

**REPORT TO THE BOARD OF DIRECTORS OF JPMORGAN CHASE & CO.
REGARDING PUBLIC BENEFIT CORPORATIONS**

JPMorgan Chase & Co. (the “Company” or “JPMorgan Chase”) received a shareholder proposal (the “Proposal”) for its 2021 annual meeting of stockholders asking its Board of Directors (the “Board”) to issue a report to stockholders regarding a potential conversion of JPMorgan Chase to a Delaware public benefit corporation. The Board engaged us to assist it in identifying any Delaware law issues associated with such potential conversion and to prepare the report requested in the Proposal. Set forth below is our summary of Delaware law regarding Delaware public benefit corporations and the report in response to the Proposal.

A. Statutory Requirements to Become a Delaware Public Benefit Corporation

The following section provides an overview of notable Delaware statutory requirements applicable to JPMorgan Chase becoming a Delaware public benefit corporation, as well as information regarding the management and governance of a public benefit corporation.

Background on Delaware Public Benefit Corporations

JPMorgan Chase is incorporated in the State of Delaware. Since 2013, Delaware law has permitted the organization of “public benefit corporations,” which are for-profit corporations organized under and subject to the General Corporation Law of the State of Delaware (the “DGCL”), that are “intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner.” 8 *Del. C.* § 362(a). The DGCL defines a “public benefit” as “a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature.” 8 *Del. C.* § 362(b). Unlike a conventional corporation where director duties are defined by common law fiduciary duty principles and not by statute, when a corporation elects to become a public benefit corporation, the DGCL provides that the directors have a statutory duty to manage the corporation in a manner that balances the stockholders’ pecuniary interests, the best interests of those materially affected by the corporation’s conduct, and the specific public benefit or benefits identified in the corporation’s certificate of incorporation. 8 *Del. C.* §§ 362(a), 365(a).

Process of Becoming a Delaware Public Benefit Corporation

An existing corporation that is not a public benefit corporation, such as JPMorgan Chase, may become a public benefit corporation by either amending its certificate of incorporation or by



merging with or into a public benefit corporation. An amendment to the certificate of incorporation to become a public benefit corporation would require the approval of the board of directors and the holders of a majority of the outstanding shares of stock of the corporation entitled to vote thereon. 8 *Del. C.* § 242. The certificate of incorporation would need to be amended so that (i) the “heading” states that the corporation is a public benefit corporation,¹ and (ii) the purpose clause identifies one or more specific public benefits to be promoted by the corporation.² 8 *Del. C.* § 362(a). Similarly, a merger into a public benefit corporation would require the approval of the board of directors and the holders of a majority of the outstanding stock of the corporation entitled to vote thereon.³ *See, e.g.,* 8 *Del. C.* § 251. In either case, in order to convert to a public benefit corporation, the Board would need to determine that becoming a public benefit corporation is advisable and in the best interests of JPMorgan Chase and its stockholders.

Appraisal Rights in Connection with a Conversion to a Public Benefit Corporation

The DGCL was amended effective July 16, 2020 to eliminate appraisal rights in connection with the conversion of an existing corporation to a public benefit corporation either by amendment to the certificate of incorporation or by merger unless appraisal rights would otherwise be available under the DGCL. *See* 8 *Del. C.* § 262.⁴

¹ The heading of the certificate of incorporation is different from the name of the corporation. The name of the corporation is not required to include the words “public benefit corporation” or any related abbreviation or designation (such as P.B.C. or PBC). The heading is the title of the document. For example, the heading of the certificate of incorporation of a public benefit corporation could provide as follows: Certificate of Incorporation of ABC Corporation (a public benefit corporation).

² As described above, public benefit corporations are intended to operate in a responsible and sustainable manner and to produce a specific public benefit or benefits. In selecting its specific public benefit, it may be advisable for the public benefit corporation to consider a benefit that is more narrowly defined than the general statutory purpose of “operating in a responsible and sustainable manner,” but that is also defined broadly enough to avoid having to amend the public benefit in the certificate of incorporation in the future. For example, the public benefit contained in the certificate of incorporation of Laureate Education, Inc. is to “provide a positive effect (or a reduction of negative effects) for society and persons by offering diverse education programs delivered online and on premises operated in the communities that [it] serve[s], as the board of directors may from time to time determine to be appropriate and within the Corporation’s overall education mission.”

³ Note that if such a merger is structured so that JPMorgan Chase merges with and into a public benefit corporation, JPMorgan Chase’s third-party contracts would need to be reviewed to determine how a merger through which JPMorgan Chase merges out of existence would affect its existing contracts.

