” and (ii) multiple cases where the plaintiffs claim that “the use of the terms ‘light’ and ‘ultralight’ in product descriptions is deceptive”. It is therefore quite apparent that the proponent’s proposal concerned the precise subject matter of the litigation and requested the registrant to take actions that would be directly contrary to the position that it was taking in the litigation. n¹ The registrant concluded as follows:

Therefore, the Proposal squarely implicates issues that are the subject matter of multiple lawsuits involving Reynolds Tobacco. In effect, the Proposal recommends that the Company facilitate the goals of the opposing parties in these various lawsuits at the same time that the Company's operating subsidiary, Reynolds Tobacco, is actively challenging those parties' legal positions or claims. Being forced either to comply with the Proposal or to take a public position (or no position) in 2006 Proxy Materials with respect to the Proposal would improperly interfere with and otherwise adversely affect Reynolds Tobacco's litigation strategy in these cases. In fact, the Company's ability to effectively seek "no action" relief in this letter is limited because any discussion of the issues related to the use of menthol cigarettes by the African American community and "light" and "ultralight" cigarettes must of necessity be limited at this time because Reynolds Tobacco's litigation strategy and even some of the factual bases for Reynolds Tobacco's defense have not yet been fully developed and should not be disclosed prematurely to opposing parties. As such, inclusion of the Proposal in 2006 Proxy Materials would permit the Proponents to interfere with and preempt management's right and duty to determine Reynolds Tobacco's litigation strategy .

¹ The other three letters cited by the Company are conceptually similar. The *Reynolds* letter of February 6, 2004 equally involved a proposal about the deceptive terms “light” and “ultralight” at a time when the registrant was defending lawsuits alleging that the terms were deceptive. In the *Reynolds* letter of March 6, 2003, the request was for the Board to establish a committee to determine the extent of the registrant’s involvement in smuggling cigarettes at a time when it was engaged in defending lawsuits brought by governmental bodies alleging that very practice. In *AT&T* the proposal requested information about disclosure of customer communications and expenditure on legal fees when the registrant was being sued, as the proponent’s attorney pointed out in his letter to the Staff, in nine of the twelve lawsuits on the matter in which plaintiffs were seeking “billions of dollars”.

Chase can make no comparable claim. Chase's claim that the Proponents' shareholder proposal relates to ongoing litigation is as follows (first paragraph, Section III.C.2., bottom p.7):

State and federal officials have announced investigations into the procedures followed by mortgage servicing companies and banks, including the Company, relating to residential foreclosures. Additional, there have been numerous putative class action lawsuits filed against the Company . . . asserting claims related to the Company's loan modification and foreclosure practices. [These pending actions challenge] the Company's practices, procedures, compliance, or performance under HAMP [the Federal Home Affordable Modification Program, which was created by an allocation of funds from the U.S. Treasury's Troubled Asset Relief Program, the TARP] and other loan modification programs, as well as its practices, procedures and compliance with law in executing documents in connection with foreclosure actions.

This paragraph makes three claims that the Proponents' proposal relates to ongoing litigation involving the Company. First, as far as the state and federal investigations are concerned, the claim presumably relates to "robo signing" and other forms of perjury involved in some foreclosure procedures. However, it is impossible to know what the Company is claiming, since there is no further description of any such investigation nor is any attempt made to say how any such investigation would be impacted by the Proponents' shareholder proposal. In addition, the Proponents' proposal makes no reference to the matters that are presumably the subject of the governmental investigations. Therefore, Chase has abysmally failed to carry its burden of establishing that the Proponents' proposal in any way relates to any ongoing purported governmental investigation.

Similarly, the Company's third claim is that there is litigation pertaining to its "practices, procedures and compliance with law in executing documents in connection with foreclosure actions". Again, although not further explicated in the Company's argument, this apparently also relates solely to "robo signing", a practice totally unrelated to the Proponents' proposal, which deals exclusively with establishing a policy of treating owned and serviced loans identically.

