

# JPMORGAN CHASE & CO.

**Adam M. Gilbert**  
Managing Director

October 15, 2009

Office of the Comptroller of the Currency  
250 E Street, S.W.  
Mail Stop 2-3  
Washington, DC 20219  
Attention: Docket Number OCC-2009-0012

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitution Avenue, N.W.  
Washington, D.C. 20551  
Attention: Docket Number R-1368

Mr. Robert E. Feldman, Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> St., N.W.  
Washington, D.C. 20429  
Attention: Comments/Legal ESS: RIN #3064-AD48

Regulation Comments, Chief Counsel's Office  
Office of Thrift Supervision  
1700 G. Street, N.W.  
Washington, D.C. 20552  
Attention: OTS-2009-0015

Re: Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues

Ladies and Gentlemen:

JPMorgan Chase & Co. ("JPMorganChase") appreciates the opportunity to provide comments on the joint notice of proposed rulemaking identified above (the "Proposal") issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the "Agencies"), relating to the risk based capital implications of implementation of Statement of Financial Accounting Standard No. 166 *Accounting for Transfers of Financial Assets, and Amendment of FASB Statement No. 140* ("SFAS 166") and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46 (R)* ("SFAS 167"). The Proposal seeks responses with respect to a series of questions. Appendix A hereto sets forth JPMorgan Chase's responses to such questions. In addition to the information and comments set forth in Appendix A, JPMorgan Chase is particularly concerned with the proposed treatment for ABCP conduits set forth in the Proposal.

In the ordinary course, the Agencies use generally accepted accounting principles ("GAAP") as the initial basis for determining whether an exposure is on or off balance sheet for regulatory capital purposes. Under the current accounting and regulatory capital regimes, except as described below, if assets are transferred to a variable interest entity ("VIE") as part of a secured financing but remain on balance sheet under GAAP, the

VIE's assets are risk-weighted like any other assets. If a banking organization's assets are transferred to a VIE that is currently considered a qualified special purpose entity that would not be consolidated under GAAP (a "QSPE"), the banking organization holds risk based capital only against its contractual exposures to the VIE. SFAS 166/SFAS 167 will eliminate the concept of QSPEs. SFAS 167 also changes the approach for determining the primary beneficiary of a VIE from a quantitative risk and reward model to a qualitative model, based on control and economics. These changes will result in the consolidation of many more VIEs, including certain securitization entities and bank sponsored asset back commercial paper conduits ("ABCP Conduits").

When FASB issued FASB Financial Interpretation No. 46, "Consolidation of Variable Interest Entities", as revised in December 2003 ("FIN 46(R)"), a similar issue was presented with respect to banking organizations' exposures to ABCP conduits. In 2004, the Agencies issued guidance that permitted banking organizations to look to the contractual commitments entered into with the ABCP conduits as the basis for determining risk weighted assets. This approach acknowledged that the legal relationships of banking organizations with ABCP conduits had not changed even though accounting guidance subsequently resulted in consolidation of the conduits. It was also consistent with the fact that the Agencies had at that time previously issued specific guidance as to the proper risk based capital treatment for securitization exposures, including liquidity facilities and credit enhancements with respect to ABCP conduits. The guidance better aligned the capital rules with the bank's actual exposures which did not change as a result of consolidation.

The Proposal does not contemplate any similar approach in connection with the implementation of SFAS 166/SFAS 167. Specifically, based on events of the recent past, the Agencies have indicated that they do not believe there is a basis for modifying the usual approach that risk weighted assets are based on GAAP consolidation. More particularly, the Agencies propose to remove the present option to exclude consolidated ABCP conduit assets from the sponsoring bank's risk-weighted assets.

