BETTER MARKETS
TRANSPARENCY · ACCOUNTABILITY · OVERSIGHT

By Email and Overnight Delivery

May 21, 2012

Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Appointment of a Special Counsel to investigate possible violations of law in connection with over $2 billion in derivatives trading losses at JPMorgan Chase & Co.

Dear Attorney General Holder:

Due to conflicts of interest and the appearance of conflicts of interest, Better Markets, Inc., requests that you appoint an independent Special Counsel to investigate possible violations of the law in connection with the more than $2 billion derivatives trading loss announced by JPMorgan Chase & Co. ("JP Morgan") on May 10, 2012. With Americans distrustful and suspicious of government and Wall Street, particularly in light of the government's multi-trillion dollar bailout of Wall Street while Main Street suffered, it is imperative that an independent, thorough, and full investigation of the largest, most powerful, and most politically connected bank in the country be conducted expeditiously by an unconflicted Special Counsel.

This is especially important here where the Wall Street bank, JP Morgan, and its CEO, Jamie Dimon, are well known to have—or are at least widely believed and reported to have— access to and influence with this administration and the President himself. Not only has Mr. Dimon been frequently mentioned as a possible Treasury Secretary for this administration, but the President has also repeatedly and publicly praised and complimented this specific bank and its CEO. The President has even praised JP Morgan and Mr. Dimon in the days **since** the multi-billion dollar loss was announced. And, this very weekend, the President pre-judged the ongoing investigations by calling this all "a big mistake" in his weekly radio address.[1] Such a public, high-profile Presidential exoneration will only further erode the public's confidence in any investigation conducted by his administration.

Even without the many other conflicts of interest detailed below, these statements alone raise reasonable suspicions that this administration cannot and will not conduct a full, fair, and complete investigation. The trust and faith of the American people in the American

[1] Remarks of President Barack Obama, Weekly Address, The White House, May 19, 2012 (available at http://www.whitehouse.gov/the-press-office/2012/05/19/weekly-address-congress-must-move-forward-not-back-wall-street-reform).

justice system is at stake here and the prompt appointment of a Special Counsel is essential to protect and preserve that trust.

As explained below, the appointment is necessary and appropriate under the applicable statute and regulations because (1) a criminal investigation of the matter is warranted, (2) an investigation by the Department of Justice "would present a conflict of interest for the Department or other extraordinary circumstances," and (3) it would be in the public interest to appoint an outside Special Counsel to assume responsibility for the investigation. 28 C.F.R. § 600.1(a), (b).

We urge you to act expeditiously on this request and to make the Special Counsel appointment without delay, particularly in light of press reports indicating that the Department of Justice ("Department") and others have already initiated investigations into the matter.

Better Markets.

Better Markets, Inc. ("Better Markets") is a nonprofit organization that promotes the public interest in the capital and commodity markets. It advocates for greater transparency, accountability, and oversight in our financial system through a variety of activities, including regulatory comment, public advocacy, and litigation.

The Statutory Requirements for Appointment of a Special Counsel Have Been Met Here.

1. An investigation is warranted.

An investigation into the matter is clearly warranted. JP Morgan apparently engaged in high risk trading activity in illiquid synthetic derivatives, sustained billions of dollars in losses, and issued a series of contradictory and misleading statements to the public—and failed to disclose material information—as reports about the trading losses began to emerge.

In light of the gravity of these potential violations, including securities fraud, and the scope of the harm inflicted on the bank's shareholders,[2] an investigation is clearly necessary. Reports indicating that the Department as well as the SEC and the CFTC have already commenced inquiries into the matter establish that an investigation is warranted. The only open issue is whether an independent, unbiased, and thorough investigation will be conducted through the exercise of your clear authority to appoint a Special Counsel.

2. The investigation will present a conflict of interest for the Department or other extraordinary circumstances.

The investigation or prosecution of this matter by the Department will create an actual conflict of interest on multiple grounds. Furthermore, under the circumstances detailed below, the handling of the investigation by the Department will also create the

[2] Class action suits have already been filed against JP Morgan alleging securities fraud in connection with the trading losses and seeking damages arising from a nearly 10% drop in the price of JP Morgan shares once the magnitude of the losses was disclosed. *See, e.g.,* Class Action Complaint at 11, *Smith v. JPMorgan Chase & Co.,* No. 12-cv-3852 (S.D.N.Y. May 14, 2012).

appearance of a conflict of interest, intensifying the public's belief that the largest and most powerful banks on Wall Street are never held truly accountable for their conduct.

