



NATIONAL LEGAL AND POLICY CENTER

January 26, 2023

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

Re: *JPMorgan Chase & Co.*
Shareholder Proposal of the National Legal and Policy Center

VIA EMAIL: shareholderproposals@sec.gov

Ladies and Gentlemen:

This letter responds to the letter dated January 13, 2023 from Brian V. Breheny of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for JPMorgan Chase & Co. (“JPMorgan” or “Company”), requesting permission from the Staff of the Division of Corporation Finance (“Staff”) to exclude our shareholder proposal (“Proposal”) from JPMorgan’s 2023 proxy materials (“Proxy”).

The Company’s request provides insufficient rationale for exclusion and should be denied.

Despite the Company’s 12 pages of legal arguments, our half-as-long response will show that its excuses to exclude our proposal from the Proxy – that it “deals with matters relating to the Company’s ordinary business operations;” that it “would cause the Company to violate federal law;” and “because the Company lacks the power and authority to implement the proposal” – are illegitimate. The Proposal seeks to address a societal issue that *transcends* ordinary business matters, and includes no requirements to implement any measure that forces the company to violate any laws.

The 500-word limit for shareholder proposals constrained our ability to present a fuller case for the necessity of the transparency report we request, so we will attempt to do so here. But first we will address the nature of the sought-after report itself.

Transparency is sought regularly via the shareholder proposal process and thus is permitted in proxy materials.

We seek an itemization of the requests to close accounts that JPMorgan has received from entities under the Executive Branch of the United States Government, and

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an explanation of the Company's policies in response to such requests. Such a report would be no different from the types of reports that seek transparency about other Company operations, that in the past have been permitted on proxy materials under SEC precedent.

Two long-standing, consistently-presented types of shareholder proposals come to mind: disclosures of charitable contributions, and disclosures of lobbying expenditures. As examples, these two issues go to the heart of a company's approach to what causes it supports, and what government policies it seeks to influence. At the same time, both types of engagement – with nonprofits to consider potential charitable support, and a company's government affairs department for lobbying activities – occur on a “day-to-day” basis. They are as core to a company's affairs and operations as anything else it does, yet shareholder proposals seeking transparency about both types of activities have been accepted on proxy materials for many years.

Thus the Company's contention that our proposal seeks exceptional transparency, that interferes with ordinary business operations and seeks to micro-manage the company, is baseless.

Transparency about the Company's cooperation with abusive government agencies is a critical societal issue that transcends ordinary business operations.

As our Proposal's supporting statement briefly contextualizes, JPMorgan and other major financial institutions cooperated with the Department of Justice's “Operation Choke Point” initiative, to close the accounts of legally operating businesses and organizations that were politically disfavored by the executive administration at the time. Owners of such businesses were victims of “de-banking,” by “exerting back-room pressure on banks and other regulated financial institutions to terminate their relationships” with the victimized customers.¹

On May 22, 2019, two major payday lending companies announced that they “reached a settlement with the Federal Deposit Insurance Corporation (FDIC) regarding Operation Choke Point, the FDIC program that pressured banks to cut ties with certain categories of lawful businesses....”² “We uncovered how some FDIC leaders and officials executed a campaign motivated by personal scorn for our industry, contempt for our millions of customers, and blatant disregard for due process,” said Jessica Rustin,

¹ “Payday lenders sue US regulators over ‘Operation Choke Point,’ Reuters, June 6, 2014. See <https://www.cnbc.com/2014/06/06/payday-lenders-sue-us-regulators-over-operation-choke-point.html>.

² “Federal Deposit Insurance Corporation Agrees to Settlement in Operation Choke Point Lawsuit,” PR Newswire, May 22, 2019. See <https://www.prnewswire.com/news-releases/federal-deposit-insurance-corporation-agrees-to-settlement-in-operation-choke-point-lawsuit-300855421.html>.

chief legal officer for Advance America. “This settlement will help to prevent this disenfranchisement from happening again – to our business or any other legal, regulated business.”

