October 18, 2013

The Honorable Mary Jo White
Chair
c/o Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Establishing and Protecting a Meaningful Role for Chief Compliance Officers Under the Dodd-Frank Act Reforms; Release No. 34-63825; File No. S7-06-11; Release No. 34-63347; File No. S7-35-10; Release No. 34-69491; File No. S7-06-11

Dear Chair White:

Recent events have highlighted the profound importance of ensuring that chief compliance officers ("CCOs") at financial institutions have the genuine authority and independence to serve as meaningful internal safeguards against the type of reckless, unlawful, and potentially criminal conduct that led to the epic financial crisis of 2008. Better Markets[1] is filing this supplemental comment letter to ensure that the Securities and Exchange Commission ("Commission") is aware of these recent events and their relationship to the role of CCOs as it finalizes the pending rules.

On September 12, 2013, the Wall Street Journal featured a story on management changes at J.P. Morgan Chase purportedly implemented recently, following a series of enforcement actions and investigations involving a broad spectrum of violations by the bank—from the massive fraudulent sale of mortgage-backed securities to the more than $6 billion London Whale proprietary trading debacle. In a little-noticed revelation regarding the bank's approach to compliance, the Journal reported that CEO Jamie Dimon has only just recently

> given greater authority to executives in charge of risk, legal, and compliance, which means **they can no longer be overruled by business heads.**[2]

[1] Better Markets, Inc. is a nonprofit organization that promotes the public interest in the capital and commodity markets, including in particular the rulemaking process associated with the Dodd-Frank Act.

[2] Monica Langley & Dan Fitzpatrick, *Embattled J.P. Morgan Bulks up Oversight*, WALL ST. J., Sept. 12, 2013 (emphasis added), *available at* http://online.wsj.com/news/articles/SB10001424127887324755104579071304170686532.

1825 K Street, NW, Suite 1080, Washington, DC 20006 TELEPHONE (1) 202.618-6464 FAX (1) 202.618.6465 WEBSITE bettermarkets.com

The article goes on to note that the bank's chief compliance officer will henceforth report to the chief operating officer.

It is shocking that it took

(1) multiple major enforcement actions by multiple federal regulators;
(2) over $18 billion in litigation expenses, including fines;
(3) five years of reflection after the beginning of the financial crisis;
(4) three years after the passage of historic financial reform legislation; and
(5) more than **another** full year after the London Whale disaster

before J.P. Morgan Chase finally recognized that risk, legal, and compliance functions must be independent from business heads who are focused on, and richly rewarded for, revenue and profitability. The article also makes the troubling revelation that other "rival" Wall Street banks still have **not** been willing to make this basic change in their compliance structures.

That should come as no surprise to anyone paying attention. After all, risk, legal, and compliance are often viewed as impediments, at best, to revenue, profits, and, ultimately, bonuses. Indeed, there is a well-known, long-standing resistance to empowering and protecting the people most important to internal compliance and controls.

For example, it became clear after the financial collapse of 2008 that compliance and self-policing had become virtually non-existent, due both to this hostility and to the overly cozy relationships between risk, legal, and compliance personnel and the very people they were supposed to be watching. Citigroup exemplified the problem.[3]

But Citigroup was not an exception. The disregard for compliance was systemic and pervasive. The fundamental problem is highlighted in a compelling exchange described in Raghuram G. Rajan's award-winning book, FAULT LINES: HOW HIDDEN FRACTURES STILL THREATEN THE WORLD ECONOMY:

> I remember a meeting between risk managers of the major banks and academics in the spring of 2007 at which we academics were surprised that the managers were not more worried about the risks stemming from the plunging housing market. After our questions elicited few satisfactory replies, one astute veteran risk manager took me aside during the break and said: 'You must understand, **anyone who was worried was fired long ago** and is not in this room.' Top management

[3] Eric Dash & Julie Creswell, *Citigroup Saw No Red Flags Even as It Made Bolder Bets*, N.Y. TIMES, Nov. 23, 2008 (a copy of which is attached).

> had removed all those who could have restrained the risk taking precisely at the point of maximum danger.[4]

This corrosive approach to compliance—as something to be discarded when the profits are rolling in—will persist unless the rules now being finalized by the Commission and other regulators establish a meaningful and protected role for compliance officers. The issue is specifically relevant to a number of the Commission's pending rules that address the role of CCOs at various types of financial institutions, including security-based swap execution facilities and security-based swap data repositories. In our comment letters on those rules,[5] Better Markets argued for a number of key reforms, including the following:

- The vesting of authority in the independent board members to oversee the hiring, compensation, and termination of the CCO;
- Requiring the CCO to have direct access to the board;
- Requiring the CCO to meet quarterly with the Audit Committee (if there is one or non-management members of the Board if there is not), in addition to annual meetings with the board and senior management;
- Explicit prohibitions against attempts by officers, directors, or employees to coerce, mislead, or otherwise interfere with the CCO;
- Appointment of a senior CCO with overall responsibility for compliance by a group of affiliated or controlled entities;
- Competency standards to ensure that CCOs have the background and skills necessary to fulfill their responsibilities;
- Requiring the board to review and comment on, but not edit, the CCO's annual report to the Commission.

Ensuring that market participants have CCOs with real authority and autonomy to police a firm from within is one of the most efficient and effective tools available to regulators.

---

4 Page 141 (emphasis added).

5 *See* Better Markets Comment Letters "Proposed Rules Governing Security-Based Swap Data Repository, Registration, Duties, and Core Principles" (Jan. 24, 2011), *available at* http://www.sec.gov/comments/s7-35-10/s73510-9.pdf; "Registration and Regulation of Security-Based Swap Execution Facilities" (Mar. 30, 2012), *available at* http://www.sec.gov/comments/s7-06-11/s70611-117.pdf; and "Registration and Regulation of Security-Based Swap Execution Facilities" (Apr. 4, 2011), *available at* http://www.sec.gov/comments/s7-06-11/s70611-31.pdf.

1825 K Street, NW, Suite 1080, Washington, DC 20006 TELEPHONE (1) 202.618-6464 FAX (1) 202.618.6465 WEBSITE bettermarkets.com

However, as proven by the purported changes at J.P. Morgan Chase, but not at its "rivals," the SEC must require these additional measures to protect the authority and independence of CCOs. Otherwise, they are at risk of remaining the relatively insignificant placeholders that have characterized the financial services industry for too long. That cannot be allowed to continue, especially in an environment where the Commission and other regulators lack sufficient resources to monitor the vastly expanded universe of market participants under their regulatory oversight. The Commission must use the rules to increase the likelihood that the industry will effectively police itself.

We thank the Commission and its staff for their attention to our comments, and we hope that this supplemental letter is helpful.

Sincerely,

Dennis M. Kelleher
President & CEO

Stephen W. Hall
Securities Specialist

Better Markets, Inc.
1825 K Street, NW
Suite 1080
Washington, DC 20006
(202) 618-6464

www.bettermarkets.com

Copyrighted material redacted. Author cites:

Dash, Eric, and Julie Cresswell. "Citigroup Saw No Red Flags Even as It Made Bolder Bets." *NYTimes.com*. N.p., 22 Nov. 2008. Web. 21 Oct. 2013. <http://www.nytimes.com/2008/11/23/business/23citi.html?pagewanted=all&_r=0>.