JP MADOFF
The Unholy Alliance Between America’s Biggest Bank and America’s Biggest Crook

BY HELEN DAVIS CHAITMAN* AND LANCE GOTTHOFFER*
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Foreword

This is a book about JPMorgan Chase. It is, therefore, a book about greed, corruption, arrogance and power. And it is also a book about Bernie Madoff. Few people realize the link between America’s biggest bank and America’s biggest crook. Our government, which knows about it and should be the most outraged, doesn’t care. Although it announced criminal charges against the bank for two felony violations of the Bank Secrecy Act, it simultaneously entered into a deferred prosecution agreement with the bank, suspending an indictment for two years provided that the bank complies with the law in the future.1 As if JPMorgan Chase, with its armies of high-priced lawyers, didn’t know how to comply with the 1970 Bank Secrecy Act in 44 years. It needs another two years to figure out how to comply with the law!

Our government did not require that a single JPMorgan Chase employee face criminal charges . . . or even lose his job. In deferring the indictment against the bank, the United States government may have feared that JPMorgan Chase is too big to fail. But surely JPMorgan Chase, with 240,000 employees, can survive without the handful of officers who sheltered Madoff from the law for 20 years and, as the bank has


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acknowledged, violated the law. 2 Are these officers too rich to jail? How did we become a country where powerful employers can purchase immunity from criminal prosecution for their employees?

Since the government won’t protect you, the purpose of this book is to give you the information you need to protect yourselves: when bankers act like gangsters, you should treat them like gangsters, even if the government won’t. And the last thing you should do is trust them with your money.

Madoff could not have stolen $64.8 billion of other people’s money without the complicity of a major financial institution. Madoff was able to get by with a three-person accounting firm working out of a store front in a shopping center in Rockland County, New York. But make no mistake about it. Madoff needed the imprimatur and facilities of a major bank. And JPMorgan Chase stepped up to the plate. Why would the bank do this? Shall we follow the money? Do you have any idea how much money JPMorgan Chase was able to make off the Madoff account? Did you know that Madoff maintained huge balances in his JPMorgan Chase account, reaching $4 billion or more from 2006 on. And do you think the folks at JPMorgan Chase know how to make money off other people’s money? You bet they do. 3

The facts — which we lay out in this book — compel the conclusion that senior officers of JPMorgan Chase knew that Madoff was misappropriating customer funds

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3 Although he white-washed the conduct of JPMorgan Chase’s officers, U.S. Attorney Preet Bharara, in announcing the deferred prosecution agreement, said: “JPMorgan connected the dots when it mattered to its own profit but was not so diligent otherwise.”
and knew who all the victims were. There were 12 people who worked for Madoff who knew about Madoff’s embezzlement of money belonging to innocent investors. Outside of Madoff’s offices, nobody knew — for 20 years. Nobody, that is, except the people at JPMorgan Chase who were responsible to monitor the activities in Madoff’s account. They saw that, from 1986 to December 2008, Madoff deposited into his JPMorgan Chase account approximately $150 billion of funds — from upstate New York union pension funds, from charities, from corporate pension plans, from individual I.R.A. accounts. Bank officers knew that Madoff was an SEC-regulated broker who was retained by his customers to purchase securities for them. Yet, they saw no transactions in Madoff’s account indicating that he was purchasing securities for his customers. Instead, billions of dollars went to Madoff’s co-conspirators, or were wired overseas.

For a 20-year period, people at JPMorgan Chase saw that Madoff was acting illegally. At times, they called him in and questioned him. According to allegations in a recent civil suit, they never got a satisfactory explanation for the questionable transactions in Madoff’s account. According to Madoff, on one occasion a senior officer of JPMorgan Chase actually advised him how to structure the illegal transactions. And, when Madoff was arrested, the head of due diligence at the bank e-mailed a colleague, “Can’t say I’m surprised, are you?”

But JPMorgan Chase never shut Madoff down. In fact, it held onto the account to the bitter end. In October 2008, after the bank’s London branch reported to the British government that Madoff’s returns “appear[ed] too good to be true,” JPMorgan Chase

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4 Statement of Facts, supra, n. 2, ¶ 10.
5 Central Laborers’ Pension Fund v. Dimon, 14 CV 1041 (SDNY 2014 ¶¶ 6-12).
6 Author’s interview with Madoff.
7 Stipulated Statement of Facts, supra n. 2, ¶ 83.
still kept his account open for business in New York and never filed a similar report with United States authorities. It was only after Madoff confessed that his account was closed.

The government recently settled its criminal claims against JPMorgan Chase. That settlement is an insult to the American people. If an 18-year-old kid holds up a 7/11 store and walks out with $3000, he goes to jail. But if JPMorgan Chase allows Madoff to steal $64.8 billion of innocent people’s money, nobody goes to jail. Instead, the bank simply coughs up a small portion of its ill-gotten profits and all the officers at JPMorgan Chase who helped Madoff are allowed to keep their jobs and to keep the obscene bonuses they earned for 20 years.

Since the government has abdicated its obligation to protect citizens against financial criminals, it is up to every American to let JPMorgan Chase (and other financial institutions) know that financial crimes will not be tolerated. No financial institution should be permitted to purchase immunity from prosecution for its officers. And yet, that’s what JPMorgan Chase did.

Clearly, JPMorgan Chase is not the only financial institution that has abused the public trust and shattered public confidence in the entire banking system. But it is the biggest bank in the United States and probably the biggest offender, having paid approximately $29 billion in fines, penalties and settlements over the last four years.

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8 Id. ¶¶ 58, 63.
alone to resolve claims that it acted dishonestly or illegally. Thus, while JPMorgan Chase is only one chapter in a larger story of the lack of moral fiber in our financial institutions, it is the most glaring example and the story of its unholy alliance with Madoff is a shocking example of the extent to which some people who work for financial institutions will allow their banks to be used for criminal purposes so long as the bank can profit from the activities.

This book will be published in chapters on our website; we do not know how many chapters it will take because the story keeps unfolding. It is almost six years since Madoff confessed and yet, Madoff has never testified under oath; no one from JPMorgan Chase has testified under oath. With each chapter, we will publish on our website all of the supporting authorities so that you don’t have to take our word for anything. The big question is not whether the facts we write are true. The big question is whether Americans are going to continue to tolerate criminal conduct in its financial institutions. We know the government will; the question is whether the American people will.

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10 See roulette wheel at jpmadoff.com.
CHAPTER I

The Deferred Prosecution of JP Morgan Chase: The White-Wash of the Century

Introduction

In January 2014, the United States government entered into a deferred prosecution agreement with JPMorgan Chase pursuant to which the bank paid over $1.7 billion to settle criminal charges that, with respect to its maintenance of Madoff’s 703 Account — the account through which Madoff stole $64.8 billion from thousands of innocent people — the bank failed “to maintain an effective anti-money laundering program, in violation of the Bank Secrecy Act.” In the deferred prosecution agreement, the bank acknowledged that it had engaged in the conduct described in the stipulated Statement of Facts and in the Criminal Information prepared by the government. Thus, the bank admitted that it had committed two felonies for willful violation of the Bank Secrecy Act. The Criminal Information stated, and JPMorgan Chase admitted, that it had made no meaningful effort to investigate the Madoff banking relationship and that numerous bank employees had actual knowledge of suspicious activities by

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12 Statement of Facts, supra, n. 2, ¶ 12.

13 Statement of Facts, supra, n. 2, ¶ 11.
Madoff. Nonetheless, the deferred prosecution agreement said nothing about the bank’s employees’ having turned a blind eye to Madoff’s crimes. Rather, if the government is to be believed, JPMorgan Chase, America’s largest bank, with 240,000 employees, had not figured out how to comply with a 1970 statute 38 years after its enactment. By the time you finish reading this book, you will see that the government, itself, was actively misleading the American public by entering into the deferred prosecution agreement.

The Bank Secrecy Act is a pretty important statute because it is essential for banks to assist the government in detecting and preventing financial crimes like drug dealing, money laundering, embezzlement, and organized crime. For you or me, a violation of the Bank Secrecy Act is a crime punishable by imprisonment of up to ten years. But not for people who work for JPMorgan Chase. Nobody from JPMorgan

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14 Statement of Facts, supra n. 2, ¶ 22 et seq.


(a) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91--508, shall be fined not more than $250,000, or imprisoned for not more than five years, or both.

(b) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91--508, while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

(c) For a violation of section 5318(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.
Chase went to prison. Nobody from JPMorgan Chase was criminally charged. Nobody from JPMorgan Chase was required to resign from the Bank.\textsuperscript{16} Instead, the bank simply turned over $1.7 billion of its shareholders’ money and, voila, the problem went away.\textsuperscript{17}

**The Bank Secrecy Act**

But let’s focus on the Bank Secrecy Act so that you can see what the government’s charges against JPMorgan Chase were. By 1970, the United States government recognized that it needed the assistance of financial institutions to detect financial crimes. In that year, Congress enacted legislation requiring banks to monitor their customers’ accounts and report suspicious activity to the government.\textsuperscript{18} This Act requires financial institutions to maintain appropriate records and file reports involving currency transactions and the financial institution’s customer relationships. The

\begin{verbatim}
(d) A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318, or any special measures imposed under section 5318A, or any regulation prescribed under subsection (i) or (j) of section 5318 or section 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than $1,000,000. [Codified to 31 U.S.C. 5322]
\end{verbatim}

\textsuperscript{16} In contrast to its kid-glove treatment of JPMorgan Chase, the United States required, as part of its settlement with BNP Paribas, that 31 employees leave the bank. Devlin Barrett, Christopher M. Matthews & Andrew R. Johnson, *BNP Paribas Draws Record Fine for ‘Tour de Fraud’, The Wall Street Journal*, (June 30, 2014), [http://online.wsj.com/articles/bnp-agrees-to-pay-over-8-8-billion-to-settle-sanctions-probe-1404160117](http://online.wsj.com/articles/bnp-agrees-to-pay-over-8-8-billion-to-settle-sanctions-probe-1404160117)

\textsuperscript{17} Of this amount, $1.7 billion was paid to the United States as a penalty which was not tax deductible; $350 million was a civil money penalty paid to the Office of the Comptroller of the Currency (the “OCC”); $461 million was a civil money penalty paid to FinCen. In addition, JPMorgan Chase paid $325 million to settle claims asserted by Irving H. Picard, trustee for Bernard L. Madoff Investment Securities LLC (“BLMIS”) and $218 million to settle claims asserted in a class action consisting of certain BLMIS customers. JPMorgan Chase & Co., *Form 10-K* (Feb. 2014), available at [http://files.shareholder.com/downloads/ONE/3241866018x0xS19617-14-289/19617/filing.pdf#Page=298](http://files.shareholder.com/downloads/ONE/3241866018x0xS19617-14-289/19617/filing.pdf#Page=298)

industry has come to use the terms “CTR’s” to refer to Currency Transaction Reports and “SAR’s” to refer to Suspicious Activity Reports, which are the primary means used by banks to satisfy the requirements of the Bank Secrecy Act.

The government and JPMorgan Chase agreed on what the bank was required to do to comply with the statute. That is plain on the face of the statute. The bank knew that it had to file a SAR whenever it detected suspicious activity. It knew it had to maintain accurate records in case the government conducted a criminal investigation.

\[\text{id:4}\] The Bank Secrecy Act requires financial institutions “to take steps to protect against the financial institution being used by criminals to commit crimes and launder money.” The government and JPMorgan Chase agreed that the BSA requires financial institutions “to establish and maintain effective anti-money laundering (“AML”) compliance programs that, at a minimum and among other things, provide for (a) integral policies, procedures, and controls designed to guard against money laundering; (b) an individual or individuals to coordinate and monitor day-to-day compliance with the Bank Secrecy Act and AML requirements; (c) an ongoing employee training program; and (d) an independent audit function to test compliance programs. 31 U.S.C. § 5318(h).”

\[\text{id:5}\] The bank was required to file a SAR if it detected “any known or suspected Federal criminal violation, or pattern of criminal violations . . . aggregating $5,000 or more in funds or other assets . . . where the bank believes that . . . it was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects.” 12 C.F.R. § 21.11(c)(2). If the transactions total more than $25,000, then a bank must file a report “even if it cannot identify a suspect. 12 C.F.R. § 21.11(c)(3). \[\text{id:5}\]

\[\text{id:6}\] The recordkeeping regulations issued pursuant to the BSA require that a financial institution’s records be sufficient to enable transactions and activity in customer accounts to be reconstructed if necessary. Thus, a paper and audit trail is assured in case the government needs it for a criminal investigation. \[\text{id:6}\] The BSA consists of two parts: Title I authorized the Secretary of the Department of the Treasury (Treasury) to issue regulations, which require FDIC-insured financial institutions to maintain certain records. Title II directed the Treasury to prescribe regulations governing the reporting of certain transactions by and through financial institutions in excess of $10,000 into, out of, and within the U.S. The Treasury’s implementing regulations under the BSA, issued within the provisions of 31 CFR Part 103, are included in the FDIC’s Rules and Regulations and on the FDIC website.
The bank knew that the government relied on the bank in its effort to combat financial crimes.\(^{22}\)

In other words, if you run a bank, it’s your responsibility to monitor the transactions of your customers to make sure that your bank is not being used to commit a crime. It’s not really that complicated. And JPMorgan Chase conceded that the law required it to comply with these requirements because these legal requirements have been imposed on all banks since 1970. And since 1970, banks have been required to set up detailed training programs to assure that bank personnel are properly trained to detect crime.\(^{23}\)

This is a pretty important statute because money laundering can be used to disguise a wide range of crimes which include drug trafficking, financial fraud, computer crimes, alien smuggling, illegal arms sales, foreign official corruption, illegal gambling and terrorist financing.\(^{24}\) It is estimated that the volume of money laundering is between 3

\(^{22}\) The government and JPMorgan Chase agreed that the “BSA and regulations thereunder also require financial institutions to report “suspicious transaction[s] relevant to a possible violation of law or regulation.” 31 U.S.C. § 5318(g)(1). BSA regulations provide that a transaction is reportable if it is “conducted or attempted by, at, or through the bank” and where “the bank knows, suspects, or has reason to suspect that. . . [t]he transaction involves funds derived from illegal activities” or that the “transaction has no business or apparent lawful purpose.” 31 U.S.C. § 1020.320(a)(2). Financial institutions satisfy their obligation to report such a transaction by filing a SAR with the Financial Crimes Enforcement Network ("FinCEN"), a part of the United States Department of Treasury. 31 C.F.R. § 1020.320(a)(1)Statement of Facts, fn. 11 supra, ¶ 5. FinCEN is a part of the Department of the Treasury and its “mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities”. FinCEN, Home, (June 25, 2014 9:28AM), http://www.fincen.gov/

\(^{23}\) FinCEN’s Mandate From Congress, Bank Secrecy Act, available at http://www.fincen.gov/statutes_regs/bsa/

and 5% of global domestic product (GDP) which is equivalent to $2.17 to $3.61 trillion annually. This is precisely why the government imposes upon financial institutions the obligation to monitor customer transactions and report suspicious activity to the government. And, in the wake of September 11, 2001, Congress enacted additional legislation to assure that banks took all necessary steps to comply with the Bank Secrecy Act. Thus, the law requires that every bank officer “know your customer” so that a banker will know when a customer’s financial transactions are not consistent with the customer’s business.

Since the enactment of the Bank Secrecy Act, banks have been required to have training programs for their personnel so that they can fulfill their obligations to detect

25 Id.
26 The USA Patriot Act of 2001 (the “Patriot Act”), enacted in the immediate aftermath of the terrorist attack of September 11, 2001, reinforced the obligation of financial institutions to implement robust internal systems to detect and report money laundering and other suspicious activities. The regulations promulgated pursuant to the Patriot Act require financial institutions to institute an AML program that includes four elements: (i) designating an individual or individuals responsible for managing BSA compliance; (ii) a system of policies, procedures, and internal controls to ensure ongoing compliance; (iii) training for appropriate personnel; and (iv) independent testing of compliance. 12 C.F.R. § 208.63. FinCEN & Internal Revenue Service, 44 (2008), Bank Secrecy Act/ Anti-Money Laundering Examination Manual for Money Services Businesses, available at http://www.fincen.gov/news_room/rp/files/MSB_Exam_Manual.pdf#Page=50
27 This is a duty imposed pursuant to 12 C.F.R. § 208.62. The KYC obligation is based on the fact that, in order for financial institutions to detect criminal activity, it is essential for them to understand the business of each of their customers so that they can detect activity inconsistent with the purported business. Institutions viewing account activity need a baseline against which to distinguish account activity that may be normal for a particular industry from account activity that might suggest an illegal enterprise. The KYC duty pre-dated the Patriot Act and was incorporated into the Federal Reserve Bank’s BSA Examination Manual of 1995 and Supervisory Letter on Private BankingActivities, SR 97-19 (SUP).
illegal activity.\textsuperscript{28} As one of the world’s largest financial institutions, JPMorgan Chase had training programs and systems galore with respect to the obligations of bank personnel under the Act.\textsuperscript{29} Yet, as will be demonstrated in future chapters of this book, JPMorgan Chase allowed Madoff to operate in violation of numerous federal laws for close to two decades without the bank ever complying with the Bank Secrecy Act. In later chapters of this book, we will lay out evidence that JPMorgan Chase personnel knew, or must have known, what Madoff was doing and knew, or must have known, he was violating the law. You can decide for yourself whether JPMorgan Chase’s failure to comply with the law was a deliberate decision made by officers of the Bank who were more interested in enhancing the bank’s profits than in complying with the law. And, as you will see in a later chapter of this book, JPMorgan Chase profited enormously from sheltering Madoff’s criminal enterprise.

Yet, the government gave JPMorgan Chase a pass – for a price of $1.7 billion. The criminal charges that the government made were a total whitewash. Instead of charging the bank and the specific officers involved with deliberate violation of a whole raft of federal laws and regulations, the government charged only that JPMorgan Chase “lacked effective policies, procedures, or controls designed to reasonably ensure that information . . . obtained in the course of JPMorgan Chase’s other lines of business, was communicated to anti-money laundering compliance personnel based in the United

\textsuperscript{28} See, \textit{e.g.}, Federal Deposit Insurance Corporation, \textit{Bank Secrecy Act and Anti-Money Laundering}, History of Anti Money Laundering Legislation, \url{http://www.fdic.gov/regulations/examinations/bsa/bsa_3.html}

\textsuperscript{29} See \textit{e.g.}, Stipulated Facts ¶¶ 6, 14, 16.
States.” In other words, JPMorgan Chase simply dropped the ball on complying with a federal statute that was enacted in 1970!30

The Criminal Information treated JPMorgan Chase’s deliberate violations of law to be a simple failure to educate its personnel as to the requirements to monitor customer accounts for illegal activities.31 And in the process, tens of thousands of innocent people lost $64.8 billion of their life savings. . .

Now let’s suppose that you didn’t pay your taxes for five years and the government came after you. Do you think you could get the government to let you off the hook without a criminal sentence and stipulate that you just didn’t have procedures in place to assure that you complied with the law by filing your tax returns every year? I don’t think so. And, of course, what JPMorgan Chase did was not simply fail to pay taxes; in essence, it allowed Madoff to use the bank’s worldwide facilities to embezzle $64.8 billion from innocent people.

31 The Information states: In or about 2008, in the Southern District of New York and elsewhere, [JPMorgan Chase] did willfully fail to establish an adequate anti-money laundering program, including at a minimum, (a) the development of internal policies, procedures, and controls designed to guard against money laundering; (b) the designation of a compliance officer to coordinate and monitor day-to-day compliance with the Bank Secrecy Act and anti-money laundering requirements; (c) the establishment of an ongoing employee training program; and (d) the implementation of independent testing for compliance conducted by bank personnel or an outside party, to wit [JPMorgan Chase] failed to enact adequate policies, procedures, and controls to ensure that information about the Bank’s clients obtained through activities in and concerning JPMorgan Chase’s other lines of business was shared with compliance and anti-money laundering personnel, and to ensure that information about the Bank’s clients obtained outside the United States was shared with United States compliance and anti-money laundering personnel. Id. ¶ 13.
So, how is it possible that Preet Bharara, the United States Attorney for the Southern District of New York, agreed with JPMorgan Chase that America’s biggest bank, with 240,000 employees, simply forgot to put in place the procedures that the law has required since 1970? Mr. Bharara is an educated man. He went to high school, college, and law school. And, on February 25, 2010, he issued a press release on the occasion of the arrest of Daniel Bonventre, a Madoff employee, in which he assured the public:

Today’s arrest reflects the government’s ongoing commitment to ensure that those who are criminally responsible for this massive Ponzi scheme will be held accountable. Together with our law enforcement partners at the FBI and IRS, we will continue to investigate this colossal deception.32

Yet, the man who pledged that “those who are criminally responsible for this massive Ponzi scheme will be held accountable,” totally let JPMorgan Chase’s officers off the hook. At the time the government’s settlement with JPMorgan Chase was announced, Mr. Bharara issued a press release stating that JPMorgan Chase had simply been negligent:

JP Morgan must pay for its negligence in allowing Bernie Madoff to launder his ill gotten gains through the bank for decades... JPMorgan Chase connected the dots when it mattered to its own profit but wasn’t so diligent... when it came to its obligations to report illegal activity.33

33 In a January 7, 2014 article, Linette Lopez for Business Insider quoted U.S. Attorney Preet Bharara; available at http://www.businessinsider.com/jpm-knew-madoff-was-a-fraud-said-nothing-2014-1#ixzz35TtZpUxQ
Whom is he kidding? Mr. Bharara had access to all of Madoff’s records – in the possession of Madoff Trustee, Irving H. Picard. Mr. Bharara had access to Madoff, who has given out detailed information, from prison, about the complicity of JPMorgan Chase officers. Mr. Bharara had access to the bank’s Code of Conduct, binding on all of its employees, which has a specific provision setting forth the bank’s compliance with the Bank Secrecy Act and other laws.

So, if JPMorgan Chase had put in place procedures to comply with the Bank Secrecy Act, and if Mr. Bharara was committed to prosecuting anyone who was

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### 5.7. Money laundering and the USA PATRIOT Act

JPMorgan Chase has established policies, procedures and internal controls designed to assure compliance with international laws and regulations regarding money laundering and terrorist financing, including relevant provisions of the Bank Secrecy Act and the USA PATRIOT Act in the United States and similar legislation in other countries. You should be familiar with, and comply with, these policies, procedures and controls. You should also understand your obligations to:

(a) know your customers and your customers' use of the firm’s products and services.

(b) get proper training if you are identified as being in a job that poses a risk of money laundering or terrorist financing.

(c) be alert to and report unusual or suspicious activity to the designated persons within your line of business or region, including your Compliance Officer or Risk Manager responsible for anti-money laundering compliance.

criminally responsible for the massive Madoff Ponzi scheme, how is it possible that Mr. Bharara let the bank that facilitated Madoff’s theft of $64.8 billion off the hook by pretending JPMorgan Chase’s only crime was not putting in place the procedures to detect Madoff’s crime? The bank was simply negligent? Give me a break.

The question is why would an official of the United States government agree to something that clearly is untrue? We will answer this question in a future chapter.
# Chapter 2

What the Folks at JPMC Knew and When They Knew It

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Introduction

Jamie Dimon, the Chairman and Chief Executive Officer of JPMorgan Chase (“JPMC”), reassuringly espouses a practice of complete honesty in business. In his words:

All reporting must be accurate, and all relevant facts must be reported, with full disclosure and on one set of books.1

At the May 19, 2009 annual shareholders’ meeting, six months after Madoff confessed, Dimon assured the JPMC shareholders that “We had almost nothing to do with [Madoff].”2 If this statement were true, this would be a very short chapter. The statement is not true and the chapter is not short.

If you had only one bank account and you gave someone access to all your account records, they could see every check you deposited into your account and every check you wrote on your account. They would have a complete picture of your sources of income and how you spent your money – every dollar of it.

Bernie Madoff had only one bank account for his investment advisory business: the 703 Account which he maintained at JPMC from 1986 on.3 And JPMC had an inside

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view of Bernie Madoff’s investment advisory business for 22 years. Not only that, it had an obligation, under the law, to know its customer, to understand Madoff’s business and how he used his funds so that the Bank could detect any suspicious activity and report it to the federal government. Thus, ignorance cannot be a defense; JP Morgan Chase had an affirmative legal obligation to study how Madoff used his account and to report any suspicious activity to the federal government. 4

During the period from 1986 through 2008, Madoff deposited $150 billion into his account at JPMC. 5 On average, that’s about $7 billion per year. But the volume of checks and the deposit balances started out small and increased over time, peaking at $5.6 billion in August 2008. 6 Even to JPMC, $5.6 billion is a lot of money for one customer to keep on deposit. And you can be sure that the folks at JPMC noticed how much money Madoff left in his account because they swept that money into JPMC every night for JPMC’s own use. Yet, remarkably, Richard Cassa, Madoff’s account officer from 1993 through March 2008, testified at the December 2013 criminal trial of some of Madoff’s former employees (the “Bonventre Trial”) that he had no recollection of the balances that Madoff maintained in the 703 Account:

Q. Did you have an understanding, prior to Mr. Madoff’s arrest, of the size of the 703 account?

A. Well, not really. I mean, we didn’t see – if you’re referring to size, you mean if – the activity that goes in and out of the account or –

Q. What were the average balance[s]?

A. Well, the – No, I don’t – I don’t recall.

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4 See fns. 26 and 27 in chapter 1.
5 Statement of Facts, fn. 3 supra, ¶ 10.
6 Id. ¶ 11.
Q. I mean, did you have a sense, prior to Mr. Madoff’s arrest, of whether that account held millions or tens of millions or billions of dollars?

A. Probably tens of millions.\(^7\)

Aside from the fact that Cassa clearly was reluctant to admit any knowledge of the 703 Account, nobody confuses $5.6 billion with tens of millions of dollars, especially a banker.

Now, if you were the account officer on the Madoff account, under the Bank Secrecy Act you would have an obligation to understand Madoff’s business and question why he would maintain multi-billion dollar balances when his business is investing people’s money in the stock market, not maintaining billions of dollars in a bank account. But this was a question that, if you believe the folks at JPMC, was never asked. In fact, if you believe the folks at JPMC, the question never occurred to them. They apparently had a policy of “don’t ask; don’t tell” when it came to Bernie Madoff. So, when the government investigated JPMC, the folks at JPMC decided that ignorance was their best defense – and they got away with it.

In fact, our federal government – represented by Attorney General Eric Holder and United States Attorney for the Southern District of New York Preet Bharara – gave the folks at JPMC a free pass with respect to their violations of our criminal laws and stipulated that the folks at JPMC – America’s biggest bank – just didn’t know what the law required of them. They did this even though the Office of the Comptroller of the Currency (the “OCC”), which regulates banks, complained about a “pattern of forgetfulness” at JPMC and sought to compel production of the notes that JPMC’s

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\(^7\) Testimony of Richard Cassa on December 19, 2013 in *United States v. Bonventre, et al.*, 10 Cr. 288 (LTS), S.D.N.Y. (hereafter “Cassa Tr.”), Cassa Tr. at 6349 lines 1 – 11.
lawyers wrote about their interviews with JPMC officers right after Madoff confessed. JPMC argued that the lawyers’ notes were protected by the attorney/client privilege and the OCC referred the matter to the United States Treasury Department, whose Inspector General argued that the lawyers’ notes were essentially “made for the purpose of getting advice for the commission of a fraud or crime” — something which nullifies the attorney/client privilege.

Now the Department of Justice – Eric Holder and Preet Bharara — had two options here. They could have pressed for production of the lawyers’ notes so that the truth would be disclosed. Or, they could have agreed with JPMC that nobody should even review the notes to see if they were made for the purpose of giving advice for the commission of a fraud or crime. They chose the second option: keep the public ignorant of how dishonest a whole bunch of people at JPMC are and let them continue to work at JPMC. Thank you, Eric Holder.

Holder and Bharara took a dive even though they knew, for a fact, that the folks at JPMC had allowed Madoff and his crony, Norman Levy, to conduct a $105 billion check kiting scheme over an 11-year period.

Holder and Bharara took a dive even though they knew, for a fact, that the folks at JPMC knew Madoff continually submitted false financial reports to the Securities and Exchange Commission (the “SEC”).

9 See infra, text accompanying fn. 16.
10 See infra, text accompanying fn. 111 et seq.
Holder and Bharara took a dive even though they knew, for a fact, that the folks at JPMC made a deliberate decision not to inform United States authorities that Madoff was operating a Ponzi scheme, even after JPMC employees in London had notified British authorities that they believed Madoff’s returns were too good to be true. In other words, Bharara stipulated with the folks at JPMC that, even though the London branch of JPMC reported to the British government that it thought Madoff was operating a Ponzi scheme, the folks in New York just didn’t know they had a parallel responsibility. They didn’t know, that is, until after Madoff confessed. Then, all of a sudden, they learned of their legal responsibilities and filed a suspicious activity report with the federal government – after Madoff had been arrested!

But don’t take our word for this. Look at the facts and decide for yourself. And, when it comes to the facts, we have to explain something. We’ve never had the opportunity to take discovery of JPMC. What we cite in this chapter are the following: (a) information we obtained from telephone conversations we had with Bernard Madoff over the past five years; (b) the facts to which the government and JPMC stipulated; (c) the facts alleged by Irving H. Picard, the Madoff Trustee (the “Trustee”), who took extensive discovery of JPMC before filing a very detailed complaint against it; (d) the facts alleged in a complaint captioned Central Laborers’ Pension Fund v. Dimon, which are reportedly based upon in-person interviews the plaintiff’s lawyers had with Madoff;

12 Statement of Facts, fn. 3 supra, ¶ 85.
13 As explained on our website, jpmadoff.com, the authors’ law firm has sued JPMC, Richard Cassa and John Hogan on behalf of a large group of Madoff customers, seeking damages arising out the Bank’s facilitation of Madoff’s crimes. In that action, JPMC has opposed our efforts to question Madoff, Cassa and Hogan and has refused to provide to us copies of the transcripts of the depositions of Cassa and Hogan taken by the Madoff Trustee, Irving H. Picard.
and (e) publicly available information. One can only imagine how much more incriminating the full story would be if JPMC—or the Justice Department—were forced to release to the public all of JPMC’s documents.

**1986 – 2002: Bernie Madoff to Chase: “Go Fly A Kite.”**

Check kiting is a crime punishable by up to 30 years in prison. It typically involves someone writing a check on his account at Bank A and depositing it at his account under another name at Bank B, even though he has no money in his account at Bank A. Then he writes a check in the same amount on his account at Bank B (which now has the fictitious funds from the check reflected as a credit) back to himself at Bank A. Now it looks like the kiter has money in his account at Bank A. He can use that money to pay unwitting creditors and to get extra interest from the Bank B.

Bernie Madoff and Norman Levy were thrown out of Bankers Trust Company in the early 1990’s for kiting checks. Bankers Trust Company did precisely what it was required to do under the Bank Secrecy Act: it called Madoff and Levy into a meeting, asked them to explain their activities and, when they were unable to give a legitimate explanation, it closed their accounts and filed a suspicious activity report with the federal government, explaining that the Madoff-Levy transactions had “no legitimate business purpose.” What Madoff and Levy were doing was transferring huge amounts of money from Levy’s account to Madoff’s 703 Account and then back to Levy’s account,

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17 Statement of Facts, fn. 3 supra, ¶ 25.
all in one day (the “round trip transactions”). Bankers Trust Company had no
difficulty recognizing this as check kiting. What Bankers Trust Company did was not
surprising for a bank, at least for a bank in the 1990’s: it complied with the law by
reporting to the federal government the apparent commission of a crime.

After they were kicked out of Bankers Trust Company, Levy and Madoff moved
their round-trip transactions over to Chemical Bank, where Madoff had maintained the
703 Account since 1986. Bankers Trust Company had notified Chemical Bank that it
had closed the accounts of Madoff and Levy. That was an obvious indication that
something was wrong. But, the folks at Chemical Bank, and later at Chase and then
JPMC, were apparently only too happy to have the business. And the round-trip
transactions continued. They were structured as follows: Madoff would write a
check from an account at another bank to Levy which Levy would deposit at
JPMC. Madoff did not have the funds in his account to cover that check. On
the same day, Madoff would transfer money from the 703 Account to his account at
the other bank to cover the earlier check to Levy. Then Levy would write a check
to Madoff on his account at JPMC which Madoff deposited into the 703
Account in an amount sufficient to cover the original check Madoff had written to
Levy that day.

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18 Id., ¶ 23.
19 Picard v. JPMC, fn. 3 supra, ¶ 178; Statement of Facts, fn. 3 supra, ¶ 8; Richard
Vanderford, JPMorgan’s $2B Madoff Deal Wins Judge’s OK, Law360 (Jan. 8, 2014
6:59PM), http://www.law360.com/articles/499750/jpmorgan-s-2b-madoff-deal-wins-
judge-s-ok.
21 Id.
22 Id., ¶ 23.
23 Id.
The round-trip transactions occurred at JPMC on virtually a daily basis for a period of more than eight years, each transaction in the amount of tens of millions of dollars. Madoff and Levy started out slowly: in 1996, the round trip transactions totaled approximately $5.4 billion. But, in light of the hospitality they were shown at JPMC, the round-trip transactions increased to $15.2 billion in 1999, $23 billion in 2000, and $35 billion in 2001. These figures exceeded the gross domestic product for many of the world’s countries in those years.

There was a huge upswing in the round-trip transactions in December 2001. In that month, Levy gave Madoff checks totaling approximately $6.8 billion which Madoff deposited into the 703 Account. Each check was in the same amount: $90 million.

During 2002, Madoff initiated 318 separate transfers totaling $313,643,718 from the 703 Account at JPMC to Levy’s account at JPMC in the precise amount of $986,301. That constitutes more than one transfer per day that JPMC was open for business, all in the amount of $986,301.

Does anyone think that looked suspicious? As Bankers Trust had earlier concluded, the pattern of activity had no legitimate purpose. Yet, unlike Bankers Trust, JPMC sat back and watched these transactions for 11 years without filing a

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24 Id.
27 Picard v. JPMC, fn. 3 supra, ¶ 228.
28 Id; Statement of Facts, fn. 3 supra, ¶ 27.
29 Id.
30 Picard v. JPMC, fn. 3 supra, ¶ 224.
31 Id.
suspicious activity report. They waited to do so until after Madoff confessed!\(^{32}\)

Altogether, Madoff deposited approximately $150 \textit{billion} into the 703 Account at JPMC. Of that amount, two-thirds, totaling $105 \textit{billion}, constituted transfers from Levy. The total Levy round-trip transactions each year were as follows:\(^{33}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Transfers from Madoff to Levy</th>
<th>Transfers from Levy to Madoff</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>$1,108,364,660</td>
<td>$994,048,201</td>
</tr>
<tr>
<td>1993</td>
<td>$1,387,358,368</td>
<td>$1,517,903,726</td>
</tr>
<tr>
<td>1994</td>
<td>$2,279,645,611</td>
<td>$2,128,805,955</td>
</tr>
<tr>
<td>1995</td>
<td>$3,542,773,369</td>
<td>$3,453,047,453</td>
</tr>
<tr>
<td>1996</td>
<td>$5,372,928,546</td>
<td>$5,471,231,206</td>
</tr>
<tr>
<td>1997</td>
<td>$7,067,467,981</td>
<td>$7,377,869,833</td>
</tr>
<tr>
<td>1998</td>
<td>$10,102,787,010</td>
<td>$10,039,234,425</td>
</tr>
<tr>
<td>1999</td>
<td>$15,316,343,975</td>
<td>$15,227,808,969</td>
</tr>
<tr>
<td>2000</td>
<td>$23,044,584,696</td>
<td>$23,103,627,635</td>
</tr>
<tr>
<td>2001</td>
<td>$35,095,634,103</td>
<td>$35,154,090,159</td>
</tr>
<tr>
<td>2002</td>
<td>$862,232,070</td>
<td>$898,796,993</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td><strong>$105,180,120,389.00</strong></td>
<td><strong>$105,366,464,555.00</strong></td>
</tr>
</tbody>
</table>

The round-trip transactions were eight times greater than the combined transfers of all other Madoff customers during this period. The chart below depicts the deposits and withdrawals into and out of the 703 Account \textit{excluding} Levy’s transactions:

<p>| All Accounts Excluding Norman Levy Account 1L0027(^{34}) |
|----------------|----------------|</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>Cash In</th>
<th>Cash Out</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>$904,272,560</td>
<td>$1,018,689,670</td>
</tr>
<tr>
<td>1993</td>
<td>$664,370,878</td>
<td>$609,219,797</td>
</tr>
<tr>
<td>1994</td>
<td>$577,959,780</td>
<td>$651,932,259</td>
</tr>
<tr>
<td>1995</td>
<td>$884,907,897</td>
<td>$955,450,002</td>
</tr>
<tr>
<td>1996</td>
<td>$1,303,802,139</td>
<td>$1,076,280,471</td>
</tr>
</tbody>
</table>

\(^{32}\) Statement of Facts, fn. 3 \textit{supra}, ¶ 85.
\(^{34}\) \textit{Id.} at 15.
Between 1998 and 2008, Madoff transferred nearly $84 billion out of the 703 Account to just four customers.35 These transactions represented over 75 percent of the wires and checks that flowed out of the 703 Account to Madoff’s customers.36 Thus, JPMC could see that, even though Madoff received funds from thousands of different investors whose checks were deposited into the 703 Account, the primary activity in the account was among Madoff, Levy, and three others. And, indisputably, JPMC recognized that Levy and Madoff were kiting checks.37 You can see this from the Statement of Facts that JPMC agreed to, which details how a JPMC officer wrote, in 1994, that the overdrafts from these transactions were “outrageous.”38

Because of the delay between when the checks were credited and when they were cleared (the “float”), the effect of the round-trip transactions was to make the balances in the 703 Account appear larger than they otherwise were.39 For a period of more than 12 years, JPMC watched as Madoff and Levy transferred through the 703 Account over $105 billion in these facially illegal transactions.40

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35 Picard v. JPMC, fn. 3 supra, ¶ 226.
36 Id.
37 Statement of Facts, fn. 3 supra, ¶ 24.
38 Id., ¶¶ 24-28.
39 Id. ¶ 23.
40 See chart in text accompanying fn. 33 supra.
In November 1994, a JPMC officer whose identity the government has concealed drafted a memo stating that “the daily cost associated with” the overdrafts from the round-trip transactions is “outrageous.” His memo documented calls on November 29, 1994, in which the un-named banker informed both Madoff and Levy that JPMC was aware of the activity and the fact that it allowed Madoff to earn interest on uncleared funds. Levy’s arrogant response to the JPMC officer was “if Bernie is using the float, it is fine with me, he makes a lot of money for my account.” Of course, this does not explain why JPMC credited the 703 Account with interest on uncleared funds, effectively compensating Madoff for his criminal activity.

JPMC’s response to this obviously illegal activity is set forth in the stipulated Statement of Facts:

JPMC Private Bank did not file a suspicious activity report relating to the transaction activity between the Private Bank Client [i.e. Levy] and Madoff Securities, or terminate its banking relationship with Madoff, or direct the parties to cease such transactions. JPMC allowed the Private Bank Client transactions to continue, although JPMC did require the Private Bank Client to reimburse JPMC for the interest payments that these transactions had cost the bank.

Apparently, JPMC had no problem with Madoff and Levy kiting checks so long as they didn’t lose money on these transactions.

41 Statement of Facts, fn. 3 supra, ¶ 24.
42 Id.
44 Statement of Facts, fn. 3 supra, ¶ 26. The government’s insistence upon concealing Norman Levy’s identity reminds the authors of the face masks worn by actors in pornographic movies to conceal their identity.
According to Madoff, JPMC’s senior personnel met with Madoff and Levy on several occasions to discuss the activity in their accounts. These personnel included Madoff’s “sponsor” or account officer, Richard Cassa; Walter Shipley, the Chairman and Chief Executive Officer of Chemical Bank and then of Chase; and, after 1999, John Hogan who, in 2006, became Chief Risk Officer for the Chase Investment Bank and, effective January 1, 2012, became Chief Risk Officer for all of JPMC.

Madoff claims that, at one point, JPMC directed Madoff and Levy to structure their illegal transactions so that they would be less noticeable to bank regulators. In 2002, after the enactment of the Patriot Act which increased a bank’s monitoring obligations as set forth in the Bank Secrecy Act, the round-trip transactions decreased dramatically. Madoff told the authors that, in late 2002, an officer of JPMC told him that the transactions would have to stop. And they did. Madoff had no choice but to comply with JPMC's edict because he could not operate without JPMC.

Despite the indisputable evidence of check kiting as constituting 2/3 of the activity in the 703 Account, Richard Cassa testified as follows concerning the Account at the Bonventre Trial:

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45 Id. ¶ 182.
46 Picard v. JPMC, fn. 3 supra, ¶ 191.
48 Picard v. JPMC, fn. 3 supra, ¶ 66; Central Laborers v. Dimon, fn. 43 supra, ¶ 267; ¶ 89.
49 Telephone interview with Bernard L. Madoff.
51 Telephone Interview with Bernard L. Madoff.
Q. Do you know what part of Madoff Securities’ business that checking account was associated with?

A. Well, we always knew them as a market maker, basically a company that traded securities.52

And then, to sum it all up, Cassa testified as follows:

Q. Mr. Cassa, did you have an understanding, prior to Mr. Madoff’s arrest, of what that 703 account was used for?

A. Yes. I mean, it was a basic checking account, you know. Checks would come in and out, payments would be made, wire transfers would go in and out. It was a pretty normal checking account for that type of firm.53

If it is “pretty normal” for a JPMC customer to be kiting checks, the government should shut JPMC down immediately. Surely, Cassa could not have forgotten about the round-trip transactions in the 703 Account when he told the jury at the Bonventre Trial that the activity in the 703 Account was “pretty normal.” It is hard to comprehend how the government could have elicited this testimony just three weeks before the publication of the Stipulation of Facts, which clearly contradicts Cassa’s testimony.

Other Signs of Illegal Activity

In addition to the obviously illegal round-trip transactions, Chase recognized and ignored repeated instances of irregular activity in the 703 Account and dismissed monitoring system alerts of unusual activity.54 An alert was issued on January 3, 2007 when the 703 Account received $757.2 million in customer wires and transfers, 27 times the average daily value of incoming wires and transfers over the prior 90 days

52 Cassa Tr., supra n. 7, at 6348 lines 19-22.
53 Id. at 6348 lines 13-18.
54 Picard v. JPMC, fn. 3 supra, ¶ 177.
of activity, virtually all of which came from Madoff feeder funds.\textsuperscript{55} The system alerted again in July 2008 due to activity associated with Treasury bond redemptions. In both cases, JPMC’s anti-money laundering investigators attempted to review the know-your-customer file for Madoff but received messages that no such file was available. They did nothing to investigate Madoff beyond a review of the company’s website and ultimately closed the alerts.\textsuperscript{56} Indeed, despite all of the indicia of illegal conduct, JPMC never took any steps to shut Madoff’s account down or to expose the illegal activities to law enforcement authorities.

**Richard Cassa’s role as Madoff’s Sponsor**

Richard Cassa worked at JPMC from 1968 through March 2008.\textsuperscript{57} Cassa worked as a relationship manager in the broker-dealer division which only dealt with regulated broker-dealers. His accounts included Raymond James, Edward Jones, A.G. Edwards, Nomura Securities, Bear Stearns, and Madoff.\textsuperscript{58} From the mid-1990’s until March 2008, as Madoff’s Sponsor or account officer, Cassa periodically visited Madoff’s offices and obtained financial documents.\textsuperscript{59} And, as required of a Sponsor, beginning in the mid-1990’s and continuing until early 2008, Cassa signed periodic certifications that the necessary due diligence had been performed and that the client “continues to meet the JPMC corporate client standards.”\textsuperscript{60}

\begin{itemize}
  \item \textsuperscript{55} Statement of Facts, fn. 3 \textit{supra}, ¶ 21; \textit{Central Laborers v. Dimon}, fn. 43 \textit{supra}, ¶ 139. A “feeder fund” is an investment fund that invests money into another fund, in this case, BLMIS. \url{http://en.wikipedia.org/wiki/Feeder_fund}.
  \item \textsuperscript{56} Statement of Facts, fn. 3 \textit{supra}, ¶ 21; \textit{Central Laborers v. Dimon}, fn. 43 \textit{supra}, ¶ 139.
  \item \textsuperscript{57} Cassa Tr., \textit{supra} n. 7, at 6334 line 15.
  \item \textsuperscript{58} \textit{Id.} at 6335 line 1 – 6337 line 15.
  \item \textsuperscript{59} \textit{Central Laborers v. Dimon}, fn. 43 \textit{supra}, ¶ 135.
  \item \textsuperscript{60} Statement of Facts, fn. 3 \textit{supra}, ¶ 19; ¶ 14; \textit{Central Laborers v. Dimon}, fn. 43 \textit{supra}, ¶ 134.
\end{itemize}
Now being Madoff’s “Sponsor” was no small thing. The Sponsor is considered a “Senior Officer” of JPMC.61 One assumes, therefore, that Cassa must have been a pretty smart fellow. Yet, when Cassa was questioned under oath by counsel for the Trustee on November 4, 2010 and shown internal Bank documents indicating that he was the “Sponsor” of the Madoff account, he testified that he did not know what a “Sponsor” was and that, in all his years at JPMC, he did not know that he was the Sponsor for Madoff, despite the fact that he signed certifications stating that he had performed his duties as client Sponsor.62

When he testified on December 19, 2013 at the Bonventre Trial, Cassa readily admitted that he had been the Madoff account officer for about 15 years (that is, from 1993 – 2008), although he claimed that, over 15 years, he “spoke to [Madoff] twice and met him once.”63 Madoff told the authors he spoke with Cassa on numerous occasions over the years.

**Who is More Credible: Madoff or JPMC?**

One could fairly ask the question whether Madoff, a convicted felon, could be more credible than JPMC and Richard Cassa, a retired JPMC senior banker. You should draw your own conclusions on this important subject but we believe that Madoff is more credible than Cassa and JPMC for several reasons:

First, as a general matter, the fact that Madoff is a convicted felon does not make him incredible *per se*. Indeed, the government traditionally relies upon convicted felons

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62 *Picard v. JPMC*, fn. 3 *supra*, ¶ 191.

63 Cassa Tr., *supra* n. 7, at 6363 lines 12-16.
to testify truthfully in criminal trials of co-conspirators, even where the convicted felons have received substantial consideration from the prosecutor for their testimony in terms of lenient sentences. Obviously, then, the government believes that convicted felons can be reliable witnesses. Indeed, the government has relied heavily on Frank DiPascali, Madoff’s former right hand man, to provide information and testify against other Madoff employees, even though DiPascali pled guilty on August 11, 2009 to directing the fraudulent investment advisory business for Madoff. Unlike DiPascali, Madoff received no leniency and has less reason to lie about JPMC’s role in his crimes than the folks at JPMC have.

Second, after numerous conversations with Madoff over a five-year period, we found his description of the conversations he claimed he had with Cassa and others at JPMC credible. Indeed, it is incredible to think that JPMC did not comply with its obligation, under the Bank Secrecy Act, to know its customer and understand all of the transactions in the 703 Account. To us, it is impossible to believe that, given the Norman Levy transactions, JPMC’s senior personnel would not have had numerous discussions with Madoff and Levy about them.

While we would have liked to interview Madoff in person to enhance our ability to judge his credibility, the prison warden refused Ms. Chaitman’s written request to visit him on the ground that she would be a threat to the security of the prison.

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Third, we cannot believe that Cassa, the account officer, saw nothing unusual about the 703 Account. As described above, there is a 1994 internal memo by an unidentified Bank employee (who, for all we know, could have been Cassa), analyzing the illegal transactions between Madoff and Levy and concluding “the daily cost associated with” the overdrafts from the round-trip transactions is “outrageous.” And yet Cassa testified at the Bonventre Trial as follows:

Q. It was a checking account, right?

A. Yes.

Q. You understood it was used for general business purposes, correct?

A. Yes.

Q. Apart from that, you did not know how the account was used, correct?

A. Yes.

Q. And certainly there was nothing on the face of the account, from what you could see, that was out of the ordinary, correct?

A. No.

Q. There was nothing on the face of the account that caused you any concern, correct?

A. No.

Q. There was nothing on the face of the account that, to you, was any kind of red flag, correct?

A. No.67

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66 Statement of Facts, fn. 3 supra, ¶ 24.
67 Cassa Tr. at 6366 line 19 to 6367 line 10.
Given the indisputable record of round-trip transactions between Madoff and Levy, Cassa’s testimony is incredible to us. If there were no red flags for JPMC personnel on the 703 Account, if this was simply business as usual for JPMC, shouldn’t the government shut JPMC down immediately?

