



## THIS WEEK IN WALL STREET REFORM

October 12-18, 2013

### LONDON WHALE SETTLEMENT

#### **JPMorgan Said to Settle CFTC London Whale Trading Probe**

**(Silla Brush, Bloomberg, 10/16/13)**

“JPMorgan Chase & Co. (JPM) has agreed to pay about \$100 million to resolve the Commodity Futures Trading Commission’s probe into the firm’s botched derivatives bets last year, according to people briefed on the matter.

“The deal, which would bring the bank’s total settlements in the episode to more than \$1 billion, may be announced as early as this week, the people said, asking not to be named because the talks were confidential. The accord would resolve a CFTC assertion that the trading amounted to a “manipulative device,” the people said. CFTC Chairman Gary Gensler and Joseph Evangelisti, a spokesman for the company, declined to comment...”

#### **A Regulator Cuts New Teeth on JPMorgan in ‘London Whale’ Case**

**(Ben Protess, The New York Times, 10/16/13)**

“Lobbying groups for Wall Street’s biggest banks cautioned that a new rule before the nation’s commodities trading regulator ‘could have myriad unintended adverse consequences.’ A hedge fund trade group feared that the rule was ‘overly aggressive.’ And the CME Group, one of the world’s largest futures exchanges, warned that the rule was susceptible to legal action.

Now, roughly two years after the Commodity Futures Trading Commission adopted the rule, lowering the legal requirement for proving that financial firms manipulate the markets, Wall Street is feeling the effects of the rule it fought so hard to tame...”

## **JPMorgan's \$100 Million Settlement Elevates Role of CFTC**

**(Joe Mont, Compliance Week, 10/17/13)**

“This week’s \$100 million settlement with JPMorgan Chase by the Commodity Futures Trading Commission... was a coming-of-age moment for the CFTC. Since the enactment of the Dodd-Frank Act, that agency was greatly elevated in stature and tasked with a growing workload despite operating with only a fraction of the manpower and budget of the Securities and Exchange Commission. The order issued against JPMorgan on Wednesday, the result of a 17-month investigation, further solidifies its position as an increasingly important cop-on-the-beat...”

## **JPMorgan’s Latest Settlement Shows Regulatory Sea Change**

**(Editors, Bloomberg, 10/16/13)**

“JPMorgan Chase & Co.’s chief executive officer, Jamie Dimon, initially called the bank’s ‘London whale’ trading debacle a “tempest in a teapot.” Some teapot. Today the bank agreed to pay \$100 million to settle an action brought by the Commodity Futures Trading Commission. But more important than that relatively modest sum is the bank’s admission that its traders were ‘recklessly aggressive...’

“JPMorgan’s concessions in today’s CFTC case and last month’s Securities and Exchange Commission settlement signal that Wall Street firms no longer can flout the law and then, if caught, dismiss the resulting penalties as a cost of doing business. This is a sea change in U.S. law enforcement, one with far-reaching consequences...”

## **Are Big Banks Still Addicted to Risk?**

**(Patricia Hurtado, Bloomberg, 10/17/13)**

“The London Whale case has drawn a bigger reaction than other missteps by banks since the 2008 financial crisis, partly because of Dimon’s previous rock-star status. More importantly, it raised a worrisome question: What if the banks are still addicted to risk...?”

## **Should Jamie Dimon Be Fired?**

**(Andrew Ross Sorkin, New York Times, 10/14/13)**

“Writers, editors and bloggers have made it clear that they want his scalp... Yet there is an almost bizarre disconnect between the headlines and what the people who matter — the investors, analysts, board members and, yes, even regulators — are seeking. None of them want him fired...”

## COMMODITIES AND DERIVATIVES

### **Fed Weighs Surcharge on Banks' Physical Commodity Businesses**

**(Michael R. Crittenden and Justin Baer, Wall Street Journal, 10/16/13)**

“Federal Reserve officials are considering imposing a new capital surcharge on Wall Street banks that own oil pipelines, metals warehouses and other lucrative physical-commodities assets, according to people familiar with the matter...”

“Such an approach could encourage banks to pare back their involvement in physical commodities, which has increasingly raised concerns among regulators and lawmakers. While no decision has been made, imposing a surcharge would allow the Fed to sidestep a legal jam caused by existing laws that set Goldman Sachs Group Inc. and Morgan Stanley apart from peers and give the former investment banks broad leeway to own commodities...”

### **First Order of Business When CFTC Reopens: Building morale**

**(Zachary Warmbrodt, Politico, 10/17/13)**

“When the government shutdown ends and the Commodity Futures Trading Commission reopens its doors, one topic is very much on the mind of agency leaders: How many of its employees still want the job...?”

