

# J P MORGAN CHASE & CO

## FORM 8-K

(Current report filing)

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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): December 2, 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)

**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 8.01. Other Events**

On November 26, 2008, JPMorgan Chase & Co. (the “Company”) entered into an Underwriting Agreement (the “Underwriting Agreement”) with J.P. Morgan Securities Inc. and the other several Underwriters named in Schedule A thereto with respect to the offer and sale by the Company of \$5,000,000,000 3.125% Guaranteed Notes due 2011, \$1,000,000,000 Floating Rate Guaranteed Notes due 2010 and \$500,000,000 Floating Rate Guaranteed Notes due 2011 (collectively, the “Notes”).

A copy of the form of the Underwriting Agreement is included as Exhibit 1.1 to this Current Report on Form 8–K and is incorporated into this Item 8.01 by reference. The Company may from time to time enter into additional underwriting agreements in the form of the Underwriting Agreement in connection with offerings of its senior debt securities guaranteed by the Federal Deposit Insurance Corporation (the “FDIC”) pursuant to the FDIC’s Temporary Liquidity Guarantee Program established pursuant to 12 C.F.R. Part 370 (the “Temporary Liquidity Guarantee Program”).

On December 2, 2008, the Company and Deutsche Bank Trust Company Americas (the “Trustee”) entered into a Second Supplemental Indenture (the “Supplemental Indenture”) to the Indenture dated as of December 1, 1989, between the Company and the Trustee, as supplemented by the Agreement of Resignation, Appointment and Acceptance, dated as of March 29, 1996, and as amended by the First Supplemental Indenture, dated as of November 1, 2007. The Supplemental Indenture includes a form of note representing the Notes (the “Form of Note”).

A copy of the Supplemental Indenture is included as Exhibit 4.1 to this Current Report on Form 8–K and is incorporated into this Item 8.01 by reference. A copy of the Form of Note is included as Exhibit 4.2 to this Current Report on Form 8–K and is incorporated into this Item 8.01 by reference. The Company may from time to time issue additional senior debt securities guaranteed by the FDIC pursuant to the Temporary Liquidity Guarantee Program in the form of the Form of Note.

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

#### (d) Exhibits

Exhibits 1.1, 4.1 and 4.2 shall not be deemed filed with respect to the Company’s registration statements other than the Company’s registration statement on Form S-3, File No. 333–146731, except as may otherwise be specified in the Company’s registration statements or other filings with the Securities and Exchange Commission.

<u>Exhibit No.</u>	<u>Description</u>
1.1	Form of Underwriting Agreement
4.1	Supplemental Indenture
4.2	Form of Note (included in Exhibit 4.1)

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**SIGNATURES**

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.  
(Registrant)

By: /s/ Anthony J. Horan

Name: Anthony J. Horan

Title: Corporate Secretary

Dated: December 2, 2008

**Item 9.01. Financial Statements and Exhibits**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
1.1	Form of Underwriting Agreement
4.1	Supplemental Indenture
4.2	Form of Note (included in Exhibit 4.1)

JPMORGAN CHASE &amp; CO.

[SECURITIES TITLE]

UNDERWRITING AGREEMENT

[DATE]

[LEAD REPRESENTATIVE]

As Representative of  
the several Underwriters  
listed in Schedule A hereto  
c/o [LEAD REPRESENTATIVE  
ADDRESS]

Ladies and Gentlemen:

1. Introductory. JPMorgan Chase & Co., a Delaware corporation (the “Company”), proposes to issue and sell \$[ ] principal amount of its [SECURITIES TITLE] (the “Securities”). The Securities will be issued under an indenture dated as of [ ] (as amended and supplemented, the “Indenture”), between the Company and [ ], as trustee. The Company hereby agrees with the several Underwriters named in Schedule A hereto (the “Underwriters”) as follows:

At or prior to the time when sales of the Securities were first made (the “Time of Sale”), the Company had prepared the following information (collectively, the “Time of Sale Information”): a Prospectus Supplement, Subject to Completion, dated [ ] (including the related Basic Prospectus dated [ ]), (the “Preliminary Prospectus”) and each “free-writing prospectus” (as defined pursuant to Rule 405 under the Securities Act) listed on Annex B hereto.

2. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, the several Underwriters that:

(a) A registration statement on Form S-3 (No. 333-[ ]) relating to the Securities has been filed with the Securities and Exchange Commission (the “Commission”). Such Registration Statement (including the information, if any, deemed pursuant to Rule 430A, 430B or 430C under the Securities Act of 1933, as amended (the “Act”) to be part of the registration statement at the time of its effectiveness and all documents incorporated therein by reference) is hereinafter referred to as the “Registration Statement”. As used herein, “Basic Prospectus” means the prospectus (including all documents incorporated therein by reference) relating to the Registration Statement, in the form in which such prospectus has most recently been filed, or transmitted for filing, with the Commission on or prior to the date hereof (but without regard to any prospectus supplements relating specifically to securities other than the Securities); and “Prospectus” means the Basic Prospectus together with the

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prospectus supplement (including all documents incorporated therein by reference) specifically relating to the Securities, as such prospectus supplement is first filed with the Commission on or after the date hereof pursuant to Rule 424(b) under the Act; provided, however, that if a previously unfiled form of prospectus with an issue date later than the issue date of the Basic Prospectus is to be filed with the Commission together with the prospectus supplement relating to the Securities, then “Prospectus” means such new form of prospectus (including all documents incorporated therein by reference) together with such prospectus supplement (including all documents incorporated therein by reference) as first filed with the Commission on or after the date hereof pursuant to Rule 424(b) under the Act.

(b) The Registration Statement (as of each effective date) conformed, the Registration Statement (as of the date hereof) conforms, and the Time of Sale Information and the Prospectus (when filed with the Commission) and any amendments and supplements to the Registration Statement or the Time of Sale Information and the Prospectus will conform, in all respects to the applicable requirements of the Act, the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Trust Indenture Act of 1939 (the “Trust Indenture Act”) and the Rules and Regulations (as hereinafter defined); the Registration Statement (as of each effective date) did not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading; and the Registration Statement (as of the date hereof) does not, and the Registration Statement, the Prospectus and any amendments or supplements to the Registration Statement or the Prospectus (at any time when a prospectus relating to the Securities is required, or required but for Rule 172 under the Act, to be delivered under the Act) will not, include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of the Prospectus, in the light under which they were made); provided that this representation and warranty shall not apply to statements or omissions made in reliance upon and in conformity with information furnished in writing to the Company by an Underwriter of the Securities through the Representative expressly for use in the Prospectus, as amended or supplemented, relating to such Securities.

(c) Any reference herein to the terms “amend”, “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing under the Exchange Act on or after the date hereof of any document deemed to be incorporated therein by reference. “Rules and Regulations” means the respective rules and regulations of the Commission under the Act, the Exchange Act and the Trust Indenture Act.

