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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**Date of report (Date of earliest event reported): April 23, 2008**

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**JPMORGAN CHASE & CO.**

(Exact Name of Registrant as Specified in Charter)

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**DELAWARE**

(State or Other Jurisdiction of Incorporation)

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**001-05805**

(Commission File Number)

**13-2624428**

(IRS Employer Identification No.)

**270 Park Avenue,  
New York, NY**

(Address of Principal Executive Offices)

**10017**

(Zip Code)

**Registrant's telephone number, including area code: (212) 270-6000**

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### **Item 3.03 Material Modification to Rights of Security Holders.**

On April 23, 2008, JP Morgan Chase & Co. (the “Company”) issued 600,000 shares (the “Shares”) of the Company’s Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series I, par value of \$1.00 per share and with a liquidation preference of \$10,000 per share (the “Series I Preferred Stock”), which Shares were deposited against delivery of 6,000,000 depositary receipts (the “Depositary Receipts”), each evidencing a depositary share (“Depositary Share”) representing 1/10th of a Share, issued by Mellon Investor Services LLC, as Depositary.

Under the terms of the Series I Preferred Stock, the ability of the Company to pay dividends on, make distributions with respect to, or to redeem, purchase or acquire, or make a liquidation payment on its common stock or any preferred stock ranking on a parity with or junior to the Series I Preferred Stock, will be subject to restrictions in the event that the Company does not declare dividends on the Series I Preferred Stock for the most recently completed dividend period or, in the case of any such liquidation payment, does not pay to holders of the Series I Preferred Stock liquidation distributions of \$10,000 per Share, plus any declared and unpaid dividends. The terms are more fully described in the Certificate of Designations (the “Certificate of Designations”), which establishes the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Series I Preferred Stock.

A copy of the Certificate of Designations is included as Exhibit 3.1 to this Current Report on Form 8–K and is incorporated by reference herein.

The terms of the Depositary Shares are set forth in the form of deposit agreement between the Company, Mellon Investor Services LLC, as depositary, and the holders of the depositary receipts issued thereunder (the “Deposit Agreement”). A copy of the form of deposit agreement is included as Exhibit 4.1 to this Current Report on Form 8–K and is incorporated by reference into the Company’s Registration Statement on Form S–3 (File No. 333–146731) filed with the U.S. Securities and Exchange Commission on October 16, 2007 as an exhibit thereto.

### **Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On April 23, 2008, the Company filed the Certificate of Designations with the Secretary of State of the State of Delaware, establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Series I Preferred Stock. The Certificate of Designations became effective with the Secretary of State of the State of Delaware upon filing.

A copy of the Certificate of Designations is included as Exhibit 3.1 to this Current Report on Form 8–K and is incorporated by reference herein.

### **Item 8.01 Other Events.**

On April 23, 2008, the Company completed the issuance and sale of 600,000 Shares, which Shares were deposited against delivery of 6,000,000 Depositary Receipts, pursuant to an underwriting agreement dated April 16, 2008 (the “Underwriting Agreement”) between the Company and J.P. Morgan Securities Inc., as representative of the other several underwriters named therein. The sale of the Depositary Shares was made pursuant to the Company’s Registration Statement on Form S-3 (File No. 333–146731).

On April 23, 2008, in connection with the sale of the Depositary Shares described above, the Company entered into a replacement capital covenant (the “RCC”), whereby the Company agreed to notify holders of the Company’s 5.875% Junior Subordinated Deferrable Interest Debentures, Series O, due 2035, of the rights granted to such holders under the RCC. Such notification is being made with the filing of the RCC that is attached as Exhibit 99.1.

### **Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

- 3.1 Certificate of Designations of JPMorgan Chase & Co., establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series I, filed April 23, 2008
- 99.1 Replacement Capital Covenant, dated April 23, 2008

The following exhibit is incorporated by reference into the Company’s Registration Statement on Form S-3 (File No. 333–146731) as an exhibit thereto:

- 4.1 Form of Deposit Agreement for depositary shares

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

JPMORGAN CHASE & CO.

By: /s/ Anthony J. Horan

Name: Anthony J. Horan

Title: Corporate Secretary

Dated: April 23, 2008

## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
3.1	Certificate of Designations of JPMorgan Chase & Co., establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to the Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series I, filed April 23, 2008
4.1	Form of Deposit Agreement for depositary shares
99.1	Replacement Capital Covenant, dated April 23, 2008

**CERTIFICATE OF DESIGNATIONS, POWERS,  
PREFERENCES AND RIGHTS  
OF THE  
FIXED-TO-FLOATING RATE NON-CUMULATIVE PERPETUAL PREFERRED  
STOCK, SERIES I  
(\$10,000.00 initial liquidation preference per share)**

**OF**

**JPMORGAN CHASE & CO.**

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Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware

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JPMORGAN CHASE & CO., a Delaware corporation (the “Corporation”), HEREBY CERTIFIES that the following resolution was duly adopted by the Stock Committee of the Board of Directors of the Corporation in accordance with Section 151(g) of the General Corporation Law of the State of Delaware pursuant to the authority conferred upon the Board of Directors of the Corporation by the provisions of the Certificate of Incorporation of the Corporation and pursuant to the authority duly delegated thereto by the Board of Directors of the Corporation:

RESOLVED, that the Corporation be, and hereby is, authorized to issue a new series of its preferred stock, par value \$1.00 per share, with a liquidation preference, in the aggregate, of up to \$6,000,000,000 on the following terms, with the following designations, powers, preferences and rights:

1. Designation and Amount; Fractional Shares. The series of preferred stock shall be designated as the “Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock, Series I” (the “Series I Preferred Stock”). The Series I Preferred Stock shall be perpetual, subject to the provisions of Section 6 hereof, and the authorized number of shares of Series I Preferred Stock shall be \$6,000,000,000 (600,000) shares. The Series I Preferred Stock is issuable in whole shares only.

2. Dividends.

(a) Holders of Series I Preferred Stock shall be entitled to receive, if, as and when declared by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation, but only out of assets legally available therefor, non-cumulative cash dividends on the liquidation preference of \$10,000 per share of Series I Preferred Stock, and no more, payable (x) for the Fixed Rate Period (as defined below), semi-annually in arrears on each April 30 and October 30 and (y) for the Floating Rate Period (as defined below), quarterly in arrears on each January 30, April 30, July 30 and October 30 (each such day on which dividends are payable a “*Dividend Payment Date*”). In the event that any Dividend Payment Date during the Fixed Rate Period would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a

Business Day and no additional dividends will accrue as a result of that postponement. In the event that any Dividend Payment Date during the Floating Rate Period would otherwise fall on a day that is not a Business Day, the Dividend Payment Date will be postponed to the next day that is a Business Day and dividends will accrue to but excluding the date dividends are paid. However, if during the Floating Rate Period the postponement would cause the day to fall in the next calendar month, the Dividend Payment Date will instead be brought forward to the immediately preceding Business Day. The period from and including any Dividend Payment Date to but excluding the next Dividend Payment Date is a “*Dividend Period*”, provided that the initial Dividend Period shall be the period from and including the original issue date of the Series I Preferred Stock to but excluding the next Dividend Payment Date. Dividends on each share of Series I Preferred Stock will accrue on the liquidation preference of \$10,000 per share at a rate per annum equal to (1) 7.90%, for each Dividend Period from the issue date to, but excluding, April 30, 2018 (the “*Fixed Rate Period*”), and (2) Three-Month LIBOR (as defined below) plus a spread of 3.47%, for each Dividend Period from April 30, 2018 to the date of redemption of the Series I Preferred Stock, if any (the “*Floating Rate Period*”).

Each such dividend shall be paid to the holders of record of shares of Series I Preferred Stock as they appear on the stock register of the Corporation on such record date, not more than 30 days preceding the payment date thereof, as shall be fixed by the Board of Directors or any duly authorized committee of the Board of Directors of the Corporation. For the Fixed Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year of twelve 30-day months. For the Floating Rate Period, the amount of dividends payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in a Dividend Period. Dollar amounts resulting from that calculation shall be rounded to the nearest cent, with one-half cent being rounded upward.

A “*Business Day*” shall mean any weekday that is not a legal holiday in New York, New York and is not a day on which banking institutions in New York, New York are authorized or required by law or regulation to be closed.

“*Three-Month LIBOR*” means, with respect to any Dividend Period in the Floating Rate Period, the offered rate (expressed as a percentage *per annum*) for deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period that appears on Reuters Screen Page “LIBOR01” as of 11:00 a.m. (London time) on the second London Banking Day immediately preceding the first day of that Dividend Period (the “*Dividend Determination Date*”). If such rate does not appear on Reuters Screen Page “LIBOR01”, Three-Month LIBOR will be determined on the basis of the rates at which deposits in U.S. dollars for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000 are offered to prime banks in the London interbank market by four major banks in the London interbank market selected by the Corporation, at approximately 11:00 a.m., London time on the second London Banking Day immediately preceding the first day of that Dividend Period. The Calculation Agent will request the principal London office of each of such banks to provide a quotation of its rate. If at least two such quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations. If fewer than two quotations are provided, Three-Month LIBOR with respect to that Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted by three major

banks in New York City selected by the Corporation, at approximately 11:00 a.m., New York City time, on the first day of that Dividend Period for loans in U.S. dollars to leading European banks for a three-month period commencing on the first day of that Dividend Period and in a principal amount of not less than \$1,000,000. However, if fewer than three banks selected by the Corporation to provide quotations are not quoting as described above, Three-Month LIBOR for that Dividend Period will be the same as Three-Month LIBOR as determined for the previous Dividend Period, or in the case of the first Dividend Period in the Floating Rate Period, the most recent rate that could have been determined in accordance with the first sentence of this paragraph had the dividend rate been a floating rate during the Fixed Rate Period (as defined below). The Calculation Agent's establishment of Three-Month LIBOR and calculation of the amount of dividends for each Dividend Period in the Floating Rate Period will be on file at the principal offices of the Corporation, will be made available to any holder of Series I Preferred Stock upon request and will be final and binding in the absence of manifest error.

*"London Banking Day"* shall mean any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London, England.

*"Calculation Agent"* shall mean such bank or entity as may be appointed by the Corporation to act as calculation agent for the Series I Preferred Stock during the Floating Rate Period.

(b) Dividends on shares of Series I Preferred Stock shall be non-cumulative. To the extent that any dividends payable on the shares of Series I Preferred Stock on any Dividend Payment Date are not declared and paid, in full or otherwise, on such Dividend Payment Date, then such unpaid dividends shall not cumulate and shall cease to accrue and be payable, and the Corporation shall have no obligation to pay, and the holders of Series I Preferred Stock shall have no right to receive, dividends accrued for such Dividend Period after the Dividend Payment Date for such Dividend Period or interest with respect to such dividends, whether or not dividends are declared for any subsequent Dividend Period with respect to Series I Preferred Stock.

(c) No full dividends shall be declared or paid or set apart for payment on the preferred stock of any series ranking, as to dividends, on a parity with or junior to the Series I Preferred Stock for any period unless full dividends on the shares of the Series I Preferred Stock for the most recently completed Dividend Period have been or contemporaneously are declared and paid (or have been declared and a sum sufficient for the payment thereof has been set apart for such payment). When dividends are not paid in full, as aforesaid, upon the shares of the Series I Preferred Stock and any other series of preferred stock ranking on a parity as to dividends with the Series I Preferred Stock, all dividends declared and paid upon shares of the Series I Preferred Stock and any other series of preferred stock ranking on a parity as to dividends with the Series I Preferred Stock shall be declared and paid pro rata. For purposes of calculating the pro rata allocation of partial dividend payments, the Corporation shall allocate dividend payments based on the ratio between the then-current dividend payments due on shares of Series I Preferred Stock and the aggregate of the current and accrued dividends due on any series of preferred stock ranking on a parity as to dividends with the Series I Preferred Stock. The Corporation shall not pay interest or any sum of money instead of interest on any dividend payment that may be in arrears on the Series I Preferred Stock.

(d) So long as any shares of the Series I Preferred Stock are outstanding, no dividend (other than a dividend in common stock or in any other stock ranking junior to the Series I Preferred Stock as to dividends and upon liquidation, dissolution or winding up and other than as provided in the paragraph directly above) shall be declared or paid or set aside for payment or other distribution declared or made upon the common stock or upon any other stock ranking junior to or on a parity with the Series I Preferred Stock as to dividends or upon liquidation, dissolution or winding up, nor shall any common stock or any other stock of the Corporation ranking junior to or on a parity with the Series I Preferred Stock as to dividends or upon liquidation, dissolution or winding up be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Corporation (except by conversion into or exchange for stock of the Corporation ranking junior to the Series I Preferred Stock as to dividends and upon liquidation, dissolution or winding up), unless, in each case, full dividends on all outstanding shares of the Series I Preferred Stock shall have been paid or declared and set aside for payment in respect of the most recently completed Dividend Period.

3. Liquidation Preference. (a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the holders of the shares of the Series I Preferred Stock shall be entitled to receive and to be paid out of the assets of the Corporation legally available for distribution to its stockholders, before any payment or distribution shall be made on the common stock or on any other class of stock ranking junior to the Series I Preferred Stock upon liquidation, the amount of \$10,000 per share, plus an amount equal to any declared and unpaid dividends on each such share without accumulation of undeclared dividends.

(b) After the payment to the holders of the shares of the Series I Preferred Stock of the full preferential amounts provided for in this Section 3, the holders of the Series I Preferred Stock as such shall have no right or claim to any of the remaining assets of the Corporation.

(c) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Corporation, the amounts payable with respect to the shares of the Series I Preferred Stock and any other shares of stock of the Corporation ranking as to any such distribution on a parity with the shares of the Series I Preferred Stock are not paid in full, the holders of the shares of the Series I Preferred Stock and of such other shares shall share ratably in any such distribution of assets of the Corporation in proportion to the full respective distributions to which they are entitled.

(d) Neither the sale of all or substantially all the property or business of the Corporation, nor the merger or consolidation of the Corporation into or with any other entity or the merger or consolidation of any other entity into or with the Corporation, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purposes of this Section 3.

4. Preemption and Conversion. The holders of Series I Preferred Stock shall not have any rights of preemption or rights to convert such Series I Preferred Stock into property or shares of any other class or series of capital stock of the Corporation.



## 5. Voting Rights.

(a) The Series I Preferred Stock, except as provided herein or as otherwise from time to time required by law, shall have no voting rights. Whenever, at any time or times, dividends payable on the shares of Series I Preferred Stock have not been paid for an aggregate of three semi-annual or six quarterly Dividend Periods or more, whether or not consecutive, the authorized number of directors of the Corporation shall automatically be increased by two and the holders of the Series I Preferred Stock shall have the right, with holders of shares of any one or more other classes or series of Parity Preferred Stock (as defined in Section 8) outstanding at the time upon which like voting rights have been conferred and are exercisable ("*Voting Parity Stock*"), voting together as a class, to elect two directors (hereinafter the "*Preferred Directors*" and each a "*Preferred Director*") to fill such newly created directorships at the Corporation's next annual meeting of stockholders and at each subsequent annual meeting of stockholders until full dividends have been paid on the Series I Preferred Stock for at least two semi-annual or four quarterly consecutive Dividend Periods, as applicable, at which time such right shall terminate, except as herein or by law expressly provided, subject to revesting in the event of each and every subsequent default of the character above mentioned. Upon any termination of the right of the holders of shares of Series I Preferred Stock and Voting Parity Stock as a class to vote for directors as provided above, the Preferred Directors shall cease to be qualified as directors, the term of office of all Preferred Directors then in office shall terminate immediately and the authorized number of directors shall be reduced by the number of Preferred Directors elected pursuant hereto. Any Preferred Director may be removed at any time, with or without cause, and any vacancy created thereby may be filled only by the affirmative vote of the holders of shares of Series I Preferred Stock voting separately as a class together with the holders of shares of Voting Parity Stock, to the extent the voting rights of such holders described above are then exercisable. If the office of any Preferred Director becomes vacant for any reason other than removal from office as aforesaid, the remaining Preferred Director may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

(b) So long as any shares of any Series I Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least 66 2/3% in voting power of the Series I Preferred Stock and any Voting Parity Stock, voting together as a class, (i) authorize, create or issue any capital stock of the Corporation ranking, as to dividends or upon liquidation, dissolution or winding up, prior to such Series I Preferred Stock, or reclassify any authorized capital stock of the Corporation into any such shares of such capital stock or issue any obligation or security convertible into or evidencing the right to purchase any such shares of capital stock, or (ii) amend, alter or repeal the certificate of designations for such Series I Preferred Stock, or the Certificate of Incorporation of the Corporation, whether by merger, consolidation or otherwise, so as to adversely affect the powers, preferences or special rights of such Series I Preferred Stock. Any increase in the amount of authorized common stock or other authorized preferred stock, or any increase or decrease in the number of shares of any series of preferred stock or the authorization, creation and issuance of other classes or series of stock, in each case ranking on a parity with or junior to the shares of Series I Preferred Stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to adversely affect such powers, preferences or special rights.

