10-16-2013

CFTC Files and Settles Charges Against JPMorgan Chase Bank, N.A., for Violating Prohibition on Manipulative Conduct In Connection with "London Whale"Swaps Trades

United States: Commodity Futures Trading Commission (CFTC)

U.S. COMMODITY FUTURES TRADING COMMISSION
ENSURING THE INTEGRITY OF THE FUTURES & OPTIONS MARKETS

RELEASE: PR6737-13

October 16, 2013

CFTC Files and Settles Charges Against JPMorgan Chase Bank, N.A., for Violating Prohibition on Manipulative Conduct In Connection with “London Whale” Swaps Trades

JPMorgan Admits to Reckless Conduct in First Case Charging Violation of Dodd Frank’s Prohibition Against Manipulative Conduct and is Ordered to Pay a $100 Million Civil Monetary Penalty

Washington, DC – The U.S. Commodity Futures Trading Commission (CFTC) today issued an Order against JPMorgan Chase Bank, N.A. (JPMorgan or Bank), bringing and settling charges for employing a manipulative device in connection with the Bank’s trading of certain credit default swaps (CDS), in violation of the new Dodd-Frank prohibition against manipulative conduct. As set forth in the CFTC’s Order, by selling a staggering volume of these swaps in a concentrated period, the Bank, acting through its traders, recklessly disregarded the fundamental precept on which market participants rely, that prices are established based on legitimate forces of supply and demand. As a result, after a thorough 17-month investigation, the Commission has found the Bank liable for violating Section 6(c)(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §9 (2012), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), and Commission Regulation 180.1, 17 C.F.R. §180.1 (2012).

JPMorgan, which admits the specified factual findings in the Order including that its traders acted recklessly, is directed, among other things, to pay a $100 million civil monetary penalty.

“In Dodd-Frank, Congress provided a powerful new tool enabling the CFTC for the first time to prohibit reckless manipulative conduct,” said David Meister, the CFTC’s Director of Enforcement. “As this case demonstrates, the Commission is now better armed than ever to protect the market from traders, like those here, who try to ‘defend’ their position by dumping a gargantuan, record-setting, volume of swaps virtually all at once, recklessly ignoring the obvious dangers to legitimate pricing forces.”

Highlights of the CFTC Order

The CDS market comprises globally traded credit derivatives used to speculate on and hedge against credit defaults. Trillions of dollars (notional) of CDS instruments and baskets of CDS called credit default indices, some known as CDX, are used to transfer risk of defaults by companies in the United States and around the world. As such, the CDS market is an important aspect of the global economy.

From approximately 2007 through 2011, JPMorgan’s Chief Investment Office (“CIO”), operating through a trading desk in the Bank’s London branch, traded and held various credit default indices, including CDX, in a Synthetic Credit Portfolio (“SCP”). Each day the SCP traders marked their positions to market, assigning a value to the positions using market prices and other factors. That value was used to calculate the CIO’s profits and losses. At the end of each month an “independent” group at JPMorgan tested the validity of the traders’ month-end marks.

As of the end of 2011, the portfolio held $51 billion net notional of these credit instruments, the outsized amount spurring press reports referring to one CIO trader as the “London Whale.” Although previously quite profitable, the portfolio had taken a serious turn for the worse at least by late January 2012, with year-to-date mark-to-market losses of $100 million. In February 2012, daily losses were large and growing.

The violation charged in the CFTC's Order concerns the Bank's trading of one particular credit default index -- "CDX NA.IG9 10 year index" ("IG9 10Y"). 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.

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.

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.

The Order provides comparative measures that demonstrate just how large and concentrated these February 29 sales of IG9 10Y were. For example, these sales 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.

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.

As set forth in the Order, 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.

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.

In addition to finding the violation, the Order describes aspects of the CFTC's new business conduct rules applicable to swap dealers. JPMorgan registered with the Commission as a swap dealer as of December 31, 2012, and at that time became subject to the Commission's new swap dealer regime, including rules that impose supervision and control obligations. Although these rules did not apply to the Bank at the time of the events in question, the Order explains how some of these new rules would have covered the matters set forth in the Order, and concludes that had the regulations been in place, much of the offending conduct at issue (and the significant losses it caused) may well have been detected and remedied internally much more quickly, thereby potentially reducing losses.

The CFTC acknowledges the valuable assistance of the United Kingdom's Financial Conduct Authority, as well as that of the U.S. Securities and Exchange Commission and the United States Attorney's Office for the Southern District of New York.

The CFTC also acknowledges JPMorgan's cooperation with the Division of Enforcement's investigation.

CFTC Division of Enforcement staff responsible for this action are Saadeh Al-Jurf, Allison Baker Shealy, Traci Rodriguez, Daniel Ullman, Joan Manley, and Paul G. Hayeck.

Last Updated: October 16, 2013