⁴ JPMorgan Chase’s Restated Certificate of Incorporation, as amended (the “Restated Certificate of Incorporation”), does not provide for appraisal rights in connection with an amendment to the Restated Certificate of Incorporation. With respect to a merger into a public benefit corporation, the holders of JPMorgan Chase common stock would not have appraisal rights unless the common stockholders are required to accept anything for their shares other than publicly traded shares of stock, cash in lieu of fractional shares or any combination thereof. 8 *Del. C.* §

Governance of a Public Benefit Corporation and Directors' Fiduciary Duties

Delaware laws governing the internal affairs of a conventional stock corporation are generally applicable to a public benefit corporation. The principal difference between a conventional stock corporation and a public benefit corporation relates to the fiduciary duties of the directors. In a conventional solvent stock corporation, fiduciary duties are owed by the directors solely to the corporation and its stockholders. Interests of other constituencies, such as employees, customers, suppliers, creditors, the environment, the community in which the corporation operates and the like, may be (and generally are) considered in making business decisions as those interests are crucial parts of the long-term success of the corporation. For example, the Business Roundtable Statement on the Purpose of a Corporation, of which JPMorgan Chase's Chief Executive Officer is a signatory, includes a commitment by all signatories to deliver value to their customers, invest in their employees, deal fairly and ethically with their suppliers, support the communities in which they work and generate long-term value for their stockholders. Because the interests of customers, employees, suppliers and the community in general are often key to the success of the corporation (and therefore are aligned with the interests of the corporation's stockholders), directors of conventional corporations may, consistent with their fiduciary duties, consider such stakeholder interests in making decisions. If the interests of the stockholders and the other constituencies conflict, however, the board's fiduciary duties require it to act in a manner that furthers the interests of the stockholders.

In a public benefit corporation, on the other hand, directors are required to manage the corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or benefits identified in its certificate of incorporation. 8 *Del. C.* § 365(a). For any decision made by the directors of a public benefit corporation, each director is deemed to have satisfied his or her fiduciary duties to stockholders and the corporation to manage the corporation in a manner that satisfies his or her duties under Section 365(a) if his or her decision is informed and disinterested and not such that no person of ordinary, sound judgment would approve. 8 *Del. C.* § 365(b). For purposes of considering whether a director is disinterested, a director's ownership of or other interest in the stock of the public benefit corporation will not alone create a conflict of interest on the part of the director with respect to any decision implicating the director's balancing requirements, except to the extent that such ownership or other interest would create a conflict of interest if the corporation were not a public benefit corporation. 8 *Del. C.* § 365(c). In addition, absent a conflict of interest, no failure to satisfy the balancing requirements will, for purposes of Section 102(b)(7) of the DGCL (which generally exculpates directors against personal liability for monetary damages for breaches of the duty of care) or Section 145 of the DGCL (which governs rights to indemnification, subject in certain cases, to the indemnitee having met specific standards of conduct), constitute an act or omission not in good faith or a breach of the duty of loyalty, unless the certificate of incorporation otherwise provides. *Id.*

262(b)(2). However, appraisal rights may be available to the holders of outstanding shares of certain series of JPMorgan Chase preferred stock (if such series are neither listed on a national securities exchange nor held of record by more than 2,000 holders). 8 *Del. C.* § 262(b).

Thus, unlike in a conventional corporation, directors of a public benefit corporation are required to consider the interests of constituencies other than stockholders in making business decisions, and where the pecuniary interests of stockholders and one or more of the corporation's other constituencies conflict, the directors are obligated to balance the competing interests. Unlike in a conventional corporation, in balancing the pecuniary interests of stockholders and the interests of all of the corporation's various constituencies, the board of directors is obligated to select an option that balances the interests of all the corporation's constituencies. If the board of directors is disinterested and fully informed and makes a decision is not such that no person of ordinary, sound judgement would approve, the board of directors is permitted to choose an alternative that is in the best interests of the corporation when balancing the interests of the corporation's various constituencies, even if it is not the best one from the standpoint of the pecuniary interests of the stockholders.

Notwithstanding the requirement that directors consider and balance the pecuniary interests of stockholders and those of the corporation's other constituencies, the DGCL provides that a director of a public benefit corporation does not, by virtue of the public benefit provisions, have any duty to any person that is not a stockholder on account of such person's interests in the public benefit(s) identified in the certificate of incorporation or on account of any interest materially affected by the corporation's conduct. 8 *Del. C.* § 365(b). Only stockholders of public benefit corporations who own individually or collectively at least 2% of the corporation's outstanding shares or, in the case of a corporation with shares listed on a national securities exchange, the lesser of such percentage or shares of the corporation with a market value of at least \$2 million as of the date the action is filed, may bring any action (including individual, derivative or any other type of action) to enforce the balancing requirement of Section 365(a) of the DGCL. 8 *Del. C.* § 367.

