

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

www.skadden.com

DIRECT DIAL  
202-371-7180  
DIRECT FAX  
202-661-9010  
EMAIL ADDRESS  
BRIAN.BREHENY@SKADDEN.COM

FIRM/AFFILIATE OFFICES

BOSTON  
CHICAGO  
HOUSTON  
LOS ANGELES  
NEW YORK  
PALO ALTO  
WILMINGTON

BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
MUNICH  
PARIS  
SÃO PAULO  
SEOUL  
SHANGHAI  
SINGAPORE  
TOKYO  
TORONTO

January 15, 2021

BY EMAIL (shareholderproposals@sec.gov)

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

Re: JPMorgan Chase & Co. – Withdrawal of No-Action Request,  
Dated January 11, 2021, Regarding the Shareholder Proposal of  
John C. Harrington

Ladies and Gentlemen:

We refer to our letter, dated January 11, 2021 (the “No-Action Request”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission concur with JPMorgan Chase & Co.’s view that it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by John C. Harrington (the “Proponent”) from its proxy materials for JPMorgan Chase & Co.’s 2021 Annual Meeting of Shareholders.

Attached hereto as Exhibit A is a letter, dated January 14, 2021 (the “Proponent’s Withdrawal Letter”), from the Proponent withdrawing the Proposal. In reliance on the Proponent’s Withdrawal Letter, we hereby withdraw the No-Action Request.

Office of Chief Counsel  
January 15, 2021  
Page 2

If we can be of any further assistance, or if the Staff should have any questions, please do not hesitate to contact me at the telephone number or email address appearing on the first page of this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'B. Breheny', with a long horizontal flourish extending to the right.

Brian V. Breheny

Enclosure

cc: Molly Carpenter  
Corporate Secretary  
JPMorgan Chase & Co.

John C. Harrington

EXHIBIT A

(see attached)



January 14, 2021

Via E-mail: [corporate.secretary@jpmchase.com](mailto:corporate.secretary@jpmchase.com)

Molly Carpenter, Corporate Secretary  
JP Morgan Chase & Company  
Office of the Secretary  
4 New York Plaza  
New York, NY 10004-2413

Re: Shareholder Proposal

Dear Secretary Carpenter:

As the proponent of the shareholder proposal for the 2021 proxy statement requesting that the company issue a report regarding conversion to a Delaware Public Benefit Corporation (PBC), I appreciate the work that went into the report, and congratulate the company for breaking new ground in issuing this important document. Even though the Board declined to implement conversion, I believe this report will provide an important resource for the company, its shareholders, and other stakeholders in understanding the company's perspective on shareholder primacy, as well as the opportunities and challenges associated with conversion to a Public Benefit Corporation. Congratulations are in order for commissioning the report, and for the quality of the report completed by Delaware counsel.

Although I disagree with the Board's conclusion that it is not in the Company's interest to convert to a Public Benefit Corporation, we do agree that the Company has substantially implemented the proposal.

Please notify the SEC that my proposal for the 2021 proxy statement has been withdrawn. I look forward to your agreement to withdraw your SEC request to exclude my proposal.

Sincerely,

A handwritten signature in black ink, appearing to be "John C. Harrington", is written over a circular stamp. The signature is fluid and stylized.

John C. Harrington  
President / CEO

Cc: Sanford Lewis, Attorney at Law ([sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net))

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

[www.skadden.com](http://www.skadden.com)

DIRECT DIAL  
202-371-7180  
DIRECT FAX  
202-661-9010  
EMAIL ADDRESS  
BRIAN.BREHENY@SKADDEN.COM

FIRM/AFFILIATE OFFICES

BOSTON  
CHICAGO  
HOUSTON  
LOS ANGELES  
NEW YORK  
PALO ALTO  
WILMINGTON

BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
MUNICH  
PARIS  
SÃO PAULO  
SEOUL  
SHANGHAI  
SINGAPORE  
TOKYO  
TORONTO

January 11, 2021

BY EMAIL ([shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov))

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

Re: Shareholder Proposal Submitted by John C. Harrington

Ladies and Gentlemen:

This letter is submitted on behalf of JPMorgan Chase & Co., a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Company requests that the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) not recommend enforcement action if the Company omits from its proxy materials for the Company’s 2021 Annual Meeting of Shareholders (the “2021 Annual Meeting”) the shareholder proposal and supporting statement (the “Proposal”) submitted by John C. Harrington (the “Proponent”).

This letter provides an explanation of why the Company believes it may exclude the Proposal and includes the attachments required by Rule 14a-8(j). In accordance with Section C of Staff Legal Bulletin 14D (Nov. 7, 2008) (“SLB 14D”), this letter is being submitted by email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). A copy of this letter also is being sent to the Proponent as notice of the Company’s intent to omit the Proposal from the Company’s proxy materials for the 2021 Annual Meeting.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder

proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the Company.

### Background

On October 27, 2020, the Company received the initial version of the Proposal, accompanied by a cover letter from the Proponent, and a letter from Charles Schwab verifying the Proponent's stock ownership in the Company. On November 2, 2020, the Company sent a letter to the Proponent via email notifying the Proponent of the Company's belief that the submission contained more than one shareholder proposal in violation of Rule 14a-8 and of the Proponent's obligation to reduce the submission to a single proposal (the "Deficiency Letter"). On November 10, 2020, the Company received a revised version of the Proposal and updated letter from Charles Schwab verifying the Proponent's stock ownership in the Company. Copies of the initial Proposal, cover letter, Deficiency Letter, revised Proposal and related correspondence are attached hereto as Exhibit A.

### Summary of the Proposal

The text of the resolution contained in the Proposal follows:

Resolved, that shareholders request that the Board of Directors issue a report to shareholders, at reasonable expense and excluding proprietary information, regarding potential conversion of JP Morgan Chase to a Delaware Public Benefit Corporation, including review of options, in the course of such a conversion, for the company to:

- Adopt a particular restated "purpose" such as promoting a sustainable global economy;
- Alter fiduciary obligations with respect to accounting for stakeholder interests;
- Alter duties of board committees, including the audit, compensation, corporate governance and nominating, and public responsibility committees;
- Alter company policies or standards of decision so as to guide fiduciary decision-making when interests of stakeholders may conflict, and/or

- Enable the company to operate in a responsible and sustainable manner.

#### Bases for Exclusion

We hereby respectfully request that the Staff concur in the Company's view that it may exclude the Proposal from the proxy materials for the 2021 Annual Meeting pursuant to:

- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal; and
- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

#### Analysis

*A. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because the Company has Substantially Implemented the Proposal.*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." See Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release"); Exchange Act Release No. 34-12598 (July 7, 1976). In adopting this standard, the Commission made it clear that the actions requested by a proposal need not be "fully effected" provided that they have been "substantially implemented" by the company. See 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a proposal when it has determined that the company's policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. See, e.g., *Devon Energy Corp.* (Apr. 1, 2020)\*; *Johnson & Johnson* (Jan. 31, 2020)\*; *Pfizer Inc.* (Jan. 31, 2020)\*; *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont'l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder System, Inc.* (Feb. 11, 2015); *Wal-Mart Stores, Inc.* (Mar. 27, 2014).

