AMERICANS
FOR FINANCIAL REFORM
ACCOUNTABILITY ★ FAIRNESS ★ SECURITY

Americans for Financial Reform
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November 1, 2012

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Lanny Breuer
Assistant Attorney General U.S.
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Mr. Robert Khuzami
Director, Division of Enforcement
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable John Walsh
United States Attorney
District of Colorado
1225 17th Street, Suite 700
Denver, CO 80202

The Honorable Stuart Delery
Assistant Attorney General (Acting), Civil
Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Eric Schneiderman
Attorney General
State of New York
120 Broadway
New York, NY 10271

Dear Chairs of the Residential Mortgage-Backed Securities Task Force,

We write to urge you to push forward with efforts to seek accountability, and redress for borrowers and investors, from the Wall Street and other firms whose actions led to the financial crisis and the foreclosure crisis.

In response to the legal case filed by AG Schneiderman on October 1 (*People of the State of New York v. JPMorgan Securities LLC et al.*) JPMorgan is trying to make a very public case that it would be wrong to compel the company to bear the costs of illegal acts by Bear Stearns because it acquired that company at the government's request. JPMorgan now claims that it was a reluctant suitor, "was asked to do it" and only entered into and closed on the deal as a "favor" to the Federal Reserve.[1]

There are many problems with this argument, including the very simple one that whatever the circumstances, JP Morgan by its merger with Bear knowingly both acquired assets and assumed

[1] Comments of Jamie Dimon, CEO of JPMorgan Chase, before the Council on Foreign Relations, October 10, 2012, http://www.reuters.com/article/2012/10/10/us-jpmorgan-dimon-bearstearns-idUSBRE8991CE20121010.

liabilities from Bear. JPM negotiated a price that took both into account and it has profited from the assets, and may now have to satisfy the liabilities. The alternative is impunity for Bear's wrongdoing, an improper renegotiation by JPM to shed the liabilities 4-1/2 years after it contractually assumed them, and one more round of Wall Street pocketing the gains and the rest of us suffering the losses.

If we look more closely at the deal, moreover, JPMorgan's story falls apart even more dramatically.

First, the record indicates that JPMorgan was anything but hesitant to buy Bear. In fact, it was an eager buyer and took extraordinary steps to protect its offer, and to prevent any other buyers from stepping in. JPM's suggestion that the Bear Stearns deal was a sacrifice of some kind is contradicted by the very terms of the merger deal it negotiated.

If JPM was reluctant to buy Bear, as it now suggests, the best way for it to have structured its deal would have been to encourage competitive bidding leading to a higher or better bid that would have taken JPM off the hook.

Instead, JPMorgan sought and obtained various deal protections that would make its purchase of Bear Stearns all but inevitable. These protections suggest that Morgan saw an opportunity to acquire Bear Stearns on fire sale terms, and did not want to let it get away. The bid protections negotiated for and obtained by JPM included 'no shop' provisions prohibiting Bear from actively soliciting other proposals, or from discussing or negotiating with other potential partners without giving JPMorgan notice and an opportunity to match the terms; an extraordinary 25% 'breakup fee' if another higher bidder won the deal; restrictions on competing bids; a requirement that if shareholders disapproved the deal it had to be restructured and resubmitted; and more. In addition to these measures to make sure that it – and no one else – would be the successful buyer, JPMorgan took the additional step of buying 10% of Bear Stearns stock on the open market in order to increase the certainty that the deal would close.

Contemporaneous accounts from March 2008 also tell the story that JPM and Dimon, far from showing any reticence, moved heaven and earth to lock up what they thought was a great acquisition. "Dimon's race to cut a deal for Bear began around 6 p.m. Thursday, [March 13, 2008] …..Dimon immediately dispatched his investment banking co-heads to assemble the team for "a possible takeover." Dimon "'was driving the process - it was an extraordinary thing to watch,' said a senior executive involved in the deal."[2]

The attached memo describes in more detail the array of deal protections and negotiated and open-market stock purchases made and obtained by JPM to lock up the merger, and the March 2008 perspective on the transaction.

Second, while Dimon now describes the deal as a favor, he earlier described it to shareholders as a value proposition. After the deal was completed, and JPM had the opportunity to assess Bear's assets and liabilities, Mr. Dimon and others at JPM made numerous representations to investors about getting good value for Bear Stearns. In 2008, commenting on JPM's recent agreement to

[2] http://dealbook.nytimes.com/2008/03/18/rallying-the-house-of-morgan/.

acquire Bear Stearns, Mr. Dimon remarked: “The Bear Stearns merger provides a unique opportunity to enhance our ability to serve clients by adding new capabilities in prime brokerage and clearing and by improving strength in equities, mortgage trading, commodities and asset management. We welcome the employees of Bear Stearns and look forward to working together to build increased franchise value.”[3] On September 9, 2009 JPM announced the formation of the Prime-Custody Solutions Group, stating: “Since 1997, Bear Stearns was one of the only prime brokers that had offered custody benefits to clients. Since being acquired by J.P. Morgan, the prime brokerage has thrived.”[4]

Third, JPMorgan was aware of the risks in its purchase of Bear, and the cost of these risks was negotiated into the support for the deal it obtained from the Federal Reserve, and into the price they paid for the company.