(c) In exercising the voting rights set forth in this Section 5 or when otherwise granted voting rights by operation of law or by the Corporation, each share of Series I Preferred Stock shall be entitled to one vote (the holders of shares of any other class or series of Voting Parity Stock being entitled to such number of votes, if any, for each share of such stock held as may be granted to them).

(d) The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required or upon which the holders of Series I Preferred Stock shall be entitled to vote shall be effected, all outstanding shares of Series I Preferred Stock shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect such redemption.

6. Redemption.

(a) The Corporation, at the option of its Board of Directors or any duly authorized committee of the Board of Directors of the Corporation, may redeem out of funds legally available therefor, in whole or in part, the shares of Series I Preferred Stock at the time outstanding, at any time on any Dividend Payment Date on or after the Dividend Payment Date on April 30, 2018, upon notice given as provided in Section 6(b) below. The redemption price for shares of Series I Preferred Stock shall be \$10,000 per share plus an amount equal to any dividends that have been declared but not paid on the shares of Series I Preferred Stock called for redemption.

(b) Notice of every redemption of shares of Series I Preferred Stock shall be mailed by first class mail, postage prepaid, addressed to the holders of record of such shares to be redeemed at their respective last addresses appearing on the stock register of the Corporation. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Section 6(b) shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series I Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series I Preferred Stock. Each notice shall state (i) the redemption date; (ii) the number of shares of Series I Preferred Stock to be redeemed and, if fewer than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where the certificates representing such shares are to be surrendered for payment of the redemption price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date. Notwithstanding the foregoing, if the Series I Preferred Stock is held in book-entry form through The Depository Trust Company, the Corporation may give such notice in any manner permitted by The Depository Trust Company.

(c) In case of any redemption of only part of the shares of Series I Preferred Stock at the time outstanding, the shares of Series I Preferred Stock to be redeemed shall be selected either *pro rata* from the holders of record of Series I Preferred Stock in proportion to the number of Series I Preferred Stock held by such holders or by lot or in such other manner as the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors of the Corporation may determine to be fair and equitable. Subject to the provisions of this Section 6, the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors shall have full power and authority to prescribe the terms and conditions upon which shares of Series I Preferred Stock shall be redeemed from time to time.

(d) If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been set aside by the Corporation, separate and apart from its other assets, in trust for the pro rata benefit of the holders of the shares called for redemption, so as to be and continue to be available therefor, or deposited by the Corporation with a bank or trust company selected by the Board of Directors of the Corporation or any duly authorized committee of the Board of Directors (the “*Depository Company*”) in trust for the pro rata benefit of the holders of the shares called for redemption, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date all shares so called for redemption shall be cancelled and shall cease to be outstanding, all dividends with respect to such shares shall cease to accrue after such redemption date, and all other rights with respect to such shares shall forthwith on such redemption date cease and terminate, except for the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company at any time after the redemption date from the funds so deposited, without interest. The Corporation shall be entitled to receive, from time to time, from the Depository Company any interest accrued on such funds, and the holders of any shares called for redemption shall have no claim to any such interest. Any funds so deposited and unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released or repaid to the Corporation, and in the event of such repayment to the Corporation, the holders of record of the shares so called for redemption shall be deemed to be unsecured creditors of the Corporation for an amount equivalent to the amount deposited as stated above for the redemption of such shares and so repaid to the Corporation, but shall in no event be entitled to any interest.

(e) Shares of Series I Preferred Stock that have been issued and reacquired in any manner, including shares purchased or redeemed, shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized and unissued shares of the class of preferred stock undesignated as to series and may be redesignated and reissued as part of any series of preferred stock.

7. Amendment of Resolution. The Board of Directors reserves the right from time to time to increase or decrease the number of shares that constitute the Series I Preferred Stock (but not below the number of shares thereof then outstanding) and in other respects to amend this Certificate of Designations within the limitations provided by law, this resolution and the Certificate of Incorporation.

8. Rank. Any stock of any class or classes or series of the Corporation shall be deemed to rank:

(a) prior to shares of the Series I Preferred Stock, either as to dividends or upon liquidation, dissolution or winding up, or both, if the holders of stock of such class or classes or series shall be entitled by the terms thereof to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of shares of the Series I Preferred Stock;

(b) on a parity with shares of the Series I Preferred Stock, either as to dividends or upon liquidation, dissolution or winding up, or both, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of

the Series I Preferred Stock, if the holders of stock of such class or classes or series shall be entitled by the terms thereof to the receipt of dividends or of amounts distributed upon liquidation, dissolution or winding up, as the case may be, in proportion to or otherwise based on their respective dividend rates or liquidation prices, without preference or priority of one over the other as between the holders of such stock and the holders of shares of Series I Preferred Stock (the term “*Parity Preferred Stock*” being used to refer to any stock on a parity with the shares of Series I Preferred Stock, either as to dividends or upon liquidation, dissolution or winding up, or both, as the content may require); and

(c) junior to shares of the Series I Preferred Stock, either as to dividends or upon liquidation, dissolution or winding up, or both, if such class or classes or series shall be common stock or if the holders of the Series I Preferred Stock shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of stock of such class or classes or series.

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, does hereby affirm, under penalties of perjury, that this certificate is the act and deed of the Corporation and that the facts herein stated are true, and accordingly has hereunto set his hand this 23rd day of April, 2008.

JPMORGAN CHASE & CO.

By: /s/ Anthony J. Horan

Name: Anthony J. Horan

Title: Corporate Secretary

FORM OF DEPOSIT AGREEMENT

Dated \_\_\_\_\_

JPMORGAN CHASE & CO.,

ISSUER

And

\_\_\_\_\_

AS DEPOSITARY, REGISTRAR AND TRANSFER AGENT

RELATING TO RECEIPTS, DEPOSITARY SHARES AND RELATED

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
Definitions	1
ARTICLE II	
Form of Receipts, Deposit of Preferred Stock, Execution And Delivery, Transfer, Surrender and Redemption of Receipts	3
SECTION 2.01. Form and Transferability of Receipts	3
SECTION 2.02. Deposit of Preferred Stock; Execution and Delivery of Receipts in Respect Thereof	6
SECTION 2.03. Optional Redemption of Preferred Stock for Cash	6
SECTION 2.04. Registration of Transfers of Receipts	8
SECTION 2.05. Combinations and Split-ups of Receipts	8
SECTION 2.06. Surrender of Receipts and Withdrawal of Preferred Stock	8
SECTION 2.07. Limitations on Execution and Delivery, Transfer, Split-up. Combination, Surrender and Exchange of Receipts	9
SECTION 2.08. Lost Receipts, etc.	10
SECTION 2.09. Cancellation and Destruction of Surrendered Receipts	10
SECTION 2.10. No Pre-Release	10
ARTICLE III	
Certain Obligations of Holders of Receipts and the Company	10
SECTION 3.01. Filing Proofs, Certificates and Other Information	10
SECTION 3.02. Payment of Fees and Expenses	11
SECTION 3.03. Representations and Warranties as to Preferred Stock	11
SECTION 3.04. Representation and Warranty as to Receipts and Depositary Shares	11
ARTICLE IV	
The Preferred Stock; Notices	11
SECTION 4.01. Cash Distributions	11

SECTION 4.02. Distributions Other Than Cash	12
SECTION 4.03. Subscription Rights, Preferences or Privileges	12
SECTION 4.04. Notice of Dividends; Fixing of Record Date for Holders of Receipts	13
SECTION 4.05. Voting Rights	14
SECTION 4.06. Changes Affecting Preferred Stock and Reorganization Events	14
SECTION 4.07. Inspection of Reports	15
SECTION 4.08. Lists of Receipt Holders	15
ARTICLE V	
The Depositary and the Company	15
SECTION 5.01. Maintenance of Offices, Agencies and Transfer Books by the Depositary and the Registrar	15
SECTION 5.02. Prevention or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Company	16
SECTION 5.03. Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company	16
SECTION 5.04. Resignation and Removal of the Depositary; Appointment of Successor Depositary	20
SECTION 5.05. Indemnification by the Company	21
SECTION 5.06. Fees, Charges and Expenses	21
ARTICLE VI	
Amendment and Termination	22
SECTION 6.01. Amendment	22
SECTION 6.02. Termination	22
ARTICLE VII	
Miscellaneous	23
SECTION 7.01. Counterparts	23
SECTION 7.02. Exclusive Benefits of Parties	23
SECTION 7.03. Invalidity of Provisions	23



SECTION 7.04. Notices	23
SECTION 7.05. Depositary’s Agents	24
SECTION 7.06. Holders of Receipts Are Parties	24
SECTION 7.07. Governing Law	24
SECTION 7.08. Inspection of Deposit Agreement and Certificate of Designations	24
SECTION 7.09. Headings	24
EXHIBIT A - Form of Face of Receipt; Form of Reverse of Receipt	
EXHIBIT B - Certificate of Designations	

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DEPOSIT AGREEMENT

DEPOSIT AGREEMENT, dated \_\_\_\_\_, among  
**JPMORGAN CHASE & CO.**, a Delaware corporation,  
\_\_\_\_\_, a \_\_\_\_\_ organized under the  
laws of \_\_\_\_\_, as Depositary, and all holders from time to  
time of Receipts (as hereinafter defined) issued hereunder.

WITNESSETH:

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of the Company's Preferred Stock (as hereinafter defined) with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Depositary Shares representing a fractional interest in the Preferred Stock deposited and for the execution and delivery of Receipts evidencing Depositary Shares;

WHEREAS, the Receipts are to be substantially in the form of **Exhibit A** annexed to this Deposit Agreement, with appropriate insertions, modifications and omissions, as hereinafter provided in this Deposit Agreement;

WHEREAS, the terms and conditions of the Preferred Stock is substantially set forth in the Certificate of Designations attached hereto as **Exhibit B**; and

NOW, THEREFORE, in consideration of the promises contained herein, it is agreed by and among the parties hereto as follows:

ARTICLE I

Definitions

The following definitions shall apply to the respective terms (in the singular and plural forms of such terms) used in this Deposit Agreement and the Receipts:

"*Certificate of Designations*" shall mean the certificate that amends the Restated Certificate of Incorporation of the Company, adopted by the Board of Directors of the Company or a duly authorized committee thereof, establishing and setting forth the rights, preferences and privileges of the Preferred Stock, as filed with the Secretary of State of the State of Delaware on \_\_\_\_\_ and attached hereto as Exhibit B, and as such certificate may be amended or restated from time to time.

"*Certificate of Incorporation*" shall mean the Restated Certificate of Incorporation of the Company dated April 3, 2006, including any certificates of designation, and as restated or amended from time to time.

“*Company*” shall mean JPMorgan Chase & Co., a Delaware corporation, and its successors.

“*Deposit Agreement*” shall mean this agreement, as the same may be amended, modified or supplemented from time to time.

“*Depository*” shall mean \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of \_\_\_\_\_ having its principal executive office in the United States and having a combined capital and surplus of at least \$50,000,000 and any successor as depository hereunder.

“*Depository Office*” shall mean the principal office of the Depository at which at any particular time its business in respect of matters governed by this Deposit Agreement shall be administered, which at the date of this Deposit Agreement is located at \_\_\_\_\_.

“*Depository Share*” shall mean the security representing a \_\_\_\_ fractional interest in a share of Preferred Stock deposited with the Depository hereunder and the same proportionate interest in any and all other property received by the Depository in respect of such share of Preferred Stock and held under this Deposit Agreement, all as evidenced by the Receipts issued hereunder. Subject to the terms of this Deposit Agreement, each owner of a Depository Share is entitled, proportionately, to all the rights, preferences and privileges of the Preferred Stock represented by such Depository Share (including the dividend, voting, redemption and liquidation rights contained in the Certificate of Designations).

“*Depository’s Agent*” shall mean an agent appointed by the Depository as provided, and for the purposes specified, in Section 7.05.

“*Dividend Payment Date*” shall have the meaning set forth in the Certificate of Designations.

“*Dividend Record Date*” shall have the meaning set forth in the Certificate of Designations.

“*DTC*” means The Depository Trust Company.

“*DTC Receipts*” has the meaning set forth in Section 2.01.

“*Preferred Stock, Series \_\_\_\_*” or “*Preferred Stock*” shall mean shares of the Company’s \_\_\_\_\_ (liquidation preference \_\_\_\_\_ per share), \$\_\_\_\_\_ par value per share, heretofore validly issued, fully paid and nonassessable.

“*Receipt*” shall mean a receipt issued hereunder to evidence one or more Depository Shares, whether in definitive or temporary form, substantially in the form set forth as Exhibit A hereto.

“*record date*” shall mean the date fixed pursuant to Section 4.04.

“Record holder” or “holder” as applied to a Receipt shall mean the individual, entity or person in whose name a Receipt is registered on the books maintained by the Depositary for such purpose.

“redemption date” has the meaning set forth under Section 2.03.

“redemption price” has the meaning set forth under Section 2.03.

“Registrar” shall mean \_\_\_\_\_ or any bank or trust company appointed to register ownership and transfers of Receipts and the deposited Preferred Stock, as herein provided.

“Reorganization Event” shall mean:

(1) any consolidation or merger of the Company with or into another person (other than a merger or consolidation in which the Company is the continuing corporation and in which the shares of Common Stock outstanding immediately prior to the merger or consolidation are not exchanged for cash, securities other property of the Company or another corporation);

(2) any sale, transfer, lease or conveyance to another person of all or substantially all the property and assets of the Company; or

(3) any statutory exchange of securities of the Company with another Person (other than in connection with a merger or acquisition) or any binding share exchange which reclassifies or changes its outstanding Common Stock.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Transfer Agent” shall mean \_\_\_\_\_ or any bank or trust company appointed to transfer the Receipts and the deposited Preferred Stock, as herein provided.

## ARTICLE II

### Form of Receipts, Deposit of Preferred Stock, Execution And Delivery, Transfer, Surrender and Redemption of Receipts

SECTION 2.01. Form and Transferability of Receipts. Definitive Receipts shall be substantially in the form set forth in Exhibit A annexed to this Deposit Agreement, in each case with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of definitive Receipts, the Depositary, upon, and pursuant to, the written order of the Company delivered in compliance with Section 2.02 shall be authorized and instructed to, and shall, execute and deliver temporary Receipts which shall be substantially of the tenor of the definitive Receipts in lieu of which they are issued and in each case with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine (but which do not affect the rights or duties of the Depositary), as evidenced by

their execution of such Receipts. If temporary Receipts are issued, the Company and the Depositary will cause definitive Receipts to be prepared without unreasonable delay. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Depositary Office without charge to the holder. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary is hereby authorized and instructed to, and shall, execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts. Such exchange shall be made at the Company's expense and without any charge therefor. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement, and with respect to the Preferred Stock deposited, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual or facsimile signature of a duly authorized signatory of the Depositary; provided, that if a Registrar for the Receipts (other than the Depositary) shall have been appointed then such Receipts shall also be countersigned by manual or facsimile signature of a duly authorized signatory of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been executed as provided in the preceding sentence. The Depositary shall record on its books each Receipt executed as provided above and delivered as hereinafter provided. Receipts bearing the manual or facsimile signature of a duly authorized signatory of the Depositary who was at any time a proper signatory of the Depositary shall bind the Depositary, notwithstanding that such signatory ceased to hold such office prior to the execution and delivery of such Receipts by the Registrar or did not hold such office on the date of issuance of such Receipts.

Receipts shall be in denominations of any number of whole Depositary Shares. All Receipts shall be dated the date of their issuance.

Receipts may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary and approved by the Company, or which the Company has determined are required to comply with any applicable law or regulation or with the rules and regulations of any securities exchange upon which the Depositary Shares may be listed for trading or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject, in each case as directed by the Company.