---

\* Citations marked with an asterisk indicate Staff decisions issued without a letter.

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objectives of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. For example, in *Oshkosh Corp.* (Nov. 4, 2016), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal asking the board to amend certain provisions of the company's proxy access bylaw in accordance with the six "essential elements" specified in the proposal. In arguing that the proposal had been substantially implemented, the company explained that it had adopted three of the six proposed changes in the proposal. Although the proposal asked for the adoption of all of the proposed changes, the Staff concluded that the company's bylaw amendments "compare favorably with the guidelines of the proposal" and that the company substantially implemented the proposal. Similarly, in *PG&E Corp.* (Mar. 10, 2010), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company provide a report disclosing, among other things, the company's standards for choosing the organizations to which the company makes charitable contributions and the "business rationale and purpose for each of the charitable contributions." In arguing that the proposal had been substantially implemented, the company referred to a website where the company had described its policies and guidelines for determining the types of grants that it makes and the types of requests that the company typically does not fund. Although the proposal appeared to contemplate disclosure of each and every charitable contribution, the Staff concluded that the company had substantially implemented the proposal. *See also, e.g., The Wendy's Co.* (Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report).

In this case, the Company has substantially implemented the Proposal, the essential objective of which is to obtain a report from the Company's Board of Directors (the "Board") regarding the potential conversion of the Company to a Delaware public benefit corporation. In particular, the Proposal requests that the report also entail consideration of options, including adopting "a particular restated 'purpose' such as promoting a sustainable global economy," altering "fiduciary obligations with respect to accounting for stakeholder interests" and altering "company policies or standards of decision so as to guide fiduciary decision-making when interests of stakeholders may conflict."



Specifically, the Company already has issued to shareholders precisely the report requested by the Proposal. In this regard, the Board, acting through the Corporate Governance & Nominating Committee, engaged the law firm Richards, Layton & Finger to prepare the report requested by the Proposal regarding conversion of the Company to a Delaware public benefit corporation (the “Report”). Richards, Layton & Finger completed and delivered the Report to the Board in January 2021, and the Company has made a copy of the Report available on its website.<sup>1</sup>

The Report consists of two sections, both of which address aspects of the Proposal’s request. The first section of the Report provides an overview of Delaware public benefit corporations, the statutory requirements to becoming a Delaware public benefit corporation and other considerations in the conversion of a traditional Delaware corporation to a Delaware public benefit corporation. In particular, the Report includes a discussion of the “Background on Delaware Public Benefit Corporations,” the “Process of Becoming a Delaware Public Benefit Corporation,” “Appraisal Rights in Connection with a Conversion to a Public Benefit Corporation,” “Governance of a Public Benefit Corporation and Directors’ Fiduciary Duties” and “Other Statutory Considerations and Requirements.” In addressing the mechanics for conversion to a Delaware public benefit corporation, the Report provides that “an existing corporation that converts to a public benefit corporation may [] consider reviewing its bylaws, board committee charters and other governance policies and procedures to determine whether any revisions are necessary or whether any additional policies should be adopted in light of the corporation’s specific public benefit purpose or purposes” and “the directors’ fiduciary duties in connection therewith.” The second section of the Report also provides a detailed analysis of other relevant factors and considerations relating to the Company’s potential conversion to a public benefit corporation that the Board and shareholders may consider in evaluating whether to pursue a conversion.

The Report also includes a review of options for the Company to consider in the course of a potential conversion to a Delaware public benefit corporation that addresses the topics requested by the Proposal. For example, the Proposal requests that the Company’s report consider adopting a restated “purpose” such as promoting a sustainable global economy. The Proposal also requests that the Company review ways to enable the Company “to operate in a responsible and sustainable manner.” Both of these issues are discussed in the Report. In particular, the Report notes that one of the requirements of conversion to a Delaware public benefit corporation is amending a company’s certificate of incorporation to identify one or more specific

---

<sup>1</sup> See *Report to the Board of Directors of JPMorgan Chase & Co. Regarding Public Benefit Corporations*, available at <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/public-benefit-report.pdf> and attached hereto as Exhibit B.

public benefits to be promoted by the corporation. The Report also explains that “[i]n selecting its specific public benefit, it may be advisable for the public benefit corporation to consider a benefit that is more narrowly defined than the general statutory purpose of ‘operating in a responsible and sustainable manner,’ but that is also defined broadly enough to avoid having to amend the public benefit in the certificate of incorporation in the future.” Moreover, the Report contains a subsection titled “Identification of Public Benefit Purpose(s),” which states that “a public benefit corporation must identify in its certificate of incorporation one or more specific public benefits that it will pursue.” The subsection also notes that “[c]urrently, [the Company] is involved in a large number of public benefit initiatives, including advancing racial equity, investing in its employees, customers and communities and promoting sustainability” and that the Company “would need to decide which public benefit or benefits it wishes to identify in its certificate of incorporation.”

The Report also addresses the Proposal’s request to review directors’ fiduciary obligations in a Delaware public benefit corporation. In this regard, the section titled “Governance of a Public Benefit Corporation and Directors’ Fiduciary Duties” in the Report covers, in detail, the differences in fiduciary obligations of directors of a traditional Delaware corporation and a Delaware public benefit corporation, including fiduciary decision-making when interests of stakeholders conflict. In particular, the Report notes that the “principal difference between a conventional stock corporation and a public benefit corporation relates to the fiduciary duties of the directors,” explaining that in a traditional Delaware corporation “fiduciary duties are owed by the directors solely to the corporation and its stockholders,” while in a Delaware public benefit corporation, “directors are required to manage the corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation’s conduct, and the specific public benefit or benefits identified in its certificate of incorporation.” As the Report notes, in a traditional Delaware corporation, if “the interests of the stockholders and the other constituencies conflict, however, the board’s fiduciary duties require it to act in a manner that furthers the interests of the stockholders.” Nevertheless, the Report also explains that in a traditional Delaware corporation “[i]nterests of other constituencies, such as employees, customers, suppliers, creditors, the environment, the community in which the corporation operates and the like, may be (and generally are) considered in making business decisions as those interests are crucial parts of the long-term success of the corporation.” As an example of this, the Report notes that the Business Roundtable’s Statement on the Purpose of a Corporation, of which the Company’s Chairman and Chief Executive Officer is a signatory, includes a commitment by its signatories to “deliver value to their customers, invest in their employees, deal fairly and ethically with their suppliers, support the communities in which they work and generate long-term value for their stockholders.”

