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Comptroller of the Currency  
Administrator of National Banks

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Large Bank Licensing, MS 7-13  
250 E Street, S.W.  
Washington, DC 20219

**Conditional Approval #864**  
**July 2008**

June 30, 2008

Mr. Gregory S. Meredith  
Senior Vice President and Associate General Counsel  
J.P. Morgan Chase & Company  
277 Park Avenue, Floor 19  
New York, NY 10172

Subject: Applications from JPMorgan Chase Bank, National Association, Columbus, Ohio (“Bank”) to acquire four operating subsidiaries from The Bear Stearns Companies, Inc.  
Application Control Numbers: 2008-ML-08-0010, 0011 and 0012

Dear Mr. Meredith:

This is in response to the operating subsidiary applications filed by the Bank on June 2 and June 3, 2008, pursuant to 12 C.F.R. § 5.34(e)(5) to acquire four operating subsidiaries of the Bear Stearns Companies Inc. (“BSC”), that engage in various derivative and mortgage lending activities: Bear Stearns Forex Inc. (“BSFI”), Bear Stearns Credit Products Inc. (“BSCP”), Bear Stearns Commercial Mortgage, Inc. (“BSCMI”), and Bear Stearns Mortgage Capital Corporation (“BSMCC”) (collectively, the “Subsidiaries”). For the reasons discussed below, and based on the facts and representations provided by the Bank, the Bank’s acquisition of the Subsidiaries is approved subject to the conditions set forth herein.

### **Discussion**

The Bank has applied to acquire four subsidiaries of BSC that engage in a variety of derivative and mortgage lending activities. Based on the information provided, as represented by the Bank, we conclude that the activities are permissible for the Bank and, accordingly, for operating subsidiaries of the bank. The Subsidiaries must conduct their derivative activities consistently with the Bank’s risk measurement and management systems and controls applicable to the activities and their activities are subject to any other supervisory considerations as determined by the Bank’s examiner-in-charge (“EIC”).

## **BSFI**

BSFI is a foreign currency and precious metals dealer. It conducts trading in every type of foreign exchange contract including spot and forward contracts, exchange for physicals, nondeliverable forwards and other over-the-counter (“OTC”) options and derivatives. Foreign exchange trading operations are conducted in New York, London, and Hong Kong. BSFI conducts trading in precious metals (including, bullion, platinum, and palladium) using spot and forward contracts, non-deliverable contracts, and options. BSFI has no subsidiaries.<sup>1</sup>

BSFI’s derivative activities are permissible for national banks. National banks are expressly authorized to engage in the business of “buying and selling exchange, coin, and bullion.”<sup>2</sup> Pursuant to this authority, a national banks and operating subsidiaries may buy and sell gold, silver, platinum, palladium, and copper, coins, and bullion.<sup>3</sup> The express power to buy and sell exchange, coin, and bullion includes the authority to buy and sell foreign currency, because it is a form of exchange.<sup>4</sup> National banks and their operating subsidiaries may engage in derivative transactions that reference exchange, coin, and bullion as their underlying reference assets. For example, national banks may engage in currency swaps, foreign currency derivatives, exchange-traded foreign currency options, and options on precious metals.<sup>5</sup> Indeed, national banks may engage in forwards, options, swaps, caps, floors and collars, and options on futures, swaps, caps, floors and collars, in which a portion of the return (including interest or principal or payment streams) is linked to “exchange, coin, or bullion” or the price thereof.<sup>6</sup> Bank permissible derivatives may also reference interest rates, and include basis swaps, cross-currency swaps, currency coupon swaps, and interest rate swaps, caps, floors and swaptions.<sup>7</sup>

## **BSCP**

BSCP engages in a range of credit derivative transactions, including single-name, portfolio and single-tranche credit default swaps. The portfolio and single-tranche credit default swaps

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<sup>1</sup> Precious metals trading operations are conducted in New York, London, and Hong Kong. The London office of Bear Stearns International Limited (“BSIL”) and the Hong Kong office of Bear Stearns Asia Limited (“BSAL”) conduct trading as agents for BSFI. BSIL is licensed and authorized by the UK Financial Services Authority, and BSAL is licensed and authorized by the Hong Kong Securities and Futures Commission.