Title to any Receipt (and to the Depositary Shares evidenced by such Receipt) that is properly endorsed, or accompanied by a properly executed instrument of transfer, or endorsement shall be transferable by delivery with the same effect as in the case of a negotiable instrument; provided, however, that until transfer of a Receipt shall be registered on the books of the Depositary as provided in Section 2.04, the Depositary may, notwithstanding any notice to the contrary, treat the record holder thereof at such time as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions or payments with respect to the Preferred Stock, to exercise any redemption or voting rights or to receive any notice provided for in this Deposit Agreement and for all other purposes.

Notwithstanding the foregoing, upon request by the Company, the Depositary and the Company will make application to DTC for acceptance of all or a portion of the Receipts for its book-entry settlement system. In connection with any such request, the Company hereby appoints the Depositary acting through any authorized officer thereof as its attorney-in-fact, with full power to delegate, for purposes of executing any agreements, certifications or other instruments or documents necessary or desirable in order to effect the acceptance of such Receipts for DTC eligibility. So long as the Receipts are eligible for book-entry settlement with DTC, unless otherwise required by law, all Depositary Shares to be traded with book-entry settlement through DTC shall be represented by one or more receipts (the "DTC Receipts"), which shall be deposited with DTC (or its custodian) evidencing all such Depositary Shares and registered in the name of the nominee of DTC (initially expected to be Cede & Co.). The Depositary or such other entity as is agreed to by DTC may hold the DTC Receipts as custodian for DTC. Ownership of beneficial interests in the DTC Receipts shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) DTC or its nominee for such DTC Receipts, or (ii) institutions that have accounts with DTC.

If issued, the DTC Receipts shall be exchangeable for definitive Receipts only if (i) DTC notifies the Company at any time that it is unwilling or unable to continue to make its book-entry settlement system available for the Receipts and a successor to DTC is not appointed by the Company within 90 days of the date the Company is so informed in writing, (ii) DTC notifies the Company at any time that it has ceased to be a clearing agency registered under applicable law and a successor to DTC is not appointed by the Company within 90 days of the date the Company is so informed in writing or (iii) the Company executes and delivers to DTC a notice to the effect that such DTC Receipts shall be so exchangeable. If the beneficial owners of interests in Depositary Shares are entitled to exchange such interests for definitive Receipts as the result of an event described in clause (i), (ii) or (iii) of the preceding sentence, then without unnecessary delay but in any event not later than the earliest date on which such beneficial interests may be so exchanged, the Depositary is hereby directed to and shall provide written instructions to DTC to deliver to the Depositary for cancellation the DTC Receipts, and the Company shall instruct the Depositary in writing to execute and deliver to the beneficial owners of the Depositary Shares previously evidenced by the DTC Receipts definitive Receipts in physical form evidencing such Depositary Shares. The DTC Receipts shall be in such form and shall bear such legend or legends as may be appropriate or required by DTC in order for it to accept the Depositary Shares for its book-entry settlement system. Notwithstanding any other provision herein to the contrary, if the Receipts are at any time eligible for book-entry settlement through DTC, delivery of shares of Preferred Stock and other property in connection with the withdrawal or redemption of Depositary Shares will be made through DTC and in accordance with its procedures, unless the holder of the relevant Receipt otherwise requests and such request is reasonably acceptable to the Depositary and the Company.

SECTION 2.02. Deposit of Preferred Stock; Execution and Delivery of Receipts in Respect Thereof. Concurrently with the execution of this Deposit Agreement, the Company is delivering to the Depositary a certificate or certificates, registered in the name of the Depositary and evidencing \_\_\_\_\_ shares of Preferred Stock, properly endorsed or accompanied, if required by the Depositary, by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with (i) all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement and (ii) a written order of the Company directing the Depositary to execute and deliver to, or upon the written order of, the person or persons stated in such order a Receipt or Receipts for the Depositary Shares representing such deposited Preferred Stock registered in such names specified in such written order. The Depositary acknowledges receipt of the aforementioned \_\_\_\_\_ shares of Preferred Stock and related documentation and agrees to hold such deposited Preferred Stock in an account to be established by the Depositary at the Depositary Office or at such other office as the Depositary shall determine. The Company hereby appoints \_\_\_\_\_ as the Registrar and Transfer Agent for the Preferred Stock deposited hereunder and \_\_\_\_\_ hereby accepts such appointment and, as such, will reflect changes in the number of shares (including any fractional shares) of deposited Preferred Stock held by it by notation, book-entry or other appropriate method.

Upon receipt by the Depositary of a certificate or certificates for Preferred Stock deposited hereunder, together with the other documents specified above, and upon registering such Preferred Stock in the name of the Depositary, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver to, or upon the order of, the person or persons named in the written order delivered to the Depositary referred to in the first paragraph of this Section 2.02, a Receipt or Receipts for the number of whole Depositary Shares representing the Preferred Stock so deposited and registered in such name or names as may be requested by such person or persons. The Depositary shall execute and deliver such Receipt or Receipts at the Depositary Office, except that, at the request, risk and expense of any person requesting such delivery, such delivery may be made at such other place as may be designated by such person. Other than in the case of splits, combinations or other reclassifications affecting the Preferred Stock, or in the case of dividends or other distributions of Preferred Stock, if any, there shall be deposited hereunder not more than the number of shares constituting the Preferred Stock as set forth in the Certificate of Designations, as such may be amended. To the extent that the Company issues shares of Preferred Stock in excess of the amount set forth in the Certificate of Designations as of the date hereof (which shares have been validly authorized by the Company), the Company shall notify the Depositary of such issuance in writing.

SECTION 2.03. Optional Redemption of Preferred Stock for Cash. Whenever the Company shall elect to redeem shares of deposited Preferred Stock for cash in accordance with the provisions of the Certificate of Designations, it shall (unless otherwise agreed in writing with the Depositary) give the Depositary not less than 40 nor more than 70 days' prior written notice of the date fixed for redemption of such Preferred Stock (the "redemption date") and of the number of such shares of Preferred Stock held

by the Depositary to be redeemed and the applicable redemption price (the “redemption price”), as set forth in the Certificate of Designations. The Depositary shall mail, first-class postage prepaid, notice of the redemption of Preferred Stock and the proposed simultaneous redemption of the Depositary Shares representing the Preferred Stock to be redeemed, not less than 30 and not more than 60 days prior to the redemption date, to the holders of record on the record date fixed for such redemption pursuant to Section 4.04 of the Receipts evidencing the Depositary Shares to be so redeemed, at the addresses of such holders as the same appear on the records of the Depositary; but neither the failure to mail any such notice to one or more such holder nor any defect in any such notice shall affect the sufficiency of the proceedings for redemption except as to the holder to whom notice was defective or not given.

The Company shall prepare and provide the Depositary with such notice, and each such notice shall state: (i) the redemption date; (ii) the redemption price (including any declared and unpaid dividends); (iii) the number of shares of deposited Preferred Stock and Depositary Shares to be redeemed; (iv) if fewer than all Depositary Shares held by any holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed; (v) the place or places where the Preferred Stock and the Receipts evidencing Depositary Shares to be redeemed are to be surrendered for payment of the redemption price; and (vi) that on the redemption date dividends in respect of the Preferred Stock represented by the Depositary Shares to be redeemed will cease to accrue.

In the event that notice of redemption has been made as described in the immediately preceding paragraphs and the Company shall then have paid in full to the Depositary the redemption price (determined pursuant to the Certificate of Designations) of the Preferred Stock deposited with the Depositary to be redeemed, the Depositary shall redeem the number of Depositary Shares representing such Preferred Stock so called for redemption by the Company and on the redemption date (unless the Company shall have failed to pay for the shares of Preferred Stock to be redeemed by it as set forth in the Company’s notice provided for in the preceding paragraph), all dividends in respect of the shares of Preferred Stock called for redemption shall cease to accrue, the Depositary Shares called for redemption shall be deemed no longer to be outstanding and all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price (including any declared and unpaid dividends)) shall, to the extent of such Depositary Shares, cease and terminate. Upon surrender in accordance with said notice of the Receipts evidencing such Depositary Shares (properly endorsed or assigned for transfer, if the Depositary shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to \_\_\_\_\_ of the redemption price per share paid in respect of the shares of Preferred Stock, plus declared and unpaid dividends thereon to the date fixed for redemption.

If less than all of the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with payment of the redemption price for and all other amounts payable in respect of the Depositary Shares called for redemption, a new Receipt evidencing the Depositary Shares evidenced by such prior Receipt and not called



for redemption; provided, however, that such replacement Receipt shall be issued only in denominations of whole Depositary Shares and cash will be payable in respect of fractional interests.

If less than all of the Preferred Stock is redeemed pursuant to the Company's exercise of its optional redemption right, the Depositary will select the Depositary Shares to be redeemed pursuant to this Section 2.03 on a pro rata basis, by lot or in such other manner as the Depositary may determine to be fair and equitable.

SECTION 2.04. Registration of Transfers of Receipts. The Company hereby appoints \_\_\_\_\_ as the Registrar and Transfer Agent for the Receipts and \_\_\_\_\_ hereby accepts such appointment and, as such, shall register on its books from time to time transfers of Receipts upon any surrender thereof by the holder in person or by a duly authorized attorney, agent or representative properly endorsed or accompanied by a properly executed instrument of transfer or endorsement, together with evidence of the payment by the applicable party of any transfer taxes as may be required by law. Upon such surrender, the Depositary shall execute a new Receipt or Receipts and deliver the same to or upon the order of the person entitled thereto evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

SECTION 2.05. Combinations and Split-ups of Receipts. Upon surrender of a Receipt or Receipts at the Depositary Office or such other office as the Depositary may designate for the purpose of effecting a split-up or combination of Receipts, subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts in the authorized denominations requested evidencing the same aggregate number of Depositary Shares evidenced by the Receipt or Receipts surrendered.

SECTION 2.06. Surrender of Receipts and Withdrawal of Preferred Stock. Any holder of a Receipt or Receipts may withdraw any number of whole shares of deposited Preferred Stock represented by the Depositary Shares evidenced by such Receipt or Receipts and all money and other property, if any, represented by such Depositary Shares by surrendering such Receipt or Receipts to the Depositary or at such other office as the Depositary may designate for such withdrawals; provided, that a holder of a Receipt or Receipts may not withdraw such Preferred Stock (or money and other property, if any, represented thereby) which has previously been called for redemption. If such holder's Depositary Shares are being held by DTC or its nominee, such holder shall request, withdrawal from the book-entry system of the number of Depositary Shares specified in the preceding sentence. Upon such surrender, upon payment of the fee of the Depositary for the surrender of Receipts to the extent provided in Section 5.07 and payment of all taxes and governmental charges in connection with such surrender and withdrawal of Preferred Stock, and subject to the terms and conditions of this Deposit Agreement, without unreasonable delay, the Depositary shall deliver to such holder, or to the person or persons designated by such holder as hereinafter provided, the number of whole shares of such Preferred Stock and all such money and other property, if any, represented by the Depositary Shares evidenced by the Receipt or

Receipts so surrendered for withdrawal, but holders of such whole shares of Preferred Stock will not thereafter be entitled to deposit such Preferred Stock hereunder or to receive Depositary Shares therefor. If the Receipt or Receipts delivered by the holder to the Depositary in connection with such withdrawal shall evidence a number of Depositary Shares in excess of the number of Depositary Shares representing the number of whole shares of deposited Preferred Stock to be withdrawn, the Depositary shall at the same time, in addition to such number of whole shares of Preferred Stock and such money and other property, if any, to be withdrawn, deliver to such holder, or (subject to Section 2.04) upon his order, a new Receipt or Receipts evidencing such excess number of Depositary Shares. Delivery of such Preferred Stock and such money and other property being withdrawn may be made by the delivery of such certificates, documents of title and other instruments as the Depositary may deem appropriate, which, if required by the Depositary, shall be properly endorsed or accompanied by proper instruments of transfer.

If the deposited Preferred Stock and the money and other property being withdrawn are to be delivered to a person or persons other than the record holder of the Receipt or Receipts being surrendered for withdrawal of Preferred Stock, such holder shall execute and deliver to the Depositary a written order so directing the Depositary and the Depositary may require that the Receipt or Receipts surrendered by such holder for withdrawal of such shares of Preferred Stock be properly endorsed in blank or accompanied by a properly executed instrument of transfer or endorsement in blank.

The Depositary shall deliver the deposited Preferred Stock and the money and other property, if any, represented by the Depositary Shares evidenced by Receipts surrendered for withdrawal at the Depositary Office, except that, at the request, risk and expense of the holder surrendering such Receipt or Receipts and for the account of the holder thereof, such delivery may be made at such other place as may be designated by such holder.

SECTION 2.07. Limitations on Execution and Delivery, Transfer, Split-up, Combination, Surrender and Exchange of Receipts. As a condition precedent to the execution and delivery, transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require any or all of the following: (i) payment to it of a sum sufficient for the payment (or, in the event that the Company shall have made such payment, the reimbursement to it) of any tax or other governmental charge and stock transfer or registration fee with respect thereto (including any such tax or charge with respect to the Preferred Stock being deposited or withdrawn); (ii) the production of evidence satisfactory to it as to the identity and genuineness of any signature (or the authority of any signature); and (iii) compliance with such regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement as may be required by any securities exchange on which the deposited Preferred Stock, the Depositary Shares or the Receipts may be included for quotation or listed or any applicable self-regulatory body.

The deposit of Preferred Stock may be refused, the delivery of Receipts against Preferred Stock may be suspended, the transfer of Receipts may be refused, and the transfer, split-up, combination, surrender, exchange or redemption of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed or (ii) if any such action is deemed reasonably necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government or governmental body or commission, or under any other provision of this Deposit Agreement.

SECTION 2.08. Lost Receipts, etc. In case any Receipt shall be mutilated and surrendered to the Depositary or destroyed or lost or stolen, the Depositary shall execute and deliver a Receipt of like form and tenor in exchange and substitution for such mutilated Receipt or in lieu of and in substitution for such destroyed, lost or stolen Receipt; provided, that the holder thereof shall have (a) filed with the Depositary (i) a request for such execution and delivery before the Depositary has notice that the Receipt has been acquired by a protected purchaser and (ii) an indemnity bond and (b) satisfied any other reasonable requirements imposed by the Depositary.

SECTION 2.09. Cancellation and Destruction of Surrendered Receipts. All Receipts surrendered to the Depositary or any Depositary's Agent shall be cancelled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized, but not required, to destroy such Receipts so cancelled.

SECTION 2.10. No Pre-Release. The Depositary shall not deliver any deposited Preferred Stock evidenced by Receipts prior to the receipt and cancellation of such Receipts or other similar method used with respect to Receipts held by DTC. The Depositary shall not issue any Receipts prior to the receipt by the Depositary of the corresponding Preferred Stock evidenced by such Receipts. At no time will any Receipts be outstanding if such Receipts do not represent Preferred Stock deposited with the Depositary.

### ARTICLE III

#### Certain Obligations of Holders of Receipts and the Company.

SECTION 3.01. Filing Proofs, Certificates and Other Information. Any person presenting Preferred Stock for deposit or any holder of a Receipt may be required from time to time to file with the Depositary such proof of residence, guarantee of signature or other information and to execute such certificates as the Depositary may reasonably deem necessary or proper or the Company may reasonably require by written request to the Depositary. The Depositary or the Company may withhold or delay the delivery of any Receipt, the transfer, redemption or exchange of any Receipt, the withdrawal of the deposited Preferred Stock represented by the Depositary Shares evidenced by any Receipt, the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof, until such proof or other information is filed, or such certificates are executed.

SECTION 3.02. Payment of Fees and Expenses. Holders of Receipts shall be obligated to make payments to the Depositary of certain fees and expenses and taxes or other governmental charges to the extent provided in Section 5.07, or provide evidence satisfactory to the Depositary that such fees and expenses and taxes or other governmental charges have been paid. Until such payment is made, transfer of any Receipt or any withdrawal of the Preferred Stock or money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused, any dividend or other distribution may be withheld, and any part or all of the Preferred Stock or other property represented by the Depositary Shares evidenced by such Receipt may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder a reasonable number of days prior to such sale). Any dividend or other distribution so withheld and the proceeds of any such sale may be applied to any payment of such fees or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.03. Representations and Warranties as to Preferred Stock. In the case of the initial deposit of the Preferred Stock hereunder, the Company represents and warrants that such Preferred Stock and each certificate therefor are validly issued, fully paid and nonassessable. Such representations and warranties shall survive the deposit of the Preferred Stock and the issuance of Receipts.