In addition, the Report addresses the Proposal's request to consider how the duties of board committees could be altered in the course of a conversion to a Delaware public benefit corporation. In this regard, the Report explains that "although not statutorily required, the board of directors (or a duly authorized committee thereof) of an existing corporation that converts to a public benefit corporation may also consider reviewing its bylaws, board committee charters and other governance policies and procedures to determine whether any revisions are necessary or whether any additional policies should be adopted in light of the corporation's specific public benefit purpose or purposes contained in the certificate of incorporation and the directors' fiduciary duties in connection therewith."

While the Report covers, in detail, the Proposal's specific request, it also contains a thorough discussion of competing considerations that could weigh against converting to a Delaware public benefit corporation, including risks related to such conversion. Among others, these include a lack of precedent for converting conventional corporations to public benefit corporations and regarding the governance of publicly-traded public benefit corporations, regulatory uncertainty, market uncertainty, uncertainty on the Company's ability to attract and retain employees, uncertainty on the impact of the Company's international operations and costs of implementation. Accordingly, the Report gives a balanced overview of the possibility of converting the Company to a Delaware public benefit corporation. After reviewing the Report and considering, among other things, the factors and issues outlined therein, including the Company's current commitments to stakeholders beyond shareholders and involvement in public benefit initiatives, the Corporate Governance & Nominating Committee determined that it would not be in the Company's best interests to convert to a Delaware public benefit corporation. Nevertheless, given that the Company published the Report on January 8, 2021, and the Report is publicly available on its website, the Company already has done exactly what the Proposal requests. Therefore, the Company has satisfied the Proposal's essential objective and its public disclosures compare favorably with those requested by the Proposal.

Accordingly, the Proposal has been substantially implemented and may be excluded pursuant to Rule 14a-8(i)(10).

*B. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(7) Because the Proposal Deals with Matters Relating to the Company's Ordinary Business Operations.*

Under Rule 14a-8(i)(7), a shareholder proposal may be excluded from a company's proxy materials if the proposal "deals with matters relating to the company's ordinary business operations." In Exchange Act Release No. 34-40018 (May 21, 1998) ("1998 Release"), the Commission stated that the policy underlying

the ordinary business exclusion rests on two central considerations. The first recognizes that certain 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.

In accordance with these principles, the Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). *See* 1998 Release; *see also, e.g., Abbott Laboratories* (Feb. 28, 2019) (permitting exclusion under Rule 14a-8(i)(7) on the basis of micromanagement of a proposal that requested the adoption of a policy requiring compensation committee approval of certain sales of shares by senior executives); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018) (permitting exclusion under Rule 14a-8(i)(7) on the basis of micromanagement of a proposal that requested open market share repurchase programs or stock buybacks subsequently adopted by the board not become effective until approved by shareholders); *Marriott Int'l, Inc.* (Mar. 17, 2010, *recon. denied* Apr. 19, 2010) (permitting exclusion under Rule 14a-8(i)(7) on the basis of micromanagement of a proposal requiring the installation of showerheads that deliver no more than 1.6 gallons per minute of flow, along with mechanical switches that would allow guests to control the level of water flow).

In addition, in Staff Legal Bulletin No. 14J (Oct. 23, 2018), the Staff explained that micromanagement may apply to proposals that call for a study or report and that it would, consistent with Commission guidance, consider the underlying substance of the matters addressed by the study or report to determine whether a proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies. Moreover, in Staff Legal Bulletin No. 14K (Oct. 16, 2019), the Staff indicated that micromanagement depends on the level of prescriptiveness of a proposal. Specifically, when a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted. *See, e.g., Exxon Mobil Corp.* (Mar. 6, 2020) (permitting exclusion under Rule 14a-8(i)(7) on the basis of micromanagement of a proposal that requested the board charter a new board committee on climate risk); *Johnson & Johnson* (Feb. 14, 2019) (permitting exclusion under Rule 14a-8(i)(7) on the basis of micromanagement of a proposal that urged the board to adopt a policy prohibiting adjustments to financial performance metrics to exclude compliance costs when determining executive

compensation because the proposal prohibited all adjustments without regard to specific circumstances or the possibility of reasonable exceptions).

In this instance, the Proposal attempts to micromanage the Company by prescribing a number of specific methods for implementing complex policies. In particular, the Proposal requests the publication of a report on the Company's potential conversion to a Delaware public benefit corporation, including a review of related options, such as adopting "a particular restated 'purpose' such as promoting a sustainable global economy," altering "fiduciary obligations with respect to accounting for stakeholder interests," altering the "duties of board committees, including the audit, compensation, corporate governance and nominating, and public responsibility committees" and altering "company policies or standards of decision so as to guide fiduciary decision-making when interests of stakeholders may conflict." In this regard, the Proposal seeks to impose specific methods for implementing the complex matter of determining the Company's corporate form. By requiring that the report cover the actions listed above, the Proposal removes the necessary flexibility and discretion required by management and the Board in producing the report. Moreover, the underlying substance of the report relates to the imposition of specific actions, as described in the Proposal.

The Proposal also is directly analogous to at least one example where the Staff permitted exclusion on the basis of micromanagement in *JPMorgan Chase & Co.* (Mar. 30, 2018) ("*JPMorgan 2018*"), in which the proposal not only requested a report but also specific actions that the company's management or the board would have been required to undertake. There, the report centered on certain risks associated with project and corporate lending, underwriting, advising and investing on tar sands projects and the resolved clause dictated that the report include assessments of, among other things, "short- and medium-term risk of portfolio devaluation due to stranding of high cost tar stand assets" and "[r]educing risk by establishing a specific policy, similar to that of other banks, restricting financing for tar sands projects and companies." The company argued, in relevant part, that the proposal sought the establishment of a specific policy restricting the company's financing operations, and therefore would micromanage the company's financing decisions. In granting relief under Rule 14a-8(i)(7), the Staff concluded that "the [p]roposal micromanages the [c]ompany by seeking to impose specific methods for implementing complex policies."

This Proposal seeks to micromanage the Company in the same manner as the proposal in *JPMorgan 2018*, by requesting a report that prescribes specific methods for implementing complex policies. Like in *JPMorgan 2018* where the proposal required certain actions in the company's assessment of its tar sands projects, the Proposal requests a number of specific methods relating to the complex matter of the Company's corporate form and obligations to shareholders. Matters such as the

Office of Chief Counsel  
January 11, 2021  
Page 10

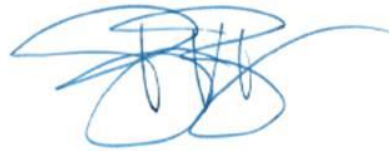
Company's corporate purpose, fiduciary obligations of directors, composition of board committees and the Company's standards and policies for decision-making entail a degree of business judgment and require flexibility on the part of management and the Board that the Proposal would eliminate through its specific request. As such, the Proposal seeks to micromanage the Company and, thus, is precisely the type of request Rule 14a-8(i)(7) is intended to prevent.

Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

Conclusion

On the basis of the foregoing, the Company respectfully requests the concurrence of the Staff that the Proposal may be excluded from the Company's proxy materials for the 2021 Annual Meeting. If you have any questions or would like any additional information regarding the foregoing, please do not hesitate to contact me at (202) 371-7180. Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "B. Breheny", with a stylized flourish extending to the right.

Brian V. Breheny

Enclosures

cc: Molly Carpenter  
Corporate Secretary  
JPMorgan Chase & Co.

John C. Harrington

EXHIBIT A

(see attached)



October 27, 2020

Via E-mail: [corporate.secretary@jpmchase.com](mailto:corporate.secretary@jpmchase.com)

JP Morgan Chase & Company  
Office of the Secretary  
4 New York Plaza  
New York, NY 10004-2413

Re: Shareholder Proposal

Dear Corporate Secretary:

As a shareholder in JP Morgan Chase & Company, I am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in the JP Morgan Chase & Company Proxy Statement for the 2021 annual meeting of shareholders.

I am the beneficial owner of at least \$2,000 worth of JP Morgan Chase & Company stock. I have held the requisite number of shares for over one year, and plan to hold sufficient shares in JP Morgan Chase & Company through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

A handwritten signature in blue ink, appearing to read "John C. Harrington", is written over a light blue circular background. The signature is fluid and cursive.

John C. Harrington  
President / CEO

Enclosures



## **JP Morgan Chase - 2021**

Whereas, our company recently signed a Business Roundtable (“BRT”) Statement that provides, “we share a fundamental commitment to all of our stakeholders . . . . We commit to deliver value to all of them, for the future success of our companies, our communities and our country,”

Whereas, the State of Delaware has adopted and recently amended a law allowing our company to become a Public Benefit Corporation (PBC) by amending our company’s Certificate of Incorporation to establish a public purpose, and to balance that interest, the shareholders’ pecuniary interests and the interests of all stakeholders materially affected by the company;

Whereas, one prominent Delaware law firm reported to another BRT signatory considering conversion to a PBC that directors may consider stakeholder interests only if “*any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholder,*”

Whereas, in the past three years, our company has spent \$59.5 billion on share buybacks, without necessary governance provisions to balance public purpose or stakeholders, so that it is unclear why this pecuniary benefit went to shareholders instead of to other stakeholder needs such as giving employees raises or investing in consumer friendly infrastructure.

Whereas, our company has pledged to help its clients come into alignment with the Paris Agreement on climate change, which will be especially challenging because our company was the world’s top funder of fossil fuels lending between 2016 through 2019 of over \$268 billion to fossil fuel companies and business entities expanding fossil fuels, according to a report, Banking on Climate Change: Fossil Fuel Finance Report Card 2020, including financing of Tar Sands Oil, Ultra-Deep Water Oil and Gas, Fracking, and Liquefied Natural Gas:

Whereas, our bank's business principles specifically pledge to “. . . strive for the best internal governance and controls” as well as to “. . . not compromise our integrity;” and

Whereas, none of these statements or pledges are part of our corporation's governance documents, including Bylaws and Articles of Incorporation;

Resolved, that shareholders request that the Board of Directors issue a report to shareholders, at reasonable expense and excluding proprietary information, exploring the implications of conversion of JP Morgan Chase to a Delaware Benefit Corporation, including:

- How a restated “purpose” such as promoting a sustainable global economy, might alter fiduciary obligations with respect to accounting for stakeholder interests;
- Whether and how public benefit status might be implemented by altering the duties of board committees, including the audit, compensation, corporate governance and nominating, and public responsibility committees;
- An analysis of how policies or standards of decision might be altered, in light of public benefit status, to guide fiduciary decision-making when interests of stakeholders may conflict, and to enable the company to operate in a responsible and sustainable manner.



October 27, 2020

John Harrington  
HARRINGTON INVEST INC 401K PLN  
1001 2nd Street Suite 325  
Napa, CA 94559

Account number ending in:

\*\*\*\*\_\*\*\*

Questions: Contact your advisor or  
call Schwab Alliance at  
1-800-515-2157.

---

**As requested, we're confirming a stock holding in your account.**

---

Dear John Harrington,

As requested, we're writing to confirm that the above account holds in trust 100 shares of JPMORGAN CHASE & CO (JPM) common stock. These shares have been held in the account continuously for at least one year since October 27, 2019.

These shares are held at Depository Trust Company under Charles Schwab & Co., Inc., which serves as custodian for the account.

**Thank you for choosing Schwab.** If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

*Seth Deibel*

Seth Deibel  
Manager, Institutional  
IST PHOENIX SERVICE  
2423 E Lincoln Dr  
Phoenix, AZ 85016-1215

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

# JPMORGAN CHASE & CO.

**Molly Carpenter**  
Corporate Secretary  
Office of the Secretary

November 2, 2020

## VIA EMAIL

John C. Harrington  
President & CEO  
Harrington Investments, Inc.  
1001 2<sup>nd</sup> Street, Suite 325  
Napa, CA 94559

Dear Mr. Harrington:

I am writing to acknowledge receipt of your letter to JPMorgan Chase & Co. (“JPMC”) on October 27, 2020, containing a submission (the “Submission”) pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, for consideration at JPMC’s 2021 Annual Meeting of Shareholders.

We believe the Submission contains a procedural deficiency, as set forth below, which Securities and Exchange Commission (“SEC”) regulations require us to bring to your attention.

### **No More Than One Proposal**

Rule 14a-8(c) provides that a shareholder may submit no more than one proposal to a company for a particular shareholders’ meeting. We believe that the Submission contains more than one shareholder proposal. The Submission requests the Board of Directors issue a report “exploring the implications of conversion of JP Morgan Chase to a Delaware Benefit Corporation, including:

- How a restated ‘purpose’ such as promoting a sustainable global economy, might alter fiduciary obligations with respect to accounting for stakeholder interests;
- Whether and how public benefit status might be implemented by altering the duties of board committees, including the audit, compensation, corporate governance and nominating, and public responsibility committees;
- An analysis of how policies or standards of decision might be altered, in light of public benefit status, to guide fiduciary decision-making when interests of stakeholders may conflict, and to enable the company to operate in a responsible and sustainable manner.”

We believe the Submission constitutes more than one proposal as the Submission seeks a report on actions by JPMC with regard to a number of separate matters. In this regard, the Submission seeks a report on changing JPMC’s corporate form and on JPMC’s corporate governance, duties of committees of the Board of Directors, and policies or standards that may guide fiduciary decision-

making. You may correct this procedural deficiency by submitting a revised submission to us that contains only a single proposal.

For your reference, please find enclosed a copy of Rule 14a-8.

For the Submission to be eligible for inclusion in JPMC's proxy materials for JPMC's 2021 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me via email to [corporate.secretary@jpmchase.com](mailto:corporate.secretary@jpmchase.com).

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Molly Carpenter", with a stylized, flowing script.