Other Statutory Considerations and Requirements

In addition, the following statutory requirements currently apply to a Delaware public benefit corporation:

- Any stock certificates shall note conspicuously that the corporation is a public benefit corporation, and any notice given to holders of uncertificated shares pursuant to Section 151(f) of the DGCL shall state conspicuously that the corporation is a public benefit corporation. 8 *Del. C.* § 364.
- Any notice of a meeting of stockholders must include a statement that it is a public benefit corporation. 8 *Del. C.* § 366(a).
- It must, no less than biennially, provide stockholders with a statement as to the corporation's promotion of the public benefit identified in the certificate of incorporation and of the best interests of those materially affected by the corporation's conduct. 8 *Del. C.* § 366(b).

Also, although not statutorily required, the board of directors (or a duly authorized committee thereof) of an existing corporation that converts to a public benefit corporation may also consider reviewing its bylaws, board committee charters and other governance policies and procedures to determine whether any revisions are necessary or whether any additional policies

should be adopted in light of the corporation's specific public benefit purpose or purposes contained in the certificate of incorporation and the directors' fiduciary duties in connection therewith.

B. Other Relevant Factors and Considerations

In addition to the above, converting to a public benefit corporation would raise a large number of logistical, regulatory and practical issues and considerations that would need to be investigated and considered including but not limited to, those described below.

Ability to Obtain the Requisite Stockholder Vote in Connection with a Conversion to a Public Benefit Corporation is Uncertain

Conversion to a Delaware public benefit corporation is only permitted if approved by the holders of at least a majority of JPMorgan Chase's outstanding shares of common stock. To date, no publicly traded Delaware corporation has converted to a public benefit corporation or sought a stockholder vote seeking authorization for converting to a public benefit corporation, so it is uncertain whether the necessary stockholder vote can be obtained. To date, proxy advisors such as Institutional Shareholder Services and Glass Lewis have not published positions on whether they would support proposals to convert to a public benefit corporation. Likewise, the voting policies of large institutional investors are silent on this issue.

Lack of Precedent for Converting Conventional Corporations to Benefit Corporations

To our knowledge, no U.S. publicly traded corporation has converted to a public benefit corporation. As noted above, in order for a Delaware corporation to convert to a benefit corporation, the board of directors would have to determine that it is advisable and in the best interests of the corporation and its stockholders to do so. Converting would require the Board to determine, in the exercise of its business judgment, that converting to a public benefit corporation would be more beneficial in the long run to the corporation and its stockholders than continuing to operate as a conventional corporation. There is no direct precedent to which the Board could look in making that decision, though the experience of the several companies that have gone public as public benefit corporations could provide some reference points.

Ability of Directors of Conventional Delaware Corporations to Consider the Interests of Stakeholders

The directors of conventional Delaware corporations are permitted to (and generally do) consider the interests of stakeholders of the corporation other than stockholders in making business decisions, and in many cases, the interests of the corporation's customers, employees and the communities in which the corporation operates are a critical component of the corporation's ability to be successful and to maximize the value of the corporation in the long term. JPMorgan Chase's Chief Executive Officer is a signatory to the Business Roundtable Statement on the Purpose of a Corporation, in which the signatories commit to deliver value to all of their company's customers, employees, suppliers, communities and stockholders for the future success of each of the companies, their communities and the country. Further, JPMorgan Chase is subject to regulation by a number of state and federal bank regulatory agencies that take into account the interests of

constituencies other than stockholders in their regulatory oversight functions.⁵ Finally, JPMorgan Chase is engaged in a number of public benefit activities and initiatives that benefit the communities in which it operates under its existing corporate governance structure and periodically publishes public reports describing those activities and initiatives. All of these actions are permissible for directors of a conventional corporation under existing law so long as they are in the long-term best interests of the corporation and its stockholders.⁶

Lack of Precedent Regarding the Governance of Publicly Traded Public Benefit Corporations