JPM said in its presentation to its investors, made immediately after the initial merger agreement with Bear Stearns was announced, that JPM’s total exposure to risky mortgage assets held by Bear amounted to $33 billion, and thus as a part of the deal JPM had demanded that the Fed create a special purpose vehicle that took $30 billion of this exposure off JPM’s books.[5] (Later amendments made that amount effectively 29 billion, on a non-recourse basis to JPM.) JPMorgan also was aware in March 2008 that its acquisition of Bear Stearns potentially involved litigation liabilities far in excess of the $1.2 billion purchase price. The assumption of those liabilities was, at all times, part of the deal. CFO Michael Cavanaugh stated at the March 18, 2008 conference call on the Bear Stearns transaction that JPM would “be looking at various reserves for the combined company at the time of the deal. That includes litigation reserves.” And he gave a figure of from 5 to 6 billion for those reserves. Any reduction in the amount of the liabilities that JPM agreed to assume in March 2008 would have resulted in an increase in the $1.2 billion purchase price and a reduction in the $29.0 billion of non-recourse Fed money.

For JPM to assert now that it is surprised by lawsuits to liquidate Bear Stearns’ claims and liabilities that JPM expressly assumed under the merger agreements, and knew it would have to and in fact did reserve for, is absurd. These liabilities in fact constituted the largest part of the purchase price for the deal.

Fourth, it is particularly outrageous for JPMorgan to argue that the New York Attorney General’s office, the taxpayers, and the citizens that were harmed by Bear Stearns’ alleged illegal actions owe JPM special treatment and a post-merger release from Bear Stearns liabilities when it already has received substantial other subsidies from the U.S.

JPM received those subsidies from the U.S. contemporaneously with JPM’s agreement to acquire Bear Stearns and assume Bear Stearns’ liabilities. Those subsidies enabled JPM to shore up its own balance sheet and return to robust profitability in the midst of a severe downturn. Individuals and companies affected by Bear Stearns’ alleged wrongs have not been so fortunate. Even if JPM had been an unwilling suitor, which it clearly was not, JPM

[3] JP Morgan investor presentation dated March 16, 2008, filed with the SEC as Form 8-K on March 18, 2008.

[4] http://www.jpmorgan.com/tss/General/J_P_Morgan_Creates_Integrated_Prime_Brokerage_and_Custody_Group/1252451387278

[5] JP Morgan investor presentation dated March 16, 2008, filed with the SEC as Form 8-K on March 18, 2008.

has already been handsomely compensated by those subsidies and privileges, which include:

- The agreement of the Fed and OCC to provide JPM with an 18-month exemption from risk-based leverage and capital requirements. This gave JPMorgan a competitive advantage and flexibility over its peers who received no such exemption.[6]

- Billions of dollars in direct government support during the crisis, including $25 billion in TARP bailout funds.

- Over $390 billion in total emergency loans from the Fed. Bloomberg News has estimated that JPMorgan earned $457.89 million, virtually risk free, by investing the money that it borrowed at below market rates from the Fed.[7]

- JPM's CEO Dimon served on the board of the Federal Reserve Bank of New York at the same time that his bank received the emergency loans.

JPM's use by the Fed as a clearinghouse for the Fed's emergency lending programs, generating still more fees and revenues for JPM.[8] In short, JPMorgan's current description of its purchase of Bear has very little to do with what actually happened. Dimon and JPM went after Bear Stearns relentlessly and with eyes wide open. While JPM boxed out any and all competitors for the deal, it still masterminded a $29.0 billion direct subsidy from the Fed to address perceived risks. The Bear assets acquired were worth many times more than the $1.2 billion of JPM stock that was paid. The assumption by JPM of Bears' liabilities was more than an essential part of the deal --- it was the most significant part of the purchase price. JPM was doing no one a "favor," and should not be permitted to renegotiate the deal at the expense of the taxpayers or the individuals, pension plans, 401k participants, and other investors who lost significant sums from Bear Stearns' wrongdoing and are entitled to a recovery. JP Morgan is trying to get away with enjoying the profits from Bear's activities, while leaving defrauded investors and the public to pay the costs.

We urge you to ignore these efforts, and to work aggressively to pursue claims against Morgan and all of the actors on Wall Street who broke the law. They need to be held accountable, both to reestablish the rule of law over our financial system, and to win redress for investors and homeowners who were harmed. JPMorgan's efforts to evade responsibility make legal action more, not less urgent. And they point to the need to hold both institutions and individuals responsible for their conduct.

Sincerely,

Americans For Financial Reform

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[6] U.S. GAO Report to Congress: "Federal Reserve Bank Governance," October 2011; JPM 10K, page 69.
[7] U.S. GAO Report to Congress: "Federal Reserve Bank Governance," October 2011; http://bit.ly/Bloomberg-Fed-Data.
[8] U.S. GAO Report to Congress: "Federal Reserve Bank Governance," October 2011.

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services

- Home Defender's League
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group

- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Affiliates

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY

- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG

- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin
- UNET