

# GIBSON, DUNN & CRUTCHER LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
INCLUDING PROFESSIONAL CORPORATIONS

1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306

(202) 955-8500

www.gibsondunn.com

jolson@gibsondunn.com

January 10, 2008

RECEIVED  
2008 JAN 11 PM 1:30  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Direct Dial  
(202) 955-8522

Fax No.  
(202) 530-9574

Client No.  
C 62344-00015

**VIA HAND DELIVERY**

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

Re: *Shareholder Proposal of the American Federation of State, County and  
Municipal Employees Pension Plan and the North Carolina Equity  
Investment Fund Pooled Trust  
Exchange Act of 1934—Rule 14a-8*

Dear Ladies and Gentlemen:

This letter is to inform you that our client, JPMorgan Chase & Co. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2008 Annual Meeting of Shareholders (collectively, the "2008 Proxy Materials") a shareholder proposal and statements in support thereof (the "Proposal") received from the American Federation of State, County and Municipal Employees Pension Plan and the North Carolina Equity Investment Fund Pooled Trust (collectively, the "Proponents").

Pursuant to Rule 14a-8(j), we have:

- enclosed herewith six (6) copies of this letter and its attachments; and
- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) provides that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Securities and Exchange Commission (the "Commission") or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponents that if the

# GIBSON, DUNN & CRUTCHER LLP

Office of Chief Counsel

Division of Corporation Finance

January 10, 2008

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Proponents elect to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k).

## THE PROPOSAL

The Proposal states:

RESOLVED, pursuant to Section 10.02 of the By-laws of JPMorgan Chase & Co. and section 109(a) of the Delaware General Corporation Law, the stockholders amend the By-laws to add the following section 2.10:

“The Corporation shall include in its proxy materials for a meeting of stockholders the name, together with the Disclosure and Statement (defined below), of any person nominated for election to the Board (“Candidate”) by a stockholder or group thereof satisfying the requirements of this section 2.10 (the “Nominator”), and shall allow stockholders to vote with respect to such Candidate on the Corporation’s proxy card. A Nominator may nominate up to two candidates for inclusion in the proxy statement for a meeting, unless more than one Nominator seeks inclusion of Candidates, in which case (a) each Nominator may include only one Candidate and (b) Candidates will be included in the order in which the Nominator satisfies the requirements set forth below, until the number of Candidates nominated by the Nominators equals (i) 50% of the Directors to be elected at the meeting minus (ii) one.

A Nominator must:

- (a) beneficially own 3% or more of the Corporation’s outstanding common stock for at least two years;
- (b) provide written notice received by the Secretary within the time period specified in Section 1.09(a)(2)(annual meeting) or (b)(2)(special meeting); such notice shall contain (i) with respect to each Candidate, (A) the information required by Items 5(b) and 7 of SEC Schedule 14A and (B) such Candidate’s consent to being named in the proxy statement and to serving as a director if elected; and (ii) with respect to the Nominator, the information required by Items 4(b) and 5(b) of Schedule 14A (with separate disclosure for each stockholder in a group) (all disclosure in this section 2.10(b) is the “Disclosure”); and
- (c) execute an undertaking that it agrees to (i) assume all liability arising out of any violation of law or regulation in connection with the Nominator’s communications with stockholders of the Corporation, including the

**GIBSON, DUNN & CRUTCHER LLP**

Office of Chief Counsel  
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Disclosure; (ii) to the extent it uses soliciting material other than the Corporation's proxy materials, comply with all laws and regulations relating thereto.

The Nominator may furnish a 500-word statement in support of each Candidate's election (the "Statement"), which the Corporation shall include in the proxy statement. The Board shall adopt a procedure for timely resolving disputes over whether the Disclosure and Statement comply with SEC rules, including 14a-9."

A copy of the Proposal, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.

The Company intends to file its definitive 2008 Proxy Materials with the Commission on or about March 31, 2008.