(d) The Company acknowledges and agrees that the Underwriters are acting solely in the capacity of an arm's-length contractual counterparty to it with respect to the offering of the Securities contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Company or any other person. Additionally, neither the Representative nor any other Underwriter is advising the Company or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Company with respect thereto. Any review by the Underwriters of the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be performed on behalf of the Company.

(e) The Time of Sale Information, at the Time of Sale did not, and at the Closing Date (as defined below), will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use in such Time of Sale Information. No statement of material fact included in the Prospectus has been omitted from the Time of Sale Information and no statement of material fact included in the Time of Sale Information that is required to be included in the Prospectus has been omitted therefrom.

(f) The Company (including its agents and representatives, other than the Underwriters in their capacity as such) has not made, used, prepared, authorized, approved or referred to, and will not make, use, prepare, authorize, approve or refer to, any "written communication" (as defined in Rule 405 under the Act) that constitutes an offer to sell or the solicitation of an offer to buy the Securities (each such communication by the Company or its agents and representatives (other than a communication referred to in clause (i), (ii) or (iii) below) an "Issuer Free Writing Prospectus") other than (i) the Preliminary Prospectus, (ii) the Prospectus, (iii) any document not constituting a prospectus pursuant to Section 2(a)(10)(a) of the Act or Rule 134 under the Act and (iv) the documents listed on Annex B hereto and other written communications approved in writing in advance by the Underwriters. Each such Issuer Free Writing Prospectus complied in all material respects with the Act, has been filed in accordance with the Act (to the extent required thereby) and, when taken together with the Preliminary Prospectus filed prior to the first use of such Issuer Free Writing Prospectus did not, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in each such Issuer Free Writing Prospectus in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by such Underwriter expressly for use in any Issuer Free Writing Prospectus.

(g) The Registration Statement is an “automatic shelf registration statement” as defined under Rule 405 of the Act that has been filed with the Commission not earlier than three years prior to the date hereof; and no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Act has been received by the Company. No order suspending the effectiveness of the Registration Statement has been issued by the Commission and no proceeding for that purpose or pursuant to Section 8A of the Act against the Company or related to the offering has been initiated or threatened by the Commission.

(h) The Company is not an ineligible issuer and is a well known seasoned issuer, in each case as defined under the Act, in each case at the times specified in the Act in connection with the offering of the Securities.

(i) The Company is a “participating entity” in the “debt guarantee program”, in each case as defined in the Temporary Liquidity Guarantee Program (12 C.F.R. Part 370), as amended (the “TLG Program”), adopted by the Federal Deposit Insurance Corporation (the “FDIC”).

(j) As of the Closing Date, the Company has duly authorized the “master agreement” (as defined in Section 370.5 of the TLG Program), and the “master agreement” (as defined in Section 370.5 of the TLG Program) will be executed and delivered in accordance with the terms and conditions of the TLG Program.

(k) The Notes to be issued by the Company constitute “FDIC-guaranteed debt” (as defined in Section 370.2(i) of the TLG Program) and do not exceed the maximum amount of “FDIC-guaranteed debt” (as defined in Section 370.2(i) of the TLG Program) issuable by the Company and allowable under the TLG Program as set forth in Section 370.3(b) of the TLG Program.

3. Purchase, Sale and Delivery of the Securities. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to sell to the Underwriters, and the Underwriters agree, severally and not jointly, to purchase from the Company, at a purchase price of [ ]% of the principal amount of the Securities, plus accrued interest from [ ] to the Closing Date (as defined below), the respective principal amounts of the relevant of Securities set forth opposite the names of the Underwriters in Schedule A hereto.

The Company will deliver the Securities to J.P. Morgan Securities Inc. for the respective accounts of the Underwriters, at the office of JPMorgan Chase Bank, as Authenticating Agent, at 4 New York Plaza, 15th Floor, New York, New York, against payment of the purchase price by wire transfer in immediately available funds payable to the Company, 270 Park Avenue, New York, New York, at 10:00 a.m., New York time, on the date of issuance, or at such other time not later than seven full business days thereafter as you and the Company determine, such time being herein referred to as the “Closing Date”. The Securities so to be delivered will be issued in the form of one or more fully registered global securities, which will be deposited with, or in accordance with the instructions of, The Depository Trust Company (the “Depository”) and registered in the name of the Depository’s nominee.

4. Offering by the Underwriters. It is understood that the several Underwriters propose to offer the Securities for sale to the public as set forth in the Prospectus.

(a) Each Underwriter represents, warrants and agrees [INSERT ANY RELEVANT OFFERING RESTRICTIONS].

(b) Each Underwriter hereby represents and agrees that:

(i) It has not and will not use, authorize the use of, refer to, or participate in the planning for use of, any “free writing prospectus”, as defined in Rule 405 under the Act (which term includes the use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) other than (1) a free writing prospectus that contains no “issuer information” (as defined in Rule 433(h)(2) under the Act) that was not included (including through incorporation by reference) in the Preliminary Prospectus or a previously filed Issuer Free Writing Prospectus, (2) any Issuer Free Writing Prospectus listed on Annex B or prepared pursuant to Section 2(f) above, or (3) any free writing prospectus prepared by such underwriter and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (1) or (3), an “Underwriter Free Writing Prospectus”).

(ii) It has not and will not distribute any Underwriter Free Writing Prospectus referred to in clause 4(b)(i)3 in a manner reasonably designed to lead to its broad unrestricted dissemination.

(iii) It has not and will not, without the prior written consent of the Company, use any free writing prospectus that contains the final terms of the Securities unless such terms have previously been included in a free writing prospectus filed with the Commission; provided that Underwriters may use term sheets substantially in the form of Annex C hereto without the consent of the Company; provided further that any Underwriter using such term sheets shall notify the Company, and provide a copy of such term sheets to the Company, prior to the first use of such term sheets.

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(iv) It is not subject to any pending proceeding under Section 8A of the Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the Prospectus Delivery Period).

5. Covenants of the Company. The Company covenants and agrees with the several Underwriters that:

(a) The Company will cause the Prospectus (or, if permitted by Rule 424(c) under the Act, the prospectus supplement relating to the Securities that forms a part thereof), properly completed, to be filed with the Commission pursuant to Rule 424(b)(2) (or, if applicable and consented to by you, pursuant to Rule 424(b)(5)) within the time periods prescribed by Rule 424(b) and Rule 430A, 430B or 430C under the Act; will file any Issuer Free Writing Prospectus to the extent required by Rule 433 under the Act; and will provide evidence satisfactory to you of such timely filing. The Company will pay the registration fees for this offering within the time period required by Rule 456(b)(1)(i) under the Act (without giving effect to the proviso therein) and in any event prior to the Closing Date. The Company will advise you promptly of any proposal to amend or supplement the Registration Statement or the Prospectus (other than an amendment or a supplement relating solely to an offering of securities other than the Securities or by reason of filing a report under the Exchange Act that is incorporated by reference in the Registration Statement or the Prospectus and does not relate specifically to the Securities); the Company will also advise you promptly of the filing of any such amendment or supplement, and of the institution by the Commission of any stop order proceedings in respect of the Registration Statement, any proceedings under Section 401(g)(2) under the Act or any proceeding pursuant to Section 8A of the Act, and will use its best efforts to prevent the issuance of any such stop order and to obtain as soon as possible its lifting if issued; before preparing, using, authorizing, approving, referring to or filing any Issuer Free Writing Prospectus, whether before or after the time that the Registration Statement becomes effective, the Company will furnish to the Underwriters and counsel for the Underwriters a copy of the proposed Issuer Free Writing Prospectus, for review and will not prepare, use, authorize, approve, refer to or file any such Issuer Free Writing Prospectus to which the Underwriters reasonably object.