SECTION 3.04. Representation and Warranty as to Receipts and Depositary Shares. The Company hereby represents and warrants that the Receipts, when issued, will evidence legal and valid interests in the Depositary Shares and each Depositary Share will represent a legal and valid \_\_\_\_\_ fractional interest in a share of deposited Preferred Stock represented by such Depositary Share. Such representation and warranty shall survive the deposit of the Preferred Stock and the issuance of Receipts evidencing the Depositary Shares.

#### ARTICLE IV

##### The Preferred Stock; Notices

SECTION 4.01. Cash Distributions. Whenever the Depositary shall receive any cash dividend or other cash distribution on the deposited Preferred Stock, including any cash received upon redemption of any shares of Preferred Stock pursuant to Section 2.03, the Depositary shall, subject to Sections 3.01 and 3.02, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.04 such amounts of such sum as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required by law to and shall withhold from any cash dividend or other cash distribution in respect of the Preferred Stock represented by the Receipts held by any holder an amount on account of taxes or as otherwise required by law, regulation or court process, the amount made available for distribution or distributed in respect of Depositary Shares represented by such Receipts subject to such withholding shall be reduced accordingly. The Depositary, however, shall distribute or make available for distribution, as the case may be, only such amount as can be distributed without attributing to any holder of Receipts a fraction of one cent. Any

such fractional amounts shall be rounded down to the nearest whole cent and so distributed to registered holders entitled thereto and any balance not so distributable shall be held by the Depositary (without liability for interest thereon) and shall be added to and be treated as part of the next succeeding distribution to record holders of such Receipts. Each holder of a Receipt shall provide the Depositary with a properly completed Form W-8 (i.e., Form W-8BEN, Form W-8EXP, Form W-8IMY, Form W8ECI or another applicable Form W-8) or Form W-9 (which form shall set forth such holder's certified taxpayer identification number if requested on such form), as may be applicable. Each holder of a Receipt acknowledges that, in the event of non-compliance with the preceding sentence the Internal Revenue Code of 1986 as amended, may require withholding by the Depositary of a portion of any of the distribution to be made hereunder.

SECTION 4.02. Distributions Other Than Cash. Whenever the Depositary shall receive any distribution other than cash on the deposited Preferred Stock, the Depositary shall, subject to Sections 3.01 and 3.02, distribute to record holders of Receipts on the record date fixed pursuant to Section 4.04 such amounts of the securities or property received by it as are, as nearly as practicable, in proportion to the respective numbers of Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary and the Company may deem equitable and practicable for accomplishing such distribution. The Depositary shall not make any distribution of securities to the holders of Receipts unless the Company shall have provided to the Depositary an opinion of counsel stating that such securities have been registered under the Securities Act or do not need to be registered. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Depositary may, with the approval of the Company, adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale (at public or private sale) of the securities or property thus received, or any part thereof, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall be, subject to Sections 3.01 and 3.02, distributed or made available for distribution, as the case may be, by the Depositary to record holders of Receipts as provided by Section 4.01 in the case of a distribution received in cash.

SECTION 4.03. Subscription Rights, Preferences or Privileges. If the Company shall at any time offer or cause to be offered to the persons in whose names deposited Preferred Stock is registered on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of Receipts in such manner as the Company shall instruct (including by the issue to such record holders of warrants representing such rights, preferences or privileges); provided, however, that (a) if at the time of issue or offer of any such rights, preferences or privileges the Company determines upon advice of its legal counsel that it is not lawful or feasible to make such rights, preferences or privileges available to the holders of Receipts (by the issue of warrants or otherwise) or (b) if and to the extent instructed by holders of

Receipts who do not desire to exercise such rights, preferences or privileges, the Depositary shall then, if so directed by the Company, and if applicable laws or the terms of such rights, preferences or privileges so permit, sell such rights, preferences or privileges of such holders at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sale shall, subject to Sections 3.01 and 3.02, be distributed by the Depositary to the record holders of Receipts entitled thereto as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall not make any distribution of such rights, preferences or privileges, unless the Company shall have provided to the Depositary an opinion of counsel stating that such rights, preferences or privileges have been registered under the Securities Act or do not need to be registered.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company agrees that it will promptly notify the Depositary of such requirement, that it will promptly file a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its commercially reasonable efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any securities unless and until such a registration statement shall have become effective or unless the offering and sale of such securities to such holders are exempt from registration under the provisions of the Securities Act.

If any other action under the law of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company agrees that it will promptly notify the Depositary of such requirement and to use its commercially reasonable efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

The Depositary will not be deemed to have any knowledge of any item for which it is supposed to receive notification under any Section of this Deposit Agreement unless and until it has received such notification.

**SECTION 4.04. Notice of Dividends; Fixing of Record Date for Holders of Receipts.** Whenever any cash dividend or other cash distribution shall become payable, any distribution other than cash shall be made, or any rights, preferences or privileges shall at any time be offered, with respect to the deposited Preferred Stock, or whenever the Depositary shall receive notice of (i) any meeting at which holders of such Preferred Stock are entitled to vote or of which holders of such Preferred Stock are entitled to notice or (ii) any election on the part of the Company to redeem any shares of such Preferred Stock, the Depositary shall in each such instance fix a record date (which shall be the same date as the record date fixed by the Company with respect to the

Preferred Stock) for the determination of the holders of Receipts who shall be entitled to receive such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, to give instructions for the exercise of voting rights at any such meeting or to receive notice of such meeting or whose Depositary Shares are to be so redeemed.

SECTION 4.05. Voting Rights. Upon receipt of notice of any meeting at which the holders of deposited Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of Receipts a notice, which shall be provided by the Company and which shall contain (i) such information as is contained in such notice of meeting, (ii) a statement that the holders of Receipts at the close of business on a specified record date fixed pursuant to Section 4.04 will be entitled, subject to any applicable provision of law, to instruct the Depositary as to the exercise of the voting rights pertaining to the amount of Preferred Stock represented by their respective Depositary Shares and (iii) a brief statement as to the manner in which such instructions may be given. Upon the written request of a holder of a Receipt on such record date, the Depositary shall insofar as practicable vote or cause to be voted the amount of Preferred Stock represented by the Depositary Shares evidenced by such Receipt in accordance with the instructions set forth in such request. To the extent any such instructions request the voting of a fractional interest of a share of deposited Preferred Stock, the Depositary shall aggregate such interest with all other fractional interests resulting from requests with the same voting instructions and shall vote the number of whole votes resulting from such aggregation in accordance with the instructions received in such requests. Each share of Preferred Stock is entitled to one vote and, accordingly, each Depositary Share is entitled to \_\_\_\_\_ of a vote. The Company hereby agrees to take all reasonable action that may be deemed necessary by the Depositary in order to enable the Depositary to vote such Preferred Stock or cause such Preferred Stock to be voted. In the absence of specific instructions from the holder of a Receipt, the Depositary will not vote Depositary Shares held by it. In the absence of authorization from the holder of a Receipt, the Depositary will abstain from voting (but, at its discretion, not from appearing at any meeting with respect to the Preferred Stock unless directed to the contrary by the record holders of all the related Receipts) to the extent of the shares of Preferred Stock (or portion thereof) represented by the applicable Depositary Shares evidenced by such Receipt.

SECTION 4.06. Changes Affecting Preferred Stock and Reorganization Events. Upon any change in liquidation preference, par or stated value, split-up, combination or any other reclassification of the Preferred Stock, any Reorganization Event or any exchange of the Preferred Stock for cash, securities or other property, the Depositary shall, upon the written instructions of the Company setting forth any of the following adjustments, (i) reflect such adjustments in the Depositary's books and records in (a) the fraction of an interest represented by one Depositary Share in one share of Preferred Stock and (b) the ratio of the redemption price per Depositary Share to the redemption price of a share of Preferred Stock, as may be required by or as is consistent with the provisions of the Certificate of Designations to fully reflect the effects of such change in liquidation preference, par or stated value, split-up, combination or other reclassification of Preferred Stock, of such Reorganization Event or of such exchange and (ii) treat any shares of stock or other securities or property (including cash) that shall be

received by the Depositary in exchange for or in respect of the Preferred Stock as new deposited property under this Deposit Agreement, and Receipts then outstanding shall thenceforth represent the proportionate interests of holders thereof in the new deposited property so received in exchange for or in respect of such Preferred Stock. In any such case the Depositary may, upon the receipt of written request of the Company, execute and deliver additional Receipts, or may call for the surrender of all outstanding Receipts to be exchanged for new Receipts specifically describing such new deposited property. Anything to the contrary herein notwithstanding, holders of Receipts shall have the right from and after the effective date of any such change in liquidation preference, par or stated value, split-up, combination or other reclassification of the Preferred Stock or any such recapitalization, reorganization, merger, amalgamation or consolidation to surrender such Receipts to the Depositary with instructions to convert, exchange or surrender the Preferred Stock represented thereby only into or for, as the case may be, the kind and amount of shares of stock and other securities and property and cash into which the Preferred Stock represented by such Receipts might have been converted or for which such Preferred Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

SECTION 4.07. Inspection of Reports. The Depositary shall make available for inspection by record holders of Receipts at the Depositary Office and at such other places as it may from time to time deem advisable during normal business hours any reports and communications received from the Company that are both received by the Depositary as the holder of deposited Preferred Stock and made generally available to the holders of the Preferred Stock. In addition, the Depositary shall transmit, upon written request by the Company, certain notices and reports to the holders of Receipts as provided in Section 5.05.

SECTION 4.08. Lists of Receipt Holders. Promptly upon request from time to time by the Company, the Registrar shall furnish to the Company a list, as of a recent date specified by the Company, of the names, addresses and holdings of Depositary Shares of all persons in whose names Receipts are registered on the books of the Registrar.

## ARTICLE V

### The Depositary and the Company.

SECTION 5.01. Maintenance of Offices, Agencies and Transfer Books by the Depositary and the Registrar. The Depositary shall maintain at the Depositary Office facilities for the execution and delivery, transfer, surrender and exchange, split-up, combination and redemption of Receipts and deposit and withdrawal of Preferred Stock and at the offices of the Depositary's Agents, if any, facilities for the delivery, transfer, surrender and exchange, split-up, combination and redemption of Receipts and deposit and withdrawal of Preferred Stock, all in accordance with the provisions of this Deposit Agreement.



The Registrar shall keep books at the Depositary Office for the registration and transfer of Receipts, which books at all reasonable times, shall be open for inspection by the record holders of Receipts as provided by applicable law. The Company may cause the Registrar to close such books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties hereunder.

If the Receipts or the Depositary Shares evidenced thereby or the Preferred Stock represented by such Depositary Shares shall be listed on the New York Stock Exchange, Inc. or any other stock exchange, the Depositary may, with the written approval of the Company, appoint a registrar (acceptable to the Company) for registration of such Receipts or Depositary Shares in accordance with the requirements of such exchange. Such registrar (which may be the Registrar if so permitted by the requirements of such exchange) may be removed and a substitute registrar appointed by the Registrar upon the request or with the written approval of the Company. If the Receipts, such Depositary Shares or such Preferred Stock are listed on one or more other stock exchanges, the Registrar will, at the request and expense of the Company, arrange such facilities for the delivery, transfer, surrender, redemption and exchange of such Receipts, such Depositary Shares or such Preferred Stock as may be required by law or applicable stock exchange regulations.

SECTION 5.02. Prevention or Delay in Performance by the Depositary, the Depositary's Agents, the Registrar or the Company. None of the Depositary, any Depositary's Agent, any Registrar, any Transfer Agent, or the Company shall incur any liability to any holder of any Receipt, if by reason of any provision of any present or future law or regulation thereunder of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar or Transfer Agent, by reason of any provision, present or future, of the Certificate of Incorporation or, in the case of the Company, the Depositary, the Depositary's Agent, the Transfer Agent or the Registrar, by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, any Depositary's Agent, the Transfer Agent, the Registrar or the Company shall be prevented or forbidden from doing or performing any act or thing that the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, the Transfer Agent, any Registrar or the Company incur any liability to any holder of a Receipt by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing that the terms of this Deposit Agreement provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement.

SECTION 5.03. Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company. The Company does not assume any obligation or shall be subject to any liability under this Deposit Agreement or any Receipt to holders of Receipts other than from acts or omissions arising out of conduct constituting gross negligence or willful misconduct in the performance of such duties as are specifically set forth in this Deposit Agreement. Neither the Depositary nor any Depositary's Agent nor any Transfer Agent or Registrar assumes any obligation or shall be subject to any liability under this Deposit Agreement to holders of Receipts, the Company or any other person or

entity other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). Notwithstanding anything to the contrary contained herein, neither the Depositary, nor any Depositary's Agent nor any Transfer Agent or Registrar shall be liable for any special, indirect, incidental, consequential, punitive or exemplary damages, including but not limited to, lost profits, even if such person or entity alleged to be liable has knowledge of the possibility of such damages. Any liability of the Depositary and any Registrar or Transfer Agent under this Deposit Agreement will be limited to the amount of annual fees paid by the Company to the Depositary or any Registrar or Transfer Agent.

None of the Depositary, any Depositary's Agent, any Registrar or Transfer Agent or the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding with respect to the deposited Preferred Stock, Depositary Shares or Receipts that in its opinion may involve it in expense or liability, unless indemnity satisfactory to it against all expense and liability be furnished as often as may be required.

None of the Depositary, any Depositary's Agent, any Registrar or Transfer Agent or the Company shall be liable for any action or any failure to act by it in reliance upon the advice of legal counsel or accountants, or information provided by any person presenting Preferred Stock for deposit or any holder of a Receipt. The Depositary, any Depositary's Agent, any Registrar or Transfer Agent and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper party or parties.

In the event the Depositary shall receive conflicting claims, requests or instructions from any holders of Receipts, on the one hand, and the Company, on the other hand, the Depositary shall be entitled to act on such claims, requests or instructions received from the Company, and shall incur no liability and shall be entitled to the full indemnification set forth in Section 5.06 in connection with any action so taken.

The Depositary shall not be responsible for any failure to carry out any instruction to vote any of the deposited Preferred Stock or for the manner or effect of any such vote made, as long as any such action or non-action does not result from bad faith, gross negligence or willful misconduct of the Depositary (which bad faith, gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Depositary undertakes, and any Registrar or Transfer Agent shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement, and no implied covenants or obligations shall be read into this Agreement against the Depositary or any Registrar or Transfer Agent.

The Depositary, its parent, affiliate, or subsidiaries, any Depositary's Agent, and any Registrar or Transfer Agent may own, buy, sell or deal in any class of securities of the Company and its affiliates and in Receipts or Depositary Shares or

become pecuniarily interested in any transaction in which the Company or its affiliates may be interested or contract with or lend money to or otherwise act as fully or as freely as if it were not the Depositary or the Depositary's Agent hereunder. The Depositary may also act as transfer agent or registrar of any of the securities of the Company and its affiliates or act in any other capacity for the Company or its affiliates.

It is intended that neither the Depositary nor any Depositary's Agent shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any Depositary's Agent are acting only in a ministerial capacity as Depositary for the deposited Preferred Stock; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

Neither the Depositary (or its officers, directors, employees, agents or affiliates) nor any Depositary's Agent makes any representation or has any responsibility as to the validity of the registration statement pursuant to which the Depositary Shares are registered under the Securities Act, the deposited Preferred Stock, the Depositary Shares, the Receipts (except its countersignature thereon) or any instruments referred to therein or herein, or as to the correctness of any statement made therein or herein; provided, however, that the Depositary is responsible for its representations in this Deposit Agreement.

The Company agrees that it will register the deposited Preferred Stock and the Depositary Shares in accordance with the applicable federal securities laws.

In the event the Depositary, the Depositary's Agent or any Registrar or Transfer Agent believes any ambiguity or uncertainty exists in any notice, instruction, direction, request or other communication, paper or document received by it pursuant to this Deposit Agreement, the Depositary, the Depositary's Agent, Transfer Agent or Registrar shall promptly notify the Company of the details of such alleged ambiguity or uncertainty, and may, in its sole discretion, refrain from taking any action, and the Depositary, the Depositary's Agent, Transfer Agent or Registrar shall be fully protected and shall incur no liability to any person from refraining from taking such action, absent bad faith, gross negligence or willful misconduct (which bad faith, gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction), unless and until (i) the rights of all parties have been fully and finally adjudicated by a court of appropriate jurisdiction or (ii) the Depositary, the Depositary's Agent, Transfer Agent or Registrar receives written instructions with respect to such matter signed by the Company that eliminates such ambiguity or uncertainty to the satisfaction of the Depositary, the Depositary's Agent, Transfer Agent or Registrar.