The lesson of Operation Choke Point did not serve as a deterrent for JPMorgan and its de-banking practices, unfortunately. In early 2019, the Company shut down the accounts of several conservative activists within weeks of each other.³ We would like to know in instances such as these whether it was at the behest of the federal government.

And as referenced briefly in our Proposal, JPMorgan engaged in a particularly egregious example of de-banking, by shuttering the account of the reputable nonprofit, the National Committee for Religious Freedom (NCRF). This inexcusable decision was made without providing an explanation to the organization’s leadership. The NCRF, with the noble mission to “protect and defend religious freedom for all Americans,” is led by Sam Brownback, who served as United States Ambassador-at-Large for International Religious Freedom from 2018 to 2021. Ambassador Brownback enjoys a sterling reputation across the political spectrum, having formerly served as a U.S. Congressman and Senator, and as Governor, representing the state of Kansas.

The disturbing incident caught the attention of members of Congress who are concerned about the growing trend of politically-motivated pressure applied to financial institutions. In a letter to JPMorgan Chairman and CEO Jamie Dimon, inquiring about the bank’s treatment of NCRF, Sen. Marco Rubio wrote:⁴

In recent weeks, Chase appears to have not only denied credit to a credit-worthy religious liberty non-profit without any explanation, but also suggested the decision could be reconsidered if the organization provided Chase with a list of its donors and its decision-making criteria for funding outside groups. Millions of Americans who are concerned about religious and political discrimination deserve a response for this concerning behavior, and any discriminatory actions taken by your bank must stop.

Back in August 2021, the Company also cancelled the credit card of the wife of former National Security Advisor, General Michael Flynn, “because continuing the

³ Byrne, John Aidan. “JPMorgan Chase accused of purging accounts of conservative activists,” New York Post, May 25, 2019. See <https://nypost.com/2019/05/25/jpmorgan-chase-accused-of-purging-accounts-of-conservative-activists/>.

⁴ Rubio, Sen. Marco. “Rubio Raises Concerns About Chase Bank Politically Motivated De-Banking,” Oct. 25, 2022. See <https://www.rubio.senate.gov/public/index.cfm?p=Press-Releases&id=1F3CDDE5-9419-46B7-A0EB-18F0B4554674>.

relationship creates possible reputational risk to our company.”⁵ Following a public outcry, the Company reversed its decision and apologized. Nonetheless the episode illustrates how susceptible JPMorgan is to political influence, and how disclosure pursuant to the transparency we seek in our Proposal is of widespread interest.

Government and elected officials have been proven to be more-than-willing in recent years to pressure private corporations to censor or “de-fund” their political adversaries.⁶ Nowhere has this been exposed as more evident than with the release by new CEO Elon Musk of “The Twitter Files” over the past two months, via several reputable independent journalists.⁷ And in another de-banking example, Democrat members of both the U.S. House and Senate pressed JPMorgan and Wells Fargo to cut ties with an association of Republican state financial officers.⁸

We have no way of knowing – hence our Proposal’s request – but circumstantial evidence points to the possibility that political bias and pressure from the very top of JPMorgan may influence day-to-day decision-making about account holders, who may eagerly invite improper government meddling. When the State of Georgia in 2021 enacted a law to improve that state’s election integrity, Mr. Dimon responded with a prejudiced misrepresentation of the law, saying, “We regularly encourage our employees to exercise their fundamental right to vote, and we stand against efforts that may prevent them from being able to do so.”⁹

And following the 2022 election, Bloomberg reported that Mr. Dimon attended a party of former JPMorgan executives where he “began bluntly dispensing opinions.”¹⁰ The news syndicate cited attendees who claimed Mr. Dimon “lit into former President

⁵ Gentile, Luke. “Chase Bank apologizes for Michael Flynn credit card cancellation letter sent in 'error',” *Washington Examiner*, Sept. 1, 2021. See <https://news.yahoo.com/chase-bank-apologizes-michael-flynn-233500718.html>.