(b) (i) If at any time when a prospectus relating to the Securities is required to be delivered under the Act (or required to be delivered but for Rule 172 under the Act) any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend or supplement the Registration Statement or the Prospectus to comply with the Act, the Company promptly will prepare and file with the Commission an amendment or supplement that

will correct such statement or omission or an amendment that will effect such compliance and (ii) if at any time prior to the Closing Date any event shall occur or condition shall exist as a result of which the Time of Sale Information as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Company will immediately notify the Underwriters thereof and forthwith prepare and, subject to paragraph (a) above, file with the Commission (to the extent required) and furnish to the Underwriters and to such dealers as the Underwriters may designate, such amendments or supplements to the Time of Sale Information as may be necessary so that the statements in the Time of Sale Information as so amended or supplemented will not, in the light of the circumstances under which they were made, be misleading. The expense of complying with the requirements of this Section 5(b) shall be borne (1) during the period of nine months after the date of this Agreement, by the Company, and (2) after the expiration of such nine-month period, by you, if you request copies of the Prospectus or of an amendment or amendments of or a supplement or supplements to the Prospectus.

(c) As soon as practicable but in no event later than 16 months after the date of this Agreement, the Company will make generally available to its security holders an earnings statement or statements of the Company and its subsidiaries that will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(d) The Company will furnish to you copies of the Registration Statement (including all exhibits), the Prospectus, each Issuer Free Writing Prospectus (to the extent not previously delivered) and all amendments and supplements to such documents, in each case as soon as available in such quantities as you request (and will make available to your counsel a manually executed copy of the Registration Statement and manually executed copies of all amendments thereto to the extent not previously furnished to such counsel, in each case with all exhibits).

(e) The Company will arrange for the qualification of the Securities for sale and the determination of their eligibility for investment under the laws of such jurisdictions as you designate and will continue such qualifications in effect so long as required for the distribution; provided, however, that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any such jurisdiction.

(f) During the period of two years hereafter, and if not publicly available through the Commission's website, the Company will furnish to you from time to time, such information concerning the Company as you may reasonably request.

(g) The Company will pay all expenses incident to the performance of its obligations under this Agreement, and will reimburse you for any expenses (including fees and disbursements of counsel) incurred by you in connection with qualification of the Securities for sale and determination of their eligibility for investment under the laws of such jurisdictions as you designate and the printing of memoranda relating thereto and for any fees charged by investment rating agencies for the rating of the Securities.

(h) From the date of this Agreement through the close of business on the Closing Date, the Company will not, without your prior consent, offer or sell (other than upon exercise of warrants therefor), (i) any of its unsubordinated debt securities or (ii) any of its subordinated debt securities (regardless of maturity) other than the Securities.

(i) The Company will, pursuant to reasonable procedures developed in good faith, retain copies of each Issuer Free Writing Prospectus that is not filed with the Commission in accordance with Rule 433 under the Act.

(j) The Company will not use the proceeds of the Notes to prepay debt that is not "FDIC-guaranteed debt" (as defined in Section 370.3(e)(1) of the TLG Program).

(k) The Company will pay all FDIC assessments and fees associated with the Notes due pursuant to Section 370.6 of the TLG Program within the time period required by such Section.

6. Conditions of the Obligations of the Underwriters. The obligations of the several Underwriters to purchase and pay for the Securities will be subject to the accuracy of the representations and warranties on the part of the Company herein, to the accuracy of the statements of Company officers made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) Prior to the Closing Date, no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose, pursuant to Rule 401(g)(2) under the Act or pursuant to Section 8A under the Act, shall have been instituted or, to the knowledge of the Company or you, shall be contemplated by the Commission.

(b) Since the respective dates as of which information is given in the Time of Sale Information and the Prospectus, there shall not have been any change in the consolidated long-term debt of the Company and its subsidiaries (other than changes resulting from the accretion of premium or amortization of debt discount on long-term debt and changes resulting from the issuance of debt securities by the Company that have occurred, and have been disclosed by the Company to the Underwriters, prior to the date hereof), any change in the capital stock of the Company (except for increases in outstanding capital stock

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that are not material), or any change or any development involving a prospective change, in or affecting the general affairs, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, viewed as a whole, otherwise than as set forth or contemplated in the Time of Sale Information and the Prospectus, the effect of which, in any such case, is, in the judgment of a majority in interest of the Underwriters after discussion with the Company, so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities on the terms and in the manner contemplated in the Time of Sale Information and the Prospectus.

(c) You shall have received an opinion letter of Simpson Thacher & Bartlett LLP, counsel for the Company, or such other counsel as is acceptable to the Representative, including in-house counsel, dated the Closing Date, to the effect that:

(i) The Company has been duly incorporated and is validly existing and in good standing as a corporation under the law of the State of Delaware, and JPMorgan Chase Bank, National Association has been duly organized and is validly existing and in good standing as a national banking association under the laws of the United States, in each case with full corporate power and authority to conduct its business as described in the Registration Statement, the Time of Sale Information and the Prospectus.

(ii) The Indenture has been duly authorized, executed and delivered by the Company and duly qualified under the Trust Indenture Act, and, assuming that the Indenture is the valid and legally binding obligation of the Trustee, constitutes a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(iii) The Notes have been duly authorized, executed and issued by the Company and, assuming due authentication thereof by the Trustee or the Bank of New York Mellon as Authenticating Agent under the Indenture and on behalf of the Trustee, and upon payment and delivery in accordance with the Underwriting Agreement, will constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms and entitled to the benefits of the Indenture, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

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(iv) The Notes, upon payment and delivery in accordance with the Underwriting Agreement, will be entitled to the benefits of the guarantee of the FDIC in accordance with the terms and conditions of the TLG Program.

(v) The Underwriting Agreement has been duly authorized, executed and delivered by the Company.

(vi) The issue and sale of the Notes by the Company and the execution, delivery and performance by the Company of this Underwriting Agreement and the Notes will not breach, or result in a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument filed or incorporated by reference as an exhibit to the Registration Statement or any of the Company's reports filed pursuant to the Exchange Act identified in such opinion (collectively the "Exchange Act Documents"), nor will such actions violate the Certificate of Incorporation or By-laws of the Company or any federal or New York statute or the Delaware General Corporation Law or any rule or regulation that has been issued pursuant to any federal or New York statute or the Delaware General Corporation Law or any order known to such counsel issued pursuant to any federal or New York statute or the Delaware General Corporation Law by any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties.

