

## CORPORATE COMPLIANCE ALERT

8/12/13

### Securities and Exchange Commission Gets Serious About New “Admit It” Policy

This week the Securities and Exchange Commission (SEC) demonstrated that the agency is serious about enforcing its new “admit it” policy, which they unveiled earlier this year, since the SEC indicated that it would require JPMorgan Chase to admit wrongdoing in its management of a multi-billion dollar trading loss initiated by one of its traders.<sup>1</sup>

Prior to this week’s announcement regarding the JPMorgan Chase settlement, the SEC briefly outlined the new “admit it” policy:

*[T]here may be other situations that...justify requiring the defendant’s admission of allegations in our complaint or other acknowledgment of the alleged misconduct as part of any settlement. In particular, there may be certain cases where heightened accountability or acceptance of responsibility through the defendant’s admission of misconduct may be appropriate, even if it does not allow us to achieve a prompt resolution...*

*These may include misconduct that harmed large numbers of investors or placed investors or the market at risk of potentially serious harm; where admissions might safeguard against risks posed by the defendant to the investing public, particularly when the defendant engaged in egregious intentional misconduct; or when the defendant engaged in unlawful obstruction of the Commission’s investigative processes.<sup>2</sup>*

This pronouncement was a stark deviation from prior SEC enforcement policy. Indeed, Robert Khuzami, former Director of Enforcement with the SEC, testified before the U.S. House of Representatives in May of 2012 as follows:

*There is little dispute that if “neither-admit-nor-deny” settlements were eliminated, and cases could be resolved only if the defendant admitted the facts constituting the violation, or was found liable by a court or jury, there would be far fewer settlements, and much greater delay in resolving matters and bringing relief to harmed investors. The reality is that many companies likely would refuse to settle cases if they were required to affirmatively admit unlawful conduct or facts related to that conduct.<sup>3</sup>*

Assuming that JPMorgan is required to admit wrongdoing as a condition of the settlement with the SEC, the new “admit it” policy may signal a new era of SEC enforcement. Under this new policy, JPMorgan

<sup>1</sup> [http://www.washingtonpost.com/business/economy/sec-seeks-admission-of-wrongdoing-from-jpmorgan-in-london-whale-case/2013/08/08/6c2f9580-007d-11e3-9711-3708310f6f4d\\_story.html](http://www.washingtonpost.com/business/economy/sec-seeks-admission-of-wrongdoing-from-jpmorgan-in-london-whale-case/2013/08/08/6c2f9580-007d-11e3-9711-3708310f6f4d_story.html); Last year, JP Morgan Chase acknowledged that traders in London placed large, risky bets on credit derivatives that resulted in heavy losses to investors and ultimately cost the bank about \$6.2 billion. According to a Senate report released in March of 2012, the bank-concealed losses, overstated the value of its trading positions, ignored red flags, and withheld information about the nature of the trading portfolio when regulators made inquiries.

<sup>2</sup> <http://www.scribd.com/doc/148816465/SEC-letter-describing-policy-shift-on-Wall-Street-wrongdoing>; see also <http://www.nytimes.com/2013/06/22/business/secs-new-chief-promises-tougher-line-on-cases.html?pagewanted=all>

<sup>3</sup> <http://www.sec.gov/News/Testimony/Detail/Testimony/1365171489454>

Chase will not be the only company parading around with the scarlet letter “A,” as an increasing amount of companies will likely be required to admit wrongdoing to avoid expensive, protracted litigation.

The consequences of such harmful admissions are significant. First, depending on the nature of the conduct, an admission of guilt may be used against the company, or the company’s principals, in a criminal prosecution initiated by the Department of Justice. Second, companies should be wary of how such admissions of guilt will likely create a new class of plaintiffs, *i.e.*, investors suffering harm due to egregious conduct, with a powerful new tool for initiating lawsuits.

Finally, companies should take note of the lack of guidelines governing what constitutes especially egregious or intentional conduct according to the new policy and should closely scrutinize the outcome in the JPMorgan Chase case and the parameters of any settlement agreement.

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