The second claim appears to relate only to litigation concerning the Company's performance under HAMP (despite the reference to unspecified "other loan modification programs"). The Federal District Court in the *Durmic* case, one

of the two whose complaints are set forth in Company's Exhibit B to its no-action letter request, summarized that complaint as follows (see **Durmic v. J.P. Morgan Chase Bank, NA, 2010 U.S. Dist. LEXIS 131069**):

The following background note is extracted from the court's November 24, 2010 Memorandum and Order denying Chase's motion to dismiss and plaintiffs' motion for a preliminary injunction. After being persuaded to participate in the Obama Administration's Home Affordable Modification Program (HAMP), Chase solicited some of its customers who were having difficulty staying current with their mortgages to apply for a loan modification to make their monthly payments more affordable. In other cases, borrowers who independently learned of HAMP initiated the request for a modification. Under the HAMP guidelines, before any applicant receives a mortgage modification, the lender is required to conduct a Net Present Value (NPV) test to determine whether it is more profitable to modify the homeowner's loan or to allow it to go into foreclosure. If the borrower appears to qualify under the HAMP guidelines, he or she is given a document entitled "Home Affordable Modification Trial Period Plan" (TPP). The TPP is a Fannie Mae Freddie Mac "Uniform Instrument" that has the appearances of a contract. After setting out a series of good faith representations required of the borrower and obligating the borrower to submit proof of current income, the TPP then lists individualized payment terms for a three-month trial period.

After successfully passing the NPV test and meeting other HAMP criteria, each of the named plaintiffs received a TPP, which they signed and returned to Chase. Each of the plaintiffs submitted the required proof of income and made the three required payments (although the timeliness of some of the payments by named plaintiffs is contested). None of the named plaintiffs, however, received an executed copy of the TPP or a permanent loan modification.

Plaintiffs seek certification of a class consisting of all Massachusetts borrowers who entered into a written TPP Agreement with Chase and who made the three required payments, other than borrowers to whom Chase sent either a Home Affordable Modification Agreement (HAMA) prior to the date of class certification or a written denial of eligibility on or before the Modification Effective Date set out in the TPP Agreement. Plaintiffs estimate the proposed class to consist of approximately 1,875 members.

It is thus readily apparent that the *Durmic* litigation pertains exclusively to Chase's actions under HAMP. However, the Proponent's shareholder proposal makes no reference to HAMP and the requested policy, if actually adopted by the Company, couldn't possibly have any material effect on the litigation. To the contrary, HAMP is irrelevant to the proposal and *vice versa*.

The second litigation relied upon by Chase to buttress its contention that the shareholder proposal would interfere with litigation strategy is the *Deutsch* case, also found in Exhibit B to the Company's no-action letter request. That case involves a foreclosure action by Chase in which the borrower counterclaimed alleging that Chase had filed false affidavits. The Proponents' shareholder proposal is totally unrelated to this "robo signing" litigation and could not possibly have any effect on it if implemented by the Company.

Finally, the other two cases mentioned by Chase in footnote 4 (p. 8) fail to establish anything at all, since they are not individually described nor is the text of either complaint supplied.

In summary, Chase has failed to carry its burden of establishing that the Proponents' shareholder proposal would impact its litigation strategy. On the contrary, there is not one scintilla of evidence to support any such claim. The fact that the Proponents' proposal pertains to the way the Company modifies mortgages that it services provides no support for contending that it would impact unrelated litigation that also happens to concern mortgages.

Company's III.C.3

The Company argues that even if the proposal raises a significant policy issue, it is nevertheless excludable because, Chase contends, it also deals with matters that are ordinary business. However, this is simply a rehash of its III.C.1 argument. Of course the matters dealt with are "ordinary business", but they also are significant policy issues. See Release 34-20091 (August 16, 1983), quoted above. The no-action letters cited by the Company are inapposite since in each case the problem with the proposal was that not that it related both to ordinary business matters and significant policy issues, but rather that *only* some *parts* of the proposal related to significant policy issues but that other parts of the proposal (e.g. compensation of the general workforce) did not raise any significant policy issue whatever. In contrast, the Proponents' shareholder proposal is unitary and if, as it clearly does, it raises an important policy issue, that issue is relevant to the entire proposal, not simply one part of it.

