JPMorganChase

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OFFICE OF EXECUTIVE SECRETARY

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Attention: Comments

Re: RIN 3064-A026: Processing of Deposit Accounts and Large-Bank Deposit Insurance Modernization

Dear Mr. Feldman:

JPMorgan Chase Bank, N.A. ("JPMC") appreciates the opportunity to comment on the Federal Deposit Insurance Corporation ("FDIC") notice of proposed rules that would: (i) establish the FDIC's practice for determining deposit account balances at a failed depository institution; and (ii) require the largest depository institutions to draft procedures that would, in the event of the depository institution's failure, provide the FDIC with standard deposit account and customer information and enable the FDIC to place and release holds on liability accounts (the "Proposed Rules").[1]

JPMC is a member of The Clearing House Association L.L.C. (the "Clearing House") which has submitted a comment letter on the Proposed Rules. JPMC wishes to express its full support of the views expressed in that comment letter. In addition to agreeing with and supporting the Clearing House comment letter JPMC has concluded that it is necessary to articulate and emphasize certain additional points with respect to the Proposed Rules.

JPMC acknowledges the substantial efforts of the FDIC in improving the Proposed Rules over its earlier proposals.[2] JPMC agrees with the objective of the FDIC in the Proposed Rules – establishing the FDIC practice for timely determining deposit account balances at a failed institution, providing a providing a prompt release of funds to depositors, and the least costly resolution of a failed institution. We further agree that it is necessary to have a systematic

[1] Notice of Proposed Rulemaking, 73 Fed. Reg. 2364 (January 14, 2008).
[2] Advance Notice of Proposed Rulemaking, 71 Fed. Reg. 74857 (December 13, 2006); Advanced Notice of Proposed Rulemaking 70 Fed. Reg. 73652 (December 13, 2005).

approach for determining deposit account balances on the day an institution fails, based on the institution's end-of-day ledger and after the performance of the institution's customary end-of-day processes. We do, however, have concerns about aspects of the Proposed Rules, which we view as unnecessary, complicated, and which we believe would increase costs of the services which we provide to our customers.

The concerns on which this comment letter is focused and which we would like the FDIC to consider in adopting its final rules, are concentrated on sweep products and can be categorized as follows:

- Cost and Burden
- FDIC "Cutoff Point"
- Sweeps Treatment
- Sweeps: FDIC Holds
- Implementation Timeline

I. <u>Cost and Burden</u>

The Proposed Rules offer the useful objectives of standardizing information and data, providing a means to determining end-of-day deposit balances, and providing a mechanism for the FDIC to systematically hold or release funds to customers of the failed depository institution. However, those objectives need to be balanced against the costs that would be imposed on the covered institutions. Large covered institutions such as JPMC have complex, multiple computer platforms for customer deposit and sweep products. The complexity of such systems results from the array of products, the geographic reach of large institutions and the merging of banks and related entities.

The Proposed Rules point to system adjustments for differentiating types of sweep accounts in accordance with new concepts articulated in the Proposed Rules, implementing systems to enable holds and releases to be placed on all deposit accounts with formula to be determined at the time of an institution's failure, and developing mechanisms to implement an artificial cutoff point for end-of-day transactions, all of which need to be tested by the institution and the FDIC. Our experience is that any changes to the operating and computer systems for deposit account and sweep account products, even if deemed "small", will require hundred of person hours and significant costs. The exact number of person hours and costs to extensively change these systems cannot yet be calculated without additional details from the FDIC.

It is our view that the FDIC needs to both simplify its proposals and provide additional details with respect to its concepts of new approaches for determining end-of-day balances in order that we may be able to properly assess the hours and costs of the proposed system changes. Some of the ways to arrive at the better result of simplification are set forth in following sections of this comment letter. But the foremost recommendation is that the FDIC rely on a bank's existing systems and processes.