(vii) No consent, approval, authorization, order, registration or qualification of or with any federal or New York governmental agency or body or any Delaware governmental agency or body acting pursuant to the Delaware General Corporation Law or, to such counsel's knowledge, any federal or New York court or any Delaware court acting pursuant to the Delaware General Corporation Law is required for the issue and sale of the Securities by the Company, except such as have been obtained under the Act and the Exchange Act and the Trust Indenture Act and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Underwriters.

(viii) The statements made in the Time of Sale Information and the Prospectus under the captions "Description of the Notes" and "Description of Debt Securities," [INSERT OTHER RELEVANT CAPTIONS] insofar as they purport to constitute summaries of certain terms of documents referred to therein, constitute accurate summaries of such documents in all material respects.

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(ix) The statements made in the Prospectus under the captions “Description of the Notes—Description of FDIC Guarantee,” insofar as they purport to constitute summaries of certain terms and conditions of the TLG Program and of documents referred to therein, constitute accurate summaries of the terms of the TLG Program and such documents in all material respects.

(x) The Registration Statement has become effective under the Act, and the Prospectus was filed with the Commission pursuant to Rule 424(b) of the rules and regulations of the Commission under the Act; and, to such counsel’s knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been instituted or threatened by the Commission.

(xi) To the knowledge of such counsel, there are no contracts or documents of a character required to be described in the Registration Statement or Prospectus or to be filed as exhibits to the Registration Statement or incorporated by reference therein which are not described and filed or incorporated by reference as required.

(d) You shall have received from Cravath, Swaine & Moore LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date, with respect to the incorporation of the Company, the validity of the Securities, the Registration Statement, the Prospectus, and other related matters as you may require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(e) You shall have received a certificate of the Chairman, the President, any Vice-Chairman, any Senior Executive Vice President, the Chief Financial Officer, any Executive Vice President, the Treasurer or any Senior Vice President, dated the Closing Date, in which such officer, to the best of his or her knowledge after reasonable investigation, shall state that the representations and warranties of the Company in this Agreement are true and correct, that the Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date, that no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose or pursuant to Section 8A under the Act have been instituted or, to the best of his or her knowledge, are contemplated by the Commission, and that, subsequent to the date of the most recent financial statements in the Time of Sale Information and the Prospectus, there has been no material adverse change in the financial position or results of operations of the Company and its subsidiaries except as set forth or contemplated in the Time of Sale Information and the Prospectus or as described in such certificate.

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The Company will furnish you with such conformed copies of such opinions, certificates, letters and documents as you reasonably request.

7. Indemnification. (a) The Company will indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of the Act against any losses, claims, damages or liabilities, joint or several, to which such Underwriter or such controlling person may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based (i) upon any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or caused by the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; and will reimburse each Underwriter and each such controlling person for any legal or other expenses reasonably incurred by such Underwriter or such controlling person in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any such document in reliance upon and in conformity with written information furnished to the Company by any Underwriter specifically for use therein. This indemnity agreement will be in addition to any liability that the Company may otherwise have.

(b) Each Underwriter will indemnify and hold harmless the Company, each of its directors, each of its officers who have signed the Registration Statement and each person, if any, who controls the Company within the meaning of the Act, against any losses, claims, damages or liabilities to which the Company, or any such director, officer or controlling person may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement or caused by the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Prospectus (or any amendment or supplement thereto), any Issuer Free Writing Prospectus or any Time of Sale Information, or caused by any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company by such Underwriter specifically for use therein; and will reimburse any legal or other expenses reasonably incurred by the Company or any such director, officer or controlling person in connection with investigating or defending any such loss, claim, damage, liability or action. This

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indemnity agreement will be in addition to any liability that such Underwriter may otherwise have. The Company acknowledges that the statements set forth in [ ] in the prospectus supplement forming a part of the Prospectus constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in the Prospectus or any Issuer Free Writing Prospectus, and you confirm that such statements are correct.

(c) Promptly after receipt by an indemnified party under this Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section, notify the indemnifying party of the commencement thereof; but the omission so to notify the indemnifying party will not relieve it from any liability that it may have to any indemnified party otherwise than under this Section. In case any such action is brought against any indemnified party, and it notified the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof, other than reasonable costs of investigation.

(d) If recovery is not available under the foregoing indemnification provisions of this Section, for any reason other than as specified therein, the parties entitled to indemnification by the terms thereof shall be entitled to contribution to liabilities and expenses, except to the extent that contribution is not permitted under Section 11(f) of the Act. In determining the amount of contribution to which the respective parties are entitled, there shall be considered the relative benefits received by each party from the offering of the Securities (taking into account the portion of the proceeds of the offering realized by each), the parties' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, and any other equitable considerations appropriate under the circumstances. The Company and the Underwriters agree that it would not be equitable if the amount of such contribution were determined by pro rata or per capita allocation. No Underwriter or any person controlling such Underwriter shall be obligated to make a contribution hereunder that in the aggregate exceeds the total public offering price of the Securities purchased by such Underwriter under this Agreement, less the aggregate amount of any damages that such Underwriter and its controlling persons have otherwise been required to pay in respect of the same claim or any substantially similar claim. The Underwriters' obligations to contribute are several in proportion to their respective underwriting obligations and not joint.

8. Default of Underwriters. If any Underwriter or Underwriters default in their obligations to purchase the Securities of a series hereunder and the aggregate principal amount of the Securities of that series that such defaulting Underwriter or Underwriters agreed but failed to purchase does not exceed 10% of the total principal amount of the Securities of that series, you may make arrangements satisfactory to the Company for the purchase of such Securities by other persons, including any of the Underwriters, but if no such arrangements are made by the Closing Date the non-defaulting Underwriters of the relevant series of the Securities shall be obligated severally, in proportion to their respective commitments hereunder, to purchase the Securities of the relevant series that such defaulting Underwriter or Underwriters agreed but failed to purchase. If any Underwriter or Underwriters so default and the aggregate principal amount of the series of the Securities with respect to which such default or defaults occur is more than the above principal amount and arrangements satisfactory to you and the Company for the purchase of such Securities by other persons are not made within 36 hours after such default, this Agreement will terminate without liability with respect to the Securities of the relevant series on the part of any non-defaulting Underwriter or the Company, except as provided in Section 10. As used in this Agreement, the term "Underwriter" includes any person substituted for an Underwriter under this Section. Nothing herein will relieve a defaulting Underwriter from liability for its default.

9. Termination. This Agreement shall be subject to termination, by notice given to the Company prior to delivery of and payment for the Securities, if (a) prior to such time (i) trading in securities generally on the New York Stock Exchange shall have been suspended or materially limited, (ii) trading in the Common Stock of the Company on the New York Stock Exchange shall have been suspended, (iii) a general moratorium on commercial banking activities in New York shall have been declared by Federal or New York authorities or (iv) there shall have occurred any outbreak of hostilities or escalation thereof or other calamity or crisis having an adverse effect on the financial markets of the United States and (b) the occurrence or consequences of any one or more of such events, in the reasonable judgment of the Representative, shall have made it impracticable to market the Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Prospectus.