For the foregoing reasons, Rule 14a-8(i)(7) is inapplicable to the Proponents' shareholder proposal.

RULE 14a-8(i)(3)

The request is so simple that Chase's shareholders and members of its Board will have zero difficulty understanding what is being requested and how to implement the proposal. The Proponents' shareholder proposal asks that when loans are considered for modification that no distinction be made between those loans that are Company owned and those that the Company services. It is simple to implement the concept: simply don't treat serviced loans any differently than owned loans. There is absolutely nothing vague or inherent in that request. Consequently, Rule 14a-8(i)(3) cannot conceivably apply to the Proponents' shareholder proposal.

In conclusion, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no action request. We would appreciate your telephoning the undersigned at 941-349-6164 with respect to any questions in connection with this matter or if the staff wishes any further information. Faxes can be received at the same number. Please also note that the undersigned may be reached by mail or express delivery at the letterhead address (or via the email address).

Very truly yours,

Paul M. Neuhauser
Attorney at Law

cc: Martin P. Dunn
Rev. William Somplatsky-Jarman
Fr. Seamus Finn
John Lind
Laura Berry



O'MELVENY & MYERS LLP

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1934 Act/Rule 14a-8

January 11, 2011

VIA E-MAIL (shareholderproposals@sec.gov)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: JPMorgan Chase & Co.
Shareholder Proposal of the Board of Pensions of the Presbyterian Church (USA)
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client JPMorgan Chase & Co., a Delaware corporation (the "**Company**"), which requests confirmation that the staff (the "**Staff**") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "**Commission**") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "**Exchange Act**"), the Company omits the enclosed shareholder proposal (the "**Proposal**") and supporting statement (the "**Supporting Statement**") submitted by the Board of Pensions of the Presbyterian Church (USA)¹ (with the co-filers, collectively the "**Proponent**") from the Company's proxy materials for its 2011 Annual Meeting of Shareholders (the "**2011 Proxy Materials**").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2010 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

¹ Walden Asset Management, Catholic Healthcare West, Haymarket People's Fund, Mercy Investment Services, Benedictine Convent of Perpetual Adoration, the Funding Exchange, Calvert Asset Management, and the Board of Pensions of the Evangelical Lutheran Church in America subsequently submitted identical proposals to the Proposal and have indicated that they wish to serve as co-filers of the Proposal, with the Board of Pensions of the Presbyterian Church (USA) serving as primary contact.

A copy of the Proposal and Supporting Statement, the Proponent's cover letters submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit A.

I. SUMMARY OF THE PROPOSAL

On November 5, 2010, the Company received a letter from the Board of Pensions of the Presbyterian Church (USA) containing the Proposal for inclusion in the Company's 2011 Proxy Materials. The Proposal requests that the Company's Board of Directors "oversee development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to both loans owned by the corporation and those serviced for others" and "report policies and results to shareholders by October 30, 2011."

II. BACKGROUND

The Company is a global financial services firm that specializes in investment banking, financial services for consumers, small business and commercial banking, financial transaction processing, asset management, and private equity. In the ordinary course of business, the Company services approximately 8.59 million home loans -- of which 5.84 million home loans are serviced for others (such as government-sponsored enterprises, the Federal Housing Administration, and private investors) and 2.57 million home loans are owned by the Company (of which 2.1 million are Home Equity loans). As a servicer of home loans and, more specifically of home mortgages, the Company is responsible for the day-to-day management of a mortgage loan account and as such:

- collects, allocates (escrow, principal, interest), and credits the borrower's payments;
- maintains the escrow account and makes tax and insurance payments from that account on behalf of the borrower;
- provides statements to the borrower regarding payments and other mortgage-related activity;
- responds to the borrower's inquiries about his/her account;
- may obtain property insurance on behalf of the borrower if the borrower is not already adequately insured;
- may arrange for certain default-related services to protect the value of a property that is in default;
- initiates foreclosure proceedings and manages the foreclosure process to completion; and
- explores loss mitigation options with borrowers, including loan modification, short sales and deeds in lieu of foreclosure.²

² For more information on the responsibilities of a mortgage servicer, *see* <http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea10.shtm>.