Fourth, Madoff has been proven correct in many of his statements with respect to JPMC. For example, when the Trustee filed his complaint against JPMC in 2010, Madoff predicted in conversations with the press that JPMC would pay a huge amount of money to settle the Trustee’s claims against it. He said:

JPMorgan doesn’t have a chance in hell of not coming up with a big settlement.

I am not a banker but I know that $100 billion going in and out of a bank account is something that should alert you to something.

There were senior people at the Bank who knew what was going on.

Standing in stark contrast to Madoff’s now-proven prognostication about the outcome of the Trustee’s lawsuit are Jamie Dimon’s assurances to JPMC’s shareholders at the 2009 annual meeting that “We had almost nothing to do with [Madoff].” This raises the inevitable question of whether Dimon was lying to JPMC’s shareholders or JPMC’s officers were lying to their boss, or both.

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68 There is an ironic similarity between Madoff and JPMC: When it came to JPMC, Madoff made a hell of a prophet; when it came to Madoff, JPMC made a hell of a profit.


One can’t help recalling Richard Nixon’s famous statement on August 29, 1972 about the Watergate break-in:

I can state categorically that no one in the White House staff, no one in this administration presently employed, was involved in this very bizarre incident.71

Of course, the very bizarre incident to which Nixon referred resulted in his resignation as President of the United States and the imprisonment of his former Attorney General and several top aides.

Indeed, in a November 2010 statement, JPMC represented to the public that the Trustee’s claims were “meritless” and “demonstrably false.”72 In its press release concerning the complaint against JPMC, it stated:

The complaint filed today by the Trustee for the Madoff estate blatantly distorts both the facts and the law in an attempt to grab headlines.

Contrary to the Trustee’s allegations, JPMorgan did not know about or in any way assist in the fraud orchestrated by Bernard Madoff. As a provider of regular commercial banking services to Madoff’s brokerage firm, JPMorgan complied fully with all applicable laws and regulations governing customer accounts.

*    *    *

JPMorgan intends to defend itself vigorously against the meritless and unfounded claims brought by the Trustee.73

73 Id.
Whoever drafted this press release for JPMC certainly needs a lesson in accuracy. As the reader knows from Chapter 1, JPMC has stipulated to all of the facts constituting liability for the felonies alleged in the criminal Information.\(^74\) And, of course, in addition to the $1.7 billion paid to the government to avoid criminal prosecution for its role in Madoff’s crimes, JPMC paid an additional $1.354 billion—including $325 million to settle the “demonstrably false” “meritless,” “unfounded,” and “blatantly distort[ed]” claims asserted by the Trustee.\(^75\) Pretty hefty for a bank that had “almost nothing to do with” Madoff.

Fortune Magazine writer, Colin Barr, obviously had it right. On December 2, 2010, he wrote “Perhaps JPMC had more to do with Bernie Madoff than Jamie Dimon would like to admit.”\(^76\)

Nonetheless, sticking to its story, on February 17, 2011, JPMC’s General Counsel, Stephen Cutler, told a group of stock analysts that “JPMorgan did not know about or in any way participate in the fraud.”\(^77\) Jamie Dimon added: “You can imagine what I

\(^74\) Deferred Prosecution Agreement, fn. 11 \emph{supra}, ¶ 2 “Acceptance of Responsibility.”

\(^75\) In addition to the $1.7 billion paid the United States to avoid criminal prosecution for its role in Madoff’s crimes, JPMC paid $1.354 billion relating to its conduct concerning Madoff, consisting of $350 million as a civil money penalty to the Office of the Comptroller of the Currency; $461 million as a civil money penalty to FinCen; $325 million to settle the Trustee’s claims, and $218 million to settle claims asserted in a class action consisting of certain BLMIS customers. JPMC & Co., \emph{Form 10-K} (Feb. 2014), available at http://files.shareholder.com/downloads/ONE/3241866018x0xs19617-14-289/19617/filing.pdf#Page=298.


would say.”78 (Actually, no. We can’t.) Cutler vowed not to litigate the case in the media, thereby taking Dimon off the hook and essentially telling the media that every future question about Madoff would be answered by “No comment.”

Stephen Cutler, the reader may recall, was the Director of the SEC’s Division of Enforcement a good part of the time that Harry Markopolos was vainly attempting to blow the whistle on Madoff.79 In December 2006, Cutler became General Counsel of JPMC.80 More on that in our next chapter.

**Madoff’s co-conspirator, Norman F. Levy**

You may not have heard of Norman Levy. He was the Chairman of Cross & Brown, a New York real estate brokerage firm81 and, sometimes referred to as the surrogate father to Madoff.82 That’s hardly a compliment but, to the folks at JPMC, that was a real distinction. Levy was treated like a prince. JPMC even gave him a private office at the Chase Investment Bank.83

Notwithstanding his near-familial relationship to Madoff, in 1993 Levy requested that a senior investment officer of JPMC meet with Madoff so that Levy could better understand how Madoff generated such consistent returns. Along with a quantitative analyst, the senior investment officer met with Madoff. He reported

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78 *Id.*
80 *Id.*
83 *Picard v. JPMC*, fn. 3 supra, ¶ 244.
that he was “very comfortable” with Madoff, “his operation” and his “conservative, risk-averse investment approach” and with the fact that “it is quite possible for top-notch investment advisors to make 20-30% annual returns through such short-term programs.” The officer later admitted that he and the analyst could not understand how Madoff was able to generate such consistent quarterly returns for Levy despite historic volatility in the market and therefore concluded that Madoff “might also have been smoothing out the returns” by sharing trading spreads and profits from the Madoff market-making business with Levy-- an activity that, of course, would have been illegal because the profits belonging to one customer or entity would have been transferred to another.\footnote{Statement of Facts, fn. 3 \textit{supra}, ¶ 29; \textit{Central Laborers v. Dimon}, fn. 43 \textit{supra}, ¶ 153. In this context, “smoothing” would be taking profits and losses from one customer and applying them to another customer.}

Despite Levy’s participation in the round-trip transactions, from 1996 through 2005, JPMC loaned Levy and his children money to invest with Madoff.\footnote{\textit{Picard v. JPMC}, fn. 3 \textit{supra}, ¶ 252.} In 1996, the same year that Chemical Bank acquired Chase, JPMC loaned Levy $188 million to invest with Madoff.\footnote{\textit{Id.}, ¶ 253.} Two years later, JPMC conducted a review of Levy’s account statements from Madoff to see how JPMC’s loans had profited Levy. Madoff had increased Levy’s investments from $183 million at the end of 1986 to $1.7 billion in early 1998, an increase of 830 percent in 12 years. Chase also learned that Madoff reported consistently positive returns for Levy at all times, including through the October 1987 stock market crash and subsequent market corrections.\footnote{Statement of Facts, fn. 3 \textit{supra}, ¶ 30; \textit{Central Laborers v. Dimon}, fn. 43 \textit{supra}, ¶¶ 153-54.}
JPMC observed the manner in which this occurred because it had access to Levy’s financial records. These records showed that Madoff had “loaned” Levy and his children billions of dollars. In fact, at the time Madoff confessed on December 11, 2008, Levy’s children had a $2 billion “margin loan” owed to Madoff!

Chase had been making loans to Levy on a 90-day basis. Madoff recalled that, in or about 2000, Chase complained to Madoff about Levy’s 90-day loans, asking if Levy could instead keep the loans open and just pay interest. But Levy liked the idea of paying the loans back within the 90 days, so he insisted they be structured as 90-day loans that would be paid off every 90 days and then be reissued. The 90-day loans also showed a significant amount of activity to make it look like Levy was an active trader, which enabled him to deduct his loan interest for tax purposes. But, according to the Central Laborers’ complaint, Risk Officer John Hogan phoned Madoff and asked whether they could stop issuing the loans every 90 days because, Hogan said, it looked like Levy was kiting checks. Of course, that had been the conclusion of JPMC in 1994. It was obvious that Levy was kiting checks. But JPMorgan did nothing to stop it.

Levy died in September 2005. His children later settled claims by the Trustee for $220 million, with the Trustee inexplicably releasing the Levy children of any liability for their $2 billion margin loan.
JPMC’s Knowledge of Other Dishonest Aspects of Madoff’s Business

In 2001, Barron’s featured an article entitled “Don’t Ask, Don’t Tell: Bernie Madoff is so secretive, he even asks his investors to keep mum.” The Barron’s article raised some of the same issues identified by JPMC’s risk analysts. For example, it noted that Madoff had “produced compound average annual returns of 15 percent for more than a decade” and that “some of the larger, billion-dollar Madoff-run funds have never had a down year.” The article reported that “some on the Street have begun speculating that Madoff’s market-making operation subsidizes and smooths his hedge-fund returns” (something suspected by JPMC) and described how such smoothing could be accomplished through an unlawful practice known as front-running. These observations were 100 percent consistent with Chase’s internal reviews.

There was one Bank employee who, in December 1998, had not gotten with the program. After reviewing Madoff’s reported returns, he wrote that the returns were “possibly too good to be true” and that there were “too many red flags” to

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94 Erin E. Arvedlund, Don’t Ask, Don’t Tell: Bernie Madoff Attracts Skeptics in 2001 – Bernie Madoff is so secretive, he even asks investors to keep mum, Barron’s, (May 7, 2001 12:01AM), [http://online.barrons.com/news/articles/SB989019667829349012](http://online.barrons.com/news/articles/SB989019667829349012)
95 Statement of Facts, fn. 3 supra, ¶ 47
96 Id.
97 Id. Front running is the illegal practice of a stockbroker executing orders on a security for its own account while taking advantage of advance knowledge of pending orders from its customers. When orders previously submitted by its customers will predictably affect the price of the security, purchasing first for its own account gives the broker an unfair advantage, since it can expect to close out its position at a profit based on the new price level. The front running broker either buys for its own account (before filling customer buy orders that drive up the price), or sells (where the broker sells for its own account, before filling customer sell orders that drive down the price). Wikipedia, Front running, [http://en.wikipedia.org/wiki/Front_running](http://en.wikipedia.org/wiki/Front_running).
98 Statement of Facts, fn. 3 supra, ¶¶ 30, 32.
warrant JPMC’s investing through Madoff. However, JPMC did not forward the information to anti-money laundering personnel and did not file a suspicious activity report.

The illegality of Madoff’s operations would be readily apparent to anyone who spent even a few hours studying the activity in the 703 Account. Between 2004 and 2008, the 703 Account’s international wire transfers with high- and medium-risk jurisdictions increased 83 percent and 67 percent respectively. JPMC had an obligation to file a suspicious activity report concerning these transfers. Between 2006 and the middle of 2008, the 703 Account had an average balance of several billion dollars – an inexplicable business practice for a stockbroker. As the financial markets began to sharply decline in 2008, however, the cash balance in the 703 Account began to drop precipitously. The balance in the 703 Account peaked at approximately $5.6 billion in August 2008.

Between August 2008 and Madoff’s arrest on December 11, 2008, billions of dollars were withdrawn from the 703 Account, leaving a balance of approximately

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99 Id., Central Laborers v. Dimon, fn. 43 supra, ¶ 156.  
100 Id.  
101 Picard v. JPMC, fn. 3 supra, ¶ 229.  
102 Banks are required by federal regulations to file a SAR when transactions aggregating $5,000 or more are conducted at or through the bank and the bank or affiliate knows, suspects, or has reason to suspect that the transaction involves money laundering or other illegal activity, is designed to evade the Bank Secrecy Act or implementing regulations, or has no business or apparent lawful purpose or is not the type of transaction that the particular customer would normally be expected to engage in and the bank knows of no reasonable explanation for the transaction after examining the available facts. Federal Financial Institutions Examination Council, Bank Secrecy Act Anti-Money Laundering Examination Manual, Suspicious Activity Reporting-Overview. https://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_015.htm.  
103 Statement of Facts, fn. 3 supra, ¶¶ 80-81; Central Laborers v. Dimon, fn. 43 supra, ¶ 19.  
104 Statement of Facts, fn. 3 supra, ¶ 11.
$234 million.\textsuperscript{105} We believe the conclusion is inescapable that JPMC kept the 703 Account operational in the fall of 2008 so that JPMC could recover the monies it had invested in Madoff feeder funds – disregarding its legal obligations to the federal government and to its own customers in the process.\textsuperscript{106}

\textbf{JPMC’s loans to BLMIS in 2005-2006}

Madoff formed Bernard L. Madoff Investment Securities LLC (“BLMIS”) as a sole proprietorship in 2000 and thereafter operated the 703 Account under the name of BLMIS. On November 14, 2005, Madoff’s Controller called Richard Cassa and requested an immediate loan from JPMC of $95 million, to be secured by a bond that BLMIS\textsuperscript{107} held in another account, called the Geoserve Account. Cassa was told that Madoff needed the loan “to pay bills because they didn’t want to liquidate investments.”\textsuperscript{108} However, according to JPMC’s own records, the bond in the Geoserve Account had been received “free” from one of Madoff’s friends, Carl Shapiro, and was credited to BLMIS accounts held by Shapiro family members. Thus, Madoff was asking for a $95 million loan to be secured by collateral belonging to one of his customers. Madoff had “borrowed” the collateral and was paying Shapiro’s family members interest at the rate of 30 percent, although the prime rate at the time was between 7-8 percent. Despite the facially implausible economics of this transaction, on the very same day that the loan was requested, JPMC advanced $95 million to the 703 Account. JPMC charged

\textsuperscript{105} Id.
\textsuperscript{106} Id., ¶¶ 79-82.
\textsuperscript{108} Cassa Tr., fn. 7 supra, at 6342 lines 1-3.

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interest on the loan of $198,081.60 for November 2005, and $374,062.50 for December 2005.

Quickly thereafter, on January 18, 2006, Madoff asked JPMC for an additional $50 million to be secured by two more bonds from the Shapiro family, again deposited into the Geoserve Account. And five days later, again despite the facial implausibility of the economics of the transaction, JPMC deposited another $50 million into the 703 Account. Again, BLMIS paid the Shapiro family 30 percent interest on the bond and JPMC collected interest on the loans in the following amounts: $443,689.23 for January 2006; $552,057.30 for February 2006; $620,781.25 for March 2006; $625,564.23 for April 2006; and $668,862.85 for May 2006.

JPMC never performed a credit review on this transaction as required by its own policies. However, it collected over $3.4 million in interest in a seven-month period.\(^{109}\)

**Madoff’s Out of Focus “FOCUS” Reports.**

Madoff was required by law to submit quarterly financial reports to the SEC called FOCUS reports.\(^{110}\) And JPMC required that Madoff provide it with copies. It was Richard Cassa’s job, as the Madoff/BLMIS Sponsor, to review the FOCUS reports, along with BLMIS’ own financial statements, which he did from October 2001 on.\(^{111}\) And as noted above, Cassa signed certifications that he did not find any irregularities in the reports.\(^{112}\) Willfully submitting a false report to the SEC is a crime.\(^{113}\) And willfully signing a false certification for a federally insured financial

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\(^{109}\) *Picard v. JPMC*, fn. 3 *supra*, ¶ 258-267.


\(^{111}\) *Picard v. JPMC*, fn. 3 *supra*, ¶¶ 193-194; Cassa Tr. at 6350 line 17 – 6351 line 2.

\(^{112}\) *Picard v. JPMC*, fn. 3 *supra*, ¶ 191.

institution is also a crime.\textsuperscript{114} Yet, the FOCUS reports and financial reports contained numerous false statements that should have been obvious to Cassa.\textsuperscript{115} For example:

- The 2001 FOCUS reports did not disclose the Norman Levy transactions which constituted the vast majority of the transactions in the 703 Account in 2001. JPMC obviously knew about all these transactions.\textsuperscript{116}

- The FOCUS reports substantially under-stated BLMIS' cash positions at JPMC -- another fact that JPMC knew first-hand because it maintained the 703 Account and, on a nightly basis, JPMC swept funds from the 703 Account into overnight deposits for JPMC's own use. For reporting purposes, the funds in the 703 Account and the overnight deposits are considered “cash” and were visible and obviously noteworthy to JPMC. Cassa – or anyone else at JPMC – could have quickly and easily compared the “cash” reported by BLMIS to the SEC in the FOCUS Reports with the cash at JPMC. For example, the December 2006 FOCUS Report listed $4,882,332 as the amount of cash on hand whereas the actual cash on hand was $295,394,700 – an understatement of over $290 million. Yet, JPMC took no action to disclose these inconsistencies to law enforcement authorities.\textsuperscript{117}

- The December 31, 2005 FOCUS report failed to disclose the loan JPMC made to BLMIS and, in fact, contained the false representation that BLMIS had no loans outstanding. It also failed to disclose the pledge of collateral to Chase to secure the loan. Obviously, Cassa would have known the FOCUS report was false because Cassa, himself,

\textsuperscript{114} 18 U.S.C. § 1014; See also NY Penal Law Section 175:05; 175:10.
\textsuperscript{115} Picard v. JPMC, fn. 3 supra, ¶¶ 193-94.
\textsuperscript{116} Statement of Facts, fn. 3 supra, ¶ 24.
\textsuperscript{117} Picard v. JPMC, fn. 3 supra, ¶ 203.
had approved the loan.\textsuperscript{118} The December 31, 2005 FOCUS Report should have listed the Shapiro bond under “encumbered securities” which category was left blank.\textsuperscript{119}

Yet, Cassa testified at the Bonventre Trial that it was important to JPMC that the FOCUS reports and financial statements were accurate:

\begin{quote}
Q. And did it matter to JPMorgan in extending credit, among other things, that those FOCUS reports and audited financial statements were accurate?

A. Sure, yes.

Q. And we talked before about the bonds that were pledged as collateral; do you recall that?

A. Yes.

Q. Did it matter to JPMorgan that representations about those bonds were accurate?

A. Yes.\textsuperscript{120}
\end{quote}

\begin{itemize}
\item JPMC was in possession of at least seven FOCUS reports and annual audited reports filed prior to September 2006, none of which disclosed any commission revenue. This should have been another red flag to Cassa since BLMIS was the broker on investment advisory accounts and would have been expected to report revenue from commissions.\textsuperscript{121} JPMC was also in possession of at least nine FOCUS Reports and annual audited reports filed for periods including or after September 2006. These reports revealed a startling change in revenue. Although BLMIS reported no commission revenue for the fiscal year ended 2005, it reported commission revenue of $103,174,848 for the fiscal year ended 2007, which represented over 60 percent of total
\end{itemize}

\textsuperscript{118} Id., ¶¶ 257-259.
\textsuperscript{119} Id., ¶ 206.
\textsuperscript{120} Cassa Tr. at 6353 line 25 – 6354 line 9.
\textsuperscript{121} Picard v. JPMC, fn. 3 supra, ¶ 207.
BLMIS revenue for that year. The sudden shift by BLMIS to begin reporting commission revenue should have raised suspicions and prompted further investigation by JPMC as part of its ongoing know-your-customer duties. Instead, JPMC disregarded blatant misrepresentations in violation of its duty, under the Bank Secrecy Act, to monitor and understand the business of its customers.122

- In the December 2006 FOCUS Report, BLMIS reported $23,921,497 in securities transactions executed on an exchange and no commission revenue. JPMC knew that BLMIS’ trading strategy consisted of trading S&P 100 equities and options. Thus, JPMC should have expected BLMIS to report commissions relating to options and, when it saw none, it should have questioned Madoff about this.123

- The FOCUS reports failed to report the kind of financial activity an investment advisor would have.124 For example, the December 2005 FOCUS Report had no amounts recorded as “Receivables from customers” and “Payable to customers.” In addition, the credit and debit balance amounts in customer security accounts that form the basis for the computation for the reserve requirement were left blank.125 Indeed, none of the FOCUS Reports and Annual Audited Reports in JPMC’s possession—at least 15 in total—included customer receivables or customer payables.126

Now, these FOCUS Reports and financial statements were not just thrown in the waste basket when JPMC received them. On the contrary, folks at JPMC actually read the Reports, analyzed them, and prepared spreadsheets comparing the

122 Id., ¶ 208.
123 Id., ¶ 209.
124 Id., ¶ 210.
125 Id., ¶ 211.
126 Id., ¶ 212.
information in the Reports over a multi-year period.\textsuperscript{127} Cassa testified as follows at the Bonventre Trial:

\begin{quote}
Q. And why was JPMorgan keeping track of the information on Madoff Securities’ audited financial statements and FOCUS reports?

A. Well, typically, when the firms would – any firm would send us in financial information, the credit department would – what we would call spread the numbers, put them on the sheet and file them into the system.\textsuperscript{128}
\end{quote}

Is it possible to believe that Cassa, a Senior Officer of JPMC specifically tasked with overseeing the Madoff account, did not recognize that BLMIS was falsely reporting its financial condition to the SEC? Instead of proceeding against Cassa and possibly others for criminal violations of the Bank Secrecy Act, the government stipulated with JPMC that Cassa “had a limited and inaccurate understanding” of Madoff’s business (after being Madoff’s Sponsor for 15 years!) and that Cassa believed the 703 Account was primarily Madoff’s operating account used to pay rent and other routine expenses.\textsuperscript{129}

If you believe that one, let us show you a bridge we have for sale.

\textbf{JPMC’s Frenzy to Increase Profits in 2006-2008}

JPMC had a group called the “Equity Exotics & Hybrids Desk.”\textsuperscript{130} If you don’t work on Wall Street, this would seem to be a weird name. But that’s because you don’t earn the big bucks. People who work on Wall Street use this terminology as a euphemism to refer to an unconventional investment. The goal of the group was to

\footnotesize{\textsuperscript{127} Cassa Tr., fn. 7 supra, at 6351 lines 9 – 22.  
\textsuperscript{128} Id., at 6352 lines 3 – 9.  
\textsuperscript{129} Statement of Facts, fn. 3 supra, ¶ 20.  
\textsuperscript{130} Picard v. JPMC, fn. 3 supra, ¶ 59.}
make JPMC and its officers a lot of money, in part through persuading people to make investments in BLMIS feeder funds.\footnote{Id.}

In February 2006, Equity Exotics began working with Cassa to conduct due diligence on BLMIS feeder funds. Apparently, the folks at Equity Exotics thought Cassa knew something about BLMIS. They asked Cassa for the BLMIS FOCUS Reports and financial statements as part of their due diligence. James Coffman, who worked at the Chase Investment Bank where Madoff maintained the 703 Account and where Levy was provided with a private office,\footnote{Id.} suggested that his team review the FOCUS Reports to “assess quality and detail of regulatory FOCUS reports from the firm [because] we derive comfort knowing that regulatory reports are presented to and reviewed by SEC and exchanges, and firms can be penalized significantly if statements prove to be fraudulent or inaccurate.”\footnote{Picard v. JPMC, fn. 3 supra, ¶ 198.} Thus, at least Coffman knew the significance of the FOCUS reports and knew the criminal implications of a false certification that JPMC was not aware of any illegality with respect to BLMIS’ account.\footnote{Id.}

JPMC also knew, from inception, that its greatest risk was that Madoff was a Ponzi scheme. In a February 1, 2006 e-mail, a risk executive evaluating the Madoff derivatives proposal commented that “it seems to me the real systemic risk is that [Madoff] ends up being the next Refco and all their assets are frozen...”\footnote{Id.} Refco was a 2005 Ponzi scheme and it was on Coffman’s mind as well. In March 2006, Coffman

\footnote{James Coffman worked at the Investment Bank in the Credit Risk Management Subdivision of the Risk Management Division, which managed the creditworthiness of transaction counterparties. \textit{Picard v. JPMC}, fn. 3 supra, ¶ 67.}

\footnote{\textit{Picard v. JPMC}, fn. 3 supra, ¶ 198.}

\footnote{Id.}

\footnote{Id., ¶ 36.}
stated again that JPMC should scan the FOCUS Reports to ensure that BLMIS was not “another possible Refco.”  

Equity Exotics performed some due diligence on Madoff and found out he ran a billion dollar business like a five and ten cent store. Equity Exotics learned that Madoff’s auditor, Friehling & Horowitz, CPAs (“Friehling”), was a three-person firm whose sole office was in a storefront in a shopping center in Rockland County, New York. It appears that no one at JPMC had thought to check out Friehling before. That might be acceptable if the auditor is Price Waterhouse or Ernst & Young, but Friehling was hardly a household name. As the folks at Equity Exotics quickly discovered, Friehling was not registered with the Public Company Accounting Oversight Board and was not subject to peer reviews from the American Institute of Certified Public Accountants. The firm did not even have a website. One banker working in JPMC’s London office, Scott Palmer, noted that this was an “odd choice” and questioned whether such a small firm was competent to conduct an audit of an investment firm with “$650m in shareholder capital.”

As part of its due diligence, JPMC gathered information from Fairfield Greenwich Group (“FGG”), a group of Madoff feeder funds run by Walter Noel and his family in Greenwich, Connecticut. By February 2006, Bank personnel had visited FGG and noted some basic “concerns . . . not clear whether [FGG] has any discretion or control over the autopilot trading program…. how [did] the fund [make] money during times of

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136 Picard v. JPMC, fn. 3 supra, ¶ 199; Central Laborers v. Dimon, fn. 43 supra, ¶ 168.
137 Picard v. JPMC, fn. 3 supra, ¶ 135.
138 Id., ¶ 88.
139 Central Laborers v. Dimon, fn. 43 supra, ¶ 87; Picard v. JPMC, fn. 3 supra, ¶ 135.
market distress?... how did they manage to get better than 3M T-Bill returns?... For example, the S&P 100 Index [was] down 30%... and the Fund was able to generate over 6% returns.”

Despite these obvious red flags, JPMC invested approximately $343 million in Madoff “feeder funds,” that is, funds that sent investor money to BLMIS as a hedge for structured products issued by JPMC’s investment bank – the very branch of JPMC that allowed the Levy-Madoff check kiting for over 12 years. JPMC’s investments were sold as “derivative products” in 2006 and 2007, intended to provide investors with “synthetic exposure” to hedge funds or other equities without the investor making a direct investment in the fund itself. Again, these terms may seem confusing, but that’s because we don’t qualify to earn the big bucks the Wall Street folks earn

On November 11, 2006, Marco Bischof, who worked in the Credit Risk Management department, wrote to Equity Exotics about the lack of proper legal documentation for Madoff feeder funds called Lagoon, Hermes and Aurelia: “What continues to surprise me is the fact that after their 14 years in the business and [$1.5 billion in assets under management], we seem to be the first ‘investor’ spotting this lack of documentation around Lagoon and it’s [sic] upstream/downstream relationships.” The Equity Exotics officer responded that the key question was whether JPMC, as a firm, should even be doing business with Hermes and Aurelia. He explained: “They

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141 Picard v. JPMC, fn. 3 supra, ¶ 84.
142 Statement of Facts, fn. 3 supra, ¶ 33.
143 What this means is that customers were investing in funds that would guarantee them the same returns they would get by investing in Madoff.
144 Central Laborers v. Dimon, fn. 43 supra, ¶ 245; Picard v. JPMC, fn. 3 supra, ¶ 86.
...don’t run risk analysis and don’t have the know-how of how to do this....It doesn’t look pretty.”

By February 2007, JPMC had over $65 million in BLMIS-related products in the pipeline that were developed by Equity Exotics and structured to allow customers to collect returns tied to the returns of the BLMIS feeder funds. These products included a €5 million trade on Fairfield Sigma, two $25 million trades tied to Fairfield Sentry, and a $10 million trade on Thema, a Madoff feeder fund managed by Bank Medici, AG, an Austrian bank operated by Sonja Kohn that put together European investments in BLMIS.

With hundreds of millions of dollars in additional deals ready to close, some Bank personnel felt they needed to get more comfortable with JPMC’s exposure to Madoff. On February 15, 2007, James Coffman wrote, “I would classify [BLMIS feeder funds] as a single fund, and therefore assume it falls under the $100mm limit ... Without actually getting to do due diligence on Madoff, I don’t think we should consider going above that limit.” Yet, Bank personnel continued to structure additional Madoff-related products. In March 2007, Bank personnel were determining terms for deals on Fairfield Sentry, Fairfield Sigma, Herald Asset Management Corp. (“Herald”), the Rye Funds and Thema, all Madoff feeder-funds. By March 19, 2007, JPMC was

145 Id., ¶ 87.
146 Id., ¶¶ 91-92.
148 Picard v. JPMC, fn. 3 supra, ¶ 95.
149 Id., ¶ 93.
considering another deal with the Rye Funds that would have increased JPMC’s investment in Madoff-related products by $200 - $300 million.\footnote{Id., ¶ 94.}

**John Hogan Knew in June 2007 that Madoff was Rumored to be Operating a Ponzi Scheme**

John Hogan was Chief of Risk for the Chase Investment Bank.\footnote{JPMC & Co., Annual Report (Form 10-K) at 25 (Feb. 28, 2013) available at: \url{http://files.shareholder.com/downloads/ONE/3466453056x0xS19617-13-221/19617/filing.pdf}; \textit{Picard v. JPMC}, fn. 3 supra, ¶ 66.} Although counsel for JPMC denies this, according to Madoff, Hogan had spoken with him about the round-trip transactions and yet had taken no action to shut BLMIS down.\footnote{Telephone Interview with Bernard L. Madoff.} On June 15, 2007, Matt Zames, who also worked at the Investment Bank in New York, told Hogan that Madoff was rumored to be operating a Ponzi scheme.\footnote{\textit{Picard v. JPMC}, fn. 3 supra, ¶ 111.} Hogan immediately shared this information with his colleagues:

> For whatever its worth, I am sitting at lunch with Matt Zames who just told me that there is a well-known cloud over the head of Madoff and that his returns are speculated to be part of a Ponzi scheme— he said if we Google the guy we can see the articles for ourselves – Pls do that and let us know what you find.\footnote{Statement of Facts, fn. 3 supra, ¶ 4; \textit{Picard v. JPMC}, fn. 3 supra, ¶ 111.}

Hogan warned:

> you will recall that Refco was also regulated by the same crowd [SEC, NYSE, NASD] and there was noise about them for years before it was discovered to be rotten to the core. Hopefully this is not the case here but given Matt’s view, I think we owe it to ourselves to investigate further.”\footnote{\textit{Picard v. JPMC}, fn. 3 supra, ¶ 112.  Zames is not a man to be trifled with. In 2013, at the age of 43, Zames was the Chief Operating Officer of JPMC with compensation for 2013 of $17,400,000. Bloomberg Businessweek, \textit{JPMC & Co (JPM: New York)} \textit{Matthew E. Zames}, Executive Profile*.}
Despite Hogan’s comments, Equity Exotics’ further research on Madoff appears to have been limited to a Google search with no follow-up.156 The head of JPMC’s Broker/Dealer Group asked one of her colleagues to “please have one of the juniors look into this rumor about Madoff that Hogan refers to below.” The junior forwarded an article about a proposed change in SEC regulations that would eliminate a loophole in the regulations governing broker/dealers. He speculated the loophole allowed broker/dealers to run “a ‘[P]onzi’ scheme of sorts.”157 But Zames told a colleague that he believed his recollection was of a Wall Street Journal article from 2002 which eliminated the possibility that the analyst’s explanation based on a recently-proposed regulatory change was correct.158

Yet, Hogan took no steps to shut BLMIS down or to terminate JPMC’s business with Madoff feeder funds, even though JPMC was able to obtain “little additional insight as to the source of [Madoff’s] returns” and even though Madoff refused to meet with JPMC personnel to answer their questions. And once again, neither Hogan, nor anyone else at JPMC made a report about Madoff to JPMC’s anti-money laundering personnel or filed a suspicious activity report.159

On March 30, 2007, the folks at Equity Exotics arranged with Richard Cassa to set up a conference call among Madoff, Cassa, and members of JPMC’s Risk

http://investing.businessweek.com/research/stocks/people/person.asp?personId=13156813&ticker=JPM.
156 Picard v. JPMC, fn. 3 supra, ¶ 113. The government stipulated that no one at JPMC located the Barron’s article, although a junior Bank employee conducted an unsuccessful search. Statement of Facts, fn. 3 supra, ¶ 47.
157 Id.
158 Picard v. JPMC, fn. 3 supra, ¶ 114.
159 Statement of Facts, fn. 3 supra, ¶ 32.
Management Division.160 Even though the products JPMC was structuring would have led to increased investments in the BLMIS feeder funds, and even though JPMC had serviced the 703 Account for 20 years at that point, Madoff explained on the phone call that he disliked banks structuring products on his strategy and he made it clear that he was not willing to engage in “full due diligence.”161

On April 11, 2007, representatives of JPMC met with officers of another Madoff feeder fund, Tremont Group Holdings (“Tremont”). Shortly after the meeting, JPMC sent Tremont a list of additional questions, many of which were related to the counterparties to BLMIS’ over-the-counter [“OTC”] options trading. JPMC asked whether BLMIS entered into the trading agreements on behalf of Tremont or in BLMIS’ own name and whether Tremont knew who the counterparties were. Tremont responded that, even though Tremont was the party entering into these agreements, it did not know who the counterparties were. JPMC never verified any of Tremont’s responses with third parties, or questioned the source of Tremont’s information about the counterparties.162

Despite these dissatisfying responses, Equity Exotics put together a “Transaction Approval Package” which stated that “We will be receiving full transparency on the program via trade statements from BLM, albeit on a delayed basis, and will be able to verify our risk analysis on an ongoing basis” and the “liquidity of the underlying portfolio, even assuming close to $15 billion in [assets under management] at Madoff, should be adequate to fully unwind the program without catastrophic slippage.”163

160 Picard v. JPMC, fn. 3 supra, ¶ 96.
161 Id., ¶ 97.
162 Id., ¶ 99.
163 Id., ¶ 100.
Equity Exotics requested approval from JPMC’s Hedge Fund Underwriting Committee (“HFUC”) of “an overall BLM Strategy risk limit” that would carry a maximum potential exposure of $1.32 billion. The proposal was submitted with a certain sense of urgency because, at the time it was submitted, Equity Exotics had already arranged for $540 million worth of BLMIS transactions to close at the end of June 2007.

The HFUC met on June 15, 2007. The written materials submitted to the HFUC repeatedly stated that “the main risk this trade poses is systemic fraud risk at the BLM [i.e., Madoff] level”, . . . “[c]learly, our largest risk is that of wholesale fraud at BLM that would strip the firm of any real assets (balance sheet or customer).”

Again, Hogan noted that

Mr. Madoff will not allow us to conduct any due diligence on him directly and we are forced to rely on the diligence of third parties.... I told Bobby [Magee] and Neil [McCormick] we don’t do $1 bio ‘trust me’ deals and we need to do our own due diligence on Madoff or this wasn’t going to happen.

But the only further “diligence” that appears to have been done was that Hogan requested and received additional information about Madoff, including information

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164 Statement of Facts, fn. 3 supra, ¶ 38; Picard v. JPMC, fn. 3 supra, ¶ 167.
165 Picard v. JPMC, fn. 3 supra, ¶ 110.
166 Statement of Facts, fn. 3 supra, ¶ 40.
167 Id., ¶ 42.
168 Jonathan “Bobby” Magee ran Equity Exotics during 2007 and 2008 when the group was structuring and issuing products related to BLMIS feeder funds. Andrea De Zordo, Neil McCormick, and Dimitrios Nikolakopoulos all worked at Equity Exotics under Magee’s leadership. While McCormick and Magee are no longer employed by JPMC, De Zordo and Nikolakopoulos continued to work for the Bank as of December 2010. Picard v. JPMC, fn. 3 supra, ¶ 60.
169 Id., ¶ 115.
from JPMC’s reviews of BLMIS; and then, on June 27, 2007, Hogan had a phone call with Madoff, following which Hogan permitted $250 million worth of “trust me” deals. Hogan explained that he was approving $250 million of total risk exposure to include both JPMC’s existing approximately $105 million in exposure as well as exposure generated through new transactions by the Investment Bank. Based on the decision to set risk exposure at $250 million, the Equity Exotics Desk ended its discussions related to other potential Madoff derivative transactions.

In the fall of 2007, JPMC hired a “Head of Due Diligence” for the Equity Exotics Desk. On his first day on work, he was asked to review the Madoff feeder fund positions and offer any insight into how Madoff was able to generate his purported returns. The Head of Due Diligence was unable to explain the returns and learned that the Equity Exotics Desk was no longer interested in issuing products linked to Madoff’s returns.

Michael Cembalest, the Chief Investment Officer in JPMC’s Global Wealth Management department, heard Madoff speak at a conference in October of 2007 where Madoff stated: “In today’s regulatory environment, it’s virtually impossible to violate rules.” Obviously unimpressed, Cembalest commented that this type of attitude was the reason “why hedge-fund due-diligence is more than just looking at volatility and return patterns.”

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170 Statement of Facts, fn. 3 supra, ¶¶ 48-49. For some reason, in the Statement of Facts, the government concealed Hogan’s identity, referring to him only by title, i.e., “CRO” or Chief Risk Officer. The Trustee’s complaint names Hogan. See Picard v. JPMC, fn. 3 supra, ¶¶ 111-16.
171 Statement of Facts, fn. 3 supra, ¶ 49.
172 Id., ¶ 51.
173 Picard v. JPMC, fn. 3 supra, ¶ 73.
174 Id., ¶ 164.
In January 2008, BLMIS filed with the SEC an Amended Uniform Application for Investment Adviser Registration which represented, among other things, that BLMIS had 23 customer accounts and assets under management of approximately $17.1 billion. In actuality, in January 2008, BLMIS had 4,900 active customer accounts and purported assets under management of approximately $65 billion.\(^{175}\) **JPMC could not have missed the falsity:** it cleared checks from and to more than 5,000 BLMIS customers.

On June 23, 2008, after reviewing e-mails about the failure of one of the feeder funds to provide information about how Madoff invested money and the departure of various feeder fund employees, a senior Equity Exotics banker e-mailed the head of the Equity Exotics Desk: “How much do we have in Madoff at the moment? To be honest, the more I think about it, the more concerned I am.”\(^{176}\) By June 2008, JPMC had approximately $150 million invested directly in Herald, in order to hedge JPMC’s exposure on its structured products tied to Herald’s returns.\(^{177}\) When JPMC learned that its main contact at Bank Medici, which serviced Herald, was departing, JPMC scheduled a meeting with his replacement, Andreas Schindler, and a handful of others from Bank Medici. The JPMC team was sent to Vienna on July 7, 2008, to perform a “very thorough refresh” of its initial due diligence.\(^{178}\) Following this meeting, JPMC downgraded Herald to the lowest risk rating of “5-E.”\(^{179}\) Scott Palmer directed that JPMC verify that Herald’s assets actually existed at BLMIS. In hopes of gaining more

\(^{175}\) *Id.*, ¶ 46.
\(^{176}\) *Statement of Facts*, fn. 3 *supra*, ¶ 42; *Central Laborers v. Dimon*, fn. 43 *supra*, ¶ 296.
\(^{177}\) *Picard v. JPMC*, fn. 3 *supra*, ¶ 123.
\(^{178}\) *Id.*
\(^{179}\) *Picard v. JPMC*, fn. 3 *supra*, ¶ 124.

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transparency on BLMIS, JPMC scheduled a follow-up meeting for July 10, 2008 with Sonja Kohn, the head of Bank Medici and a long time friend of Madoff.\textsuperscript{180}

Following the July 10, 2008 meeting, JPMC affirmed Herald’s recently downgraded due diligence rating. JPMC found that Kohn did not provide credible responses to a number of questions related to the managed accounts Bank Medici had with BLMIS. Given that Kohn was the only person at Bank Medici to have “any relationship of substance” with Madoff or BLMIS, it should have been very troubling to JPMC that she could not provide adequate responses to its questions.\textsuperscript{181}

In September and October 2008, in light of its increased hedge fund exposure in the wake of JPMC’s acquisition of Bear Stearns and in view of the deteriorating economy, JPMC commenced an “exposure health check” on all BLMIS feeder funds in which it had invested or in which it had structured products. Scott Palmer’s team contacted the managers of numerous feeder funds, as well as a number of fund custodians.\textsuperscript{182} Now, for the first time, JPMC exhibited a sense of real urgency, requesting detailed information about various BLMIS feeder funds.\textsuperscript{183}

Anticipating that the funds would be less than forthcoming, JPMC requested the fund managers’ availability for follow-up questions.\textsuperscript{184} As before, the feeder funds found creative ways to dodge questions about their knowledge of Madoff and BLMIS.\textsuperscript{185}
Although, in April 2008, Sonja Kohn had promised to share reports with JPMC, four months later, she still had not done so.\textsuperscript{186}

Things finally hit the boiling point in September 2008 but not because of the threat of fraud – a risk JPMC had recognized from inception – but rather because of the threat of violence. JPMC had sold its Madoff-structured financial products to Aurelia Finance. During a call with Aurelia made by people at the Equity Exotics Desk in London, a JPMC officer said that JPMC was going to be redeeming from Lagoon.\textsuperscript{187} The Aurelia Finance representatives made it very clear they didn’t want any redemptions and, at two points during the conversation, they threatened the JPMC officer by referencing “Colombian friends” who could “cause havoc” and would know “where to find you.”\textsuperscript{188}

This was too much for JPMC. It sent a letter to the United Kingdom’s Serious Organised Crime Agency (“SOCA”) conveying the threats. In the letter, JPMC admitted that it had had doubts about BLMIS’ legitimacy for two years:

\textbf{Ultimately, the bank reached the same conclusion it had reached during its initial due diligence efforts in 2006 and 2007; JPMorgan was unable to obtain look through transparency at the Feeder Fund level, did not have access to the identities of the counterparties to Madoff’s OTC options, did not fully understand the relationship between the broker-dealer and the investment advisor, and noted the fact that the custodians did not actually hold the assets.}\textsuperscript{189} [Emphasis added.]

Thus, JPMC admitted that it had reason to know, in 2006, that Madoff was not operating a legitimate business. Nonetheless, it waited two years to inform British

\textsuperscript{186} Id., ¶ 131.
\textsuperscript{187} Id., ¶ 129; Statement of Facts, fn. 3 supra, ¶ 53.
\textsuperscript{188} Picard v. JPMC, fn. 3 supra, ¶ 143.
\textsuperscript{189} Id., ¶¶ 144-45.
authorities, never told United States authorities (until after Madoff was arrested), and never told its own customers who had invested in BLMIS.

Palmer met with Sonya Kohn and Amit Vijayvergiya, the Head of Risk Management at FGG. When Palmer asked Vijayvergiya how BLMIS’ trade information was put into the order entry system, Vijayvergiya told Palmer that “he did not know and did not ask.” From this conversation, Palmer concluded that the BLMIS feeder funds knew very little about Madoff’s operations and were extremely reluctant to push Madoff for answers. Following this meeting, JPMC finally acknowledged that none of the funds knew who the counterparties were to their own options contracts and that they relied solely on Madoff’s oral promises.

In October 2008, Tom Petters was arrested for operating a $3.5 billion Ponzi scheme. It sent shock waves throughout the worldwide financial community. Dixon, who worked in JPMC’s London office, drew parallels between Petters—a respected businessman, pillar of his church and philanthropist—and Madoff, pointing out that they could not just rely on a long history and trust in an investment adviser, a mistake that Petters’ investors were now regretting. Finally, more than 20 years after JPMC began providing banking services to Madoff and Levy, Dixon suggested with respect to Madoff’s three person accounting firm, “Let’s go see Friehling and Horowitz the next time we’re in NY . . . to see that the address isn’t a car wash at least.”

On October 10, 2008, JPMC submitted requests to redeem approximately $13 million from Fairfield Sentry and €15 million from Fairfield Sigma. Later that month,
JPMC requested redemptions of $154 million from Herald and £72 million from Fairfield Sigma.\textsuperscript{195} In a document sent to SOCA, JPMC explained that it had chosen to redeem its interests in BLMIS feeder funds because it suspected BLMIS was not operating a legitimate business.\textsuperscript{196}

On October 16, 2008, an Equity Exotics analyst wrote a lengthy e-mail to the head of the Equity Exotics Desk and others summarizing his conclusions (the “October 16 Memo”). He described the inability of JPMC or the feeder funds to validate Madoff’s trading activity or custody of assets. He noted that the feeder funds were audited by major accounting firms and he questioned Madoff’s “odd choice” of a small, unknown accounting firm. He reported that personnel from one of the feeder funds “said they were reassured by the claim that FINRA and the SEC performed occasional audits of Madoff,” but that they “appear not to have seen any evidence of the reviews or findings.” He also questioned the reliability of information provided by the feeder funds. For example, he reported that personnel at one feeder fund “seem[ed] very defensive and almost scared of Madoff. They seem unwilling to ask him any difficult questions and seem to be considering his ‘interests’ before those of the investors. It’s almost a cult he seems to have fostered.” He wrote that there was both a “lack of transparency” into BLMIS and “a

\textsuperscript{195} Id., ¶ 147.
\textsuperscript{196} Id., ¶ 144. The Equity Exotics Desk also held through the time of Madoff’s arrest a gap note providing the Bank with $5 million in protection if the value of a Madoff feeder fund collapsed completely. In a November 28, 2008 e-mail, an Equity Exotics banker declined a third party’s request to buy this protective gap note from the Bank and described the gap note as being “as of today... very valuable” to the Bank. Statement of Facts, fn. 3 supra, ¶ 67.
resistance on the part of Madoff to provide meaningful disclosure.” The memo concluded:

There are various elements in the story that could make us nervous,” [including the fund managers’] “apparent fear of Madoff where no one dares to ask any serious questions as long as the performance is good.” . . . I could go on but we seem to be relying on Madoff’s integrity (or the [feeder funds’] belief in Madoff’s integrity) and the quality of the due diligence work (initial and ongoing) done by the custodians - - - to ensure that the assets actually exist and are properly custodied. If some[thing] were to happen with the funds, our recourse would be to the custodians and whether they had been negligent or grossly negligent.

The Memo was forwarded to JPMC’s in-house and external counsel, as well as to JPMC’s London-based Head of Anti-Money Laundering for the European region, who also served as JPMC’s designated Bank Secrecy Act Officer for the region (the “BSA Officer”). Following consultation with legal counsel, on October 29, 2008, the BSA Officer filed with SOCA a suspicious activity report, pursuant to the terms of the United Kingdom’s Proceeds of Fraud Act (the “U.K. Report”). The U.K. Report stated that JPMC’s:

- concerns around Madoff Securities are based (1) on the investment performance achieved by its funds which is so consistently and significantly ahead of its peers year-on-year, even in the prevailing market conditions, as to appear too good to be true meaning that it probably is; and (2) the lack of transparency around Madoff Securities trading techniques, the implementation of its investment strategy, and the identity of its OTC [over the counter] options counterparties; and (3) its unwillingness to provide helpful information. As a result, JPMCB has sent out redemption notices in respect of one fund, and is preparing similar notices for two more funds.