**BASIS FOR EXCLUSION**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2008 Proxy Materials pursuant to Rule 14a-8(i)(8) because the Proposal would establish procedures relating to a nomination or election for membership on the Company's Board of Directors.

**ANALYSIS**

**The Proposal May Be Excluded under Rule 14a-8(i)(8) Because the Proposal Would Establish Procedures Relating to a Nomination or Election for Membership on the Company's Board of Directors.**

In December 2007, the Commission amended Rule 14a-8(i)(8) to state that a shareholder proposal may be excluded if the proposal "relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election." As discussed below, the Proposal is excludable under Rule 14a-8(i)(8) since by its terms the Proposal would establish procedures that relate to the nomination and election of directors.<sup>1</sup>

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<sup>1</sup> The Proposal would be excludable under Rule 14a-8(i)(8) – i.e., even if the provision had not been amended – in light of the prior version's text and its longstanding interpretation by the Commission, including the Commission's authoritative interpretation in recent rulemaking. *See* Exchange Act Release No. 56161 (July 27, 2007) (confirming the Commission's longstanding position that shareholder proposals that would result in an election contest, either in the current year or a subsequent year, may be excluded under Rule 14a-8(i)(8)); *see*

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## *A. Adopting Release.*

Following the analysis of comments received on the proposed amendment to Rule 14a-8(i)(8) as set forth in Exchange Act Release No. 56161 (July 27, 2007) (the "Interpretive and Proposing Release"), in December 2007, the Commission adopted the amendment to Rule 14a-8(i)(8), as proposed. *See* Exchange Act Release No. 56914 (Dec. 6, 2007) (the "Adopting Release"). By doing so, the Commission reiterated and codified its longstanding position that shareholder proposals relating to procedures for the election of directors are excludable. Prior to its amendment in December 2007, Rule 14a-8(i)(8) permitted the exclusion of a shareholder proposal that "relates to an election for membership on the company's board of directors or analogous governing body." The amended Rule 14a-8(i)(8) now provides that a proposal may be excluded if it "relates to a nomination or an election for membership on the company's board of directors . . . or a procedure for such nomination or election." In the Adopting Release, the Commission emphasized that the term "procedures" in the election exclusion "relates to procedures that would result in a contested election either in the year in which the proposal is submitted or in any subsequent year," thus evidencing the Commission's clear intent, consistent with its longstanding interpretation, that the Rule 14a-8(i)(8) exclusion be applied to exclude proposals that would result in a contested election of directors, regardless of whether a contest would result immediately or subsequently. As the Commission explained in the Adopting Release:

We are acting today to state clearly that the phrase "relates to an election" in the election exclusion cannot be read so narrowly as to refer only to a proposal that relates to the current election, or a particular election, but rather must be read to refer to a proposal that "relates to an election" in subsequent years as well. In this regard, if one looked only to what a proposal accomplished in the current year, and not to its effect in subsequent years, the purpose of the exclusion could be evaded easily.

Specifically, the purpose of the exclusion in Rule 14a-8(i)(8) is to prevent the establishment of procedures that could circumvent those protections of the federal proxy rules that are triggered by a proxy contest. As the Commission explained in the Adopting Release:

[W]ere the election exclusion not available for proposals that would establish a process for the election of directors that circumvents the proxy disclosure rules, it would be possible for a person to wage an election contest without providing the disclosures required by the Commission's present rules governing such contests. Additionally, false and misleading disclosure in connection with such an election contest could potentially

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[Footnote continued from previous page]

*also* Exchange Act Release No. 56914 (Dec. 6, 2007) (reiterating and codifying after public comment the Commission's longstanding interpretation).

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Office of Chief Counsel  
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occur without liability under Exchange Act Rule 14a-9 for material misrepresentations made in a proxy solicitation.

The Commission further said that it agreed with the determinations of the Staff “that shareholder proposals that may result in a contested election – including those which establish a procedure to list shareholder-nominated director candidates in the company’s proxy materials – fall within the election exclusion.”