#### I. Traditional ABCP Conduit Structural Features and Performance

JPMorgan Chase appreciates the Agencies' concern that banking organizations maintain regulatory capital commensurate with the actual risks of each transaction, as well as the concern that banking organizations have in certain cases provided non-contractual support to securitization vehicles. The Agencies cited in the Proposal instances where banking organizations have provided non-contractual support to ABCP programs. However, JPMorgan Chase respectfully submits that it is important to distinguish traditional customer-focused, multi-seller ABCP conduits ("Customer Conduits") from other non-traditional ABCP vehicles, such as structured investment vehicles ("SIVs"). In the case of SIVs, banking organizations have in certain cases provided support in excess of their contractual obligations to the vehicles. Actions taken to support a securitization structure in excess of contractual obligations constitute "implicit recourse" under current rules. Specifically, Interagency Guidance on Implicit Recourse in Asset Securitizations issued in May 2002 provides examples of such implicit recourse.

By contrast, in a Customer Conduit structure, the sponsoring bank enters into or arranges for explicit contractual liquidity arrangements covering 100% of the ABCP conduit's obligations, as well as explicit contractual credit enhancement arrangements with the ABCP conduit. All such contractual obligations attract regulatory risk based capital consistent with the current risk based capital rules adopted in 2004. During the most recent stressed market environment, banking organizations, including JPMorgan Chase, occasionally drew upon such liquidity facilities. In JPMorgan Chase's experience, and we believe in the experience of the Customer Conduit industry as a whole, the regulatory capital requirements imposed on sponsoring bank's liquidity and credit enhancement exposures to its Customer Conduits were more than sufficient to cover losses incurred by the sponsoring bank in connection with such exposures.

ABCP expanded over the last several years to include a much broader universe of products such as SIVs, CDOs and extendible ABCP. These products had different structures and therefore performed very differently than the more traditional Customer Conduits. In the case of SIVs and extendible ABCP, such programs did not include the full liquidity contractual support seen in Customer Conduits and resulted in the need to liquidate collateral to repay maturing liabilities. In the case of the CDOs, the issue was not one of inadequate liquidity support, but excess correlation and poor collateral performance with an inability to address problems as they arose.



Customer Conduit programs do not have these characteristics. Customer Conduits typically have liquidity facilities that cover 100% of such conduit's outstanding commercial paper and do not require the forced liquidation of collateral. In addition, Customer Conduit transactions typically have tight performance triggers and short tenors, which enable the conduit administrator to address problems in underlying transactions if performance is worse than anticipated. For instance, the conduit administrator can respond to deterioration in asset performance in a transaction by requiring the customer to provide additional enhancement or make structural improvements to the transaction. Failure by the customer to do so typically results in an early amortization of the transaction. Furthermore, trade receivables and certain other transactions funded in Customer Conduit programs include dynamic calculations of credit enhancement that adjust the amount of protection based on the ongoing performance of the underlying receivables. These features -- 100% liquidity support, short tenor, tight performance triggers and dynamic credit enhancement -- have resulted in the extremely low level of losses experienced in the assets within Customer Conduits for our 21 year history in this business. The performance of the assets funded by Customer Conduits demonstrates that an increase in risk based capital charges is not warranted and would be excessive.

JPMorgan Chase anticipates that future Customer Conduits will include provisions requiring liquidity facilities covering 100% of a conduit's outstanding commercial paper, and we are supportive of any requirements by the Agencies that only Customer Conduits maintaining such liquidity facilities will be permitted to look to the contractual commitments entered into with the ABCP conduits as the basis for determining risk weighted assets, as currently allowed.

Qualifying characteristics for a Customer Conduit would include:

- A requirement that each investment is individually structured and negotiated by the conduit's sponsor in order to provide funding to a customer of the sponsor.
- Maintenance of liquidity facilities that in the aggregate cover at least of 100% of its outstanding ABCP.
- No requirement to sell any investment due to a decline in market value of the investment.