<sup>2</sup> 12 U.S.C. 24(Seventh).

<sup>3</sup> IL No. 693, *supra*.

<sup>4</sup> Interpretive Letter No. 414 (Feb. 11, 1988) (“IL 414”).

<sup>5</sup> See, e.g., Interpretive Letter No. 1064 (Jul. 13, 2006) (“IL 1064”); Interpretive Letter 725 (May 10, 1996) (“IL 725”); Interpretive Letter 683 (July 28, 1995); IL 414, *supra*; and Interpretive Letter No. 372 (Nov. 7, 1986).

<sup>6</sup> Interpretive Letter No. 1073 (Oct. 19, 2006).

<sup>7</sup> See, e.g., Interpretive Letter No. 462 (Dec. 19, 1988) and IL 725, *supra*.

reference standard indices or custom portfolios.<sup>8</sup> BSCP also enters into options on credit default swaps. BSCP also owns and will continue to own loans or participating interests (convertible to direct interests) in loans made by affiliates, as hedges to its credit derivative activities. BSCP has no subsidiaries.<sup>9</sup>

BSCP's derivative activities are permissible for national banks. National banks may engage in credit derivative transactions as part of a financial intermediation business provided they meet certain standards and the bank's examiner-in-charge or supervisory office is satisfied the bank has adequate risk management and measurement systems to conduct the activity on a safe and sound basis. Such credit derivative transactions include credit default swaps denominated in various currencies, swaps tied to various credit derivative indices, total rate of return swaps, credit default swaptions, and credit-linked notes.<sup>10</sup>

## **BSCMI**

BSCMI is engaged in the origination, sale, and securitization of fixed and adjustable rate commercial mortgage loans and mezzanine loans. Commercial mortgage loans are often originated through a combination of a senior loan, which is securitized through the issuance of commercial mortgage-backed securities ("CMBS"), and a subordinated or mezzanine loan. The subordinated or mezzanine loans may take the form of (1) subordinated mortgage notes secured by a junior lien on the mortgaged property, (2) subordinated participation interest in the whole loan, or (3) mezzanine loans secured by the equity interest in the borrowing entity that owns the mortgaged property. These subordinated or mezzanine loans may initially be retained by BSCMI after the securitization of the senior loans, but they are eventually sold to third parties. The Bank represents that it is not the intention of BSCMI to retain the subordinated or mezzanine loans. BSCMI enters into hedges in the form of total return swaps in connection with its loan portfolio.

BSCMI has one wholly-owned subsidiary, Bear Stearns Commercial Mortgage Securities Inc. ("BSCMSI"). BSCMSI is the entity that purchases commercial mortgage loans from BSCMI and deposits them into the securitization trusts. BSCMSI has a shelf registration statement on file with the Securities and Exchange Commission for the public offering of the resulting CMBS.

The mortgage lending activities of BSCMI and BSCMSI are permissible for national banks. National banks may make and sell loans and extensions of credit (or interests therein).<sup>11</sup> BSCMSI purchases the commercial loans and deposits them into the securitization trusts. The

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<sup>8</sup> A "custom portfolio" is a portfolio of credits agreed upon by the buyer and seller.

<sup>9</sup> Trading operations are conducted in New York, London, Tokyo, and Hong Kong. The London office of BSIL, the Hong Kong office of BSAL, and the Tokyo Office of Bear Stearns (Japan) Ltd. ("BSJL") conduct trading as agents for BSCP. BSJL is licensed and authorized by Japan Financial Services Authority.

<sup>10</sup> IL 1064, *supra*; Interpretive Letter No. 1051 (Feb. 15, 2006); Interpretive Letter No. 1047 (Dec. 20, 2005); and Interpretive Letter No. 945 (June 30, 2000).