In the Adopting Release, the Commission also emphasized the need for clarity and certainty in the 2008 proxy season, stating: “It is our intention that this [amendment] will enable shareholders and companies to know with certainty whether a proposal may or may not be excluded under Rule 14a-8(i)(8).” The Commission further noted that the amendment “will facilitate the [S]taff’s efforts in reviewing no-action requests and interpreting Rule 14a-8 with certainty in responding to requests for no-action letters during the 2008 proxy season.”

*B. The Proposal Establishes Procedures Relating to a Nomination or Election for Membership on the Company’s Board of Directors.*

In furtherance of this goal, we request that the Commission concur that the Proposal be excluded under Rule 14a-8(i)(8) because it would establish a procedure that relates to the nomination and election of directors. Specifically, the Proposal provides that “Nominators” may nominate candidates for the Board of Directors and that the names of such candidates must be included in the Company’s proxy materials. This plainly falls within the terms of Rule 14a-8(i)(8).

We note also that the Proposal, if adopted, may result in contested elections of directors, as the Company’s Board of Directors nominates a sufficient number of candidates for all available seats on the Board of Directors. If shareholders nominated director candidates in accordance with the Proposal, the Proposal would require the Company to include in its proxy materials the additional candidates who would run in opposition to the Board’s candidates for a fixed number of seats, thus resulting in a contested election.

Accordingly, we believe that the Proposal may be properly excluded from the 2008 Proxy Materials under Rule 14a-8(i)(8), and we request that the Staff concur in our conclusion.

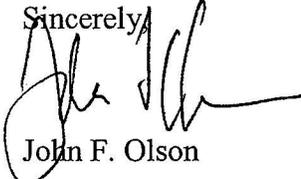
## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2008 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Moreover, the Company agrees to promptly forward to the Proponents any response from the Staff to this no-action request that the Staff transmits by facsimile to the Company only.

**GIBSON, DUNN & CRUTCHER LLP**

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If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8522, my colleague, Amy L. Goodman, at (202) 955-8653 or Anthony J. Horan, the Company's Corporate Secretary, at (212) 270-7122.

Sincerely,  
  
John F. Olson

Enclosures

cc: Anthony J. Horan, JPMorgan Chase & Co.  
Gerald W. McEntee, American Federation of State, County and Municipal Employees  
Pension Plan  
Lisa Schneider, North Carolina Equity Investment Fund Pooled Trust

**EXHIBIT A**



RECEIVED BY THE  
OFFICE OF THE SECRETARY

NOV 28 2007

Committee  
Gerald W. McEntee  
William Lucy  
Edward J. Keller  
Kathy J. Sackman  
Henry C. Scheff

## EMPLOYEES PENSION PLAN

November 27, 2007

**Via Overnight Mail and Telecopier (212) 270-4240**

JPMorgan Chase & Co.  
270 Park Avenue  
New York, NY 10017  
Attention: Anthony J. Horan, Corporate Secretary

Dear Mr. Horan:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to give notice that pursuant to the 2007 proxy statement of JPMorgan Chase (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Plan intends to present the attached proposal (the "Proposal") at the 2008 annual meeting of shareholders (the "Annual Meeting"). The Plan is the beneficial owner of 57,395 shares of voting common stock (the "Shares") of the Company, and has held the Shares for over one year. In addition, the Plan intends to hold the Shares through the date on which the Annual Meeting is held.

The Proposal is attached. I represent that the Plan or its agent intends to appear in person or by proxy at the Annual Meeting to present the Proposal. I declare that the Plan has no "material interest" other than that believed to be shared by stockholders of the Company generally. Please direct all questions or correspondence regarding the Proposal to Charles Jurgonis at (202) 429-1007.