Enclosures:

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



November 10, 2020

Via E-mail: [corporate.secretary@jpmchase.com](mailto:corporate.secretary@jpmchase.com)

JP Morgan Chase & Company  
Molly Carpenter, Corporate Secretary  
Office of the Secretary  
4 New York Plaza  
New York, NY 10004-2413

Re: Shareholder Proposal

Dear Corporate Secretary Carpenter:

Enclosed is an amended version of the proposal submitted on October 27, 2020. We are submitting this amended version in response to the deficiency notice dated and received on November 2, 2020 (copy attached for your convenience).

As a shareholder in JP Morgan Chase & Company, I am filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in the JP Morgan Chase & Company Proxy Statement for the 2021 annual meeting of shareholders.

I am the beneficial owner of at least \$2,000 worth of JP Morgan Chase & Company stock. I have held the requisite number of shares for over one year, and plan to hold sufficient shares in JP Morgan Chase & Company through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included. I or a representative will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

John C. Harrington  
President / CEO  
Enclosures

Cc: Sanford Lewis, Attorney at Law ([sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net))  
Stella Lee, Senior Counsel  
JP Morgan Chase & Co.

## **JP Morgan Chase - 2021**

Whereas, our company recently signed a Business Roundtable (“BRT”) Statement that provides, “we share a fundamental commitment to all of our stakeholders . . . . We commit to deliver value to all of them, for the future success of our companies, our communities and our country,”

Whereas, the State of Delaware has adopted and recently amended a law allowing our company to become a Public Benefit Corporation (PBC) by amending our company’s Certificate of Incorporation to establish a public purpose, and to balance that interest, the shareholders’ pecuniary interests and the interests of all stakeholders materially affected by the company;

Whereas, one prominent Delaware law firm reported to another BRT signatory considering conversion to a PBC that directors may consider stakeholder interests only if “*any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholder,*”

Whereas, in the past three years, our company has spent \$59.5 billion on share buybacks, without necessary governance provisions to balance public purpose or stakeholders, so that it is unclear why this pecuniary benefit went to shareholders instead of to other stakeholder needs such as giving employees raises or investing in consumer friendly infrastructure.

Whereas, our company has pledged to help its clients come into alignment with the Paris Agreement on climate change, which will be especially challenging because our company was the world’s top funder of fossil fuels lending between 2016 through 2019 of over \$268 billion to fossil fuel companies and business entities expanding fossil fuels, according to a report, Banking on Climate Change: Fossil Fuel Finance Report Card 2020, including financing of Tar Sands Oil, Ultra-Deep Water Oil and Gas, Fracking, and Liquefied Natural Gas:

Whereas, our bank's business principles specifically pledge to "... strive for the best internal governance and controls" as well as to "... not compromise our integrity;" and

Whereas, none of these statements or pledges are part of our corporation's governance documents, including Bylaws and Articles of Incorporation;

Resolved, that shareholders request that the Board of Directors issue a report to shareholders, at reasonable expense and excluding proprietary information, regarding potential conversion of JP Morgan Chase to a Delaware Public Benefit Corporation, including review of options, in the course of such a conversion, for the company to:

- Adopt a particular restated "purpose" such as promoting a sustainable global economy;
- Alter fiduciary obligations with respect to accounting for stakeholder interests;
- Alter duties of board committees, including the audit, compensation, corporate governance and nominating, and public responsibility committees;
- Alter company policies or standards of decision so as to guide fiduciary decision-making when interests of stakeholders may conflict, and/or
- Enable the company to operate in a responsible and sustainable manner.





November 10, 2020

JOHN C HARRINGTON TTEE  
HARRINGTON INVEST INC 401K PLN  
1001 2nd Street Suite 325  
Napa, CA 94559

Account number ending in:

\*\*\*\*.\*\*\*

Questions: Contact your advisor or  
call Schwab Alliance at  
1-800-515-2157.

---

**As requested, we're confirming a stock holding in your account.**

---

Dear John Harrington,

As requested, we're writing to confirm that the above account holds in trust 100 shares of JPMORGAN CHASE & CO (JPM) common stock. These shares have been held in the account continuously for at least one year since November 10, 2019.

These shares are held at Depository Trust Company under Charles Schwab & Co., Inc., which serves as custodian for the account.

**Thank you for choosing Schwab.** If you have questions, please contact your advisor or Schwab Alliance at 1-800-515-2157. We appreciate your business and look forward to serving you in the future.

Sincerely,

*Seth Deibel*

Seth Deibel  
Manager, Institutional  
IST PHOENIX SERVICE  
2423 E Lincoln Dr  
Phoenix, AZ 85016-1215

Independent investment advisors are not owned by, affiliated with, or supervised by Charles Schwab & Co., Inc. ("Schwab").

EXHIBIT B

(see attached)

## **REPORT TO THE BOARD OF DIRECTORS OF JPMORGAN CHASE & CO. REGARDING PUBLIC BENEFIT CORPORATIONS**

JPMorgan Chase & Co. (the “Company” or “JPMorgan Chase”) received a shareholder proposal (the “Proposal”) for its 2021 annual meeting of stockholders asking its Board of Directors (the “Board”) to issue a report to stockholders regarding a potential conversion of JPMorgan Chase to a Delaware public benefit corporation. The Board engaged us to assist it in identifying any Delaware law issues associated with such potential conversion and to prepare the report requested in the Proposal. Set forth below is our summary of Delaware law regarding Delaware public benefit corporations and the report in response to the Proposal.

### **A. Statutory Requirements to Become a Delaware Public Benefit Corporation**

The following section provides an overview of notable Delaware statutory requirements applicable to JPMorgan Chase becoming a Delaware public benefit corporation, as well as information regarding the management and governance of a public benefit corporation.

#### *Background on Delaware Public Benefit Corporations*

JPMorgan Chase is incorporated in the State of Delaware. Since 2013, Delaware law has permitted the organization of “public benefit corporations,” which are for-profit corporations organized under and subject to the General Corporation Law of the State of Delaware (the “DGCL”), that are “intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner.” 8 Del. C. § 362(a). The DGCL defines a “public benefit” as “a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature.” 8 Del. C. § 362(b). Unlike a conventional corporation where director duties are defined by common law fiduciary duty principles and not by statute, when a corporation elects to become a public benefit corporation, the DGCL provides that the directors have a statutory duty to manage the corporation in a manner that balances the stockholders’ pecuniary interests, the best interests of those materially affected by the corporation’s conduct, and the specific public benefit or benefits identified in the corporation’s certificate of incorporation. 8 Del. C. §§ 362(a), 365(a).