10. Survival of Certain Representations and Obligations. The respective indemnities, agreements, representations, warranties, and other statements of the Company or its officers and of the several Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation, or statement as to the results thereof, made by or on behalf of any Underwriter or the Company or any of its officers or directors or any controlling person, and will survive delivery of and payment for the Securities. If for any reason the purchase of the Securities by the several Underwriters is not consummated, the Company shall remain responsible for expenses to be paid or reimbursed by it pursuant to Section 5 and the respective obligations of the Company and the Underwriters pursuant to Section 7 shall remain in effect.

11. Notices. All communications hereunder will be in writing, and, if sent to the Underwriters will be mailed, delivered or telegraphed and confirmed [     ], or, if sent to the Company, will be mailed, delivered or telegraphed and confirmed to it at 270 Park Avenue, New York, N.Y. 10017, Attention: Office of the Secretary; provided, however, that any notice to an Underwriter pursuant to Section 7 will be mailed, delivered or telegraphed to such Underwriter at its address furnished to the Company by such Underwriter.

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12. Successors. This Underwriting Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 7, and no other person will have any right or obligation hereunder.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

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If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to us the enclosed duplicate hereof, whereupon it will become a binding agreement between the Company and you in accordance with its terms.

JPMORGAN CHASE & CO.,

by \_\_\_\_\_  
Name:  
Title:

The foregoing Underwriting Agreement  
is hereby confirmed and accepted as  
of the date first above written.  
[       ]

by: [       ]

by \_\_\_\_\_  
Name:  
Title:

On behalf of each of the Underwriter

JPMORGAN CHASE & CO.

(formerly known as Chemical Banking Corporation)

AND

DEUTSCHE BANK TRUST COMPANY AMERICAS

(formerly known as Bankers Trust Company,  
as successor to The Chase Manhattan Corporation),

as Trustee

SECOND SUPPLEMENTAL INDENTURE

Dated as of December 2, 2008

to

INDENTURE

Dated as of December 1, 1989

SENIOR DEBT SECURITIES

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SECOND SUPPLEMENTAL INDENTURE, dated as of December 2, 2008, between JPMORGAN CHASE & CO. (formerly known as Chemical Banking Corporation), a Delaware corporation (the “Company”), and DEUTSCHE BANK TRUST COMPANY AMERICAS (formerly known as Bankers Trust Company), a New York banking corporation, as successor to The Chase Manhattan Bank (National Association), as trustee (the “Trustee,” which term shall include any successor trustee appointed pursuant to Article Six of the Indenture hereafter referred to). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture).

#### RECITALS OF THE COMPANY

The Company and the Trustee have heretofore executed and delivered a certain Indenture, dated as of December 1, 1989 (the “Base Indenture,” and as supplemented by the Agreement of Resignation, Appointment and Acceptance, dated as of March 29, 1996, and the First Supplemental Indenture, dated as of November 1, 2007, the “Indenture”), providing for the issuance from time to time of Securities;

Section 901(5) of the Base Indenture provides that, without the consent of any Holders of any Securities, the Company, when authorized by Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental to the Indenture, in form satisfactory to the Trustee, to change or eliminate any of the provisions of the Indenture, provided that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision;

Section 201 of the Base Indenture provides that, without the consent of any Holders of any Securities, the Company, when authorized by Board Resolution or in one or more indentures supplemental to the Indenture, may establish the form of Securities of any series, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Indenture;

The Company desires and has requested that the Trustee join in the execution of this Second Supplemental Indenture for the purpose of amending certain provisions of the Indenture and establishing the form of certain Securities as hereinafter set forth;

The execution and delivery of this Second Supplemental Indenture has been authorized by a Board Resolution of the Company; and

All conditions precedent and requirements necessary to make this Second Supplemental Indenture a valid and legally binding instrument in accordance with its terms have been complied with, performed and fulfilled and the execution and delivery hereof have been in all respects duly authorized;

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NOW, THEREFORE, THIS SECOND SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises and intending to be legally bound hereby, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of Securities of the applicable series referred to below, as follows:

ARTICLE ONE

REPRESENTATIONS OF THE COMPANY

The Company represents and warrants to the Trustee as follows:

SECTION 1.1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

The execution, delivery and performance by the Company of this Second Supplemental Indenture have been authorized and approved by all necessary corporate action on the part of it.

ARTICLE TWO

SCOPE OF THIS SUPPLEMENTAL INDENTURE

SECTION 2.1. The changes, modifications and supplements to the Indenture effected by this Supplemental Indenture shall only be applicable with respect to, and govern the terms of, the FDIC-Guaranteed Series (as defined herein), and shall not apply to any other series of Securities.

ARTICLE THREE

AMENDMENTS

SECTION 3.1. Section 101 of the Base Indenture is hereby amended by adding the following definitions:

“Authorized Representative” has the meaning specified in Section 1403.

“Debt Guarantee Program” has the meaning specified in Section 1402.

“Effective Period” has the meaning specified in Section 1406.

“FDIC” means the Federal Deposit Insurance Corporation, a corporation organized under the laws of the United States.

“FDIC-Guaranteed Series” means the Company’s 3.125% Guaranteed Notes due 2011, Floating Rate Guaranteed Notes due 2010 and Floating Rate Guaranteed Notes due 2011, which series are guaranteed by the FDIC pursuant to its Temporary Liquidity Guarantee Program.

“Master Agreement” has the meaning specified in Section 1408.

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“Temporary Liquidity Guarantee Program” means the Temporary Liquidity Guarantee Program established pursuant to 12 C.F.R. Part 370.

SECTION 3.2. Section 202 of the Base Indenture shall not apply to the FDIC-Guaranteed Series and the Form of Face of Note relating to the FDIC-Guaranteed Series attached hereto as Annex A shall hereby be inserted with respect to the FDIC-Guaranteed Series in lieu thereof.

SECTION 3.3. Section 203 of the Base Indenture shall not apply to the FDIC-Guaranteed Series and the Form of Reverse of Note relating to the FDIC-Guaranteed Series attached hereto as Annex A shall hereby be inserted with respect to the FDIC-Guaranteed Series in lieu thereof.

SECTION 3.4. Sections 501(A)(1) and 501(A)(2) of the Base Indenture shall not apply to the FDIC-Guaranteed Series and the following paragraphs shall hereby be inserted with respect to the FDIC-Guaranteed Series in lieu thereof:

(1) default (a) by the Company in the payment of interest, if any, upon any Security of that series when it becomes due and payable and continuance of such default for a period of 30 days and (b) by the FDIC in the payment of interest, if any, upon any Security of that series in accordance with the Temporary Liquidity Guarantee Program (12 C.F.R. Part 370); or

(2) default (a) by the Company in the payment of the principal of (or premium, if any, on) any Security of that series at its Maturity and (b) by the FDIC in the payment of the principal of (or premium, if any, on) any Security of that series in accordance with the Temporary Liquidity Guarantee Program (12 C.F.R. Part 370); or

SECTION 3.5. The first paragraph of Section 502 of the Base Indenture shall not apply to the FDIC-Guaranteed Series and the following paragraph shall hereby be inserted with respect to the FDIC-Guaranteed Series in lieu thereof:

If an Event of Default specified in Sections 501(A)(1) or 501(A)(2) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if the Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all of the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable.