Sincerely,

GERALD W. McENTEE  
Chairman

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 775-8142 FAX (202) 785-4606 1625 L Street, N.W., Washington, D.C. 20036-5687

RESOLVED, pursuant to Section 10.02 of the By-laws of JPMorgan Chase & Co. and section 109(a) of the Delaware General Corporation Law, the stockholders amend the By-laws to add the following section 2.10:

“The Corporation shall include in its proxy materials for a meeting of stockholders the name, together with the Disclosure and Statement (defined below), of any person nominated for election to the Board (“Candidate”) by a stockholder or group thereof satisfying the requirements of this section 2.10 (the “Nominator”), and shall allow stockholders to vote with respect to such Candidate on the Corporation’s proxy card. A Nominator may nominate up to two Candidates for inclusion in the proxy statement for a meeting, unless more than one Nominator seeks inclusion of Candidates, in which case (a) each Nominator may include only one Candidate and (b) Candidates will be included in the order in which the Nominator satisfies the requirements set forth below, until the number of Candidates nominated by Nominators equals (i) 50% of the Directors to be elected at the meeting minus (ii) one.

A Nominator must:

- (a) beneficially own 3% or more of the Corporation’s outstanding common stock for at least two years;
- (b) provide written notice received by the Secretary within the time period specified in Section 1.09(a)(2)(annual meeting) or (b)(2)(special meeting); such notice shall contain (i) with respect to each Candidate, (A) the information required by Items 5(b) and 7 of SEC Schedule 14A and (B) such Candidate’s consent to being named in the proxy statement and to serving as a director if elected; and (ii) with respect to the Nominator, the information required by Items 4(b) and 5(b) of Schedule 14A (with separate disclosure for each stockholder in a group) (all disclosure in this section 2.10(b) is the “Disclosure”); and
- (c) execute an undertaking that it agrees to (i) assume all liability arising out of any violation of law or regulation in connection with the Nominator’s communications with stockholders of the Corporation, including the Disclosure; (ii) to the extent it uses soliciting material other than the Corporation’s proxy materials, comply with all laws and regulations relating thereto.

The Nominator may furnish a 500-word statement in support of each Candidate’s election (the “Statement”), which the Corporation shall include in the proxy statement. The Board shall adopt a procedure for timely resolving disputes over whether the Disclosure and Statement comply with SEC rules, including Rule 14a-9.”

## SUPPORTING STATEMENT

For the third quarter of 2007, JPMorgan took \$1.3 billion in markdowns on \$40.6 billion of leveraged loans and \$339 million in markdowns on \$6.8 billion of CDOs. Management stated that it expects home equity portfolio quarterly losses to rise to \$250 to \$270 million over the next few quarters. We believe our company has done a bad job managing risk in its debt underwriting.

In our view, access to the proxy is the most effective mechanism for ensuring board accountability. We believe that greater accountability would benefit JPMorgan and enhance stockholder value.



Committee  
Gerald W. McEntee  
William Lucy  
Edward J. Keller  
Kathy J. Sackman  
Henry C. Scheff

## EMPLOYEES PENSION PLAN

November 27, 2007

**Via Overnight Mail and Telecopier (212) 270-4240**

JPMorgan Chase & Co.  
270 Park Avenue  
New York, NY 10017  
Attention: Anthony J. Horan, Corporate Secretary

Dear Mr. Horan:

On behalf of the AFSCME Employees Pension Plan (the "Plan"), I write to provide you with verified proof of ownership from the Plan's custodian. If you require any additional information, please do not hesitate to contact me at the address above.

Sincerely,

  
Charles Jurgonis  
Plan Secretary

Enclosure

American Federation of State, County and Municipal Employees, AFL-CIO

TEL (202) 775-8142 FAX (202) 785-4606 1625 L Street, N.W., Washington, D.C. 20036-5687



STATE STREET

Kevin Yakimowsky  
Assistant Vice President  
Specialized Trust Services

STATE STREET BANK  
200 Newport Avenue - JQB7  
N. Quincy, MA 02171

Telephone: 617-885-7712  
Facsimile: 617-769-6695  
kyakimowsky@statestreet.com

November 27, 2007

Lonita Waybright  
A.F.S.C.M.E.  
Benefits Administrator  
1625 L Street N.W.  
Washington, D.C. 20036