197 Statement of Facts, fn. 3 supra, ¶ 55; Central Laborers v. Dimon, fn. 43 supra, ¶ 30.
198 Statement of Facts, fn. 3 supra, ¶¶ 55-56; Central Laborers v. Dimon, fn. 43 supra, ¶ 31.
199 Statement of Facts, fn. 3 supra, ¶ 58.
The UK Report explained that JPMC had undertaken to redeem its exposure to Madoff which totaled $150 million from one fund and €200 million from another.\(^{200}\)

Despite the fact that senior Bank officers in New York knew about the filing of the UK Report, JPMC did not file a similar report with the federal government, as required by the Bank Secrecy Act.\(^{201}\) Nor did the New York office inform its own customers who had invested through BLMIS of their concerns about Madoff’s legitimacy. Instead, JPMC allowed the 703 Account to continue to operate while JPMC raced to liquidate its own positions. JPMC used the month of November 2008 to divest itself of all of its BLMIS-related investments. In other words, JPMC knew Madoff was a thief and quietly pulled out its money, leaving its customers to twist slowly in the wind.\(^{202}\) Between October 16, 2008 and Madoff’s confession on December 11, 2008, approximately $3.5 billion was withdrawn by Madoff from the 703 Account and paid over to redeeming investors, like JPMC, leaving the account with just $234 million in cash on the day of Madoff’s arrest.\(^{203}\)

On November 10, 2008, an anti-money laundering compliance officer in London wrote an e-mail asking “What other relationships, if any, does JPM have with either [a particular distributor] or Madoff Investment Securities?” A markets compliance officer responded, copying the U.S.-based Senior TB Compliance Officer and noting that JPMC had “lodged a report with the relevant U.K. authority” and that the Global Head of Compliance was “aware” of the report. The email also stated that, while U.K. personnel would examine JPMC’s relationship with Madoff in that

\(^{200}\) Id., ¶60.
\(^{201}\) Id., ¶70.
\(^{202}\) Id., ¶¶ 79-82.
\(^{203}\) Id., ¶82.
jurisdiction, “given Madoff is a U.S. broker dealer we may undertake significant business in the U.S. I’ve copied [the Senior TB Compliance Officer] to keep him apprised.” No JPMC personnel in the United States took any action following this email to investigate JPMC’s relationship with BLMIS or to report Madoff to law enforcement authorities in the United States.\(^{204}\)

On November 19, 2008, the BSA Officer filed a second report with SOCA in the United Kingdom on behalf of JPMC. This report alerted British regulators to a proposal by JPMC to buy back certain of the Madoff-linked notes from investors linked to the distributor who had referenced “Colombian friends” and stated that “[c]learly we do not wish to make the legal offer if there is any risk that we could not meet our obligations if SOCA refused consent at a later date, on the basis that JPM could be considered party to laundering the proceeds of crime.”\(^{205}\)

**The Post-Mortems**

On December 11, 2008, Madoff confessed. He was arrested and the world stood aghast – except for the folks at JPMC. On learning of the arrest, the Head of Due Diligence e-mailed the author of the October 16 Memo: “Can’t say I’m surprised, can you?” The analyst replied: “No”.\(^{206}\)

On the same day, McCormick, who worked at Equity Exotics, congratulated himself:

\[
\ldots \text{We... got this one right at least – I said it looked too good to be true on that call with you in Sep.}\] \(^{207}\)
And Hogan, who should have shut Madoff out of JPMC years earlier, congratulated himself that JPMC had limited its exposure. “Bobby F-ing Magee wanted to do $1bio of [BLMIS-related products] and we made it $200mio – thank God.”208 Not a word of consideration for all of the victims of Madoff’s fraud; not even for the victims who were JPMC clients. Indeed, JPMC congratulated itself that, while many of its Private Bank customers (to whom JPMC owed a fiduciary duty) had invested with BLMIS, “luckily we didn’t place any there.”209 An officer of the JPMC Private Bank similarly noted that “a lot of our Private Bank customers have invested with Madoff but luckily we didn’t place any there.”210

One officer, Andrew Cox211, admitted that JPMC violated its own policies in dealing with Aurelia, one of the Madoff feeder funds:

This document[ation] alone, irrespective of what’s happen [sic], is probably a fireable offence based on my own KYC training.

Marco told me last night he objected to dealing with Aurelia as there was no transparency, which maybe [sic] the reason for the statement in the document. I looked at Aurelia’s website www.aurelia.com and they are prohibited from dealing with customers from US, UK, Switzerland and Bermuda. Now that’s a red flag!212

Cox was honest enough to admit a knowing and intentional violation of the Bank Secrecy Act. Yet, despite Cox’ admission—an admission which was known to U.S. Attorney Preet Bharara—the Government allowed JPMC’s officers to escape criminal

208 Central Laborers v. Dimon, fn. 43 supra, ¶ 333.
209 Id., ¶ 337.
210 Statement of Facts, fn. 3 supra, ¶ 83.
211 Andrew Cox worked out of London in Global Credit Risk and Client Operations for Europe, the Middle East and Africa. Central Laborers v. Dimon, fn. 43 supra, ¶ 90.
212 Picard v. JPMC, fn. 3 supra, ¶¶ 154-159; Central Laborers v. Dimon, fn. 43 supra, ¶ 334.

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punishment by stipulating that JPMC had simply not been “diligent” in complying with the Bank Secrecy Act. Is it possible that Preet Bharara forgot that our criminal justice system is premised on the belief that criminal punishment plays a fundamental role in deterring others from committing similar crimes? Or is it that our government does not place any importance on protecting average citizens from criminals who work for major financial institutions?

One officer summarized JPMC’s knowledge of the scam and fear that its knowledge would be revealed following Madoff’s arrest. In words reminiscent of convicted Watergate conspirator John Erlichman telling White House counsel John Dean to “deep six” some incriminating evidence, this JPMC officer stated in reference to the June 15, 2007 meeting agenda for the HFUC where Equity Exotics requested approval to increase JPMC’s risk limit for BLMIS-related transactions to over $1 billion: “Perhaps best this never sees the light of day again!!”\(^\text{213}\) Of course, Erlichman and Dean went to prison. No one at JPMC did.

We believe the conclusion is inescapable that JPMC knew that Madoff was a crook from at least 1996 on but refused to close him down because they made so much money from his account. The final proof of this fact is that the London branch of JPMC filed a suspicious activity report about Madoff with the British government, but the head of the New York anti-money laundering department never even bothered to speak to the UK people about the report they filed and JPMC did not file a suspicious activity report in the United States until after Madoff was arrested.\(^\text{214}\) (One can’t help but wonder who the genius was behind that decision.)

\(^{213}\) *Picard v. JPMC*, fn. 3 supra, ¶ 159.

\(^{214}\) Statement of Facts, fn. 3 supra, ¶ 77, 85.
On December 19, 2008, JPMC held a meeting at which two officers presented a “postmortem of the Madoff transactions.” They provided a chronology of the events surrounding JPMC’s investments in BLMIS. They began by explaining how Equity Exotics had requested approval from the HFUC to increase JPMC’s risk limit for Madoff-related transactions to over $1 billion – a request that “far exceeded the . . . approved single HP limit of $100mm.” They then recounted how a conference call with Madoff had been arranged in an attempt to gather due-diligence information, but during the call Madoff “clearly expressed his dislike of doing structured products on his strategy and would not accommodate any direct due diligence on his firm.”

The minutes for the December 19, 2008 meeting indicated that “[g]iven the red flags and lessons learned, the group agreed that going forward we should not do business with any client or counterparty – either directly or indirectly – who will not provide basic due diligence, without exception.” It is impossible to believe that it took Madoff to teach one of the world’s largest financial institutions this basic precept that community bankers learn on their first day of work.

Outside of the 12 people working for Madoff in the investment advisory business, probably the only people in the world who had access to the fact that Madoff maintained approximately 5,000 different accounts for investment advisory customers including charities, foundations, universities, corporate pension plans, and individual IRA accounts were the people at JPMC. JPMC’s personnel had observed, over a 20-year period, precisely how Madoff used the 703 Account, receiving checks totaling billions of dollars from over 5,000 different customers, transferring billions of dollars to Madoff’s

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215 Picard v. JPMC, fn. 3 supra, ¶¶ 166-67; Central Laborers v. Dimon, fn. 43 supra, ¶¶ 342-43.
216 Picard v. JPMC, fn. 3 supra, ¶ 171.
friends like Norman Levy and transferring billions of dollars overseas. But just like BLMIS’ 12 employees, the folks at JPMC concealed this information in order to allow Madoff’s fraud to continue and enrich themselves in the process. BLMIS’ employees have been prosecuted and convicted. The folks at JPMC have not even had to disgorge their bonuses. God bless America.

In our next chapter, we will give you the facts necessary for you to draw your own conclusions as to why Eric Holder and Preet Bharara took a dive in the prosecution of the bankers at JPMC.

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Chapter 3
All in the Family

We promised to explain to you why Eric Holder and Preet Bharara would not enforce the criminal laws of this country against the folks at JPMC. The answer, in our view, is: follow the money. Eric Holder’s boss is President Obama, who received approximately $850,000 from the folks at JPMC for his 2008 Presidential campaign.¹ That sounds like enough to buy a bunch of get-out-of-jail-free cards and, in fact, nobody from JPMC was indicted, lost his job, or even had to disgorge his bonuses. But think about it: this makes sense: After all, the victims of JPMC’s dishonesty are not in a position to match such a contribution. And if people who violate the law have to disgorge their bonuses, they’ll have less money to contribute in the future. So what can we expect?

As to Preet Bharara, his loyalty is to Senator Charles Schumer, for whom he served as Staff Director and then as Chief Counsel.² Schumer recommended to President Obama that Bharara be appointed U.S. Attorney for the Southern District of New York – an appointment Bharara received in August 2009.³ Thus, the decision whether to prosecute criminal bankers following the 2008 global financial collapse was

¹ Data taken from The Center for Responsive Politics (OpenSecrets.org). According to OpenSecrets: “The organizations themselves did not donate, rather the money came from the organizations’ PACs, their individual members or employees or owners, and those individuals' immediate families. Organization totals include subsidiaries and affiliates.” OpenSecrets.org Center for Responsive Politics, Barack Obama (D) Top Contributors, (Mar. 25, 2013), http://www.opensecrets.org/pres08/contrib.php?cycle=2008&cid=N00009638

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JPMadoff: The Unholy Alliance between America’s Biggest Bank and America’s Biggest Crook

in the hands of Bharara/Schumer. How convenient for Senator Schumer’s major
supporters who are, you guessed it, all the folks at JPMC and all of the other Wall Street
banksters (that is, criminal bankers), and the law firms that represent them. Is this all
coincidental? Read the facts and decide for yourself whether we should be surprised
that there has not been a single prosecution of a bankster since Bharara’s appointment.
Wall Street brought the global economy to its knees in 2008, causing consumer losses of
trillions of dollars.4 And yet no one has gone to jail. Now that’s what we call democracy!
And if, as Schumer is advocating, Bharara is our next Attorney General, we can
anticipate another period of saintly tolerance for banksters – and continuing fraud on
the consumers they victimize.5

In our effort to follow the money, we discuss the role of several different people
and institutions, some of which may not be familiar to you. But join us on this survey of
how money impacts Congress, the SEC, and the Department of Justice. In the process,
you will get a glimpse of the role that some major firms play in the process of purchasing
and selling political influence. We put under the factual microscope one New York law
firm that successfully represented the family of Jeffry Picower, who realized the lion’s
share of profits from Madoff’s crimes, and got to keep them, thanks (we believe) to his
lawyers’ political contributions to Senator Schumer. It may seem, as you read, that the
various sections of this chapter are not related, but they are: they all tie back to political
contributions to Senator Schumer and his relationship with Preet Bharara.

Now, again, we urge you to reach your own conclusions. Certainly, if the
government and JPMorgan Chase would release all of their documents relating to

5 Empty Wheel, Eric Holder Resigns, Will Likely Go Back to Representing Banks at Covington and
Burling, (Sept. 25, 2014), http://www.emptywheel.net/tag/preet-bharara/

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Madoff so that the truth could come out, perhaps we would come to some other conclusion as to why Eric Holder and Preet Bharara took a dive when it came to holding people at JPMorgan Chase liable for their illegal conduct. But the government won’t release the documents and, in the absence of such evidence, we lay out the conclusions we have reached.

Is Congress for sale?

We all know that money doesn’t buy happiness. But it can surely buy Congress. It takes a lot of money to get a piece of legislation enacted, but history shows that money will do the trick. There is one recent example which reflects just how expensive Congressional favors can be. WilmerHale is a prominent Washington, D.C. law firm which has a substantial lobbying practice for its clients. However, in 2001 something happened which made WilmerHale need lobbying services for itself.

The FDA had approved the new drug application for Angiomax, a drug owned by The Medicines Company (“MDCO”), at 5:38 p.m. on Friday, December 15, 2000. After the approval, MDCO asked WilmerHale to file for a patent term extension based upon the delay in the regulatory approval process. Unfortunately, WilmerHale blew the deadline for filing by one day. They didn’t file the application until February 14, 2001, just past the 60-day period allowed in the statute. As a result, the Patent Office refused to consider the application.

In February 2011, WilmerHale and its malpractice insurers agreed to pay MDCO $18 million for past expenses resulting from their slip-up and agreed to make available an additional $214 million in case the generic version of Angiomax went on the market.

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in the United States prior to June 2015 as a result of the patent not being granted or being held valid. The $18 million reportedly covered the expenses associated with litigation against the Patent Office and “lobbying” expenses. Thus, altogether, WilmerHale was facing a loss of $232 million as a result of this one-day slip-up.

The “lobbying” expenses paid off. On September 16, 2011, the “America Invents Act” (the “AIA”) was signed into law by President Obama. It contained a special provision to resolve WilmerHale’s malpractice exposure. The special provision states that, if permission for a product is transmitted after 4:30 P.M. Eastern Time on a business day, or is transmitted on a day that is not a business day, “the product shall be deemed to receive such permission on the next business day.” Further, although most of the law’s provisions did not go into effect for one year, the WilmerHale provision became effective immediately with respect to any patent extension “that is pending on, that is filed after, or as to which a decision regarding the application is subject to judicial review on, the date of the enactment of this Act.”

Now, that was a dollar well spent for WilmerHale! Or rather $18 million well spent. Of course, when you have a $232 million exposure, $18 million for litigation and lobbying expenses is not a problem. And we should not be surprised that, in my country ‘tis of thee, Congress often enacts legislation for those who can pay for it. Indeed, Congress enacted legislation introduced by Senator Schumer to allow the banksters to avoid paying royalties on patents, approved by the United States Patent Office, which were owned by DataTreasury Corporation of Plano, Texas, for processing digital copies of

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of checks.® Apparently, the banksters felt it was economically inconvenient to pay
DataTreasury what it was legally entitled to. It makes you think there’s nothing that
money can’t buy in this country!

**Is the SEC for sale?**

In 2013, when Robert Khuzami left his job as Director of the SEC Division of
Enforcement, he received a job offer from, you guessed it, WilmerHale. However, he
decided to go with the Chicago-based law firm of Kirkland & Ellis, where he was
guaranteed a compensation package in excess of $5 million a year and could represent
the companies that had become enamored of him when he was at the SEC.® Khuzami’s
move was similar to that of Stephen Cutler who had been Director of the Division of
Enforcement at the SEC from October 2001 to June 2005, when he joined
WilmerHale.® But Cutler’s stay at WilmerHale was short-lived. Cutler waited one year
and four months to join JPMorgan Chase as General Counsel.® And, voila, Cutler
became a very rich man indeed. According to JPMorgan Chase, in just the last three
years, Cutler has had the following stock transactions: He exercised stock options
totaling $14,629,000 in value; he sold $7,656,638 of stock; and he has new equity

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9:06PM), [http://dealbook.nytimes.com/2013/07/22/a-legal-bane-of-wall-street-switches-sides/?_php=true&_type=blogs&_r=0](http://dealbook.nytimes.com/2013/07/22/a-legal-bane-of-wall-street-switches-sides/?_php=true&_type=blogs&_r=0)
10 WilmerHale, *Former SEC Enforcement Director, Stephen M. Cutler, to Join Firm*, WilmerHale
11 Bloomberg Businessweek, *JPMorgan Chase & Co. Stephen M. Cutler, Executive Profile*,
[http://investing.businessweek.com/research/stocks/people/person.asp?personId=23278257&ticker=JPM](http://investing.businessweek.com/research/stocks/people/person.asp?personId=23278257&ticker=JPM)
grants of $18,292,715.\textsuperscript{12} Doesn’t it make you proud to realize how handsomely we compensate public servants in this country?

So do you think that, somehow, some way, some people at the SEC compromise their integrity in order to pander to the country’s banksters or to the Senators to whom they contribute? We are not the first people to suggest that the SEC's revolving door is responsible for the failure of the SEC to fulfill its mandate. According to the 60-page study prepared by the Project on Government Oversight (“POGO”), called "Dangerous Liaisons: Revolving Door at SEC Creates Risk of Regulatory Capture," the revolving door "blurs the lines between one of the nation’s most important regulatory agencies and the interests it regulates."\textsuperscript{13} POGO found that:

Former employees of the . . .SEC routinely help corporations try to influence SEC rulemaking, counter the agency’s investigations of suspected wrongdoing, soften the blow of SEC enforcement actions, block shareholder proposals, and win exemptions from federal law.\textsuperscript{14}

The fact that the SEC could be for sale may be shocking to people who don’t have familiarity with the securities industry but it is business as usual for those who do. A study of enforcement proceedings by the SEC found that “politically connected firms on average are less likely to be involved in SEC enforcement actions and face lower penalties if they are prosecuted by the SEC. Contributions to politicians in a strong

\begin{itemize}
  \item \textsuperscript{12} EquilarAtlas, Stephen M. Cutler General Counsel at JPMorgan Chase & Co., \url{http://people.equilar.com/bio/stephen-cutler-jpmorgan-chase/salary/186636#_VCSRPyldW8o}
  \item \textsuperscript{13} Project on Government Oversight, The SEC's Revolving Door, Featured Investigations, \url{http://www.pogo.org/our-work/reports/sec-revolving-door.html}
  \item \textsuperscript{14} Michael Smallberg, Overview, Project on Government Oversight, (Feb. 11, 2013), \url{http://www.pogo.org/our-work/reports/2013/dangerous-liaisons/overview.html}
\end{itemize}
position to put pressure on the SEC are more effective than others at reducing the probability of enforcement and penalties imposed by an enforcement action.”

So if you were defrauding investors and you wanted to stay in business, wouldn’t you be tempted to make contributions “to politicians in a strong position to put pressure on the SEC”? Of course you would. Because it’s a strategic use of your money. And the paradigm of someone who was strategic about the use of his money was Bernie Madoff. If you read the Report prepared by David Kotz, the then SEC Inspector General, concerning the SEC’s failure to discover Madoff’s fraud, you learn that the SEC conducted six separate investigations of Madoff over a 16-year period involving 122 different SEC employees. Yet, they never discovered that Madoff was not allocating securities purchases to his investment advisory customers!

How could this happen? Well, maybe everybody at the SEC is incompetent. Or, maybe, just maybe, Madoff had friends in high places. Should we be shocked to learn that Madoff and some of his family members were loyal supporters of Senator Schumer? Or that Senator Schumer was a frequent visitor to Madoff in his office in New York’s Lipstick Building. According to opensecrets.com, Bernard, Ruth, Peter, Mark and Andrew all gave Schumer donations on the same days and in the same amounts in 1998, 2002 and 2004. In addition, Bernard Madoff wrote checks in 2007 – 2008 totaling $100,000 for the Democratic Senators Campaign Committee, of which Schumer was the

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17 Several former employees of Madoff informed Ms. Chaitman in 2009 that Schumer came to see Madoff in his office frequently.
Chairman. In fact, he even gave Schumer $100,000 for the Senators Campaign Committee in March 2009 — after he had confessed! After cashing them, Schumer decided to refund the post-confession checks.

In considering the significance of political contributions, it is important to recognize that federal law limits the amounts that individuals can contribute. For example, for 2013-2014, an individual could not give more than $2,600 to each candidate or more than $5,000 to a national party committee. The Madoff family gave Schumer the maximum amounts permitted under federal law in the years of their contributions. But, of course, there are a variety of ways that savvy people can end-run the contribution limits by making payments that are not so easily ascertainable, such as by contributing to PACs that support particular candidates. No one ever said that Bernie Madoff wasn’t savvy. And certainly Schumer was not shy about asking people like Madoff for money. As the New York Times described it:

Donors describe the Schumer pitch as unusually aggressive: He calls repeatedly to suggest breakfast or dinner, coffee or cocktails. He enlists intermediaries to invite prospects to events and recruits several senators to tag along. And he presses for the maximum contribution — “I need you to max out,” he is known to say — then follows up by asking that a donor’s spouse and four or five friends write checks, too.

So Schumer needed Madoff and Madoff needed Schumer and the Madoff family’s loyal support of Senator Schumer would certainly be sufficient to warrant a few friendly

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phone calls to one or two of the SEC Commissioners. Unfortunately, there is no law requiring that a public record be made whenever a member of Congress or his staff confers with someone from the SEC concerning a pending investigation. Thus, there is no way to prove whether such calls were made. How convenient. Nobody is suggesting that Senator Schumer could have known of Madoff’s fraud. Of course, he could not have. But it is certainly possible that he placed strategic phone calls to the top people at the SEC asking them to leave Madoff alone and, as a result, the SEC deliberately bungled the investigation.

Another recent perpetrator of a massive financial crime, Allen Stanford, was just as strategic about his money as Madoff was. And the SEC was just as inexplicably incompetent when it came to Stanford as it was when it came to Madoff. The SEC had determined that Stanford was probably operating a fraud in 1998. But the SEC waited 11 years – until 2009 – to shut him down. Now, the SEC was not in hibernation from 1997 – 2008. It was operating; it just did nothing to close down Stanford’s operation. We are open to suggestions but we can’t think of any reason the SEC would not have shut Stanford down, other than the fact that Stanford and his employees spent over $5 million on lobbying expenses and political contributions from 2000 to 2009.

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And the recipients of those political contributions obviously thought they had provided value in return for the money because many of them refused to disgorge the contributions after Stanford was imprisoned.25 These people are true to the advice given to President Lincoln by his Secretary of War, Simon Cameron: “an honest politician is one who, when he is bought, will stay bought.”26

Getting back to Madoff, other than the SEC’s doing a favor for a powerful politician, how do you explain the following conduct by SEC personnel:

- When young SEC staffers reported to their superior that Madoff lied to them, they were told by their superior “it could [just] be a matter of semantics.”27
- When junior SEC staffers suggested that they should meet with some of the Madoff feeder funds to test Madoff’s representation that he did not do options trading as part of his trading strategy, senior SEC personnel directed the examiners not to spend the time visiting with the feeder funds because they had already spent enough time on the Madoff investigation and because of concern that it might cause the feeder funds to pull their money out of Madoff.28
- The staff drafted a letter to the National Association of Securities Dealers (“NASD”), which was essential to any adequate review of Madoff’s trading because the data and information from the NASD would have independently verified Madoff’s trading activity. However, the letter was never sent, with the explanation given by staff

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that it would have been too time-consuming to review the information they would have obtained. In fact, according to the expert advising the Office of Inspector General, had the letter been sent out, the NASD would have provided the data that would have proven the fraud

- When Madoff’s scheme finally collapsed in 2008, an SEC Enforcement attorney testified that it took only “a few days” and “a phone call … to [Depository Trust & Clearing Corporation] to confirm that Madoff had not placed any trades with his investors’ funds.”

The SEC’s failure to shut Madoff down despite reports that he was a crook spanned a period of 16 years. But four of those 16 years fell in the period when Steven Cutler was the SEC Director of the Division of Enforcement. Now wouldn’t you think that someone smart enough to be paid millions of dollars as General Counsel of JPMorgan Chase would be smart enough to figure out that maybe this guy Madoff was a crook after all? Or is it that the people who earn the really big bucks in our society are paid to be dumb?

Of course you should form your own conclusions but we just don’t believe the SEC simply bungled 16 years of investigations involving 122 SEC employees.

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The power of Senator Schumer

Madoff clearly understood how important Senator Schumer is in Washington. He is one of the most powerful people there. He sits on the following important committees in the Senate:

Schumer is Chairman of the Committee on Rules and Administration which oversees all Senate rules and procedures and qualifications and credentials of Senators. Any legislation related to ethics and lobbying reform must pass through this Committee. How convenient!

Schumer sits on the Committee on the Judiciary, one of the oldest and most powerful in the Senate, which oversees federal law enforcement, all federal courts, and key policy areas including anti-terrorism measures, copyright and patent law, immigration policy, and bankruptcy protection. The Committee has review power over all nominations for life-time judicial appointments, including those to the Supreme Court, as well as to key positions in the Department of Justice, including the Attorney General and the Director of the Federal Bureau of Investigation.

Schumer sits on the Senate Finance Committee which writes legislation related to the Internal Revenue Code, the Internal Revenue Service, trade issues, such as international trade agreements, Trade Adjustment Assistance for workers, and tariffs and duties, many issues related to private and private pension plans, including 401(k) plans and IRAs, and unemployment insurance.
Senator Schumer sits on the Banking, Housing and Urban Affairs Committee which oversees the United States’ financial system and institutions, monetary policy, housing, community development and transit programs.33

In addition to his Committee assignments, Schumer exercises enormous control over the appointment of federal judges in New York pursuant to the tradition of “senatorial courtesy” under which the senators from the state in which a judicial vacancy occurs actually make the decision on who will be appointed, if the President is of the same political party. The President almost always follows the recommendation of the senator.34 Thus, for example, Kevin McNulty, who is married to Schumer’s sister, Fran, was named to the United States District Court in New Jersey by President Obama on Friday, Dec. 16, 2011, after being nominated by New Jersey’s two Democratic senators, Frank Lautenberg and Robert Menendez.35

**Senator Schumer is a family man**

Senator Schumer’s family loyalty extends beyond his sister’s husband. His brother, Robert Schumer, chairs the corporate department at Paul, Weiss, Rifkind, Wharton & Garrison (“Paul, Weiss”), which has acted as counsel for numerous corporations involved in mergers.36 Paul, Weiss is a heavy contributor to Schumer.37

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33 Senator Charles E. Schumer - United States Senator for New York, Committee Assignments, [http://www.schumer.senate.gov/About%20Chuck/committeeassignments.htm](http://www.schumer.senate.gov/About%20Chuck/committeeassignments.htm)

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Robert Schumer’s wife, Pamela Seymon, Schumer’s sister-in-law, was a partner in the corporate department of Wachtell Lipton Rosen & Katz, also a contributor to Schumer. The importance of this family relationship is apparent in the Ticketmaster-Live Nation merger. In 2009, Seymon was Ticketmaster’s lead outside counsel on its merger with Live Nation. Initially, Schumer opposed the $2.5 billion deal. He then changed his opinion and began lauding Ticketmaster for collaborating with him.

Here’s what happened:

Ticketmaster controlled two thirds of the primary ticket market. Live Nation was the biggest concert promoter in the world and also had 15% of the primary ticket market. Thus, the merger raised obvious antitrust concerns. Bruce Springsteen advocated against the merger, calling it a “near-monopoly.” Schumer opposed the merger and blasted Ticketmaster in a series of statements and press conferences. “Bruce Springsteen says Ticketmaster abused his fans,” he said at a hearing of the Senate Judiciary Committee’s antitrust subcommittee, “and I agree with the Boss.”

Shortly after the merger was announced, Schumer joined with Representative Bill Pascrell of New Jersey in calling on the Obama administration to block the deal and investigate Ticketmaster’s anticompetitive practices. At a joint press conference with Pascrell, Schumer stated: “Now we’re here today to announce that we vehemently oppose the proposed Ticketmaster merger with Live Nation that was announced yesterday.”

39 Kevin Connor, Schumer recusal raises questions about conflicted role in Ticketmaster deal, LittleSis, (Feb. 27, 2014, 12:27PM), http://blog.littlesis.org/tag/wachtell-lipton/
Schumer explained that the merger would create a company that controlled 80% of the ticket sales market. “And no one company should have 80 percent of the market. . . when you have 65 and you’re ready to pluck out the strongest competition, what does that say? Does that say you want to lower prices or you want to control competition?”

Two months later, Schumer had a complete change of heart. He issued a press release:

Schumer today . . . announced that he has discussed his proposed legislation with Ticketmaster and that Ticketmaster supports his proposal as well as his efforts to reform and bring more transparently to the resale industry. Schumer said he will meet with the heads of Ticketmaster and other ticket distributors to discuss a possible code-of-conduct for ticket reselling in New York and across the country.

* * *

Schumer today also commended Ticketmaster for acting responsibly in early February by announcing a policy to no longer allow the prelisting of tickets on TicketsNow prior to onsales and for working cooperatively with him to enhance consumer protection and make the ticket sale process more transparent to the public.

Although the government’s antitrust case against Ticketmaster and Live Nation appeared to be strong “if antitrust law means anything,” according to former Federal Trade Commission official, David Balto, Obama approved the deal with some conditions attached. According to Pascrell: “If that is as far as the Obama administration is going to go, then . . . we can guarantee higher prices and higher fees because these people control the industry, as everyone knows.”

Schumer took a position as well on the merger of Time Warner Cable and Comcast. Time Warner is the 15th largest overall contributor to Schumer in his career.

So, naturally, Schumer voiced his approval for the merger. He later learned that his brother was representing Time Warner Cable – a longstanding Paul, Weiss client – in the transaction and he recused himself from participating in consideration of the deal by the Antitrust Subcommittee of the Senate Judiciary Committee.

Senator Schumer is loyal to his friends

When Schumer was in the New York State Assembly, he had an almost unblemished record as a liberal, seeking to protect (as he should) his average constituent. But today, he is more aptly described as “The Senator for Banksters.” Just as with the bill he sponsored to deny Data/Treasury the royalties it was entitled to receive from financial institutions, he takes pro-business positions that increase his supporters’ ability to take unfair advantage of the public. Case in point: Schumer, as a Congressman, voted to override President Clinton’s veto of the Private Securities Litigation Act of 1995 (the “PSLRA”) which could more accurately be called “The Banksters’ Protection Act of 1995.” The PSLRA places almost impossible burdens on private plaintiffs seeking to bring claims under the federal securities laws against public companies. Such claims are usually brought by small investors against large financial institutions...
interests and they play an important role in the effort to keep institutions like JPMC honest. As President Clinton explained in his message accompanying his veto of the bill:

I am not . . . willing to sign legislation that will have the effect of closing the courthouse door on investors who have legitimate claims. Those who are the victims of fraud should have recourse in our courts. Unfortunately, changes made in this bill during conference could well prevent that.

This country is blessed by strong and vibrant markets and I believe that they function best when corporations can raise capital by providing investors with their best good-faith assessment of future prospects, without fear of costly, unwarranted litigation. But I also know that our markets are as strong and effective as they are because they operate -- and are seen to operate -- with integrity. I believe that this bill, as modified in conference, could erode this crucial basis of our markets' strength.46

Certainly, the events that have transpired since 2008 prove the wisdom of President Clinton’s comments. If you’ve had a turn at the Wheel of Misfortune on our website, you will see that JPMC paid out approximately $29 billion in just the last four years to settle civil and criminal charges that it violated the law and defrauded groups of the public ranging from veterans, to credit card holders, to municipalities, to homeowners, etc. One could fairly ask whether JPMC has institutionalized fraud and dishonesty.

Thus, providing for a balance to the massive power of super-corporations like JPMC is essential to assure an honest economy. Yet Schumer voted to make it close to impossible for small investors to bring such suits. Indeed, Schumer made a passionate speech in the House of Representatives explaining why it was in the public’s interests

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to over-ride President Clinton’s veto!47 Schumer, the liberal when it was politically expedient, joined with such die hard conservative Republicans as Jesse Helms of North Carolina, Strom Thurmond of South Carolina, Orrin Hatch of Utah, and the man he later defeated for the New York Senate seat, Alfonse D’Amato, in voting to over-ride President Clinton’s veto of the PSLRA.48 Thus, we have Schumer, among many others, to thank for the unchecked dishonesty that pervades the Board rooms of our major financial institutions.

How did this metamorphosis from passionate liberal to hard-core protector of Wall Street come about? Two words: money and expedience. In 1982, when Schumer was a first term Congressman, there was a redistricting that threatened his chances at re-election. Schumer, everyone agrees, is a very astute politician. He was elected to the New York State Assembly at the age of 23, the youngest member of that body since Theodore Roosevelt.49 So he knows how the game is played. And he knows, as Jess Unruh, the Speaker of the California Assembly in the 1960’s put it, that “money is the mother’s milk of politics.”50 Accordingly, Schumer set about making friends on Wall Street, telling the City’s top law firms and securities houses that, if he was going to be re-elected, he would need their help, and tapping them for campaign donations.51 And Schumer succeeded beyond all expectations. Clearly he views himself as the

50 Iz quotes, Jesse M. Unruh Quote, http://izquotes.com/quote/311445

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representative of the major Wall Street interests, not of the millions of New Yorkers whom the Wall Street firms victimize.

So what we have is the old fee for service syndrome: Schumer’s support has come from the major Wall Street firms and the law firms that represent the major Wall Street firms. For example, his top 20 overall career contributors are as follows:52

<table>
<thead>
<tr>
<th>Rank</th>
<th>Contributor</th>
<th>Total</th>
<th>Individuals</th>
<th>PACs</th>
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In the old days, people contributed to the political campaign of representatives whose policies they supported. That’s quaint. Now, the folks who want the biggest bang for their buck contribute to the political campaigns of the representatives who can provide legislative protection to them. It’s not a matter of political conviction; it’s a

matter of control. And for this reason, staunch Republicans, as well as Democrats, contribute to Senator Schumer’s campaigns. Let’s take a look at the top 39 contributors to Schumer in 2008:

<table>
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<tr>
<th>Rank</th>
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<td>$0</td>
</tr>
<tr>
<td>32</td>
<td>Fried, Frank et al</td>
<td>$30,500</td>
<td>$30,500</td>
<td>$0</td>
</tr>
</tbody>
</table>

In 2008, JPMorgan Chase personnel donated $494,204 to the Democratic Senatorial Campaign Committee, of which Schumer was the Chairman. That's something Schumer is not likely to forget.

In 2010, the top 20 contributors to Senator Schumer were:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Contributor</th>
<th>Total</th>
<th>Individuals</th>
<th>PACs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Paul, Weiss</td>
<td>$145,550.00</td>
<td>$145,550.00</td>
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<td>2</td>
<td>Paulson &amp; Co</td>
<td>$142,100.00</td>
<td>$142,100.00</td>
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<tr>
<td>3</td>
<td>Weitz &amp; Luxenberg</td>
<td>$86,200.00</td>
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<td>4</td>
<td>Schulte, Roth &amp; Zabel</td>
<td>$80,600.00</td>
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<tr>
<td>5</td>
<td>Lazard Ltd</td>
<td>$78,150.00</td>
<td>$78,150.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>6</td>
<td>Blackstone Group</td>
<td>$70,400.00</td>
<td>$53,400.00</td>
<td>$17,000.00</td>
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<tr>
<td>7</td>
<td>Fragomen, Del Rey et al</td>
<td>$70,300.00</td>
<td>$64,500.00</td>
<td>$5,800.00</td>
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<td>8</td>
<td>Credit Suisse Group</td>
<td>$69,450.00</td>
<td>$59,450.00</td>
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<td>9</td>
<td>Renaissance Technologies</td>
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<td>10</td>
<td>Ernst &amp; Young</td>
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<td>11</td>
<td>Deloitte LLP</td>
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<tr>
<td>12</td>
<td>Sullivan &amp; Cromwell</td>
<td>$58,900.00</td>
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<td>$0.00</td>
</tr>
<tr>
<td>13</td>
<td>Kasowitz, Benson et al</td>
<td>$56,550.00</td>
<td>$56,550.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>14</td>
<td>KPMG LLP</td>
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<td>15</td>
<td>Cablevision Systems</td>
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<tr>
<td>16</td>
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<td>17</td>
<td>Cantor Fitzgerald</td>
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<td>$0.00</td>
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<td>18</td>
<td>York Capital Management</td>
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<td>$0.00</td>
</tr>
<tr>
<td>19</td>
<td>MBF Clearing Corp</td>
<td>$48,000.00</td>
<td>$48,000.00</td>
<td>$0.00</td>
</tr>
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</table>

In 2012, the top 20 contributors to Senator Schumer were:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Contributor</th>
<th>Total</th>
<th>Individuals</th>
<th>PACs</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Lightyear Capital</td>
<td>$ 46,600.00</td>
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<td>$ 0.00</td>
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In 2014, the top 20 contributors to Senator Schumer were:

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<tr>
<th>Rank</th>
<th>Contributor</th>
<th>Total</th>
<th>Individuals</th>
<th>PACs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Lazard Ltd</td>
<td>$ 181,800.00</td>
<td>$ 181,800.00</td>
<td>$ 0.00</td>
</tr>
</tbody>
</table>


So, naturally, Schumer is indebted to the law firms and corporations that support him and he is recognized as being a loyal advocate for Wall Street interests. As the New York Times wrote: “Senator Schumer plays an unrivaled role in Washington as beneficiary, advocate and overseer of an industry that is his hometown’s most important business.”

Thus, when Jamie Dimon, the CEO of JPMC, appeared before the Senate Finance Committee on June 13, 2012 to explain JPMC’s $2 billion trading loss in London (which actually was a $6 billion trading loss), the event was described as: “Senators Funded

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by Banks Suck Up to JP Morgan CEO Jamie Dimon During Hearing." According to one report, Schumer downplayed the $2 billion loss (which, again, was actually a $6 billion loss but Dimon wasn’t saying) and pandered on Dimon, along with the other committee members, seeking to learn his view of proposed financial regulations rather than why, with him at the helm, JPMC, a federally-insured financial institution, incurred a massive trading loss. Do you think Schumer’s fawning on Dimon has anything to do with the fact that JPMC is the third largest all-time contributor to Senator Schumer?

Of course, other Senators were also recipients of JPMC’s largesse and they also fawned on Dimon. But Schumer is particularly noteworthy because he demands – and gets – the biggest bucks for the bang. In its 2013 article “Congress: The Best Politicians JPMorgan Can Buy,” the Daily Economist, after focusing on JPMC’s massive expenditures for lobbying, wrote;

all one has to do is look at the biggest villain of corporate largesse, and the one Wall Street owns lock, stock and barrel. None other than Democratic Senator from New York, Chuck Schumer.

Now, there is a flip side to this. There is one Senator who did not go easy on Dimon at the Senate hearing on JPMC’s $2 billion loss: Robert Menendez of New

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Jersey, to whom the JPMC’s Political Action Committee had not donated a penny in the then current electoral cycle.\textsuperscript{63} There’s a lesson there.

Similarly, WorldCom learned an important lesson in 2003 when Schumer angrily demanded that the SEC not allow WorldCom to get away with a slap on the wrist for its major accounting fraud because “Leniency ... from ... federal enforcement officials in the face of this pervasive conduct will not provide the strong message necessary to deter future corporate fraud.”\textsuperscript{64} Now, that sounds like something President Clinton would have said and it is a good argument for putting some folks at JPMorgan Chase in jail. But Schumer never advocated similar treatment for JPMorgan Chase. Could this double standard be explained by the fact that, while he was a Senator, WorldCom contributed to Schumer a paltry $500?\textsuperscript{65}

**Schumer’s Relationship with Paul, Weiss, Rifkind, Wharton & Garrison**

You might wonder why a law firm’s partners would so heavily contribute to Senator Schumer. Well, think of it this way: one asset that a law firm can sell to its clients is access to important people. And, for clients, that can pay off big time. Keep reading and you’ll see.

Paul, Weiss is a major New York law firm and, as reflected in the above charts, is a substantial contributor to Schumer’s campaigns. Indeed, during the period from 2007


2012, Paul, Weiss was Schumer’s top contributor, contributing $145,550.66 But
Schumer’s relationship with Paul, Weiss goes way back. In 1980, when Schumer was a
member of the New York Assembly, he sought and was elected to the Congressional seat
formerly held by Elizabeth Holtzman. Shortly after Schumer’s election to Congress,
articles appeared in newspapers concerning his alleged improper use of State employees
during the Congressional campaign. The U.S. Attorney’s Office investigated the charges
and recommended indictment but the Justice Department decided the matter was not
appropriate for a federal prosecution. Holtzman, then the District Attorney of Kings
County where Schumer resided, decided that local officials should pursue the charges.
Because she believed she might be accused of bias based upon past political differences
with Schumer, she asked Governor Cuomo to supersede her in prosecuting Schumer.
The Governor refused to do so and Holtzman appointed a "Special Assistant District
Attorney" to whom she gave broad powers to control the investigation and prosecution.

Schumer sought to challenge the appointment of a Special Assistant District
Attorney to prosecute him and he retained Arthur Liman, the star of the litigation group
at Paul, Weiss. Liman, utilizing the services of then-associate, Colleen McMahon, was
successful in challenging Holtzman’s appointment of a Special Prosecutor, with New
York’s highest court, the New York Court of Appeals, holding that Holtzman lacked the
constitutional authority to delegate her prosecutorial functions to an appointee.67

Whether for legal considerations, political considerations, or personal embarrassment,

66 OpenSecrets.org - Center for Responsive Politics, Sen. Charles E. Schumer,
=N
Holtzman, who ran for public office as a Democrat well into the 1990s, did not pursue the case further.

But perhaps the most significant thing about the case was this: When Schumer ran out of money, Arthur Liman continued to represent him at no charge. This was no small favor. Paul, Weiss is a very expensive firm and Arthur Liman was probably the most expensive litigation partner there. And if Schumer had lost the case and been prosecuted, his political career could have ended very quickly.

Colleen McMahon became a federal judge in the Southern District of New York. She was nominated by President Clinton in 1998, the year Schumer was first elected to the Senate. Charles Schumer doesn’t forget his friends.

**JPMC’s relationship with Paul, Weiss**

Just as people with mutual friends often become friends, so have Schumer’s supporters become actively involved with each other. For example, Paul, Weiss receives a substantial amount of work from JPMC, most recently representing JPMC with respect to the investigation by the SEC and the Justice Department into JPMC’s hiring practices in Hong Kong – specifically the hiring of the children of well-connected Chinese officials and the connection to a wider bribery investigation.

Federal authorities have opened a bribery investigation into whether JPMorgan Chase hired the children of powerful Chinese officials to help the bank win lucrative business in

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the booming nation, according to a confidential United States government document.

In one instance, the bank hired the son of a former Chinese banking regulator who is now the chairman of the China Everbright Group, a state-controlled financial conglomerate, according to the document, which was reviewed by The New York Times, as well as public records. After the chairman’s son came on board, JPMorgan secured multiple coveted assignments from the Chinese conglomerate, including advising a subsidiary of the company on a stock offering, records show.

The Hong Kong office of JPMorgan also hired the daughter of a Chinese railway official. That official was later detained on accusations of doling out government contracts in exchange for cash bribes, the government document and public records show.

The former official’s daughter came to JPMorgan at an opportune time for the New York-based bank: The China Railway Group, a state-controlled construction company that builds railways for the Chinese government, was in the process of selecting JPMorgan to advise on its plans to become a public company, a common move in China for businesses affiliated with the government. With JPMorgan’s help, China Railway raised more than $5 billion when it went public in 2007.

Isn’t it heart-warming to see America’s largest financial institution exporting corrupt practices to China?

Now, the folks at JPMorgan Chase probably don’t worry too much about this investigation because, the revolving door swings again, Paul, Weiss has on its staff, Walter G. Ricciardi, a former Deputy Director of the SEC’s Division of Enforcement.

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and, anyway, you guessed it, any decision to prosecute JPMC in the United States will be made by the Obama administration and by Preet Bharara.

**Schumer’s relationship with Schulte Roth & Zabel**

Perhaps there is no better example of why the partners of a law firm would contribute heavily to Senator Schumer than the example of Schulte Roth & Zabel which has also been one of Schumer’s top supporters. As you will see, that support has paid off handsomely in connection with the Madoff story. Name partner William D. Zabel had a very close relationship with Madoff’s chief co-conspirator, Jeffry Picower.73 In fact, in addition to being Picower’s lawyer, Zabel sat on the Board of the Jeffry M. & Barbara Picower Foundation74 which was one of the primary beneficiaries of Madoff’s crimes, according to the Madoff Trustee’s complaint against Picower and his various entities.75

**The Madoff Trustee’s Allegations against Picower**

The Madoff Trustee, who had access to all of Madoff’s records, filed a complaint against Picower, his wife, and their various entities on May 12, 2009, in which he made some pretty shocking allegations. Here are a few of them:

- According to the Trustee, the net investment, or net loss, resulting from Madoff’s crimes, was $17 billion. Of that amount, over a 25-year period, Picower withdrew $7.9 billion against an investment of $650 million, for a net return, exclusive

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74 Bloomberg Businessweek, Board Members Affiliated with Jeffry M. Picower, [http://investing.businessweek.com/research//stocks/private/relationship.asp?personId=1106861&privcapId=4923073&previousCapId=99171&previousTitle=Schulte%20Roth%20&%20Zabel%20LLP](http://investing.businessweek.com/research//stocks/private/relationship.asp?personId=1106861&privcapId=4923073&previousCapId=99171&previousTitle=Schulte%20Roth%20&%20Zabel%20LLP)
of profits, of $7.2 billion. Thus, Picower received $7.2 billion of other people’s money.\textsuperscript{76}

\begin{itemize}
  \item For several of Picower’s various Madoff accounts, he enjoyed annual returns of more than 100%, with some annual returns as high as 500% or even 950% per year.\textsuperscript{77} For example, Picower’s “Decision Inc. #3” and “Decision Inc. #4” regular trading accounts purportedly earned annual rates of return of 120% to over 550% for four consecutive years, from 1996-1999. Picower’s “Decision Inc. #2” account earned over 950% in 1999.\textsuperscript{78}
  \item Between 1996 and 2007, Picower’s 24 regular trading accounts enjoyed 14 instances of annual returns of more than 100% and 25 in which the annual returns purportedly exceeded 50%.\textsuperscript{79}
  \item Picower’s accounts were riddled with blatant and obvious fraud. For example, the Trustee alleged that the accounts reported profitable trades before the accounts were opened or funded; execution of trading instructions that hadn’t yet been given; inexplicable changes in account positions; outlandish returns; and – at Picower’s direction – the accomplishment of investment results over time periods that already had expired.\textsuperscript{80}
  \item At the time of Madoff’s arrest, one of the Picower accounts allegedly had a negative cash balance of $6 billion representing a margin loan made by Madoff to
\end{itemize}

\footnotesize
\textsuperscript{77} Complaint, \textit{Picard v. Picower}, ¶ 3.
\textsuperscript{78} Complaint, \textit{Picard v. Picower}, ¶ 63(a).
\textsuperscript{79} Complaint, \textit{Picard v. Picower}, ¶ 63(a).
\textsuperscript{80} Complaint, \textit{Picard v. Picower}, ¶ 63.
Picower.81 Ultimately, this loan was forgiven by Preet Bharara and by the Madoff Trustee, for no consideration – but more about that below.