SECTION 3.6. The Base Indenture is hereby amended by adding the following Article Fourteen with respect to the FDIC-Guaranteed Series immediately following Article Thirteen.

“ARTICLE FOURTEEN”

C E R T A I N M A T T E R S P E R T A I N I N G T O T H E F D I C - G U A R A N T E E D S E R I E S

Section 1401. *Applicability* .

The provisions of this Article Fourteen shall apply to each FDIC-Guaranteed Series issued under this Indenture, but shall not apply to any other series of Securities.

Section 1402. *Acknowledgement of the FDIC’s Debt Guarantee Program* .

The parties to this Indenture acknowledge that the Company has not opted out of the Debt Guarantee Program as set forth in 12 C.F.R. Part 370 (the “Debt Guarantee Program”) established by the FDIC under its Temporary Liquidity Guarantee Program.

***As a result, this debt is guaranteed under the FDIC Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC’s regulations, 12 C.F.R. Part 370, and at the FDIC’s website, [www.fdic.gov/tlgp](http://www.fdic.gov/tlgp). The expiration date of the FDIC’s guarantee is the earlier of the maturity date of this debt or June 30, 2012.***

Section 1403. *Trustee Designated as Representative* .

The Trustee is designated under this Indenture as the duly authorized representative of the Holders for purposes of making claims and taking other permitted or required actions under the Debt Guarantee Program (the “Authorized Representative”). Any Holder may elect not to be represented by the Authorized Representative by providing written notice of such election to the Authorized Representative (it being understood that such election shall not affect the Trustee’s capacity hereunder except as the representative of such Holder under the Debt Guarantee Program). The Company hereby authorizes and directs the Authorized Representative to take all actions on behalf of the Holders that the Authorized Representative is required or empowered to take on behalf of the Holders pursuant to the Debt Guarantee Program, including, without limitation, in the event the Company fails to make any payment in respect of Securities of an FDIC-Guaranteed Series on the date such payment is due, to take all reasonable actions to pursue guarantee payments from the FDIC pursuant to the Debt Guarantee Program.

In particular, (i) on the 30th day from the date the Company defaults in payment of interest, which default has not been cured by the Company by such 30th day, or (ii) no later than the fourth (4th) business day after Maturity, in the case of default in principal, the Authorized Representative shall make a demand on behalf of the Holders to the FDIC for payment of the guaranteed amount under the Debt Guarantee Program. Such demand shall be accompanied by a proof of claim, which shall include evidence, to the extent not previously provided in the Master Agreement, in form and content satisfactory to the FDIC, of: (A) the Authorized Representative's financial and organizational capacity to act as representative under the Temporary Liquidity Guarantee Program; (B) the Authorized Representative's exclusive authority to act on behalf of the Holders and its fiduciary responsibility to the Holders when acting as such, as established by the terms of this Indenture; (C) the occurrence of a payment default with respect to Securities of an FDIC-Guaranteed Series; and (D) the authority to make an assignment of the Holders' right, title, and interest in the Securities of the applicable FDIC-Guaranteed Series to the FDIC and to effect the transfer to the FDIC of the Holder's claim in any insolvency proceeding. Such assignment shall include the right of the FDIC to receive any and all distributions on the Securities of the applicable FDIC-Guaranteed Series from the proceeds of the receivership or bankruptcy estate. Any demand under this Section 1403 shall be made in writing and directed to the Director, Division of Resolution and Receiverships, Federal Deposit Insurance Corporation, Washington, D.C., and shall include all supporting evidences as provided in this Section 1403, and shall certify to the accuracy thereof.

*Section 1404. Subrogation of the FDIC .*

The FDIC shall be subrogated to all of the rights of the Holders and the Authorized Representative under this Indenture against the Company in respect of any amounts paid to the Holders, or for the benefit of the Holders, under any FDIC-Guaranteed Series by the FDIC pursuant to the Debt Guarantee Program.

*Section 1405. Assignment upon Guarantee Payment .*

The Holders hereby authorize the Authorized Representative, at such time as the FDIC shall commence making any guarantee payments to the Authorized Representative for the benefit of the Holders of any FDIC-Guaranteed Series pursuant to the Debt Guarantee Program, to execute an assignment in the form attached to this Indenture as Annex C pursuant to which the Authorized Representative shall assign to the FDIC its right to receive any and all payments from the Company under this Indenture on behalf of the Holders of such FDIC-Guaranteed Series. The Issuer hereby consents and agrees that the FDIC is an acceptable transferee for all or any portion of payments made in respect of the FDIC-Guaranteed Series for all purposes of this Indenture and upon any such assignment, the FDIC shall be deemed a Holder under this Indenture for all purposes hereof, and the Company hereby agrees to take such reasonable steps as are necessary to comply with any relevant provision of this Indenture as a result of such assignment.

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Section 1406. *Surrender of Senior Unsecured Debt Instrument to the FDIC* .

If, at any time on or prior to the expiration of the period during which any FDIC-Guaranteed Series is guaranteed by the FDIC under the Debt Guarantee Program (the “Effective Period”), payment in full with respect to any Security of such FDIC-Guaranteed Series shall be made pursuant to the Debt Guarantee Program on the outstanding principal and accrued interest to such date of payment, the Holder shall, or the Holder shall cause the person or entity in possession to, promptly surrender to the FDIC the certificate, note or other instrument evidencing such Security, if any.

Section 1407. *Notice Obligations to FDIC of Payment Default* .

If, at any time prior to the earlier of (a) full satisfaction of the payment obligations in respect of any FDIC-Guaranteed Series, or (b) expiration of the Effective Period with respect to thereto, the Company is in default of any payment obligation in respect of such FDIC-Guaranteed Series hereunder or under the Securities of such series, including timely payment of any accrued and unpaid interest in respect of the Securities of such FDIC-Guaranteed Series, without regard to any cure period, the Authorized Representative covenants and agrees that it shall provide written notice to the FDIC within one (1) Business Day of such payment default at the address set forth below, or at such other address or by such other means of delivery as the FDIC may specify from time to time:

The Federal Deposit Insurance Corporation  
Deputy Director, Receivership Operations Branch  
Division of Resolutions and Receiverships  
Attention: Master Agreement  
550 17th Street, N.W.  
Washington, DC 20429

Section 1408. *Ranking* .