In addition, JPMorgan Chase agrees that due to their differentiated negative performance, Customer Conduits should not be permitted to fund CDO assets in the future and qualify for risk based capital provisions based on contractual commitments to the conduits. The Agencies could draft regulations to preclude the application of the current risk based capital rules to ABCP programs' funding such riskier assets, an approach which would be consistent with recent revisions in the Basel rules relative to CDO assets and other "resecuritizations" funded in ABCP programs.

As an alternative to simply continuing the current risk based capital rule, the Agencies could elect to permit banks to early adopt the Internal Assessment Approach ("IAA") under Basel II, which will allow banks to apply ratings-based risk weights to ABCP conduit exposures based on the bank's internal application of publicly available rating criteria. The IAA was designed for ABCP conduit exposures and we believe that the framework laid out in Basel II is still a valid framework for Customer Conduits and that the problems over the past two years with SIVs and CDOs have been addressed by the recent revisions in the Basel II rules with respect to resecuritizations.

JPMorgan Chase also understands that the Agencies are currently considering the over-all capital levels that the Agencies would like U.S. regulated banks to maintain. However, we believe that as part of such consideration, the Agencies should also consider that a bank's over-all capital requirements may be allocated differently among different types of exposure held by a bank in part based on risk-based capital charges. Capital rules should be sensitive to the varying degrees of risk of different types of exposures, in order to provide appropriate risk management incentives to banks. We believe the capital treatment of Customer Conduit transactions in the proposed rules is not appropriately risk sensitive since the proposed rules would not recognize the benefits of collateral nor the protections afforded by secured bankruptcy remote conduit structures.

## II. Market and Competitive Equity Impacts

Bank-sponsored Customer Conduit programs are an important funding source for many bank customers in the U.S., currently providing over \$500 billion of financing to a diverse group of bank customers, from multi-national corporations to middle market companies. Customer Conduit programs finance a variety of asset types, including trade receivables, credit cards and auto loans. Our customers use the funding they get from



Customer Conduit programs to fund their day-to-day working capital needs, and consumer finance customers use Customer Conduit funding to provide financing to consumers.

JPMorgan Chase anticipates that the proposed increase to regulatory capital requirements associated with ABCP programs, absent any other changes, will have a significant and negative impact on the amount of Customer Conduit funding that will be made available by U.S. banks to their customers. These customers would then need to source other financing alternatives which in the short term would be disruptive resulting in additional expenses for these customers. Since many of our customers use the financing they receive from Customer Conduits to provide financing to their business customers or to consumers, any dislocation in the market might have an adverse affect on financing available to the individuals and businesses that are the ultimate beneficiaries of Customer Conduit financing.

Moreover the proposed changes to risk based capital rules with respect to Customer Conduits raise significant competitive equity concerns for U.S. banks. While many other jurisdictions have consolidated Customer Conduit programs onto the sponsoring banks' balance sheet, such consolidation does not result in a change in treatment for the Basel II risk based capital calculations-currently applicable to non-U.S. banks.

We believe this point is best illustrated through an example. Suppose that a Customer Conduit program were to fund a \$100 million unrated, senior credit card transaction, supported by a 364-day eligible liquidity facility which is internally assigned the equivalent of "AAA" credit risk by the sponsoring bank. If the sponsor is a U.S. bank, the current Basel I rules would have provided for \$800,000 of regulatory capital against such exposure (\$100 million times 10% times 8% minimum capital requirement). Under the proposed rules, this U.S. bank would now need to maintain \$8,000,000 (\$100 million times 100% times 8% minimum capital requirement) against the same exposure. However, if the sponsor were a non-U.S. regulated bank that had adopted the IAA approach, the sponsor would be required to hold \$560,000 (\$100 million times 7% times 8% minimum capital requirement) of regulatory capital for the same risk.

Despite the significant difference in required capital, the U.S. banks will not be able to fully charge for the increased capital due to the global nature of this competitive market. As a result, U.S. banks will earn much lower returns on risk weighted assets for the Customer Conduit business and will be at a significant disadvantage relative to their foreign competition.