<sup>11</sup> 12 U.S.C. §§ 24(Seventh) and 371; 12 C.F.R. Part 34; 12 C.F.R. §§ 5.34(e)(5)(v)(C) and (D)

OCC has long held that national banks may use asset securitization as a means of selling or borrowing against their mortgage or other loan assets, and engage in securitization activities.<sup>12</sup>

BSCMI's derivative activities are permissible for national banks. Banks commonly enter into hedges, either in the form of total return swaps or through other derivatives, in connection with the management of their loan portfolios.<sup>13</sup>

### **BSMCC**

BSMCC provides warehouse financing to third parties that originate residential mortgage loans. Warehouse financing consists of short-term lines of credit secured by mortgage loans offered to mortgage originators, to fund their mortgage loans between loan closing and the sale of the loans to institutional investors, inclusion of the loans in a securitization or a refinancing of the loans. BSMCC, as a warehouse lender, offers the funds to the mortgage loan originators through a reverse repurchase program.

BSMCC has three wholly-owned subsidiaries: (i) Bear Stearns Home Equity Trust, which is dormant, has no assets or liabilities, and will be dissolved; (ii) Structured Asset Mortgage Inc., which has acted as depositor in several residential mortgage backed securitizations and will be transferred to a non-bank holding company subsidiary, JPMorgan Securities Holdings LLC, rather than to the Bank; and (iii) Bear Stearns Funding Inc. ("BSF"), which is an active subsidiary providing commercial mortgage warehouse financing and initially will be a second-tier subsidiary of the Bank.

The activities of BSMCC and BSF also are permissible for national banks. The OCC has long held that such activities are permissible for national banks and their operating subsidiaries.<sup>14</sup>

### **Conclusion**

Based on the facts and representations provided by the Bank, the Bank's acquisition of the Subsidiaries is hereby subject to the following conditions:

1. Prior to the acquisition of the Subsidiaries by the Bank, the Bank shall execute an operating agreement ("Operating Agreement") with the OCC. The Operating Agreement shall provide, among other things, that within thirty days after the date of the Operating Agreement, the Bank shall enter into an agreement, acceptable to the OCC, with J.P. Morgan Chase & Company ("JPMC") pursuant to which JPMC agrees to indemnify the Bank for losses and related expenditures, as specified, that may be incurred by the Bank arising from the acquisition of the Subsidiaries and other specified assets by the Bank.

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<sup>12</sup> Interpretive Letter No. 1035 (July 21, 2005); Interpretive Letter No. 540 (Dec. 12, 1990).

<sup>13</sup> See, e.g., Interpretive Letter No. 961 (Mar 17, 2003).

<sup>14</sup> E.g., 12 U.S.C. §§ 24(Seventh) and 371; 12 C.F.R. Part 34; 12 C.F.R. § 5.34(e)(5)(v)(D); Conditional Approval No. 338 (Nov. 10, 1999); and No-Objection Letter No. 92-5 (June 18, 1992).

2. The Board of Directors of the Bank shall assure that the Operating Agreement is adopted, fully and timely implemented, and adhered to thereafter.
3. The Bank agrees to divest with reasonable promptness and in no event later than 60 days any assets received from Bear Stearns that are subsequently determined to be impermissible for a national bank.

The conditions of this approvals are conditions “imposed in writing by a Federal banking agency in connection with any action any on application, notice or other request” within the meaning of 12 U.S.C. § 1818. As such, these conditions are enforceable under 12 U.S.C. § 1818.

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. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have questions regarding this letter, please contact Stephen A. Lybarger, Large Bank Licensing Lead Expert at (202) 874-5294 or by email at: [Stephen.Lybarger@occ.treas.gov](mailto:Stephen.Lybarger@occ.treas.gov). Please reference the application control numbers in any correspondence.

A separate letter is enclosed requesting your feedback on how we handled your request. We would appreciate your response so we may continue to improve our service.

Sincerely,

*signed*

Lawrence E. Beard  
Deputy Comptroller  
Licensing