Whenever in the performance of its duties under this Deposit Agreement, the Depositary, the Depositary's Agent, Transfer Agent or Registrar shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter

(unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided and established by a certificate signed by any one of the President, any Managing Director, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or Assistant Secretary of the Company and delivered to the Depositary, the Depositary's Agent, Transfer Agent or Registrar; and such certificate shall be full and complete authorization and protection to the Depositary, the Depositary's Agent, Transfer Agent or Registrar and the Depositary, the Depositary's Agent, Transfer Agent or Registrar shall incur no liability for or in respect of any action taken, suffered or omitted by it under the provisions of this Deposit Agreement in reliance upon such certificate. The Depositary, the Depositary's Agent, Transfer Agent or Registrar shall not be liable for or by reason of any of the statements of fact or recitals contained in this Deposit Agreement or in the Receipts (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

The Depositary, the Depositary's Agent, Transfer Agent or Registrar will not be under any duty or responsibility to ensure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of the Receipts, Stock or Depositary Shares.

Notwithstanding anything herein to the contrary, no amendment to the Certificate of Designations shall affect the rights, duties, obligations or immunities of the Depositary, Transfer Agent, the Depositary's Agent or Registrar hereunder.

The Depositary, Transfer Agent and any Registrar hereunder:

- (i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;
- (ii) shall have no obligation to make payment hereunder unless the Company shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full amounts due and payable with respect thereto;
- (iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary determines to take any legal or other action hereunder, and, where the taking of such action might in the Depositary's judgment subject or expose it to any expense or liability, the Depositary shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;
- (iv) may rely on and shall be authorized and protected in acting or failing to act upon any certificate, instrument, opinion, notice, letter, facsimile transmission or other document or security delivered to the Depositary and believed by the Depositary to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;

(v) may rely on and shall be authorized and protected in acting or failing to act upon the written, telephonic, electronic and oral instructions, with respect to any matter relating to the Depositary's actions as depositary covered by this Deposit Agreement (or supplementing or qualifying any such actions) of officers of the Company;

(vi) may consult counsel satisfactory to it, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in accordance with the advice of such counsel;

(vii) shall not be called upon at any time to advise any person with respect to the Depositary Shares or Receipts;

(viii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the Depositary Shares or Receipts; and

(ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to the Depositary) executing or delivering or purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.

The obligations of the Company set forth in this Section 5.03 shall survive the replacement, removal or resignation of any Depositary, Registrar, Transfer Agent or Depositary's Agent or termination of this Deposit Agreement.

SECTION 5.04. Resignation and Removal of the Depositary; Appointment of Successor Depositary. The Depositary may at any time resign as Depositary hereunder by notice of its election to do so delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

In case at any time the Depositary acting hereunder shall resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor depositary, which shall be an entity having its principal office in the United States of America and having a combined capital and surplus of at least \$50,000,000. If a successor depositary shall not have been appointed and have accepted appointment in 60 days, the resigning Depositary may petition a court of competent jurisdiction to appoint a successor depositary. Every successor depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder, and thereupon such successor depositary, without any further act or deed, shall become fully vested with all the rights,

powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall promptly execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all rights, title and interest in the deposited Preferred Stock and any moneys or property held hereunder to such successor and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor Depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any corporation or other entity into or with which the Depositary may be merged, consolidated or converted, or any corporation or other entity to which all or a substantial part of the assets of the Depositary may be transferred, shall be the successor of such Depositary without the execution or filing of any document or any further act. Such successor depositary may execute the Receipts either in the name of the predecessor depositary or in the name of the successor depositary.

The provisions of this Section 5.04 as they apply to the Depositary apply to the Registrar and Transfer Agent, as if specifically enumerated herein.

**SECTION 5.05. Indemnification by the Company.** The Company shall indemnify the Depositary, any Depositary's Agent and any Transfer Agent or Registrar against, and hold each of them harmless from, any loss, liability, damage, cost or expense (including the costs and expenses of defending itself) which may arise out of (i) acts performed or omitted in connection with this Deposit Agreement and the Receipts (a) by the Depositary, any Transfer Agent or Registrar or any of their respective agents (including any Depositary's Agent), except for any liability arising out of gross negligence or willful misconduct (as determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) on the respective parts of any such person or persons, or (b) by the Company or any of its agents, or (ii) the offer, sale or registration of the Receipts or shares of Stock pursuant to the provisions hereof. The obligations of the Company set forth in this Section 5.06 shall survive the replacement, removal or resignation of any Depositary, Registrar, Transfer Agent or Depositary's Agent or termination of this Deposit Agreement. In no event shall the Depositary have any right of set off or counterclaim against the Depositary Shares or the Preferred Stock.

**SECTION 5.06. Fees, Charges and Expenses.** The Company shall pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. The Company shall pay all charges of the Depositary in connection with the initial deposit of the Preferred Stock and the initial issuance of the Depositary Shares and any redemption of the Preferred Stock at the option of the Company. All other transfer and other taxes and governmental charges and fees for the withdrawal of Preferred Stock upon surrender of Receipts shall be at the expense of holders of Depositary Shares. If, at the request of a holder of Receipts, the Depositary incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses. All other charges and expenses of the Depositary

and any Depositary's Agent hereunder and of any Registrar and Transfer Agent (including, in each case, fees and expenses of counsel) incident to the performance of their respective obligations hereunder will be paid upon consultation and agreement between the Depositary and the Company as to the amount and nature of such charges and expenses. The Depositary shall present its statement for charges and expenses to the Company once every three months or at such other intervals as the Company and the Depositary may agree.

## ARTICLE VI

### Amendment and Termination

SECTION 6.01. Amendment. The form of the Receipts and any provision of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary without the consent of holders of Receipts in any respect that the Company and the Depositary may deem necessary or desirable; provided, however, that no such amendment (other than any change in the fees of any Depositary, Registrar or Transfer Agent that are payable by the Company) which (i) shall materially and adversely alter the rights of the holders of Receipts or (ii) would be materially and adversely inconsistent with the rights granted to the holders of the Preferred Stock pursuant to the Certificate of Incorporation shall be effective unless such amendment shall have been approved by the holders of Receipts evidencing at least a majority of the Depositary Shares then outstanding. In no event shall any amendment impair the right, subject to the provisions of Section 2.06 and Section 2.07 and Article III, of any holder of any Receipts evidencing such Depositary Shares to surrender any Receipt with instructions to the Depositary to deliver to the holder the deposited Preferred Stock and all money and other property, if any, represented thereby, except in order to comply with mandatory provisions of applicable law. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by this Deposit Agreement as amended thereby.

SECTION 6.02. Termination. This Deposit Agreement may be terminated by the Company or the Depositary only if (i) all outstanding Depositary Shares shall have been redeemed pursuant to Section 2.03 or (ii) there shall have been made a final distribution in respect of the deposited Preferred Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the holders of Depositary Shares pursuant to Section 4.01 or 4.02, as applicable.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary, any Depositary's Agent and any Transfer Agent or Registrar under Section 5.06 and Section 5.07.

ARTICLE VII

Miscellaneous

SECTION 7.01. Counterparts. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Deposit Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Deposit Agreement.

SECTION 7.02. Exclusive Benefits of Parties. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.03. Invalidity of Provisions. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or disturbed thereby; provided, however, that if such provision affects the rights, duties, liabilities or obligations of the Depositary, the Depositary shall be entitled to resign immediately.

SECTION 7.04. Notices. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or by facsimile transmission confirmed by letter, addressed to the Company at:

JPMorgan Chase & Co.  
270 Park Avenue  
New York, New York 10017  
Attention: Office of the Secretary

or at any other address of which the Company shall have notified the Depositary in writing.

Any notices to be given to the Depositary, Transfer Agent or Registrar hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail, or telecopier confirmed by letter, addressed to the Depositary: \_\_\_\_\_

Any notices given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if transmitted through the facilities of DTC in accordance with DTC's procedures or personally delivered or sent by mail, recognized next-day courier service or telecopier



confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary; provided that any record holder may direct the Depositary to deliver notices to such record holder at an alternate address or in a specific manner that is reasonably requested by such record holder in a written request timely filed with the Depositary and that is reasonably acceptable to the Depositary.

Delivery of a notice sent by mail shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a facsimile message) is deposited, postage prepaid, in a post office letter box, or in the case of a next-day courier service, when deposited with such courier, courier fees prepaid. The Depositary or the Company may, however, act upon any facsimile message received by it from the other or from any holder of a Receipt, notwithstanding that such facsimile message shall not subsequently be confirmed by letter as aforesaid.

SECTION 7.05. Depositary's Agents. The Depositary may from time to time appoint Depositary's Agents to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will notify the Company of any such action.

SECTION 7.06. Holders of Receipts Are Parties. The holders of Receipts from time to time shall be deemed to be parties to this Deposit Agreement and shall be bound by all of the terms and conditions hereof and of the Receipts by acceptance of delivery thereof to the same extent as though such person executed this Deposit Agreement.

SECTION 7.07. Governing Law. This Deposit Agreement and the Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by, and construed in accordance with, the law of the State of New York.

SECTION 7.08. Inspection of Deposit Agreement and Certificate of Designations. Copies of this Deposit Agreement and the Certificate of Designations shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Depositary Office by any holder of any Receipt.

SECTION 7.09. Headings. The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, JPMorgan Chase & Co. and \_\_\_\_\_ have duly executed this Deposit Agreement as of the day and year first above set forth and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

JPMORGAN CHASE & CO.,

By \_\_\_\_\_

\_\_\_\_\_,  
as Depositary, Registrar and Transfer Agent,

By \_\_\_\_\_

## FORM OF FACE OF RECEIPT

**[IF GLOBAL RECEIPT IS ISSUED: UNLESS THIS RECEIPT IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), NEW YORK, NEW YORK, TO THE CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY RECEIPT ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**TRANSFERS OF THIS GLOBAL RECEIPT SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL RECEIPT SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE DEPOSIT AGREEMENT REFERRED TO BELOW.]**

**IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH REGISTRAR AND TRANSFER AGENT MAY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.**

Certificate Number\_\_\_\_\_

Aggregate Amount of Depositary Shares

Number of Depositary Shares

CUSIP NO.:

RECEIPT FOR DEPOSITARY SHARES,  
Each Representing \_\_\_\_\_ Interest in a Share of

\_\_\_\_\_  
(par value \$\_\_\_\_\_ per share)  
(liquidation preference \$\_\_\_\_\_ per share)  
of  
JPMORGAN CHASE & CO.

\_\_\_\_\_, as Depositary (the “Depositary”), hereby certifies that \_\_\_\_\_ is  
the registered owner of \_\_\_\_\_ Depositary Shares (“Depositary

Shares”), equivalent to \_\_\_\_\_ aggregate amount, each Depositary Share representing \_\_\_\_\_ of one share of \_\_\_\_\_, \$\_\_\_\_\_ par value per share and liquidation preference of \$\_\_\_\_\_ per share (the “Stock”), of JPMorgan Chase & Co., a corporation duly organized and existing under the laws of the State of Delaware (the “Company”), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated \_\_\_\_\_ (the “Deposit Agreement”), among the Company, the Depositary and the holders from time to time of Receipts for Depositary Shares. By accepting this Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Receipt shall not be valid or obligatory for any purpose or entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual or facsimile signature of a duly authorized officer or, if a Registrar in respect of the Receipts (other than the Depositary) shall have been appointed, by the manual signature of a duly authorized officer of such Registrar.

Dated:

[Countersigned:

\_\_\_\_\_, as Depositary

By \_\_\_\_\_  
\_\_\_\_\_]

By: \_\_\_\_\_  
Authorized Signatory

[FORM OF REVERSE OF RECEIPT]

The following abbreviations when used in the instructions on the face of this receipt shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenant in common

UNIF GIFT MIN ACT - \_\_\_\_\_  
Custodian \_\_\_\_\_  
(Cust) (Minor)

TEN ENT - as tenants by the entireties

Under Uniform Gifts to Minors Act

JT TEN - as joint tenants with right of survivorship  
and not as tenants in common

\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto

PLEASE INSERT SOCIAL SECURITY OR  
OTHER IDENTIFYING NUMBER OF ASSIGNEE, AS APPLICABLE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS  
INCLUDING POSTAL ZIP CODE OF ASSIGNEE

\_\_\_\_\_ Depositary Shares, equivalent to \_\_\_\_\_ aggregate amount, represented by the within Receipt, and do hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Depositary Shares on the books of the within named Depositary with full power of substitution in the premises.

Dated \_\_\_\_\_

\_\_\_\_\_  
NOTICE: The signature to the assignment must corresponds with the name as written upon the face of this Receipt in every particular, without alteration or enlargement

SIGNATURE GUARANTEED

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations, and credit unions with membership in an approved signature guarantee medallion program), pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

Certificate of Designations

**Replacement Capital Covenant**, dated as of April 23, 2008 (this “*Replacement Capital Covenant*”), by JPMorgan Chase & Co., a Delaware corporation (together with its successors and assigns, the “*Corporation*”), in favor of and for the benefit of each Covered Debtholder (as defined below).

### Recitals

A. On the date hereof, the Corporation is issuing 6,000,000 depositary shares (each, a “*Depositary Share*”), each representing a 1/10th interest in a share of the Corporation’s Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series I, \$1 par value, with a liquidation preference of \$10,000 per share (the “*Series I Preferred Stock*” and, together with the Depositary Shares, the “*Securities*”).

B. This Replacement Capital Covenant is the “*Replacement Capital Covenant*” referred to in the Prospectus Supplement, dated April 16, 2008, relating to the Securities (together with the Prospectus, dated October 16, 2007 attached thereto, the “*Prospectus Supplement*”).

C. The Corporation is entering into and disclosing the content of this Replacement Capital Covenant in the manner provided below with the intent that the covenants provided for in this Replacement Capital Covenant be enforceable by each Covered Debtholder and that the Corporation be estopped from disregarding the covenants in this Replacement Capital Covenant, in each case to the fullest extent permitted by applicable law.

D. The Corporation acknowledges that reliance by each Covered Debtholder upon the covenants in this Replacement Capital Covenant is reasonable and foreseeable by the Corporation and that, were the Corporation to disregard its covenants in this Replacement Capital Covenant, each Covered Debtholder would have sustained an injury as a result of its reliance on such covenants.

**NOW, THEREFORE**, the Corporation hereby covenants and agrees as follows in favor of and for the benefit of each Covered Debtholder.

SECTION 1. *Definitions*. Capitalized terms used in this Replacement Capital Covenant (including the Recitals) have the meanings set forth in Schedule I hereto.

SECTION 2. *Limitations on Redemption and Purchase of Securities*. The Corporation hereby promises and covenants to and for the benefit of each Covered Debtholder that the Corporation shall not redeem or purchase, nor shall any Subsidiary purchase, all or any part of the Securities before the Termination Date except to the extent that the Corporation has obtained the prior approval of the Federal Reserve if such approval is then required under the Federal Reserve’s capital guidelines applicable to bank holding companies and either:

(a) the applicable redemption or purchase price does not exceed the sum of the following amounts:

(i) the Applicable Percentage of the aggregate amount of net cash proceeds received by the Corporation and its Subsidiaries from the sale of Common Stock and rights to acquire Common Stock (including Common Stock or rights to acquire Common Stock issued pursuant to the Corporation’s dividend reinvestment plan or employee benefit plans), Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity, Mandatorily Convertible Preferred Stock or REIT Preferred Securities and Qualifying Capital Securities; plus

(ii) the Applicable Percentage of the Market Value of any Common Stock that the Corporation or its Subsidiaries have (x) delivered as consideration for property or assets in an arm's-length transaction or (y) issued in connection with the conversion or exchange of any convertible or exchangeable securities, other than securities for which the Corporation or any of its Subsidiaries has received equity credit from any NRSRO;

in each case to Persons other than the Corporation and its Subsidiaries within the applicable Measurement Period (without double counting proceeds received in any prior Measurement Period); or

(b) the Securities are exchanged for consideration that includes (i) Common Stock with a Market Value equal to at least 75% of the aggregate liquidation preference of the Securities being exchanged, (ii) at least an equal aggregate liquidation preference or principal amount of Mandatorily Convertible Preferred Stock, Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity or Qualifying Capital Securities or (iii) a combination thereof; *provided* that such consideration is issued or delivered in exchange for the Securities no later than the Securities are redeemed or purchased by the Corporation or any of its Subsidiaries

*provided; however*, that the provisions of this Section 2 shall not apply to the purchase of the Securities or any portion thereof by Subsidiaries in connection with the distribution thereof or market-making or other secondary-market activities.