### **Conclusion**

Given the extremely low level of losses experienced in the 20+ year history of Customer Conduit programs, the important role the Customer Conduit market plays in enabling sponsoring banks to accommodate the funding needs of their customers, and the significant competitive equity issues raised by the proposed rule changes, JPMorgan Chase believes that the current treatment permitting a banking organization to look to its contractual obligations only with respect to Customer Conduits should be preserved. JPMorgan Chase respectfully requests the Agencies to reevaluate the proposal to remove the exclusion of consolidated ABCP program assets from risk-weighted assets of the consolidating bank, and instead either (1) continue to impose the current risk based capital requirements on the sponsoring bank's explicit contractual obligations to its Customer Conduits until the bank transitions to the IAA, or (2) alternatively, permit banks to adopt early the IAA.

JPMorgan Chase has also noted several other specific issues in the attached Appendix, in particular issues related to Asset Management funds and Private label RMBS transactions.

We appreciate the opportunity to comment on the Proposal and would be pleased to discuss our comments in more detail. If you have questions regarding the views expressed in this letter, please contact me at (212) 270-8928.

Sincerely,



Adam M. Gilbert  
Managing Director

*Appendix A*

*Question 1: Which types of VIEs will banking organizations have to consolidate onto their balance sheets due to the 2009 GAAP modifications, which types are not expected to be subject to consolidation, and why? Which types are likely to be restructured to avoid consolidation?*

VIEs expected to be consolidated under SFAS 167, include the following:

- Securitizations where the reporting entity services the assets and holds the residual interest and/or other significant interest in the entity
  - Credit cards
  - Private label residential mortgages
  - Auto and private student loans
- Bank administered multi-seller ABCP conduits
- Certain asset management funds, where the asset manager can not be unilaterally removed without cause and earns a performance based fee that is more than insignificant- this includes cases where the asset manager does not own an equity interest in the fund

VIEs expected not to be consolidated under SFAS 167:

- Securitizations where the reporting entity services the assets, but does not retain an interest in the transaction or holds an interest that is deemed to be insignificant
- Other VIEs where the reporting entity holds a residual interest, but does not service or does not have control in the VIE
- Client intermediation transactions where the reporting entity does not have a variable interest (e.g., credit-linked note structures or other repackaging structures where reporting entity creates the risk in the VIE through derivative transactions)
- Municipal Tender Option Bond programs where reporting entity does not hold the residual interests, which control the vehicles
- Collateralized debt obligations (“CDO”) warehouse or investment CDOs, where the reporting entity is not the asset manager

JPMorgan Chase does not currently anticipate restructuring any VIEs in order to avoid consolidation. However, we continue to evaluate opportunities to decrease the Firm’s risk positions in order to reduce the impact.

*Question 2: Are there features and characteristics of securitization transactions or other transactions with VIEs, other SPEs, or other entities that are more or less likely to elicit banking organizations’ provision of non-contractual (implicit) support under stressed or other circumstances due to reputational risk, business model, or other reasons? Commenters should describe such features and characteristics and the methods of support that may be provided. The agencies are particularly interested in comments regarding credit card securitizations, structured investment vehicles, money market*



*funds, hedge funds, and other entities that are likely beneficiaries of non-contractual support.*

There are no specific features or characteristics that increase the likelihood of future non-contractual support during stress environments. Such actions are taken on a case-by-case basis.

Following are examples of JPMorgan Chase's historical experience with the requested type of structures.

#### Multi-seller ABCP conduits

Each of the multi-seller ABCP conduits administered by JPMorgan Chase has liquidity facilities covering at least 100% of the outstanding commercial paper of the conduit. These liquidity facilities are provided in almost all cases by JPMorgan Chase. For U.S. banks, these facilities attract regulatory capital under current rules. During the most recent stressed market environment, banks, including JPMorgan Chase, occasionally drew upon such facilities. In JPMorgan Chase's experience, the regulatory capital was more than sufficient to cover losses in connection with such transactions.