- In 2000, several of the Picowers’ regular trading accounts reported significantly negative annual rates of return, ranging from negative 74% to negative 779%. According to the complaint, a contributing factor to these negative returns was the unwinding in January 2000 of close to $11 billion in “short sales” created in December 1999. As of November 1999, these accounts reflected a total negative cash balance of approximately $3.8 billion. In December 1999, however, Defendants “executed” $8.5 billion of short sales, resulting in the cash balance in these accounts moving from net negative to net positive. In January 2000, the Picowers “completed” the short trades, resulting in a new net cash deficit of approximately $6.3 billion. The net effect of the January 2000 transactions was to increase the net cash deficit across these accounts by $2.5 billion over the net cash deficit in November 1999. In other words, the Picowers “executed” short trades that reversed their year-end net cash, making it net positive as of December 31, 1999, but which then resulted in a net loss of $2.5 billion a month later.82

- On December 22, 2005, Picower faxed a letter to Madoff’s company, Bernard L. Madoff Investment Securities LLC (“BLMIS”) directing sales across various accounts to have occurred on December 1, 2005 – 21 days earlier. BLMIS reported the sales as having settled on December 2.83

- In December 2005, BLMIS created backdated “purchases” of stock in certain accounts, recording them as having settled almost a full year earlier—between

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82 Complaint, *Picard v. Picower*, ¶ 63(c).
January 12 and January 20, 2005. These back-dated transactions resulted in a gain of $79 million and the accounts were instantly credited, in December 2005, with quarterly dividends for March, June and September 2005, totaling about $82,000.84

- On December 22, 2005, Picower and/or his chief financial officer, April Freilich, faxed to BLMIS a letter signed by Picower and bearing a date of December 1, 2005. The letter directed the sale of specific positions across at least four accounts and purported “sales” consistent with those instructions are reported on the Picowers’ December 2005 account statement as having settled on December 2, and thus “sold” before December 1, even though the BLMIS records subsequently showed that these positions were still held by the Picowers as of December 16, 2005.85

- On December 29, 2005, April Freilich faxed to BLMIS a letter signed by Picower that directed BLMIS to “pick up long term capital gains in the accounts listed below before December 31, 2005” across five Decisions accounts. The letter directed BLMIS to realize $50 million in gains and attached the relevant “portfolio appraisal” statements for the five Decisions accounts listed in the letter. Each “portfolio appraisal,” created by Picower and/or his agents, purported to show the securities held in each account, the date they were “purchased,” the quantity held, and also purported to calculate the unrealized gain or loss on each security based on the market values as of November 30, 2005, the date of the “portfolio appraisal.” According to Picower’s own “portfolio appraisals,” none of these Decisions accounts held more than 11 different securities, and three of these accounts held five or fewer securities as of November 30,

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84 Complaint, Picard v. Picower, ¶ 63(i)(ii).
85 Complaint, Picard v. Picower, ¶ 63(h).
Upon Picower’s instruction, BLMIS “sold” certain stocks and realized a long-term gain of approximately $46.3 million, a significant majority of the requested gain. According to the account statements generated by BLMIS for December 2005 – and forwarded to Picower and his agents – these trades purportedly settled around December 8 and 9, 2005, approximately three weeks before the relevant instruction was sent to BLMIS.87

In December 2005, BLMIS also created backdated “purchases” on margin of Google, Diamond Offshore Drilling (“Diamond”) and Burlington Resources, Inc. (“Burlington”) across numerous Picower accounts. These “purchases” – with purported settlement dates between January 12 and January 20, 2005 – were entirely fictitious and were reflected for the first time in the BLMIS-created account statements issued at the end of December 2005. This backdated trading activity resulted in an immediate purported 12-month unrealized “gain” for Picower of approximately $79 million and a portfolio value of over $155 million as of the end of December as a result of the increase in the market value of these securities during the calendar year. BLMIS’ December 2005 account statements also credited the Decisions accounts with $82,000 of Burlington quarterly dividends for March, June and September 2005, which also had not appeared on any BLMIS account statement or “portfolio appraisal” in any of the preceding months because these accounts did not “hold” Burlington until December 2005. The new Burlington, Diamond and Google positions continued to be reported in subsequent account statements.88

86 Complaint, Picard v. Picower, ¶ 63(i).
87 Complaint, Picard v. Picower, ¶ 63(i)(f).
88 Complaint, Picard v. Picower, ¶ 63(i)(ii)
According to BLMIS’ records, BLMIS employees had several conversations with April Freilich about gains that the Picower Foundation needed during January and February 2006.\(^8^9\) On April 24, 2006, one of Picower’s companies, Decisions #6, opened an account with BLMIS by wire transfer on April 18 of $125 million, according to the complaint. BLMIS promptly began “purchasing” securities in the account, but backdated the vast majority of these purported transactions to January 2006. By the end of April, 12 days later, the purported net equity value of the account was over $164 million, a gain of $39 million, or a return of more than 30% in less than two weeks. The reason for this massive gain: the Decisions #6 April 2006 customer account statement reflected 57 purported purchases of securities between January 10 and January 24, 2006, almost three months before the account was opened or funded – an annualized rate of return of more than 750%. The majority of the securities “purchased” in January were “purchased” near the lowest prices for the period from January to April 2006, and were purportedly chosen in order to create an unusually high unrealized gain by the end of April.\(^9^0\)

On April 18, 2006, Picower wired $125 million to BLMIS in order to open an account.\(^9^1\) This deposit constituted more than 1/4 of the total cash that Picower ever invested in BLMIS.\(^9^2\) Within two weeks, the $125 million deposit had purportedly grown

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\(^8^9\) Complaint, Picard v. Picower, ¶ 63(f).
\(^9^0\) Complaint, Picard v. Picower, ¶ 63(e).
\(^9^1\) Complaint, Picard v. Picower, ¶ 63(e).
to $164 million.\textsuperscript{93} Five months later, Picower withdrew his original $125 million, leaving $81 million in the account.\textsuperscript{94}

\begin{itemize}
\item On May 18, 2007, April Freilich told BLMIS that the Foundation needed $20 million in gains for January and February and wanted 18\% appreciation for the year. Five days later, on May 23, 2007, she told BLMIS that the numbers she had provided earlier were wrong and the Foundation “needs” only $12.3 million in gains for January and February 2007. Consistent with her instructions, the Picower Foundation’s May 2007 statement reflected millions of dollars in securities transactions for the months of January and February 2007 that collectively resulted in a purported gain to the account of $12.6 million, according to the complaint. These transactions had not appeared on the January or February 2007 statements, nor on any prior monthly customer statements that had been generated before May 2007, nor were the corresponding equity positions or values reflected on those earlier statements. With these “new” positions, the reported value of the Picower Foundation’s account appeared to increase by $54.6 million – from $711.3 million in April 2007 to $765.9 million in May 2007 – because the May 2007 statement was (and subsequent statements were) based on an entirely different account history: one in which various trades had taken place more than 15 months earlier, resulting in entirely different positions and values.\textsuperscript{95}
\end{itemize}

And remember that William D. Zabel, a name partner of Schulte Roth & Zabel, was a member of the Board of Trustees of the Picower Foundation who, presumably, was responsible to review the financial performance of the Foundation’s investments.

\textsuperscript{93} Complaint, \textit{Picard v. Picower}, ¶ 63(e).
\textsuperscript{95} Complaint, \textit{Picard v. Picower}, ¶ 63(f)(i)-(ii).
When the Trustee’s lawyer signed the complaint against Picower, he was representing to the court, pursuant to Rule 11 of the Federal Rules of Civil Procedure, that the factual contentions have evidentiary support.

**Schulte Roth & Zabel’s response to the Madoff Trustee’s allegations**

On July 31, 2009, Zabel’s firm filed a motion to dismiss the Trustee’s complaint in which Zabel personally represented to the court, also pursuant to Rule 11 of the Federal Rules of Civil Procedure, that, contrary to the Trustee’s charges, Picower was an innocent victim of Madoff’s fraud:

Over the course of more than thirty years, Jeffry M. Picower invested huge sums of money with Bernard L. Madoff Investment Securities LLC (“BLMIS”) on behalf of himself, his businesses, his family, and the charitable entities through which the Picowers conducted their extensive and well-documented philanthropy. Mr. Picower invested with BLMIS because he trusted Bernie Madoff, whom he – and the world – believed to be a brilliant trader, a successful businessman, an industry leader, and a pillar of the financial community.

Mr. Picower learned the ugly truth about Bernie Madoff on December 11, 2008, following Madoff’s arrest for running the largest Ponzi scheme in history. Like thousands of other BLMIS investors, financial professionals, and regulators around the world, Mr. Picower learned for the first time on that date that Madoff – to whom he had entrusted much of his fortune – had callously betrayed that trust. The consequence of Madoff’s betrayal to all BLMIS investors, including Mr. Picower and the other Defendants, was devastating. For Mr. Picower’s wife, Barbara, the consequence of Madoff’s fraud was immeasurable, as it caused the closure of the Picower Foundation, which Mrs. Picower had nurtured and to which she had devoted herself over many years.96

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It is certainly difficult to reconcile this stirring defense with the April Freilich/Jeffry Picower written instructions to Madoff – over a period of years – to backdate tens of millions of dollars of securities transactions to create fictitious gains, allowing Picower to turn a $650 million investment into $7.9 billion and allowing Mrs. Picower to devote herself to philanthropy.

The Madoff Trustee, who had possession of all the documentary proof of his allegations against Picower, wasn’t buying it. On September 30, 2009, he filed a brief opposing the Picowers’ motion to dismiss the complaint in which he put before the court further facts demonstrating Picowers’ criminal conduct. In response, Zabel issued a press release stating:

The Trustee continues to make false and outrageous claims about Mr. Picower based on a misreading of the purported ‘facts.’ When the true facts are known, the Court will see that Mr. Picower was deceived by Bernard L. Madoff like the SEC and thousands of other investors, as many as half of whom took out more money than they put in.

Now this is real advocacy: Zabel was suggesting that Picower’s $7.9 billion return on his $650 million Madoff investment was typical of the returns enjoyed by all of Madoff’s customers. In fact, as was publicly known at the time, the innocent Madoff customers enjoyed returns, on which they paid taxes, at short term capital gains rates, that were approximately double the returns on U.S. Treasury Notes. Thus, for example, in 2007, the innocent Madoff customers realized an after-tax return of 6% on their investments.

Less than a month after Zabel’s firm filed their reply brief on Picower’s motion to dismiss the Madoff Trustee’s complaint, on October 25, 2010, Picower, then 67, decided to go swimming in his Palm Beach swimming pool when he was having a heart attack. He was found dead at the bottom of his pool. He left a very substantial estate – consisting primarily of money stolen from thousands of innocent people and the appreciated assets acquired with that stolen money. Now, Picower was no dummy. Indeed, in the words of Schulte, Roth & Zabel, Picower “was a businessman and an extraordinarily successful private investor.” And if anyone should know, it is Bill Zabel.

Picower realized a net gain of $7.2 billion from his complicity with Madoff over a 25-year period. Although the Madoff Trustee has not revealed the information as to the precise dates on which Picower withdrew funds from Madoff, if we assume that the funds were drawn out evenly over 25 years, and we assume that Picower had simply invested his stolen money in U.S. Treasury Notes over a 25-year period, he would have tripled his money – giving him a profit from Madoff’s crimes of approximately $21 billion. Again, that’s assuming he did nothing with his money but invest in U.S. Treasury Notes. But we have it straight from his lawyer’s mouth that he was an “extraordinarily successful” investor. So, presumably, he did a heck of a lot better than realize the returns paid on U.S. Treasury Notes. It’s hard to imagine, then, how much money Picower actually made on his Madoff relationship.

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It is a fundamental tenet of our criminal justice system that crime does not pay. So you would think that, when Preet Bharara got involved in negotiating with Picower’s lawyers, Bharara would have insisted that the Picowers disgorge at least $21 billion because Picower not only realized profits on stolen money, he committed tax fraud in the process by, for example, instructing Madoff to back-date losses. Well, that’s where you would be mistaken. And the reason is simple: the fundamental tenet of our criminal justice system that crime does not pay was in conflict with the fundamental tenet of our political system that political contributions do pay. And the perfect illustration is Jeffry Picower who took $7.2 billion of stolen money over 25 years, failed to pay the full taxes due on that money, and got off by simply paying back the net amount he stole, without interest, taxes, or penalties. How could this happen? Well, the Picower parties were smart enough to use Schulte Roth & Zabel to negotiate with the government for them. And guess what? They negotiated with – you guessed it – Preet Bharara, Schumer’s former chief counsel.

And Bharara negotiated a truly shocking deal: Despite the fact that, as alleged in the Madoff Trustee’s complaint, Picower gave orders to Madoff as to how much money Madoff should steal from innocent customers in order to enrich Picower, and despite the fact that Madoff and Picower perpetrated the largest financial fraud in the history of the world, and despite the fact that Picower probably committed massive tax fraud, Bharara decided that Mrs. Picower should retain all of the profits that her husband realized from his criminal activities: our country ‘tis of thee settled with the Picower parties by allowing them to simply pay back the net amount they stole over 25 years: $7.2 billion. No accounting for profits; no interest, no penalties for tax fraud. In other
words, Preet Bharara approved a retroactive tax free, interest free loan to Picower of $7.2 billion over a 25-year period.

And it’s even better than that because, according to the Madoff Trustee, Picower and his entities owed $6 billion to BLMIS at the time Madoff confessed and, as part of the government settlement, the Madoff Trustee completely forgave that $6 billion. The Madoff Trustee accepted $5 billion of the $7.2 billion that the government received from Mrs. Picower in settlement of all the Trustee’s claims. On top of that, apparently, the government did not require the Picower parties to pay the income taxes that common folks like us would have to pay if we had forgiveness of indebtedness income of $6 billion. So the government walked away from 40% of $6 billion, or $2.4 billion, plus estimated profits made by Picower on the stolen $7.2 billion of at least $15 billion – probably more.

And, on top of that, despite all of his fact-specific, documented allegations against the Picowers as set forth in detail in the Madoff Trustee’s court filings, the $5 billion in settlement funds paid to the Madoff Trustee apparently knocked him off his feet, caused him to fall over and hit his head hard on a cement sidewalk, causing temporary amnesia because, upon the receipt of the $5 billion, the Madoff Trustee realized that he had no basis to pursue the complaint! As Schulte Roth & Zabel bragged in its annual report for 2010-2011:

It took a concerted effort among SRZ attorneys with diverse specialties to arrive at this historic result. The representation was led by partners from Individual Client Services and Litigation who were assisted by attorneys from

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Business Reorganization, Tax and Business Transactions. In announcing the settlement, Madoff trustee, Irving Picard, said, “When we filed suit against Mr. Picower and others in the spring of 2009, the records available led us to allege that Mr. Picower might have or should have known of Mr. Madoff’s fraud. With the benefit of additional records, I have determined that there is no basis to pursue the complaint against Mr. Picower, and we have arrived at a business solution instead.”

Now, isn’t that a happy ending?

❖ The Picowers get to keep the fruits of their crimes.
❖ Preet Bharara gets to have a big press conference because, as nobody can deny, $7.2 billion sounds like a lot of money if you ignore the facts.
❖ The Madoff Trustee gets a very heavy dose of amnesia and $5 billion to distribute to people who lost $64.8 billion.
❖ The IRS doesn’t have to conduct a massive investigation into all of Picower’s shenanigans.
❖ Schulte Roth & Zabel gets to brag about what a great law firm it is and undoubtedly gets paid appropriately for the services rendered.
❖ Senator Schumer is sure to get lots more contributions from the lawyers at Schulte Roth & Zabel because those contributions definitely pay off.
❖ Schulte Roth & Zabel’s partners have plenty of money to make further contributions to Senator Schumer.
❖ Nobody has to go to jail.

103 See Schulte Roth & Zabel’s 2010 - 2011 year in review at 6, found at http://www.srz.com/files/upload/SRZ_YIR_2010_2011.pdf#page=8
104 The Madoff Trustee claimed, with $5 billion in hand, that, “with the benefit of additional records,” he determined there was no basis to pursue the complaint against the Picowers, but he did not explain what those “additional records” were; nor did he disclose them to the court. And he certainly never discredited the documents he relied upon in his complaint. The authors’ law firm is attempting, in litigation, to recover from the Picowers the money stolen from the firm’s clients.
The Picowers are left to enjoy the fruits of their crimes.

April Freilich is available to help anyone who aspires to Jeffry Picower’s wealth. (Although Picower left her about $12 million in his will, so she may come at a high price.)

Mrs. Picower, like a true Robinette Hood, is now running one of the world’s largest foundations.

Doesn’t that make us all feel warm and fuzzy?

Now, of course, we have no personal knowledge as to why Preet Bharara took a dive in prosecuting the Picowers or whether there was any connection in his mind to the sizeable contributions made by Schulte Roth & Zabel lawyers to Schumer’s campaigns. But if any of you can think of any other reason why Preet Bharara would have allowed Mrs. Picower to keep the earnings on her husband’s stolen money, we’d like to hear it.

So thank you Eric Holder and Preet Bharara. As George W. Bush told FEMA director Michael Brown during the ordeal of Hurricane Katrina: “You're doing a heck of a job.”

Oh, we forgot one last point: William Zabel’s son, Richard Zabel, is the chief of the Criminal Division of the United States Attorney’s Office in the Southern District of New York – working under Preet Bharara! Is anyone beginning to see a pattern here?

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105 Ponzi Madoff, Reading Picower’s Will --- a new Picower Foundation, http://twinkle_toes_engineering.home.comcast.net/~twinkle_toes_engineering/ponzi_madoff.htm#Reading


In our next Chapter, we will take a look at the people who run JPMorgan Chase and ran it aground in the Madoff matter, with emphasis on the Board of Directors which, of course, voted to approve the deferred prosecution agreement and the $1.7 billion payment to the government to resolve the Bank’s criminal violations of the Bank Secrecy Act in connection with Madoff and then voted to give Jamie Dimon a 74% raise for heading America’s largest, and least ethical, financial institution.
Chapter 4

The Differences Between the Gambino Crime Family and JPMorgan Chase

The Gambino crime family was one of the Five Mafia Families that dominated organized crime activities in the United States. It derives its name from Carlo Gambino, who succeeded to the position of boss in 1957, the fatal day Albert Anastasia had the haircut of his life, in a barber chair at the Park-Sheraton Hotel in Manhattan. It is believed that Carlo Gambino played a hand in the haircut episode which led to his takeover of the family business.

The family's history demonstrates the importance of having loyal underlings. The family fortunes grew through 1976, when Gambino appointed his brother-in-law, Paul Castellano, as boss. Castellano infuriated upstart capo John Gotti, who orchestrated Castellano's murder in 1985. But Gotti’s tenure was short-lived. His downfall came in 1992, when his underboss, Sammy Gravano, decided to cooperate with
the FBI. Gravano's cooperation brought down Gotti, along with most of the top members of the Gambino family.¹

The Gambino crime family's operations extended from New York and the eastern seaboard to California and to Cuba and Sicily. Gambino partnered with Meyer Lansky to control gambling interests in Cuba. The Gambino family provided a full-range of activities including labor and construction racketeering, gambling, loan-sharking, extortion, drug trafficking, money laundering, prostitution, murder for hire, solid and toxic waste dumping violations, construction, building and cement violations, fraud and wire fraud, hijacking, pier thefts and fencing.² And Gambino’s bank? Chase Manhattan Bank, of course.³ But that doesn’t mean he was above planning a robbery of a Chase Manhattan Bank armored truck.⁴

JPMorgan Chase is one of the five major financial institutions in the United States. It has offices all over the world, employs 245,000 people,⁵ has assets of $2.5 trillion⁶, and has an overwhelming market share. JPMorgan Chase does business with 50% of American households, 80% of Fortune 500 companies, and 60% of the world’s largest pensions, sovereign wealth funds, and central banks.⁷

⁵ Macroaxis, JPMorgan Number of Employees, http://www.macroaxis.com/invest/ratio/JPM--Number-of-Employees
JPMorgan Chase finances individuals, businesses, and governments and it manages assets for individuals, businesses, governments, pension funds and charities. Like the Gambino crime family, JPMorgan Chase provides a full range of illegal activities. And like the Gambino crime family, JPMorgan Chase recognizes that getting caught is just the cost of doing business illegally. A review of only the last three years of JPMorgan Chase’s annual reports and various news stories reveals the broad array of illegal activities in which JPMorgan Chase engaged and got caught:

- In April 2011, JPMorgan Chase agreed to pay $35 million to settle claims that it over-charged members of the military service on their mortgages in violation of the Service Members Civil Relief Act and the Housing and Economic Recovery Act of 2008.8

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In March 2012, JPMorgan Chase paid the government $659 million to settle charges that it charged veterans hidden fees in mortgage refinancing transactions.9

In October 2012, JPMorgan Chase paid $1.2 billion to settle claims that it, along with other banks, conspired to set the price of credit and debit card interchange fees.10

On January 7, 2013, JPMorgan Chase announced that it had agreed to a settlement with the Office of the Controller of the Currency ("OCC") and the Federal Reserve Bank of charges that it had engaged in improper foreclosure practices.11

In September 2013, JPMorgan Chase agreed to pay $80 million in fines and $309 million in refunds to customers whom the Bank billed for credit monitoring services that the Bank never provided.12

On November 15, 2013, JPMorgan Chase announced that it had agreed to pay $4.5 billion to settle claims that it defrauded investors in mortgage-backed securities in the time period between 2005—2008.13

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12 James O’Toole, JPMorgan ordered to refund $309 million over “unfair” credit card billing, CNN Money, (Sept. 19, 2013), http://money.cnn.com/2013/09/19/investing/jpmorgan-credit-card/
On December 13, 2013, JPMorgan Chase agreed to pay 79.9 million Euros to settle claims of the European Commission relating to illegal rigging of benchmark interest rates.\(^{14}\)

In February 2012, JPMorgan Chase agreed to pay $110 million to settle claims that it over-charged customers for overdraft fees.\(^{15}\)

In July 2013, JPMorgan Chase paid $410 million to the Federal Energy Regulatory Commission to settle claims of bidding manipulation of California and Midwest electricity markets.\(^{16}\)

On November 19, 2013, JPMorgan Chase agreed to pay $13 billion to settle claims by the Department of Justice, the FDIC, the Federal Housing Finance Agency, the States of California, Delaware, Illinois, Massachusetts and New York, and to consumers, relating to fraudulent practices with respect to mortgage-backed securities.\(^{17}\)

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\(^{13}\) JPMorgan Chase & Co. 2013 Annual Report at 79, 193 available at http://files.shareholder.com/downloads/ONE/3527577237x0x742266/2bd13119-52d2-4d78-9d85-a433141c21ae/01-2013AR_FULL_09.pdf#page=73


In November 2012, JPMorgan Chase paid $296,900,000 to the SEC to settle claims that it mis-stated information about the delinquency status of its mortgage portfolio.18

In December 2013, JPMorgan Chase paid $22.1 million to settle claims that the Bank imposed expensive and unnecessary flood insurance on homeowners whose mortgages the Bank serviced.19

But the illegal activities in which JPMorgan Chase engages do not prevent it from engaging in various legitimate activities. In 2013, JPMorgan Chase raised over $2.1 trillion of capital for its clients and issued more than 800,000 mortgages.20 It holds deposits of more than $450 billion.21 To put the figure into perspective, the US budget deficit in 2008 was $455 billion.22 And households, businesses and governments have left this amount in the hands of JPMorgan Chase, the same bank that facilitated Madoff’s embezzlement of $64.8 billion from tens of thousands of people; the same bank that, in the last four years, paid out over $29 billion in fines, penalties and settlements to resolve claims that it violated civil and criminal laws and defrauded

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various groups of customers ranging from minority homeowners to veterans, to municipalities, to credit card holders, to investors, etc.\textsuperscript{23}

JPMorgan Chase employees are skilled at finding ways for their customers’ money to generate profits for JPMorgan Chase – even if it is at the expense of customers.\textsuperscript{24} In 2013, JPMorgan Chase’s net income was $17.9 billion, despite the fact that it spent $8.6 billion on legal expenses.\textsuperscript{25} In 2013, JPMorgan Chase’s consumer and community banking activities yielded a net income of $10.7 billion.\textsuperscript{26} But all of its departments turned a solid profit, with the least profitable, asset management, making $2.03 billion.\textsuperscript{27} JPMorgan Chase did not even suffer a loss during the 2008 financial crisis and ensuing recession.\textsuperscript{28} Although the $29 billion of fines and settlements, along

\textsuperscript{23} See the Wheel of Misfortune on our website, jpmadoff.com. The information on the Wheel of Misfortune is taken directly from JPMorgan Chase’s own SEC filings.


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with the cost of defending so much litigation, dented the bank’s profits, in the years 2007 to 2013, the total net income of the conglomerate never fell below $5 billion.

In 2008, JPMorgan Chase accepted $25 billion in government assistance from the Troubled Asset Relief Program, which it paid back in 2009. A Bloomberg analysis based on data from the International Monetary Fund found that the government’s willingness to bail out large banks is the same as giving JPMorgan Chase a subsidy of $14 billion a year, because the expectation that the US government will assist large banks allows them to borrow at a lower rate and some of the risk is shifted from JPMorgan Chase to the government, that is, the American taxpayers.

The JPMorgan name has a more prestigious lineage than Carlo Gambino and his family. It traces back to J. Pierpont Morgan and a banking partnership founded in New York in 1871. From the start, JPMorgan’s history is one of power and influence. In the early days of banking, J. Pierpont Morgan had the effective role of central banker to the United States government. He helped finance the Panama Canal and the Brooklyn Bridge.

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29 JP Morgan reported a loss of $0.4 billion in the Third Quarter of 2013, JPMorgan Chase & Co., Financial Presentation 3Q13, at 1, http://files.shareholder.com/downloads/ONE/3422083597x0x696269/53cac7f7-de8d-4e28-aeed-4122712d40b/3Q13_Earnings_Presentation.pdf

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JPMorgan also has a longstanding history with regulators; it was the first private firm investigated after the 1929 stock market crash. At the time, its chairman, JP “Jack” Morgan Jr., stated that the firm was not content with merely meeting the letter of the law, it wanted to maintain an unblemished professional code. This sentiment has been echoed several times in the firm’s history. In the 2013 annual report the CEO of the Commercial Banking unit, Douglas Petno, wrote that the top priority in the firm is to ensure that we fully meet the spirit and letter of the law. After playing the Wheel of Misfortune, whose information is all taken from JPMorgan Chase’s own SEC filings, one can only assume that Petno was expressing a personal fantasy.

But J. Pierpont Morgan and Carlo Gambino had a lot more in common. Gambino routinely operated on the theory of “the public be damned.” J. Pierpont Morgan had the same philosophy; he put it this way: “I owe the public nothing.” Carlo Gambino’s family and the folks at J.P. Morgan Chase have common business practices. As we all know from watching “The Godfather,” mafia families, like the folks at JPMorgan Chase, understand the value of making very substantial political contributions to politicians in high places. We noted in Chapter 3, for example, that the folks at JPMorgan Chase contributed approximately $850,000 to Obama’s 2008 political campaign. But 111 years earlier, old J. Pierpont Morgan decided “we will buy a president” and buy President William McKinley he did.

38 http://studygrowknowblog.com/2012/11/16/buying-a-president/; Scott Whitlock, History Channel Spins Republican President McKinley as Bribe-Taker, Corporate Stooge, MRC NewsBusters, (Nov. 22,
But let’s be clear: There are differences as well, between JPMorgan Chase and
the Gambino crime family. For example, old J. Pierpont Morgan bailed out the United
States government during the silver crisis of 1893 and bailed out New York City in its
1907 financial crisis.39 Jamie Dimon turned it around in 2008: the government bailed
out JPMorgan Chase to the tune of $25 billion.40

Unlike the Gambino crime family which was managed as a dictatorship by Carlo
Gambino, JPMorgan Chase is managed by a Board of Directors and advised by its own
consigliore, JPMorgan Chase’s esteemed General Counsel, Stephen M. Cutler. But like
the consigliore in “The Godfather,” Cutler conforms to J. Pierpont Morgan’s conception
of a good lawyer. The old man was heard to say: “I don’t know as I want a lawyer to tell
me what I cannot do. I hire them to tell me how to do what I want to do.”41 In this,
Jamie Dimon and J. Pierpont Morgan are cut from the same cloth.

Stephen M. Cutler

39 Mark Esposito, J.P. Morgan and the Reverse Bailout that Saved the U.S., Johnathan Turley, (Feb. 6,
J.P. Morgan, Easing the Financial Panic, Company History,
https://www.jpmorgan.com/pages/jpmorgan/about/history/month/oct
40 JPMorgan Chase & Co. Press Release June 17 2009, JPMorgan Chase Repays $25 Billion In TARP
Funds In Full, http://investor.shareholder.com/JPMorganChase/releasedetail.cfm?ReleaseID=390330
In 2002, there was an overwhelming loss of confidence in the integrity of the securities markets as a result of the massive frauds perpetrated on investors in companies such as Enron Corporation, Tyco International Ltd., Adelphia Communications Corporation, Peregrine Systems Inc., and WorldCom. In order to restore confidence in the capital markets, Congress enacted the Sarbanes-Oxley Act of 2002.\(^\text{42}\) This was a huge step forward in protecting investors because it imposed upon a public company’s top management personal liability for the accuracy of the company’s publicly filed financial information. Although the legislation was vigorously opposed by corporate insiders, to those of us who want to protect the public against dishonest officers of public companies, the Sarbanes-Oxley Act was a long-needed and fundamental reform. After all, the public has no way of knowing if a company’s financial statements are accurate. The corporate insiders certainly do.

Thus, prior to Sarbanes-Oxley, the general counsel of a public corporation could take the position that he had no knowledge that the company’s financials were inaccurate. After Sarbanes-Oxley, “inside counsel” were essentially deputized as a public corporation’s gatekeepers, responsible to assure the investing public that it can rely upon the company’s public filings.\(^\text{43}\)

When Sarbanes-Oxley was enacted, Cutler was Director of Enforcement at the SEC and was one of the country’s leading proponents of imposing fundamental obligations of integrity upon the officers of public companies and their attorneys. Cutler vigorously embraced the letter and the spirit of Sarbanes-Oxley. In a speech Cutler gave

\(^{42}\) (Pub.L. 107–204, 116 Stat. 745, enacted July 30, 2002), also known as the 'Public Company Accounting Reform and Investor Protection Act' (in the Senate) and 'Corporate and Auditing Accountability and Responsibility Act' (in the House) and more commonly called Sarbanes-Oxley.

in 2004, he defended the effectiveness of SEC rules implementing Sarbanes-Oxley, including the requirement to “report up the ladder” evidence of material violations of securities laws. He explained that the SEC was looking both to corporate officers and corporate in-house lawyers to expose corporate frauds and he announced that the SEC intended to bring actions against lawyers who assist clients with violations of federal securities laws by, for example, assisting in illegal late trading or in “concealing evidence of fraud, particularly in the context of internal investigations.”

Here are Cutler’s own words in describing, in 2002, the themes of the SEC’s enforcement program:

Let me briefly tell you what I believe those themes to be: the first is the fundamental significance of gatekeepers in maintaining fair and honest markets; the second is the importance of maintaining integrity in the investigative process aimed at ferreting out securities law violations; and the third is the need for greater personal accountability and deterrence at the top of the corporate world.

Cutler, speaking for the SEC, explained:

Consistent with Sarbanes-Oxley’s focus on the important role of lawyers as gatekeepers, we have stepped up our scrutiny of the role of lawyers in the corporate frauds we investigate. We have named lawyers as respondents or defendants in more than 30 of our enforcement actions in the past two years.

In another speech in 2004 to the General Counsel Roundtable, Cutler exhorted corporate general counsel to:

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Hold all of your managers accountable for setting the right tone. That means disciplining or even firing them when they have failed to create a culture of compliance. Human nature being what it is, there will be those who break the rules. But if managers don’t do enough to prevent those violations, or let them go unaddressed for too long, then they should be held responsible – even in the absence of direct involvement in those violations.47

How could anyone argue with Cutler’s values? Why would any honest American condone a corporate officer’s deception of the investing public or a corporate lawyer’s acting as the agent of his client’s fraud? This is like apple pie. There isn’t an honest American who would disagree. How reassuring, then, it must have been for JPMorgan Chase shareholders to learn, in 2006, that former SEC Director of Enforcement Stephen M. Cutler had become General Counsel of JPMorgan Chase. Cutler was eminently qualified to assure investors that JPMorgan Chase would comply with all of the securities laws to protect public investors. After all, Cutler not only had the high standards one would expect from a Director of Enforcement at the SEC, he had a stellar resume: He had a BA summa cum laude from Yale University where he was Phi Beta Kappa; he was a graduate of Yale Law School where he was the editor of the Law Journal; he clerked for a federal appeals court judge immediately after law school; he had been a partner at the high-powered Washington, D.C., law firm of Wilmer Hale (high-powered enough to get a special patent law passed by Congress to protect it from malpractice as set forth in Chapter 3), and he had a distinguished career at the SEC from 2001—2005 (except he failed to pursue the investigation of Madoff).48

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Cutler was hailed as a public watch dog by James Stewart, who wrote in the New York Times:

As the Securities and Exchange Commission’s chief of enforcement from 2001 to 2005, the era of landmark fraud settlements with Enron, WorldCom and Tyco, Stephen M. Cutler earned a reputation as a tough and, at times, feared regulator. He was particularly dismayed by chief executives, chief financial officers, general counsels and compliance officials who, even if not directly implicated in wrongdoing, created a culture in which it was ignored, tolerated, or even worse, tacitly encouraged. 49

But a funny thing happened to Cutler on his way from the SEC to Wall Street. He lost his moral compass. And he lost his disapproval of corporate officers who “created a culture in which” wrongdoing is “ignored, tolerated, or even worse, tacitly encouraged.”

If readers play the Wheel of Misfortune on our website, jpmadoff.com, they will see that, in the last four years, JPMorgan Chase has paid out $29 billion in fines, penalties and settlements for violating the law in the United States and in numerous foreign countries and for defrauding a broad array of its customers from municipalities, to credit card holders, to homeowners, to veterans, to investors – all during the period that Cutler has been General Counsel of JPMorgan Chase. The Wheel of Misfortune proves that nobody who deals with JPMorgan Chase is safe.

Even Columbia professor John C. Coffee, Jr. had to admit that Cutler has lost his moral compass:

“You have to say, he didn’t run a tight enough ship. It’s not just the London Whale episode. I wouldn’t call that the crime of the century. But taken with everything else, the energy manipulation, the mortgage fraud cases, the Libor

rigging, it suggests that there was not enough investment in compliance and the general counsel was not proactive enough. He’s done a very good job at defending the firm but not enough at preventing it in the first place.”

The London Whale scandal was, of course, stunning in its scope, but as the New York Times acknowledged on September 21, 2013, the $6.2 billion London Whale fiasco was not JPMorgan Chase’s only regulatory problem on Cutler’s watch:

The bank faces multiple other regulatory actions and investigations, ranging from manipulating energy markets, to mortgage-backed securities fraud, to failing to disclose suspicions about the Ponzi scheme operator Bernard Madoff, to conspiring to fix rates in the setting of the global benchmark interest rate informally known as Libor. As the allegations have mushroomed, JPMorgan has gone with almost dizzying speed from one of the world’s most admired banks to one tainted by scandal.

It’s as if Cutler has sold his soul to corporate corruption, doing precisely what prompts many people to think of the law as the world’s second oldest profession. To take just one example, although Cutler publicly announced in 2002 that the SEC was going to target corporate lawyers who concealed evidence of fraud “in particular in the context of internal investigations,” with Cutler at the legal helm, JPMorgan Chase refused to turn over to the OCC and the Treasury Department the notes taken by JPMorgan Chase’s lawyers of their interviews with bank employees about the bank’s

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knowledge of Madoff’s crimes.54 Is there any possible conclusion one can reach other than that the lawyers’ notes prove that JPMorgan Chase was complicit in Madoff’s crimes? And, sadly, that Steven Cutler has turned into the kind of lawyer he targeted for prosecution when he was SEC Director of Enforcement?

And let us not forget that Cutler was the man who, in 2011, stood beside Jamie Dimon at an analysts meeting and represented, in refutation of the Madoff Trustee’s complaint against JP Morgan Chase, that “JPMorgan did not know about or in any way participate in the [Madoff] fraud.”55 JPMorgan knew so little about the Madoff fraud that it paid over $3 billion to settle criminal and civil charges arising from its relationship with Madoff. And, obviously, the bank’s Board of Directors recognized that the bank got off cheap because the Board awarded Jamie Dimon a 74% raise for having accomplished such a bargain settlement of the government’s criminal charges. Can we really believe that Cutler was ignorant of the falsity of Dimon’s representation to analysts at the 2011 meeting that JPMorgan Chase “did not know about or in any way participate in the [Madoff] fraud?” If so, then why did Cutler refuse to turn over the attorneys’ notes of their internal investigation? Obviously, the bank had something very significant to hide and Cutler was the head of the legal department that hid it.

Similarly, Cutler was the representative of JPMorgan Chase who signed the Deferred Prosecution Agreement with the government and who admitted to the facts set


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forth in the Stipulation of Facts and in the criminal Information which formed part of
the Deferred Prosecution Agreement.\textsuperscript{56} And Cutler certainly knows that the securities
laws prohibit not just statements that are literally false but also those that are materially
misleading.\textsuperscript{57}

But it gets worse. As Matt Taibbi explained: in 2008 Cutler obtained from his
successor as the Director of Enforcement at the SEC, Linda Chatman Thomsen,
confidential internal SEC information concerning the SEC’s intentions with respect to
JPMorgan Chase. Thomsen “went out of her way to pass along valuable information to
Cutler .... who had gone to work for JP Morgan. According to the SEC’s inspector
general, Thomsen signaled Cutler that the SEC was unlikely to take action that would
hamper JP Morgan’s move to buy up Bear Stearns.”\textsuperscript{58} Some people go to jail for giving
out and accepting insider tips. Others, like Thomsen and Cutler, simply go to Wall
Street. Ms. Thomsen is now a partner with Davis Polk Wardwell LLP.\textsuperscript{59}

As Judge Stanley Sporkin wrote in connection with the misdeeds that led to the
collapse of Lincoln Savings & Loan Association:

Where were these professionals, a number of whom are now
asserting their rights under the Fifth Amendment, when
these clearly improper transactions were being
consummated?

Why didn’t any of them speak up or disassociate themselves
from any of the transactions?

Where also were the outside accountants and attorneys when
these transactions were effectuated?\textsuperscript{60}

\textsuperscript{56} January 6, 2014 Deferred Prosecution Agreement at 9.
\textsuperscript{57} See 17 CFR 240.14a-9.
\textsuperscript{58} Matt Taibbi, Is the SEC Covering Up Wall Street Crimes?, Rolling Stone, (Aug. 17, 2011),
\textsuperscript{59} Davis Polk, Linda Chatman Thomsen, http://www.davispolk.com/lawyers/linda-thomsen/
\textsuperscript{60} Lincoln Sav. & Loan Ass’n v. Wall, 743 F. Supp. 901 (D.D.C. 1990).
Of course you have to draw your own conclusions but, in Cutler’s case, it seems he has become a conscientious objector in the war against banksters – with a compensation package of at least $10 million a year. As one lawyer expressed it: “I have to admit to a certain amount of schadenfreude” because, while Cutler was at the SEC, “he did a lot of grandstanding about lawyers being gatekeepers and the moral compass for the organization and how we should have prevented all this. He sounded great on the soapbox. Now I’ve been following JPMorgan and it’s pretty ironic.” What has happened to change Cutler’s moral character in the 12 years since 2002, other than the massive increase in his net worth?

We are not the first to focus on the evil of over-compensating in-house counsel. One early expert on this subject is none other than . . . Cutler himself! Cutler oversaw the SEC’s settlement with Tyco International Ltd. arising from, among other things, the looting of the company by its President and CEO, Dennis Kozlowski. The general counsel of Tyco during the period was Mark Belnick, a former litigation partner at Paul Weiss and a protégé there of Arthur Liman. Praised as a “model of integrity” by respected United States Senator Warren Rudman for his role as assistant to Arthur Liman at the Senate Iran Contra hearings, Belnick was accused by the SEC (led by Cutler) in 2002 of accepting an unauthorized $17 million compensation package as hush money for looking the other way and permitting Dennis Kozlowski to loot Tyco of more than $170 million. While a $17 million compensation package must seem like pocket-change to Cutler who earns more than that in just two years at JPMorgan Chase, at the

time Cutler described the dollar amounts in the Tyco case as "staggering." The SEC’s complaint alleged that the case "involves egregious, self-serving and clandestine misconduct."63

Belnick was prosecuted under state law because Sarbanes-Oxley had not yet been enacted. His defense rested, in large part, on his argument that “I am not my board of directors’ keeper.” This was a defense that was removed by Sarbanes-Oxley but, using that defense, Belnick was acquitted. But he did not come out covered with glory.64

Many people expressed skepticism that a lawyer of his quality and experience was unaware of what was going on at Tyco. Others were more blunt. As one person put it:

“Evidently, lawyer Belnick was willing to grease the skids for Mr. Kozlowski’s sophisticated looting of Tyco in exchange for greasing his lawyer’s palms.”65

Cutler was unforgiving:

[Kozlowski and Belnick] treated Tyco as their private bank, taking out hundreds of millions of dollars in loans and compensation without ever telling investors [and in doing so] put their own interests above those of Tyco’s shareholders.66

How Cutler has changed! While our society is unforgiving of women who sell their bodies to support themselves, we are unbelievably tolerant of men who sell their

souls to acquire massive fortunes. You would have to be brain-dead through the last 14 years to believe there is no connection between over-compensation and lack of ethics on Wall Street.\textsuperscript{67} And this has been a particular problem with in-house counsel. Cutler himself noted, while at the SEC, that about half of all lawyers charged with misconduct were in-house lawyers.\textsuperscript{68}

How sad it is then, that Cutler, of all people, would have succumbed to the conduct that he had previously prosecuted. The compromise of Cutler’s high values was compensated, in large part, by the receipt of large amounts of JPMorgan Chase stock. Not a good thing. If the in-house lawyer is a shareholder, then, like any shareholder, he has an economic incentive to conceal any internal fraudulent or criminal conduct because it would adversely impact the company’s stock price and his own net worth. Stock ownership by inside counsel, though not illegal, raises a mass of legal and moral issues and many commentators have called for banning or, at least, strictly scrutinizing equity-based compensation to such counsel.\textsuperscript{69} One cannot help but wonder whether Cutler’s conduct is traceable to his enormous shareholdings in JPMorgan Chase and also whether it is not the policy of JPMorgan Chase to over-compensate its officers with corporate stock so that they have a huge disincentive to blow the whistle on illegal conduct they observe.

Perhaps the most significant issue to which Cutler exhibited a blind eye and tone deaf ear is that of the SEC’s revolving door (discussed in Chapter 3). He took the position of General Counsel at JPMorgan Chase quickly after leaving the SEC, when he had been SEC Director of Enforcement during a part of the period that the SEC was investigating Madoff and he knew that Madoff’s investment advisory business was carried out through JPMorgan Chase.\(^70\) Wouldn’t most people see the conflict in taking a job at the bank which exclusively services Bernie Madoff’s controversial investment advisory business? The very business that the SEC had been investigating, on and off, since 1992? Madoff was investigated by the SEC six times during the 16-year period from 1992—2008, including during the time that Cutler was Director of Enforcement. As set forth in the Inspector General’s Report on the failure of the SEC to uncover Madoff’s fraud, Cutler was receiving emails involving Madoff as early as 2001, the year he became Director of Enforcement.\(^71\) If it turned out there was any problem or question regarding Madoff, any red flag, any inquiry at JPMorgan Chase, what was Cutler going to do? The answer, unfortunately, is precisely what he did do: nothing.

And, of course, as you may recall from Chapter 2, JPMorgan Chase, with Cutler as its General Counsel, did not file a suspicious activity report about Madoff with the United States government until after Madoff confessed and was arrested.\(^72\) What would Stephen M. Cutler, SEC Director of Enforcement, have to say about that?


\(^72\) Stipulated Statement of Facts dated January 6, 2014 ¶ 85.
But Cutler's conduct respecting Madoff tells only a part of the story. Cutler was the chief watch-dog at JPMorgan Chase in 2012, at the time of the $2 billion (except it was really $6 billion) London Whale trading loss. Cutler described it like this:

two of his “proudest days” as general counsel were May 10 of last year, when JPMorgan publicly disclosed the London Whale problem and acknowledged that it was the result of a badly conceived, executed and vetted trading strategy, and two months later, on July 13, when the bank told investors what had gone wrong and restated its first-quarter results.73

Yet, this statement itself ignored the fact that, according to the Senate’s report on the London Whale, the JPMorgan Chase officer in charge of the London trading department, Ina Drew, ordered traders to stop trading on March 23, 2012, at which point the traders had sent emails acknowledging that the losses where “huge” and “more and more monstrous.”74 Yet, three weeks later, on April 13, 2012, Dimon dismissed early press accounts of possible losses in the London trading book as a “tempest in a teapot” and Douglas Braunstein, then JPMorgan Chase's chief financial officer, said on an earnings call with analysts and investors that the bank was "very comfortable with our positions."75 According to Senator Carl Levin:

None of those statements made on April 13 to the public, to investors, to analysts were true. The bank also neglected to disclose on that day that the portfolio had massive positions

that were hard to exit, that they were violating in massive numbers key risk limits.  

At an April 30, 2012 meeting, Jamie Dimon finally saw the numbers of the actual losses. Observers said “he couldn’t breathe.” According to the Wall Street Journal, a group of bank executives at the meeting, including Cutler, weighed whether or not to disclose the losses immediately. And the decision was made to hold off public disclosure.

Thus, one wonders whom JPMC thought it was kidding. The magnitude of the projected loss was not disclosed until July 13, 2012 – approximately one month after Jamie Dimon testified in Congress – when JPMorgan Chase finally disclosed that the loss was $5.8 billion, with the addition of a $4.4 billion loss in the second quarter and subsequent recalculation of a loss of $1.4 billion for the first quarter. A bank spokesman claimed that projected total losses could be more than $7 billion.

As this chapter is being written, the Wall Street Journal and others are reporting on the government’s investigation of possible violations by JPMorgan Chase of the Foreign Corrupt Practices Act with respect to JPMorgan Chase’s hiring of family members of powerful Chinese government officials. According to information provided to the Wall Street Journal, during Cutler’s tenure, people in the legal department of JPMorgan Chase in New York were asked to investigate these practices by JPMorgan

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Chase employees in China. Yet the practices continued. And on November 4, 2014, JPMorgan Chase acknowledged that the Department of Justice is investigating possible criminal violations by the Bank relating to its foreign exchange trading business.

It is clear that JPMorgan Chase has the ability (and apparently the determination) to defraud people and violate the law in scores of countries all over the world. See our Wheel of Misfortune at jpmadoff.com if you have any doubt about this.

The Senate Committee that investigated the London Whale found that JPMorgan Chase’s Chief Risk Officer, John Hogan, fresh off his failure to stop the Madoff fraud, failed to give correct information to federal regulators investigating the London Whale. We will have separate chapters dealing with John Hogan and with the London Whale because of their significance in understanding JPMorgan Chase’s culture which contributed to its de facto partnership with Madoff.

**The Corporate Governance and Nominating Committee**

While we certainly have reason to be discouraged about Cutler’s performance, we should be able to take comfort in the fact that there are other “gatekeepers” at JPMorgan Chase: the members of the Corporate Governance and Nominating Committee, which controls admission to the Board of Directors of JPMorgan Chase.

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Like the Gambino crime family, the over-riding goal of the Board of Directors is to enhance stock value, by hook or by crook. Anyone who posed a threat to the achievement of the Gambino crime family’s goals ended up sleeping with the fishes at the bottom of a river. JPMC uses more sophisticated means, as we have seen with Stephen Cutler. Anyone who poses a threat to the achievement of JPMC’s goals is neutralized with money: either they are paid exorbitant amounts to join or they are subjected to the massive army of professionals that JPMC employs to help it achieve its goals.

The Corporate Governance and Nominating Committee plays a crucial role in assuring that JPMC is properly managed by people with the necessary level of moral fiber to get the job done. It is this Committee that proposes new members to the JPMC Board. And the Committee is able to offer new Board members a handsome compensation package for this minimally time-consuming position: All Board Members are paid $245,000 a year to serve on the board.\(^8^3\) Berkshire Hathaway, on the other hand, pays its Board members approximately $3,800 per year \(^8^4\) but that is because Warren Buffet believes that excessive compensation to Directors can hurt shareholders.\(^8^5\)

The Chairman of the Corporate Governance and Nominating Committee is chosen for his particular qualifications to screen and control the members of the Board.

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After all, the Board makes important decisions like how much of a raise Jamie Dimon should get for avoiding having any JPMC officers imprisoned for their complicity in Madoff’s crimes. (Readers will recall that the Board gave Dimon a 74% raise for that achievement.) William C. Weldon is the current Chairman of the Committee and, as set forth below, he is eminently qualified for this position.

**William C. Weldon**

Weldon came to JPMorgan Chase after a distinguished career at Johnson & Johnson (“J&J”) where he was Chief Executive Officer from 2002—2012. In 2011, he received total compensation as Chief Executive Officer of $26.8 million. And he provided enormous value to J&J: Under his leadership, the company struggled with recalls of artificial hip implants, recalls of over-the-counter drugs, and safety concerns involving vaginal mesh products. About a week prior to Weldon announcing his

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retirement, J&J recalled the entire U.S. supply – 574,000 bottles – of its infant Tylenol soon after the product had returned to pharmacy shelves.\(^{88}\)

In the year prior to announcing his retirement, Weldon sold more than one million shares of J&J stock, yielding Weldon nearly $69 million. In 2011, critics of Weldon, including a group of shareholders, complained of his compensation of about $30 million a year, saying it ignored his troubled leadership.\(^{89}\) To prove their point, when Weldon retired from J&J, he took a retirement package of $143.5 million.\(^{90}\)

Weldon’s achievements have been widely recognized. For example, he was named one of "The Worst C.E.O.'s of 2011"\(^{91}\) in an article in the *New York Times* written by Sydney Finkelstein, who is a Professor of Strategy and Leadership at the Tuck School of Business at Dartmouth College and author of the bestselling book “Why Smart Executives Fail.”\(^{92}\) In Finkelstein’s view:

> The most complacent chief executive in America has got to be Mr. Weldon of Johnson & Johnson. And maybe the luckiest as well, because he remains in his corner office despite an incredible collection of product recalls from all corners of the company: insulin pumps, syringes, hip implants, sutures, contact lenses, Tylenol (!), Benadryl, Rolaids, the list goes on.

Johnson & Johnson is a highly decentralized organization, so it is unusual to see so many breakdowns in

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\(^{88}\) Bill Berkrot and Michele Gershberg, Johnson & Johnson CEO Weldon to step down in April, Reuters, (Feb. 21, 2012, 6:48PM), [http://www.reuters.com/article/2012/02/21/us-johnsonjohnson-idUSTRE81KrYO20120221](http://www.reuters.com/article/2012/02/21/us-johnsonjohnson-idUSTRE81KrYO20120221)


product quality and safety because they span such a wide range of businesses. When this happens, responsibility must surely rest at the very top of the enterprise, with Mr. Weldon and the culture he has set in place. Mr. Weldon is almost the Tony Hayward of 2011, though unlike after BP's disastrous Gulf oil spill, Johnson & Johnson keeps trucking along. But at some point the Teflon will start to wear off, and these mistakes will stick.

Mr. Finklestein is not the only one to recognize Weldon’s achievements. Harvard Business School selected Weldon as a case study of unethical corporate leadership.\(^{93}\) Thus, this is a man who is uniquely qualified to be on the Board of JPMorgan Chase and to be given the enormous distinction, among Board members, of being Chairman of the Governance and Nominating Committee. We certainly hope he chooses people in his own image.