As noted above, the responsibilities of a mortgage servicer, such as the Company, include working with borrowers that become delinquent in their payments by exploring loss mitigation options such as loan modification, refinancing, deeds in lieu and short sales. In fact, since 2009, the Company has handled over 32.3 million inbound calls to its call centers from homeowners seeking foreclosure prevention assistance, including 5.3 million calls to the Company's dedicated customer hotline for modification inquiries. The Company has offered over 1 million modifications to struggling homeowners through various modification programs and converted 275,152 of these offers into permanent modifications since the beginning of 2009. Finally, when mortgage modification or other loss mitigation options are determined to be unavailable, a mortgage servicer is also responsible for initiating and managing foreclosure proceedings.

III. EXCLUSION OF THE PROPOSAL

A. Bases for Exclusion of the Proposal

As discussed more fully below, the Company believes that it may properly omit the Proposal from its 2011 Proxy Materials in reliance on the following paragraphs of Rule 14a-8:

- Rule 14a-8(i)(3), as the Proposal is materially false and misleading; and
- Rule 14a-8(i)(7), as the Proposal deals with matters relating to the Company's ordinary business operations.

B. The Proposal May Be Excluded in Reliance on Rule 14a-8(i)(3), as it is Materially False and Misleading

Rule 14a-8(i)(3) permits a company to exclude a proposal or supporting statement, or portions thereof, that are contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false and misleading statements in proxy materials. Pursuant to Staff Legal Bulletin 14B (September 15, 2004) ("**SLB 14B**"), reliance on Rule 14a-8(i)(3) to exclude a proposal or portions of a supporting statement may be appropriate in only a few limited instances, one of which is when the resolution contained in the proposal is so inherently vague or indefinite that neither the shareholders in voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. *See also Philadelphia Electric Company* (July 30, 1992).

In applying the "inherently vague or indefinite" standard under Rule 14a-8(i)(3), the Staff has long held the view that a proposal does not have to specify the exact manner in which it should be implemented, but that discretion as to implementation and interpretation of the terms of a proposal may be left to the board. However, the Staff also has noted that a proposal may be materially misleading as vague and indefinite where "any action ultimately taken by the Company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *See Fuqua Industries, Inc.* (March 12, 1991).

The Staff has consistently allowed for the exclusion of proposals employing a key term that was vague or indefinite. For example, in *Citigroup Inc.* (February 22, 2010), the Staff concurred that the company could omit a proposal seeking to amend the company's bylaws to establish a board committee on "US Economic Security" under Rule 14a-8(i)(3) as vague and indefinite. Citigroup asserted that not only the proposal was vague regarding whether it required or recommended action, but also the term "US Economic Security" could be defined by any number of macroeconomic factors or economic valuations, making the proposal's object unclear. *See also Bank of America Corporation* (February 25, 2008) (concurring in the omission of a proposal requesting a "moratorium on further involvement in activities that support [mountain top removal] coal mining" as inherently vague and indefinite because the action requested of the company was unclear); *NSTAR* (January 5, 2007) (concurring in the omission of a proposal requesting standards of "record keeping of financial records" as inherently vague and indefinite because the proponent failed to define the terms "record keeping" or "financial records"); *People's Energy Corporation* (November 23, 2004) (concurring in the omission of a proposal requesting the company not provide indemnification to directors or officers for acts or omissions involving gross negligence or reckless neglect as inherently vague and indefinite because the term "reckless neglect" was undefined); *Wendy's International, Inc.* (February 24, 2006) (concurring in the omission of a proposal requesting reports on "the progress made toward accelerating development of [controlled-atmosphere killing]" as inherently vague and indefinite because the term "accelerating development" was undefined such that the actions required to implement the proposal were unclear).