In 2008, JPMorgan Chase increased letters of credit issued in connection with certain Customer Conduits in replacement of program surety bonds where the monoline surety provider had been downgraded. Because the monoline's ratings were no longer consistent with the rating of the Customer Conduits' ABCP, if the surety bond had not been replaced with alternative credit enhancement, the ABCP would likely have been downgraded. The downgrade of the ABCP would likely have resulted in a draw on liquidity facilities provided by JPMorgan Chase to the conduits, because a downgraded conduit would likely not be able to continue issuing commercial paper given lack of demand. Consequently, JPMorgan Chase chose to replace the surety bond provided by the downgraded monoline by increasing letters of credit it provided to the Customer Conduits. Such decision was made solely as a result of the downgrade of the monoline, and not as a result of any deterioration in the assets held in the Customer Conduits, and JPMorgan Chase conducted its ordinary course credit analysis prior to increasing the letters of credit. Moreover, in the 21 year history of this business, JPMorgan Chase has never had a draw under a program letter of credit. It is also our understanding that this is true generally for the industry as a whole.

#### Credit Card Trusts

JPMorgan Chase took certain actions in the second quarter of 2009 related to the Chase Issuance Trust (the "Trust"). The Trust which holds prime quality credit card receivables, maintained positive excess spread, a key metric for evaluating the performance of a credit card trust, through the first six months of 2009. However, given market uncertainty concerning projected credit costs in the credit card industry, and to mitigate any further deterioration in the performance of the Trust, JPMorgan Chase took certain actions, as permitted by the Trust agreements, to enhance the performance of the Trust, including

increasing the required credit enhancement level for each tranche of outstanding notes issued by the Trust and by designating as “discount receivables” a percentage of new credit card receivables for inclusion in the Trust. These actions resulted in the addition of approximately \$40 billion of risk-weighted assets for regulatory capital purposes.

### Money Market Funds

During the second half of 2008, many asset managers provided non-contractual support to their funds in order to not “break the buck”. The support provided to these funds was a result of the potential for significant withdrawals by investors related to unprecedented market events; such support included the purchase of certain types of assets from the funds and/or cash infusion.

*Question 3: What effect will the 2009 GAAP modifications have on banking organizations' financial positions, lending, and activities? How will the modifications impact lending typically financed by securitization and lending in general? How may the modifications affect the financial markets? What proportion of the impact is related to regulatory capital requirements? Commenters should provide specific responses and supporting data.*

JPMorgan Chase expects to consolidate up to \$110 billion of GAAP<sup>1</sup> assets as a result of the implementation of SFAS 167. The expected impact on risk weighted assets could be up to \$15 billion and a decrease in the Basel I Tier 1 capital ratio of 40 basis points; the impact does not include the proposed regulatory capital rule that would eliminate the existing treatment for consolidated ABCP conduits from risk weighted assets.

In regards to lending activities, JPMorgan Chase anticipates significant impacts to multi-seller ABCP programs, credit card securitizations and private label RMBS, as discussed further below.

### Multi-seller ABCP Programs

JPMorgan Chase anticipates that the proposed increase to regulatory capital requirements associated with ABCP programs, absent any other changes, will have a significant and negative impact on the amount of JPMorgan Chase sponsored ABCP conduit funding available to our customers in the U.S. JPMorgan Chase, similar to other U.S. banking institutions, decides which lines of business to allocate capital to in large part based on the anticipated return on risk-based capital. The ABCP conduit business is already a significant user of risk-based capital within the bank. Returns on this business have been appropriate, given the amount of risk weighted capital charges, to justify pursuit of this business. However, the significant increase in risk based capital charges will result in a significantly lower return on risk-based capital. Global (non U.S.) banking organizations, having already adopted Basel II, will not be subject to such changes and therefore,

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<sup>1</sup> The ultimate impact could differ significantly, due to ongoing interpretations of the final rule and market conditions.