**Re: Shareholder Proposal Record Letter for JP MORGAN (cusip 46625H100)**

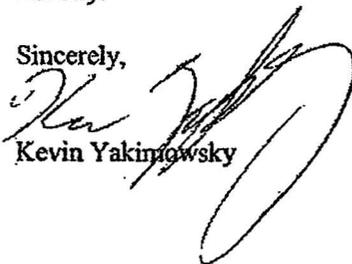
Dear Ms Waybright:

State Street Bank and Trust Company is Trustee for 57,395 shares of JP Morgan common stock held for the benefit of the American Federation of State, County and Municiple Employees Pension Plan ("Plan"). The Plan has been a beneficial owner of at least 1% or \$2,000 in market value of the Company's common stock continuously for at least one year prior to the date of this letter. The Plan continues to hold the shares of JP Morgan stock.

As Trustee for the Plan, State Street holds these shares at its Participant Account at the Depository Trust Company ("DTC"). Cede & Co., the nominee name at DTC, is the record holder of these shares.

If there are any questions concerning this matter, please do not hesitate to contact me directly.

Sincerely,



Kevin Yakimowsky

# JPMorganChase

Anthony J. Horan  
Corporate Secretary  
Office of the Secretary

November 28, 2007

Mr. Charles Jurgonis  
American Federation of State, County and Municipal Employees  
1625 L Street, N.W.  
Washington, DC 20036

Dear Mr. Jurgonis:

This will acknowledge receipt of the letter dated November 27, 2007, from Gerald McEntee, advising JPMorgan Chase & Co. of the intention of the AFSCME Employees Pension Plan (Plan), to submit a proposal to be voted upon at our 2008 Annual Meeting. The proposal requests a By-Law amendment establishing a process for shareholder access.

We also acknowledge receipt of the letter dated November 27, 2007 from State Street, verifying that AFSCME Employees Pension Plan are the beneficial owners of shares of JPMorgan Chase common stock with a market value of at least \$2,000.00 in accordance with Rule 14a-8(b)(2) of the Securities and Exchange Commission.

Sincerely,





RECEIVED BY THE  
OFFICE OF THE SECRETARY

NOV 28 2007

RICHARD H. MOORE  
*Treasurer*  
*State of North Carolina*

November 28, 2007

Via Overnight Mail and Telecopier (212) 270-4240

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

Dear Mr. Horan:

As Treasurer of the State of North Carolina, I am the sole Trustee for the North Carolina Equity Investment Fund Pooled Trust (the "Trust"). On behalf of the Trust, I write to give notice that pursuant to the 2007 proxy statement of JPMorgan Chase (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, the Trust intends to cosponsor the attached proposal (the "Proposal") submitted to the Company under separate cover by the AFSCME Employees Pension Plan for consideration at the 2008 annual meeting of shareholders (the "Annual Meeting"). The Trust is the beneficial owner of 5,441,156 shares of voting common stock (the "Shares") of the Company. In addition, the Trust intends to hold the Shares through the date on which the Annual Meeting is held. A copy of our proof of ownership is enclosed.

I represent that the AFSCME Employees Pension Plan or one of the Proposal's cosponsors intends to appear at the Annual Meeting to present the Proposal. Please direct all questions or correspondence regarding the Proposal to Lisa Schneider, Director of Corporate Governance, at 919-508-1040.

Sincerely,

A handwritten signature in black ink that reads "Richard H. Moore".