To our knowledge, only three U.S. corporations have gone public as public benefit corporations.⁷ There are no major publicly traded financial institutions that are public benefit corporations. There is considerable case law upon which the board of directors of a conventional corporation can rely as to its fiduciary duties in various situations, which is not the case for a public benefit corporation. To date there has been no litigation brought against a public benefit corporation alleging breach of duty by its directors, and there is no case law interpreting or applying the provisions of Section 365 of the DGCL in a decision-making context. As a result, there is no precedent and therefore less certainty regarding decision-making in a public benefit corporation, particularly where the interests of stockholders and other stakeholders or the public benefit diverge and the board of directors is required to balance those divergent interests. In light of the lack of precedent and the uncertainty regarding decision-making for a public benefit

⁵ The Federal Deposit Insurance Corporation, among other things, “examines and supervises financial institutions for safety, soundness, and consumer protection.” <https://www.fdic.gov/about/>. The Consumer Financial Protection Bureau, among other things, “aim[s] to make consumer financial markets work for consumers, responsible providers, and the economy as a whole.” <https://www.consumerfinance.gov/about-us/>. The Office of the Comptroller of the Currency, among other things, “ensures that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.” <https://www.occ.treas.gov/about/what-we-do/index-what-we-do.html>. The Board of Governors of the Federal Reserve System “performs five general functions to promote the effective operation of the U.S. economy and, more generally, the public interest.” <https://www.federalreserve.gov/aboutthefed.htm>. The Securities and Exchange Commission, among other things, works “to make a positive impact on America’s economy, our capital markets, and people’s lives.” <https://www.sec.gov/about/what-we-do>.

⁶ See *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 33 (Del. Ch. 2010) (noting that, for conventional corporations, “[p]romoting, protecting, or pursuing nonstockholder considerations must lead at some point to value for stockholders”); *Revlon Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 183 (Del. 1986) (noting that, with respect to conventional corporations, “[a] board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders”).

⁷ Laureate Education, Inc., a for-profit education company, completed its initial public offering in February 2017 and is listed on the Nasdaq Stock Market. Lemonade, Inc., a for-profit insurance company, completed its initial public offering in July 2020 and is listed on the New York Stock Exchange. Vital Farms, Inc., a for-profit food company, completed its initial public offering in November 2020 and is listed on the Nasdaq Stock Market.

corporation, it is difficult to predict the impact, if any, that conversion to a public benefit corporation could have on JPMorgan Chase's ability to attract and retain experienced and qualified directors. Given the ability of directors of conventional corporations to take into account interests of constituencies other than stockholders when it is in the long-term best interests of the corporation and its stockholders to do so, it is unclear whether the conversion to a public benefit corporation would have a material impact on the outcome of any decision before the board of directors.

Regulatory Uncertainty and Oversight by Financial Regulators

As a large financial institution, JPMorgan Chase is subject to review and examination by a number of regulatory agencies, including, among others, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Securities and Exchange Commission and the Commodities Futures Trading Commission. Compliance with the rules and regulations of these authorities allows JPMorgan Chase to continue to do business as a financial institution. The views of such authorities, as well as JPMorgan Chase's ability to comply with the applicable rules and regulations of such authorities, could impact JPMorgan Chase's ability to convert to a public benefit corporation and, following conversion, its ability to take certain actions needed to achieve its specific public benefit purpose.

Market Uncertainty

Due to the lack of precedent for a publicly traded company (let alone a major financial institution) converting to a public benefit corporation, it is difficult to predict the impact, if any, such actions would have on a company's short- and long-term stock price, market capitalization and overall operational and financial performance. In addition, it is difficult to predict how the failure to achieve (or the perceived failure to achieve) the corporation's specific public benefit purpose could impact the corporation's reputation, overall operational and financial performance and stock price. We believe it would be advisable for a corporation considering converting to a public benefit corporation to obtain advice from a financial advisor on these issues.

Uncertain Impact on Ability to Attract and Retain Employees

Due to lack of precedent for a publicly traded company (let alone a large public corporation with 250,000 employees in more than 60 jurisdictions), converting to a public benefit corporation and the resulting uncertainty with respect to the effect of doing so on a company's short- and long-term stock price, market capitalization and overall operational and financial performance, it is difficult to predict the impact, if any, such action could have on JPMorgan Chase's ability to attract

and retain employees and, in connection therewith, to compete for employees with other companies that are not public benefit corporations.

Uncertain Impact on International Operations

JPMorgan Chase currently operates in 60 international jurisdictions and the impact, if any, of converting to a public benefit corporation would need to be reviewed in each of the jurisdictions where JPMorgan Chase currently operates.

Identification of Public Benefit Purpose(s)

As noted above, a public benefit corporation must identify in its certificate of incorporation one or more specific public benefits that it will pursue. Currently, JPMorgan Chase is involved in a large number of public benefit initiatives, including advancing racial equity, investing in its employees, customers and communities and promoting sustainability as described in further detail in the 2019 Environmental, Social & Governance Report maintained on JPMorgan Chase's website. JPMorgan Chase would need to decide which public benefit or benefits it wishes to identify in its certificate of incorporation.