JPMorgan Chase and other U.S. based banking organizations will not be able to increase the fees earned for this business to compensate for the increased risk based capital charge without risking the loss of business to our global competitors who do not face these same changes. In any event, we expect that the increase in regulatory capital requirements for ABCP conduit programs may result in decreased appetite from U.S. banks to make such financing available. Since many of our customers use the financing they receive from ABCP conduits to provide financing to their business customers or to consumers, any dislocation in this market may similarly affect the availability of financing to the individuals and businesses that are the ultimate beneficiaries of ABCP conduit financing.

#### Credit Card

Credit card lending has historically been financed by securitization as well as the bank's access to other diversified sources of funding. The implementation of SFAS 166 and SFAS 167 could result in a re-evaluation of lending acquisition models and loan growth strategies.

#### Private label RMBS

Overall, the demand for securitization is being impacted by a lack of consumer debt creation as households are still shedding debt accumulated during the last cycle. In addition, private label RMBS securitizations will be impacted by the higher limits for conforming loans which will result in more loans sold to the GSE's. The implementation of SFAS 166 and SFAS 167 will move certain securitizations onto bank balance sheets, raise the cost of capital, and make other forms of funding (e.g., bank deposits) more attractive. Potential regulatory reforms, including a mandatory retention will increase the amount of capital required to support securitization but may also trigger consolidation under SFAS 167 leading to additional capital requirements. To the extent banks allocate capital to securitization activities, which have become more capital intensive, they will have less capital to allocate to other lending activities.

The modifications as proposed would create higher barriers to entry to the securitization market due to greater capital requirements. The result will be fewer participants, transactions and less liquidity in the financial markets.

We have considered the various current and proposed challenges to private securitization including the impact of SFAS 167, Basel II market risk rules, regulatory reforms requiring retained interests and revised requirements from the rating agencies for higher levels of credit enhancement. While based upon individual facts and circumstances, SFAS 167 is potentially the most impactful in scenarios where banks have limited retained interests in securitization entities but are required to consolidate and hold capital against all of the assets of the securitization entity.

*Question 4: As is generally the case with respect to changes in accounting rules, the 2009 GAAP modifications would immediately affect banking organizations' capital requirements. The agencies specifically request comment on the impact of immediate*



*application of the 2009 GAAP modifications on the regulatory capital requirements of banking organizations that were not included in the SCAP. In light of the potential impact at this point in the economic cycle of the 2009 GAAP modifications on regulatory capital requirements, the agencies solicit comment on whether there are significant costs and burdens (or benefits) associated with immediate application of the 2009 GAAP modifications to regulatory capital requirements. If there are significant costs and burdens, or other relevant considerations, should the agencies consider a phase-in of the capital requirements that would result from the 2009 GAAP modifications? Commenters should provide specific and detailed rationales and supporting evidence and data to support their positions. Additionally, if a phase-in of the impact of the GAAP modifications is appropriate, what type of phase-in should be considered? For example, would a phase-in over the course of a four quarter period, as described below, for transactions entered into on or prior to December 31, 2009, reduce costs or burdens without reducing benefits?*

JPMorgan Chase believes that the Agencies should re-evaluate the proposed rule changes with respect to traditional, customer-focused, multi-seller ABCP conduits (“Customer Conduits”) and the alternative capital treatments that are discussed in our response to question 7 below. However, if the Agencies decline to consider these alternatives and adopt the rule as proposed, we strongly support a phase-in period for the rule changes. In light of the nascent economic recovery and giving considerations to other pending changes to the regulatory capital rules, we believe that an extended phase-in period would be necessary.

