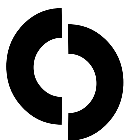

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

June 11, 2013

Kathryn V. McCulloch
Sr. Vice President & Associate General Counsel
JPMorgan Chase Bank, N.A.
270 Park Avenue, 38th Floor
New York, NY 10017

Subject: Request for a transition period under section 716(f)

Dear Ms. McCulloch:

Summary

This responds to the request filed by JPMorgan Chase Bank, N.A. ("Bank") for a transition period under section 716(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd–Frank Act"). Section 716(f) provides that to the extent an insured depository institution qualifies as a swaps entity and would be subject to the Federal assistance prohibition in section 716(a),[1] the appropriate Federal banking agency "shall permit" a transition period of up to 24 months.[2] Section 716(e) provides that the prohibition on Federal assistance only applies to swaps or security-based swaps entered into after the end of the transition period.

---

[1] Section 716 prohibits the provision of "Federal assistance" to any entity defined under that section to be a "swaps entity" with respect to any swap, security-based swap, or other activity of the swaps entity. "Federal assistance" is defined in section 716 as "the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act" and "[FDIC] insurance or guarantees" for certain specified purposes. Section 716 is codified at 15 U.S.C. § 8305.

[2] The OCC issued guidance in January 2013 that provided notice to insured Federal depository institutions of procedures and conditions for requesting a transition period from the OCC. *See* Transition Period under Section 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 78 Fed. Reg. 1306 (January 8, 2013).

The OCC is the appropriate Federal banking agency for the Bank.[3] Section 716(f) requires the OCC, in establishing the appropriate transition period, to take into account and make written findings regarding the potential impact of the Bank's divestiture or cessation of its swaps dealing on the Bank's mortgage lending, small business lending, job creation, and capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund ("DIF") of the Federal Deposit Insurance Corporation ("FDIC") ("Statutory Factors"). Section 716(f) permits the OCC to consider such other factors as may be appropriate. Section 716(f) further requires the OCC to consult with and consider the views of the Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission ("SEC"), as appropriate.[4]

As discussed below, the OCC has concluded that granting a 24-month transition period, as compared to the Bank's near-term divestiture or cessation of its swaps dealing on July 16, 2013 or a significantly shorter transition period:

- is less likely to have a disruptive impact on mortgage lending, small business lending, job creation and capital formation;
- is likely to have a neutral impact on insured depositors; and
- is less likely to have a negative impact on the DIF.

Consequently, the OCC is granting the Bank a transition period of 24 months beginning on July 16, 2013.[5]

Analysis and Findings

The OCC has evaluated the impact of divestiture or cessation of the Bank's swaps dealing on the Statutory Factors as of July 16, 2013 and after a 24-month transition period or a significantly shorter transition period. Overall, the OCC has found that the potential impact of granting a 24-month transition period is less adverse than the potential impact of denying the transition period or providing a significantly shorter transition period. The lesser impact associated with a 24-month transition period results from lowering the probability of operational problems and market disruption that could occur if the Bank does not have a sufficient opportunity to restructure its swaps dealing in an orderly manner.

The OCC views an orderly restructuring of swaps dealing to be closely related to comprehensive implementation of title VII of the Dodd-Frank Act ("Title VII"). Development of Title VII is ongoing. The prudential regulators, CFTC and SEC continue to issue proposed rules, final rules, guidance and exemptive orders to implement Title VII.

[3] 12 U.S.C. § 5301(2).
[4] The OCC consulted with and considered the views of the CFTC and the SEC, as appropriate.
[5] *See* Guidance on the Effective Date of Section 716 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 77 Fed. Reg. 27,456, 27,457 (May 10, 2012).

Although the Title VII regulatory structure is still being implemented, section 716 goes into effect on July 16, 2013.

A 24-month transition period will provide reasonable time for the Bank to develop a transition plan that provides for an orderly cessation or divestiture of swaps activities that is based on a more developed Title VII regulatory framework. Under section 716(c), the Bank must: (1) determine whether to terminate the swaps activities or transfer them to a third party or affiliate, (2) identify and capitalize an affiliate, if appropriate, to accept the swaps activities, and (3) novate existing swaps to the affiliate.[6] The novation of existing swaps may require entering into new master swap agreements with each customer and may also present operational risks. Operational risk is significantly heightened if the Bank and the third party or affiliate do not have the requisite time to complete these activities in an orderly fashion.

The 24-month transition period will permit the Bank to better evaluate whether to transfer the swaps activities to a third party or an affiliate(s) and which affiliate(s) is best positioned to accept its swaps business. The 24-month transition period also would permit the creation of a new affiliate(s) and appropriate capital planning for affiliates that assume swaps activities.

In contrast, a significantly shorter or no transition period could result in disorderly termination or divestiture of swaps activities and considerable disruption to swaps markets and financial markets that could weaken lending markets and result in a similar negative impact on job creation and capital formation. In reaching our determination that a 24-month transition period is appropriate, we have considered each Statutory Factor on an individual basis, as well as the impact of a transition period on the Statutory Factors on a collective basis.