SECTION 3. *Covered Debt.* (a) The Corporation represents and warrants that the Initial Covered Debt is Eligible Debt.

(b) On or during the 30-day period immediately preceding the Redesignation Date with respect to the Covered Debt then in effect, the Corporation shall identify the series of Eligible Debt that will become the Covered Debt on and after such Redesignation Date in accordance with the following procedures:

(i) the Corporation shall identify each series of its then outstanding long-term indebtedness for money borrowed that is Eligible Debt;

(ii) if only one series of the Corporation's then outstanding long-term indebtedness for money borrowed is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(iii) if the Corporation has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the next Redesignation Date;

(iv) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, and its Largest Depository Institution Subsidiary has only one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, such series shall become the Covered Debt commencing on the related Redesignation Date;

(v) if the Corporation has no outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, but its Largest Depository Institution Subsidiary has more than one outstanding series of long-term indebtedness for money borrowed that is Eligible Debt, then



the Corporation shall identify the series that has the latest occurring final maturity date as of the date the Corporation is applying the procedures in this Section 3(b) and such series shall become the Covered Debt on the next Redesignation Date;

(vi) the series of outstanding long-term indebtedness for money borrowed that is determined to be Covered Debt pursuant to clause (ii), (iii), (iv) or (v) above shall be the Covered Debt for purposes of this Replacement Capital Covenant for the period commencing on the related Redesignation Date and continuing to but not including the Redesignation Date as of which a new series of outstanding long-term indebtedness is next determined to be the Covered Debt pursuant to the procedures set forth in this Section 3(b); and

(vii) in connection with such identification of a new series of Covered Debt, the Corporation shall, as provided for in Section 3(c), give a notice and file with the Commission a current report on Form 8-K including or incorporating by reference this Replacement Capital Covenant as an exhibit within the time frame provided for in such section.

(c) *Notice.* In order to give effect to the intent of the Corporation described in Recital C, the Corporation covenants that:

(i) simultaneously with the execution of this Replacement Capital Covenant or as soon as practicable after the date hereof, it shall (A) give notice to the Holders of the Initial Covered Debt, in the manner provided in the indenture relating to the Initial Covered Debt, of this Replacement Capital Covenant and the rights granted to such Holders hereunder and (B) file a copy of this Replacement Capital Covenant with the Commission as an Exhibit to a Form 8-K (or any successor form) under the Securities Exchange Act;

(ii) so long as the Corporation is a reporting company under the Securities Exchange Act, the Corporation shall include in each annual report filed with the Commission on Form 10-K (or any successor form) under the Securities Exchange Act a description of the covenant set forth in Section 2 and identify the series of long-term indebtedness for borrowed money that is Covered Debt as of the date such Form 10-K (or any successor form) is filed with the Commission;

(iii) if a series of the Corporation's or one of its Depository Institution Subsidiary's long-term indebtedness for money borrowed (1) becomes Covered Debt or (2) ceases to be Covered Debt, the Corporation shall give notice of such occurrence within 30 days to the holders of such long-term indebtedness for money borrowed in the manner provided for in the indenture, fiscal agency agreement or other instrument under which such long-term indebtedness for money borrowed was issued and report such change in a current report on Form 8-K (or any successor form) including or incorporating by reference this Replacement Capital Covenant, and in the Corporation's next quarterly report on Form 10-Q (or any successor form) or annual report on Form 10-K (or any successor form), as applicable;

(iv) if, and only if, the Corporation ceases to be a reporting company under the Securities Exchange Act, the Corporation shall (A) post on its website (or any other similar electronic platform generally available to the public) the information otherwise required to be included in Securities Exchange Act filings pursuant to clauses (ii) and (iii) of this Section 3(c) and (B) cause a notice of the execution of this Replacement Capital Covenant to be posted on the Bloomberg screen for the Covered Debt or any successor Bloomberg screen and each similar third-party vendor's screen the Corporation reasonably believes is appropriate (each an "*Investor*

Screen”) and cause a hyperlink to a definitive copy of this Replacement Capital Covenant to be included on the Investor Screen for each series of Covered Debt, in each case to the extent permitted by Bloomberg or such similar third-party vendor, as the case may be; and

(v) promptly upon request by any Holder of Covered Debt, the Corporation shall provide such Holder with a definitive copy of this Replacement Capital Covenant.

(d) The Corporation agrees that, if at any time the Covered Debt is held by a trust (for example, where the Covered Debt is part of an issuance of trust preferred securities), a holder of the securities issued by such trust may enforce (including by instituting legal proceedings) this Replacement Capital Covenant directly against the Corporation as though such holder owned Covered Debt directly, and such holder shall be deemed to be a holder of “Covered Debt” for purposes of this Replacement Capital Covenant for so long as the indebtedness held by such trust remains Covered Debt hereunder.

SECTION 4. *Termination, Amendment and Waiver.* (a) The obligations of the Corporation pursuant to this Replacement Capital Covenant shall remain in full force and effect until the earliest date (the “*Termination Date*”) to occur of:

(i) April 30, 2023, subject to extension as provided in Section 4(b)(iv);

(ii) the date, if any, on which the Holders of a majority in principal amount of the then effective series of Covered Debt consent or agree in writing to the termination of this Replacement Capital Covenant and the obligations of the Corporation hereunder;

(iii) the date on which neither the Corporation nor any of its Depository Institution Subsidiaries has any series of outstanding Eligible Senior Debt or Eligible Subordinated Debt (in each case without giving effect to the rating requirement in clause (b) of the definition of each such term); and

(iv) the date that all of the Securities have been redeemed or purchased in full in compliance with this Replacement Capital Covenant.

From and after the Termination Date, the obligations of the Corporation pursuant to this Replacement Capital Covenant shall be of no further force and effect.

(b) This Replacement Capital Covenant may be amended or supplemented from time to time in a written instrument signed by the Corporation with the consent of the Holders of at least a majority by principal amount of the then-effective series of Covered Debt, *provided* that this Replacement Capital Covenant may be amended or supplemented from time to time by a written instrument signed only by the Corporation (and without the consent of the Holders of the then effective series of Covered Debt) if:

(i) such amendment or supplement eliminates Common Stock, Debt Exchangeable for Common Stock, rights to acquire Common Stock, and/or Mandatorily Convertible Preferred Stock as a Replacement Capital Security, if after the date of this Replacement Capital Covenant, an accounting standard or interpretive guidance of an existing accounting standard issued by an organization or regulator that has responsibility for establishing or interpreting accounting standards in the United States becomes effective such that there is more than an insubstantial risk that failure to eliminate Common Stock, Debt Exchangeable for Common Stock, rights to acquire Common Stock and/or Mandatorily Convertible Preferred Stock as a Replacement Capital Security would result in a reduction in the Corporation’s earnings per share as calculated for financial reporting purposes;

(ii) such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt and an officer of the Corporation has delivered to the Holders of the then-effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate stating that, in his or her determination, such amendment or supplement is not adverse to the Holders of the then-effective series of Covered Debt;

(iii) the effect of such amendment or supplement is solely to impose additional restrictions on, or eliminate certain of, the types of securities qualifying as Replacement Capital Securities, and an officer of the Corporation has delivered to the Holders of the then-effective series of Covered Debt in the manner provided for in the indenture, fiscal agency agreement or other instrument with respect to such Covered Debt a written certificate to that effect; or

(iv) the effect of such amendment or supplement is solely to impose additional restrictions on the ability of the Corporation or its Subsidiaries to redeem or purchase Securities in any circumstance, including extending the termination date of this Replacement Capital Covenant as specified in Section 4(a)(i).

(c) For the avoidance of doubt, an amendment or supplement that adds new types of Qualifying Capital Securities or modifies the requirements of the Qualifying Capital Securities described herein would not be adverse to the rights of the Holders of the then-effective Covered Debt if, following such amendment or supplement, this Replacement Capital Covenant would satisfy clause (ii) of the definition of Qualifying Replacement Capital Covenant.

(d) For purposes of Sections 4(a) and 4(b), the Holders whose consent or agreement is required to terminate, amend or supplement the obligations of the Corporation under this Replacement Capital Covenant shall be the Holders of the then effective Covered Debt as of a record date established by the Corporation that is not more than 30 days prior to the date on which the Corporation proposes that such termination, amendment or supplement becomes effective.

**SECTION 5. *Miscellaneous.* (a) This Replacement Capital Covenant shall be governed by and construed in accordance with the laws of the State of New York.**

(b) This Replacement Capital Covenant shall be binding upon the Corporation and its successors and assigns and shall inure to the benefit of the Covered Debtholders as they exist from time to time (it being understood and agreed by the Corporation that any Person who is a Covered Debtholder at the time such Person acquires, holds or sells Covered Debt shall retain its status as a Covered Debtholder for so long as the series of long-term indebtedness for borrowed money owned by such Person is Covered Debt and, if such Person initiates a claim or proceeding to enforce its rights under this Replacement Capital Covenant after the Corporation has violated its covenants in Section 2 and before the series of long-term indebtedness for money borrowed held by such Person is no longer Covered Debt, such Person's rights under this Replacement Capital Covenant shall not terminate by reason of such series of long-term indebtedness for money borrowed no longer being Covered Debt until the termination of such claim or proceeding). Except as specifically provided herein, this Replacement Capital Covenant shall have no other beneficiaries, and no Person other than those specified herein is entitled to rely on this Replacement Capital Covenant.

(c) All demands, notices, requests and other communications to the Corporation under this Replacement Capital Covenant shall be deemed to have been duly given and made if in writing and (i) if served by personal delivery upon the Corporation, on the day so delivered (or, if such day is not a Business Day, the next succeeding Business Day), (ii) if delivered by registered post or certified mail, return receipt requested, or sent to the Corporation by a national or international courier service, on the date of receipt by the Corporation (or, if such date of receipt is not a Business Day, the next succeeding Business Day), or (iii) if sent by telecopier, on the day telecopied, or if not a Business Day, the next succeeding Business Day, *provided* that the telecopy is promptly confirmed by telephone confirmation thereof, and in each case to the Corporation at the address set forth below, or at such other address as the Corporation may thereafter notify to Covered Debtholders or post on its website as the address for notices under this Replacement Capital Covenant:

JPMorgan Chase & Co.  
270 Park Avenue, 39<sup>th</sup> Floor  
New York, New York 10017  
Attention: Neila Radin

IN WITNESS WHEREOF, the Corporation has caused this Replacement Capital Covenant to be executed by its duly authorized officer, as of the day and year first above written.

JPMORGAN CHASE & CO.

By: /s/ Le Roy Davis  
Name: Le Roy Davis  
Title: Managing Director

### **Definitions**

“*Alternative Payment Mechanism*” means, with respect to any Qualifying Capital Securities, provisions in the related transaction documents permitting the Corporation, in its sole discretion, or in response to a directive or order from the Federal Reserve, to defer or skip in whole or in part payment of Distributions on such Qualifying Capital Securities for one or more consecutive Distribution Periods up to 10 years and requiring the Corporation to issue (or use Commercially Reasonable Efforts to issue) one or more types of APM Qualifying Securities raising eligible proceeds at least equal to the deferred Distributions on such Qualifying Capital Securities and apply the proceeds to pay unpaid Distributions on such Qualifying Capital Securities, commencing on the earlier of (x) the first Distribution Date after commencement of a deferral period on which the Corporation pays current Distributions on such Qualifying Capital Securities and (y) the fifth anniversary of the commencement of such deferral period, and that:

(a) define “eligible proceeds” to mean, for purposes of such Alternative Payment Mechanism, the net proceeds (after underwriters’ or placement agents’ fees, commissions or discounts and other expenses relating to the issuance or sale of the relevant securities, where applicable, and including the fair market value of property received by the Corporation or any of its Subsidiaries as consideration for such APM Qualifying Securities) that the Corporation has received during the 180 days prior to the related Distribution Date from the issuance of APM Qualifying Securities, up to the Preferred Cap in the case of APM Qualifying Securities that are Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock;

(b) may permit the Corporation to pay current Distributions on any Distribution Date out of any source of funds but (i) require the Corporation to pay deferred Distributions only out of eligible proceeds and (ii) prohibit the Corporation from paying deferred Distributions out of any source of funds other than eligible proceeds;

(c) if deferral of Distributions continues for more than one year (or such shorter period as provided for in the terms of such Qualifying Capital Securities), require the Corporation and its Subsidiaries not to redeem or purchase any of the Corporation’s securities ranking junior to or *pari passu* with any APM Qualifying Securities the proceeds of which were used to settle deferred interest during the relevant deferral period until at least one year after all deferred Distributions have been paid (a “*Repurchase Restriction*”), other than the following (none of which shall be restricted or prohibited by a Repurchase Restriction):

(I) purchases of such Securities by Subsidiaries in connection with the distribution thereof or market-making or other secondary-market activities;

(II) purchases, redemptions or other acquisitions of shares of Common Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of employees, officers, directors or consultants; or

(III) purchases of shares of Common Stock pursuant to a contractually binding requirement to buy Common Stock entered into prior to the beginning of the related deferral period, including under a contractually binding stock repurchase plan;

(d) notwithstanding clause (b) of this definition, if the Federal Reserve disapproves the Corporation's sale of APM Qualifying Securities or the use of the proceeds thereof to pay deferred Distributions, may (if the Corporation elects to so provide in the terms of such Qualifying Capital Securities) permit the Corporation to pay deferred Distributions from any source or, if the Federal Reserve does not disapprove the Corporation's issuance and sale of APM Qualifying Securities but disapproves the use of the proceeds thereof to pay deferred Distributions, may (if the Corporation elects to so provide in the terms of such Qualifying Capital Securities) permit the Corporation to use such proceeds for other purposes and to continue to defer Distributions, without a breach of its obligations under the transaction documents;

(e) limit the obligation of the Corporation to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities that are Common Stock and Qualifying Warrants to settle deferred Distributions pursuant to the Alternative Payment Mechanism either (i) during the first five years of any deferral period or (ii) before an anniversary of the commencement of any deferral period that is not earlier than the fifth such anniversary and not later than the ninth such anniversary (as designated in the terms of such Qualifying Capital Securities) with respect to deferred Distributions attributable to the first five years of such deferral period, either:

(I) to an aggregate amount of such securities, the net proceeds from the issuance of which is equal to 2% of the product of the average of the current Market Value of the Common Stock on the 10 consecutive trading days ending on the fourth trading day immediately preceding the date of issuance multiplied by the total number of issued and outstanding shares of Common Stock as of the date of the Corporation's most recent publicly available consolidated financial statements; or

(II) to a number of shares of Common Stock and shares purchasable upon exercise of Qualifying Warrants, in the aggregate, not in excess of 2% of the outstanding number of shares of Common Stock as of the date of the Corporation's most recent publicly available consolidated financial statements (the "*Common Cap*");

(f) limit the right of the Corporation to issue APM Qualifying Securities that are Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock to settle deferred Distributions pursuant to the Alternative Payment Mechanism to an aggregate amount of Qualifying Preferred Stock and still-outstanding Mandatorily Convertible Preferred Stock issued pursuant to the Alternative Payment Mechanism, the net proceeds from the issuance of which with respect to all deferral periods is equal to 25% of the liquidation or principal amount of such Qualifying Capital Securities (the "*Preferred Cap*");

(g) in the case of Qualifying Capital Securities other than preferred stock, include a Bankruptcy Claim Limitation Provision;

(h) may include a provision that, notwithstanding the Common Cap and the Preferred Cap, for purposes of paying deferred Distributions, limits the Corporation's ability to sell shares of its Common Stock, Qualifying Warrants or Mandatorily Convertible Preferred Stock above an aggregate cap specified in the transaction documents (a "*Share Cap*"), subject to the Corporation's agreement to use commercially reasonable efforts to increase the Share Cap amount from time to time to a number of shares of Common Stock that would allow it to satisfy its obligations to pay deferred Distributions; and

(i) permit the Corporation, at its option, to provide that if it is involved in a merger, consolidation, amalgamation, binding share exchange or conveyance, transfer or lease of assets substantially as an entirety to any other person or a similar transaction (a “*Business Combination*”) where immediately after the consummation of the Business Combination more than 50% of the surviving or resulting entity’s voting stock is owned by the shareholders of the other party to the Business Combination, then clauses (a) through (c) of this definition will not apply to any deferral period that is terminated on the next Distribution Date following the date of consummation of the Business Combination (or if later, at any time within 90 days following the date of consummation of the Business Combination);

*provided* (and it being understood) that:

(i) the Corporation shall not be obligated to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(ii) if, due to a Market Disruption Event or otherwise, the Corporation is able to raise and apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the Corporation will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap, the Share Cap and the Preferred Cap, as applicable; and

(iii) if the Corporation has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and apply some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the Corporation from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a *pro rata* basis up to the Common Cap, the Share Cap and the Preferred Cap, as applicable, in proportion to the total amounts that are due on such securities, or on such other basis as the Federal Reserve may approve.