Similarly, the Proposal's request that the Company's board of directors ensure that the same loan modification methods are used for "similar loan types" is so inherently vague or indefinite that neither the shareholders in 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. As a servicer of home loans, the Company services approximately 8.59 million home loans and the Proposal seeks policies that would apply to every home loan issued and serviced by the Company. The Proposal states that these loans should be classified into "similar loan types" in order to ensure uniform application of loan modification methods but fails to specify how to define these "similar loan types." In this regard, we note that loans may be classified by what the proceeds will be used for (home purchase, refinancing, second mortgage, etc.), by geographic region, by whether they are securitized or not, or by numerous other criteria. Further, the Supporting Statement describes "single family housing loans," "securitized loans," "subprime loans," and "Option ARMs" and also references "low income borrowers." However, it is unclear if these are the "similar loan types" referenced by the Proposal. Moreover, if these are the "types" to be used to ensure uniform loan modification methods, there is significant potential overlap between the categories of loans referenced in the Supporting Statement. Assuming the Proposal relates only to "home loans," such loans can refer to a broad range of loans, including home purchase loans, second mortgages, home equity loans, lines of credit, or refinance loans, each of which have various characteristics that make each loan unique. For example, a loan may have a fixed or variable interest rate or it may be for a property that is owned or not-owned. Moreover, the status of the borrower may further influence any "categorization" of a loan (i.e., whether or not the borrower

is delinquent in payment, the amount of equity in a borrower's property, the financial condition of the borrower, etc.). As the main purpose of the Proposal appears to be ensuring uniform application of loan modification methods across "similar loan types," the definition of the "similar loan types" is fundamental to understanding and implementing the Proposal. Given the Proposal's lack of specificity, it would be impossible for either shareholders or the Company to determine with any reasonable certainty exactly what actions or measures the proposal requires.

Based on the foregoing analysis, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2010 Proxy Materials in reliance on Rule 14a-8(i)(3).

C. The Proposal May Be Excluded in Reliance on Rule 14a-8(i)(7), as it Deals With Matters Relating to the Company's Ordinary Business Operations

A company is permitted to omit a shareholder proposal from its proxy materials under Rule 14a-8(i)(7) if the proposal deals with a matter relating to the company's ordinary business operations. In Commission Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"), the Commission stated that the underlying policy of the "ordinary business" exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." The Commission further stated in the 1998 Release that this general policy rests on two central considerations. The first is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration relates 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." The fact that a proposal seeks a report from a company's board of directors (instead of a direct action) is immaterial to these determinations -- a shareholder proposal that calls on the board of directors to issue a report to shareholders is excludable under Rule 14a-8(i)(7) as relating to an ordinary business matter if the subject matter of the report relates to the company's ordinary business operations. *See Release No. 34-20091* (August 16, 1983). Importantly, with regard to the first basis for the "ordinary business" matters exception, the Commission also stated that "proposals relating to such matters but focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote."

As described below, the Proposal clearly relates to the Company's ordinary business operations as it addresses the products and services offered by the Company.

1. The Proposal addresses fundamental management decisions regarding the products and services the Company may offer

As discussed above, the Company is a global financial services firm that provides a wide range of products and services to its customers in the ordinary course of business. As such, the Proposal relates to the Company's ordinary business operations because it seeks to impact the Company's loan modification practices. In this regard, the Company has offered over 1 million mortgage modifications to struggling homeowners and has converted 275,152 such modifications into permanent modifications since the beginning of 2009 through the U.S. Treasury's Making Home Affordable programs, including the Home Affordable Modification Program ("**HAMP**") and the Second Lien Modification Program, and the Company's other loss-mitigation programs.³ The Company's decisions as to whom and whether to offer a particular loan, a loan modification, or other loan services and the manner in which the Company offers its products and services are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7).

