

## Securities Regulation Daily Wrap Up, ENFORCEMENT—JPMorgan to pay \$1.7 billion fine for BSA violations in Madoff case, (Jan. 7, 2014)

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J.P. Morgan Chase, NA (JPMorgan), which was the primary bank for Bernard L. Madoff Securities, has agreed to pay a \$1.7 billion penalty for two felony violations of the Bank Secrecy Act (BSA) related to its actions dealing with the largest known Ponzi scheme in history. Under the agreement, the bank must also admit to its conduct, and implement and maintain a BSA/AML compliance program.

The U.S. Attorney for the Southern District of New York (S.D.N.Y.) and the New York Office of the Federal Bureau of Investigation have announced criminal charges against JPMorgan for two violations of the BSA five years after the arrest of Bernard Madoff in December of 2008. The U.S. Attorney for the S.D.N.Y. also released a deferred prosecution agreement with JPMorgan charging the bank with failure to maintain an effective anti-money laundering program (AML) and failure to file a Suspicious Activity Report (SAR) when it had reason to suspect potentially fraudulent activities. Under the deferred prosecution agreement with the S.D.N.Y., JPMorgan admitted to the facts set forth in the complaint, agreed to pay \$1.7 billion, a record penalty under the BSA, and agreed to have the Final Order of Forfeiture entered against them. The S.D.N.Y. has stated that the funds collected will be contributed to the recovery fund for victims of the fraudulent investment scheme.

In separate actions, the Treasury Department, Office of the Comptroller of the Currency (OCC), and the Financial Crimes Enforcement Network (FinCEN), also announced that they have reached agreements with JPMorgan. The OCC will collect a \$350 million fine. FinCEN fined JPMorgan \$461 million for willfully violating the BSA by failing to report suspicious transactions arising out of the multi-billion dollar fraudulent investment scheme. To ensure the maximum amount of money for the victims, FinCEN deemed its penalty satisfied by JPMorgan's payment to the S.D.N.Y. In total, JPMorgan has agreed to a combined collection amount of \$2.05 billion.

**JPMorgan actions in fall 2008.** The FinCEN release states that in 2007, JPMorgan had concerns that Madoff's securities firm could be engaged in fraud that culminated in the identification of several red flags in its system by 2008. The red flags included that Madoff's firm's investment performance appeared too good to be true; its trading techniques and investment activity lacked expected transparency; the firm used a small, unknown auditor; and it repeatedly refused to provide full information to JPMorgan as part of its due diligence reviews.

FinCEN describes how, in the Fall of 2008, JPMorgan took steps to protect its own business interests yet failed to notify FinCEN of the suspicious, potentially fraudulent activities, and failed to file any SAR with FinCEN as required under the BSA. Speaking at a press conference on Jan. 7, 2014, Jennifer Shasky Calvery, FinCEN director, said, "When JPMorgan failed to file a SAR with FinCEN, an opportunity to stop this fraud was missed. JPMorgan's concerns about potential fraud went unheard, leaving law enforcement and regulators in the dark. A critical piece of the puzzle was left out, and innocent people continued to be victimized." During the intervening time in the fall of 2008 before Madoff's arrest in December of that year, JPMorgan redeemed approximately \$275 million of its own investments from Madoff's funds. When Madoff was arrested on December 11, 2008, JPMorgan booked a loss of approximately \$40 million, substantially less than it would have lost but for its transactions in the preceding months. "When JPMorgan suspected Mr. Madoff's fraud, it focused on its own investment exposure and saved itself approximately \$250 million," noted Shasky Calvery. "If it had given the same attention to its anti-money laundering responsibilities, it could have saved itself \$2 billion, and potentially saved thousands of other fraud victims untold misery and loss."

**Deferred prosecution agreement.** Among other things, JPMorgan agreed to the following under the deferred prosecution agreement on the felony charges:

- To accept responsibility for its conduct by stipulating to the information in the Statement of Facts;
- to have the Final Order of Forfeiture entered against them;
- to implement and maintain an effective BSA/AML compliance program; and

- to provide quarterly reports on the status of its BSA/AML compliance program.

Assuming the bank's continued compliance, the government will defer prosecution for two years, after which it will dismiss the charges. U.S. Attorney Preet Bharara of the S.D.N.Y. said, "Today, the largest financial institution in the country stands charged with two criminal offenses. Institutions, not just individuals, have an obligation to follow the law and to police themselves. They must exercise due care not only with their own money but with other people's money also. In this case, JPMorgan connected the dots when it mattered to its own profit, but was not so diligent otherwise. Fortunately, with today's resolution, the bank has accepted responsibility and agreed to continue reforming its anti-money laundering practices. Most importantly, the victims of Bernie Madoff's epic fraud are \$1.7 billion closer to being made whole."

Companies: J.P. Morgan Chase Bank N.A.; Bernard L. Madoff Securities

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