Costs of Implementation

The costs of converting to a public benefit corporation could include, but are not limited to, (i) the fees and expenses of legal and other advisors in connection with researching the issues noted above and any other issues identified in connection with the conversion and management of the corporation as a public benefit corporation; (ii) if the conversion to a public benefit corporation is accomplished by merger, the costs, fees and expenses incurred in connection with any appraisal proceedings that may be filed by certain holders of preferred stock; (iii) the fees and expenses incurred in connection with any stockholder litigation relating to the conversion; (iv) the costs of soliciting stockholder approval of the conversion to a public benefit corporation; (v) the costs of preparing the biennial statement to stockholders (as described above) and (vi) if applicable, the costs of obtaining and maintaining a third party certification (as described below). In addition, a public benefit corporation could be subject to derivative litigation claiming that the directors failed to balance stockholder and public benefit interests which could be costly and could distract management from executing on the corporation's strategy.

Considerations Regarding Whether to Obtain Third Party Certification

While not required by the DGCL, some public benefit corporations⁸ have elected to obtain a certification with respect to their benefit corporation status from B Lab, a third-party non-profit organization. The three U.S. publicly traded public benefit corporations have obtained such a certification. In order to obtain such a certification, a company is required to undertake an

⁸ While conventional corporations may also elect to obtain a certification from B Lab, in order to be certified, a company is "legally required to consider the impact of their decisions on all their stakeholders." In order to do this, a corporation must update its certificate of incorporation, convert to a public benefit corporation or make other similar structural changes within a specific time period. <https://bcorporation.net/certification/legal-requirements>.

assessment of its impact on society and the environment against the proprietary criteria established by B Lab. According to B Lab, the assessment is intended to evaluate how a company's operations and business model impacts its employees, suppliers, community and the environment using a 200 point scale determined by B Lab. After completing the assessment, B Lab will verify the company's score to determine if it meets the 80 point minimum that B Lab has determined is required for certification. Every company that is certified is required to disclose its assessment score on B Lab's website. Companies that have obtained such certifications and that desire to continue to be certified are required to renew such certifications and verify their updated scores with B Lab every three years. The costs to be paid to B Lab for such certification (and the renewals of the certification) are determined based on each company's annual revenue. Because there are only three U.S. publicly traded public benefit corporations, the effect of obtaining and maintaining such a certification on a company's business is not clear. In addition, it is unknown whether the regulatory oversight to which JPMorgan Chase is subject could restrict, delay or otherwise interfere with JPMorgan Chase's ability to obtain such certification. Were JPMorgan Chase to decide to convert to a public benefit corporation, it would need to determine, after researching the issues noted above, whether to seek a third party assessment of JPMorgan Chase's impact on society and environment (including addressing the promotion of the public benefit or benefits identified in its certificate of incorporation) and to obtain a certification in connection therewith.

Other Potential Risk Factors

In addition, the corporations that have gone public as public benefit corporations have identified a number of risk factors specifically related to their status as public benefit corporations, including the following:

- i. The corporation's status as a public benefit corporation may not result in the anticipated public benefits;
- ii. The corporation's focus on a specific benefit purpose and producing a positive effect for society may negatively impact the corporation's financial performance;
- iii. The corporation cannot provide any assurance that it will achieve its public benefit purpose;
- iv. The board's duty to balance a variety of interests may result in actions that do not maximize stockholder value;
- v. The corporation may be subject to increased derivative litigation concerning the board's duty to balance stockholder and public benefit interests, the occurrence of which may have an adverse impact on the corporation's financial condition and results of operations; and
- vi. If the corporation loses its third party certification or its reported third party score declines, or if state or federal regulators restrict, delay, or otherwise interfere with the corporation's ability to achieve its public benefit, the corporation's reputation could be harmed and its business could be adversely affected.

Dated: January 5, 2021

JPMORGAN CHASE & CO.

RESPONSE OF THE BOARD OF DIRECTORS OF JPMORGAN CHASE & CO.

After reviewing Richards, Layton & Finger's report on the potential conversion of JPMorgan Chase & Co. ("JPMC") to a Delaware public benefit corporation (the "Report") and considering, among other things, the factors and issues outlined in the Report, the Board of Directors, acting through its Corporate Governance & Nominating Committee, determined that it would not be in JPMC's best interests to convert to a Delaware public benefit corporation.

Dated: January 7, 2021