Any indebtedness of the Company to the FDIC arising under Section 2.03 of the Master Agreement entered into by the Company and the FDIC in connection with the Debt Guarantee Program (the “Master Agreement”) will constitute a senior unsecured general obligation of the Company, ranking *pari passu* with Securities of any FDIC-Guaranteed Series issued hereunder.

Section 1409. *No Modifications without FDIC Consent* .

Notwithstanding anything to the contrary contained in Article Nine, without the express written consent of the FDIC, the parties hereto agree not to

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amend, modify, supplement or waive any provision in this Indenture or the Securities that is related to the principal or interest payment, default or ranking of the Securities of any FDIC-Guaranteed Series; that is required to be included herein or therein pursuant to the Master Agreement; or any provision herein or therein that would require the consent of each Holder of Securities of such series.

SECTION 3.7. The Indenture is hereby amended by attaching as Annex C thereto the Form of Assignment attached to this Second Supplemental Indenture as Annex C.

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ARTICLE FOUR

MISCELLANEOUS

SECTION 4.1. Except as amended hereby, the Indenture and the Securities are in all respects ratified and confirmed and all the terms thereof shall remain in full force and effect and the Indenture, as so amended, shall be read, taken and construed as one and the same instrument.

SECTION 4.2. The Trustee accepts the modification of the Indenture effected by this Second Supplemental Indenture, but only upon the terms and conditions set forth in the Indenture. Without limiting the generality of the foregoing, the Trustee assumes no responsibility for the correctness of the recitals herein contained, which shall be taken as the statements of the Company.

SECTION 4.3. If and to the extent that any provision of this Second Supplemental Indenture limits, qualifies or conflicts with another provision included in this Second Supplemental Indenture or in the Indenture that is required to be included in this Second Supplemental Indenture or the Indenture by any of the provisions of Sections 310 to 317, inclusive, of the Trust Indenture Act of 1939, such required provision shall control.

SECTION 4.4. Nothing in this Second Supplemental Indenture is intended to or shall provide any rights to any parties other than those expressly contemplated by this Second Supplemental Indenture.

SECTION 4.5. This Second Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be governed by and construed in accordance with the laws of said State.

SECTION 4.6. This Second Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested all as of the day and year first above written.

JPMORGAN CHASE & CO.

By /s/ Authorized Signatory

(Corporate Seal)

Attest:

/s/ Authorized Signatory

DEUTSCHE BANK TRUST COMPANY AMERICAS,  
as Trustee

(Corporate Seal)

Attest:

/s/ Authorized Signatory

/s/ Authorized Signatory

[Registered]

[Registered]

JPMORGAN CHASE & CO.  
[ ] GUARANTEED NOTES DUE [ ]

This Security is not a Deposit or other obligation of a depository institution. This Security is guaranteed under the Federal Deposit Insurance Corporation (the "FDIC")'s Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 C.F.R. Part 370, and at the FDIC's website, [www.fdic.gov/tlgp](http://www.fdic.gov/tlgp). The expiration date of the FDIC's guarantee is the earlier of the maturity date of this Security or June 30, 2012.

[R- ]

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CUSIP No: [ ]

[This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of Cede & Co., the nominee of The Depository Trust Company (the "Depository"). This Global Security is exchangeable for Securities registered in the name of a Person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and no transfer of this Security (other than a transfer of this Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in such limited circumstances. The Depository will not sell, assign, transfer or otherwise convey any beneficial interest in this Global Security unless such beneficial interest is in an amount equal to an authorized denomination for Securities of the series, and the Depository, by its acceptance hereof, agrees to be so bound.

Unless this Security is presented by an authorized representative of the Depository to JPMorgan Chase & Co. or its agent for registration of transfer, exchange or payment, and any Security issued is registered in the name of Cede & Co. or such other name as is requested by an authorized representative of the Depository (and any payment is made to Cede & Co. or to such other entity as is an authorized representative of the Depository), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful since the registered owner hereof, Cede & Co., has an interest herein.]

JPMorgan Chase & Co., a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to

CEDE & CO., or registered assigns,  
the principal sum of

[ ] (\$[ ])

on [ ], 20[ ], on the terms and in the manner described on the reverse hereof, and to pay interest, [*for Securities with fixed rate interest, insert* : semi-annually in arrears on [ ] and [ ] of each year, commencing [ ], 200[ ], and at maturity on said principal sum, at the rate of [ ] per annum from the next preceding [ ] or [ ], as the case may be, unless no interest has been paid on this Security, in which case from [ ], 200[ ], until the payment of said principal sum has been made or duly provided for; provided, however, that if the Company shall default in the payment of interest due on such [ ] or [ ], then this Security shall bear interest from the next preceding [ ] or [ ] to which interest has been paid, or, if no interest has been paid on this Security, from [ ], 2008. The interest so payable, and punctually paid or duly provided for, on any interest payment date shall, as provided in the Indenture referred to on the reverse hereof, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the [ ] or [ ] (whether or not a Business Day), as the case may be, next preceding such [ ] or [ ].]

[*for Securities with floating rate interest, insert* : [[quarterly, monthly, semi-annually or annually] in arrears on [ ] of each year, commencing [ ], 200[ ] at a floating rate equal to the [ ] rate plus [ ]% per annum. The period beginning on and including [ ], 200[ ] and ending on but excluding the first interest payment date and each successive period beginning on and including an interest payment date and ending on but excluding the next interest payment date is an “interest period.” [ ], as calculation agent, shall calculate the interest rate for each interest period based on [ ], prior to the first day of such interest period. The interest so payable, and punctually paid or duly provided for, on any interest payment date shall, as provided in the Indenture referred to on the reverse hereof, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the [ ] day of the month preceding the month in which the interest payment date occurs.]

Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to the Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

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Payment of principal of and any such interest on this Security shall be made at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts; provided, however, that at the option of the Company, payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof, or an Authenticating Agent, by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

*[Balance of Page Intentionally Blank]*

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Date: [\_\_]

JPMORGAN CHASE & CO.

By: \_\_\_\_\_

Name: [\_\_]

Title: [\_\_]

Attest: \_\_\_\_\_

Name: [\_\_]

Title: [\_\_]

[Seal]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

DEUTSCHE BANK TRUST COMPANY AMERICAS  
(formerly known as Bankers Trust Company),  
AS TRUSTEE

By The Bank of New York  
as Authenticating Agent

By: \_\_\_\_\_

Authorized Officer

## [REVERSE OF SECURITY]

## [ ] GUARANTEED NOTES DUE [ ]

This Security is one of a duly authorized issue of senior debt securities of the Company (herein called the “Securities”) of the series hereinafter specified, all issued or to be issued under and pursuant to the Indenture, dated as of December 1, 1989 (as supplemented by the Agreement of Resignation, Appointment and Acceptance, dated as of March 29, 1996), as amended by the First Supplemental Indenture, dated as of November 1, 2007, and further amended by the Second Supplemental Indenture, dated as of December 2, 2008 (as amended and supplemented, the “Indenture”) between the Company and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company), as trustee (the “Trustee” which term includes any successor trustee under the Indenture), duly executed and delivered by the Company. Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company, the holders of Senior Indebtedness and Additional Senior Obligations and the holders of the Securities. Terms defined in the Indenture are used herein as so defined. The Securities may be issued in one or more series, which different series may be issued in various aggregate principal amounts, may mature at different times, may bear interest, if any, at different rates, may be subject to different redemption provisions, if any, may be subject to different sinking funds, if any, may be subject to different covenants and Events of Default and may otherwise vary as provided in the Indenture. This Security is one of the series designated as the [ ] Guaranteed Notes due [ ] of the Company (herein called the “Notes”), which series shall have a current aggregate principal amount of [ ], which principal amount may be increased from time to time through the issuance of additional Notes.