The Staff previously has concurred that proposals relating to credit policies, loan underwriting, and customer relations relate to the ordinary business operations of a financial institution and, as such, may be omitted under Rule 14a-8(i)(7). For example, in *BankAmerica Corp.* (February 18, 1977), the Staff noted that "the procedures applicable to the making of particular categories of loans, the factors to be taken into account by lending officers in making such loans, and the terms and conditions to be included in certain loan agreements are matters directly related to the conduct of one of the [c]ompany's principal businesses and part of its everyday business operations." See also, e.g., *JPMorgan Chase & Co.* (March 16, 2010) (concurring in the omission of a proposal requesting cessation of the issuance of refund anticipation loans in reliance on Rule 14a-8(i)(7) because "proposals concerning the sale of particular services are generally excludable under [R]ule 14a-8(i)(7)"); *Bank of America Corp.* (February 27, 2008) (concurring in the omission of a proposal requesting a report disclosing the company's policies and practices regarding the issuance of credit cards in reliance on Rule 14a-8(i)(7) because it related to "credit policies, loan underwriting and customer relations"); *Cash America International, Inc.* (March 5, 2007) (concurring in the omission of a proposal that requested the appointment of a committee to develop a suitability standard for the company's loan products, to determine whether loans were consistent with the borrowers' ability to repay, and to assess the reasonableness of collection procedures in reliance on Rule 14a-8(i)(7) because it related to "credit policies, loan underwriting and customer relations"); *H&R Block, Inc.* (August 1, 2006) (concurring in the omission of a proposal requesting cessation of the issuance of refund anticipation loans in reliance on Rule 14a-8(i)(7) because it related to "credit policies, loan underwriting, and customer relations"); *Wells Fargo & Co.* (February 16, 2006) (concurring in the omission of a proposal that requested a policy that the company would not provide credit or banking services to lenders engaged in payday lending in reliance on Rule 14a-8(i)(7) because

³ See also the Company's Quarterly Report on Form 10-Q for the fiscal period ending September 30, 2010, at page 91, for information on mortgage modification activities as of that date, available at: <http://www.sec.gov/Archives/edgar/data/19617/000095012310102689/y86142e10vq.htm>.

it related to “credit policies, loan underwriting and customer relations”). As in those prior situations in which the Staff has expressed the view that a company may omit a proposal in reliance on Rule 14a-8(i)(7), the Proposal’s subject matter regards the Company’s procedures for making decisions regarding loan modifications, refinancing and the terms and conditions of other financial products offered by the Company, including the manner in which the Company services its outstanding loans.

Similar concerns were raised in *JPMorgan Chase & Co.* (February 26, 2007), *Bank of America Corp.* (February 21, 2007), and *Citigroup Inc.* (February 21, 2007): the companies received three nearly identical shareholder proposals requesting a report on policies against the provision of services that enabled capital flight and resulted in tax avoidance. Citigroup noted that “policies governing whether Citigroup will engage in any particular financial service for our clients are formulated and implemented in the ordinary course of the Company’s business operations” and requested exclusion of the proposal because it “usurps management’s authority by allowing stockholders to manage the banking and financial relationships that the Company has with its customers.” The Staff concurred that the proposal could be omitted in reliance on Rule 14a-8(i)(7) as related to ordinary business operations (i.e., sale of particular services). Likewise, the Proposal seeks the development and enforcement of policies regarding the Company’s basic business decisions as to what products and services to offer, who to offer those products and services to, and how to maintain its relationships with its customers. In fact, the Supporting Statement clearly states the intention of the Proponent in submitting the Proposal: “Investors filing this resolution want assurance that the modifications made to loans serviced for others are the same as modifications made to loans by the servicer.”

Because the Proposal seeks to influence the Company’s lending and servicing practices -- quintessential ordinary business matters for financial institutions -- the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7).