II. FDIC Cutoff Point

The Proposed Rules would establish an "FDIC Cutoff Point" which would determine whether transactions would be given effect on the day of a depository institution failure. JPMC in analyzing the Proposed Rules has concluded the FDIC should revise, and actually eliminate the concept of the FDIC Cutoff Point.

Depository institutions, such as JPMC, have established cutoff times for various transactions, as is recognized by the FDIC in the Proposed Rules. These cutoff times have been developed by banks in accordance with product offerings, geographic reach and market expectations.

The FDIC, if it establishes a single, arbitrary FDIC Cutoff Point creates unnecessary and problematic results. First, a change in bank established practices will have repercussions on customers and markets. In the Proposed Rules the FDIC posits an FDIC Cutoff Point of 5 pm (Eastern Time), 2 pm (Pacific Time), which would have a disruptive effect on customers across multiple time zones, since deposits of customers in the Pacific time zone would not being counted toward the end-of-day balance. This is contrary to communications to customers and understanding of customers over a long period of time, and a change of this nature may well create market disruptions. Second, it is not certain that a bank system can accommodate this type of technical disruption on the short notice that testing (and actual institution failure) will require. Third, the FDIC Cut off Point is U.S. focused, but it will have an even more disruptive effect internationally, as it does not adequately address the extensive time zones across which banks operate in determining an end-of-day balance, a concern of large global institutions. Fourth, it would immensely complicate the systems changes (and dramatically increase the cost) required to comply with the Proposed Rules if the systems also had to be developed with the necessary flexibility to recognize and implement on any given day an arbitrary Cutoff Point which would not even be known until the FDIC set the Cutoff Point on the failure date.

Accordingly, JPMC recommends the elimination of the FDIC Cutoff Point, in favor of the already established, tested and workable cut off times already in place in each bank's systems.

III. Sweep Treatment

The FDIC has proposed extensive proposals relating to sweep products which were not part of prior proposals. JPMC is concerned about the issues raised and the potential impact to institutions and markets that these proposals may cause. Sweep products have been in place at banks for multiple decades, and any proposal that disrupts the existing treatment of sweep products may disrupt not only the product and systems of a bank, but will also disrupt the expectation of customers and markets. The consequences of such disruptions would be potentially serious and unpredictable.

JPMC strongly recommends that all proposals relating to sweeps be removed from the Proposed Rules and be addressed in a separate proposal and process by the FDIC. That process should include consultation with the regulated institutions, and with other banking and securities regulators.

We recognize the FDIC's concern in developing a policy for sweep transactions in the event of a depository institution failure, particularly in light of the Adagio case.[3] We agree, in principle, with the approach of codifying the FDIC's practice with respect to sweep transactions in determining the end-of-day deposit balances in the event of a depository institution failure. If the FDIC chooses to move forward with sweep transactions in the Proposed Rules, then the final rule should provide that outgoing prearranged automated sweeps be given effect in determining the end-of-day ledger balances, regardless of the actual time of day when the institutions internal systems process the transactions in the ordinary course of business.

We do not see the purpose in introducing the various new complexities for sweep products which are in the Proposed Rules. The Proposed Rules set forth some interesting, new, but unnecessary definitions of sweeps: "Internal Sweeps" (transfers to other accounts at the same institution-including sweeps to non-domestic branches); "External Sweeps" (transfers from the institution to a separate legal entity its e.g. money market funds); "Class A Sweeps" (External Sweeps and domestic, same institution Internal Sweeps), and "Class B Sweeps" (all other Internal Sweeps not in Class A).

Generally sweep products have, in their many different forms (money market funds, non-U.S. deposits, fed funds, repos and commercial paper), a commonality of providing customers with an ability to earn interest on dividends in exchange for the increased risk of removing the funds from the FDIC insured deposit framework. Customers who seek such products are essentially corporate, institutional and similarly situated clients who understand the risk and measure that risk against the business opportunity. Sweep arrangements are evidenced by agreements with the customers that authorize the sweep and disclose the risks. The customers select the type of sweep in accordance with their own criteria. We do not see the need for the FDIC to inject new and differentiating concepts as to which sweeps will occur in the event of depository institution failure and which sweeps will not be effectuated.