This Security is not redeemable prior to maturity and is not subject to any sinking fund.

[ *for Securities with fixed rate interest, insert* : Interest on this Security shall be computed on the basis of a 360-day year consisting of twelve 30-day months.]

If an Event of Default concerning: (1) default (a) by the Company in the payment of interest, if any, upon any Security of that series when it becomes due and payable and continuance of such default for a period of 30 days and (b) by the FDIC in the payment of interest, if any, upon any Security of that series in accordance with the Temporary Liquidity Guarantee Program (12 C.F.R. Part 370); or (2) default (a) by the Company in the payment of the principal of (or premium, if any, on) any Security of that series at its Maturity and (b) by the FDIC in the payment of the principal of (or premium, if any, on) any Security of that series in accordance with the Temporary Liquidity Guarantee Program (12 C.F.R. Part 370) shall occur and is continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company’s obligations in respect of the payment of the principal of and interest, if any, on the Securities of this series shall terminate.

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The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of each series to be affected; *provided, however*, that the express written consent of the FDIC will be required to amend, modify or waive any provision of the Securities that comprise the FDIC-Guaranteed Series or the provisions of the Indenture relating to principal, interest, default or ranking provisions of such Securities; any provisions of the notes or the Indenture required to be included by a “Master Agreement” between the Company and the FDIC relating to the Company’s participation in the “Debt Guarantee Program” component of the FDIC’s Temporary Liquidity Guarantee Program; or any other provision that would require the consent of all holders of the Securities. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest (if any) on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer in any place where the principal of and interest (if any) on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, shall be issued to the designated transferee or transferees.

[The Securities of this series are issuable only in registered form without coupons in denominations of \$2,000 and any larger integral multiples of \$1,000.] As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

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No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof and for all purposes, whether or not this Security shall be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse for the payment of the principal of (or premium, if any) or interest on this Security or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or any indenture supplemental thereto or in this Security, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company, or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released by each holder of this Security.

By the acceptance of this Security, the Holder hereof hereby agrees to the appointment of the Trustee as its Authorized Representative for purposes of making claims and taking all actions permitted or required under the Debt Guarantee Program and in accordance with the terms of, and under the circumstances set forth in, the Indenture. Any Holder may elect not to be represented by the Authorized Representative by providing written notice of such election to the Authorized Representative (it being understood that such election shall not affect the Trustee's capacity under the Indenture except as the representative of such Holder under the Debt Guarantee Program).

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

This Security shall be governed by and construed in accordance with the laws of the State of New York.

FORM OF ASSIGNMENT<sup>1</sup>

This Assignment is made pursuant to the terms of Section 1405 of the Indenture, dated as of December 1, 1989 (as supplemented by the First Supplemental Indenture, dated as of November 1, 2007, and the Second Supplemental Indenture, dated as of [\_\_\_], the “Indenture”), between JPMORGAN CHASE & CO. (formerly known as Chemical Banking Corporation), a Delaware corporation (the “Company”), and DEUTSCHE BANK TRUST COMPANY AMERICAS (formerly known as Bankers Trust Company), (the “Trustee”), acting on behalf of the Holders of the Securities issued under the Indenture who have not opted out of representation by the Trustee (the “Holders”) with respect to [designate series] (the “Assigned FDIC-Guaranteed Series”). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

For value received, the Trustee, on behalf of the Holders (the “Assignor”), hereby assigns to the Federal Deposit Insurance Corporation (the “FDIC”), without recourse, all of the Assignor’s respective rights, title and interest in and to: (a) the certificates or other instruments evidencing the Securities of the Assigned FDIC-Guaranteed Series issued under the Indenture (the “Notes”); (b) the Indenture; and (c) any other instrument or agreement executed by the Company regarding obligations of the Company under the Notes or the Indenture (collectively, the “Assignment”).

The Assignor hereby certifies that:

1. Without the FDIC’s prior written consent, the Assignor has not:

(a) agreed to any material amendment of the Notes or the Indenture or to any material deviation from the provisions thereof;  
or

(b) accelerated the maturity of the Notes.

[ **Instructions to the Assignor:** If the Assignor has not assigned or transferred any interest in the Notes and related documentation, such Assignor must include the following representation.]

2. The Assignor has not assigned or otherwise transferred any interest in the Notes or Indenture;

[ **Instructions to the Assignor:** If the Assignor has assigned a partial interest in the Notes and related documentation, the Assignor must include the following representation.]

2. The Assignor has assigned part of its rights, title and interest in the Notes and the Indenture to \_\_\_\_\_ pursuant to the \_\_\_\_\_ agreement, dated as of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_, as assignor, and \_\_\_\_\_, as assignee, an executed copy of which is attached hereto.

<sup>1</sup> This Form of Assignment shall be modified as appropriate if the assignment is being made by an individual Holder rather than the Trustee or if the debt being assigned is not in certificated form or otherwise represented by a written instrument.

The Assignor acknowledges and agrees that this Assignment is subject to the Indenture and to the following:

1. In the event the Assignor receives any payment under or related to the Notes or the Indenture from a party other than the FDIC (a “ Non-FDIC Payment ”):

(a) after the date of demand for a guarantee payment on the FDIC pursuant to 12 C.F.R. Part 370, but prior to the date of the FDIC’s first guarantee payment under the Indenture pursuant to 12 C.F.R. Part 370, the Assignor shall promptly but in no event later than four (4) Business Days after receipt notify the FDIC of the date and the amount of such Non-FDIC Payment and shall apply such payment as payment made by the Company, and not as a guarantee payment made by the FDIC, and therefore, the amount of such payment shall be excluded from this Assignment; and

(b) after the FDIC’s first guarantee payment under the Indenture, the Assignor shall forward promptly to the FDIC such Non-FDIC Payment in accordance with the payment instructions provided in writing by the FDIC.

2. Acceptance by the Assignor of payment pursuant to the Debt Guarantee Program on behalf of the Holders shall constitute a release by such Holders of any liability of the FDIC under the Debt Guarantee Program with respect to such payment.

The Person who is executing this Assignment on behalf of the Assignor hereby represents and warrants to the FDIC that he/she/it is duly authorized to do so.

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IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Very truly yours,

[ASSIGNOR]

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

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Consented to and acknowledged by this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

THE FEDERAL DEPOSIT INSURANCE CORPORATION

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)