Among the indicia of Weldon's sensitive corporate leadership, in 2009, he bought an $8.45 million, palm-fringed waterfront lot in North Palm Beach, Florida,\(^{94}\) at the same time J&J announced plans to lay off 8,100 employees. He bought the property from Jack Welch Jr., former chairman and CEO of General Electric. The lot is in a development called "Lost Tree Village" which a realtor describes as consisting “of homes with ocean, intracoastal, golf course, and lake views with a boundary of MacArthur State Park to the south, the Atlantic Ocean to the east, Lake Worth to the west and Seminole Landing to the north. The average home in the community sells for nearly $9 million, with a range from $2.3 to $23.9 million.\(^{95}\)

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Weldon has experience testifying before Congress. In late 2010, he was called to testify about some of J&J’s product recalls, as well as about an incident in which J&J hired contractors to pose as customers and buy defective bottles of Motrin at drugstores rather than alert the general public to the defects. Showing his sensitivity to corporate ethics, Weldon admitted that “This was not one of our finer moments.” 96 During Weldon’s tenure at J&J, the quality control problems at J&J’s McNeil consumer healthcare unit – which makes over-the-counter medicines like painkillers Tylenol and Motrin – were deemed so pervasive that U.S. health regulators took over supervision of three manufacturing plants. 97 That was also not one of J&J’s finer moments.

But Weldon has experience in international crimes which is valuable to JPMorgan Chase. Under his leadership, in April 2011, J&J agreed to pay $70 million to settle charges that it had bribed doctors abroad in order to promote its medical devices. 98 The SEC had charged J&J with violating the Foreign Corrupt Practices Act by bribing public doctors in Greece, Poland, and Romania to select J&J surgical implants and other products and by paying kickbacks to Iraq to obtain 19 contracts under the United Nations Oil for Food Program. 99 J&J agreed to settle the SEC’s charges by paying more than $48.6 million in disgorgement and prejudgment interest and a fine of

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96 Bill Berkrot and Michele Gershberg, Johnson & Johnson CEO Weldon to step down in April, Reuters, (Feb. 21, 2012, 6:48PM), [http://www.reuters.com/article/2012/02/21/us-johnsonjohnson-idUSTRE81KiYO20120221](http://www.reuters.com/article/2012/02/21/us-johnsonjohnson-idUSTRE81KiYO20120221)
97 Bill Berkrot and Michele Gershberg, Johnson & Johnson CEO Weldon to step down in April, Reuters, (Feb. 21, 2012, 6:48PM), [http://www.reuters.com/article/2012/02/21/us-johnsonjohnson-idUSTRE81KiYO20120221](http://www.reuters.com/article/2012/02/21/us-johnsonjohnson-idUSTRE81KiYO20120221)
JPMadoff: The Unholy Alliance between America’s Biggest Bank and America’s Biggest Crook

$21.4 million to settle parallel criminal charges announced by the U.S. Department of Justice.\(^\text{100}\)

While the fines J&J paid were small change – only in the tens of millions of dollars, now, at JPMorgan Chase, Weldon is in the big leagues – holding an important Board position as JPMorgan Chase pays out tens of **billions** of dollars in fines and penalties for its illegal conduct, here and abroad. We note, of course, that JPMorgan Chase is now under investigation for bribing Chinese officials in order to obtain business in China – an investigation that will likely result in another substantial diversion of shareholder dollars.\(^\text{101}\)

And, in addition to his experience in foreign corrupt practices, Weldon has a realistic view of the quality of a corporation’s products. His corporate philosophy at J&J was described as we “make our numbers for the analysts, period. And if that means we have to cut costs on things that affect quality, then by God, we’re going to make those numbers.”\(^\text{102}\)

Even though Weldon may not have thought twice about sacrificing the quality of J&J’s products in his effort to make his numbers, he understands where corporations should not scrimp. For example, his compensation at J & J was as follows:

**Compensation for 2012**

<table>
<thead>
<tr>
<th>Salary</th>
<th>$1,320,578</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restricted stock awards</td>
<td>$7,565,328</td>
</tr>
</tbody>
</table>


And Weldon has not exactly entered the poorhouse since he left J & J. He now has time to spread his business acumen among other major corporations that recognize his unique skills. Thus, Weldon’s directors’ fees in 2013 were as follows:  

<table>
<thead>
<tr>
<th>All other compensation</th>
<th>$234,688</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option awards</td>
<td>$4,019,999</td>
</tr>
<tr>
<td>Non-equity incentive plan compensation</td>
<td>$13,447,666</td>
</tr>
<tr>
<td>Change in pension value and nonqualified deferred compensation earnings</td>
<td>$3,250,000</td>
</tr>
<tr>
<td>Total Compensation</td>
<td>$29,838,259</td>
</tr>
</tbody>
</table>

You might wonder why Weldon would be sitting, simultaneously, on the Boards of four different major corporations. The answer is obvious: There are not a lot of guys running around with his level of competence and integrity. And he is thrifty, as well. When Weldon was the CEO of J&J, he took advantage of a New Jersey law that relieved him of the obligation to pay income taxes to New Jersey if he lived outside the state. So he bought a home in Bucks County, Pennsylvania, and took a helicopter to work in New Jersey each day.  

Weldon is a graduate of Quinnipiac University and is in its Business Leader Hall of Fame. He has offered valuable advice to students: "You must be willing to make
tough decisions to preserve your dignity and ethics." Now that certainly makes us pause.

But Weldon is not the sole member of the important Governance and Nominating Committee. He has two co-members: Lee R. Raymond and Stephen B. Burke.

Lee R. Raymond

It is heartening to know that there is someone on the Board of JPMorgan Chase who has good values. Lee R. Raymond has been the Lead Independent Director since 2001 and he is more aptly referred to as the Board’s moral philosopher. Thus, as he explained:

There is no system that is inherently moral if the participants themselves are not.

In other words, if the participants are inherently immoral, then the system will be too. This is a valuable principle which the Board undoubtedly considered when it

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rewarded Jamie Dimon with a 74% raise for dodging the criminal prosecution of any of the Bank’s officers in connection with the Bank’s sheltering of Madoff for 20 years.

The function of Lead Independent Director is crucial in the management of JPMorgan Chase. As explained in JPMorgan Chase’s proxy materials: The Board carries out its responsibilities through, among other things, the recently strengthened role of the Lead Independent Director, a strong committee structure and adherence to our Corporate Governance Principles. Thus, Raymond’s strong moral fiber is essential to the integrity of the Board. And Raymond understands the threat that greed poses to our society. As he himself observed:

   We have seen that in this country in the last few years, particularly on Wall Street, with the rise of the old human frailty of greed. This occurs when people begin to serve only their own needs to the detriment of everyone else.

But Raymond also recognizes that nothing in life is black-and-white. Thus, in 2005, the year before he retired as Chairman and Chief Executive Officer of Exxon Mobil, his annual compensation was a mere $19.9 million. And when he retired, he insisted on a modest retirement package of $398 million. Raymond’s humility is evident in the fact that his 2005 compensation was $19.9 million and not $20 million, as well as in the fact that his retirement package was $398 million and not $400 million. There is no reason to be garish. It is this kind of subtle sensitivity to the feelings of the

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common man which makes Raymond’s position as the Lead Independent Director of JPMorgan Chase so vital.

Raymond distinguished himself at Exxon Mobil by conserving the company’s resources so that there would be more money to pay him. He started this early on, perhaps because he knew he would need a hefty retirement package to support his family in the style to which they had become accustomed. Thus, in 1998, when Exxon and Mobil announced its merger, Raymond eliminated 2,000 executive positions out of a total of 3,000. But being a true democrat, he didn’t stop at executives; he also cut the jobs of 16,000 employees, resulting in a total saving of $3.8 billion within four years of the merger. So it’s no wonder, having put 16,000 people out of work, why he was entitled to a $398 million retirement package. Nobody ever said that someone on Raymond’s level has to practice what he preaches. After all, consistency is the hobgoblin of fools or rather, of people who don’t make the big bucks by being the job destroyers.

And then there’s the Exxon Valdez incident. In 1989, when Raymond was President of Exxon, the Exxon Valdez had a small problem in Alaska. It hit a reef and smeared 11 million gallons of oil over 1,200 miles of Alaska’s coast line, one of the worst environmental disasters in America’s history. Exxon said it was an accident but ultimately it had to pay, in addition to approximately $500 million in compensatory damages, another $500 million in punitive damages (reduced on a technicality from a $5 billion jury award) for conduct the United States Supreme Court called less than

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malicious but more than negligent.\textsuperscript{114} There are two theories as to why the accident occurred: some people say it resulted from the fact that Exxon put a Captain in charge of the ship who had a drinking problem and was in his bunk sleeping it off when the ship struck the reef. Other people, including investigative reporter Greg Palast, say that the radar was out on the ship (and had been from the first time it went to sea) and Exxon management knew it but didn’t want to spend the money to fix it.\textsuperscript{115}

Palast who characterizes Exxon’s version of events as “a lot of lies,” wrote a four-volume report with the affected Alaskan natives in preparation for bringing fraud and racketeering charges against Exxon. His report never saw the light of day. Why? Because, according to Palast, Exxon’s lawyers threatened the natives that if they went public with fraud charges, Exxon would never give them a dime to clean up the villages. But Exxon sure outsmarted the natives: Being naïve, they abandoned their claims. And then, SURPRISE, Exxon stiffed them on the money.\textsuperscript{116} As President of Exxon, Raymond was heavily involved in the Exxon Valdez incident, including his going on TV the week after the disaster to defend Exxon and his negotiating a settlement with the Department of Justice. Raymond may not have been directly involved in the cheat-the-natives scheme but, of course, the buck stopped with him and he had to bear the ultimate responsibility for this conduct. No wonder he is so well-suited to be on the Board of JPMorgan Chase.


\textsuperscript{115} Gregory Palast, Don’t Buy Exxon’s Fable of the Drunken Captain, Greg Palast - Journalism and Film, (Mar. 29, 1999), \url{http://www.gregpalast.com/dont-buy-exxons-fable-of-the-drunken-captain/}

\textsuperscript{116} Greg Palast, 20th Birthday of the Exxon Valdez Lie, Greg Palast - Journalism and Film, (Mar. 23, 2009), \url{http://www.gregpalast.com/stick-your-damn-hand-in-it-20th-birthday-of-the-exxon-valdez-lie/}
Although Raymond understands that the executives of a corporation work for the shareholders, he did not treat Exxon shareholders with respect. Or anyone else for that matter. In his 12 years as chief executive of Exxon Mobil, Raymond had a reputation for bulldozing analysts and shareholders and going toe-to-toe with government authorities.\(^\text{117}\) He used to roll his eyes and shake his head with disbelief at annual meetings when the shareholders spoke. He even ordered their microphones shut off when they proposed resolutions involving the environment, global warming and human rights.\(^\text{118}\) Fadel Gheit, the managing director of oil and gas for Oppenheimer and Company, was quoted as saying of Raymond, “He was never bashful to tell you just how wrong you were.”\(^\text{119}\)

This behavior is strangely inconsistent with Raymond’s acknowledgment that “his first responsibility is to serve” his shareholders.\(^\text{120}\) We weren’t there when Raymond said this and it’s possible it was tongue-in-cheek – just like it was supposed to be tongue-in cheek when Jamie Dimon tossed aside a question from an analyst by saying, “I’m richer than you.”\(^\text{121}\) Quite a bunch of cut-ups, these JPMorgan Chase Board members. The Board meetings must be a riot.

But to give Raymond his due, he could recognize when shareholders were evil. For example, concerned Exxon shareholders formed a group called “Campaign Exxon

\(^{117}\) Jessica Silver-Greenberg and Susanne Craig, Big Vote on Dimon May Hinge on Views on JPMorgan’s Top Director, New York Times, (May 12, 2013, 7:32PM), [http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/](http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/)


\(^{119}\) Jessica Silver-Greenberg and Susanne Craig, Big Vote on Dimon May Hinge on Views on JPMorgan’s Top Director, New York Times, (May 12, 2013, 7:32PM), [http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/](http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/)

\(^{120}\) ML Quotes, Lee R. Raymond Quotes about Business, [http://www.mlquotes.com/authors/lee_r._raymond/about/business/](http://www.mlquotes.com/authors/lee_r._raymond/about/business/)

\(^{121}\) Jessica Silver-Greenberg and Susanne Craig, Big Vote on Dimon May Hinge on Views on JPMorgan’s Top Director, New York Times, (May 12, 2013, 7:32PM), [http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/](http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/)
Mobil” which accused Raymond of making false statements that he had a petition containing signatures of 17,000 scientists who believed that there was no consensus on global warming. Campaign Exxon Mobil based their findings on a report by Dr. Lloyd Keigwin, a scientist who had completed studies for Exxon on global warming. The Campaign challenged Raymond’s claim, asserting that the signatures were obtained from the Internet with no verification and included the names of such noted scientists as the Spice Girls, James Brown (not sure if that was the football player or the Father of Soul or just an alias), and several TV situation comedy characters. Raymond did not respond to the charges. Instead he announced that he would seek out methods to increase Exxon's efficiency while bringing larger returns to its stockholders figuring, no doubt correctly, that the shareholders would agree that ethics in the pursuit of profits is no virtue and dishonesty to increase stock price is no vice.¹²²

While Raymond was at Exxon, the company was roundly criticized by several Senators after it hired Phillip Cooney, a White House official who had just resigned after—get this—allegedly revising government scientific reports to cast doubt upon the link between global warming and the emission of greenhouse gasses. The Senators, including then minority leader Harry M. Reid, wrote to Raymond, questioning the company’s ethics. Exxon’s official response was: “We hired the best man for the job.”¹²³ Apparently, Cooney was hired to tamper with scientific data.

But perhaps the most surprising episode in Raymond’s career came just last year when shareholders were called upon to consider splitting Jamie Dimon's jobs as

chairman and chief executive.124 Although it was a non-binding plebiscite, a “yes” vote, some feared, would lead to Dimon’s leaving the Bank. The Board is supposed to oversee the CEO, and Raymond’s role was critical. Given his background, age (15 years older than Dimon) and ferocity at Exxon Mobil, Raymond was logically the only effective counterbalance there could be to the high-strung – some would say arrogant – Dimon. And a counterbalance was going to be sorely needed if Dimon was to keep both positions, at least in the view of many shareholders contemplating the $6 billion London Whale fiasco (if they only knew what was yet to come).

The problem was, as the institutional investors looked at Raymond’s performance, they found the wheels seemed to have come off the Exxon Bulldozer and he was viewed as not having done enough to strengthen risk controls and root out problems.125 Martha Carter, global head of research for a shareholder advisory firm, Institutional Shareholder Services Inc., which supported splitting Dimon’s roles, pressed Raymond on why the Board’s “Risk Policy Committee” had three director-members who lacked strong risk management backgrounds. Raymond’s response: “It was a challenge to find qualified board members.”126

Now this just goes to show how ignorant we are. At $245,000 a year (plus perks) over and above one’s day job, we would have thought the all-powerful Governance and Nominating Committee could have found someone competent to do the job, especially

124 Jessica Silver-Greenberg and Susanne Craig, Big Vote on Dimon May Hinge on Views on JPMorgan’s Top Director, New York Times, (May 12, 2013, 7:32PM), http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/
125 Jessica Silver-Greenberg and Susanne Craig, Big Vote on Dimon May Hinge on Views on JPMorgan’s Top Director, New York Times, (May 12, 2013, 7:32PM), http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/
126 Nadia Damouni, David Henry, and Ross Kerber, RPT-Insight-Dimon has big say over who serves on JPMorgan board, Reuters, (May 16, 2013, 7:59AM), http://www.reuters.com/article/2013/05/16/jpmorgan-dimon-idUSL2NoDXoKT20130516
when other financial giants like Citibank and Morgan Stanley overhauled risk controls during the same time frame. But in a battle between ethics and economics, ethics seldom stands a chance. Despite all the corruption, or maybe because of it, JPMorgan Chase’s profits and stock price have continued to rise, and why rock the boat when it is at a high water mark? Although at least eight federal agencies were investigating the Bank, Raymond and William Weldon sent a seven-page letter to shareholders saying the Risk Committee “has the requisite experience, knowledge, judgment and dedication to oversee the risk management processes.”

We all know the end result: nothing changed: Dimon still holds both jobs; later in 2013, JPMC agreed to pay $13 billion to settle claims arising out of its sale of mortgage-backed securities; and, in early January 2014, JPMorgan Chase paid slightly more than $3 billion to settle the civil and criminal claims arising out of its relationship with Madoff. And, of course, in late January 2014, the Board awarded Dimon a 74% raise. Why not? He is doing the work of two officers (President and CEO) and managed to pay out over $29 billion of shareholder money in just four years to satisfy claims that individuals at JPMorgan Chase had violated the law or defrauded customers.

If you are perplexed, it might help to know that, according to Raymond: “Ethical conduct is something that becomes inherent in an organization over a long period of time.” Raymond has never stated how long we will have to wait until ethics factors

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127 Jessica Silver-Greenberg and Susanne Craig, Big Vote on Dimon May Hinge on Views on JPMorgan’s Top Director, New York Times, (May 12, 2013, 7:32PM), http://dealbook.nytimes.com/2013/05/12/big-vote-on-dimon-may-turn-on-views-about-top-director/

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into the conduct of the folks at JPMorgan Chase.\footnote{We can take comfort from the fact that there is a third member of the Governance and Nominating Committee: Stephen B. Burke – a man who has focused on what is important in life. Although at a young age he considered going to divinity school, he quickly realized that would be a mistake and, instead, he went to Harvard Business School. This was a good choice because, now, he is richer than God. Burke was the chief operating officer and President of Comcast Cable, where he made $31.3 million a year, which included $386,752 for his personal travel on the corporate jet. Tim Arango and Bill Carter, A Little Less Drama at NBC, New York Times, (Jan. 26, 2011). Burke does, however, do public service. For example, he sits on the Board of Directors of Berkshire Hathaway for a mere $2,100 a year. \url{http://www.nytimes.com/2011/01/27/business/media/27nbc.html?partner=rss&emc=rss&pagewanted=all}; Forbes, Stephen Burke, \url{http://www.forbes.com/profile/stephen-burke/}} Obviously, we have a long wait ahead of us. But maybe the mistake is in our expectations: We would not expect Carlo Gambino to concern himself with ethics. Why would we expect that from JPMorgan Chase?

We have more information to give you about the folks who run JPMorgan Chase. In future chapters we will deal, for example, with John Hogan, Chief of Risk during the London Whale debacle. And of course we will have a special chapter on Jamie Dimon.

And now we provide a handy summary of the information in this chapter:

**Comparison between the Gambino Crime Family and JPMorgan Chase**

<table>
<thead>
<tr>
<th>Comparison</th>
<th>Gambino Crime Family</th>
<th>JPMorgan Chase</th>
</tr>
</thead>
<tbody>
<tr>
<td>The business provides a broad array of business and personal services throughout the United States and in other countries</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Compliance with the law is irrelevant to fulfillment of the organization’s goals</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>The goal is to maximize profits for the capos</td>
<td>✓</td>
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<tr>
<td>Paying fines and penalties for violations of the law is a cost of doing business</td>
<td>✓</td>
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</tr>
<tr>
<td>Making political contributions pays off in spades</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>In-house lawyers are given incentive pay to get the job done</td>
<td>✓</td>
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</tr>
</tbody>
</table>
We cannot claim that we are the first to see what JPMorgan Chase and the Gambino crime family have in common. Look what Bill Moyers had to say about a meeting of JPMorgan Chase lobbyists:

One of Senator Johnson’s former staffers is now one of JPMorgan’s chief lobbyists. And the chairman’s present top assistant used to be a lobbyist for a law firm that worked for JPMorgan. I mean, this wasn’t a hearing. This was a reunion of the Gambino family.\textsuperscript{131}

\textsuperscript{131} Bill Moyers, Jamie Dimon’s ‘Family Reunion’ With the Senate Banking Committee, Shift Frequency, http://www.shiftfrequency.com/bill-moyers-jamie-dimons-family-reunion-with-senate-banking-committee/
CHAPTER 5

The Case for Prosecuting Officers of JPMorgan Chase under RICO

In Chapter 4, we compared JPMorgan Chase to the Gambino Crime Family to focus on the many areas in which these two organizations had the same goals and strategies. In fact, the most significant difference between JPMorgan Chase and the Gambino Crime Family is the way the government treats them. While Congress made it a national priority to eradicate organized crime, there is an appalling lack of appetite in Washington to de-criminalize Wall Street. Congress and the executive branch of the government seem determined to protect Wall Street criminals, which simply assures their proliferation.

This country cannot move forward with integrity until it faces the fact that bankers have criminalized the financial services industry. We, the people, have to demand an honest government that enforces the law, even against super-rich criminals. As Robert Kennedy said:

> Every society gets the kind of criminal it deserves. What is equally true is that every community gets the kind of law enforcement it insists on. \(^1\)

It is time for the community of honest American citizens to insist on law enforcement that cannot be bought off by Wall Street’s money. We have had enough of Obama's pandering to Wall Street and Eric Holder's incomprehensible justifications for betraying his oath of office to enforce the laws of the United States. When bankers act

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\(^1\) Robert Kennedy Quotes, Brainy Quote, [http://www.brainyquote.com/quotes/quotes/r/robertkenn400860.html](http://www.brainyquote.com/quotes/quotes/r/robertkenn400860.html)
like criminals, they should be treated like criminals. If Jamie Dimon is running a
criminal institution, he should be prosecuted for it. And law enforcement has the
perfect tool for such a prosecution: the Racketeer Influenced and Corrupt Organizations
Act ("RICO").

The RICO statute

Congress enacted RICO in 1970 in order to give law enforcement the statutory
tools it needed to prosecute, not only the people who committed crimes upon orders
from mob leaders, but the mob leaders themselves. RICO targets organizations called
"racketeering enterprises" that engage in a pattern of criminal activity, as well as the
individuals who derive profits from such enterprises. For example, under RICO, a mob
leader who passed down an order for an underling to commit a serious crime could be
held liable for being part of a racketeering enterprise. He would be subject to
imprisonment for up to 20 years per racketeering count, and to disgorgement of the
profits he realized from the enterprise and any interest he acquired in any business

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2 RICO: 18 U.S.C. Section 1962 provides:
(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a
pattern of racketeering activity or through collection of an unlawful debt in which such person has
participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest,
directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any
interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of
which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of
investment, and without the intention of controlling or participating in the control of the issuer, or of
assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by
the purchaser, the members of his immediate family, and his or their accomplices in any pattern or
racketeering activity or the collection of an unlawful debt after such purchase do not amount in the
aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or
in fact, the power to elect one or more directors of the issuer.
(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of
an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise
which is engaged in, or the activities of which affect, interstate or foreign commerce.
(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the
activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly,
in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of
unlawful debt.
(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or
(c) of this section.
gained through a pattern of "racketeering activity."\(^3\) In a civil suit against such a person, a plaintiff could recover treble damages.\(^4\)

In enacting RICO, Congress meant business. This powerful law enforcement weapon requires proof that the defendant committed "at least two acts of racketeering activity" within a ten year period, that are related to financial gain.\(^5\) The “predicate acts are drawn from a list of 27 federal and eight state law crimes. They include the typical mob crimes like murder, kidnapping, gambling, arson, robbery, extortion, and drug dealing.\(^6\) But the predicate acts also include a lot of the crimes committed by Wall Street banksters in order to enrich themselves at the expense of others, such as bribery, mail and wire fraud, fraud in the sale of securities, embezzlement, financial institution fraud, obstruction of justice, tampering with or retaliating against a witness, victim or informant, and money laundering.

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\(^3\) **RICO PENALTIES:** 18 USC § 1963:

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

1. any interest the person has acquired or maintained in violation of section 1962;
2. any—
   (A) interest in;
   (B) security of;
   (C) claim against; or
   (D) property or contractual right of any kind affording a source of influence over;
3. any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962. The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.


One cannot spin the Wheel of Misfortune on our website without seeing that, in the past four years, JPMorgan Chase has paid out $29 billion to satisfy 25 different claims of various governmental agencies and private parties that the Bank violated the law and defrauded its customers. These are not isolated incidents; the pattern is clear. JPMorgan Chase has a culture — like the mob — where anything goes so long as it is profitable. This is precisely the kind of pattern of criminal activity that RICO was intended to target.

If you feel we are exaggerating, consider the following facts as exposed by Pam Martens, of Wall Street on Parade, who took the time to study the record assembled by the Senate Subcommittee on Investigations in connection with its investigation of Wall Street's control over the physical commodities markets. In her December 3, 2014 article, Ms. Martens explained how, in 2010, Francis Dunleavy, the head of Principal Investing at a JPMorgan Chase affiliate, hired John Howard Bartholomew, a young man whose resume boasted that, while he worked at Southern California Edison in the power procurement department, he had identified a flaw in their accounting system which was causing them to misallocate millions of dollars. Bartholomew bragged in his resume he could increase profits by 400%.

Senator Carl Levin found it incredible that JPMorgan Chase would hire someone like Bartholomew but JPMorgan Chase not only hired him; within three months of his hiring, the Bank (according to the Senate's findings) "began to develop manipulative bidding strategies to take advantage of the flaw that Bartholomew had identified." By early September, 2010, the system was in place and by October, JPMorgan Chase was
estimating that the strategy "could produce profits of between $1.5 and $2 billion through 2018." The Senate report explained:

In essence, JPMorgan sold high priced electricity . . ., received a . . . payment equal to twice its costs, and also received a payment at the prevailing marketplace price for the electricity provided—in effect, it was paid three times for the same electricity. 9

In other words, JPMorgan Chase was manipulating the electricity market in California, at the expenses of its citizens, and making a fortune in the process. But this is not all. Representatives of the Federal Energy Regulatory Commission reported to the Senate Committee that JPMorgan Chase engaged in other manipulative bidding strategies and that the regulators had "never before witnessed the degree of blatant rule manipulation and gaming strategies" that JPMorgan Chase used. 10

No matter what area of JPMorgan Chase's business you focus on, the evidence is overwhelming that the Bank has turned into an institution where breaking the law and defrauding innocent people is simply incidental to the institution's primary goal: to make money at other people's expense.

This would not be the first time the government used the powerful weapon of RICO against banksters. Financier Michael Milken and his firm, Drexel Burnham Lambert, were prosecuted in 1989 under RICO. Milken was indicted for racketeering and insider trading. He entered into a plea bargain with the government whereby he pled guilty to securities and reporting violations but not to racketeering or insider trading. Milken was sentenced to ten years in prison, fined $600 million, and

10 Id.
permanently barred from the securities industry by the SEC. His sentence was later reduced to two years for cooperating in testifying against his former colleagues and for good behavior.\footnote{Wikipedia, \textit{Michael Milken}, \url{http://en.wikipedia.org/wiki/Michael_Milken}} As part of the package, the government also required Drexel to take a guilty plea to six counts of stock fraud.\footnote{Stephen Labaton, \textit{Drexel, as Expected, Pleads Guilty to 6 Counts of Fraud}, The New York Times, (Sept. 12, 1989), \url{http://www.nytimes.com/1989/09/12/business/drexel-as-expected-pleads-guilty-to-6-counts-of-fraud.html}}

Nothing would be more effective in changing the moral culture on Wall Street than putting the senior management of JPMorgan Chase in prison and forcing them to disgorge all of the profits they have realized from their illegal conduct. Like Michael Milken, they would quickly learn that the way to a modified prison sentence is to give other people up to the government. Like Michael Milken, they would be forced to surrender all of their wealth to the government. Thus, in one single criminal prosecution, the government could take a giant step in the process of cleaning up Wall Street and protecting honest, hard-working Americans from Wall Street banksters.

In this chapter we lay out some of the indisputable facts about JPMorgan Chase and evaluate whether, based on those facts, top officers of JPMorgan Chase could be prosecuted under RICO. We analyze JPMorgan Chase's criminal exposure in the context of four situations:

1) JPMorgan Chase's sale of mortgage-backed securities, resulting in a settlement with the federal government in 2013 for an alleged $13 billion (which was only $9 billion according to the legendary investigative reporter Matt Taibbi).\footnote{Matt Taibbi, \textit{The $9 Billion Witness: Meet JPMorgan Chase’s Worst Nightmare}, Rolling Stone, (Nov. 6, 2014), \url{http://www.rollingstone.com/politics/news/the-9-billion-witness-20141106}}
2) JPMorgan Chase's relationship with Bernard Madoff over a period of more than 20 years, resulting in a $3 billion settlement with the Department of Justice and other governmental and non-governmental parties in January 2014.

3) JPMorgan Chase's "Sons and Daughters" Program in China, for which it is at present under investigation by the Department of Justice for potential violations of the Foreign Corrupt Practices Act.

4) JPMorgan Chase's foreign exchange activities, for which it is presently under investigation by the Department of Justice and the SEC.

Remember that RICO requires only two acts of racketeering activity over a ten year period. In this chapter alone, we will describe scores of predicate acts by JPMorgan Chase officers, drawn from the public record, which are indictable under RICO. And, we don't mean to suggest, by any means, that JPMorgan Chase has only been involved in four criminal activities in the past five years. There are numerous other examples, such as the manipulation of the California electrical power market, as detailed in the Senate Report; and there is JPMorgan Chase's conduct in the “London Whale” scandal, a $6.2 billion trading loss compounded by false testimony to Congress. We chose these four examples only because there are so many facts publicly available permitting a strong inference of criminal intent.

I. JPMorgan Chase’s fraudulent sale of mortgage-backed securities

On November 6, 2014, Rolling Stone magazine published an article by legendary financial reporter, Matt Taibbi, describing the experience of a JPMorgan Chase whistleblower named Alayne Fleischmann. According to Taibbi, it was Eric Holder's threat to publicize Ms.Fleischmann's testimony that brought Jamie Dimon to his knees
in the fall of 2013 when JPMorgan Chase agreed to pay (allegedly) $13 billion to settle the government's claims that it defrauded purchasers of mortgage-backed securities.

In his article, Taibbi and Fleischmann blew the lid off JPMorgan Chase’s fraudulent conduct and subsequent cover-up. Taibbi also exposed Eric Holder's dishonesty in claiming the settlement was for $13 billion, when the real number was $9 billion.

Fleischmann is a lawyer who began working as a transaction manager at JPMorgan Chase in 2006 and was responsible to review the quality of loans that were put into packages and sold to investors. She recognized that JPMorgan Chase was engaging in fraudulent practices and she did everything within her power to bring it to the attention of senior officers of the Bank.

In our view, Alayne Fleischmann deserves a medal of honor. Here is a young woman who had the courage to expose one of this country’s biggest cover-ups by one of the country’s most powerful institutions. And, if the government is afraid to take on JPMorgan Chase, imagine how hard it has been for Alayne Fleischmann to do it. If, some day, we have a government that demands that banksters be put in jail, we will have Alayne Fleischmann to thank for it.

**The evidence of knowing misrepresentation**

We accept as true the facts set forth in Matt Taibbi’s article. Based on those facts, crimes were clearly committed:

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1. In 2006, Fleischmann was a transaction manager at JPMorgan Chase, responsible to assure quality control in the mortgages that JPMorgan Chase packaged and sold to investors with representations as to the quality of the loans.

2. Personnel involved in the mortgage review process noted that many of the loans did not meet JPMorgan Chase's standards because the borrowers were not creditworthy.

3. A few months into Fleischmann's tenure, the Bank hired a new manager for diligence who instructed everyone in the group in charge of reviewing and clearing loans to not send emails or put anything about the mortgages in writing.

4. Fleischmann was asked to package mortgages originated by a company called GreenPoint purportedly worth approximately $900 million. There were serious problems with these loans. They had either been previously rejected by JPMorgan Chase or another bank, or had already gone into default. Fleischmann and her group found that about 40% of the loans involved borrowers who had grossly over-stated their incomes.

5. Despite the obvious problems with the loans, the people working in Fleischmann’s group were pressured by their bosses to approve the loans and include them in investor packages as to which the Bank represented that the loans were of high quality.

6. On December 15, 2006 Fleischmann approached a managing director named Greg Boester and pleaded with him not to include the loans that were inconsistent with the Bank’s representations as to quality.

7. When Boester did not confirm to Fleischmann that he was going to do anything about her ethical concerns, Fleischmann wrote a letter on January 10, 2007 to
another managing director, William Buell, laying out the fraudulent activities which she witnessed.

8. In February 2008, JPMorgan Chase let Fleischmann go. But, of course, the mortgages were sold with false representations as to their quality and the investors suffered massive losses.

9. According to Taibbi, in September 2008, Jamie Dimon told Fortune Magazine, as quoted in an article titled “Jamie Dimon’s SWAT Team,” that he knew well before the meltdown that the subprime market was toast. “We concluded that underwriting standards were deteriorating across the industry,” Dimon told Fortune.\(^{15}\) According to the Fortune article, Dimon gave orders to his subordinates to dump the bank’s subprime holdings in October 2006.\(^{16}\) One is reminded of the following passage from Shakespeare’s Richard II:

EXTON: Didst thou not mark the king, what words he spake, 'Have I no friend will rid me of this living fear?' Was it not so?

SERVANT: These were his very words.\(^{17}\)

10. In January 2010, Dimon testified under oath before the Financial Crisis Inquiry Commission (the "FCIC"). He started out with a heartening statement:

If we are to learn from this crisis moving forward, we must be brutally honest about the causes and develop a realistic understanding of them that is not overly simplistic.\(^{18}\)

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\(^{15}\) Ricky Griffin, Gregory Moorhead, *Organizational Behavior*, 373, (Scott Person, et al. eds., 10th ed. 2012), available at [http://books.google.com/books?id=--eg8AAAQBAJ&pg=PA373&dq=dimon+We+concluded+that+underwriting+standards+were+deteriorating+across+the+industry&source=bl&ots=eJ61afk2Ir&sig=iQtrF1HasteBzjnbfWMzoOsaPvU&hl=en&sa=X&ei=eht-VJ3eJ8zaoAT9vIILYd&ved=0CCUQ6AEwAQ#v=onepage&q=dimon%20We%20concluded%20that%20underwriting%20standards%20were%20deteriorating%20across%20the%20industry&f=false]


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11. Unfortunately, Dimon didn't follow his own advice because, immediately thereafter, he told the FCIC the opposite of what Fortune Magazine reported he said in 2008. As of 2010, Dimon testified:

In mortgage underwriting, somehow we just missed, you know, that home prices don’t go up forever.19

12. Buell also testified before the FCIC, on September 15, 2010. He was asked if anybody had asked him to apply the brakes and stop pushing out questionable mortgage loans. Apparently, Buell forgot all about Alayne Fleischmann's letter; he never mentioned it to the FCIC.20

13. Buell had a similar professed lack of recollection shortly thereafter. An FCIC interviewer asked:

During the period 2005, May 2005 until let’s say the end of 2007, was there a period of time where you, in your position, noted that there was somewhat of a deterioration in the quality of the loans that were being presented to you to purchase?"

Buell's answer was Wall Street Jabberwocky:

I think that what we saw happening at the time was there was a very competitive process to offer a wider and wider array of products to borrowers. And, it wasn’t the case that in that period of time, until the very end, in that period of time that anybody that really I was involved with was looking at

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the situation and saying, wow, we really think guidelines and origination standards were deteriorating...

14. The Federal Housing Finance Agency (the "FHFA") had obtained in discovery an internal memo prepared by JPMorgan Chase personnel called “Cheats & Tricks," which described the rating program used by the Bank as "ZIPPY." FHFA described the memo as follows:

The memorandum encouraged brokers to game the ZIPPY system because ‘[i]t’s super easy! Give it a try!’ It provided the following ‘handy steps’ in order to gain approval for an otherwise rejected Stated Income/Stated Asset loan application:

“(1) In the income section of your 1003, make sure you input all income in base income. DO NOT break it down by overtime, commissions or bonus.

(2) NO GIFT FUNDS! If your borrower is getting a gift, add it to a bank account along with the rest of the assets. Be sure to remove any mention of gift funds on the rest of your 1003.

(3) If you do not get Stated/Stated, try resubmitting with slightly higher income. Inch it up $500 to see if you can get the findings you want. Do the same for assets.

15. Following an investigation of JPMorgan Chase’s activities that contributed to the 2008 global financial collapse, the Department of Justice announced that it had reached a $13 billion settlement with the Bank. On November 19, 2013, the Department of Justice issued a statement which confirmed that JPMorgan Chase defrauded investors in mortgage-backed securities by misrepresenting the quality of the loans, just as Alayne Fleischmann said.

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As part of the settlement, JPMorgan admitted that the outside due diligence firms informed JPMorgan that numerous loans in the random samples of mortgage loans were in violation of underwriting guidelines and without compensating factors to justify the loans...Even though due diligence on the random samples indicated that the securitization pools likely contained many more loans with underwriting violations, JPMorgan did not identify and eliminate those loans from the pools. Thus, as JPMorgan admits in the settlement agreement, it did not disclose to investors that the RMBS [residential mortgage backed securities] included mortgage loans that did not comply with the applicable underwriting guidelines. The bank also admits in the settlement agreement that it did not disclose that it had an established practice of allowing loans into the pools for which the value of the collateral property determined in the due-diligence process differed from the originator’s appraisal by up to 15 percent, even when the loan-to-value ratio was as high as 100 percent.\(^\text{23}\)

16. Of course, this is inconsistent with the sworn testimony of William Buell. Moreover, as part of its settlement with the Department of Justice, JPMorgan Chase admitted the facts about which Buell claimed ignorance when he testified under oath before the FCIC.

17. Years after she was let go by JPMorgan Chase, Fleischmann learned that the Greenpoint mortgages were sold in mortgage-backed securities to investors, who suffered massive losses.

18. As noted above, according to Taibbi, it was Eric Holder’s threat of having Fleischmann testify that brought Jamie Dimon to agree to the alleged settlement of $13 billion. But as Taibbi reveals, this is another lie. The real settlement cost to JPMorgan Chase was $9 billion and most of it was tax deductible, thereby shifting a portion of the settlement cost to the American taxpayer. The government allocated $4 billion of the

alleged settlement of $13 billion to accommodations that were supposed to have been made to borrowers. Since JPMorgan Chase no longer owned the loans, it had no control over whether accommodations would be made to borrowers. Eric Holder just thought $13 billion sounded better than $9 billion. Apparently, in Holder's view, it is justifiable to deceive the public in order to protect criminal bankers.

The possible crimes committed by JPMorgan Chase officers

If these facts are correct, (and we don't see how they can be disputed), JPMorgan Chase personnel could be indicted on an array of different criminal charges which would form the predicate acts under RICO. The criminal statutes that appear to have been violated include the following:

1. **Misprision of felony**. This is a crime of concealing and not reporting to law enforcement authorities the commission of a felony of which the individual is aware. Here, JPMorgan Chase committed a felony by defrauding purchasers of mortgage-backed securities. We know of at least two Bank officers who, according to Alayne Fleischman, had actual knowledge of this yet concealed it — Greg Boester and William Buell. If Boester and Buell were indicted, they might very well spill the beans on other colleagues in order to obtain reduced prison sentences.

2. **False statement**. This is a crime of making a deliberately false statement or concealing a false statement respecting any matter within the jurisdiction of the United

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24 **Misprision of felony** - 18 U.S. Code § 4:

> Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or **imprisoned not more than three years**, or both.
States Government.\textsuperscript{25} William Buell and Jamie Dimon possibly violated this statute in their testimony before the FCIC.

3. \textbf{Perjury}. This is a crime of making a deliberately false statement under oath, such as in testimony before the FCIC or before a Congressional Committee.\textsuperscript{26} This statute covers the same apparently false testimony given by Buell and Dimon before the FCIC.

4. \textbf{Mail fraud}. This is a crime of using mail communications to deprive another of money or property.\textsuperscript{27} Clearly, the fraudulent sale of mortgage-backed securities would fall within the purview of mail fraud.

\textsuperscript{25} \textit{False Statements, Concealment - 18 U.S.C. § 1001}
\begin{itemize}
    \item[(a)] whoever ... knowingly and willfully—
    \begin{itemize}
        \item[(1)] falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
        \item[(2)] makes any materially false, fictitious, or fraudulent statement or representation; or
        \item[(3)] makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
    \end{itemize}
\end{itemize}
shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section \textsuperscript{2331}), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section \textsuperscript{1591}, then the term of imprisonment imposed under this section shall be \textbf{not more than 8 years.}
\item[(b)] Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

\textsuperscript{26} \textit{Perjury - 18 U.S.C. 1621:}
Whoever—
\begin{itemize}
    \item[(1)] having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
    \item[(2)] in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section \textsuperscript{1746} of title \textsuperscript{28}, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

\textsuperscript{27} \textit{Mail Fraud - 18 U.S. Code § 1341:}
Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or
5. **Wire fraud.** This is a crime of using an interstate telephone call or electronic communication to intentionally defraud another out of money.\(^{28}\) Again, undoubtedly, the fraudulent sale of mortgage-backed securities would fall within the purview of wire fraud.

6. **Securities fraud.** This is the crime of defrauding a person in connection with commodity or security transactions or falsely obtaining money or property in connection with the purchase of a commodity or security.\(^{29}\) The sale of mortgage-backed securities based upon fraudulent misrepresentations would constitute securities fraud.

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\(^{28}\) **Wire Fraud - 18 U.S. Code § 1343:**

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, ... or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

\(^{29}\) **Securities and Commodities Fraud - 18 U.S. Code § 1348:**

> Whoever knowingly executes, or attempts to execute, a scheme or artifice—
> (1) to defraud any person in connection with any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (d)); or
> (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any commodity for future delivery, or any option on a commodity for future delivery, or any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (d));
>
> shall be fined under this title, or imprisoned not more than 25 years, or both.
7. **Conspiracy to commit mail fraud, wire fraud, or securities fraud.** This is the crime of two or more people planning to commit mail fraud, wire fraud or securities fraud against the United States or a governmental agency, such as the I.R.S., and resulting in one or more persons completing any act in furtherance of the plan. The government could undoubtedly prove that numerous officers at JPMorgan Chase conspired with the outside firm that JPMorgan Chase hired to assist in selling mortgage-backed securities for inflated prices, thus coming within this statute.

### The possible criminal defendants

Based on these facts, a prosecutor could consider indicting at least the following people for the following crimes:

- The un-named diligence manager who told the Bank employees working with Fleischmann not to put anything in writing. Is there any inference you can draw from that order, other than that the manager knew crimes were being committed and he wanted to assure there would be no documentary evidence?

- Greg Boester, who was told by Fleischmann that the Bank was fraudulently misrepresenting the quality of loans included in the mortgage-backed securities.

- William Buell, who received Fleischmann’s letter laying out the fraud being perpetrated by the Bank on investors in mortgage-backed securities but forgot about its existence a few years later when he testified before the FCIC.

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30 **Conspiracy to commit offense or to defraud United States - 18 U.S.Code § 371:**

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.
Jamie Dimon, who also testified before the FCIC inconsistently with prior statements he had made and who, at one point, admitted he gave the order to get rid of the bad loans.\(^{31}\)

Now, if you had a real prosecutor interested in pursuing these potential charges, that person would put pressure on the junior officers in order to see how far up in JPMorgan Chase the fraud went. Alternatively, a prosecutor could start with Jamie Dimon, just as the government prosecuted Michael Milken on RICO charges and then, as one would expect, Milken "cooperated" with the government in its prosecution of lower level personnel at Drexel Burnham Lambert.

The fact that hefty prison sentences can be handed down under RICO is critical. Banksters don’t mind paying money for absolution (particularly when the money belongs to their shareholders) but Congress has not yet passed a statute allowing banksters to designate someone else to serve their prison sentences. And no bankster wants to go to jail. This is the one thing every man must do by himself. Along with all the obvious reasons why bankers don’t want to go to jail, here’s an interesting statistic: For every year in prison, the prisoner’s life expectancy decreases by two years.\(^{32}\) A ten year term, then, could take twenty years off the bankster’s life.

Accordingly, whether you start at the top or the bottom of the corporate ladder, one way or another every person indicted will try to make a deal with the government by providing information about someone else.


The goal (again, assuming you had a legitimate prosecutor) would be to get to the highest level of the organization involved in the criminal activity. Given the fact that Jamie Dimon admitted in 2008 that he saw the collapse of the mortgage market and gave orders to his subordinates to dump the bank’s subprime holdings, it is not implausible that Dimon himself knew that the Bank was dumping the mortgages by defrauding purchasers. Nor is it implausible that general counsel Stephen Cutler reviewed Alayne Fleischmann’s letter to Buell.

Do these facts suggest a sufficient basis for allowing a grand jury to determine if these individuals, or others, actually committed a crime? We think they do.

II. JPMorgan Chase’s relationship with Madoff

In Chapter 2, we detailed the facts that are known about JPMorgan Chase’s sheltering of Bernard Madoff for a period of more than 20 years. We will summarize them briefly here simply to show the range of crimes for which JPMorgan Chase personnel could be prosecuted. While JPMorgan Chase entered into a deferred prosecution agreement with the government resolving the criminal charges against it arising out of its relationship with Madoff, that agreement is conditioned upon JPMorgan Chase’s not committing any crimes subsequent to January 6, 2014 — a condition with which it is clearly impossible for JPMorgan Chase to comply.33 Thus, the deferred prosecution agreement does not prevent the government from indicting officers of JPMorgan Chase for conduct relating to Madoff.

33 While the United States settled all criminal charges against JPMorgan Chase in the January 6, 2014 deferred prosecution agreement, if JPMorgan Chase violates the agreement in any way, the government could prosecute JPMorgan Chase. See Deferred Prosecution Agreement ¶ 14 available at http://www.justice.gov/usao/nys/pressreleases/January14/JPmcDPA%20Packet%20%28Fully%20Executed%20w%20Exhibits%29.pdf
The evidence of wrongdoing

1. During the period from 1992 - 2002, JPMorgan Chase effectuated $106 billion of transfers between Madoff’s 703 Account and the account of Madoff’s co-conspirator, Norman Levy. In 2001 alone, $36 billion was transferred between the two accounts. As far back as 1994, JPMorgan Chase personnel had analyzed these transactions, recognized they had no legitimate business purpose, and called them "outrageous." Yet, the Bank's officers allowed them to continue.34

2. Bank personnel received and reviewed financial reports that Madoff gave to the SEC which made representations of material fact that JPMorgan Chase personnel knew to be false. Yet no one from JPMorgan Chase ever questioned Madoff about the false statements and no one ever reported to the SEC the actual facts that were within the Bank’s knowledge.35

3. Despite being Madoff’s account officer for 15 years and certifying under oath, on a regular basis, as he was required to do, that there was nothing illegal or suspicious about Madoff’s activities, Richard Cassa testified that he thought the 703 Account was used to pay ordinary business expenses like rent.36

4. The government characterized JPMorgan Chase's conduct with respect to Madoff as a willful violation of the Bank Secrecy Act in the criminal Information and JPMC accepted and acknowledged responsibility for such conduct.37

5. In 2007, the Chief of Risk for the Chase Investment Bank, John Hogan, was told by another Bank officer that Madoff was suspected of running a Ponzi scheme and that Madoff had "a very shady reputation in the market." The executive referenced an accusatory article about Madoff and offered to help Hogan find it. Hogan never bothered to find the article and, two weeks later, he approved the Bank making a $250 million investment in Madoff feeder funds.38

6. In October 2008, the London branch of JPMorgan Chase filed a suspicious activity report about Madoff with the English government, informing the government that the Bank believed Madoff was operating a Ponzi scheme. The report was sent to the General Counsel's office in New York but JPMorgan Chase did not file a suspicious activity report with United States authorities until after Madoff had confessed; and it kept Madoff's 703 Account operational until that time.39

**The possible crimes committed by JPMorgan Chase officers**

The facts to which JPMorgan Chase stipulated with the government as part of the January 6, 2014 deferred prosecution agreement would support indictments of individuals for:


1. **Money laundering.** This is a crime in which the proceeds of crime are transformed into ostensibly legitimate money or other assets. Assuming Norman Levy and Madoff were laundering money (and it’s hard to imagine what else they were doing), every person at JPMorgan Chase who knew about the round-trip transactions and concealed that information from law enforcement authorities could be indicted for misprision of felony, if not aiding and abetting money laundering. Even if Levy and Madoff were not laundering money, they were clearly engaged in illegal transactions which Bank personnel concealed.40

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40 **Laundering of Monetary Instruments - 18 U.S. Code § 1956:**

(a) (1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A) (i) with the intent to promote the carrying on of specified unlawful activity; or
(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or
(B) knowing that the transaction is designed in whole or in part—
(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
(ii) to avoid a transaction reporting requirement under State or Federal law,
shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(b) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or
(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
(ii) to avoid a transaction reporting requirement under State or Federal law,
shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant’s knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph
2. **Aiding and abetting Madoff’s fraud.** Aiding and abetting mail or wire fraud is the crime of providing material assistance to someone who is perpetrating a fraud using the U.S. mails or the telephone. A party who aids and abets can be punished as if they committed the act themselves.\(^\text{41}\)

3. **Misprision of felony.** As previously explained, misprision of felony occurs when a person conceals the fact that someone else is committing a crime. Here, numerous officers of JPMorgan Chase had to have known of the Levy-Madoff round-trip transactions and yet the activity was never reported to law enforcement authorities.