We believe that the expectation of the markets is that a prearranged, automated sweep, regardless of the vehicle used, will be effectuated in the course of the business day, even if the processing is at different times within the bank's internal system. The FDIC should not be imposing a result which is inconsistent with bank agreements and market expectations. Rather the FDIC should

[3] Adagio Investment Holding Ltd v FDIC, 338 F. Supp. 2d 71 (D.D.C. 2004).

articulate provisions indicating that it will give effect to all prearranged automated sweeps in determining the end-of-day ledge balance.

The FDIC has posed a number of questions concerning sweep arrangements, which questions together with the sweep proposals, should, as we have noted be contained in a separate proposal. Nevertheless, we think it is important to address these questions, which can be summarized into two broad questions: (i) whether "repo sweeps" are appropriately characterized, i.e. a true sale of securities, and (ii) whether the FDIC should disregard sweep arrangements and require premium on those funds as if they were domestic deposits?

JPMC believes its repo sweeps are appropriately characterized as agreements for the purchase and sale of securities, and not as collateralized loan or deposits. With respect to FDIC premiums, JPMC is most strongly of the opinion that FDIC premiums should be assessed only against domestic bank deposits. Any proposal to charge FDIC premiums on swept amounts would likely increase costs to banks relating to that product and may result in a product set which is not competitive with equivalent products offered by non-banks.

IV. Sweeps: FDIC Holds

The FDIC, under the Proposed Rules, to the extent a sweep is completed on the day of a depository institution failure, would require that the covered institution place holds on the swept funds so that the FDIC would have control over the funds the following morning after the sweep was completed (and the morning after the day the depository institution failed).

In concept this is an acceptable approach to managing a difficult process – paying claimants in accordance with the FDIC statutory preferences, and determining the actual funds available to make such payments. The particular solution set forth by the FDIC – placing holds on the systems which record internal sweeps, as well as developing an overall capacity of having a hold and release capacity across all domestic deposit system seems to us to be unnecessarily duplicative. The sweeps processing systems, in most instances do not have a hold functionality. Rather the mechanics are such that the funds are returned in a prearranged automated fashion to the initial deposit account. To build a funds hold system within the sweep processing does not appear to be necessary. To the extent that a bank has in place mechanics to place holds on its U.S. deposit account system (either by a direct hold or by the use of suspense accounts), the FDIC's goal, i.e. a hold functionality which prevents customers from accessing funds which the FDIC has determined should not be accessed, appears to be satisfied.

The concerns surrounding holds on return sweeps point once again to the view of JPMC that the FDIC should separate its sweep proposals from the other proposals in the Proposed Rule.

V. <u>Implementation Timeline</u>

JPMC has considered the FDIC's proposed implementation timeline of 18 months for the systems modification necessary to implement the Proposed Rules. A timeline of 18 months after publication of the final rule is not sufficient. Systems changes of the magnitude proposed are planned and budgeted well in advance of implementation. At the present time (March, April 2008) systems changes are being planned and budgeted for the 2009 calendar year. If the actual development is 18 months, then an additional minimal 12 months is needed for the planning and budgeting process.

Accordingly, JPMC is recommending the FDIC adopt a longer period – a minimum of 30 months after the publication of the final rule – for a depository institution to be in compliance with the final rule.

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JPMorgan Chase Bank, N.A. greatly appreciates the efforts the FDIC has made in producing the Proposed Rules, and we thank you for your consideration of our comments. If you would like additional information regarding this comment letter please contact Michael W. Blanc, Managing Director of JPMC at 212-552-8218 or Joseph B. White, Executive Director/Assistant General Counsel of JPMC at 212-552-0795.

Cordially,

Michael W. Blanc
Managing Director