#### *Process of Becoming a Delaware Public Benefit Corporation*

An existing corporation that is not a public benefit corporation, such as JPMorgan Chase, may become a public benefit corporation by either amending its certificate of incorporation or by

■ ■ ■

merging with or into a public benefit corporation. An amendment to the certificate of incorporation to become a public benefit corporation would require the approval of the board of directors and the holders of a majority of the outstanding shares of stock of the corporation entitled to vote thereon. 8 *Del. C.* § 242. The certificate of incorporation would need to be amended so that (i) the “heading” states that the corporation is a public benefit corporation,<sup>1</sup> and (ii) the purpose clause identifies one or more specific public benefits to be promoted by the corporation.<sup>2</sup> 8 *Del. C.* § 362(a). Similarly, a merger into a public benefit corporation would require the approval of the board of directors and the holders of a majority of the outstanding stock of the corporation entitled to vote thereon.<sup>3</sup> See, e.g., 8 *Del. C.* § 251. In either case, in order to convert to a public benefit corporation, the Board would need to determine that becoming a public benefit corporation is advisable and in the best interests of JPMorgan Chase and its stockholders.

### *Appraisal Rights in Connection with a Conversion to a Public Benefit Corporation*

The DGCL was amended effective July 16, 2020 to eliminate appraisal rights in connection with the conversion of an existing corporation to a public benefit corporation either by amendment to the certificate of incorporation or by merger unless appraisal rights would otherwise be available under the DGCL. See 8 *Del. C.* § 262.<sup>4</sup>

---

<sup>1</sup> The heading of the certificate of incorporation is different from the name of the corporation. The name of the corporation is not required to include the words “public benefit corporation” or any related abbreviation or designation (such as P.B.C. or PBC). The heading is the title of the document. For example, the heading of the certificate of incorporation of a public benefit corporation could provide as follows: Certificate of Incorporation of ABC Corporation (a public benefit corporation).

<sup>2</sup> As described above, public benefit corporations are intended to operate in a responsible and sustainable manner and to produce a specific public benefit or benefits. In selecting its specific public benefit, it may be advisable for the public benefit corporation to consider a benefit that is more narrowly defined than the general statutory purpose of “operating in a responsible and sustainable manner,” but that is also defined broadly enough to avoid having to amend the public benefit in the certificate of incorporation in the future. For example, the public benefit contained in the certificate of incorporation of Laureate Education, Inc. is to “provide a positive effect (or a reduction of negative effects) for society and persons by offering diverse education programs delivered online and on premises operated in the communities that [it] serve[s], as the board of directors may from time to time determine to be appropriate and within the Corporation’s overall education mission.”

<sup>3</sup> Note that if such a merger is structured so that JPMorgan Chase merges with and into a public benefit corporation, JPMorgan Chase’s third-party contracts would need to be reviewed to determine how a merger through which JPMorgan Chase merges out of existence would affect its existing contracts.

<sup>4</sup> JPMorgan Chase’s Restated Certificate of Incorporation, as amended (the “Restated Certificate of Incorporation”), does not provide for appraisal rights in connection with an amendment to the Restated Certificate of Incorporation. With respect to a merger into a public benefit corporation, the holders of JPMorgan Chase common stock would not have appraisal rights unless the common stockholders are required to accept anything for their shares other than publicly traded shares of stock, cash in lieu of fractional shares or any combination thereof. 8 *Del. C.* §

## *Governance of a Public Benefit Corporation and Directors' Fiduciary Duties*

Delaware laws governing the internal affairs of a conventional stock corporation are generally applicable to a public benefit corporation. The principal difference between a conventional stock corporation and a public benefit corporation relates to the fiduciary duties of the directors. In a conventional solvent stock corporation, fiduciary duties are owed by the directors solely to the corporation and its stockholders. Interests of other constituencies, such as employees, customers, suppliers, creditors, the environment, the community in which the corporation operates and the like, may be (and generally are) considered in making business decisions as those interests are crucial parts of the long-term success of the corporation. For example, the Business Roundtable Statement on the Purpose of a Corporation, of which JPMorgan Chase's Chief Executive Officer is a signatory, includes a commitment by all signatories to deliver value to their customers, invest in their employees, deal fairly and ethically with their suppliers, support the communities in which they work and generate long-term value for their stockholders. Because the interests of customers, employees, suppliers and the community in general are often key to the success of the corporation (and therefore are aligned with the interests of the corporation's stockholders), directors of conventional corporations may, consistent with their fiduciary duties, consider such stakeholder interests in making decisions. If the interests of the stockholders and the other constituencies conflict, however, the board's fiduciary duties require it to act in a manner that furthers the interests of the stockholders.

In a public benefit corporation, on the other hand, directors are required to manage the corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or benefits identified in its certificate of incorporation. 8 *Del. C.* § 365(a). For any decision made by the directors of a public benefit corporation, each director is deemed to have satisfied his or her fiduciary duties to stockholders and the corporation to manage the corporation in a manner that satisfies his or her duties under Section 365(a) if his or her decision is informed and disinterested and not such that no person of ordinary, sound judgment would approve. 8 *Del. C.* § 365(b). For purposes of considering whether a director is disinterested, a director's ownership of or other interest in the stock of the public benefit corporation will not alone create a conflict of interest on the part of the director with respect to any decision implicating the director's balancing requirements, except to the extent that such ownership or other interest would create a conflict of interest if the corporation were not a public benefit corporation. 8 *Del. C.* § 365(c). In addition, absent a conflict of interest, no failure to satisfy the balancing requirements will, for purposes of Section 102(b)(7) of the DGCL (which generally exculpates directors against personal liability for monetary damages for breaches of the duty of care) or Section 145 of the DGCL (which governs rights to indemnification, subject in certain cases, to the indemnitee having met specific standards of conduct), constitute an act or omission not in good faith or a breach of the duty of loyalty, unless the certificate of incorporation otherwise provides. *Id.*

---

262(b)(2). However, appraisal rights may be available to the holders of outstanding shares of certain series of JPMorgan Chase preferred stock (if such series are neither listed on a national securities exchange nor held of record by more than 2,000 holders). 8 *Del. C.* § 262(b).

Thus, unlike in a conventional corporation, directors of a public benefit corporation are required to consider the interests of constituencies other than stockholders in making business decisions, and where the pecuniary interests of stockholders and one or more of the corporation's other constituencies conflict, the directors are obligated to balance the competing interests. Unlike in a conventional corporation, in balancing the pecuniary interests of stockholders and the interests of all of the corporation's various constituencies, the board of directors is obligated to select an option that balances the interests of all the corporation's constituencies. If the board of directors is disinterested and fully informed and makes a decision is not such that no person of ordinary, sound judgement would approve, the board of directors is permitted to choose an alternative that is in the best interests of the corporation when balancing the interests of the corporation's various constituencies, even if it is not the best one from the standpoint of the pecuniary interests of the stockholders.

Notwithstanding the requirement that directors consider and balance the pecuniary interests of stockholders and those of the corporation's other constituencies, the DGCL provides that a director of a public benefit corporation does not, by virtue of the public benefit provisions, have any duty to any person that is not a stockholder on account of such person's interests in the public benefit(s) identified in the certificate of incorporation or on account of any interest materially affected by the corporation's conduct. 8 *Del. C.* § 365(b). Only stockholders of public benefit corporations who own individually or collectively at least 2% of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of such percentage or shares of the corporation with a market value of at least \$2 million as of the date the action is filed, may bring any action (including individual, derivative or any other type of action) to enforce the balancing requirement of Section 365(a) of the DGCL. 8 *Del. C.* § 367.