4. **Violations of the Bank Secrecy Act.** It is a criminal violation of the Bank Secrecy Act to deliberately fail to comply with its provisions for reporting suspicious activity to the government.\(^\text{42}\) Here, the facts are indisputable that officers of JPMorgan Chase

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\(^{41}\) **Principals - 18 U.S. Code § 2:**

(A) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(B) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.


31 U.S. Code § 5322 - Criminal penalties

(a) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508, shall be fined not more than $250,000, or imprisoned for not more than five years, or both.
identified and concealed activity in the 703 Account that could not possibly have had a legitimate purpose.

**The possible criminal defendants**

Based on the facts we laid out in Chapter 2, there are numerous JPMorgan Chase personnel who might be criminally liable with respect to Madoff. Richard Cassa and, undoubtedly, numerous other JPMorgan Chase personnel, had to have recognized that Madoff was committing crimes through the 703 Account that he maintained for 20 years at JPMorgan Chase. Yet, they never reported any of the suspicious activities to law enforcement; they never reported to the SEC that the financial information that Madoff submitted to the SEC was materially false; they never informed their own customers who were investing through Madoff of their concerns about his integrity; and they never shut Madoff’s account down.

Moreover, at times Madoff maintained $4-5 billion deposit balances at the Bank. It is inconceivable that his activities were not brought to the attention of senior management.

It is certainly possible that general counsel Stephen Cutler, participated in the decision not to file a suspicious activity report with the federal government in October

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**(b)** A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508, while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

**(c)** For a violation of section 5318 (a)(2) of this title or a regulation prescribed under section 5318 (a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

**(d)** A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318, or any special measures imposed under section 5318A, or any regulation prescribed under subsection (i) or (j) of section 5318 or section 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than $1,000,000.
2008, after the London branch of JPMorgan Chase filed such a report with the British

government. That conduct might constitute a criminal violation of the Bank Secrecy Act

which requires bankers to report suspicious activities of bank customers to the federal
government.

III. JPMorgan Chase’s Sons and Daughters Program

The Foreign Corrupt Practices Act

One of the RICO predicate acts is bribery which is punishable under many

statutes, including the Foreign Corrupt Practices Act (the “FCPA”). This statute was

enacted in 1977, making it a crime to give “anything of value” to a foreign official to win

“an improper advantage” in retaining business.43 In 1988, the FCPA was amended to

provide for enhanced penalties and to impose liability on corporate officers who acted

willfully.44 People convicted of violating the FCPA are subject to imprisonment for up to

5 years.45

To violate the statute, a person must act with improper intent. There are three

separate elements to this requirement: the violation must be done “corruptly,” i.e., with

the expectation of getting government business in return for the “payment,” the

individual making the payment must have acted “willfully,” and, if the act involved

payment to a third party, the payment must have been made “while knowing” that the


43 Peter J. Henning, JPMorgan Case Tests U.S. Law on Buying Influence Abroad, New York Times
Dealbook, (Sept. 3, 2013, 2:05PM), http://dealbook.nytimes.com/2013/09/03/jp-morgan-case-tests-u-s-
law-on-buying-influence-abroad/

at: http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1323&context=mjil

45 The criminal fines for anti-bribery provisions under the FCPA includes fines up to $250,000 and/or
imprisonment for 5 years, while criminal fines for entities could be as high as $2 million. Violating
accounting provisions of the FCPA could result in imprisonment up to 20 years. FCPA Penalties,
legislation/fcpa-penalties.aspx
money or thing of value would be directed in whole or part to a foreign official.\textsuperscript{46} Violations can be triggered not only by cash payments, but by “entertainment expenses, scholarships, or the hiring of a foreign official’s family member if its purpose is to generate an advantage not enjoyed by competitors.\textsuperscript{47} Violations of the FCPA have, directly or indirectly, provided the basis for many RICO claims.\textsuperscript{48}

The FCPA was enacted in the wake of Watergate and a widespread belief that corporations were buying political favors based, in large part, on an SEC investigation in the mid-1970s which disclosed that more than 400 American companies were paying bribes to foreign officials to procure business or get special favors abroad.\textsuperscript{49} Major companies were implicated like Lockheed, and Chiquita Banana, which had allegedly bribed the President of Honduras to get preferential tax treatment. This type of thing, Congress believed, threatened the faith of the American public in the integrity of the American business system.\textsuperscript{50}

Courts have imposed both criminal sentences and heavy fines for violation of the FCPA. Only two months ago, in September 2014 a Hewlett Packard subsidiary pled guilty to bribing Russian officials in violation of the FCPA, concluding a trio of FCPA claims against Hewlett Packard which cost the company $108 million in criminal and


\textsuperscript{47} Janet Kanzawa, \textit{JPMorgan: Now Open for (Corrupt?) Hiring}, The Vassar Chronicle, (Nov. 2013), \url{http://vassarchronicle.com/section/politics/foreign-affairs/jpmorgan-chase-foreign-corrupt-practices-act-bribery/2/}


The evidence against JPMorgan Chase


The investigation is focused on whether JPMorgan Chase acted with “corrupt” intent, or with the expectation of offering a job in exchange for government business,\footnote{Jessica Silver-Greenberg, Ben Protess, and David Barboza, Hiring in China by JPMorgan Under Scrutiny, New York Times Dealbook, (Aug. 17, 2013, 8:01PM), http://dealbook.nytimes.com/2013/08/17/hiring-in-china-by-jpmorgan-under-scrutiny/?_r=0; Jessica Silver-Greenberg and Ben Protess, JPMorgan Hiring Put China’s Elite on an Easy Track, New York Times Dealbook, (Aug. 29, 2013, 10:00PM), http://dealbook.nytimes.com/2013/08/29/jpmorgan-hiring-put-chinas-elite-on-an-easy-track/?_r=0} while operating a program that it called “Sons and Daughters”. That program separated Chinese elites from “other” job applicants. According to Jamie Dimon, it was the “norm...

The following evidence, from public sources, would support an indictment of JPMorgan Chase personnel for violations of the FCPA:


3. In an internal document, JPMorgan Chase linked the hires to the “revenue” it obtained from companies controlled by the parents of the applicants in the program.\footnote{Jessica Silver-Greenberg and Ben Protess, \textit{JPMorgan Hiring Put China’s Elite on an Easy Track}, New York Times Dealbook, (Aug. 29, 2013, 10:00PM), \url{http://dealbook.nytimes.com/2013/08/29/jpmorgan-hiring-put-chinas-elite-on-an-easy-track/?_r=0}}
4. Applicants from the program typically faced few job interviews and relaxed hiring standards. Some candidates had poor academic records and lacked relevant expertise.\textsuperscript{63}

5. JPMC hired Zhang Xixi, whose father is Zhang Shuguang, the disgraced former deputy chief engineer of China’s railway ministry.\textsuperscript{64} During the time that Xixi was hired, the China Railway Group was considering JPMorgan Chase as an advisor for an IPO worth more than $5 billion.\textsuperscript{65} JPMorgan Chase obtained the desired business some four years later — when Ms. Zhang was an associate at the bank. The operator of a high-speed railway from Beijing to Shanghai picked the Bank to guide it through its own initial public stock offering.\textsuperscript{66} Meanwhile, Ms. Zhang’s father was detained on suspicion of corruption. He is alleged to have hidden as much as $2.8 billion in overseas accounts.\textsuperscript{67} He has been sentenced to death for taking bribes of more than $7.7 million over an 11 year period.\textsuperscript{68} Zhang XiXi has left JPMorgan Chase.\textsuperscript{69} The SEC has asked the

\textsuperscript{63} Jessica Silver-Greenberg and Ben Protess, JPMorgan Hiring Put China’s Elite on an Easy Track, New York Times Dealbook, (Aug. 29, 2013, 10:00PM), \url{http://dealbook.nytimes.com/2013/08/29/jpmorgan-hiring-put-chinas-elite-on-an-easy-track/?_r=0}


\textsuperscript{69} JPMorgan investigated for bribery over allegations the bank hired children of top Chinese officials in exchange for business, Daily MailOnline UK, (Aug. 18, 2013, 12:45AM),
company for files on her employment and compensation, as well as “all contracts or agreements between JPMorgan Chase and the Ministry of Railways of the People’s Republic of China.”

6. To promote its standing in China, JPMorgan Chase hired a firm run by Wen Ruchun (also known as Lily Chang), the daughter of former Prime Minister Wen Jiabao. Her salary was $75,000 per month and her role was allegedly to pull in deals from state-owned Chinese companies during a time that coincided with her father’s premiership.

7. In a series of emails, JPMorgan Chase executives in Hong Kong bemoaned the loss of a lucrative assignment, stating “We lost a deal to [Deutsche Bank] today because they got the chairman’s daughter to work for them this summer.” The executives allegedly decided that one good bribe deserved another and so they resolved to embrace the strategy of hiring the children of China’s elite. One of the executives stated “I am supportive to have our own ‘hiring’ strategy.” JPMC then escalated its “Sons and Daughters” Hiring Program where they hired scores of well connected employees and tracked how those hires translated into business deals.

8. For example, JPMorgan Chase hired Tang Xiaoning, whose father was a Chinese banking regulator and the chairman of a state-controlled financial

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conglomerate called the China Everbright Group.\textsuperscript{74} Prior to his being hired in 2010, the Bank’s business with China Everbright was nearly nonexistent, but within a year of his hiring, China Everbright’s banking subsidiary picked JPMorgan Chase as one of 12 financial advisers in connection with its decision to become a public company. In addition, JPMorgan Chase secured other coveted business from China Everbright and, despite JPMorgan Chase officials’ questioning the younger Mr. Tang’s financial expertise, the Bank continued to employ him.\textsuperscript{75}

9. In 2011, Chris Charnock, a JPMC compliance officer in Asia, emailed five colleagues including the legal department to raise a red flag about JPMorgan Chase’s hiring practices.\textsuperscript{76} In addition, in December 2011, a junior banker in Hong Kong, Zhang Rong, resigned and wrote: "I do not think my family is in a position to help you to the extent as others did: bring their family business to the firm." Mr. Zhang also drafted a resignation letter that lamented how "All of my efforts seemed meaningless to you and you tend to judge me solely on the relation part of me." Mr. Zhang said he was quitting because he could no longer "live under the shadow of my father." The father had ties to the China Post Group, which runs the Chinese postal service.\textsuperscript{77}

10. JPMorgan Chase employed Ning Gaoning, the daughter of the chairman of China’s massive state run food company, Cofco. After she arrived, a subsidiary of Cofco

\textsuperscript{74} David Henry, \textit{China probe is latest legal headache for JPMorgan}, Reuters, (Aug. 19, 2013, 6:54PM), \url{http://www.reuters.com/article/2013/08/19/us-china-jpmorgan-hiring-idUSBRE97I0H620130819}

\textsuperscript{75} Jessica Silver-Greenberg and Ben Protes, \textit{JPMorgan Hiring Put China’s Elite on an Easy Track}, \textit{New York Times Dealbook}, (Aug. 29, 2013, 10:00PM), \url{http://dealbook.nytimes.com/2013/08/29/jpmorgan-hiring-put-chinas-elite-on-an-easy-track/?r=0}


11. At the request of a top Chinese insurance regulator to hire a young family friend, Jamie Dimon met the applicant and the regulator in June 2012. The applicant was subsequently hired.

12. Nevertheless, in connection with Dimon’s trip to interview the applicant, a JPMorgan Chase spokesperson, Joseph Evangelisti, issued a statement that “our CEO played no role in the hiring decision, did not weigh in, and did not follow up.”\footnote{79}{Refile - China insurance official asked JPMorgan’s Dimon for job ‘favor’ - NYT, Reuters, (Feb. 10, 2014, 5:05AM), \url{http://www.reuters.com/article/2014/02/10/china-jpmorgan-hiring-idUSL3N0LF1WK20140210}}


14. After a probe of the Bank’s Asian hiring practices, top JPMorgan Chase Chinese officer, Fang Fang, left the Bank stating that, at the age of 48, he had a desire to “retire, spend more time with family and pursue new opportunities.” Fang Fang was chief executive for China investment banking and vice chairman of investment banking in Asia. He had been with the Bank for more than a decade and was credited with helping build the Bank into "one of the most influential investment banks in China."\footnote{81}{Dan Fitzpatrick, Enda Curran, and Mike Rothfeld, Top J.P. Morgan Executive in China to Leave Bank, The Wall Street Journal, (Mar. 24, 2014, 10:24AM), \url{http://online.wsj.com/articles/SB10001424052702304679404579457760203547006}}
15. Two days after Fang left the Bank, more than 10 officials from the Independent Commission Against Corruption in Hong Kong (the “ICAC”), an organization committed to fighting corruption using law enforcement, prevention and education, searched JPMorgan Chase’s headquarters in the city’s central business district, confiscating documents from Fang’s office.

16. On May 20, 2014, Fang was arrested by the ICAC in Hong Kong. He was released shortly thereafter but, as of May 22, 2014, was prohibited from leaving Hong Kong, according to a report in Caixin, a Chinese-language financial news outlet based in Beijing. Fang was one of several JPMorgan Chase executives whose emails on hiring practices were given to the United States authorities. In one, Fang wrote: “You all know I have always been a big believer of the Sons and Daughters program — it almost has a linear relationship” with winning jobs to advise Chinese companies.

17. An internal JPMorgan Chase investigation discovered more than 250 well-connected hires in Asia alone. And the SEC found an internal spreadsheet that shows...

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a direct correlation between JPMorgan Chase’s hiring practices and the business won in Asia. 88

The most likely criminal defendants

Obviously, the Sons and Daughters program was not being run by junior JPMorgan Chase personnel without approval from senior management. In fact, the program was originally reviewed by U.S. legal and compliance personnel with an eye on the FCPA. 89 Moreover, JPMorgan Chase has its own anti-bribery investigatory group, with a highly trained team that manages internal investigations relating to the FCPA. 90 In its own words: “The strong compliance culture comes from developing and maintaining program infrastructure that identifies, measures and monitors compliance with applicable laws, regulations and rules that govern our business globally.” 91

Thus, if junior people at JP Morgan Chase co-opted the program and acted in violation of the Bank’s policies, they would have been spotted and shut down by the anti-bribery and compliance forces. It follows that, if JPMorgan Chase personnel violated the FCPA, they did it with the knowledge and approval of very senior management. Any criminal investigation should consider whether people at the level of Stephen Cutler and Jamie Dimon — both of whom held their present positions from

virtually the inception of the Program — knew about the Program, and what they did, or did not, do. Whether the investigation has included such senior personnel is unknown.

IV. JPMorgan Chase's participation in Foreign Exchange market manipulation

Though the foreign currency market may sound remote and peripheral in comparison to the mortgage-backed securities fraud and the Madoff matter, the market is staggering in its size. It involves trades of approximately $5.3 trillion — $5,300,000,000,000 — a day.92 On November 3, 2014, JP Morgan Chase disclosed that it faced criminal and regulatory investigations here and in Europe into its alleged participation with other major banks to rig foreign currency exchange rates.93 JPMC said it was raising by $5.9 billion its estimates of what it might need to cover legal expenses beyond that for which it had already taken reserves. JPMorgan Chase booked over $1 billion in legal costs in the third quarter of 2014 alone, due “in large part” to the currency probe.94

JPMC's announcement was the culmination of a 13-month investigation in which multiple U.S. and foreign entities participated, including Britain's Financial Conduct Authority,95 the U.S. Commodity Futures Trading Commission (CFTC),96 the Serious Fraud Office (an independent UK Government department that investigates and

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© 2014 by Helen Davis Chaitman and Lance Gotthoffer
prosecutes serious and complex fraud and corruption cases, the Federal Reserve, and the US Department of Justice (DOJ). Shortly after the November 2013 announcement of the investigation, JPMorgan Chase and most of its alleged co-conspirators (including Citigroup, Bank America, UBS, HBSC and Royal Bank of Scotland), settled the charges with regulators for a combined $4.3 billion. JPMorgan was fined $310 million by the US regulator, the CFTC, but it has agreed to pay more than $1 billion to resolve the allegations that it manipulated the foreign-currency market. The fines were as follows:

### Bank Fines for Currency Manipulation, in Millions

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<tr>
<th>Authority</th>
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<td>OCC</td>
<td></td>
<td>$350</td>
<td>$350</td>
<td>$350</td>
<td>$250</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$799 million</td>
<td>$618 million</td>
<td>$634 million</td>
<td>$1.01 billion</td>
<td>$1.02 billion</td>
<td>$250 million</td>
</tr>
</tbody>
</table>

The evidence against JPMorgan Chase

If one had to choose one situation which represented the total lack of moral compass among Wall Street personnel, the foreign exchange violations may be the best. These were crimes committed by young traders who apparently believed it was worth

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violating the law if you could make a lot of money in the process. While JPMorgan Chase pulled out its usual excuse of compliance lapses and poor systems and controls, the documentary evidence shows these were deliberate violations of law. The emails of the traders reveal a mentality of college freshmen competing for fraternities. They communicated with their purported competitors in the marketplace — and documented illegal conspiracies to beat the market — through on-line chat rooms. They adopted nick-names, for themselves, including “the 3 musketeers,” the “A-Team," and “The Players.”

1. One document showed a conversation among three traders — at JPMorgan, Citibank and UBS — discussing whether to let a fourth into their group. “Will he tell rest of desk stuff,” asked one trader, indicating concern about whether the new participant could be trusted. Another answered that it was a good question because they did not want “other numpty’s in mkt to know.” A “numpty’, in British vernacular, is an idiot or ‘numbskull’.

2. Another email chain showed precisely how a JPMorgan Chase foreign exchange trader and a “Bank W” trader coordinated their trading in an attempt to manipulate the market.

At 3:43:50, the Bank W trader asked the JPMC trader whether he needed to buy Euros in the market in the forthcoming fix. The JPMC trader responded that he had a net buy order for the fix, which he subsequently confirmed as totaling EUR105 million.

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103 Martin Robinson, Criminal probe into bankers who rigged foreign exchange markets after five of world’s biggest banks are fined record £2 billion, Daily mail, http://www.dailymail.co.uk/news/article-2831108/Five-world-s-banks-fined-2BN-rigging-foreign-exchange-markets-prosecuted.html
At 3:44:04, the JPMC trader offered to transfer that net buy order to the Bank W trader. The Bank W trader replied “maybe” and then stated that he had a net buy order for EUR 150 million. The traders had the following exchange:

Bank W Trader: 3:46:53  i’d prefer we join forces
JPMC Trader: 3:46:56  perfick
3:46:59  lets do this...
JPMC Trader: 3:47:11  lets double team them
Bank W Trader: 3:47:12  YESssssssssssss

Immediately after the fixing window, the traders congratulated themselves:

Bank W Trader: 4:03:25  sml rumour we haven’t lost it
JPMC Trader: 4:03:45  we
4:03:46  do
4:03:48  dollarrr

3. According to the consent order entered into by the Office of the Comptroller of the Currency and JPMorgan Chase, the Bank admitted that its traders:

- Improperly discussed confidential customer information including trades that they were looking to transact.
- Worked together to manipulate a currency’s benchmark that is used to set foreign-exchange rates across the industry and asset classes.
- Attempted to trigger stop-loss orders (instructions for a broker to sell or buy a security when it reaches a certain price) in order to increase the banks’ trading profits.

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Traded in advance of pending customers’ orders for the trader or Bank’s benefit.

Made agreements not to trade in a particular currency pair while other traders were doing so.

Disclosed confidential and proprietary bank information.  

This conduct reportedly made millions for the traders’ banks and big bonuses for the traders themselves. “He sat back in his chair... announcing to desk... that’s why I got the bonus pool,” said one trader to a rival after they colluded on a rate, earning, according to regulators, a profit of $513,000 on the trade.

On another occasion, a JPMC trader coordinated with a trader from “Bank X” in an attempt to manipulate the EUR/USD fix just ahead of the 4 p.m. fix:

JPMC Trader: 3:51:21 ok, i got a lot of euros
Bank X Trader: 3:51:25 ?
JPMC Trader: 3:51:28 you selling?
Bank X Trader: 3:51:30 yes
JPMC Trader: 3:51:33 now
Bank X Trader: 3:51:35 or pickun? (a slang term for fixing orders)
JPMC Trader: 3:51:39 pick un
3:51:46 u want it? ...
Bank X Trader: 3:52:24 ill take it [JPMC trader]
3:52:26 if u dont want it
JPMC Trader: 3:52:39 tell you what
3:52:42 lets double team it

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By their nicknames, the traders attempted to keep their actions concealed.

They also used code names to identify clients.\textsuperscript{111}

**The possible crimes committed by JPMorgan Chase personnel**

1. **Antitrust violations.** Section 1 of the Sherman Act, which has been the nation’s landmark antitrust statute since 1898, prohibits conspiracies in restraint of trade that affect U.S. commerce. Price fixing among competitors, including bid-rigging, is the prototype of a “per se” violation of the Act. It is punishable by a fine not exceeding $100 million if the violation is by a corporation. If the violation is by an individual, the individual is subject to a fine of up to $1 million and imprisonment not exceeding 10 years.\textsuperscript{112}

2. **Commodity Exchange Act violations.** The Commodity Exchange Act regulates trading of commodity futures in the United States and establishes the statutory framework under which the Commodity Futures Trading Commission (the "CFTC")

\textsuperscript{111} Chad Bray, Jenny Anderson, and Ben Protess, Big Banks Are Fined $4.25 Billion in Inquiry Into Currency-Rigging, NY Times, (Nov. 12, 2014, 2:24AM), \texttt{http://dealbook.nytimes.com/2014/11/12/british-and-u-s-regulators-fine-big-banks-3-16-billion-in-foreign-exchange-scandal/?_r=1}

\textsuperscript{112} 15 U.S. Code § 1, Legal Information Institute, Cornell University Law School, \texttt{http://www.law.cornell.edu/uscode/text/15/1}
operates. Sections 6(c), 6(d), and 9(a)(2) of the Commodity Exchange Act deal with acts of attempted manipulation. JPMorgan Chase personnel violated Section 9(a)(2) of the Act which makes it unlawful for “[a]ny person to . . . attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity . . . ” In addition, JPMorgan Chase personnel may have engaged in acts of attempted manipulation in violation of Commission Regulation 180.2 which makes it “unlawful ...directly or indirectly . . . to attempt to manipulate, the price of ...any commodity in interstate commerce.”

3. **Wire & securities fraud.** As earlier discussed, wire fraud is a crime of using an interstate telephone call or electronic communication to intentionally defraud another out of money. Securities fraud is the crime of defrauding a person in connection with security transactions or falsely obtaining money or property in connection with the purchase of a security. These statutes may have been violated by JPMorgan Chase personnel.

4. **Conspiracy to commit wire fraud and securities fraud.** This is the crime of two or more people planning to commit wire fraud or securities fraud against the United States or a governmental agency, such as the CFTC, and resulting in one or more persons completing any act in furtherance of the plan. Clearly, here, the evidence suggests that conspiracies were formed.

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115 18 U.S. Code § 1343.
116 18 U.S. Code § 1348.
The most likely criminal defendants

All of the traders who committed these violations are subject to criminal prosecution. In addition, to the extent their supervisors knew of their illegal activities and allowed them to continue, the supervisors would also be subject to criminal prosecution. Similarly, inhouse attorneys who had supervisory responsibilities over the traders could be liable.118

Conclusion

It is impossible to explain why the American public — 50% of whose households do business with JPMorgan Chase — would accept criminality from a financial institution.

Until the American public insists on prosecution of Wall Street banksters, our elected officials will simply continue to accept contributions from Wall Street in exchange for a tacit agreement to look the other way. We have all seen the correctness of Aristotle’s observation that:

At his best, man is the noblest of all animals; separated from law and justice, he is the worst.119

We call upon our government to de-criminalize the financial services industry, utilizing the same tools that were used to eradicate organized crime.

118 See In the Matter of Theodore W. Urban, Adm. Proc. File No. 3-13655, Initial Decision (Sept. 8, 2010). In this civil case, the SEC argued that the General Counsel was a “supervisor” who could be liable for the improper acts of a person he supervised, if he did not supervise reasonably. However, the administrative law judge found that, although the employee engaged in securities laws violations and the General Counsel was considered his supervisor, the General Counsel did not fail to exercise that supervision reasonably. This determination was affirmed by an equally divided Commission, In the Matter of Theodore W. Urban, Adm. Proc. File No. 3-13655, Order Dismissing Proceeding (Jan. 26, 2012) available at https://www.sec.gov/litigation/admin/2012/34-66259.pdf. Thus, it would not disturb the finding that a general counsel can be liable for a subordinate’s fraud if he does not supervise reasonably.

119 Aristotle, Politics, Book 1 section 1253a.
Chapter 6
When Jamie Dimon Screws Up, He Does a Whale of a Job

Introduction

The London Whale fiasco is a perfect illustration of the lack of integrity that pervades the senior management of JPMorgan Chase. It is a story of traders who were hired, and compensated, to take massive risks with depositors’ money — much of which is insured by the American taxpayer through the Federal Deposit Insurance Corporation (the "FDIC"). And it is a story of JPMorgan Chase senior management who, when they learned of the massive losses the Bank was facing, systematically lied about the losses to regulators, to the SEC, and to the public — until the truth could no longer be concealed. Then they lied to the Senate to try to cover up their own cover-up.¹

The arrogance of the senior officers of JPMorgan Chase and the disdain with which they view their primary regulator, the Office of the Comptroller of the Currency (the "OCC"), is stunning. You will see instance after instance in which the Bank's most senior, highly paid officers claimed they did not see or had misread emails that were sent to them. These people concocted a cover-up that would not deceive a high school sophomore.

Ultimately, JPMorgan Chase concealed the full extent of its losses from the London Whale fiasco. The Bank admitted losses of $6.2 billion\(^2\) but the Bank transferred some of the speculative positions to another department within JPMorgan Chase before the losses on those positions were realized and then never disclosed the losses traceable to the transferred positions.

Although there have been voluminous news reports about the London Whale, the most authoritative source of information is the 300-page Report issued by the Senate Subcommittee on Investigations (the "Senate Report").\(^3\) God bless Senator Carl Levin the Chairman of that Subcommittee and Senator John McCain, the Ranking Minority Member. They have rendered an extraordinary service to the American people. At least there are two people in Congress who have not sold their souls to Wall Street.

As set forth in the Senate Report, the Senate Subcommittee concluded that senior officers of JPMorgan Chase, including Jamie Dimon and Douglas Braunstein, Chief Financial Officer, made false statements to the public and the SEC concerning the Bank's losses. The making of false statements constitutes a crime under the securities laws.\(^4\)

Apparently with the hope of influencing the outcome of the Senate Report, JPMorgan Chase formed its own task force which issued management's version of what happened (the "Management Report").\(^5\) The management task force was headed by


\(^3\) Senate Report.

\(^4\) Senate Report at 261 et seq.

Michael Cavanagh, the Co-Chief Executive Officer of the JPMorgan Chase Corporate and Investment Bank.\(^6\) Should we be surprised that the Management Report overlooks the securities law violations of senior management?

Please hang in there with us as you read this chapter. It is difficult material but you will feel a definite "Wow" by the time you finish. Some of the trading terms may be new to you but we will explain them as we go along. And we have included at the end of the chapter a glossary of the key players and key terms.

**The formation of the Chief Investment Office**

The responsibility for the London Whale falls 100% on Jamie Dimon. Unlike the Madoff relationship, which started with Chemical Bank in the early 1990's, long before Jamie Dimon joined JPMorgan Chase, the London Whale is entirely the product of Jamie Dimon's management. JPMorgan Chase acquired Bank One in 2004.\(^7\) Dimon had been Chief Executive Officer of Bank One and, effective July 1, 2004, Dimon became the President and Chief Operating Officer of JPMorgan Chase. Dimon has been the Chief Executive Officer of JPMorgan Chase since January 1, 2006.\(^8\)

Shortly after he joined JPMorgan Chase, Dimon formed the Chief Investment Office (the "CIO") for the purpose of investing Bank deposits.\(^9\) Banks are required to invest bank deposits very conservatively because the deposits are insured, up to a certain amount, by the FDIC which, in turn, is funded by taxpayers.\(^10\) Thus, if Dimon

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\(^6\) Management Report at 1.

\(^8\) Management Report at 18.

\(^9\) Senate Report at 21.

\(^10\) In 2005, the FDIC insurance was $100,000 per account; now it is up to $250,000 per account. Marcie Geffner, FDIC insures bank deposits to $250,000, Bankrate, (Sept. 23, 2010), [http://www.bankrate.com/finance/savings/fdic-insures-bank-deposits-to-250-000-1.aspx](http://www.bankrate.com/finance/savings/fdic-insures-bank-deposits-to-250-000-1.aspx)

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decides to gamble with depositors' money and he wins, the Board that he controls awards him with an obscene bonus. In a worst case scenario, if Dimon gambles and he loses, he doesn't pay the depositors back with his own money. If the Bank's equity is depleted, Dimon walks away with his huge bonuses and the American taxpayers pay off the depositors. It's a perfect "heads I win, tails you lose" situation, if your name is Jamie Dimon.

Dimon hired Ina Drew to head the CIO as the Bank's Chief Investment Officer. Drew had worked for Dimon at Bank One and served on the Bank One Operating Committee. Dimon made Drew a member of JPMorgan Chase's Executive and Operating Committees and she reported directly to him.11

The CIO's activities were centered in two offices: at the JPMorgan Chase Investment Bank in New York City and at the CIO's International Office in London. The CIO housed, in London, the Bank's Synthetic Credit Portfolio ("SCP").12 In theory, the purpose of the CIO and the SCP was to hedge the Bank's deposits. A hedge is a device to minimize risk and loss. If you invest $1,000 in a stock that you expect will go up when oil prices rise, you might also "short" an oil stock so that you will make money if oil prices fall. You are not trying to make a profit on the hedge; you are trying to minimize losses even if that cuts down your profit.

11 Senate Report at 23.
12 The Synthetic Credit Portfolio consisted of massive investments in debt securities. A debt security is an asset such as a bond. A collateralized debt obligation is a bond backed by collateral. A synthetic collateralized debt obligation is one where the underlying credit exposure is taken using a credit default swap, rather than having an entity buy assets such as bonds. A credit default swap is designed to transfer the credit exposure of fixed income products between parties: the purchaser of the swap makes payments to the seller of the swap up until the maturity date of a contract. In return, the seller agrees to pay off a third party debt if this party defaults on the loan. A credit default swap is considered insurance against non-payment. A buyer of a credit default swap might be speculating on the possibility that the third party will default. These credit instruments are often described as 'synthetic,' because they do not contain any tangible assets such as a loan or bond; they simply reference the financial instrument or entity whose credit quality is at issue. Wikipedia, Synthetic CDO, http://en.wikipedia.org/wiki/Synthetic_CDO; Investopedia, Credit Default Swap - CDS, http://www.investopedia.com/terms/c/creditdefaultswap.asp
After the London Whale fiasco, senior Bank officers claimed (falsely) in statements to the public and to the Senate Subcommittee, that the SCP was intended to hedge the Bank's balance sheet as a whole. However, they could not produce a single Bank document that spelled out what the SCP was meant to hedge. And Patrick Hagan, the CIO's most senior quantitative analyst, who joined the CIO in 2007 and spent about 75% of his time on SCP projects, testified that he was never asked to do the kind of analysis that would have been necessary to use the SCP as a hedge for the Bank's assets. And, the conclusion of the Senate Subcommittee was that the SCP was not a hedging operation at all; it was a "high risk proprietary trading operation." In other words, the Bank was trying to make a profit for itself on every dollar invested — and of course high risk means that, while the profits may be good, you can also lose big time. The problem here, of course, was that the Bank was gambling with other people's money — money that the American taxpayers insure through the FDIC.

Although Dimon refused to admit that he formed the CIO for the purpose of proprietary trading, that is, solely to generate profits and not to hedge conventional banking risks, he was forced to acknowledge that the CIO "morphed into something that, rather than protect the firm, created new and potentially larger risks." If Dimon was telling the truth — that the CIO "morphed" into a risky operation — this is a damning indictment of Dimon and his management team because, at the very same time that the CIO was "morphing" into a reckless proprietary trading operation, Dimon

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13 Senate Report at 12, 43. Dawn Kopecki, JPMorgan's Jamie Dimon misled investors, dodged regulator to hide 'monstrous' derivatives bet that went bad, Financial Post, (March 15, 2013, 8:32AM), http://business.financialpost.com/2013/03/15/jpmorgan_jamie-dimon_london-whale/
14 Senate Report at 43.
15 Senate Report at 44.
16 Senate Report at 4.
17 Senate Report at 4.
was busy trying to persuade everyone in Congress that the Volcker Rule's restrictions on proprietary trading were unnecessary and that bankers are smart enough and competent enough to manage their own risk.\footnote{http://blog.nj.com/njv_editorial_page/2012/05/jamie_dimon_jp_morgan_chase_pr.html \url{http://www.opensecrets.org/orgs/recips.php?id=D000000103&type=P&state=&sort=A&cycle=2012}. In addition, JPMC paid $8,060,000 to lobbyists in 2012. \url{http://www.opensecrets.org/lobby/clientsum.php?id=D000000103&year=2012} Star-Ledger Editorial Board, Jamie Dimon, JP Morgan Chase prove banks are still gambling with the economy, NJ.com, (May 15, 2012, 6:06AM), \url{http://blog.nj.com/njv_editorial_page/2012/05/jamie_dimon_jp_morgan_chase_pr.html}}

The London Whale sure proved the lie that Dimon was telling. But, of course, given the enormous monetary inducements JPMorgan Chase showered on Congress,\footnote{In the 2012 election cycle, JPMC's officers and employees made federal campaign contributions of $3,055,300. \url{http://www.opensecrets.org/orgs/recips.php?id=D000000103&type=P&state=&sort=A&cycle=2012}. In addition, JPMC paid $8,060,000 to lobbyists in 2012. \url{http://www.opensecrets.org/lobby/clientsum.php?id=D000000103&year=2012} Star-Ledger Editorial Board, Jamie Dimon, JP Morgan Chase prove banks are still gambling with the economy, NJ.com, (May 15, 2012, 6:06AM), \url{http://blog.nj.com/njv_editorial_page/2012/05/jamie_dimon_jp_morgan_chase_pr.html}} ultimately our esteemed government relieved banks of the restrictions necessary to protect American taxpayers against the costs of a future bailout.\footnote{http://ourfuture.org/20141224/wall-street-had-a-merry-christmas-the-new-years-still-up-for-grabs; \url{http://dealbook.nytimes.com/2014/12/09/wall-street-seeks-to-tuck-dodd-frank-changes-in-budget-bill/?_r=0}}

Drew was an experienced risk manager and Dimon gave her generous risk limits\footnote{Susan Dominus, The Woman Who Took the Fall for JPMorgan Chase, The New York Times, (Oct. 3, 2012), \url{http://www.nytimes.com/2012/10/07/magazine/ina-drew-jamie-dimon-jpmorgan-chase.html?pagewanted=all& r=0}} and authorization to staff the CIO with a team of traders who were experienced in taking significant risks. In 2005, Drew hired Bruno Iksil, a French national, later called the "London Whale" because of the massive trades he executed, to serve as the head trader in the London office. Iksil managed the CIO's trading activity from January 2007 until April 2012.\footnote{Senate Report at 24 and n's 80-81.} In 2006, Drew hired Achilles Macris to head the London
office. In 2007, Drew hired Javier Martin-Artajo, a Spanish national who served as head of Credit and Equity Trading, directly oversaw the SCP, and reported to Macris.

The compensation paid to Drew and her team was obviously intended to encourage risk-taking. For example, the compensation in 2010 and 2011 was as follows:

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drew</td>
<td>$15 million</td>
<td>$14 million</td>
</tr>
<tr>
<td>Macris</td>
<td>$17.25 million</td>
<td>$14.5 million</td>
</tr>
<tr>
<td>Martin-Artajo</td>
<td>$12.75 million</td>
<td>$10.98 million</td>
</tr>
<tr>
<td>Iksil</td>
<td>$7.32 million</td>
<td>$6.76 million</td>
</tr>
</tbody>
</table>

By 2012, the CIO was managing a $350 billion portfolio which, according to the OCC, would make the CIO equal to the size of the seventh largest bank in the United States. Under Dimon’s watch, the CIO grew as it generated more and more profits for JPMorgan Chase.

Of course there is nothing wrong with taking risks in order to maximize profits, although gambling with FDIC-insured deposits is certainly something American taxpayers should not be insuring. And readers may recall that, in Chapter 2, we told you that the deposit balances in Madoff’s 703 Account generally increased over time, peaking at approximately $5.6 billion in August 2008. Those deposit balances, presumably, were transferred to the CIO for speculative trading. One can surely imagine that a single Bank customer who contributed billions of dollars to Dimon’s pet speculative trading operation would have come to Dimon’s appreciative attention.

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23 Senate Report at 24 and n. 74.
24 Senate Report at 24 and n.’s 76-77.
25 Senate Report at 58.
26 Senate Report at 22.
For some reason, Dimon never required the Bank to detail in writing the policy or mandate of the SCP.\textsuperscript{28} And the Bank declined to subject the CIO to the type of scrutiny and control exercised over other Bank departments.\textsuperscript{29} When some of his most senior advisers raised concerns about the lack of transparency and quality of internal controls in the CIO, Dimon brushed them off and, instead, encouraged the CIO to ramp up risk in search of profits.\textsuperscript{30} And, although the Board of Directors had a three-person risk-policy committee, when Drew met with them, she never discussed the SCP’s activities.\textsuperscript{31}

**The increased risk-taking after 2008**

In 2008, as a result of the global financial collapse, JPMorgan Chase was able to acquire Bear Stearns and Washington Mutual at fire-sale prices. As a result of the expansion of the size of the Bank, the money being invested by the CIO more than doubled, to $166.7 billion, from $76.2 billion the previous year. The corporate division, which includes the CIO, posted net income of $3.7 billion in 2009. Macris’ team in London, running the SCP portfolio of as much as $200 billion in trades, had a profit of $5 billion in 2010 alone, more than a quarter of JPMorgan’s net income that year.\textsuperscript{32} In 2010, some executives had warned Drew that Iksil had amassed dangerous trading positions.\textsuperscript{33} She apparently took no heed.

\textsuperscript{28} Senate Report at 39.
\textsuperscript{29} Senate Report at 39.
\textsuperscript{30} Erik Schatzker, *JPMorgan’s Jamie Dimon’s risky business*, SF Gate, (June 17, 2012), [http://www.sfgate.com/search/?action=search&channel=business&inlineLink=1&searchindex=gsa&query=%22Federal+Reserve+Board+of+Philadelphia%22](http://www.sfgate.com/search/?action=search&channel=business&inlineLink=1&searchindex=gsa&query=%22Federal+Reserve+Board+of+Philadelphia%22)
\textsuperscript{31} Senate Report at 220 and n. 1227.
The bet that paid off in 2011

In 2011, the SCP portfolio jumped from $5 billion to $51 billion. In late 2011, the SCP bankrolled a $1 billion credit derivatives trading bet that produced a gain of approximately $400 million.34

In the fall of 2011, the CIO placed a massive bet on a high yield credit index that tracked credit default swaps35 for 100 higher risk companies.36 Beginning in September 2011, Iksil began to purchase the short side of several tranches or portions of the same index, building a short position that would pay off only if at least two companies declared bankruptcy or otherwise defaulted before the position expired on December 20, 2011.37 Given the fact that JPMorgan Chase had banking relationships with 80% of the Fortune 500 companies,38 the CIO was essentially betting — big time and with other people's money — that one or two of its Fortune 500 customers would file in bankruptcy before December 20, 2011.

Just when prospects were looking very dim that any such customers would go bankrupt, American Airlines saved the day by filing in bankruptcy on November 29, 2011.39 This triggered a $550 million "windfall" to JPMorgan Chase.40 Drew immediately sent an email to Dimon bragging that the SCP has been "extremely

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34 Senate Report at 3. A derivative is a financial instrument that derives its value from another asset. Credit derivatives derive their value from the creditworthiness of a specified financial instrument such as a corporate bond or stock, or from the creditworthiness of a referenced entity, such as a corporation or sovereign nation.
35 A credit default swap is a contract between two parties placing opposite bets on the creditworthiness of a specified financial instrument or entity. Senate Report at 29.
36 Senate Report at 53.
37 Senate Report at 53.
profitable for the company (circa $2.5 billion) over the last several years" and that the "fourth quarter 400 million gain was the result of the unexpected American Airlines default."41 Clearly, this gain resulted from proprietary trading, not from any purported hedging strategy.42

The January 16, 2012 breach of a firm-wide risk limit

Drew instructed the CIO traders to try to repeat their American Airlines gain in 2012.43 And the traders took a big gamble to try to do precisely that.44 The massive positions the CIO traders took caused a breach, on January 16, 2012, of one of the risk limits imposed on the CIO — the VaR limit45 — which constituted a breach of the Bank-wide VaR limit as well. Breaches of the VaR limit were automatically sent to the highest levels of Bank management, including Dimon and the Bank's Chief Risk Officer, John Hogan.46 On the same day, the CIO purchased additional short positions that triggered another CIO and Bank-wide breach of the VaR limit.47

In the first quarter of 2012, even though the Bank claimed the CIO's "Key mandate" was to optimize "and protect the firm's balance sheet from potential losses, and create and preserve economic value over the longer-term,"48 the CIO traders "went on a sustained trading spree, eventually increasing the net notional size of the SCP from $51 billion to $157 billion."49

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41 Senate Report at 54, n. 337; 56 n. 360.
42 Senate Report at 56.
43 Senate Report at 55.
44 Senate Report at 57. The SCP traders were compensated at the top range of, or better than, the best Investment Bank employees. Senate Report at 59.
45 Senate Report at 173. The Value-at-Risk ("VaR") limit is one of five key metrics and limits used by the CIO to gauge and control the risks associated with its trading activities.
46 Senate Report at 173 and n. 981.
47 Senate Report at 173 and n.'s 982-83.
48 Senate Report at 22.
49 Senate Report at 4. "Notional" value is the total value of a leveraged position's assets. For example, one S&P 500 Index futures contract obligates the buyer to 250 units of the S&P 500 Index. If the index is
The CIO's bet that two major companies would file in bankruptcy expired on December 20, 2011. Too late to create massive profits for the CIO, on January 19, 2012, Eastman Kodak filed for bankruptcy. Because the CIO had taken a huge long position, this filing caused the CIO to lose $50 million. On the same day, Martin-Artajo sent Drew an email describing a proposed change to the VaR risk limit, designed by Patrick Hagan, which reduced by 50% the CIO's Core Credit Book RWA (risk-weighted assets). Thus, Hagan was proposing, not a reduction in the risk the Bank was taking, but simply a re-categorization of the risk limit so that the CIO's position would not trigger breaches. This was the equivalent of a dietician giving a patient a diet limited to 1,400 calories a day but listing foods at 50% of their caloric values so that a patient adhering to the diet would eat 2,800 calories a day.

**The Bank deals with the breach by expanding the risk limits**

On January 20, 2012, the CIO Chief Risk Officer, Irvin Goldman, emailed two of his subordinates:

> This is the third consecutive breach notice . . . that has gone to Jamie and [the Operating Committee] members. We need to get Ina specific answers to the cause of the breach, how it will be resolved, and by when.

One of Goldman's subordinates responded that the solution was for the CIO to adopt a new risk model which would significantly increase the risk limit and eliminate

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51 Senate Report at 65.
52 Senate Report at 171 and n. 967. The amount of capital that a bank is required to hold is measured against the amount of its "RWA" or risk-weighted assets, which is measured by considering the nature of the bank's assets and certain off-balance sheet exposures that the bank has. Management Report at 26; Senate Report at 28, n. 113.
53 Senate Report at 174 and n. 984.

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the breaches.\textsuperscript{54} Also on January 20, 2012, Goldman emailed his boss, John Hogan, JPMorgan Chase Chief of Risk, with the same suggestion: to change the VaR risk model to eliminate the breach.\textsuperscript{55}

The breach in the Bank's risk limit continued for four days without the Bank taking any significant action and ended only after the Bank temporarily increased the limit based upon the new risk model designed by Patrick Hagan.\textsuperscript{56} Thus, America's biggest bank resolved the breach of the Bank's risk limits by adopting a more lax risk model which would increase the Bank's risk. And this was done at the suggestion of Patrick Hagan who had no experience designing risk models. In fact he had never before designed a risk model.\textsuperscript{57}

On January 23, 2012, the Market Risk Management Reporting group sent an email to Dimon and Hogan asking them to approve a temporary increase in the firm-wide VaR limit from $125 million to $140 million, an increase of more than 10%. The group proposed keeping the increased limit in place until the end of the month, predicting that, by then, the CIO's new VaR model would be approved, which would end the breach.

This email is to request your approval to implement the temporary increase of the Firm's 95% 10Q VaR limit from $125mm [million] to $140mm, expiring on January 31, 2012. . . Action has been taken to reduce the VaR and will continue. In addition, CIO has developed an improved VaR model .... The impact of the new VaR model based on Jan. 18 data will be a reduction of CIO VaR by 44% to $57mm.\textsuperscript{58}

\textsuperscript{54} Senate Report at 174 and n. 985.
\textsuperscript{55} Senate Report at 174 and n. 986.
\textsuperscript{56} Senate Report at 168 and n. 947.
\textsuperscript{57} Senate Report at 165; 168 and n. 944; 175.
\textsuperscript{58} Senate Report at 176 and n. 992.
Dimon and Hogan received this email which clearly states that the new VaR model will have the effect of lowering the apparent risk of the CIO’s portfolio by a dramatic amount. Yet, with no consideration for the impact of their decision, both Dimon and Hogan responded to the email request: "I approve." Dimon later told the Senate Subcommittee that he would normally make a decision to approve a request by a business segment to exceed an existing VaR limit in a matter of "seconds." This is a remarkable admission from the man who lobbied aggressively against the Volcker rule, arguing in Congress that banks were competent to manage risk without external controls.

The VaR limit was changed on January 23, 2012. As a result of the increase in the risk limit, the CIO traders purchased the long side of a variety of credit derivatives. On January 24, 2012, Iksil wrote that the SCP portfolio had begun to "lose money in an uncontrollable way." On January 26, 2012, Iksil stated that the SCP book had already lost $100 million in January 2012 and he predicted further losses of $300 million.