The following facts and circumstances present the types of conflict and the "extraordinary circumstances" that justify appointment of a Special Counsel:

- President Obama prejudged the ongoing investigations and essentially exonerated JP Morgan and Mr. Dimon on May 19, 2012, when he stated in his radio address to the nation that the massive trading losses at JP Morgan (which were first disclosed by the bank on May 10th but which Mr. Dimon personally and publicly denied on April 13th) were merely "a big mistake at one of our biggest banks."[3] The President further prejudged not only the fundamental nature of these still-unfolding events, but also the scope of the harm, describing it as a "two billion dollar loss."[4] In fact, recent reporting on the losses indicates that they could well exceed $5 billion—more than twice the $2 billion figure cited by the President.[5]

- President Obama made these statements even after wide-spread reports indicated that (1) Mr. Dimon personally transformed the JP Morgan Chief Investment Office ("CIO") (where the trading bets were made and the losses have been incurred) from a low-risk, highly liquid hedging operation into a high-risk, illiquid synthetic derivatives profit-seeking proprietary trading desk, (2) the shift caused an "exodus … of traders who specialize in more-liquid markets where risk was easier to measure," and (3) the CIO "housed a lot of former traders from the bank's proprietary trading business."[6]

- This would appear to confirm reports that President Obama regards Mr. Dimon as one of his "favorite bankers." Indeed, as recently as May 15th, **after** allegations of highly questionable conduct by JP Morgan and Mr. Dimon were widely reported, President Obama still described JP Morgan as "one of the best-managed banks there is," and Mr. Dimon as "one of the smartest bankers we got."[7]

- President Obama was widely reported to have considered Mr. Dimon for nomination to be his Secretary of the Treasury.[8]

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3 Remarks of President Barack Obama, Weekly Address, The White House, May 19, 2012 (available at http://www.whitehouse.gov/the-press-office/2012/05/19/weekly-address-congress-must-move-forward-not-back-wall-street-reform).

4 *Id.*

5 David Henry, *Analysis: JPMorgan to be haunted by change in risk model,* REUTERS, May 18, 2012, http://www.reuters.com/article/2012/05/18/us-jpmorgan-risk-idUSBRE84H15120120518.

6 *See, e.g.,* Dawn Kopecki & Max Abelson, *Dimon Fortress Breached As Push From Hedges to Bets Blows Up*, BLOOMBERG, May 14, 2012, http://www.bloomberg.com/news/2012-05-14/dimon-fortress-breached-as-push-from-hedging-to-betting-blows-up.html; Tom Braithwaite, Tracy Alloway & Shahien Nasiripour, *How JPMorgan Shock Hit the War on Volcker*, FIN. TIMES, May 11, 2012, http://www.ft.com/intl/cms/s/0/f7845f6e-9b82-11e1-8b36-00144feabdc0.html#axzz1vWUVMkUV.

7 *See* Ben White & Darren Samuelsohn, *The President Obama-Jamie Dimon saga,* POLITICO, May 15, 2012, http://www.politico.com/news/stories/0512/76304.html; Andrew Tangel & Jim Puzzanghera, *JPMorgan CEO may lose chairman post amid trading loss fallout,* L.A. TIMES, May 14, 2012; Jackie Calmes & Louise Story, *In Washington, One Bank Chief Still Holds Sway*, N.Y. TIMES, July 18, 2009.

8 *See* Andrew Tangel & Jim Puzzanghera, *JPMorgan CEO may lose chairman post amid trading loss fallout,* L.A. TIMES, May 14, 2012; David Reilly, *JPMorgan Might Lose Dimon to a Geithner Flameout,* BLOOMBERG, Mar. 20, 2009,

- President Obama has a personal banking relationship with JP Morgan, reportedly maintaining a $1 million dollar account at the bank.[9]

- Jamie Dimon reportedly has enjoyed extensive access to Treasury Secretary Timothy Geithner since the financial crisis, and has exerted a strong influence on the Administration's policies.[10]

- Mr. Dimon sits on the Board of Directors of the Federal Reserve Bank of New York, regarded as the single most important Federal Reserve Bank. As a director, Mr. Dimon exerts considerable influence in three areas: "overseeing the management of the Reserve Banks, participating in the formulation of national monetary and credit policies, and acting as a 'link' between the government and the private sector."[11]

- Mr. Dimon and JP Morgan have contributed heavily to President Obama's political campaign. For example, JP Morgan contributed over $808,000 to President Obama's 2008 election campaign. Mr. Dimon personally contributed $50,000 to President Obama's Inaugural Committee. In addition, Michael Cavanagh, recently designated by JP Morgan to lead an internal investigation into the over $2 billion trading loss, served as a "bundler" for the 2008 Obama campaign, raising between $50,000 and $100,000.[12]

- JP Morgan is currently a client of your former law firm, Covington and Burling. As Lloyd Cutler, former White House Counsel, once observed on the subject of conflicts of interest, "when a private lawyer enters government service and a matter comes before him affecting his former law firm or its clients," conflicts arise.[13]

These personal, financial, and political relationships between the Administration and JP Morgan and Mr. Dimon create the type of conflict of interest that the Special Counsel provisions were written to address. Moreover, at a minimum, they create an appearance of a conflict of interest, making it impossible for the public to believe that the President's Attorney General and the Department will conduct a thorough investigation of someone reportedly so close to the President.

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http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aVo3AMbZl0Ko; Brian Wingfield & Liz Moyer, *Obama's Economic Plan*, FORBES.COM, Nov. 7, 2008, http://www.forbes.com/2008/11/07/obama-treasury-economy-biz-beltway-cx_lm_1107braintrust.html.