#### *Other Statutory Considerations and Requirements*

In addition, the following statutory requirements currently apply to a Delaware public benefit corporation:

- Any stock certificates shall note conspicuously that the corporation is a public benefit corporation, and any notice given to holders of uncertificated shares pursuant to Section 151(f) of the DGCL shall state conspicuously that the corporation is a public benefit corporation. 8 *Del. C.* § 364.
- Any notice of a meeting of stockholders must include a statement that it is a public benefit corporation. 8 *Del. C.* § 366(a).
- It must, no less than biennially, provide stockholders with a statement as to the corporation's promotion of the public benefit identified in the certificate of incorporation and of the best interests of those materially affected by the corporation's conduct. 8 *Del. C.* § 366(b).

Also, although not statutorily required, the board of directors (or a duly authorized committee thereof) of an existing corporation that converts to a public benefit corporation may also consider reviewing its bylaws, board committee charters and other governance policies and procedures to determine whether any revisions are necessary or whether any additional policies

should be adopted in light of the corporation's specific public benefit purpose or purposes contained in the certificate of incorporation and the directors' fiduciary duties in connection therewith.

## **B. Other Relevant Factors and Considerations**

In addition to the above, converting to a public benefit corporation would raise a large number of logistical, regulatory and practical issues and considerations that would need to be investigated and considered including but not limited to, those described below.

### *Ability to Obtain the Requisite Stockholder Vote in Connection with a Conversion to a Public Benefit Corporation is Uncertain*

Conversion to a Delaware public benefit corporation is only permitted if approved by the holders of at least a majority of JPMorgan Chase's outstanding shares of common stock. To date, no publicly traded Delaware corporation has converted to a public benefit corporation or sought a stockholder vote seeking authorization for converting to a public benefit corporation, so it is uncertain whether the necessary stockholder vote can be obtained. To date, proxy advisors such as Institutional Shareholder Services and Glass Lewis have not published positions on whether they would support proposals to convert to a public benefit corporation. Likewise, the voting policies of large institutional investors are silent on this issue.

### *Lack of Precedent for Converting Conventional Corporations to Benefit Corporations*

To our knowledge, no U.S. publicly traded corporation has converted to a public benefit corporation. As noted above, in order for a Delaware corporation to convert to a benefit corporation, the board of directors would have to determine that it is advisable and in the best interests of the corporation and its stockholders to do so. Converting would require the Board to determine, in the exercise of its business judgment, that converting to a public benefit corporation would be more beneficial in the long run to the corporation and its stockholders than continuing to operate as a conventional corporation. There is no direct precedent to which the Board could look in making that decision, though the experience of the several companies that have gone public as public benefit corporations could provide some reference points.

### *Ability of Directors of Conventional Delaware Corporations to Consider the Interests of Stakeholders*

The directors of conventional Delaware corporations are permitted to (and generally do) consider the interests of stakeholders of the corporation other than stockholders in making business decisions, and in many cases, the interests of the corporation's customers, employees and the communities in which the corporation operates are a critical component of the corporation's ability to be successful and to maximize the value of the corporation in the long term. JPMorgan Chase's Chief Executive Officer is a signatory to the Business Roundtable Statement on the Purpose of a Corporation, in which the signatories commit to deliver value to all of their company's customers, employees, suppliers, communities and stockholders for the future success of each of the companies, their communities and the country. Further, JPMorgan Chase is subject to regulation by a number of state and federal bank regulatory agencies that take into account the interests of

constituencies other than stockholders in their regulatory oversight functions.<sup>5</sup> Finally, JPMorgan Chase is engaged in a number of public benefit activities and initiatives that benefit the communities in which it operates under its existing corporate governance structure and periodically publishes public reports describing those activities and initiatives. All of these actions are permissible for directors of a conventional corporation under existing law so long as they are in the long-term best interests of the corporation and its stockholders.<sup>6</sup>

### *Lack of Precedent Regarding the Governance of Publicly Traded Public Benefit Corporations*

To our knowledge, only three U.S. corporations have gone public as public benefit corporations.<sup>7</sup> There are no major publicly traded financial institutions that are public benefit corporations. There is considerable case law upon which the board of directors of a conventional corporation can rely as to its fiduciary duties in various situations, which is not the case for a public benefit corporation. To date there has been no litigation brought against a public benefit corporation alleging breach of duty by its directors, and there is no case law interpreting or applying the provisions of Section 365 of the DGCL in a decision-making context. As a result, there is no precedent and therefore less certainty regarding decision-making in a public benefit corporation, particularly where the interests of stockholders and other stakeholders or the public benefit diverge and the board of directors is required to balance those divergent interests. In light of the lack of precedent and the uncertainty regarding decision-making for a public benefit

---

<sup>5</sup> The Federal Deposit Insurance Corporation, among other things, “examines and supervises financial institutions for safety, soundness, and consumer protection.” <https://www.fdic.gov/about/>. The Consumer Financial Protection Bureau, among other things, “aim[s] to make consumer financial markets work for consumers, responsible providers, and the economy as a whole.” <https://www.consumerfinance.gov/about-us/>. The Office of the Comptroller of the Currency, among other things, “ensures that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.” <https://www.occ.treas.gov/about/what-we-do/index-what-we-do.html>. The Board of Governors of the Federal Reserve System “performs five general functions to promote the effective operation of the U.S. economy and, more generally, the public interest.” <https://www.federalreserve.gov/aboutthefed.htm>. The Securities and Exchange Commission, among other things, works “to make a positive impact on America’s economy, our capital markets, and people’s lives.” <https://www.sec.gov/about/what-we-do>.

<sup>6</sup> See *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 33 (Del. Ch. 2010) (noting that, for conventional corporations, “[p]romoting, protecting, or pursuing nonstockholder considerations must lead at some point to value for stockholders”); *Revlon Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 183 (Del. 1986) (noting that, with respect to conventional corporations, “[a] board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders”).

<sup>7</sup> Laureate Education, Inc., a for-profit education company, completed its initial public offering in February 2017 and is listed on the Nasdaq Stock Market. Lemonade, Inc., a for-profit insurance company, completed its initial public offering in July 2020 and is listed on the New York Stock Exchange. Vital Farms, Inc., a for-profit food company, completed its initial public offering in November 2020 and is listed on the Nasdaq Stock Market.



corporation, it is difficult to predict the impact, if any, that conversion to a public benefit corporation could have on JPMorgan Chase's ability to attract and retain experienced and qualified directors. Given the ability of directors of conventional corporations to take into account interests of constituencies other than stockholders when it is in the long-term best interests of the corporation and its stockholders to do so, it is unclear whether the conversion to a public benefit corporation would have a material impact on the outcome of any decision before the board of directors.