By January 27, 2012, Macris suggested stopping the losses

By January 27, 2012, the SCP's rapid purchase of long positions threatened another breach of the bank-wide VaR limit, even at the increased limit that Hogan and Dimon had approved effective January 30, 2012. At that point, the head of the CIO's London Office, Achilles Macris, told Martin-Artajo that the SCP book was no longer needed to hedge risk at the Bank and should be reshaped to stop the losses. One option, at that point, was to unwind (that is, sell off) the SCP's present positions. Iksil

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59 Senate Report at 176.
60 Senate Report at 176.
61 Senate Report at 177 and n. 997.
62 Senate Report at 66.
63 Senate Report at 177-78 and n. 1002.
64 Senate Report at 66.
had suggested doing this; cutting the Bank’s loss at a cost of approximately $516 million. But Drew nixed this idea because she didn't want to show the loss.65

After meetings and consultations, because the Bank had temporarily increased the VaR limit, the decision was made to buy more long credit derivatives pursuant to a strategy that the Bank knew could result in losses of $500 million.66 Although Drew had approved the new strategy, she told the Senate Subcommittee that she could not explain exactly what the new strategy was.67 No other Bank officers who testified before the Subcommittee were able to explain it and the traders themselves declined to be interviewed by the Senate Subcommittee.68

**On January 30, 2012, Iksil asked to stop the trading**

After only four days of executing the new strategy, on January 30, 2012, Iksil wrote an email to his supervisor, Martin-Artajo, explaining that the CIO was incurring additional losses and, in his view, the "only" course of action was "to stay as we are and let the book simply die."69 On the same day, Macris sent an email to Martin-Artajo stating "We need to discuss the synthetic book. The current strategy doesn’t seem to work-out. The intention was to be more bullish, but the book doesn't behave as intended . . . The financial performance is worrisome."70

Despite the recognition by the CIO traders that their trading strategy was a disaster, on January 30, 2012, the Bank put in place, without testing, the new VaR risk model for the CIO that had been designed by Patrick Hagan. This risk model reduced the CIO’s risk by 50% and allowed them to take on significantly more risk without

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65 Senate Report at 67 and n. 432.  
66 Senate Report at 73 and n. 458; 75 n. 477.  
67 Senate Report at 74 and n. 467.  
68 Senate Report at 74 and n's 467-69.  
69 Senate Report at 77 and n. 489.  
70 Senate Report at 78 and n. 491.
setting off firm-wide alarms.71 This is America's largest bank putting in place a 50% increase in a risk model that was designed by someone who had never before designed a risk model and who had never been given sufficient funds to construct a database to feed trading data into the CIO's risk model on an automated basis. Thus, he had to manually enter data into multiple spreadsheets each trading day, contributing to the fact that the data produced faulty results which were not detected until April or May 2012.72 As explained by the Senate Subcommittee:

a critical risk model for a portfolio containing hundreds of billions of dollars of financial instruments, operated by the man who developed the model at the behest of the portfolio manager, included flawed and untested components, and depended upon manual uploads of key trading data daily for its calculations. Thus, an untested, unautomated, error-prone VaR model was nevertheless put into place at a bank renowned for its risk management.73

Although the OCC did not assess the new VaR risk model in a timely manner, it ultimately concluded that the Bank's poor implementation efforts were "shocking" and "absolutely unacceptable."74

**The Bank mis-priced positions to conceal losses**

Changing the risk model was not sufficient to save the day for the CIO traders. Because their positions were so enormous and their imminent losses were so massive, beginning at the end of January 2012, the CIO changed the way it valued the SCP book, in a process it called "lagging," in order to make certain its trading positions look far more favorable than they were.75 "Lagging" was the term used by the CIO traders to

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71 Senate Report at 179 and n.'s 1011-13; 180 and n. 1021.
72 Senate Report at 184 and n.'s 1045-46.
73 Senate Report at 185.
74 Senate Report at 185 and n. 1050.
75 Senate Report at 106 and n. 650.

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price their positions using the most favorable bid/ask prices instead of the midpoint prices that were used by the Investment Bank in valuing its portfolio.

**Iksil called for cutting the Bank's losses in February**

In February 2012, the CIO traders continued to pursue the same strategy, acquiring even more derivatives and incurring even more losses. On February 9, 2012, the SCP book breached another Bank risk limit, the CS01 risk limit, with losses exceeding $128 million. Despite the breach, CIO managers allowed the traders to continue to implement their trading strategy.

Iksil stated that he had explained to Martin-Artajo that he did not want to add volume to the book, but Martin-Artajo responded that the book had to be "hedged on high yield defaults." Thus, Iskil continued to purchase long credit instruments.

**By March 2, 2012, the Bank was facing losses of up to $6.3 billion**

By the end of February 2012, the CIO triggered the Comprehensive Risk Measure or "CRM," which indicated that the SCP risked annual losses of $6.3 billion. On February 29, 2012, senior CIO managers including Drew, met with senior Bank officials including Dimon, Douglas Braunstein, JPMorgan Chase's Chief Financial Officer, and John Hogan, firm-wide Chief of Risk.

On March 2, 2012, Kevin Krug, a quantitative expert responsible for calculating the CRM, emailed the $6.3 billion calculation of possible losses to Peter Weiland, the CIO's Chief Risk Officer. Despite his title, Weiland claimed it was not his job to enforce

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76 Senate Report at 79.
77 The CS01 is the credit spread widening limit.
78 Senate Report at 79.
79 Senate Report at 80.
80 According to the JPMorgan Chase Task Force Report, the senior Bank officials were not told that the CIO had incurred two straight months of losses or that the CIO was increasing the size and complexity of the portfolio. Senate Report at 79 and n. 513 (citing Report of JPMorgan Chase & Co. Management Task Force Regarding 2012 CIO Losses, January 16, 2013, at 37-38). This is inconsistent with the evidence that firm-wide breaches of risk limits were reported directly to Dimon. *E.g.*, Senate Report at 173 and n. 981.
risk limits.81 When he was informed of risk limit breaches, he responded by challenging the metrics, not the CIO traders.82 Thus, when Weiland received the March 2, 2012 email from Krug, he forwarded it to Martin-Artajo, stating that the numbers looked like "garbage."83 On March 7, 2012, Patrick Hagan sent an aggressive email to the Bank's quantitative research personnel criticizing the structure, mathematics, and merits of the new, bank-wide CRM risk model.84

In March 2012, the CIO traders purchased still more long positions, enlarged the SCP further and, by the end of March, had moved the SCP into a net long position, breaching multiple risk limits in the process. The portfolio was rapidly losing value and the traders continued to increase the size of the long positions in an attempt to staunch the losses.85

On March 9, 2012, Iksil had a telephone conversation with Julien Grout, a junior CIO trader responsible to track the differences between the daily SCP values the CIO was reporting (the "lagged" values) and the values that would have been reported had the CIO used the same midpoint prices used by the Investment Bank. Grout had prepared a spreadsheet showing the differential between the real losses of the portfolio and the reduced losses using inflated prices.86 In other words, JP Morgan Chase was essentially using two sets of books. Grout told Iksil he was concerned that:

we're lagging [using prices that did not reflect the market prices], . . . so it will be a big fiasco . . . when, in fact, everybody should have . . . seen it coming a long time ago . . . I believe that it is better to say that it's dead, that we are going to crash. The firm will service the debt . . . It's going

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81 Senate Report at 159 and n. 891.
82 Senate Report at 159-60 and n. 892.
83 Senate Report at 188-89 and n's 1081-84.
84 Senate Report at 191 and n. 1092.
85 Senate Report at 81.
86 Senate Report at 111-14 and n. 689.
to be very uncomfortable but we must not screw up . . . It's going to be very political in the end . . . We have until December to cover this thing . . . we must be careful.87

By March 16, 2012, the CIO traders had understated losses by $432 million. Iksil speculated that, by the end of March, the total divergence between market value and the value the CIO traders were using could be $1 billion.88 Referring to Martin-Artajo, Iksil said: "I don't know where he wants to stop, but it's getting idiotic . . . now it's worse than before . . . there's nothing that can be done, absolutely nothing that can be done, there's no hope . . . the book continues to grow, more and more monstrous."89

On March 19, 2012, the CIO began to execute a series of trades that, in the OCC's view, doubled down on the SCP's already losing strategy.90 Altogether, in the last two weeks of March, the SCP increased its notional size by $40 billion.91

**As of March 20, 2012, senior management knew the CIO was mispricing its positions**

On March 20, 2012, Grout sent an email to about 20 CIO personnel in which he wrote that "the lag in P&L is material ($600-800M)."92 A loss of $600 million would more than extinguish all of the revenues of the SCP in 2010 and 2011.93 Grout's email was broadly circulated within the Bank. Yet, when questioned under oath by the Subcommittee, senior management claimed ignorance of its contents and the huge magnitude of the losses the CIO was facing. Drew claimed that she had not seen the

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87 Senate Report at 109 and n’s 662-63.
88 Senate Report at 113 and n.’s 680-84.
89 Senate Report at 114 and n. 687.
90 Senate Report at 82 and n. 524.
91 Senate Report at 82 and n.’s 524-27.
92 Senate Report at at 83 and n. 533; 117 and n. 700.
93 Senate Report at 117 and n. 702.
$800 million figure in Grout’s email and that, if she had seen it, it would have been a "game-changer." 94

Michael Cavanagh, Co-Chief Executive Officer of the Corporate and Investment Bank and author of the Management Report, along with the Bank’s General Counsel, Stephen Cutler (see Chapter 3), came up with an even better explanation: They told the Subcommittee that they viewed the March 20 email as predicting that the market would rebound and add $600 to $800 million in value to the SCP book!

Not to be outsmarted, Drew adopted the party line: Immediately after this Senate testimony from Cavanagh and Cutler, Drew’s counsel contacted the Senate Subcommittee to say that Drew had changed her interpretation of the email and that, upon reflection, she decided that the traders were trying to reassure her that the SCP would regain $600 to $800 million in value. 95

Even though all the senior management of the Bank purportedly mis-read entirely Grout’s email, they nevertheless held a meeting regarding the CIO on March 20, 2012. The meeting was attended by Drew, CIO Chief Risk Officer Irvin Goldman, and the Bank-wide Directors Risk Policy Committee including John Hogan and Ashley Bacon. According to the Bank, Drew and Goldman did not disclose to the Committee the SCP’s ongoing losses, risk limit breaches (which had already been reported to Dimon and Hogan) or the size of the portfolio. 96 If you believe the Bank, then, apparently, the meeting was held to talk about the weather!

94 Senate Report at 121 and n. 713.
95 Senate Report at 121 and n.’s 714-15. Drew claimed to be unaware of the substance of the testimony of Cavanagh and Cutler.
96 Senate Report at 83 and n. 532 (citing Management Report at 42-43, 88); 162 and n. 913.
On March 21, 2012, Hagan sent an email captioned "Optimizing regulatory capital" to Goldman, C.S. Venkatakrishnan, Martin-Artajo, Weiland, and others in which he suggested a way to engineer the CRM to give the CIO more leeway in trading. Later that same day, Anil Bangia, a subordinate of Venkatakrishnan, called Hagan in London and suggested he not send such emails because "there is a bit of sensitivity around this topic." Weiland also called Hagan on March 21 to caution him that "everyone is very, very sensitive about the idea — writing emails about the idea of optimizing . . ." 99

On the same day, Drew met with Macris and Martin-Artajo and discussed the SCP’s "underperformance" and strategies to reduce its RWA (risk-weighted assets). Drew told the Subcommittee that there was no discussion at the March 21 meeting about the SCP’s recent acquisition of additional long positions, the $600 - $800 million lag, or the traders' continued use of more favorable derivative prices to minimize reported SCP losses. 100

On March 21, 2012, the CIO reported a daily loss of $1.8 million. 101

On March 22, 2012, the CIO traders acquired more long positions, to Drew's surprise. 102

On March 23, 2012, Drew ordered the CIO traders to "put phones down" and stop trading. 103 The losses that day were as much as $600 million. 104 Iksil characterized the losses as "hopeless," writing that "they are going to trash/destroy us" and "you don't lose
500 M without consequences."\textsuperscript{105} Despite Iksil's report of a loss of $500 million for the day, the CIO reported internally a daily loss of only $12.5 million.\textsuperscript{106}

On March 30, 2012, Macris sent an email to John Hogan stating that he had "lost confidence" in his team and requesting "help with the synthetic credit book."\textsuperscript{107} On the same day, the CIO reported losses for the quarter of almost $719 million, still using "lagged" pricing.\textsuperscript{108} Management did not report these losses to the OCC, despite the fact that they were legally required to do so.\textsuperscript{109}

**The calculation of the Bank's losses**

In the first three months of 2012, the CIO executed trades that increased the SCP from a notional value of $51 billion at the end of December 2011 to $157 billion at the end of March.\textsuperscript{110} According to one Bank document, at the end of March the SCP held an $82 billion long position in one index called the IG9 index, which comprised over half the market in that index.\textsuperscript{111} The SCP traders complained that the trading positions of the Investment Bank were exacerbating the CIO's losses because the Investment Bank was sometimes on opposite sides of the same credit derivative trade.\textsuperscript{112}

The losses reported by the CIO climbed from $719 million in March to $2.1 billion in April, to $4 billion in May, to $4.4 billion in June, and then to $6.2 billion in September. On July 2, 2012, JPMorgan Chase transferred many SCP index positions to its Investment Bank, thus burying the losses in the Investment Bank's own CIO trades.

\textsuperscript{105} Senate Report at 123 and n. 723.  
\textsuperscript{106} Senate Report at 124 and n. 726.  
\textsuperscript{107} Senate Report at 86 and n. 560.  
\textsuperscript{108} Senate Report at 130.  
\textsuperscript{109} Senate Report at 39, 131-32, 236, and 261.  
\textsuperscript{110} Senate Report at 84 and n. 541.  
\textsuperscript{111} Senate Report at 84 and n.'s 543-44.  
\textsuperscript{112} Senate Report at 124 -29.
For this reason, the SCP portfolio losses will likely never be known. But they exceed more than three times the revenues the SCP produced in its first five years combined.

On April 3, 2012, Macris informed Drew that an analyst "is now in our office and he is 100% involved with the RWA projections of our book and ways to bringing it lower." Drew forwarded the email to John Wilmot, the CIO's Chief Financial Officer, who responded:

I don't get the sense of clarity that we know what is driving the RWA (economic risk versus VaR, stress VaR, CRM and IRC) or the p&l [profit and loss] — or more importantly that either will be manageable going forward. . . . We haven't made the case of how this book runs off and whether risk can be managed effectively.

The April 6, 2012 news reports

On April 6, 2012, Bloomberg and the Wall Street Journal ran articles on Iksil's trades, explaining that Iksil had acquired positions so large that he was driving the price moves in the $10 trillion market. The articles reported that hedge funds were betting against Iksil. The first day of trading after the articles were published was April 10, 2012 and the CIO suffered a $412 million loss in the SCP portfolio on that one day.

On April 6, 2012, Dimon and Braunstein asked Drew for a "full diagnostic" of the SCP. Hogan, the Chief Risk Officer, claimed that, prior to the Bloomberg and Wall
Street Journal articles, he had been unaware of the size and nature of the SCP.\textsuperscript{120} He told the Senate Subcommittee that he did not focus on the SCP until after the media broke the news of the whale trades. Until that time, despite the numerous bank-wide breaches of various risk limits, he claimed that his first priority had been to understand the Bank’s consumer business!\textsuperscript{121}

In response to the news reports, the OCC contacted the Bank to inquire as to what had happened. Up to that point, JPMorgan Chase had treated the OCC examiners with disdain and given them limited information but, unfortunately, the OCC examiners failed to review and comprehend even the limited information with which they were provided.\textsuperscript{122} On April 9, 2012, Bank management responded to the OCC’s questions but downplayed the SCP’s losses and the risks to the Bank.\textsuperscript{123}

On April 10, 2012, the Bank gave the OCC and the Federal Reserve incomplete information about the CIO’s positions, and claimed, falsely, that the SCP trades were a "dedicated hedge." When the OCC requested information as to the assets being hedged by the SCP, the Bank did not provide the information.\textsuperscript{124}

On April 10, 2012, the CIO traders sent out a prediction of a daily loss of about $6 million. Less than 90 minutes later, they sent out a second prediction of an estimated daily loss of $395 million.\textsuperscript{125} At the end of the day on April 10, 2012, Drew sent an email to Dimon, Braunstein, Wilmot and others in which she attributed the $400 million loss to the market moving against the CIO’s positions in anticipation of its liquidating the

\textsuperscript{120} Senate Report at 11.
\textsuperscript{121} Senate Report at 163-64 and n. 923.
\textsuperscript{122} Senate Report at 250.
\textsuperscript{123} Senate Report at 132 and n. 749.
\textsuperscript{124} Senate Report at 237 and n.’s 1349-50.
\textsuperscript{125} Senate Report at 132-33 and n.’s 756-57.
SCP book.\textsuperscript{126} Drew told the Subcommittee that the news reports were the cause of "a large piece of the loss."\textsuperscript{127}

The final daily loss recorded by the Bank for April 10, 2012 was $415 million; the cumulative year-to-date losses jumped to $1.2 billion and, beginning on April 10, Drew set up daily conference calls with Dimon and others for the two days preceding the April 13, 2012 earnings call.\textsuperscript{128}

On April 13, 2012, Hogan emailed Dimon to say that he was implementing concentration limits in the CIO similar to those used at the Investment Bank. Prior thereto, the CIO had no concentration limits.\textsuperscript{129}

**The lies told by Dimon and Braunstein on April 13, 2012**

On April 13, 2012, Dimon and Braunstein held an earnings call with market analysts and discussed the whale trades for the first time. As the Senate Report found, Dimon and Braunstein gave out numerous pieces of false information, including the following:

- Dimon utterly dismissed the media reports about the SCP\textsuperscript{130} He said:

  It’s a complete tempest in a teapot. Every bank has a major portfolio. In those portfolios you make investments that you think are wise, that offset your exposures. Obviously it’s a big portfolio, we’re a large company, and we try to run it – it’s sophisticated, obviously complex things, but at the end of the day, that’s our job is to invest that portfolio wisely and intelligently over a long period of time to earn income and to offset other exposures we have.\textsuperscript{131}

\textsuperscript{126} Senate Report at 134 and n. 765.
\textsuperscript{127} Senate Report at 134 and n. 766.
\textsuperscript{128} Senate Report at 134 and n. 768.
\textsuperscript{129} Senate Report at 210 and n. 1176; 211 and n. 1185.
\textsuperscript{130} Senate Report at 11.
As the Senate Report explained, when Dimon made that statement, he was "already in possession of information about the SCP's complex and sizeable portfolio, its sustained losses for three straight months, the exponential increase in those losses during March, and the difficulty of exiting the SCP's positions."\textsuperscript{132} In other words, Dimon lied to the analysts.

- Not to be outdone, Braunstein told the participants in the earnings call that "all of [the SCP] positions are put on pursuant to the risk management at the firm-wide level." This was flatly untrue. As Hogan explained to the Senate Subcommittee, prior to the April 6, 2012 press reports, he (as Chief of Risk) had been unaware of the size and nature of the SCP and of its mounting losses. Moreover, there is no evidence indicating that any firm-wide risk manager played any role in designing or approving the SCP positions taken in 2012.\textsuperscript{133}

- Compounding his dishonesty, Braunstein told the participants that the SCP positions were "fully transparent to the regulators" who "get information on those positions on a regular and recurring basis as part of our normalized reporting." This was a flat-out lie. In fact, as Braunstein knew, the SCP positions had been described to the OCC for the first time, in a general way, only a few days earlier and the positions had never been disclosed to the OCC in any regular bank report. Braunstein also concealed the fact that the Bank had failed to even inform the OCC about the SCP portfolio.\textsuperscript{134}

- Braunstein claimed on the earnings call that: "All of the decisions are made on a very long-term basis," referring to the trading decisions in the SCP portfolio.

\textsuperscript{132} Senate Report at 11.
\textsuperscript{133} Senate Report at 252.
\textsuperscript{134} Senate Report at 252.
committee a month before the earnings call, indicated that the SCP operated on a "short" time horizon. In fact, many of the SCP positions had been acquired within weeks of the earnings call. The Senate Report concluded that Braunstein's description was inaccurate at best, deceptive at worst.

- Braunstein claimed that the SCP was intended to provide "stress loss" protection to the Bank in the event of a credit crisis, as if the portfolio was intended to lower bank risk rather than increase it. But Drew had already informed senior bank officials, including Braunstein, that the SCP was "long" credit — a position inconsistent with providing protection against a credit crisis.

- Braunstein claimed that the SCP trades would be permissible under the Volcker Rule then under consideration by Congress. However, the purpose of the Volcker Rule was to control risk but allow banks to engage in "risk-mitigating activities." And, in fact, the Bank had previously written to legislators telling them that the SCP's derivatives trading would be prohibited under the Volcker Rule.

The April 13, 2012 Dishonest 8-K filed by JPMorgan Chase

On April 13, 2012, JPMorgan Chase filed an 8-K financial report with the SEC which grossly under-stated the CIO's first quarter losses. The Bank concealed from the public the fact that its estimation of first quarter losses was based upon a new VaR model that cut in half the SCP's purported risk profile. It is inconceivable that Braunstein, as Chief Financial Officer, was unaware of this deception.

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135 Senate Report at 252-53.
136 Senate Report at 253.
137 Senate Report at 253.
138 Senate Report at 253.
139 Senate Report at 253.
These are not simply the conclusions of the authors. According to Senator Carl Levin, the Chairman of the Subcommittee:

None of those statements made on April 13 to the public, to investors, to analysts were true. The bank also neglected to disclose on that day that the portfolio had massive positions that were hard to exit, that they were violating in massive numbers key risk limits.140

If statements like this had been made by the president of some small securities firm (that didn't have a large lobbying budget), you can be sure the SEC Enforcement Division would have shown up at his office with 16 agents. But when statements like this are made by the President and Chief Financial Officer of America's largest bank, nothing happens.

The April 16, 2012 dishonest presentation to the OCC

On April 16, 2012, the Bank provided a 13-page presentation to regulators about the whale trades. This was its first written description of what happened. It was a tissue of lies.

The presentation claimed that the SCP objective was to "protect against a significant downturn in credit, offsetting natural credit exposures in CIO and the firm."141 There was no description of the particular credit exposures being offset or the risk involved.142 There was no disclosure that the SCP held a net long position, meaning it was exposed to credit risk, as were the CIO's portfolio and the Bank as a whole.143 At the time of the meeting, the SCP's losses were calculated by the Bank at $1.25 billion,

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141 Senate Report at 237 and n. 1353.
142 Senate Report at 237-38 and n. 1354.
143 Senate Report at 237.
although the Bank told the regulators the losses were $580 million. The OCC did not respond to this presentation even though it later determined that the presentation contained "material misrepresentations." On April 19, 2012, the OCC asked the Bank about the significance of information that the SCP had breached several risk and stress loss limits. The Bank responded to the OCC’s inquiries by downplaying their significance and the OCC let the matter drop without any further investigation.

**The Bank’s continuing fraud**

By April 20, 2012, the CIO had disputes over collateral with 10 different counterparties who had become aware that the CIO was valuing the collateral at above-market values. On April 27, 2012, Ashley Bacon, the Deputy Chief Risk Officer of JPMorgan Chase, went to London to examine the values given to the positions in the SCP book. Sometime in May, he required the CIO to value its positions at the midpoint using the same independent service used by the Investment Bank. This resolved the collateral valuation disputes with the SCP’s counterparties.

Starting on April 27, 2012, the effort to understand and stop the SCP losses became, in the words of Bacon, "all consuming." At an April 30, 2012 meeting, Dimon finally saw the numbers of the actual SCP losses. Observers said “he couldn’t breathe.” According to the Wall Street Journal, a group of bank executives at the

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144 Senate Report at 238.
145 Senate Report at 237 and n. 1357.
146 Senate Report at 238 - 239 and n.’s 1364-69.
147 Senate Report at 136 and n’s. 774-76.
148 Senate Report at 139 and n. 801-02.
149 Senate Report at 139 and n. 802.
150 Senate Report at 240 and n. 1372.
meeting, including Cutler, weighed whether or not to disclose the losses immediately.\textsuperscript{151} And the decision was made to hold off public disclosure.

On May 4, 2012, a few days before JPMorgan Chase had to file a 10-Q report with the SEC disclosing its first quarter financial results, Hogan and Braunstein telephoned the OCC Examiner-In-Charge to inform the OCC that the SCP had incurred "current losses" of "approximately $1.6 billion." During the call, Braunstein said that the losses were the result of "positions established some time ago." The OCC took this to mean that the positions predated 2012 when, in fact, the positions were put on in the first quarter of 2012.\textsuperscript{152} After this phone call, the OCC began to meet with the Bank on a daily basis to gain a better understanding of the SCP and its risks to the Bank.\textsuperscript{153}

**Hogan's lie to the OCC**

On May 9, 2012, the day before the Controller's memorandum was released and the bank certified its first quarter results, the Bank met with OCC examiners to discuss the SCP. The meeting was attended, on behalf of the Bank, by Braunstein, Cutler, Drew, John Hogan, and the head of Corporate & Regulatory Affairs, Barry Zubrow. The Bank informed the OCC of the CIO's ongoing collateral disputes relating to SCP valuations. When the OCC asked when they realized that the SCP books had been mismarked, Hogan flatly denied that the books had been mismarked, even though, 19 days earlier, on April 20, 2012, Hogan had emailed Braunstein that the collateral disputes were not a good sign and "I'm going to dig further."\textsuperscript{154} His deputy, Ashley Bacon, later told the

\textsuperscript{152} Senate Report at 242 and n.'s 1377-79.
\textsuperscript{153} Senate Report at 243 and n. 1385.
\textsuperscript{154} Senate Report at 244 and n.'s 1394-96.
Subcommittee that the collateral disputes led him to investigate the marks and that the Bank changed the marks to align them with the market.155

The Controller's false memorandum

Despite concrete evidence that the CIO was valuing positions significantly above market value, the Bank's Controller issued a memorandum on May 10, 2012 stating that "the CIO valuation process is documented and consistently followed period to period" and "market-based information and actual traded prices serve as the basis for the determination of fair value."156 These were the same values that Iksil had called "idiotic" in March 2012.157 The Controller's memorandum concluded: "The Firm believes that its valuation practices in CIO are consistent with industry practices for other no-dealer investors/managers."158 According to the Bank, the Controller's memorandum had been shared with JPMorgan Chase's outside auditor, PricewaterhouseCoopers, which had concurred with the conclusions.159

The May 10, 2012 deceptions

On May 10, 2012, in connection with its 10-Q SEC filing, JPMorgan Chase announced that the SCP had lost $2 billion, would likely lose more, and was much riskier than earlier portrayed. The 10-Q stated:

Since March 31, 2012, CIO has had significant mark-to-market losses in its synthetic credit portfolio, and this portfolio has proven to be riskier, more volatile and less effective as an economic hedge than the Firm previously believed.160

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155 Senate Report at 146 and n.'s 824-25.
156 Senate Report at 145 and n. 820.
157 Senate Report at 147 n. 831.
158 Senate Report at 145 and n. 821.
159 Senate Report at 145 and n. 822. The 2013 JPMorgan Chase Task Force Report found no fault with the Controller's conclusion, which allowed JPMorgan Chase to understate the CIO's losses for the first quarter by $512 million. Senate Report at 146-47 and n.'s 830 and 835.
160 Senate Report at 11.
Nevertheless, in responding to a question asked on a May 10, 2012 earnings call, Dimon employed his usual "I'm smarter than you guys are" tone, in an attempt to minimize any issue concerning the Bank's valuation methodology, saying that the Bank made "constant changes and updates to models, always trying to get them better." Dimon did not disclose that the Bank had reinstated the old CIO VaR model because the updated model approved by the Bank and used by the CIO had understated losses by 200%. To assure his listeners that he was too busy and important to waste his time with them, he added that he was "not going to make calls every time the number moves around by $0.5 billion." Thereafter, Dimon did not disclose the next day's loss which increased the SCP's reported losses by 25%. In fact, JPMorgan Chase waited until July 2012 to restate the SCP's first quarter losses, pushing the $660 million loss reported in the second quarter back to the first quarter.

The Senate Report concluded that JPMC's April 10, April 13, and May 10 "misstatements and omissions . . . misinformed investors, regulators, and the public about the nature, activities, and riskiness of the CIO's credit derivatives during the first quarter of 2012." This conduct is actionable under the securities laws and, if we had a functioning system to protect the investing public against banksters, could support criminal prosecutions of JPMorgan Chase's most senior management. As the Senate Report explained:

Under Securities and Exchange Commission Rule 10b-51480 and Section 17(a) of the Securities Act of 1933, it is against the law for issuers of securities to make untrue statements or

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161 Senate Report at 254.
162 Senate Report at 148 and n. 837.
163 Senate Report at 148.
164 Senate Report at 148.
165 Senate Report at 13.
omissions of material facts in connection with the sale or purchase of securities. In the JPMorgan Chase case study examined by the Subcommittee, the bank, as an issuer, has made disclosures that raise significant concerns about the accuracy of the information it provided to investors and about omissions of key information.  

**Stephen Cutler's proudest day**

Despite the Senate's conclusion about the dishonesty of JPMorgan Chase's most senior management, to General Counsel Stephen Cutler, May 10th was one of his two "proudest days" because it was then that JPMorgan Chase "publicly disclosed the London Whale problem and acknowledged that it was the result of a badly conceived, executed and vetted trading strategy." Cutler's second proudest day was July 13, 2012, when the bank finally told investors what had gone wrong and restated its first-quarter results.  

Readers will recall that, when he was Director of Enforcement for the SEC, Cutler was probably America's most enthusiastic enforcer of the securities laws against officers of Wall Street firms and their counsel. (See Chapter 4.) But after about eight years at JPMorgan Chase, Cutler considered it an achievement to limit the "misstatements and omissions" to those released by the Bank on May 10, 2012.

**Kool-Aid for Everyone**

On May 11, 2012, Michael Brosnan, the head of the OCC's Large Bank Supervision Division who, obviously, had been drinking Jamie Dimon's Kool-Aid, advised Comptroller Thomas Curry to view the trades as little more than an embarrassing incident: "obviously there isn't a safety issue with these numbers, but

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166 Senate Report at 261 and n.'s 1480-81.

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there is an embarrassment issue for bank leadership which has overtly expressed pride in their ability to measure and control risk." To his credit, Comptroller Curry did not buy it. He responded: "Isn't it a little more than an embarrassment issue?" ¹⁶⁸ Shortly thereafter, the Comptroller's reaction was proven justified.

On May 18, 2012, multiple federal financial regulators held a general briefing for Senate staff hosted by the Senate Banking Committee, regarding issues relating to the CIO losses. Julie Williams, the OCC's Chief Counsel, who apparently also had been drinking Jamie Dimon's Kool-Aid, prepared handwritten talking points that "JPMC transactions at issue involved an effort to hedge the Bank's credit risk. Hedging credit risk is not uncommon and, if done properly reflects sound risk management." The Senate Report concluded that there was significant evidence contradicting Williams' statements.¹⁶⁹ She retired from the OCC two months later.¹⁷⁰

**Dimon gets religion on June 13, 2012**

Finally, on June 13, 2012, Dimon decided to change his tune. At that point, he stated:

> We made a terrible, egregious mistake. There is almost no excuse for it. We knew we were sloppy. We know we were stupid. We know there was bad judgment. In hindsight, we took far too much risk. That strategy we had was badly vetted. It was badly monitored. It should never have happened.¹⁷¹

Of course, at that point, Dimon had no choice. While he waited until June 2012 to acknowledge the massive CIO losses, the evidence was that the Bank knew at least two months earlier that the losses would be massive. The CIO used five key metrics and

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¹⁶⁸ Senate Report at 245 and n.'s 1407-08.
¹⁶⁹ Senate Report at 247 and n.'s 1417-19.
¹⁷¹ Senate Report at 93 and n. 593.
limits to gauge and control risk and the documentary evidence proved that, in the first quarter of 2012, the CIO risk limits were breached more than 330 times.\textsuperscript{172} A four-day breach in January 2012 was reported to the bank’s most senior management, including Jamie Dimon.\textsuperscript{173}

The breaches continued and they were ignored. In late January, with the knowledge of Jamie Dimon and John Hogan, the CIO adopted a new risk model which enabled it to enter into substantially more risky derivatives trading. A CIO analyst pressed the bank’s quantitative analysts to help the CIO set up a system that would make the risk appear lower than it was. He was cautioned not to put anything in his emails about his effort but he received "sustained analytical support from the bank in his attempt to construct the system and artificially lower the SCP's risk profile."\textsuperscript{174} The new risk model was not revoked until May 10, 2012.\textsuperscript{175} According to the Senate Report:

\begin{quote}
The whale trades' bad faith valuations exposed not only misconduct by the CIO and the bank’s violation of the derivative valuation process mandated in generally accepted accounting principles, but also a systemic weakness in the valuation process for all credit derivatives.

In contrast to JPMorgan Chase's reputation for best-in-class risk management, the whale trades exposed a bank culture in which risk limit breaches were routinely disregarded, risk metrics were frequently criticized or downplayed, and risk evaluation models were targeted by bank personnel seeking to produce artificially lower capital requirements.\textsuperscript{176}
\end{quote}

On May 13, 2012, Drew resigned and, on July 12, 2012, the Bank fired Macris, Martin-Artajo, and Iksil. In the termination letter to Martin-Artajo, the Bank stated that he directed Iksil and/or Grout to misstate the value of the SCP's positions. In the

\textsuperscript{172} Senate Report at 7.
\textsuperscript{173} Senate Report at 7.
\textsuperscript{174} Senate Report at 8.
\textsuperscript{175} Senate Report at 8.
\textsuperscript{176} Senate Report at 7.
termination letter to Iksil, the Bank stated that he was aware of and complied with instructions from Martin-Artajo to misstate the value of the SCP’s positions. The Bank did not terminate Grout at the time but he resigned from the Bank in December 2012.\textsuperscript{177}

The Senate Report harshly criticized the way the Bank handled the mismarking of the SCP book:

> While JPMorgan Chase has admitted the misconduct of the CIO personnel engaged in the mismarking, it has yet to acknowledge the deficiencies in the SCP pricing reviews conducted by the VCG and Controller’s offices. These reviews failed to use the objective information at hand to expose the SCP’s mismarking, to condemn the CIO’s use of overly favorable derivative prices to minimize losses, and to prohibit other bank business lines from engaging in similar derivative valuation practices. Instead, the bank expressed support for the two internal reviews that upheld the CIO’s pricing practices. By failing to provide any criticism of those reviews, the bank has essentially signaled that its businesses can continue to game derivatives prices, as long as they select prices from the daily bid-ask spread and disguise their motives. That troubling message should be counteracted with a clear policy statement prohibiting the gaming of derivative values to benefit the bank.\textsuperscript{178}

**The July 13, 2012 disclosures**

JPMorgan Chase did not reveal to the OCC or to the public, until July 13, 2012, that the CIO traders had been mispricing the SCP assets. On that day, the Bank issued a press release stating that "the recently discovered information raises questions about the integrity of the traders’ marks, and suggests that certain individuals may have been seeking to avoid showing the full amount of the losses being incurred in the portfolio during the first quarter."\textsuperscript{179}

\begin{flushleft}
\textsuperscript{177} Senate Report at 151 and n.’s 854-56.  
\textsuperscript{178} Senate Report at 152.  
\textsuperscript{179} Senate Report at 245 and n. 1404.  
\end{flushleft}
In fact, the information was not recently discovered; it was circulated to senior management of the Bank as the crisis developed. The SCP had reported losses of $100 million in January 2012; another $69 million in February, and another $550 million in March, for a total for the quarter ending March 31, 2012 of $719 million. By the end of March, the SCP held over 100 different credit derivative instruments of a "perilous size" with a "huge" exposure for the Bank.\textsuperscript{180} By May, the SCP reported losing $2 billion; by the end of June, the losses jumped to $4.4 billion; and by September 30, the losses reached at least $6.2 billion.\textsuperscript{181} After some of the positions were transferred to the Investment Bank, the actual losses were not disclosed.\textsuperscript{182} And they have never been disclosed.

It wasn't until July 13, 2012 that a bank spokesman revealed that projected total losses could be more than $7 billion.\textsuperscript{183} At that point, JPMorgan Chase & Co., the holding company for JPMorgan Chase Bank, reported that it was restating its first quarter 2012 financial results and reducing the Bank's previously-reported total net revenue by $660 million.\textsuperscript{184} The Bank blamed the reduced earnings on inappropriate SCP valuations by the CIO.\textsuperscript{185}

What the world ultimately learned is that, unbeknownst to bank regulators, JPMorgan Chase had been bankrolling high risk credit derivative trades with no oversight by senior management. As summarized by the Senate Subcommittee:

\begin{itemize}
\item \textsuperscript{180} Senate Report at 35.
\item \textsuperscript{181} Senate Report at 4.
\item \textsuperscript{182} Senate Report at 94 n. 604.
\item \textsuperscript{183} Jessica Silver-Greenberg (July 13, 2012). "JPMorgan Fears Traders Obscured Losses in First Quarter" (Dealbook blog). The New York Times. Retrieved July 13, 2012 available at http://dealbook.nytimes.com/2012/07/13/jpmorgan-says-traders-obscred-losses-in-first-quarter/. "On a conference call with analysts on Friday, Mr. Dimon said that the trade could result in another $1.7 billion in losses in the future, but added that the estimate was considering a worst-case situation."
\item \textsuperscript{184} Senate Report at 150 and n. 849.
\item \textsuperscript{185} Senate Report at 150 and n. 850.
\end{itemize}
inadequate derivative valuation practices enabled traders to hide substantial losses for months at a time; lax hedging practices obscured whether derivatives were being used to offset risk or take risk; risk limit breaches were routinely disregarded; risk evaluation models were manipulated to downplay risk; inadequate regulatory oversight was too easily dodged or stonewalled; and derivative trading and financial results were misrepresented to investors, regulators, policymakers, and the taxpaying public who, when banks lose big, may be required to finance multi-billion-dollar bailouts.186

The Senate Report was prepared without the cooperation of the key players in the debacle because Macris, Martin-Artajo, Iksil and Grout refused to appear to testify.187 Nevertheless, the Senate Subcommittee was provided with a massive amount of material, including the CIO emails and recorded phone calls, from which it concluded that, over the first quarter of 2012, the CIO had mismarked books to hide hundreds of millions of dollars in losses, manipulated models, dodged oversight of the OCC, and "misinformed investors, regulators, and the public about the nature of its risky derivatives trading."188

The Aftermath

a. The OCC

On July 27, 2012, the OCC issued a "Supervisory Letter" to JPMorgan Chase laying out the Bank's violations of bank regulations and downgrading the Bank's CAMELS189 rating for its "lax governance and oversight in the Chief Investment Office" and its other "oversight deficiencies." The OCC concluded that JPMorgan Chase "board

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186 Senate Report at 1.
187 Senate Report at 3. Iksil was dubbed the "London Whale" by industry insiders because of the CIO's large trades in the credit markets. Senate Report at 25, n. 84.
188 Senate Report at 3.
and management failed to ensure that CIO management was properly supervised, and that an adequate risk management and control infrastructure was in place.\textsuperscript{190}

On January 13, 2014, the OCC issued a Cease and Desist order against the Bank, to which the Bank consented, which requires the Bank to strengthen its risk management and derivatives trading practices.\textsuperscript{191}

b. The SEC

On September 20, 2013, a settlement was announced pursuant to which JPMorgan Chase admitted to violations of the securities laws and agreed to pay the OCC $300 million, the U.K. Financial Conduct Authority $221 million, the SEC $200 million and the Federal Reserve $200 million for a total of $921 million.\textsuperscript{192} The SEC took no steps to refer to the Department of Justice for prosecution any members of senior management of JPMorgan Chase despite the evidence that they had violated the securities laws.

c. The CFTC

On October 16, 2013, the U.S. Commodity Futures Trading Commission ("CFTC") announced that it had settled charges against JPMorgan Chase and accepted a payment from JPMorgan Chase of a fine of $100 million. As part of the settlement, JPMorgan Chase admitted to certain facts relating to the CIO's trading of one particular credit default index — “CDX NA.IG9 10 year index” (“IG9 10Y”). JPMorgan Chase admitted the following:

\textsuperscript{190} Senate Report at 248 and n. 1423-24.
\textsuperscript{191} Senate Report at 249 and n.'s 1432-33.
1. As the end of February 2012 approached, the SCP’s net short position in the IG9 10Y grew to a mammoth $65 billion, which meant that relatively small favorable or adverse movements in market prices produced significant mark-to-market profits or losses for the CIO. Because the SCP was short IG9 10Y, the mark-to-market value of the position increased as the market price decreased.

2. On February 29, just ahead of the month-end testing of their marks, the traders believed the portfolio’s situation was grave. That day, desperate to avoid further losses, the traders developed a resolve, as they put it, to “defend the position.” Recognizing that the sheer size of their position in IG9 10Y had the potential to affect or influence the market, the traders recklessly sold massive amounts of protection on the IG9 10Y. They were short protection and they sold more protection.

3. Specifically, with the portfolio standing to benefit as the IG9 10Y market price dropped, on February 29 the CIO sold on net more than $7 billion of IG9 10Y, a staggering volume — far and away the largest amount the CIO ever traded in one day — $4.6 billion of which was sold during a three-hour period as the day drew to a close.

4. The February 29 sales of IG9 10Y alone accounted for more than 90% of the day’s net volume traded by the entire market, were 15% of the month’s net volume traded by the entire market, and were nearly 11 times the SCP’s average daily volume in February. The February 29 trading followed more than $3 billion in sales of the IG9 10Y during the prior two days. The net volume the CIO sold February 27-29 amounted to roughly one-third of the total volume traded for the entire month of February by all other market participants.

5. During this same period at month-end, the IG9 10Y market price dropped substantially. While the CIO was selling at generally declining prices, the value of the
short position that the CIO held in the SCP benefited on a mark-to-market basis from the declining market prices.

6. The trading strategy to “defend the position” — selling $7.17 billion of the IG9 10Y on February 29 in a concentrated period — constituted a manipulative device employed by the traders in reckless disregard of the possible consequences of their conduct, including obvious dangers to legitimate market forces. That conduct therefore violated section 6(c)(1) of the Act and Rule 180.1.

7. In addition to paying a $100 million penalty, JPMorgan must continue to implement written enhancements to its supervision and control system in connection with swaps trading activity, including trading and risk management controls reasonably designed to prevent and promptly detect mis-marking of its books, enhanced communications among risk, control and supervisory functions, and the development of additional surveillance tools to assist supervisors with monitoring trading activity in connection with swaps.193

d. The Federal Reserve Bank of New York

On October 14, 2014, the Federal Reserve Bank of New York’s Office of Inspector General said the New York Fed spotted risks in JPMorgan Chase’s chief investment office and planned examinations in 2008, 2009 and 2010, but took no action to investigate the risks and assure that they were ameliorated. It called the failure a

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“missed opportunity.” The report noted that, in addition to its other failures, the Federal Reserve had failed to coordinate with the OCC.

**e. The Board of Directors of JPMorgan Chase**

The Board of Directors punished Dimon by cutting his compensation from $23.1 million to $11.5 million in January 2013. However, given Dimon’s stunning settlements with the government for $13 billion in 2013 relating to the government’s charges that JPMorgan Chase had fraudulently sold mortgage-backed securities in 2006-2007 and his January 2014 settlement of $3 billion relating to the Bank’s activities with Madoff, the Board rewarded Dimon with a 74% retroactive raise for 2013 so that his 2013 compensation was $20 million.

**f. Criminal prosecutions**

As we previously explained, the Senate Report concluded that Jamie Dimon’s, and Doug Braunstein’s April 10, April 13, and May 10 "misstatements and omissions . . . misinformed investors, regulators, and the public about the nature, activities, and riskiness of the CIO's credit derivatives during the first quarter of 2012."

Recall that on April 10, 2012, the Bank gave the OCC and the Federal Reserve incomplete information about the CIO's positions, claiming that the SCP trades were a "dedicated hedge." When the OCC requested information as to the assets being hedged

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197 Senate Report at 13.
by the SCP, the Bank did not provide the information.198 The decision as to what to give the OCC and the Federal Reserve was undoubtedly made by the most senior officers of JPMorgan Chase.

Recall that on April 13, 2012, Dimon and Braunstein conducted the totally dishonest earnings call with stock analysts — Dimon's "tempest in a teapot" day.199

Recall that on May 10, 2012, the Bank's Controller issued a memorandum stating that "the CIO valuation process is documented and consistently followed period to period" and "market-based information and actual traded prices serve as the basis for the determination of fair value." These were the same values that Iksil had called "idiotic" in March 2012.200

And recall that on May 10, 2012, in connection with the Bank's 10-Q SEC filing, Jamie Dimon gave out false and misleading information in an earnings call.201

Nevertheless, Preet Bharara decided not to prosecute Jamie Dimon, Doug Braunstein, John Hogan, Ina Drew, or any of the other senior officers of JPMorgan Chase who committed criminal violations of the securities laws according to the Senate Report. Read Chapter 3 to understand why.

Instead, to make it look as if he is serious about his job, on September 18, 2013, Bharara obtained a grand jury indictment of Martin-Artajo, a Spanish national, and Grout, a French national, for securities fraud and wire fraud.202 The indictment asserted that Martin-Artajo and Grout conspired from "at least in or about March 2012,

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198 Senate Report at 131-32 and n. 749; 236 and n. 1340; 1342-44.
199 See text accompanying fns. 131-38 supra.
200 Senate Report at 147 n. 831.
201 See text accompanying fns 160-66 supra.

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through and including in or about May 2012 . . . together with their co-conspirators ("known and unknown") to falsify books and records, to commit wire fraud, to make false filings with the SEC, and to commit securities fraud.203

The "known" co-conspirators are clearly Jamie Dimon, Doug Braunstein, Ina Drew, John Hogan, and the team of others who prepared Dimon and Braunstein for their meetings and who prepared the 10-Q SEC filing. But apparently Preet Bharara decided not to prosecute them. Instead, he indicted the two foreigners who, along with others in the CIO's London office, had fully disclosed to senior management of JPMorgan Chase precisely what they were doing and why.204 Thus, if they were ever tried, they would implicate Dimon, Braunstein, Hogan, Drew, and others.

But no need to worry. The only reason the government indicted these two people is that they are citizens of foreign countries which won't extradite them.205 Hence, there never will be a trial and yet Preet Bharaha can say, to anyone who is dumb enough to believe him, that he did what was appropriate to enforce the criminal laws of the United States against those responsible for the London Whale debacle.

Conclusion

President Obama can cast a lot of the blame for his failed Presidency on the problems he has had dealing with a dysfunctional Congress. However, the enforcement of the criminal laws is within the jurisdiction of the executive branch of the government. Obama did not need an act of Congress to indict Wall Street criminals. He simply had to order Eric Holder to enforce the laws against the rich, as well as against the poor. Or

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204 See, e.g., text accompanying n.’s 45-47, 55-60, 65-68, 70-80, 92-100 supra.
JPMadoff: The Unholy Alliance between America’s Biggest Bank and America’s Biggest Crook

replace Eric Holder with someone who understood what it means to take an oath of office that you will enforce the laws of the United States.

The destruction of moral values we have experienced in this country as a result of Obama’s categorical refusal to enforce the criminal laws against Wall Street banksters is a problem which he has created and for which he bears 100% of the responsibility. As we wrote in Chapter 5, Robert Kennedy wisely explained that:

Every society gets the kind of criminal it deserves. What is equally true is that every community gets the kind of law enforcement it insists on.  

It is time that the community of honest, law-abiding Americans demands integrity in law enforcement and prosecution of Wall Street criminals. It is truly incredible that 50% of American households are forced to do business with a financial institution that is run by people who believe they are above the law. Other than Senator Elizabeth Warren, there are very few people in Congress who have the integrity to speak out on this subject. Listening to her speech on December 12, 2014 will make you proud to be an American.