“*APM Qualifying Securities*” means, with respect to an Alternative Payment Mechanism or any Mandatory Trigger Provision, one or more of the following (as designated in the transaction documents for any Qualifying Capital Securities that include an Alternative Payment Mechanism or a Mandatory Trigger Provision, as applicable):

- (i) Common Stock;
- (ii) Qualifying Warrants;
- (iii) Mandatorily Convertible Preferred Stock; or
- (iv) Qualifying Preferred Stock;

*provided* (and it being understood) that (I) if the APM Qualifying Securities for any Alternative Payment Mechanism or Mandatory Trigger Provision include both Common Stock and Qualifying Warrants, (w) such Alternative Payment Mechanism or Mandatory Trigger Provision may permit, but need not require, the Corporation to issue Qualifying Warrants and (x) the Corporation may, without the consent of the holders of the Qualifying Capital Securities, amend the definition of “*APM Qualifying Securities*” to eliminate Common Stock or Qualifying Warrants (but not both) from the definition if the Corporation has



been advised in writing by a nationally recognized independent accounting firm that there is more than an insubstantial risk that the failure to do so would result in a reduction in its earnings per share as calculated for financial reporting purposes; and (II) if the “APM Qualifying Securities” for any Alternative Payment Mechanism or Mandatory Trigger Provision include Mandatorily Convertible Preferred Stock, (y) such Alternative Payment Mechanism or Mandatory Trigger Provision may permit, but need not require, the Corporation to issue Mandatorily Convertible Preferred Stock; and (z) the Corporation may, without the consent of the holders of the Qualifying Capital Securities, amend the definition of “APM Qualifying Securities” to eliminate Mandatorily Convertible Preferred Stock from the definition if the Corporation has been advised in writing by a nationally recognized independent accounting firm that there is more than an insubstantial risk that the failure to do so would result in a reduction in its earnings per share as calculated for financial reporting purposes.

“*Applicable Percentage*” means:

- (i) with respect to Common Stock and rights to acquire Common Stock (including Common Stock or rights to acquire Common Stock issued pursuant to the Corporation’s dividend reinvestment plan or employee benefit plans), 133.33%;
- (ii) with respect to Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity, Mandatorily Convertible Preferred Stock, REIT Preferred Securities and Qualifying Capital Securities, 100%;

“*Appropriate Federal Banking Agency*” means, as to a Depository Institution Subsidiary, the Federal bank regulatory agency or authority that is the “appropriate Federal banking agency” (within the meaning of 12 U.S.C. § 1813(q)) with respect to such Depository Institution Subsidiary.

“*Bankruptcy Claim Limitation Provision*” means, with respect to any Qualifying Capital Securities that have an Alternative Payment Mechanism or a Mandatory Trigger Provision, provisions that, upon any liquidation, dissolution, winding up or reorganization or in connection with any insolvency, receivership or proceeding under any bankruptcy law with respect to the issuer, limit the claim of the holders of such securities to Distributions that accumulate during (A) any deferral period, in the case of securities that have an Alternative Payment Mechanism or (B) any period in which the issuer fails to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in the case of securities that have a Mandatory Trigger Provision, to:

(i) in the case of Qualifying Capital Securities that have an Alternative Payment Mechanism or Mandatory Trigger Provision with respect to which the APM Qualifying Securities do not include Qualifying Preferred Stock or Mandatorily Convertible Preferred Stock, 25% of the stated or principal amount of such Qualifying Capital Securities then outstanding; and

(ii) in the case of any other Qualifying Capital Securities, an amount not in excess of the sum of (x) the amount of interest that relates to the earliest two years of the portion of the deferral period for which interest has not been paid and (y) an amount equal to the excess, if any, of the Preferred Cap over the aggregate amount of net proceeds from the sale of Qualifying Preferred Stock and Mandatorily Convertible Preferred Stock that is still outstanding that the issuer has applied to pay such Distributions pursuant to the Alternative Payment Mechanism or the Mandatory Trigger Provision; *provided* that the holders of such Qualifying Capital Securities are deemed to agree that, to the extent the remaining claim exceeds the amount set forth in clause (x), the amount they receive in respect of such excess shall not exceed the amount they would have received had the claim for such excess ranked *pari passu* with the interests of the holders, if any, of Qualifying Preferred Stock.

“*Business Day*” means each day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed.

“*Commercially Reasonable Efforts*” means, for purposes of selling APM Qualifying Securities, commercially reasonable efforts to complete the offer and sale of APM Qualifying Securities to third parties that are not Subsidiaries in public offerings or private placements. The Corporation shall not be considered to have made Commercially Reasonable Efforts to effect a sale of APM Qualifying Securities if it determines not to pursue or complete such sale due to pricing, coupon, dividend rate or dilution considerations.

“*Commission*” means the United States Securities and Exchange Commission.

“*Common Cap*” has the meaning specified in clause (e) of the definition of Alternative Payment Mechanism.

“*Common Stock*” means common stock of the Corporation (including treasury shares of common stock and shares of common stock issued pursuant to the Corporation’s dividend reinvestment plan and employee benefit plans).

“*Corporation*” has the meaning specified in the introduction to this instrument.

“*Covered Debt*” means (a) at the date of this Replacement Capital Covenant and continuing to but not including the first Redesignation Date, the Initial Covered Debt and (b) thereafter, commencing with each Redesignation Date and continuing to but not including the next succeeding Redesignation Date, the Eligible Debt identified pursuant to Section 3(b) as the Covered Debt for such period.

“*Covered Debtholder*” means each Person (whether a Holder or a beneficial owner holding through a participant in a clearing agency) that buys, holds or sells long-term indebtedness for money borrowed of the Corporation or its Depository Institution Subsidiary during the period that such long-term indebtedness for money borrowed is Covered Debt.

“*Debt Exchangeable for Common Equity*” means a security or combination of securities (together in this definition, “*such securities*”) that:

(i) gives the holder a beneficial interest in (a) a stock purchase contract for Common Stock that will be settled in three years or less, with the number of shares of Common Stock purchasable pursuant to such stock purchase contract to be within a range established at the time of issuance of the subordinated debt securities referred to in clause (b), subject to customary anti-dilution adjustments and (b) subordinated debt securities of the Corporation that are non-callable prior to the settlement date of the stock purchase contract;

(ii) provides that the holders directly or indirectly grant the Corporation a security interest in such subordinated debt securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the holders’ direct or indirect obligation to purchase Common Stock pursuant to such stock purchase contracts;

(iii) includes a remarketing feature pursuant to which the subordinated debt securities are remarketed to new investors commencing not later than the last Distribution Date that is at least one month prior to the settlement date of the stock purchase contract; and

(iv) provides for the proceeds raised in the remarketing to be used to purchase Common Stock under the stock purchase contracts and, if there has not been a successful remarketing by the settlement date of the stock purchase contract, provides that the stock purchase contracts will be settled by the Corporation exercising its remedies as a secured party with respect to the subordinated debt securities or other collateral directly or indirectly pledged by holders in the Debt Exchangeable for Common Equity.

“*Debt Exchangeable for Preferred Equity*” means a security or combination of securities (together in this definition, “*such securities*”) that:

(i) gives the holder a beneficial interest in (a) subordinated debt securities of the Corporation or one of its Subsidiaries (in this definition, the “*issuer*”) that include a provision permitting the issuer to defer Distributions in whole or in part on such securities for one or more Distribution Periods of up to at least seven years without any remedies other than Permitted Remedies and that are the most junior subordinated debt of the issuer (or rank *pari passu* with the most junior subordinated debt of the issuer) and (b) an interest in a stock purchase contract that obligates the holder to acquire a beneficial interest in Qualifying Preferred Stock;

(ii) provides that the holders directly or indirectly grant to the Corporation a security interest in such subordinated debt securities and their proceeds (including any substitute collateral permitted under the transaction documents) to secure the investors’ direct or indirect obligation to purchase Qualifying Preferred Stock pursuant to such stock purchase contracts;

(iii) includes a remarketing feature pursuant to which the subordinated debt of the issuer is remarketed to new investors commencing not later than the first Distribution Date that is at least five years after the date of issuance of such securities or earlier in the event of an early settlement event based on (a) the capital ratios of the Corporation, (b) the capital ratios of the Corporation as anticipated by the Federal Reserve, or (c) the dissolution of the issuer of such Debt Exchangeable for Preferred Equity;

(iv) provides for the proceeds raised in the remarketing to be used to purchase Qualifying Preferred Stock under the stock purchase contracts and, if there has not been a successful remarketing by the first Distribution Date that is six years after the date of issuance of such securities, provides that the stock purchase contracts will be settled by the Corporation exercising its rights as a secured creditor with respect to the subordinated debt securities or other collateral directly or indirectly pledged by investors in the Debt Exchangeable for Preferred Equity;

(v) includes a Qualifying Replacement Capital Covenant that will apply to such securities and to any Qualifying Preferred Stock issued pursuant to the stock purchase contracts; *provided* that such Qualifying Replacement Capital Covenant will not include Debt Exchangeable for Common Equity or Debt Exchangeable for Preferred Equity as “Replacement Capital Securities”; and

(vi) after the issuance of such Qualifying Preferred Stock, provides the holder with a beneficial interest in such Qualifying Preferred Stock.

“*Depository Institution Subsidiary*” means any Subsidiary that is a depository institution within the meaning of 12 C.F.R. § 204.2(m).

“*Distribution Date*” means, as to any Qualifying Capital Securities or Debt Exchangeable for Preferred Equity, the dates on which Distributions on such securities are scheduled to be made.

“*Distribution Period*” means, as to any Qualifying Capital Securities or Debt Exchangeable for Preferred Equity, each period from and including a Distribution Date for such securities to but not including the next succeeding Distribution Date for such securities.

“*Distributions*” means, as to any Qualifying Capital Securities or Debt Exchangeable for Preferred Equity, dividends, interest or other income distributions to the holders thereof that are not the Corporation or Subsidiaries.

“*Eligible Debt*” means, at any time, Eligible Subordinated Debt or, if no Eligible Subordinated Debt is then outstanding, Eligible Senior Debt.

“*Eligible Senior Debt*” means, at any time in respect of any issuer, each series of the issuer’s outstanding unsecured long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding-up of the issuer, ranks most senior among the issuer’s then outstanding classes of unsecured indebtedness for money borrowed, (b) is then assigned a rating by at least one NRSRO (*provided* that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding senior long-term indebtedness for money borrowed that satisfies the requirements of clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by JPMorgan Chase Bank, National Association, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of JPMorgan Chase Bank, National Association meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of JPMorgan Chase Bank, National Association meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer’s long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

“*Eligible Subordinated Debt*” means, at any time in respect of any issuer, each series of the issuer’s then-outstanding unsecured long-term indebtedness for money borrowed that (a) upon a bankruptcy, liquidation, dissolution or winding up of the issuer, ranks subordinate to the issuer’s then-outstanding series of unsecured indebtedness for money borrowed that ranks most senior; (b) is then assigned a rating by at least one NRSRO (*provided* that this clause (b) shall apply on a Redesignation Date only if on such date the issuer has outstanding subordinated long-term indebtedness for money borrowed that satisfies the requirements in clauses (a), (c) and (d) that is then assigned a rating by at least one NRSRO), (c) has an outstanding principal amount of not less than \$100,000,000, (d) was issued through or with the assistance of a commercial or investment banking firm or firms acting as underwriters, initial purchasers or placement or distribution agents, and (e) if issued by JPMorgan Chase Bank, National Association, is fully and unconditionally guaranteed by the Corporation on (I) a subordinated basis or (II) if on the relevant Redesignation Date there is no outstanding debt of JPMorgan

Chase Bank, National Association meeting the other requirements set forth above and guaranteed by the Corporation on a subordinated basis but there is outstanding debt of JPMorgan Chase Bank, National Association meeting such requirements and guaranteed on a senior basis, a senior basis. For purposes of this definition as applied to securities with a CUSIP number, each issuance of long-term indebtedness for money borrowed that has (or, if such indebtedness is held by a trust or other intermediate entity established directly or indirectly by the issuer, the securities of such intermediate entity that have) a separate CUSIP number shall be deemed to be a series of the issuer's long-term indebtedness for money borrowed that is separate from each other series of such indebtedness.

*"Federal Reserve"* means the Board of Governors of the Federal Reserve System, and any regional Federal Reserve Bank in which the Corporation owns stock.

*"Holder"* means, as to the Covered Debt then in effect, each holder of such Covered Debt as reflected on the securities register maintained by or on behalf of the Corporation with respect to such Covered Debt and each beneficial owner holding through a participant in a clearing agency.

*"Initial Covered Debt"* means the Corporation's 5.875% Junior Subordinated Deferrable Interest Debentures, Series O, due 2035.

*"Intent-Based Replacement Disclosure"* means, as to any Qualifying Preferred Stock or Qualifying Capital Securities, that the issuer has publicly stated its intention, either in the prospectus or other offering document under which such securities were initially offered for sale or in filings with the Commission made by the issuer under the Securities Exchange Act prior to or contemporaneously with the issuance of such securities, that the issuer and its Subsidiaries will redeem or purchase such securities only with the proceeds of securities that have terms and provisions at the time of redemption or purchase that are as or more equity-like than the securities then being redeemed or repurchased, raised within 180 days prior to the applicable redemption or repurchase date. Notwithstanding the use of the term "Intent-Based Replacement Disclosure" in the definitions of "Qualifying Capital Securities" and "Qualifying Preferred Stock", the requirement in each such definition that a particular security or the related transaction documents include Intent-Based Replacement Disclosure shall be disregarded and given no force or effect for so long as the Corporation is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended.

*"Largest Depository Institution Subsidiary"* means, from time to time, the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Subordinated Debt; provided, however, that if no Depository Institution Subsidiary of the Corporation has outstanding a series of Eligible Subordinated Debt, this term shall mean the Depository Institution Subsidiary of the Corporation with the greatest total assets that also has outstanding at least one series of Eligible Senior Debt.

*"Mandatorily Convertible Preferred Stock"* means preferred stock with (a) no prepayment obligation on the part of the issuer thereof, whether at the election of the holders or otherwise and (b) a requirement that the preferred stock convert into Common Stock of the Corporation within three years from the date of its issuance at a conversion ratio within a range established at the time of issuance of the preferred stock, subject to customary anti-dilution adjustments.