### *Regulatory Uncertainty and Oversight by Financial Regulators*

As a large financial institution, JPMorgan Chase is subject to review and examination by a number of regulatory agencies, including, among others, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Securities and Exchange Commission and the Commodities Futures Trading Commission. Compliance with the rules and regulations of these authorities allows JPMorgan Chase to continue to do business as a financial institution. The views of such authorities, as well as JPMorgan Chase's ability to comply with the applicable rules and regulations of such authorities, could impact JPMorgan Chase's ability to convert to a public benefit corporation and, following conversion, its ability to take certain actions needed to achieve its specific public benefit purpose.

### *Market Uncertainty*

Due to the lack of precedent for a publicly traded company (let alone a major financial institution) converting to a public benefit corporation, it is difficult to predict the impact, if any, such actions would have on a company's short- and long-term stock price, market capitalization and overall operational and financial performance. In addition, it is difficult to predict how the failure to achieve (or the perceived failure to achieve) the corporation's specific public benefit purpose could impact the corporation's reputation, overall operational and financial performance and stock price. We believe it would be advisable for a corporation considering converting to a public benefit corporation to obtain advice from a financial advisor on these issues.

### *Uncertain Impact on Ability to Attract and Retain Employees*

Due to lack of precedent for a publicly traded company (let alone a large public corporation with 250,000 employees in more than 60 jurisdictions), converting to a public benefit corporation and the resulting uncertainty with respect to the effect of doing so on a company's short- and long-term stock price, market capitalization and overall operational and financial performance, it is difficult to predict the impact, if any, such action could have on JPMorgan Chase's ability to attract

and retain employees and, in connection therewith, to compete for employees with other companies that are not public benefit corporations.

### *Uncertain Impact on International Operations*

JPMorgan Chase currently operates in 60 international jurisdictions and the impact, if any, of converting to a public benefit corporation would need to be reviewed in each of the jurisdictions where JPMorgan Chase currently operates.

### *Identification of Public Benefit Purpose(s)*

As noted above, a public benefit corporation must identify in its certificate of incorporation one or more specific public benefits that it will pursue. Currently, JPMorgan Chase is involved in a large number of public benefit initiatives, including advancing racial equity, investing in its employees, customers and communities and promoting sustainability as described in further detail in the 2019 Environmental, Social & Governance Report maintained on JPMorgan Chase's website. JPMorgan Chase would need to decide which public benefit or benefits it wishes to identify in its certificate of incorporation.

### *Costs of Implementation*

The costs of converting to a public benefit corporation could include, but are not limited to, (i) the fees and expenses of legal and other advisors in connection with researching the issues noted above and any other issues identified in connection with the conversion and management of the corporation as a public benefit corporation; (ii) if the conversion to a public benefit corporation is accomplished by merger, the costs, fees and expenses incurred in connection with any appraisal proceedings that may be filed by certain holders of preferred stock; (iii) the fees and expenses incurred in connection with any stockholder litigation relating to the conversion; (iv) the costs of soliciting stockholder approval of the conversion to a public benefit corporation; (v) the costs of preparing the biennial statement to stockholders (as described above) and (vi) if applicable, the costs of obtaining and maintaining a third party certification (as described below). In addition, a public benefit corporation could be subject to derivative litigation claiming that the directors failed to balance stockholder and public benefit interests which could be costly and could distract management from executing on the corporation's strategy.

### *Considerations Regarding Whether to Obtain Third Party Certification*

While not required by the DGCL, some public benefit corporations<sup>8</sup> have elected to obtain a certification with respect to their benefit corporation status from B Lab, a third-party non-profit organization. The three U.S. publicly traded public benefit corporations have obtained such a certification. In order to obtain such a certification, a company is required to undertake an

---

<sup>8</sup> While conventional corporations may also elect to obtain a certification from B Lab, in order to be certified, a company is "legally required to consider the impact of their decisions on all their stakeholders." In order to do this, a corporation must update its certificate of incorporation, convert to a public benefit corporation or make other similar structural changes within a specific time period. <https://bcorporation.net/certification/legal-requirements>.

assessment of its impact on society and the environment against the proprietary criteria established by B Lab. According to B Lab, the assessment is intended to evaluate how a company's operations and business model impacts its employees, suppliers, community and the environment using a 200 point scale determined by B Lab. After completing the assessment, B Lab will verify the company's score to determine if it meets the 80 point minimum that B Lab has determined is required for certification. Every company that is certified is required to disclose its assessment score on B Lab's website. Companies that have obtained such certifications and that desire to continue to be certified are required to renew such certifications and verify their updated scores with B Lab every three years. The costs to be paid to B Lab for such certification (and the renewals of the certification) are determined based on each company's annual revenue. Because there are only three U.S. publicly traded public benefit corporations, the effect of obtaining and maintaining such a certification on a company's business is not clear. In addition, it is unknown whether the regulatory oversight to which JPMorgan Chase is subject could restrict, delay or otherwise interfere with JPMorgan Chase's ability to obtain such certification. Were JPMorgan Chase to decide to convert to a public benefit corporation, it would need to determine, after researching the issues noted above, whether to seek a third party assessment of JPMorgan Chase's impact on society and environment (including addressing the promotion of the public benefit or benefits identified in its certificate of incorporation) and to obtain a certification in connection therewith.

#### *Other Potential Risk Factors*

In addition, the corporations that have gone public as public benefit corporations have identified a number of risk factors specifically related to their status as public benefit corporations, including the following:

- i. The corporation's status as a public benefit corporation may not result in the anticipated public benefits;
- ii. The corporation's focus on a specific benefit purpose and producing a positive effect for society may negatively impact the corporation's financial performance;
- iii. The corporation cannot provide any assurance that it will achieve its public benefit purpose;
- iv. The board's duty to balance a variety of interests may result in actions that do not maximize stockholder value;
- v. The corporation may be subject to increased derivative litigation concerning the board's duty to balance stockholder and public benefit interests, the occurrence of which may have an adverse impact on the corporation's financial condition and results of operations; and
- vi. If the corporation loses its third party certification or its reported third party score declines, or if state or federal regulators restrict, delay, or otherwise interfere with the corporation's ability to achieve its public benefit, the corporation's reputation could be harmed and its business could be adversely affected.

Dated: January 5, 2021

# JPMORGAN CHASE & CO.

## **RESPONSE OF THE BOARD OF DIRECTORS OF JPMORGAN CHASE & CO.**

After reviewing Richards, Layton & Finger's report on the potential conversion of JPMorgan Chase & Co. ("JPMC") to a Delaware public benefit corporation (the "Report") and considering, among other things, the factors and issues outlined in the Report, the Board of Directors, acting through its Corporate Governance & Nominating Committee, determined that it would not be in JPMC's best interests to convert to a Delaware public benefit corporation.

Dated: January 7, 2021