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### The Key Players in the London Whale Debacle

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>Achilles Macris</td>
<td>Macris joined the Chief Investment Office (&quot;CIO&quot;) in 2006 and became head of the CIO's London office. He is a Greek national and U.S. citizen</td>
</tr>
<tr>
<td>Ashley Bacon</td>
<td>Bacon is the Deputy Chief Risk Officer, reporting to the Bank-wide Chief Risk Officer, John Hogan. 208</td>
</tr>
<tr>
<td>Barry Zubrow</td>
<td>Zubrow was Chief Risk Officer until January 2012 when he was replaced by John Hogan. Zubrow then became the Head of Corporate and Regulatory Affairs. 209 He retired effective February 2013.</td>
</tr>
<tr>
<td>Bruno Iksil a/k/a the &quot;London Whale&quot;</td>
<td>Iksil is a French national who commuted to his job in London where he handled trading for the CIO.</td>
</tr>
<tr>
<td>C.S. Venkatakrishnan</td>
<td>Venkatakrishnan became Head of Model Risk and Development as of February 2012, reporting to John Hogan. Prior thereto, he was Head of Investment Bank Structuring and Pricing Direct.</td>
</tr>
<tr>
<td>Douglas Braunstein</td>
<td>Braunstein served as JPMorgan Chase's Chief Financial Officer from July 2010 to December 2012. He is presently Vice Chairman of the JPMorgan Chase holding company.</td>
</tr>
<tr>
<td>Ina Drew</td>
<td>Drew was the Chief Investment Officer from 2005 to May 2012. She reported directly to Jamie Dimon. The top traders at CIO reported directly to Drew who had final authority on risk management and final authority on trading strategy.</td>
</tr>
<tr>
<td>Irvin Goldman</td>
<td>Goldman was the CIO Chief Risk Officer from January through March 2012, reporting to Hogan. Goldman resigned in July 2012.</td>
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<tr>
<td>Jamie Dimon</td>
<td>Dimon has been the Chief Executive Officer of JPMorgan Chase since July 1, 2004 and Chairman of the Board of JPMorgan Chase since December 31, 2006.</td>
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<tr>
<td>Jason Hughes</td>
<td>Hughes worked in the CIO office in London.</td>
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<tr>
<td>Javier Martin-Artajo</td>
<td>Martin-Artajo is a Spanish national who lived in London and worked for the CIO as Head of Credit and Equity Trading.</td>
</tr>
<tr>
<td>John Hogan</td>
<td>Hogan became Chief of Risk for all of JPMorgan Chase in January 2012. Prior thereto, he had been Chief of Risk for the Investment Bank, headquartered in New York, since 2006.</td>
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<tr>
<td>John Wilmot</td>
<td>Wilmot was the Chief Financial Officer of the CIO from January 2011 to May 2012. He resigned from JPMorgan Chase effective in 2013.</td>
</tr>
<tr>
<td>Julien Grout</td>
<td>Grout worked in the London office of the CIO.</td>
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208 Senate Report at 161 and n. 107.  
209 Senate Report at 161 and n. 905.
<table>
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<tr>
<th>Name</th>
<th>Position</th>
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<tr>
<td>Keith Stephan</td>
<td>Stephan was the market risk officer in the CIO's office in London.</td>
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<tr>
<td>Michael Cavanagh</td>
<td>Cavanagh has been the Co-CEO of the Corporate and Investment Bank since July 2012. He was Chief Financial Officer from September 2004 to June 2010. In May 2012, Cavanagh became head of the JPMorgan Chase &amp; Co. Management Task Force established to conduct an internal investigation of the CIO losses.</td>
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<tr>
<td>Patrick Hagan</td>
<td>Hagan was Head of quantitative analytics at the CIO.</td>
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<tr>
<td>Peter Weiland</td>
<td>Weiland was hired by Drew in 2008 and served as the CIO's Chief Market Risk Officer. He resigned from JPMorgan Chase in October 2012.</td>
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<tr>
<td>Stephen Cutler</td>
<td>Cutler is JPMorgan Chase's General Counsel.</td>
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**Key Terms to Understand the London Whale Debacle**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Chief Investment Office (the &quot;CIO&quot;)</td>
<td>The CIO is located within JPMorgan Chase's Corporate/Private Equity division. It managed a $350 billion investment portfolio consisting, in part, of federally insured deposits. It has a staff of about 425 people including 140 traders in several different offices including New York and London. The purported purpose of the CIO is to manage the Bank's excess deposits. Included within the CIO's portfolio was the SCP.</td>
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<tr>
<td>CIO metrics are limits to control the risks associated with its trading activities. During the first four months of 2012, the CIO risk limits and advisories were breached more than 330 times.</td>
<td>CS01</td>
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<td></td>
<td>CSW10%</td>
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<td>Stop loss advisory</td>
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<td>Stress loss limit</td>
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210 Senate Report at 160 and n. 894.  
211 Senate Report at 21 and n. 45.  
212 Senate Report at 207.  
213 Senate Report at 206.  
214 Senate Report at 173.
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<tr>
<th>Term</th>
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| Comprehensive Risk Measure ("CRM") | The CRM is a key component used to calculate a bank’s overall Risk Weighted Assets ("RWA") which, in turn, is used to determine how much capital a bank is required to have on its books to absorb any losses generated by those assets.  
  
  215 Senate Report at 186.                                                                 |
| Credit Default Swap             | A credit default swap is a contract between two parties placing opposite bets on the creditworthiness of a specified financial instrument or entity.  
  
  216 Senate Report at 29.                                                                 |
| Derivative                      | A derivative is a financial instrument that derives its value from another asset. Credit derivatives derive their value from the creditworthiness of a specified financial instrument such as a corporate bond or stock, or from the creditworthiness of a referenced entity, such as a corporation or sovereign nation. These credit instruments are often described as 'synthetic,' because they do not contain any tangible assets such as a loan or bond; they simply reference the financial instrument or entity whose credit quality is at issue.  
  
  217 Senate Report at 29.                                                                 |
| Risk-Weighted Assets ("RWA")    | Risk-weighted assets is a measure of how much capital a bank is required to have on its books to absorb any losses generated by those assets.                                                                 |
| Synthetic Credit Portfolio ("SCP") | The SCP was managed by the CIO and was intended to offset some of the credit risk that JPMorgan Chase faces. It consisted of the synthetic CDOs (collateralized debt obligations in which the underlying credit exposures are taken using a credit default swap rather than by having a vehicle buy assets such as bonds. Synthetic CDOs generate income selling insurance against bond defaults in the form of credit default swaps, typically on a pool of 100 or more companies. Sellers of credit default swaps receive regular payments from the buyers, which are usually banks or hedge funds. |
| Valuation Control Group ("VCG") | The Valuation Control Group ("VCG") of the Chief Investment Office ("CIO") was charged with reviewing the accuracy of the CIO’s values at both month-end and quarter-end.                                                                 |
Chapter 7

Hallelujah: Jamie Dimon's Been Born Again — or Has He?

Introduction

We thought we had something to cheer about last month. We saw a headline that read:

Jamie Dimon said that leaving JPMorgan is the "best thing" he can do for his country and humanity in an interview with Fox Business Network’s Maria Bartiromo.

“A-men,” we said. After observing a moment of silence, we looked again and saw that the headline said “Jamie Dimon said that leading JPMorgan is the best thing he can do for his country and humanity.”¹ Alas — wishful thinking on our part but a strange sentiment for a man who once said “There’s a lot of luck involved in anyone’s success, and a little humility is important.”² We guess he was thinking of a very, very little bit of humility. Dimon is certainly a man who thinks big. Note that he didn’t say leading JPMorgan Chase is the best thing he can do for JPMorgan Chase. He said it’s the best thing he can do for "his country and humanity." Wow. This is a man with a strong self-image!

We actually thought we might have gotten through to him, but we obviously never knew that humility came in such tiny doses. So much for humility, Dimon’s and

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ours. Hubris aside, it is rather difficult to believe that Dimon would take pride in having led a financial institution that has achieved such ignominy in the last nine years, admittedly violating numerous laws enacted to assure integrity in the markets and to protect customers against fraudulent practices. See the Wheel of Misfortune on jpmadoff.com for the $29 billion that JPMorgan Chase paid out in fines, penalties and settlements in the last four years of Dimon's stellar leadership. And every week there's news of another payout for violating the law. Just this past week, JPMorgan Chase agreed to pay $99.5 million to settle a class action alleging it had rigged the foreign exchange market.3

Despite this abysmal record, Dimon bragged to Bartiromo that the Bank helps veterans, charities, and consumers.4 We aren't sure if Dimon was referring to the billions of dollars the Bank has paid out in the last four years to satisfy claims that it defrauded veterans, charities, and consumers; or to something else. More about this later.

We have always agreed with the sage of Detroit, Joe Louis, who said: “Any dog can wag his tail.”5 And there is no doubt about it: Jamie Dimon is one good tail wagger. And a survivor. He survived the Madoff scandal ($1.9 billion).6 He survived the

3 http://www.reuters.com/article/2015/01/31/us-forex-manipulation-jpmorgan-settlement-idUSKBN0L4O1220150131
5 https://books.google.com/books?id=FiaCXMN-J4C&pg=PA181&lpg=PA181&dq=joe+louis+dog+wag&source=bl&ots=z3vA5HofBq&sig=Q0JoCdAHYbEgQdRnZh_4hzZ_Img&hl=en&sa=X&ei=EcHLVP7LbtDLsASLj4DQAQ&ved=0CCgQ6AEwAg#v=onepage&q=joe%20louis%20dog%20wag&f=false
mortgage scandal ($13 billion). He avoided prison for his own securities fraud in the London Whale scandal ($6.2 billion loss plus $1 billion in fines — a "tempest in a teapot"). And the more crimes JPMorgan Chase personnel commit with impunity, the more the Board gives Dimon raises. This is a man who represents the American dream — if your name is Carlo Gambino. (See Chapter 4.)

We may be in the minority, but we think the jig may be up for Jamie and JPMorgan Chase. Look at the signs: the Bank's profits in the 4th quarter of 2014 declined by almost 7%. Dimon says this is due to "legal costs" that have now exceeded $1 billion (just in the last quarter of 2014). But he doesn't describe what "legal costs" are. It's not just lawyers' fees. It's the cost to JPMorgan Chase's bottom line to operate within the confines of the law. We are not saying that JPMorgan Chase is currently operating legitimately. But we do believe that JPMorgan Chase officers are more cautious in violating the specific laws they have been caught violating in the last few years. And that, obviously, is going to cut down on their profits because, as Jamie

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7 James O'Toole and Evan Perez, JPMorgan agrees to $13 billion mortgage settlement, CNN Money, (Nov. 19, 2013, 7:26PM), http://money.cnn.com/2013/11/19/investing/jpmorgan-mortgage-settlement/

8 As found by the Senate Subcommittee on Investigations in its Report: JPMorgan Chase Whale Trades: A Case History of Derivative Risks and Abuses (2013) at 252:

In the April 13 earnings call, in response to a question, Mr. Dimon dismissed media reports about the SCP as a "complete tempest in a teapot." While he later apologized for that comment, his judgment likely was of importance to investors in the immediate aftermath of those media reports. The evidence also indicates that, when he made that statement, Mr. Dimon was already in possession of information about the SCP’s complex and sizeable portfolio, its sustained losses for three straight months, the exponential increase in those losses during March, and the difficulty of exiting the SCP’s positions.


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Dimon and Carlo Gambino can tell you, crime does pay and adherence to the criminal laws cuts into profits. Big time. And, as the Wheel of Misfortune confirms, instead of being the bank for you, JPMC has very much become the bank to sue.

So how does Jamie Dimon keep his $20 million/year job?\(^{11}\) By melding a unique blend of Alice-In-Wonderland fantasy and 1984 sur-reality. On the Lewis Carroll side, Dimon derives his inspiration from Humpty Dumpty who said, when he uses a word, “It means exactly what I choose it to mean — neither more nor less.”\(^{12}\) One example of this is Dimon’s statement that “We had almost nothing to do with [Madoff].”\(^{13}\) That meant: we knowingly financed Madoff’s illegal activities from the early 1990’s on. (See Chapter 2). Another example is Dimon’s "tempest in a teapot" speech to stock analysts on April 13, 2012.\(^{14}\) When Dimon said that all the publicity about JPMorgan Chase's losses due to the London Whale was just a "tempest in a teapot," Dimon was not trying to mislead the public about the extent of JPMorgan Chase's losses through the London branch of the Bank’s Chief Investment Office. Not at all. Senator Carl Levin, Chairman of the Senate Subcommittee on Investigations, had it all wrong.\(^{15}\) Dimon was simply musing about the fact that his wife had left the water boiling much too long that morning when she was making his breakfast.


On the George Orwell side, Dimon has concluded, based upon his years on Wall Street, that crime is profitable; crime is good. Thus, you have to be very careful when you listen to Dimon speaking with Maria Bartiromo. “Dimon-speak” is a language all its own. But it is easy to translate: Dimon preaches integrity but practices hypocrisy.

Now Dimon would undoubtedly swear he was sincere in his statements to Maria Bartiromo about his commitment to the proverbial mother and apple pie. As proof, under Dimon's leadership, in December 2014, JP Morgan Chase said that it was publishing a comprehensive study on how it does business. We couldn't wait to see it. We thought it might be called “Lessons We Learned from Carlo Gambino” or “The Organization of a Crime Syndicate.” But it's not. It has a much more neutral title. It is called “How We Do Business — The Report.” Dimon credited “a shareholder group led by the Sisters of Charity of Saint Elizabeth” for suggesting The Report. That was heartening. We thought there might truly be an epiphany here? Hardly. At the time that JPMorgan Chase was directing propaganda to the Sisters of Charity, it had just finished swindling the Christ Church Cathedral of Indianapolis out of millions of dollars, according to the Church. More on this later.

Dimon promised that, in the Report, JPMorgan Chase was going to acknowledge its mistakes and “address recent challenges and what we were doing to improve.” We were heartened to read Dimon’s admission that “The first step in moving forward is acknowledging our mistakes. We have done that.” Well, at this point we figured the whole Report would be a discussion of the Bank's mistakes, because the Report is only

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97 pages long. But we were wrong. And, here, it is important not to be a speed reader because, if you are, you could very well miss the entire acknowledgement. Out of the 97-page report inspired by the Sisters of Charity, here is all Dimon has to say about the Bank’s mistakes (that is, the crimes they got caught for) in the last four years:

During the past several years, we have faced a series of legal and regulatory issues. Some of these issues arose from mistakes uniquely our own, some relate to actions taken at firms we acquired during the financial crisis and others concern industry wide practices. These include mortgage foreclosure processes, mortgage-backed securities matters, Anti Money Laundering Act Compliance, the Madoff matter and losses in our Chief Investment Office (CIO) (often referred to as the London Whale incident) as well as Asia hiring practices, LIBOR (London Interbank Offered Rate) and foreign exchange matters.19

Wow. That's it? Millions of the Bank's customers were defrauded and Dimon disposes of it in three sentences! The Sisters of Charity have been used and duped. We can imagine Dimon proposing to the Sisters of Charity, who are located in New Jersey, that the Bank fund the construction of an EZPass lane in their confessionals.

But our mothers brought us up to believe that it is rude to dwell on people’s failings. Thus, we would not want Dimon to dwell on the $29 billion of shareholder money he had to pay out in the last four years to various private citizens and government organizations that caught him and his cohorts violating the law. It would be especially cruel because Dimon himself has preached that:

True leaders must set the highest standards of integrity – those standards are not embedded in the business but require conscious choices.20

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19 The Report at 5.
So, if Dimon is a "true" leader, that would mean, to take just one example, that he made a conscious choice to violate the securities laws when he dismissed the press furor over the London Whale as a "tempest in a teapot." We can certainly accept the fact that Dimon made a conscious choice to lie to stock analysts about the scope of the London Whale fiasco in his earnings call on April 13, 2012.21 (See Chapter 6.) But since it would be cruel to say that, we won't. And, in the same spirit, we won't say anything about Douglas Braunstein's false statements to the public about the London Whale. Braunstein is the former Chief Financial Officer of JPMorgan Chase who, according to the Senate Subcommittee on Investigations, also violated the securities laws in his statements about the London Whale situation.22 He has decided to leave JPMorgan Chase to join a hedge fund.23

After his very short confession in The Report, we are relieved that Dimon moves on to expound on the wonderful qualities of JPMorgan Chase: its commitment to diversity, the high caliber of its Directors (ahem, see Chapter 4), and its Code of Conduct (which says nothing about not violating the Bank Secrecy Act, the Foreign Corrupt Practices Act, the Sherman Antitrust Act, the RICO Act, or any other criminal laws). Of course, the Code of Conduct was in place for the past ten years and somehow Dimon and the people working for him managed to ignore it time and time again — with absolute impunity. Come to think of it, one of the Ten Commandments is “Thou shalt not steal,” but JPMorgan Chase has posted that in all its conference rooms without the "not."

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Although Dimon has never said so, we are wondering if he is enamored of Don Quixote. We ask because Don Quixote said that “Facts are the enemy of truth.”24 And the reason the Board of JPMorgan Chase has allowed Dimon to remain the Bank's top two officers (CEO and Chairman of the Board) — for the benefit of "the country and humanity" — is precisely because he, like Don Quixote, ignores the facts and dwells in an imagined world. But, unlike Don Quixote, Dimon works in an imagined world with scores of well-dressed people who are paid to agree with him.

We have absolutely no interest in engaging with Dimon in quixotic fantasy. Hence, we will focus in this chapter on the truth. We will look at some of Dimon’s statements and see how they stack up against the facts alleged against JPMorgan Chase in pending cases. Of course, we certainly understand that people can disagree on the facts; that's why we have trials. We are simply putting the alleged facts before you for your consideration. Now, credibility is the fundamental factor in determining the truth at a trial. So, before we go into other issues, we want to focus on some of Dimon’s comments to Maria Bartiromo and see if, perchance, there might be a little, shall we say, disconnect with the truth.

What Jamie Dimon Said to Maria Bartiromo

1. Dimon told Bartiromo: “We help consumers....”25

In this instance, Dimon is telling the truth (in Dimon-speak). As we show in our Wheel of Misfortune, in September 2013, JPMorgan Chase agreed to pay $80 million in


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fines and $309 million in refunds to consumers who were billed for credit monitoring services that the Bank never provided.\textsuperscript{26} That was a big help to the consumers who had been cheated. So, score one for Dimon.

And, in February 2012, JPMorgan Chase agreed to pay $110 million to settle claims that it over-charged customers for overdraft fees.\textsuperscript{27} That helped the consumers who had been paying the unwarranted overdraft fees.

And then, in July 2013, JPMorgan Chase paid $410 million to the Federal Energy Regulatory Commission to settle claims of bidding manipulation of California and Midwest electricity markets.\textsuperscript{28} That certainly helped California and Midwest consumers on their electric bills.

And let’s not forget that, in October 2012, JPMorgan Chase paid $1.2 billion (20\% of a global $6.05 billion settlement) to settle claims that it, along with other banks, conspired to set the price of credit and debit card interchange fees.\textsuperscript{29} That helped all the people who use credit and debit cards.

And there’s one more: In March 2012, JPMC paid $150 million to settle claims that it imprudently invested pension funds in a risky debt vehicle.\textsuperscript{30}

Oops. We have another one: on January 22, 2015, the Consumer Financial Protection Bureau announced a settlement with Wells Fargo Bank and JPMorgan Chase under which the banks acknowledged that they had engaged in a kickback scheme with a

\textsuperscript{26} See more at \url{http://jpmadoff.com/victims/#sthash.RH0kXPS3.dpuf}
\textsuperscript{27} See more at: \url{http://jpmadoff.com/victims/#sthash.RH0kXPS3.dpuf} And
\textsuperscript{28} See more at: \url{http://jpmadoff.com/victims/#sthash.RH0kXPS3.dpuf}
\textsuperscript{29} See more at \url{http://jpmadoff.com/victims/#sthash.RH0kXPS3.dpuf}
\textsuperscript{30} See more at \url{http://jpmadoff.com/victims/#sthash.RH0kXPS3.dpuf}
now defunct Maryland Title Company, resulting in increased costs for the banks' customers.31

Sorry. One more. On January 30, 2015, JPMorgan Chase agreed to pay $99.5 million to settle a class action alleging the Bank was part of a conspiracy to rig the $5 trillion-per-day foreign exchange market.32 That helps all the people who over-paid on foreign exchange rates.

So, on this one, we would have to agree with Dimon: JPMorgan Chase, under his leadership, has done a lot to help consumers — out of their money.

2. Dimon told Bartiromo: “We help countries....”33

Here again, we have to hand it to Dimon. He hit the nail on the head. In fact, we wrote about this in Chapter 5 where we described the ongoing criminal and civil investigations of JPMorgan Chase's alleged bribery of Chinese officials to get business in China, in violation of the Foreign Corrupt Practices Act. JPMorgan Chase is giving China a huge helping hand by showing the Chinese how the big banks do business in the United States. And, of course, if public officials are bribed, they can afford to take lower salaries which reduces the burden on Chinese taxpayers. So thoughtful.

Also, in August 2011, JPMorgan Chase paid the Treasury Department $88.3 million to settle claims that it improperly processed transactions in violation of sanctions laws against Cuba, Iran and the Sudan.34 This was a big help to Cuba, Iran

32 http://www.reuters.com/article/2015/01/31/us-forex-manipulation-jpmorgan-settlement-idUSKBN0L40OI20150131
34 See more at: http://jpmadoff.com/victims/#sthash.dEesnDQ0.dpuf
and the Sudan and we're sure the people of these countries are very grateful to JPMorgan Chase. And, of course, the settlement reduced the federal deficit by $88.3 million. So Dimon is right: JPMorgan Chase does help countries.

3. Dimon told Bartiromo: “We help governments.”

Here again Dimon speaks the truth. Take a look at Chapter 2 and you can see how much money the people at JPMorgan Chase give to our Senators and Congressmen in Washington. That is such a big help to our government because it makes the job of our representatives so much easier. Instead of studying the complex issues involved in pending legislation, they simply have to count up the contributions they received from supporters on either side of the bill; and they vote for the side that gave them the most money. So this is a huge help to our government. It takes subjectivity completely out of the legislative process. And the people at JPMorgan Chase are not looking to get something for nothing. They readily embrace a system which requires you to buy legislation. Isn’t that what the free market is all about?

And finally, JPMorgan Chase is very patriotic. For example, it accepted a great deal of money from the federal government at very low interest rates. Some of us think that, if the government is going to make essentially interest-free loans, why not make those loans to honest, hard-working small business owners rather than to JPMorgan Chase. But never mind. Our government wants to make low interest loans to JPMorgan Chase and, under Dimon’s leadership, JPMorgan Chase patriotically accepts these funds. To give you just a few examples:

During the period from December 2007 to March 2010, JPMorgan Chase accepted approximately $98 billion in very low interest loans from the U.S. Federal Reserve Bank (the "Fed") under its Term Auction Facility ("TAF"). The TAF was set up in December 2007 as a temporary alternative to the discount window, the central bank's 97-year old primary lending program to help banks in a cash squeeze.

Although Jamie Dimon insisted that JPMorgan Chase did not need government aid during the 2008 financial collapse, JPMorgan Chase accepted $390 billion in emergency loans through the Fed's discount window. This allowed the Bank, according to an estimate of Bloomberg News, to earn $457 million, risk-free, by investing the money it borrowed from the government at below-market interest rates.

On just one day, in January 2008, when the Bank announced disappointing earnings, it took a $3.5 billion loan from the Fed. It's like a lollipop — comfort food.

JPMorgan Chase got $25 billion in TARP funds.

The Fed provided the funds for JPMorgan Chase to purchase Bear Stearns for the bargain basement price of $1.2 billion or $10.32 a share. This was quite a coup for JPMorgan Chase because:

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39 Pete Winn, JPMorgan Chase CEO: Bank Took TARP, Because We Were Asked to’ by Treasury Secretary, CNS News, (June 18, 2012, 5:07PM), [http://cnsnews.com/news/article/jpmorgan-chase-ceo-bank-took-tarp-because-we-were-asked-treasury-secretary](http://cnsnews.com/news/article/jpmorgan-chase-ceo-bank-took-tarp-because-we-were-asked-treasury-secretary)

At Dimon’s insistence, the federal government took $30 billion of toxic assets off of Bear Stearns’s books.

As part of the deal, JPMorgan Chase acquired the Bear Stearns office building in downtown Manhattan which had a value of $1.4 billion, though it also was saddled with some debt obligations.41

So let’s hear it for Jamie Dimon, one of the super-patriots of our time. He certainly spoke the truth when he told Maria Bartiromo that JPMorgan Chase helps governments, even the government of the United States — by taking its money. But wait a minute, isn’t that our money?

4. **Dimon told Bartiromo: “We’ve hired 8000 veterans.”**42

Now, here, we must confess, we are a little confused. We know that, in April 2011, JPMorgan Chase agreed to settle claims that it cheated people in the armed services big time by over-charging thousands of military personnel on their mortgages and improperly foreclosing on servicemen’s homes (many of whom were in Iraq fighting to protect our way of life).43 We’re not sure whether the 8,000 veterans hired by JPMorgan Chase included the veterans whose homes the Bank had taken; or whether all the veterans the Bank hired still had their homes. Whichever, we are sure the veterans who lost their homes salute JPMorgan Chase for what it has done for them (with the one-finger salute).

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43 JPMadoff.com, The Victims, at http://jpmadoff.com/victims/#sthash.RH0kXPS3.dpuf
5. Dimon told Bartiromo: “I can help people with their careers.”

Dimon is inspirational when it comes to helping young people with their careers. We reveal this in Chapter 5 when we explain that, at the request of a top Chinese insurance regulator to hire a young family friend, Jamie Dimon flew over to Hong Kong in June 2012 to meet the applicant and the regulator. The applicant was subsequently hired by JPMorgan Chase. We originally thought that Dimon flew over to interview the kid because he wanted the regulator to give JPMorgan Chase a lot of Chinese government business. We now realize we were wrong; he did it to help the kid. The fact that JPMorgan Chase got lots of business from the Chinese government was just an example of the fact that good things happen to good people. Or is it?

We don't know about you, but, after thinking about this, we don't really agree with Dimon that JPMorgan Chase helps consumers, veterans, governments, pensioners, and young people. And we wonder if Dimon's exalted view of himself stems from a phenomenon observed about British bankers by a brilliant Englishman named David Shirreff who attributes bankers' exaggerated sense of self-importance to the buildings in which they work:

To inspire confidence, banks have tended to be housed in prestigious buildings. That has come to obfuscate their basic function and has given bankers an exaggerated sense of their own importance. Victorian sewage works and pumping stations were also housed in prestigious buildings, but there was no illusion about the stuff they were pumping. When it comes to banks, there is.

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45 [REFILE – China insurance official asked JPMorgan’s Dimon for job ‘favor’ – NYT, Reuters, (Feb. 10, 2014, 5:05AM), [http://www.reuters.com/article/2014/02/10/china-jpmorgan-hiring-idUSL3N0LF1WK20140210](http://www.reuters.com/article/2014/02/10/china-jpmorgan-hiring-idUSL3N0LF1WK20140210)

46 David Shirreff, "Don’t Start From Here, We Need a Banking Revolution," Crunch Books 2014, at 14. See also [www.crunchbooks.org](http://www.crunchbooks.org)
Now, since Dimon heads the biggest bank in the United States, does that mean he is pumping the most sewage? We’ll have to ask David Shirreff what he thinks. But enough of what Jamie Dimon thinks of himself. Let’s now focus on what JPMorgan Chase’s customers think of the Bank he leads, for the benefit of his country and humanity.

*Rector, Wardens and Vestrymen of the Christ Church Cathedral of Indianapolis v. JPMorgan Chase & Co.*

Christ Church Cathedral of Indianapolis was founded in 1837. It has been a leading congregation in the Indianapolis area for 167 years and received substantial support from Eli Lilly, Jr., who donated the funds that constituted the Christ Church Trusts. The Church has been an ecumenical and interfaith leader for over a century, ensuring cooperation among various Christian denominations in Indianapolis and joining with other congregations to launch the Interfaith Hunger Initiative. In the early 1800s, it initiated public education in Indianapolis and, over the years, it has supported organizations dedicated to helping those with HIV or AIDS, homeless families, abused women, incarcerated mothers, and refugees.

It’s hard to understand why anyone would seek to take advantage of the Church — other than the people at JPMorgan Chase. From July 2005 through December 2013, JPMorgan Chase served as the Trustee of the Christ Church Trusts containing investments valued at $40 million. As the Trustee, JPMorgan Chase had the right to

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make all investment decisions without even consulting with the Church, although sometimes, as a courtesy, JPMorgan Chase discussed its investment decisions with representatives of the Church, but then completely ignored the Church's requests.

While it was disquieting to have no say in how the Trusts' assets were invested, the Church took comfort in the fact that, under the law, JPMorgan Chase had a fiduciary duty to act in the Church’s best interests and to put the Church's interests ahead of the Bank's own interests.\(^{50}\) Unfortunately, according to its August 2014 complaint against JPMorgan Chase, the Church found that the Bank completely violated that law and put its own interests ahead of the Church's interests — investing the Trusts' assets primarily in JPMorgan Chase's own investment products\(^ {51}\) and causing the Trusts to lose $13 million,\(^ {52}\) approximately one-third of their value, during a period when the S&P index almost doubled.\(^ {53}\) During this same time period, JPMorgan Chase's holdings increased by $1.4 trillion and its net revenue more than doubled.\(^ {54}\)

When representatives of the Church questioned JPMorgan Chase officers about the Bank's investment strategy and the fees it was charging, the officers refused to answer the Church's questions and, in fact, have never disclosed the full amount of fees

\(^{50}\) Black's Law Dictionary 737, (3rd Pocket ed. 1996).  
they charged the Trusts.\footnote{Complaint Rector, Wardens and Vestrymen of the Christ Church Cathedral of Indianapolis v. JPMorgan Chase & Co., https://ecf.insd.uscourts.gov/doc1/07314469475 - ¶¶ 17-18.} When the Church's investment committee pressed the Bank to rebalance the investment mix to decrease bonds and increase equity, the Bank agreed to do so. However, it then proceeded to do the exact opposite: it liquidated millions of dollars of equity investments and bought bonds for the portfolio.\footnote{Complaint Rector, Wardens and Vestrymen of the Christ Church Cathedral of Indianapolis v. JPMorgan Chase & Co., https://ecf.insd.uscourts.gov/doc1/07314469475 - ¶¶ 128-29.} When a junior Bank employee wanted to advise the Church of the error, which cost the Church about $1 million, a supervisor ordered him not to do so.\footnote{Complaint Rector, Wardens and Vestrymen of the Christ Church Cathedral of Indianapolis v. JPMorgan Chase & Co., https://ecf.insd.uscourts.gov/doc1/07314469475 - ¶ 130.}

While the value of the Trusts' assets diminished dramatically, the fees the Bank charged the Church increased exponentially — 475% between 2004 and 2013.\footnote{Complaint Rector, Wardens and Vestrymen of the Christ Church Cathedral of Indianapolis v. JPMorgan Chase & Co., https://ecf.insd.uscourts.gov/doc1/07314469475 - ¶ 17.} And, as if that wasn't enough, without informing the Church, JPMorgan Chase took kickbacks from bond sellers in the form of “retrocession payments.”\footnote{Complaint Rector, Wardens and Vestrymen of the Christ Church Cathedral of Indianapolis v. JPMorgan Chase & Co., https://ecf.insd.uscourts.gov/doc1/07314469475 - ¶ 12.} To take just a few allegations from the complaint:

- From July 2004 through December 2013, Defendant JPMorgan Chase Bank, N.A. served as the sole trustee over the Christ Church Trusts accounts. During this period, JPMorgan caused the Church Trusts to lose approximately $13 million in value as a result of JPMorgan's decisions to purchase over 177 different investment products, mostly from itself, using Church funds because they produced the highest revenues to JPMorgan, to the detriment of Christ Church.

- At the very highest levels of JPMorgan, decisions were made to steer clients to JPMorgan products regardless of the damage which could result to beneficiaries such as Christ Church. JPMorgan used a "guided architecture" platform whereby it approved financial products because JPMorgan...
would receive the highest revenues and then it caused its employees to steer JPMorgan clients, including the Church Trusts, to those products.

- Most of the financial products found in the Christ Church Trusts' portfolio earned JPMorgan substantial revenues in disclosed and undisclosed fees, expenses, retrocessions (or kickbacks), and revenue sharing payments from third parties seeking to have their products underwritten and approved by JPMorgan in order to gain access to JPMorgan clients and be included in the JPMorgan guided architecture platform of approved investments.

- JPMorgan as trustee used millions of dollars of Church funds to purchase from itself clearly unsuitable investments for the Church including private equity funds, structured notes, hedge funds, and other proprietary funds, many of which had no track record of success and were doomed to fail. The percentage of proprietary products purchased from itself on behalf of the Church ranged from 68% to a staggering 85% of the portfolio.

- Between 2004 and 2013, JPMorgan used Church Trusts funds to purchase mostly from itself approximately eighty-eight structured notes where JPMorgan served as the exclusive placement agent, nine offshore hedge conduit or feeder funds created by JPMorgan, two private equity conduit or feeder investments created by JPMorgan, a JPMorgan managed stock account, JPMorgan cash sweep accounts, and multiple other JPMorgan proprietary funds including many that were so heavily burdened with expenses and fees that they were doomed to fail to perform.60

The 50-page complaint filed by the Church lays out in excruciating detail every bogus investment JPMorgan Chase put the Trusts' funds into and the losses incurred by the Trusts on those investments. It is truly painful to read. The devastating losses suffered by the Trusts forced the Church to "pare its HIV, hunger and domestic-abuse

programs," according to the Very Reverend Stephen Carlsen.61 On the bright side, however, we can be sure that the fees JPMorgan Chase earned on the account resulted in handsome bonuses for some of its officers.62 Thank you, Jamie Dimon.

Of course, there are two sides to every story ("a right side and a wrong side," according to Woodrow Wilson63) and JPMorgan Chase says the suit is "meritless."64 That word sounds familiar. Oh yes. That was what JPMorgan Chase said about the Madoff Trustee's complaint 65 — the one JPMorgan Chase paid $350 million to settle.66

Is this a fluke? Unfortunately not. If JPMorgan Chase has already stolen from one church, it undoubtedly is in the habit. So we say with all reverence to the good Sisters of Charity of Saint Elizabeth, and to all men and women of faith, if the “new” JPMorgan Chase comes a-knocking at your door, you had better count the money in the poor box before you open it. Better yet, don’t open the door at all. If you do, you won’t have a prayer.

63 Ross A. Kennedy, A Companion to Woodrow Wilson, (Jan. 22, 2013), available at https://books.google.com/books?id=TytaiSLySTS&pg=PT46&dq=woodrow+wilson+the+right+side+and+the+wrong+side&source=bl&ots=n0M5_Ugprs&sig=4jR901pHvAPtQ61vOJ-kyM72F8&hl=en&ei=3xvIVPnXE4P1vASNo4DYBw&ved=0CCQQ6AEwAQ#v=onepage&q=woodrow&f=false

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State of California v. JP Morgan Chase

The victims of JPMorgan Chase's unethical practices extend far beyond churches. Perhaps the Bank's most broad-reaching unethical practices are its credit card collection practices. According to a complaint filed on May 9, 2013 by the State of California, JPMorgan Chase, the biggest credit card lender in the country, filed over 100 lawsuits a day every day between January 2008 and April 2011 against California customers, without complying with the laws that are intended to protect individuals against dishonest debt collection practices. JPMorgan Chase would send letters to customers claiming that the letters were sent by the Bank's "attorney" when, in fact, the letters were not written by, or even reviewed by, an attorney. The letters threatened to file suit and obtain liens against the customers if the alleged debt was not paid immediately.

And if the debt JPMorgan Chase claimed was not paid, the Bank filed complaints that were verified "under penalty of perjury" by someone who swore to be an assistant treasurer and officer of Chase USA. In fact, the verifications were signed by low-level employees of BankCard Services who had never even seen the complaint or the customer's file and had no personal knowledge of the facts set forth in the complaint. After that, JPMorgan Chase filed sworn proofs of service stating that the customers had been properly served when, in fact, the customers were not served at all and, many

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67 The case is California v. JPMorgan Chase & Co., case number BC508466, in the Superior Court of the State of California, County of Los Angeles. The Superior Court of California, Case Summary, http://www.lacourt.org/casesummary/ui/casesummary.aspx?#DOC21

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times, there was never even an attempt to serve them. When a customer did not show up to defend the lawsuit, which was common because so many of them were not served with the papers, JPMorgan Chase would get a default judgment entered so that it could then garnish the customer's salary and lien his property.

According to the complaint, in order to obtain default judgments against people in the military, JPMorgan Chase would file false affidavits that the defendant was not in military service and, once the default judgments were entered, JPMorgan Chase would obtain a writ of execution to force the sale of the customer's house to satisfy the Bank's judgment.72

The Attorney General of California said JPMorgan Chase was betting that their borrowers would lack the resources and legal sophistication to call their bluff.73 That is why the Attorney General sued on their behalf, estimating that JPMorgan Chase had victimized over 100,000 Californians.74 The lawsuit seeks a permanent injunction against JPMorgan Chase's illegal debt collection practices and damages for the people whom the Bank harmed.75

There is good reason to believe that the California law suit is meritorious. In September 2013, the Bank entered into a consent order with its primary regulator, the Office of the Comptroller of the Currency (the "OCC"), to resolve claims that it had used debt collection practices that violated the law with respect, for example, to its treatment

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of people in the armed services — similar to the practices alleged in the California case.\textsuperscript{76}

The OCC found, after its investigation, that:

In connection with the Bank’s sworn document and Collections Litigation processes, and the Bank’s efforts to comply with the [Servicemen's Civil Relief Act], the Bank:

(a) Filed or caused to be filed in courts affidavits executed by its employees or employees of third-party service providers making various assertions in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

(b) In some instances, filed or caused to be filed in courts inaccurate sworn documents that resulted in obtaining judgments with financial errors in favor of the Bank;

(c) Filed or caused to be filed in courts numerous affidavits that were not properly notarized, including those not signed or affirmed in the presence of a notary, where required;

(d) Failed to have in place effective policies and procedures across the Bank to ensure compliance with the SCRA; . . .

* * * *

(3) The unsafe or unsound practices identified by the OCC were most prevalent in the Bank’s consumer and community banking lines of business, including credit card services, auto lending, and student lending.\textsuperscript{77}

Thus, there is certainly a ring of truth to the allegations of the State of California.


\textsuperscript{77} \url{http://www.occ.gov/static/enforcement-actions/ea2013-138.pdf}
Los Angeles v. JPMorgan Chase

In The Report, JPMorgan Chase congratulates itself on its commitment to diversity. We acknowledge that JPMorgan Chase treats its customers equally, in the sense that it does not discriminate on the basis of race, color, religion or financial condition: the evidence shows that JPMorgan Chase cheats everyone. Therefore, it is not surprising that, in August 2014, the City of Los Angeles filed a 49-page complaint against JPMorgan Chase alleging that the Bank violated the Federal Fair Housing Act by engaging in a continuous, predatory pattern and practice of mortgage discrimination directed at black and other minority customers since at least 2004. The complaint states that JPMorgan Chase steered minority borrowers into risky home loans that the borrowers could not afford. This resulted in a flood of foreclosures and a dramatic decrease in property values. The complaint seeks compensatory and punitive damages as well as injunctive relief against JPMorgan Chase.

As alleged in the complaint, JPMorgan targeted minority homeowners for loans on terms far more onerous than those offered to white people with similar credit characteristics. These practices caused an inordinate number of foreclosures in minority neighborhoods, thereby depressing real estate values and driving down the City’s tax revenues. The illegal practices included redlining, which is the practice of charging minorities more than the Bank charges whites for the same loans or services. Minority borrowers were given subprime loans that they could not afford, even though

80 Complaint City of Los Angeles v. JPMC ¶ 1.
they qualified for better terms. The lawsuit alleged that, because JPMorgan Chase put minorities into riskier loans, the loans made in predominantly black and Latino neighborhoods were 2.19 times more likely to go into foreclosure than loans in white areas and the minority loans went into foreclosure faster.

JPMorgan Chase says the "facts don’t support [the City's] claims and are contradicted by our demonstrated commitment to minorities in the Los Angeles area." But the City of Los Angeles alleges that it went straight to the source to obtain information necessary to file this lawsuit. A portion of the complaint was based on confidential statements from former JPMorgan Chase employees. And, JPMorgan Chase’s motion to dismiss the complaint was denied.

JPMorgan Chase's alleged conduct has taken a huge toll in human terms and it has had a devastating economic impact as well. The complaint cites a report that the mortgage crisis resulted in 200,000 foreclosures in Los Angeles between 2008 and 2012 and the property tax revenues were reduced by $481 million. But, according to the complaint, JPMorgan Chase’s wrongful conduct has continued.

We wish this were an anomaly — that a few bad apples on the west coast spoiled JPMorgan Chase's efforts at equal opportunity lending and that the Bank as a whole abides by the anti-discrimination laws. But once again, it seems the problem is not in

85 Order denying Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint.
the apples but in the tree. Shortly after the Los Angeles suit was commenced, the City of Miami filed a very similar lawsuit against JPMorgan Chase, alleging a pattern and practice of discriminatory lending “in order to maximize profits at the expense of the City of Miami and minority borrowers.”86 Thus, the behavior described appears to be a pattern of discriminatory lending and unfair practices from sea to shining sea.

**JPMorgan Chase Bank, N.A. v. Butler**

As the City of Los Angeles found, JPMorgan Chase not only cheats its credit card customers, it lies to the courts as well, by filing false affidavits in its efforts to obtain judgments against credit card customers. But JPMorgan Chase's practice of filing false affidavits is not limited to suits against credit card customers. Frederic Butler found this out, the hard way.

In January 2010, JPMorgan Chase filed a foreclosure action against Butler in Brooklyn, New York, claiming that it had acquired the mortgage on property owned by Butler when Washington Mutual Bank (“WAMU”) failed.87 After a number of settlement conferences with the court or a special referee designated by the court, the court allowed Butler to sell the property and deposit the proceeds — $490,000 — in escrow. The issue before the court was who would get that money: JPMorgan Chase, whom the court referred to as Chase, or Butler.88

We know you are thinking: How could Butler possibly get to keep this money when it was claimed by JPMorgan Chase? Well, here's the answer: Under New York law, only the owner of the note and mortgage can sue for foreclosure. Despite numerous

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88 *Id.*
contrary representations to the court over a two-year period, the court found that JPMorgan Chase “never owned the subject mortgage and note....” Rather, it simply had acquired the right to service the loan from WAMU. The owner of the mortgage and note was the Federal National Mortgage Association (“Fannie Mae”).

One’s first reaction might well be, “All right, the Bank made a mistake. Regrettable but understandable in the wake of the financial crisis and in connection with a loan it bought from someone else.” And that would be a reasonable reaction if we were not dealing with JPMorgan Chase. But we are, and the court’s opinion lays to rest any possible argument JPMorgan Chase could make about good faith error. Indeed, the court stated in the most definite of terms:

... the continued subterfuge by CHASE and its counsel to the Special Referee and Court that it owned the subject BUTLER mortgage and note demonstrated "bad faith" in violation of [New York law]....”

CHASE, in the instant action, committed a fraud upon the Court by claiming to be the plaintiff. FANNIE MAE should have been the plaintiff as the owner of the note and mortgage....”

The court’s reference to the “continued subterfuge” by Chase was charitable to say the least. Chase alleged in its court filings that it was the owner of the note and mortgage. On April 7, 2011, the court’s Special Referee, in one of nine settlement conferences, directed Chase to produce the original note and mortgage at the next conference, to be held on April 11. Chase failed to do so. It was not until May 2, 2011,
in a conference with the judge himself, that Chase complied, giving the judge a note that was, on its face, owned by WAMU and not assigned to Chase. Nevertheless, Chase's counsel again represented to the court that Chase was the owner of the note.94

In late 2011, almost two years after the action was commenced, Chase was forced to come clean. In its opposition to an order to show cause filed by Butler, Chase submitted an affidavit from Fannie Mae (of whose conduct in colluding with Chase the court was also highly critical) attesting that Chase was not the owner, but merely the servicer, of the Butler loan. But having belatedly admitted this fact, Chase then pressed on the court the argument that ‘[a]s Fannie Mae’s servicer, Chase has authority to commence a foreclosure action on the Loan.”95 The court properly characterized this claim as “ludicrous [and a] violation of New York law....,”96 citing voluminous authority that under New York law a foreclosure proceeding can only be brought by the title owner of the mortgage. Further the court wrote:

... it appears to the Court that the delay by CHASE in producing the subject BUTLER Note was to give [its lawyers] ample time to temporarily borrow the BUTLER Note from FANNIE MAE for its May 2, 2011 presentation to the Court. Despite its December 2011 admission that FANNIE MAE owned the subject BUTLER mortgage and note, CHASE, prior to this, continuously presented its ownership subterfuge to Special Referee Goldstein and the Court. The Court cannot countenance the deceptive behavior of CHASE, the alleged owner of the subject BUTLER mortgage and note, its counsel, and FANNIE MAE....”97

When the court examined the records that Chase finally produced, it found that the original note was marked “fully paid” as of May 22, 2010. Chase had not told the

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95 Id. at 4.
96 Id. at 8-9.
97 Id. at 11.
court that either, and it did not comply with the court’s order to provide it with an explanation of the payment.98 The court was not happy:

In the May 10, 2011 order to show cause, I directed plaintiff to provide the Court with detailed information as to "the entity or third party that made the payment to it on May 22, 2010 that is specified in the payment history it delivered to defendant on May 4, 2011 . . . which payment resulted in plaintiff marking its loan payment history records fully settled,' in its opposition papers to be filed and served by June 13, 2011." Plaintiff failed to comply with this order and at the June 27, 2011 hearing before me made an application to extend the time to identify the May 22, 2010 payor. I denied this request.99

In determining the remedy for Chase’s fraud on the court, Justice Schack barred Chase from collecting interest, legal fees and expenses, after May 22, 2010, although those recoveries are typically allowed a foreclosing mortgagee.100 The court also directed a hearing on whether it should impose sanctions against Chase and its attorneys, citing multiple abuses by them:

In the instant action, it is obvious that plaintiff CHASE and its counsel provided conflicting information, unexplained charges and misrepresentations.101

* * * *

It is clear that CHASE's representation that it was the plaintiff in the instant action "is completely without merit in law" and "asserts material factual statements that are false.102

* * * *

98 Id. at 7.
99 Id. at 7.
100 Id. at 18.
101 Id. at 11.
102 Id. at 19.
The instant action, with CHASE, the improper plaintiff, engaging in bad faith is a waste of judicial resources.\textsuperscript{103}

The court indicated it was considering the maximum sanctions permitted by law:

This Court cannot, and will not, countenance a lack of good faith in the proceedings that are brought before it, especially where blatant and repeated misrepresentations of fact are advanced, neither will it permit equitable relief to lie in favor of one who so flagrantly demonstrates such obvious bad faith.\textsuperscript{104}

Having carefully considered Chase's conduct, the court summed it up clearly and succinctly: "This conduct...must be deterred."\textsuperscript{105}

\textit{JP Morgan Chase Bank N.A. v Porzio}

But JPMorgan Chase was not deterred. Just a few months later, it was in Westport, Connecticut trying to lie itself out of trouble in another foreclosure action on almost identical facts. In this case, the Bank falsely claimed it was the owner of a $2.5 million note and mortgage it supposedly acquired from WAMU. In denying a motion by the Bank for summary judgment, the judge said, delicately, that a "number of mistakes and typographical errors"\textsuperscript{106} had been made by JPMorgan Chase, including the filing of two false affidavits claiming that the Bank had possessed, but lost, the borrower's signed promissory note and swearing that the Bank held a first mortgage. In fact, if the Bank held anything, it held a second mortgage.\textsuperscript{107}

\textbf{Conclusion}

It is certainly comforting to know that our government has chosen to provide tens of billions of dollars of low-interest loans to an institution that routinely lies to the

\textsuperscript{103} \textit{Id.} at 20-21.
\textsuperscript{104} \textit{Id.} at 18-19.
\textsuperscript{105} \textit{Id.} at 21.
\textsuperscript{106} \textit{JP Morgan Chase Bank, N.A. v. Porzio,} available at \url{http://caselaw.findlaw.com/ct-superior-court/1650807.html}
\textsuperscript{107} \textit{Id.}
judges before whom it appears. What these cases confirm is that there is no new
JPMorgan Chase. Nor is there a new Jamie Dimon. During a January 14, 2015
classification call with reporters following the earnings report which revealed the fourth
quarter loss due to the Bank's "legal costs," Dimon bemoaned the "assault" against the
Bank by regulators. And in one respect he's right; his job would be a lot easier if
people would just stop requiring JPMorgan Chase to abide by the law. Ironically, as
readers of this book know, it is the apathy and inaction of the regulators that has
enabled JPMorgan Chase to challenge the world record for recidivism. Even Dimon
recognized how fatuous his words were with respect to regulators because, afterwards,
he did a big flip-flop:

Let me take back some of those words. We have worked very
closely with regulators. . . I was referring to the fact that
there are lots of different regulators. It's hard to deal with.109

Dimon acknowledges that the Bank has made some mistakes in the past —
although he blames these on the Bank's acquisitions of Bear Stearns and Washington
Mutual, despite the fact that most of the $29 billion the Bank has paid out in the last
four years is the result of pure, unadulterated JPMorgan Chase culture under Dimon's
leadership.

Running a crime syndicate is not easy, and we understand that. It's difficult to
predict profits when customers and regulatory agencies are suing you to stop illegal

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108 Hugh Son, JPMorgan CEO Dimon Says Overlapping Regulators Assault Banks, Bloomberg Business,
banks-under-assault-by-u-s-regulators.html
109 Tom DiChristopher, Don't Invest in banks if you want certainty: Dimon, CNBC, (Jan. 21, 2015,
12:29PM), http://www.cnbc.com/id/102355946
110 Tom DiChristopher, Don't Invest in banks if you want certainty: Dimon, CNBC, (Jan. 21, 2015,
12:29PM), http://www.cnbc.com/id/102355946
practices. As Jamie Dimon explained in a January 21, 2015 Squawk Alley interview from the World Economic Forum in Davos, Switzerland:

Investors who want certainty about legal costs for financial firms should not buy bank stocks. We have been very, very consistent about legal. It's lumpy. It's not predictable, particularly by quarter, and that's what we've got to deal with.\footnote{Tom DiChristopher, Don't Invest in banks if you want certainty: Dimon, CNBC, (Jan. 21, 2015, 12:29PM), http://www.cnbc.com/id/102355946}

Memo to Mr. Dimon: If JPMorgan Chase stops breaking the law, it will not only have more predictable legal fees but lower ones. But, of course, it will also have \textbf{significantly} lower profits. Ah. There's the rub.