2. *The Proposal relates to ongoing litigation involving the Company*

State and federal officials have announced investigations into the procedures followed by mortgage servicing companies and banks, including the Company, relating to residential foreclosures. Additionally, there have been numerous putative class action lawsuits filed against the Company and its mortgage loan subsidiaries asserting claims related to the Company’s loan modification and foreclosure practices. Through a variety of theories, these pending actions broadly challenge, among other things, the Company’s practices, compliance, or performance under HAMP and other loan modification programs, as well as its practices, procedures and compliance with law in executing documents in connection with foreclosure actions.⁴

⁴ See, e.g., *Durmic v. J.P. Morgan Chase Bank, NA*, No. 10-cv-10380-RGS (D. Mass.); *Morales v. Chase Home Finance LLC, et al.*, No. 10-cv-02068-JSW (N.D. Cal.); *Salinas v. Chase Home Finance LLC*, No. CV10-09602 (C.D. Cal.); and *Deutsch v. JPMorgan Chase Bank, N.A.*, No. 08CH4035 (Ill. Cir. Ct). Attached as Exhibit B are initial complaints for the *Durmic v. JPMorgan Chase* and *Deutsch v. JPMorgan Chase* matters referenced above.

The Staff has consistently agreed that a shareholder proposal may be omitted in reliance on Rule 14a-8(i)(7) when the subject matter of the proposal is the same as or similar to that which is at the heart of litigation in which a registrant is then involved. *See, e.g., AT&T Inc.* (February 9, 2007) (concurring in the omission of a proposal that the company report on disclosure of customer communications to specified government agencies in reliance on Rule 14a-8(i)(7) because it related to ordinary “litigation strategy”); *Reynolds American Inc.* (February 10, 2006) (concurring in the omission of a proposal to notify African Americans of the purported health hazards unique to that community that were associated with smoking menthol cigarettes in reliance on Rule 14a-8(i)(7) because it related to “litigation strategy”); *R. J. Reynolds Tobacco Holdings, Inc.* (February 6, 2004) (concurring in the omission of a proposal requiring company to stop using the terms “light,” “ultralight” and “mild” until shareholders can be assured through independent research that such brands reduce the risk of smoking-related diseases in reliance on Rule 14a-8(i)(7) because it related to “litigation strategy”); *R. J. Reynolds Tobacco Holdings, Inc.* (March 6, 2003) (concurring in the omission of a proposal requiring the company to establish a committee of independent directors to determine the company’s involvement in cigarette smuggling in reliance on Rule 14a-8(i)(7) because it related to “litigation strategy”).

The Proposal focuses directly on the Company’s policies and procedures for loan modification methods, which are one of the central subjects of the pending legal proceedings referenced above. Specifically, through a variety of theories, these pending actions broadly challenge, among other things, the Company’s practices, compliance, or performance under HAMP and other loan modification programs. As such, the subject matter of the Proposal -- compliance with internal policies and procedures related to loan modifications and foreclosures - - is the same as that of the Company’s pending litigation, and inclusion of the Proposal in the 2011 Proxy Materials could interfere with the Company’s ability to determine the proper litigation strategy with regard to those pending litigation matters.

The Staff has consistently agreed that proposals related to a company’s decision to institute or defend itself against legal actions, and decisions on how it will conduct those legal actions, are matters relating to its ordinary business operations and within the exclusive prerogative of management. *See, e.g., Merck & Co., Inc.* (February 3, 2009) (concurring in the omission of a proposal that the company take certain legal actions in pending litigation in reliance on Rule 14a-8(i)(7) because it related to “litigation strategy”); *CMS Energy Corporation* (February 23, 2004) (concurring in the omission of a proposal requiring the company to initiate legal action to recover compensation paid to former members of management in reliance on Rule 14a-8(i)(7) because it related to “the conduct of litigation”); *NetCurrents, Inc.* (May 8, 2001) (concurring in the omission of a proposal requiring the company to bring an action against certain persons in reliance on Rule 14a-8(i)(7) because it related to “litigation strategy and related decisions”). Similarly, preparing the report requested by the Proposal on the development and enforcement of loan modification methods for similar types of loans would require disclosure of the Company’s current and past loan modification practices. The Proposal therefore calls for the same information that the Company expects plaintiffs to seek in the discovery process of the aforementioned legal proceedings, which would interfere with

management's ability to determine the best manner in which to approach the ordinary business function of implementing a litigation strategy.

Because the Proposal focuses directly on issues that are the subject matter of multiple lawsuits involving the Company and would improperly interfere with the Company's litigation strategy in those matters, the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7).