“CFTC Chairman Gary Gensler plans ... an all-staff town-hall meeting aimed at ‘bringing the family back together’ as part of an effort to shore up morale and address staff concerns...”

### **O'Malia Says CFTC Not Capable Of Monitoring Compliance With Dodd-Frank**

**(Richard Hill, BNA, 10/17/13)**

“Commodity Futures Trading Commissioner Scott O'Malia said Oct. 17 that the agency currently wasn't capable of monitoring compliance with the more than 60 rules and interpretations it has adopted in the last three years under the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.

“In a speech at the Edison Electric Institute CFTC Compliance Forum in Washington, O'Malia cited the registration of various entities as one area in which the agency is lagging. For instance, he said, there are 89 temporarily registered swap dealers, but not one is fully registered. Meanwhile, three swap data repositories (SDRs) are registered temporarily, and 18 swap execution facilities (SEFs) are similarly provisionally registered. ‘I can only imagine how long it will take for a SEF to secure final approval,’ O'Malia said in prepared remarks...”

### **CFTC's O'Malia: Billions in Contracts Traded as Swap Platforms Ramp Up**

**(Jacob Bunge, Wall Street Journal, 10/10/13)**

“Hundreds of billions of dollars in swap contracts have traded across new U.S. platforms that opened for business last week, according to a senior derivatives-market regulator...”

“About \$462 billion in interest-rate swaps have traded on the swap-execution platforms and about \$26 billion worth of credit derivatives, Mr. O’Malia said, speaking Thursday at an event hosted by the Investment Company Institute in New York. Of roughly 6,500 trades made on the new platforms, about 50% have been executed electronically and the rest negotiated over the phone or via other means, he said...”

**U.S. Regulator Seeks Order Enforcing Barclays Energy Fine**  
**(Brian Wingfield, Bloomberg, 10/10/13)**

“Barclays Plc (BARC) failed to pay \$488 million in fines and disgorgement demanded by the U.S. Federal Energy Regulatory Commission for rigging California electricity prices, the agency said in a court petition seeking to enforce the July order. The agency asked a federal judge in Sacramento yesterday to affirm the penalties, as more than 60 days had passed since they were imposed. The regulator alleged the U.K.-based bank and its employees engaged in a “fraudulent scheme to manipulate electricity prices” between 2006 and 2008...”

**Barclays Leaves Poorer Americans with Higher Utility Bills**  
**(Tyson Slocum, Public Citizen, 10/11/13)**

“Barclays should ‘take its medicine’ and pay the \$435 million civil penalty to the U.S. Treasury and \$34.9 million in unjust profits that federal regulators say it owes to low-income families primarily on the West Coast, whom it harmed through market manipulation for two years, seven organizations [including Americans for Financial Reform] said today in a joint statement...”

“Barclays is one of several banks found by the Federal Energy Regulatory Commission (FERC) to have manipulated energy markets between 2006 and 2008... FERC also imposed fines on JPMorgan Chase and Deutsche Bank as well for manipulating the California energy market; those banks paid their fines...”

**U.S. Watchdog Readies Tighter New Commodity Limits Rule**  
**(Douwe Miedema, Reuters, 10/11/13)**

“Commodity Futures Trading Commission Chairman Gary Gensler is rushing to get a revamped rule out before his term runs out in December, said the sources, even while agency lawyers are preparing to defend the original position limits rule that was knocked back by a U.S. court last year...”

“The position limits rules are among the most contentious of the 2010 Dodd-Frank legislation reforms that aim to prevent a repeat of the financial crisis but they threaten to compound the troubles facing Wall Street’s biggest banks whose role in physical commodity markets is under fire... The new rule will contain a better legal justification to

conform with the U.S. District Court ruling that the CFTC had failed to prove that the limits were needed, the first source said...”

## INVESTOR PROTECTION

### **SEC Chairman Voices Concern About Information Overload**

**Celia Taylor, Race to the Bottom, 10/18/13)**

“At a speech given on October 15<sup>th</sup> at the National Association of Corporate Directors Board Leadership Conference SEC Chairman Mary Jo White expanded on her remarks in an earlier talk and voiced concern about "information overload" - the problem of too much disclosure reducing the overall efficacy of the disclosure regime...”

While careful to note that investors benefit from disclosure, Chairman White stated:

"I am raising the question... as to whether investors need and are optimally served by the detailed and lengthy disclosures about all of the topics that companies currently provide in the reports they are required to prepare and file with us... We must continuously consider whether information overload is occurring as rules proliferate and as we contemplate what should and should not be required to be disclosed going forward."