*Question 5: The agencies request comment on all aspects of this proposed rule, including the proposal to remove the exclusion of consolidated ABCP program assets from risk-weighted assets under the risk-based capital rules, the proposed reservation of authority provisions, and the regulatory capital treatment that would result from the 2009 GAAP modifications absent changes to the agencies’ regulatory capital requirements.*

The Agencies indicate that the original provisions relative to ABCP programs enacted in 2004 (which resulted in banking organizations’ holding capital on their exposures whether or not such programs were consolidated ) were enacted based on the Agencies’ belief that banking organizations sponsoring ABCP programs generally faced limited risk exposures to ABCP programs, because these exposures generally were confined to the credit enhancements and facilities arrangements banking organizations provided to these programs. As discussed in more detail in our letter accompanying these responses, we believe that the Agencies’ original assumptions are still valid for Customer Conduits.

*Question 6: Does this proposal raise competitive equity concerns with respect to accounting and regulatory capital treatments in other jurisdictions or with respect to international accounting standards?*

The IASB has issued proposed guidance on both derecognition and consolidation that is expected to be finalized over the next year and be effective not before 2011. While the

changes in SFAS 166 and SFAS 167 have reduced the differences between IFRS and US GAAP (i.e., the elimination of qualifying special purpose entities), there appears to be significant differences between SFAS 166 and SFAS 167 and the proposed guidance issued by the IASB, particularly as it relates to the consolidation model for asset management funds.

As discussed in more detail in our letter accompanying these responses, this proposal also raises significant competitive equity concerns with respect to the regulatory capital treatment of bank sponsored customer conduit programs.

*Question 7: Among the structures that likely will be consolidated under the 2009 GAAP modifications, for which types, if any, should the agencies consider assessing a different risk based capital requirement than the capital treatment that will result from the implementation of the modifications? How are commenters' views influenced by proposals for reforming the securitization markets that require securitizers to retain a percentage of the credit risk on any asset that is transferred, sold or conveyed through a securitization? Commenters should provide a detailed explanation and supporting empirical analysis of why the features and characteristics of these structure types merit an alternative treatment, how the risks of the structures should be measured, and what an appropriate alternative capital treatment would be. Responses should also discuss in detail with supporting evidence how such different capital treatment may or may not give rise to capital arbitrage opportunities.*

JPMorgan Chase strongly recommends that the regulatory capital rules recognize the different variations of credit risk on the assets that become subject to consolidation. Examples of structures that warrant different capital treatment include the following:

#### Multi-seller ABCP Conduits

JPMorgan Chase believes that the best method of evaluating the appropriateness of the risk-based capital charges would be to look at the ultimate performance of the assets following a draw upon the contractual liquidity facility. The loss experience of JPMorgan Chase (as well as the industry overall) has been such that the regulatory capital charges previously attributed were more than sufficient to cover the risk in these facilities even in the most stressed economic periods. JPMorgan Chase believes the current risk based capital rules should continue against exposures, whether or not such exposures are consolidated. Alternatively, banks should be allowed to early adopt the Basel II IAA approach.

#### Asset Management Funds

Since the issuance of SFAS 167, there are several interpretive issues surrounding the consolidation model for certain asset management funds; the ultimate resolution of these issues is unclear. It should be noted that asset management funds were generally structured to either permit the independent boards to remove the investment manager or,



in the case of funds structured as partnerships, to permit limited partners to remove the investment manager by a vote of at least 50 per centum. Based on our current interpretation of SFAS 167, there are certain cases that an organization will be required to consolidate a fund vehicle, including where the organization is the asset manager and it can not be unilaterally removed without cause; earns a performance based fee that is more than insignificant; and does not own an equity interest in the fund vehicles. Under SFAS 167, the asset manager would consolidate in the above example as they are deemed to have power to direct the activities that are most significant to the fund and the performance fee earned is considered to be a significant variable interest. In this case, the organization consolidates even though it has no exposure to losses in the entity (i.e., no down-side risk). We strongly believe that the Agencies should consider the fact that the organization has no exposure to loss of the assets in the fund, and therefore no capital should be required held on such assets.