The OCC makes the findings below regarding the impact of a 24-month transition period on the Statutory Factors.

Mortgage Lending

As discussed above, near term cessation or divestiture of the Bank's swaps dealing would increase the Bank's operational risk. Operational problems in swaps markets could easily disrupt broad financial markets since swaps are widely used by corporations, institutional investors and other financial market participants. A disruption to broad financial markets could indirectly disrupt mortgage-lending markets. For instance, an IDI that is experiencing operational problems in swaps markets is subject to reputation risk. This reputation risk could negatively affect the IDI's ability to access capital markets or hedge its own risk. In turn, this could lead to a slowdown in the IDI's own mortgage market activity and potential delays to qualified mortgage applicants.

[6] Clients may request the transfer of some or all of their existing swaps to a Bank affiliate in order to preserve the netting benefits that come from transacting with a single counterparty.

A 24-month transition period will provide reasonable time for the Bank to develop and implement an orderly transition plan based on a more developed Title VII regulatory framework. This will significantly mitigate operational risk. Lower operational risk in turn decreases the probability of a financial market disruption that could adversely affect mortgage lending.

Small Business Lending

The absence of a reasonable transition period would increase the Bank's operational risk and could cause financial market disruptions with respect to small business lending in the same manner as mortgage lending. In particular, if the Bank ceased swaps activities that require registration, current clients of the Bank would have to find an acceptable substitute swaps provider and/or find alternative means to hedge their particular risk. Failure to do so could result in the client not being able to hedge particular risk, either assuming additional risk or terminating the affected business activity or investment. A 24-month transition period would mitigate these risks and, in turn, mitigate the risk of a financial market disruption that could impair small business lending. Lower operational risk, in turn, would decrease the probability of a financial market disruption that could adversely affect small business lending.

Job Creation

As discussed above, sudden and simultaneous cessation or divestiture of IDI swaps dealing has the potential to cause general financial market disruption, and such a disruption to credit and capital markets could weaken job growth and have other negative macroeconomic consequences. Avoiding these potential market disruptions favors granting a 24-month transition period to the Bank.

Capital Formation

As with mortgage and small business lending, a general financial market disruption or a disruption to the swaps market that diminishes the ability of firms to hedge risk would tend to weaken the ability of firms to attract and acquire capital. The potential hazard from a disruption in capital markets may be more immediate than other markets, since capital markets may react quickly to operational problems. This would be especially true for any financial institution that encounters any serious operational problems from section 716-related restructuring. Thus, not granting a sufficient transition period increases risks to individual financial institutions and to the banking system as a whole. The benefit of mitigating the risk of capital market disruption favors granting a 24-month transition period to the Bank.

Insured Depositors

Insured depositors are fully protected from risk of loss from the transition period because their deposits are protected by the DIF, which is in turn backed by the full faith and credit of the United States.

The Deposit Insurance Fund

The DIF bears the risks associated with having to resolve an IDI that has failed because of problems related to its swaps dealing. This risk includes payouts from the DIF to insured depositors of the institution. The OCC believes that it is also necessary to consider the risks to the DIF that could result from potential market disruptions under a scenario with an inadequate transition period. On balance, the OCC believes that avoiding potential market disruptions and the negative effect they could have on the DIF support a 24-month transition period for the Bank.

An orderly restructuring of the Bank's swaps dealing poses less risk to the DIF than the Bank ceasing or divesting its swaps dealing without a sufficient transition period for further Title VII development. While swaps dealing does have inherent risks, the operational and reputation risks of a sudden cessation or divestiture, as discussed above, are more serious. These risks are more likely to cause market disruptions that threaten the DIF.

Conclusion

After considering the written findings set forth above, and consulting with the SEC and CFTC, the OCC hereby establishes a 24-month transition period under section 716(f) for the Bank beginning on July 16, 2013. [7] The prohibition on Federal assistance in section 716(a) will apply to the Bank if it enters into certain swaps and security-based swaps after the end of this transition period. Due to the significant adverse consequences of this prohibition, we expect the Bank to limit its swap activities to those permitted under 716(d) by July 16, 2015 and to take reasonable steps during the transition period to achieve that result.

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. This approval is specifically based on the Bank's representations, submissions, and information available to the OCC as of this date. Any change in this information could result in a different conclusion. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

[7] After consulting the CFTC and SEC, the OCC may extend the transition period by up to one year. Section 716(f).

If you have any questions concerning this letter, please contact Ted Dowd, Assistant Director, or Ellen Broadman, Director, Securities and Corporate Practices at (202) 649-5510.

Sincerely,

//signed//
Martin Pfinsgraff
Acting Senior Deputy Comptroller
Large Bank Supervision

cc: Scott Waterhouse, Examiner in Charge