3. *The Proposal's focus on ordinary business matters is not overridden by a significant policy concern*

Neither the Proposal nor the Supporting Statement characterizes any of the circumstances discussed therein as a significant policy issue for the purpose of Rule 14a-8. The Supporting Statement observes that many borrowers and "especially low income borrowers" are becoming delinquent because of the recent economic recession and later states that the actions required by the Proposal are necessary "to ensure equal treatment for loans of low income and minority borrowers." However, the Company is unsure what link the Proposal intends to draw between the delinquency of low income and minority borrowers and the loan modification methods used by the Company for those loans it owns as compared to the loan modification methods used by the Company for those loans it services. Apart from contractual and other requirements imposed by investors for whom the Company services loans (e.g., government-sponsored enterprises and private investors), the Company does not have any internal policies or practices that would result in differences in modification practices for loans it owns and loans it services for others. The Company applies all its policies and practices consistently and uniformly to all customers and makes a considerable effort to be a fair and equal lender to all borrowers. Lacking this causal link between the Company's loan modification practices and the delinquency of low income and minority borrowers, the Proposal does not appear to address any alleged predatory lending practices or other Staff-recognized significant policy issue, and the Staff has not specifically stated that the recent economic recession, lending practices, loan servicing, or loan modification practices are (individually or collectively) a significant policy concern for the purpose of Rule 14a-8 such that any economic or financial matter is *per se* a significant policy issue.

However, even if the Staff were to recognize the economic recession, loan servicing or mortgage modification practices as a significant policy concern, the Staff has expressed the view that proposals relating to both ordinary business matters and significant policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7). See *JPMorgan Chase & Co.* (February 25, 2010) (concurring in the exclusion of a proposal relating to compensation that may be paid to employees and senior executive officers and directors in reliance on Rule 14a-8(i)(7) because it concerned general employee compensation matters); *General Electric Company* (February 3, 2005) (concurring in the exclusion of a proposal intended to address "offshoring" and requesting a statement relating to any planned job cuts or offshore relocation activities in reliance on Rule 14a-8(i)(7) because it related to management of the workforce); *Wal-Mart Stores, Inc.* (March 15, 1999) (concurring in the exclusion of a proposal requesting a report on Wal-Mart's actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, child labor or who fail to comply with laws protecting employees' rights in reliance on

Rule 14a-8(i)(7) because “paragraph 3 of the description of matters to be included in the report relates to ordinary business operations”). *See also, General Electric Company* (Feb. 10, 2000) (concurring in the exclusion of a proposal relating to the discontinuation of an accounting method and use of funds related to an executive compensation program in reliance on Rule 14a-8(i)(7) as dealing with both the significant policy issue of senior executive compensation and the ordinary business matter of choice of accounting method).

Indeed, the Proposal focuses almost strictly on the Company's ordinary business matters. The Proposal seeks “development and enforcement of policies” related to the Company's loan modification methods, as well as information about those policies and their results. As discussed above, the Company's decisions about whether and to whom to offer a loan modification is a complex process -- often driven by the particular facts and circumstances of each individual borrower, the nature of the loan, and the particular accommodations or modifications for which each borrower is eligible -- that fundamentally involves a business, not a policy, determination. Although the Supporting Statement discusses the economic plights facing a specific demographic of borrowers, the Proposal itself addresses no larger significant policy concern; instead it addresses the Company's ordinary business matters regarding decisions to offer a particular product or service, credit policies, loan underwriting and customer relations. As such, the Proposal may be omitted from the Company's 2010 Proxy Materials in reliance on Rule 14a-8(i)(7) as pertaining to the Company's ordinary business operations.

4. Conclusion

Based on the foregoing analysis, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2011 Proxy Materials in reliance on Rule 14a-8(i)(7).

IV. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2011 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2011 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 383-5418.

Sincerely,



Martin P. Dunn
of O'Melveny & Myers LLP

Attachments

cc: Rev. William Somplatsky-Jarman
Coordinator for Social Witness Ministries
Board of Pensions of the Presbyterian Church (USA)

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