#### Private label RMBS

There may be instances where a bank will be required to consolidate a securitization vehicle, such as a non-agency residential mortgage backed securitization, based upon the fact that the bank has retained a financial interest such as a senior or subordinated security in that securitization transaction and the bank has ongoing decision making ability related to the securitization entity's assets because it is the servicer. In the scenario where the bank's only ongoing involvement is a senior or subordinated interest and servicing, the requirement to hold regulatory capital against the entire consolidated assets of the securitization entity may be excessive. A preferred treatment would be holding capital against the risk associated with the retained security because this is viewed as the bank's maximum exposure to loss.

The requirement for originators to retain a percentage of the credit risk adds an additional capital burden for banks when that retained interest triggers consolidation. The consolidated asset will require capital in excess of the capital required for the retained interest and therefore, increase the cost of that transaction to the bank and ultimately the consumer.

*Question 8: Servicers of securitized residential mortgages who participate in the Treasury's Making Home Affordable Program (MHAP) receive certain incentive payments in connection with loans modified under the program. If a structure must be consolidated solely due to loan modifications under MHAP, should these assets be included in the leverage and risk-based capital requirements? Commenters should specify the rationale for an alternative treatment and what an appropriate alternative capital requirement would be.*

Under SFAS 167, JPMorgan Chase does not believe that a securitization trust will require consolidation solely due to loan modifications under MHAP. The incentive payments received in connection with loans modified under the program would not be considered variable interests under SFAS 167. SFAS 167 provides guidance as to when a decision maker fee should be considered a variable interest. Assuming no other interest is held by

the servicer, the incentive payments received for loans modified under MHAP would not be considered a variable interest as they are considered to be similar to other servicing fees and are expected to be insignificant to the securitization entity.

*Question 9: Which features and characteristics of transactions that may not be subject to consolidation after the 2009 GAAP modifications become effective should be subject to risk based capital requirements as if consolidated in order to more appropriately reflect risk?*

JPMorgan Chase is not aware of any type of structure or transactions that will not be consolidated under the provisions of SFAS 167, which should be subject to risk-based capital requirements, as if consolidated in order to more appropriately reflect risk. A reporting entity will not be required to consolidate a securitization entity in cases where it has a significant interest in the entity, but does not control the entity. In such cases, we believe that the Agencies' existing rules on recourse and direct credit substitutes addresses the Basel I capital requirements related to any retained or acquired residual interests.

*Question 10: Will securitized loans that remain on the balance sheet be subjected to the same ALLL provisioning process, including applicable loss rates, as similar loans that are not securitized? If the answer is no, please explain. If the answer is yes, how would banking organizations reflect the benefits of risk sharing if investors in securitized, on-balance sheet loans absorb realized credit losses? Commenters should provide quantification of such benefits, and any other effects of loss sharing, wherever possible. Additionally, are there policy alternatives to address any unique challenges the pending change in accounting standards present with regard to the ALLL provisioning process including, for example, the current constraint on the amount of provisions that are includible in tier 2 capital? Commenters should provide quantification of the effects of the current limits on the includibility of provisions in tier 2 capital and the extent to which the 2009 GAAP modifications and the changes in regulatory capital requirements proposed in this NPR effect those limits.*

JPMorgan Chase will apply the same ALLL provision process to securitized loans that remain on the balance sheet as similar loans that are not securitized. Securitized loans that are consolidated at their current carrying values will be subject to the same ALLL provisioning process, including applicable loss rates, as similar loans that are not securitized. For loans that are elected under the fair value option, an ALLL will not be recorded.

We anticipate that our ALLL provision process will result in significant increases in the allowance, with no offsetting benefit in Tier 2 capital, due to the 1.25% limit currently in place. Despite this, we are not recommending any changes to the current limitation on the allowance, as we feel that the most relevant measures of capital adequacy is at the core/Tier 1 capital level.