Richard H. Moore

Enclosure

RESOLVED, pursuant to Section 10.02 of the By-laws of JPMorgan Chase & Co. and section 109(a) of the Delaware General Corporation Law, the stockholders amend the By-laws to add the following section 2.10:

“The Corporation shall include in its proxy materials for a meeting of stockholders the name, together with the Disclosure and Statement (defined below), of any person nominated for election to the Board (“Candidate”) by a stockholder or group thereof satisfying the requirements of this section 2.10 (the “Nominator”), and shall allow stockholders to vote with respect to such Candidate on the Corporation’s proxy card. A Nominator may nominate up to two Candidates for inclusion in the proxy statement for a meeting, unless more than one Nominator seeks inclusion of Candidates, in which case (a) each Nominator may include only one Candidate and (b) Candidates will be included in the order in which the Nominator satisfies the requirements set forth below, until the number of Candidates nominated by Nominators equals (i) 50% of the Directors to be elected at the meeting minus (ii) one.

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- (c) execute an undertaking that it agrees to (i) assume all liability arising out of any violation of law or regulation in connection with the Nominator’s communications with stockholders of the Corporation, including the Disclosure; (ii) to the extent it uses soliciting material other than the Corporation’s proxy materials, comply with all laws and regulations relating thereto.

The Nominator may furnish a 500-word statement in support of each Candidate’s election (the “Statement”), which the Corporation shall include in the proxy statement. The Board shall adopt a procedure for timely resolving disputes over whether the Disclosure and Statement comply with SEC rules, including Rule 14a-9.”

## SUPPORTING STATEMENT

For the third quarter of 2007, JPMorgan took \$1.3 billion in markdowns on \$40.6 billion of leveraged loans and \$339 million in markdowns on \$6.8 billion of CDOs. Management stated that it expects home equity portfolio quarterly losses to rise to \$250 to \$270 million over the next few quarters. We believe our company has done a bad job managing risk in its debt underwriting.

In our view, access to the proxy is the most effective mechanism for ensuring board accountability. We believe that greater accountability would benefit JPMorgan and enhance stockholder value.



Mellon Global Securities Services

November 27, 2007:

NC Department of State Treasurer  
Attn: Lisa Schneider  
325 N. Salisbury Street  
Raleigh, NC  
27603

To Whom It May Concern:

**RE: Certification of Ownership for JPMORGAN CHASE & CO.COM**  
**CUSIP: 46625H100**

Please be advised that the following beneficial owner held 5,441,156 shares as of the close of business on November 26<sup>th</sup>, 2007:

**TREASURER OF THE STATE OF N.C. EQUITY INVESTMENT FUND**  
**325 N SALISBURY ST**  
**RALEIGH, NC**  
**27603**

Please contact me directly if you have any questions. Thank-you.

Sincerely,

**Melissa Tarasovich**  
**AVP, Mellon Global Securities Services**  
**Phone: (412) 234-2475**  
**Email: tarasovich.mk@mellon.com**

**THIS SIGNATURE IS GUARANTEED BY**  
**THE MELLON GLOBAL SECURITIES**  
**MELLON TRUST OF NEW ENGLAND**  
**NATIONAL ASSOCIATION**

**AUTHORIZED SIGNATURE**  
**X 9609251**  
**(939)**  
**SECURITIES TRANSFER AGENTS MEDALLION PROGRAM™**

**Anthony J. Horan**  
Corporate Secretary  
Office of the Secretary

November 28, 2007

**Ms. Lisa Schneider**  
Director of Corporate Governance  
North Carolina Equity Investment Fund Pooled Trust  
325 North Salisbury Street  
Raleigh , North Carolina 27603-1385

Dear Ms. Schneider:

This will acknowledge receipt of the letter dated November 27, 2007, from Richard H. Moore, advising JPMorgan Chase & Co. of the intention of the North Carolina Equity Investment Fund Pooled Trust, to submit a proposal to be voted upon at our 2008 Annual Meeting. The proposal requests a By-Law amendment establishing a process for shareholder access.

We also acknowledge receipt of the letter dated November 27, 2007 from Mellon Global Securities Services, verifying that North Carolina Equity Investment Fund Pooled Trust are the beneficial owners of shares of JPMorgan Chase common stock with a market value of at least \$2,000.00 in accordance with Rule 14a-8(b)(2) of the Securities and Exchange Commission.

Sincerely,