⁶ Smith, Lee. “How the FBI Hacked Twitter,” *Tablet* magazine, Jan. 5, 2023. See <https://www.tabletmag.com/sections/news/articles/how-the-fbi-hacked-twitter-lee-smith>.

⁷ Malik, Kenan. “The Twitter Files should disturb liberal critics of Elon Musk – and here’s why,” *The Guardian*, Jan. 1, 2023. See <https://www.theguardian.com/commentisfree/2023/jan/01/the-twitter-files-should-disturb-liberal-critics-of-elon-musk-and-heres-why>.

⁸ Hallez, Emile. “Democrats urge JP Morgan, Wells Fargo to cease funding of anti-ESG group,” *InvestmentNews.com*, Oct. 24, 2022. See <https://www.investmentnews.com/democrats-urge-jp-morgan-wells-fargo-to-cess-funding-of-anti-esg-group-228225>.

⁹ Egan, Matt. “Jamie Dimon speaks out on voting rights even as many CEOs remain silent,” *CNN Business*, March 31, 2021. See <https://www.cnn.com/2021/03/30/business/jamie-dimon-voting-rights-jpmorgan/index.html>.

¹⁰ “Jamie Dimon is more crucial than ever to the bank he’s run for 17 years,” *Bloomberg*, Dec. 21, 2022. See <https://www.businesstimes.com.sg/companies-markets/jamie-dimon-more-crucial-ever-bank-hes-run-17-years>.

Donald Trump, unleashing obscenities as he discussed the Jan. 6 insurrection.”

“Some guests,” Bloomberg reported, “no strangers to his swagger, were surprised by the ferocity of his performance.”

Not long after that article published, Mr. Dimon said in another election assessment, “I thought the election was good because on both parties...the wing nuts didn’t get elected.”¹¹ Those of us concerned about politically-motivated de-banking wonder how many accounts of “wing nuts” are targeted by JPMorgan. It appears rap artist Kanye West may be one of them.¹²

The Proposal provides for exemptions and therefore implementation would NOT require the company to violate federal law, and thus the Company has the power and authority to implement the Proposal.

To repeat the first paragraph of the “RESOLVED” section of our Proposal:

*The shareholders request that JPMorgan Chase & Co. (“Company”) provide a report, published on the Company’s website and updated semi-annually – **omitting proprietary and private customer information and at reasonable cost** (emphasis added) – that specifies the Company’s policy in responding to requests to close, or in issuing warnings of imminent closure about, customer accounts by any agency or entity operating under the authority of the executive branch of the United States Government.*

As the reader can see above in the section emphasized in bold font, the Proposal allows for the Company to omit “proprietary” and other private customer information in providing the report for shareholders. Merriam-Webster defines “proprietary” as “one that possesses, owns, or holds exclusive right to something.”¹³

In its request to the Staff for permission to exclude our Proposal from the Proxy, the Company argues the Proposal would “compel the disclosure of confidential supervisory information (“CSI”)” and therefore require it to break the law. The Company then notes that “there are variations among federal banking regulators,” which indicates

¹¹ Betz, Bradford. “JPMorgan Chase CEO Jamie Dimon says he’s thankful ‘wing nuts’ in both parties weren’t elected,” FoxBusiness.com, Dec. 11, 2022. See <https://www.foxbusiness.com/politics/jpmorgan-chase-ceo-jamie-dimon-says-hes-thankful-wing-nuts-both-parties-werent-elected>.

¹² Cox, Nicki. “Candace Owens claims JP Morgan cut ties with Kanye West amid anti-Semitic comments,” *New York Post*, Oct. 12, 2022. See <https://pagesix.com/2022/10/12/jp-morgan-chase-bank-cuts-ties-with-kanye-west-after-anti-semitic-comments/>.