"I'm not suggesting investors haven't benefited from this information - much, if not all, of it could be relevant and necessary, even though some insist investors don't take advantage of it. I am asking if investors need and are served by the detailed disclosures companies currently provide to the SEC...”

## HIGH-FREQUENCY TRADING

### **How High-Frequency Trading Is Taking Over Markets**

**(Wallace Turbeville, USNews.com, 10/18/13)**

“HFT trader bots now control more than 90 percent of all exchange-traded derivatives – the ‘financial instruments of mass destruction’ that [Warren Buffett warned](#) about, five years before the 2008 crash proved him right. In other words, we have reached the point in the sci-fi movies when the machines truly take command of the nuclear arsenal.

“So it is time to ask a few basic questions about HFT. Starting with: What good is it? How does society benefit when we reduce the average trade-completion time from, say, 125 milliseconds to 5 milliseconds...?”

### **French Experiment Shows Trouble with Tax on HFTs**

**(Noemie Bisserbe, The Wall Street Journal, 10/17/13)**

As the French government discusses with banks whether to recalibrate its position on a

European proposal to curb speculative trading with a tax on financial transactions, an experiment on home territory has shown it's hard to levy much money on elusive trading.

A little over a year ago, in August 2012, France introduced a domestic tax on financial transactions.

The snag: high frequency trading, which uses computer algorithms to trade stocks in fractions of a second, and can add extreme volatility to markets, is not subject to the tax.

## **FINANCIAL REFORM IN GENERAL**

### **Chastening the Giant Banks**

**(Peter Evans, New York Times, 10/14/13)**

“Five years after the crisis, some participants and close observers of the world of finance see a generational humbling of the big banks under way. For the first time in nearly 30 years, they say, finance is starting to look a bit more like a normal industry...

“‘The future’s going to be different,’ said Richard W. Fisher, president of the Federal Reserve Bank of Dallas and a former Wall Street banker and hedge fund manager. Though he thinks some financial institutions are still too large, he believes important progress has been made since the crisis. ‘The big, complex banks have been chastened,’ he said. ‘There will be more hitting of singles and less swinging for the fences...’”

### **Inefficient Markets: A Nobel For Shiller**

**(John Cassidy, New Yorker, 10/14/13)**

“In presenting a Nobel to Robert J. Shiller, of Yale, the prize-giving committee did the right thing, recognizing a contribution that challenged a piece of received wisdom—the idea that financial markets are efficient, in the sense that they accurately reflect all available information, and, apart from some short-lived aberrations, generally get prices right. During the nineteen-eighties and nineties... the efficient-markets hypothesis... was sweeping all before it and being used to justify a hands-off approach to financial regulation that eventually led to disaster.

“Shiller, in showing that the stock market bounced up and down a lot more than could be justified on the basis of economic fundamentals such as earnings and dividends, kept alive the more skeptical and realistic view of finance that Keynes had embodied in his ‘beauty contest’ theory of investing...”

## **The Financial Sector Has Become an Engine of Inequality**

**(Jim Lardner, USNews.com, 10/11/13)**

“The past three decades have been a period of explosive growth for Wall Street and the financial industry. Meanwhile, a tiny slice of the population has claimed an ever-bigger share of this country's economic rewards. The highest-earning one percent of Americans collected [roughly 20 percent](#) of total income last year; the top .01 percent – not enough people to fill a football stadium – had [5.5 percent](#) of the income.

“Could there be a connection here? Could our booming financial sector, which now generates an astonishing [30 percent of all corporate profits](#) (more than double the figure of thirty years ago), help explain America's rapid ascent to the highest level of economic inequality since the eve of the Great Depression, and the highest of any of the world's rich nations...?”

## **When Banks Swallow Each Other, You Deserve a Voice**

**(Preeti Vissa, Huffington Post, 10/14/13)**

“The massive wave of bank megamergers that took off in the 1990s had plenty of unfortunate results, including the invention of the phrase ‘too big to fail.’ Fewer mergers are happening now -- mainly because there are far fewer banks left to merge -- but the ones that do happen can have a huge impact on communities, and those communities deserve a voice.

“They don't have nearly enough of a voice now...”

## **EXECUTIVE COMPENSATION**

### **Other Dodd-Frank Pay Requirements to Follow Ratio Proposal**

**(Yin Wilczek, BNA, 10/18/13)**

“In the wake of the Securities and Exchange Commission's recent proposal on pay ratios, other executive compensation requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act are ‘on the way,’ a senior official said Oct. 8.