*"Mandatory Trigger Provision"* means, as to any Qualifying Capital Securities, provisions in the terms thereof or of the related transaction agreements that:

(a) either (x) require the issuer of such securities to make payment of Distributions on such securities only pursuant to the sale of APM Qualifying Securities within two years of a failure of the issuer to satisfy one or more financial tests set forth in the terms of such securities or related transaction agreements, in an amount such that the net proceeds of such sale are at least equal to the amount of unpaid Distributions on such securities (including without limitation all deferred and accumulated amounts) and require the application of the net proceeds of such sale to pay such unpaid Distributions or (y) in the case of Non-Cumulative preferred stock, include provisions that, during the continuation of the failure to satisfy such financial tests, permit the issuer of such securities to make payment of Distributions on such securities only with the net proceeds of the sale of APM Qualifying Securities (provided that the issuer may skip Distributions rather than issue APM Qualifying Securities to raise such eligible proceeds), *provided* that (i) if the Mandatory Trigger Provision does not require the issuance and sale within one year of such failure, the amount of Common Stock and/or Qualifying Warrants the net proceeds of which the issuer must apply to pay such Distributions pursuant to such provision may not exceed the Common Cap and (ii) the amount of Qualifying Preferred Stock and still outstanding Mandatorily Convertible Preferred Stock issued pursuant to the Mandatory Trigger Provision the net proceeds of which the issuer may apply to pay such Distributions pursuant to such provision may not exceed the Preferred Cap;

(b) if the provisions described in clause (a) do not require such issuance and sale within one year of such failure (or in the case of Non-Cumulative preferred stock, the issuer has used the net proceeds of the sale of APM Qualifying Securities to pay Distributions more than one year after such failure), include a Repurchase Restriction;

(c) prohibit the issuer of such securities from redeeming or purchasing any of its securities ranking upon the liquidation, dissolution or winding up of the Corporation junior to or *pari passu* with any APM Qualifying Securities the proceeds of which were used to settle deferred interest during the relevant deferral period prior to the date six months after (x) the issuer applies the net proceeds of the sales described in clause (a) above to pay such deferred Distributions in full or (y) in the case of Non-Cumulative preferred stock, the date, if any, on which the issuer applied the net proceeds of any sales described in clause (a) above to pay Distributions;

(d) include a Bankruptcy Claim Limitation Provision; and

(e) may permit the issuer, at its option, to provide that if it is involved in a Business Combination where immediately after the consummation of the Business Combination more than 50% of the surviving or resulting entity's voting stock is owned by the shareholders of the other party to the Business Combination, then clauses (a), (b) and (c) of this definition will not apply to any deferral period that is terminated on the next Distribution Date following the date of consummation of the Business Combination (or, if later, at any time within 90 days following the date of such consummation);

*provided* (and it being understood) that:

(i) the issuer will not be obligated to issue (or use Commercially Reasonable Efforts to issue) APM Qualifying Securities for so long as a Market Disruption Event has occurred and is continuing;

(ii) if, due to a Market Disruption Event or otherwise, the issuer is able to raise and

apply some, but not all, of the eligible proceeds necessary to pay all deferred Distributions on any Distribution Date, the issuer will apply any available eligible proceeds to pay accrued and unpaid Distributions on the applicable Distribution Date in chronological order subject to the Common Cap and Preferred Cap, as applicable; and

(iii) if the issuer has outstanding more than one class or series of securities under which it is obligated to sell a type of APM Qualifying Securities and applies some part of the proceeds to the payment of deferred Distributions, then on any date and for any period the amount of net proceeds received by the issuer from those sales and available for payment of deferred Distributions on such securities shall be applied to such securities on a *pro rata* basis up to the Common Cap and the Preferred Cap, as applicable, in proportion to the total amounts that are due on such securities.

No remedy other than Permitted Remedies will arise by the terms of such securities or related transaction agreements in favor of the holders of such Qualifying Capital Securities as a result of the issuer's failure to pay Distributions because of the Mandatory Trigger Provision until Distributions have been deferred for one or more Distribution Periods that total together at least 10 years.

"*Market Disruption Event*" means the occurrence or existence of any of the following events or sets of circumstances:

(a) the Corporation would be required to obtain the consent or approval of its shareholders or a regulatory body (including, without limitation, any securities exchange) or governmental authority to issue or sell APM Qualifying Securities and such consent or approval has not yet been obtained notwithstanding the Corporation's commercially reasonable efforts to obtain such consent or approval or the Federal Reserve instructs the Corporation not to sell or offer for sale APM Qualifying Securities at such time;

(b) trading in securities generally (or in the Common Stock or the Corporation's preferred stock specifically) on the New York Stock Exchange or any other national securities exchange or over-the-counter market on which the Common Stock and/or the Corporation's preferred stock is then listed or traded shall have been suspended or the settlement of such trading generally shall have been materially disrupted or minimum prices shall have been established on any such exchange or market by the Commission, by the relevant exchange or market or by any other regulatory body or governmental body having jurisdiction, and the establishment of such minimum prices materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(c) a banking moratorium shall have been declared by the federal or state authorities of the United States and such moratorium materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(d) a material disruption shall have occurred in commercial banking or securities settlement or clearance services in the United States and such disruption materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(e) the United States shall have become engaged in hostilities, there shall have been an escalation in hostilities involving the United States, there shall have been a declaration of a national emergency or war by the United States or there shall have occurred any other national or international calamity or crisis and such event materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(f) there shall have occurred such a material adverse change in general domestic or international economic, political or financial conditions, including without limitation as a result of terrorist activities, and such change materially disrupts or otherwise has a material adverse effect on trading in, or the issuance and sale of, the APM Qualifying Securities;

(g) an event occurs and is continuing as a result of which the offering document for such offer and sale of APM Qualifying Securities would, in the reasonable judgment of the Corporation, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and either (i) the disclosure of that event at such time, in the reasonable judgment of the Corporation, is not otherwise required by law and would have a material adverse effect on the business of the Corporation or (ii) the disclosure relates to a previously undisclosed proposed or pending development or material business transaction, and the Corporation has a bona fide business purpose for keeping the same confidential or the disclosure of which would impede the ability of the Corporation to consummate such transaction, *provided* that no single suspension period contemplated by this paragraph (g) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (g) shall not exceed an aggregate of 90 days in any 180-day period; or

(h) the Corporation reasonably believes, for reasons other than those referred to in paragraph (g) above, that the offering document for such offer and sale of APM Qualifying Securities would not be in compliance with a rule or regulation of the Commission and the Corporation is unable to comply with such rule or regulation or such compliance is unduly burdensome, *provided* that no single suspension period contemplated by this paragraph (h) shall exceed 90 consecutive days and multiple suspension periods contemplated by this paragraph (h) shall not exceed an aggregate of 90 days in any 180-day period.

The definition of “*Market Disruption Event*” as used in any Replacement Capital Securities may include less than all of the paragraphs outlined above, as determined by the Corporation at the time of issuance of such securities, and in the case of clauses (a), (b), (c) and (d), as applicable to a circumstance where the Corporation would otherwise endeavor to issue preferred stock, shall be limited to circumstances affecting markets where the Corporation’s preferred stock trades or where a listing for its trading is being sought.

“*Market Value*” means, on any date, the closing sale price per share of Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions by the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, as reported by the principal U.S. securities exchange on which the Common Stock is traded or quoted; if the Common Stock is not either listed or quoted on any U.S. securities exchange on the relevant date, the Market Value will be the average of the mid-point of the bid and ask prices for the Common Stock on the relevant date submitted by at least three nationally recognized independent investment banking firms selected for this purpose by the Board of Directors of the Corporation or a committee thereof.



“*Measurement Date*” means with respect to any repayment, redemption or purchase of the Securities, the date that is 180 days prior to delivery of notice of such repayment or redemption or the date of such purchase.

“*Measurement Period*” means, with respect to any date on which notice of repayment or redemption is delivered with respect to the Securities or on which the Corporation repurchases, or any Subsidiary purchases, any Securities, the period beginning on the Measurement Date with respect to such notice or purchase date and ending on such notice or purchase date, as the case may be. No two Measurement Periods under this Replacement Capital Covenant can run concurrently with each other.

“*Non-Cumulative*” means, with respect to any Qualifying Capital Securities, that the issuer may elect not to make any number of periodic Distributions without any remedy arising under the terms of the securities or related agreements in favor of the holders, other than one or more Permitted Remedies.

“*No Payment Provision*” means a provision or provisions in the transaction documents for securities (referred to in this definition as “*such securities*”) that include the following:

(a) an Alternative Payment Mechanism; and

(b) an Optional Deferral Provision modified and supplemented from the general definition of that term to provide that the issuer of such securities may, in its sole discretion, or (if the issuer elects to so provide in the terms of such securities) shall in response to a directive or order from the Federal Reserve, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event has occurred and is continuing, 10 years, without any remedy other than Permitted Remedies and the obligations (and limitations on obligations) described in the definition of “Alternative Payment Mechanism” applying.

“*NRSRO*” means a nationally recognized statistical rating organization within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act.

“*Optional Deferral Provision*” means, as to any Qualifying Capital Securities, a provision in the terms thereof or of the related transaction agreements to the effect that either:

(a) (i) the issuer of such Qualifying Capital Securities may, in its sole discretion, or shall in response to a directive or order from the Federal Reserve, defer in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to five years or, if a Market Disruption Event is continuing, 10 years, without any remedy other than Permitted Remedies and (ii) such securities are subject to an Alternative Payment Mechanism (*provided* that such Alternative Payment Mechanism need not apply during the first five years of any deferral period and need not include a Common Cap, Preferred Cap, Bankruptcy Claims Limitation Provision or Repurchase Restriction); or

(b) the issuer of such Qualifying Capital Securities may, in its sole discretion, or shall in response to a directive or order from the Federal Reserve, defer or skip in whole or in part payment of Distributions on such securities for one or more consecutive Distribution Periods of up to at least 10 years without any remedy other than Permitted Remedies.

“*Permitted Remedies*” means, with respect to any securities, one or more of the following remedies:

(a) rights in favor of the holders of such securities permitting such holders to elect one or more directors of the issuer (including any such rights required by the listing requirements of any stock or securities exchange on which such securities may be listed or traded); and

(b) complete or partial prohibitions on the issuer paying Distributions on and on the issuer and its Subsidiaries purchasing Common Stock or other securities that *rank pari passu* with or junior as to Distributions to such securities for so long as Distributions on such securities, including unpaid Distributions, remain unpaid.

“*Person*” means any individual, corporation, partnership, joint venture, trust, limited liability company or corporation, unincorporated organization or government or any agency or political subdivision thereof.

“*Preferred Cap*” has the meaning specified in clause (f) of the definition of Alternative Payment Mechanism.

“*Prospectus Supplement*” has the meaning specified in Recital C.

“*Qualifying Capital Securities*” means securities or combinations of securities (other than Common Stock, rights to acquire Common Stock, Mandatorily Convertible Preferred Stock, Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity, Mandatorily Convertible Preferred Stock or REIT Preferred Securities) that, in the determination of the Corporation’s Board of Directors reasonably construing the definitions and other terms of this Replacement Capital Covenant, meet one of the following criteria:

(i) securities issued by the Corporation or its Subsidiaries that (X) rank *pari passu* with or junior to Most Junior Subordinated Debt Securities upon the liquidation, dissolution or winding up of the Corporation, (Y) have no maturity or a maturity of at least 60 years and (Z) either:

(A) have a No Payment Provision or are Non-Cumulative and are subject to a Qualifying Capital Replacement Covenant, or

(B) have an Optional Deferral Provision and a Mandatory Trigger Provision and are subject to Intent-Based Replacement Disclosure; or

(ii) securities issued by the Corporation or its Subsidiaries that (X) rank *pari passu* with or junior to Most Junior Subordinated Debt Securities upon the liquidation, dissolution or winding up of the Corporation, (Y) have no maturity or a maturity of at least 40 years and are subject to a Qualifying Capital Replacement Covenant and (Z) have an Optional Deferral Provision and a Mandatory Trigger Provision.

“*Qualifying Preferred Stock*” means non-cumulative perpetual preferred stock of the Corporation that (a) ranks *pari passu* with or junior to all other preferred stock of the Corporation, and (b) either (x) is subject to a Qualifying Replacement Capital Covenant or (y) is subject to Intent-Based Replacement Disclosure and has a provision that prohibits the Corporation from paying any dividends thereon upon its failure to satisfy one or more financial tests set forth therein, and (c) as to which the transaction documents provide for no remedies as a consequence of non-payment of dividends other than Permitted Remedies.

“*Qualifying Replacement Capital Covenant*” means a replacement capital covenant substantially similar to this Replacement Capital Covenant or a replacement capital covenant, as identified by the Corporation’s Board of Directors acting in good faith and in its reasonable discretion and reasonably construing the definitions and other terms of this Replacement Capital Covenant, (i) entered into by an issuer company that at the time it enters into such replacement capital covenant is a reporting company under the Securities Exchange Act and (ii) that restricts the related issuer and its subsidiaries from redeeming, repaying or purchasing identified securities except to the extent of the specified percentage of the net proceeds from the issuance of specified replacement capital securities that have terms and provisions at the time of redemption, repayment or purchase that are as or more equity-like than the securities then being redeemed, repaid or purchased within the 180-day period prior to the applicable redemption, repayment or purchase date; *provided* that a Qualifying Replacement Capital Covenant with respect to Debt Exchangeable for Preferred Equity may terminate at any time not less than 10 years after the issuance of the Qualifying Preferred Stock and that a Qualifying Replacement Capital Covenant with respect to REIT Preferred Securities may terminate at any time not less than 10 years after their issuance.

“*Qualifying Warrants*” means warrants for Common Stock that (i) have an exercise price greater than the Market Value of the Common Stock on their date of pricing, and (ii) the Corporation is not entitled to redeem for cash and the holders of which are not entitled to require the Corporation to repurchase for cash in any circumstances.

“*Redesignation Date*” means, as to the Covered Debt in effect at any time, the earliest of (a) the date that is two years prior to the final maturity date of such Covered Debt, (b) if the Corporation elects to redeem, or the Corporation or a Subsidiary elects to purchase, such Covered Debt either in whole or in part with the consequence that after giving effect to such redemption or purchase the outstanding principal amount of such Covered Debt is less than \$100,000,000, the applicable redemption or purchase date and (c) if such Covered Debt is not Eligible Subordinated Debt of the Corporation, the date on which the Corporation issues long-term indebtedness for money borrowed that is Eligible Subordinated Debt.

“*REIT Preferred Securities*” means non-cumulative perpetual preferred stock of a subsidiary of a Depository Institution Subsidiary, which issuer subsidiary may or may not be a “real estate investment trust” (“*REIT*”) within the meaning of Section 856 of the Internal Revenue Code of 1986, as amended, that is exchangeable for non-cumulative perpetual preferred stock of the Corporation and satisfies the following requirements:

(a) such non-cumulative perpetual preferred stock of a subsidiary of the Depository Institution Subsidiary and the related non-cumulative perpetual preferred stock of the Corporation for which it may be exchanged qualifies as Tier 1 capital of a Depository Institution Subsidiary under the risk-based capital guidelines of the Appropriate Federal Banking Agency and related interpretive guidance of such Agency (for example, in the case of the Office of the Comptroller of the Currency, Corporate Decision 97-109);

(b) such non-cumulative perpetual preferred stock of a subsidiary of the Depository Institution Subsidiary must be exchangeable automatically into non-cumulative perpetual preferred stock of the Corporation in the event that the Appropriate Federal Banking Agency directs such Depository Institution Subsidiary in writing to make a conversion because such Depository Institution Subsidiary is (i) undercapitalized under the applicable prompt corrective action regulations (which, for example, in the case of the Office of the Comptroller of the Currency and applicable to national banks, are at 12 C.F.R. 6.4(b)), (ii) placed into conservatorship or receivership, or (iii) expected to become undercapitalized in the near term;

(c) if such subsidiary of the Depository Institution Subsidiary is a REIT, the transaction documents include provisions that would enable the REIT to stop paying dividends on its non-cumulative perpetual preferred stock without causing the REIT to fail to comply with the income distribution and other requirements of the Internal Revenue Code of 1986, as amended, applicable to REITs;

(d) such non-cumulative perpetual preferred stock of the Corporation issued upon exchange for the non-cumulative perpetual preferred stock of a subsidiary of a Depository Institution Subsidiary issued as part of such transaction ranks *pari passu* with or junior to other preferred stock of the Corporation; and

(e) such REIT Preferred Securities and non-cumulative perpetual preferred stock of the Corporation for which it may be exchanged are subject to a Qualifying Replacement Capital Covenant.

“*Replacement Capital Covenant*” has the meaning specified in the introduction to this instrument.

“*Replacement Capital Securities*” means Common Stock, rights to acquire Common Stock, Debt Exchangeable for Common Equity, Debt Exchangeable for Preferred Equity, Mandatorily Convertible Preferred Stock, REIT Preferred Securities or Qualifying Capital Securities.

“*Repurchase Restriction*” has the meaning specified in clause (c) of the definition of “Alternative Payment Mechanism.”

“*Securities*” has the meaning specified in Recital B.

“*Securities Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Share Cap*” has the meaning specified in clause (h) of the definition of Alternative Payment Mechanism.

“*Subsidiary*” means, at any time, any Person the shares of stock or other ownership interests of which having ordinary voting power to elect a majority of the board of directors or other managers of such Person are at the time owned, or the management or policies of which are otherwise at the time controlled, directly or indirectly through one or more intermediaries (including other Subsidiaries) or both, by the Corporation.

“*Termination Date*” has the meaning specified in Section 4(a).