9 *See* Byron Tau, *Obama has up to $1M in JP Morgan Chase holdings*, POLITICO, May 15, 2012, http://www.politico.com/politico44/2012/05/obama-has-up-to-m-in-jpmorgan-chase-holdings-123545.html.

10 *Mr. Geithner, Wall Street is on Line 1 (again)*, MSNBC, Oct. 8, 2009, http://www.msnbc.msn.com/id/33222590/ns/business-us_business/t/mr-geithner-wall-street-line-again/.

11 Federal Reserve Bank of New York website, http://www.newyorkfed.org/aboutthefed/governance.html.

12 *See* http://www.opensecrets.org/pres08/contrib.php?cid=N00009638; https://www.opensecrets.org/obama/inaug.php; https://www.opensecrets.org/pres08/bundlers.php?id=N00009638; *see also* Liz Moyer, *Jamie Dimon's Mr. Fix It: Michael Cavanagh*, WSJ Blog, May 14, 2012, http://blogs.wsj.com/deals/2012/05/14/jamie-dimons-mr-fix-it-michael-cavanagh/.

13 *See* Peter Schweizer, *Obama's DOJ And Wall Street: Too Big For Jail?*, FORBES, May 7, 2012.

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3. Appointing a Special Counsel would serve the public interest.

The public interest is best served when the laws are enforced without fear or favor, and when the public believes that their government follows this basic principle of impartial justice. Adherence to this principle is most important when the law is being enforced—or held in abeyance—against those who enjoy wealth, power, and high public profile. If such a person or entity is also politically connected at the highest levels of government, then the need for—and a belief in—a full, fair, and thorough investigation is all the more important.

The derivatives trading losses at JP Morgan, Mr. Dimon's subsequent attempts to explain and minimize their significance, and the power and stature of the bank and its CEO collectively present exactly the set of circumstances that cry out for the appointment of an independent Special Counsel to conduct an investigation. The trust and faith of the American people in the American justice system is at stake in such circumstances.

Appointment of a Special Counsel takes on added urgency and importance in light of the financial collapse just over three years ago, which has inflicted so much pain and suffering throughout our country. Not only did rescuing the financial system cost trillions of dollars, stopping the economic crisis created by the financial collapse has cost trillions more. Those costs, of course, do not take into account the additional and immeasurable human suffering caused by widespread and prolonged unemployment, millions of home foreclosures, and the myriad other social costs that the country continues to grapple with.

Moreover, throughout the financial collapse, economic crisis, and financial reform efforts over the last several years, JP Morgan and Mr. Dimon personally have been high profile players. And now, not four years after the financial collapse, JP Morgan has sustained multi-billion dollar losses from high risk trading in illiquid derivatives. Making matters worse, the reported trade (selling credit default swaps or CDS) is the same type of trade that required US taxpayers in September 2008 to bailout AIG, which is still majority-owned by the US taxpayers. And, it appears that false information was provided to the public, shareholders, regulators, the media, and everyone else on April 13, 2012 by JP Morgan and Mr. Dimon.

This all has far too familiar a ring to the American people: a gigantic Wall Street bank engages in reckless trading in illiquid derivatives, sustains huge losses, and makes apparently false statements to avoid responsibility. It is, to say the least, uncomfortably reminiscent of the crisis that began in 2008.

The public interest in getting the truth, determining whether any laws were broken, and holding those involved accountable could not be higher. Furthermore, ensuring that the American people have full confidence in the investigation is equally critical. Many question whether there is a double standard in this country: one set of laws for the large, well-connected, and powerful Wall Street banks and one set of laws for everyone else.

This is the backdrop against which any consideration of the appointment of Special Counsel must be considered.

Conclusion.

Under all of the foregoing circumstances, it would be in the public interest for you to appoint a Special Counsel to investigate whether JP Morgan, Mr. Dimon, or others have committed securities fraud or other violations of law in connection with the reported derivatives trading losses. Taking this action would ensure the impartiality of the investigation, and it would further reassure the public that whatever the outcome of the investigation, it was not influenced by the various relationships that exist between the President and his Administration and JP Morgan and Mr. Dimon.

Importantly, the appointment of a Special Counsel is necessary regardless of the outcome of the investigation. We are not prejudging the outcome or assuming that laws have been broken. The public trust and confidence in government generally and in connection with an investigation of Wall Street in particular are at stake no matter the outcome. Indeed, appointment of a Special Counsel would also be in the best interest of JP Morgan itself because, if it were to be exonerated, that result would only be credible if the investigation were conducted by an independent Special Counsel.

Thus, the appointment of an independent Special Counsel is essential to ensure that a thorough and uncompromising investigation is conducted into these matters, and if appropriate, a vigorous prosecution is pursued against those who violated the law.

For all of the foregoing reasons, we urge you to exercise your authority to appoint a Special Counsel without delay.

Sincerely,

Dennis M Kelleher

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