¹³ See <https://www.merriam-webster.com/dictionary/proprietary>.

that not all potential information sought in our Proposal would be exclusionary. The Company further cites examples of CSI under banking regulatory requirements, and then concludes that the Company is “not permitted to disclose CSI without the prior approval of the appropriate federal banking regulator because such information *is regarded as the regulators’ own information or property*” (emphasis added).

That the hypothetical CSI is the regulators’ “information or property” falls under the very definition of “proprietary,” which our Proposal allows for the omission of.

The Company also claims it “routinely receives requests from law enforcement agencies related to customer accounts and provides information in response,” and that “many of these communications are protected by independent confidentiality requirements.” Again, our proposal *allows* for the omission of “proprietary” and “private customer information,” and thus the Company’s reasoning that it would be forced to violate federal law under the Proposal’s terms is invalid.

At this juncture it is worth noting, however, that other companies – unlike JPMorgan and much of the “Big Bank” industry – at times have found the resolve to *resist* unlawful or unethical requests made by government agencies and have *protected* their customers, sometimes in the face of strong criticism. In the last several years, for example, Apple has rejected pleas from law enforcement to provide access to shooting suspects’ encrypted iPhones.¹⁴

And genealogy companies such as Ancestry.com and 23andMe say they adhere to their privacy promises to customers, and rarely comply with requests for DNA samples from law enforcement. 23andMe “closely scrutinizes all law enforcement and regulatory requests,” only complying with ones the company “determine[s] are legally valid and legally require our response after exhausting other options,” the company said in 2021, according to Fox Business.¹⁵

These examples stand in stark contrast to the weakness of the Company and its attorneys – who apparently choose to genuflect to overreaching regulators, preserve their secrecy and shutter accounts – rather than examine the law and protect its customers.

The Company’s final argument against including our Proposal in its Proxy is that

¹⁴ Collier, Kevin & Farivar, Cyrus. “The FBI cracked another iPhone — but it's still not happy with Apple,” NBCNews.com, May 18, 2020. See <https://www.nbcnews.com/tech/security/fbi-cracked-another-iphone-it-s-still-not-happy-apple-n1209506>.

¹⁵ Murphy, Aislinn. “Idaho murder suspect nabbed by genetic genealogy; some sites work with law enforcement,” FoxBusiness.com, Jan. 5, 2023. See <https://www.foxbusiness.com/lifestyle/idaho-murder-suspect-nabbed-genetic-genealogy-sites-work-law-enforcement>.

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it “lacks the power and authority to implement the Proposal.” The Company’s rationale on this point is entirely built upon its argument that our Proposal would require it to break the law, which we have debunked above.

Despite all the potential exemptions and omissions discussed above, there are certainly examples that do not fall under any of those categories, and can be disclosed in the type of transparency report sought in our Proposal.

Conclusion

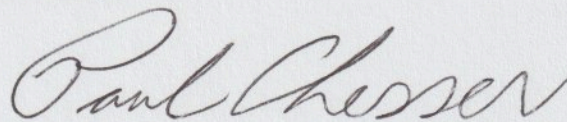
The de-banking issue is not a concern that is limited to JPMorgan. Its peers among the “Big Banks” have also been accused of similar practices, without explanation to their customer-victims.

It is a trend that we do not believe will be viewed as acceptable among the shareholder community. Greater transparency is badly needed, and shareholders should have an opportunity to vote on it with our proposal, which addresses a significant social policy issue that transcends day-to-day business.

For this reason, and because of JPMorgan’s track record of political bias and discriminatory de-banking practices, NLPC asks the Staff to recommend enforcement action should the Company omit the proposal.

If you have any questions or need more information, please feel free to contact me via email or at 662-374-0175.

Sincerely,



Paul Chesser
Director
Corporate Integrity Project

Cc: John H. Tribolati and Linda Scott – JPMorgan Chase & Co.

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