“Anne Krauskopf, special senior counsel in the SEC's Division of Corporation Finance Office of the Chief Counsel, said the division staff is ‘hard at work’ on developing recommendations—including those for clawbacks and employee hedging—for the Dodd-Frank measures. However, it is ‘premature to suggest dates or the order’ that the proposals will appear, Krauskopf said. She added that the SEC likely will issue proposals on other more immediate priorities, such as crowdfunding and Regulation A Plus, ‘before we come out with the rest of our new product line on exec comp.’”

## **CEO Pay Ratios: Trouble Ahead for HR?**

**(Tom Starner, Human Resource Executive Online, 10/14/13)**

“Based on feedback from some experts in the executive-compensation field, the SEC's rules -- likely to begin in the 2015 proxy season -- will not win any popularity tests within the HR community... While the SEC says it tried to give companies flexibility in how they calculate the median employee income and determine what qualifies as ‘total compensation,’ considering a company's entire workforce means that HR practitioners will be responsible for cataloguing the pay practices of all full-time, part-time, temporary, seasonal and international employees...”

## **PREPAID CARDS**

### **Prepaid Debit Cards Shed Some Fees, but Face Scrutiny**

**(Ann Carrns, New York Times, 10/9/13)**

“Prepaid debit cards continue to grow more popular and offer more services that mimic traditional debit cards, even as the federal government weighs new rules for the cards. In the latest expansion of a prepaid card offering, American Express on Tuesday announced that starting in November, customers will be able to load cash onto its Serve prepaid card, without charge, at about 14,000 CVS and 7-Eleven stores. The move is part of a revamping of the card to make it more attractive to customers who don't use traditional banks, said Dan Schulman, head of the enterprise growth division at American Express...”

## **MORTGAGES AND FORECLOSURES**

### **Mortgage Settlement Report Finds Lack of Debt Reduction**

**(Shaila Dewan, The New York Times, 10/16/13)**

“The \$25 billion national mortgage settlement, intended to help homeowners affected by the housing crisis, appears to be running ahead of schedule, according to a new report by the monitor of the program.

“But the number of households helped by the settlement has fallen short of the original predictions, and critics complained that too much relief was given to people who gave up their homes in short sales and not enough to help people retain their homes...”

(Original headline, shown above, later changed to: “Settlement Report Finds Banks Giving Timely Mortgage Relief.”)

### **Saving an Ignored Housing Safety Net**

**(Scott Talbott, The Hill, 10/11/13)**



A vice president of the Financial Services Roundtable defends forced-place insurance. “When a person buys a home, they agree to insure the property and keep it in reasonable condition. In exchange for a home loan, the bank holds that home as collateral until the loan is paid in full. However, if that buyer for some reason ceases to insure their home, the lender-placed insurance system allows the bank to acquire insurance to protect their asset. This is called lender-placed insurance and it is critical to ensuring the housing market remains stable for all...”

**CFA Statement on CFPB Mortgage Servicing Rule**  
**(Consumer Federation of America, 10/15/13)**

“Access to affordable and sustainable mortgage credit is a critical consumer concern. CFA has worked to identify and promote responsible approaches to the challenge of rebuilding a durable mortgage finance system for both rental and ownership housing since the collapse of the housing market and the beginning of Fannie Mae’s and Freddie Mac’s conservatorship. We published a White Paper on this topic in 2010 titled ‘Reengineering the Mortgage Finance System,’ which identified a number of different organizational paths that could be followed to achieve the critical objectives that we believe must underlie any government participation in the mortgage market...”

**CFPB Interim Final Rule - Mortgage Servicing TILA and RESPA**  
**(Consumer Financial Protection Bureau, 10/15/13)**

“This interim final rule also amends the 2013 HOEPA Final Rule by clarifying which federally required disclosure must be used in counseling under 12 CFR 1026.34(a)(5) for a closed-end HOEPA loan not subject to the Real Estate Settlement Procedures Act (RESPA). The rule replaces language that could have been read to require provision of the Good Faith Estimate (GFE) or successor disclosure under RESPA, which are not required for transactions not covered by RESPA, and instead clarifies that counseling may be based on the HOEPA disclosures that are required for such transactions pursuant to TILA section 129(a) and Regulation Z section 1026.32(c)...”

## **UNBANKED AND UNDERBANKED**

**Financial Access in a Brave New Banking World**

**(Joe Valenti, Center for American Progress, 10/16/13)**

“[A]ccording to the Federal Deposit Insurance Corporation, or FDIC, 17 million American adults lack a bank account, and that number is growing. An additional 51 million adults are considered “underbanked” by the FDIC, meaning that while they may have bank accounts, they also rely on some nonbank financial institutions such as check cashers and pawn shops.

