

# Financial Misconduct, Settlement Penalties and Corporate Governance Accountability

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## CONTEXT

The purpose of the case study is to review the facts and timeline leading to legal allegations of financial misconduct by JPMorgan Chase, and to analyze the financial settlement regulatory framework used to ensure corporate governance accountability.

## ABSTRACT

Recently, JPMorgan Chase paid over \$20 billion in settlement penalties, including \$1.7 billion for violating the United States' *Bank Secrecy Act*, 1970 (BSA; "the Act") which required the corporation to report suspicious financial activity related to Bernard L. Madoff — a man who orchestrated the largest Ponzi scheme in history. Key study questions:

- (1) Is JP Morgan Chase legally responsible through common law principles of duty of care, in the larger framework of negligence?
- (2) Is the duty of care contained in the BSA?
- (3) If duties requiring banks to alert authorities of suspicious activity are breached through governing statute, does the Act impose personal liability for executives? Do shareholders have adequate means for redress or are they "helpless victims"?

## METHODOLOGY

Examination of Misconduct Reports

Examination of Corporate Disclosures & Deferred Prosecution Agreement

Analysis of Relevant Jurisprudence → International Legal Databases

Regulatory Agencies → Settlement Orders

## RESULTS

1. JP Morgan Chase (defendant) legally responsible to the U.S. government (plaintiff). The Chief Risk Officer is an agent of the company. The common law tort principle of *vicarious liability* applies to the company's negligent misconduct, in its breach of the *standard of care* owed to the U.S. government.
2. The BSA is frequently used by law enforcement to fight money laundering in the U.S. "Failure to maintain an effective anti-money laundering program" and "failure to file a suspicious activity report" indicate criminal wrongdoing. "Duty of care" is not explicitly covered in the BSA nor is it clear Ponzi schemes constitute money laundering.
3. The BSA does not impose personal liability for executives, such as the Chief Risk Officer (CRO). This may warrant expanding the provisions of the BSA to protect shareholders without interfering with the Business Judgment Rule discussed in *Peoples*.

## CONCLUSION

JPMorgan Chase demonstrates negligent misconduct in failing to adequately identify, address, and disclose numerous warning signs concerning corporate fraud. The lack of personal liability and the Deferred Prosecution Agreement between JPMorgan Chase and the U.S. Attorney's Office penalizes shareholders for wrongdoing by managers. Current regulatory practice contained in the BSA inadequately upholds corporate accountability / responsible governance. The CRO may not be held personally liable under U.S. federal law, but amendments to the *Bank Secrecy Act* may improve accountability and reduce penalties offset by shareholders. Shareholders may seek to launch class action lawsuits to: (a) reduce or eliminate costly legal reserves; (b) recoup billions paid to regulators in penalties, and (c) secure shareholder wealth.

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