“These unbanked and underbanked consumers are the ones that banks are trying to reach with their prepaid “payroll” cards, recognizing that switching to direct deposit can save money for both the employer and the employee...”

## DEBT COLLECTION

### **State Laws Offer Consumers Varying Degrees of Protections from Creditors, Report Says**

**(Danielle Douglas, The Washington Post, 10/9/13)**

“Depending on where you live, debt collectors may be legally entitled to take your entire paycheck, house or car and completely clear out your bank accounts.

“Families in the District have a better chance of holding on to their vehicles than those in Maryland and Virginia. Yet District residents could have 25 percent of their wages transferred to a creditor.

In a report to be released Thursday, the National Consumer Law Center surveyed the patchwork of state ‘exemption laws’ meant to protect struggling families from losing everything to creditors. The advocacy group found that few places met its five basic standards for protecting consumers...”

### **Alabama Home To Nation's Weakest Debtor Protections, Report Says**

**(Alex Walsh, All Alabama, 10/11/13)**

“Alabama law contains only a few weak protections for its residents that find themselves with significant amounts of debt, a new report shows, making it one of the worst places in the nation to find one's self in debt.

“Composed by the National Consumer Law Center, the report -- titled "No Fresh Start: How States Let Debt Collectors Push Families Into Poverty" -- gives Alabama an "F" grade for its debt protection laws. Just three other states received "F" grades (Delaware, Kentucky, Michigan)...”

### **Pennsylvania Over-Exposing People to Debt Collectors, Report Says**

**(Watchdog with Paul Muschick, 10/10/13)**

“‘Some state exemption laws are still parked in the horse-and-buggy days,’ says the report, which you can read [here](#). ‘For example, while Pennsylvania has strong protections for debtors’ wages, that state protects almost none of a debtor’s property: just clothing, a Bible, school books, sewing machines not held for resale, military uniforms and \$300 of other property.’”

Additional stories in:

- **Columbus (Ohio) Dispatch** (article also ran in the *Norwalk Reflector* (OH))
- **CreditCards.com**
- **Providence Journal** (RI)
- **Lancaster News** (PA)
- **The Atlantic** magazine (Cities blog)
- **Blue Oregon** (blog)
- **Consumerist** (Consumer Union blog; also made the CU top 5 stories of the week)

## HEDGE FUNDS

### **Compliance Costs Rise at Hedge Funds** (Juliet Chung, *The Wall Street Journal*, 10/17/13)

“A raft of regulations in recent years has significantly increased compliance costs at hedge funds, an industry survey expected to be released this morning found, with expenses taking a heavier toll on smaller firms than larger ones...”

“Hedge funds managing less than \$1 billion spend an average of \$700,000 a year on compliance, according to the survey by KPMG International and the Managed Funds Association and the Alternative Investment Management Association, an industry lobbyists. That compares to an average of \$6 million for larger funds that manage less than \$5 billion and an average of \$14 million for firms that manage \$5 billion or more.”

## STUDENT LOANS

### **Consumer Financial Protection Bureau Report Highlights Private Student Loan Payment Processing Pitfalls** (CFPB, 10/16/13)

“Today the Consumer Financial Protection Bureau (CFPB) Student Loan Ombudsman released a report analyzing complaints the CFPB has received from private student loan borrowers. According to the report, private student loan borrowers face payment processing pitfalls that can lead to increased costs, prolonged repayments, and harm to their credit profiles. The CFPB is also issuing a consumer advisory today to help certain borrowers communicate their payment preferences to servicers, so they can take better control of their student loans...”

## OTHER ISSUES

### **NY Fed Fired Examiner Who Took on Goldman**

**(Jake Bernstein, ProPublica, 10/10/13)**

“In the spring of 2012, [Carmen Segarra] determined that Goldman Sachs had a problem... Although Goldman had a patchwork of [conflict-of-interest] policies, the examiner concluded that they fell short of the Fed’s requirements...”

“Before she could formalize her findings, Segarra said, the senior New York Fed official who oversees Goldman pressured her to change them. When she refused, Segarra said she was called to a meeting where her bosses told her they no longer trusted her judgment. Her phone was confiscated, and security officers marched her out of the Fed’s fortress-like building in lower Manhattan, just 7 months after being hired...”

### **New York Bankers Association Sue to Block City Credit Law**

**(Chris Bruce, BNA, 10/16/13)**

“The New York Bankers Association Inc. asked a federal judge in New York to invalidate a law that could affect which banks are eligible to receive more than \$6 billion in New York City government deposits... “The suit alleges that law wrongfully gives the City and its Community Investment Advisory Board “regulatory power over banks that are subject to state and federal law.”