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JPMorgan Pushes Back On Depo Bid In Silver Trading Suit

By **Jon Hill**

Law360 (November 27, 2018, 7:49 PM EST) -- JPMorgan Chase & Co. told a New York federal judge on Tuesday that it wouldn't do anyone any good to allow additional depositions of three bank employees that have been requested by traders suing the bank over alleged manipulation of the silver futures market.

Earlier this month, the trader plaintiffs asked U.S. District Judge Paul A. Engelmayer to reopen discovery in the case so that they could redepose former JPMorgan trader John Edmonds and his supervisors Michael Nowak and Robert Gottlieb, a request that followed on the heels of **Edmonds' guilty plea** in a criminal commodities fraud and spoofing conspiracy case in Connecticut federal court.

But JPMorgan battled this request in a letter to the judge dated Tuesday, arguing that it would only prolong litigation that's already nearly four years old and doesn't have anything to do with Edmonds' guilty plea anyway.

"The actual facts underlying that plea — which plaintiffs do not bother to describe — dispel any superficial relevance it might appear to possess," the bank said. "Mr. Edmonds' conduct falls wholly outside the ambit of plaintiffs' allegations, thus rendering it highly unlikely that additional discovery would lead to relevant evidence."

Among other things, the market that the traders are suing over is the one for long-dated silver futures contracts, but Edmonds traded spot and active-month futures, according to JPMorgan.

"When he admitted to 'plac[ing] bids and offers…for precious metals futures contracts with the intent to cancel those bids and offers before execution,' Mr. Edmonds was necessarily referring to near-dated futures contracts, or perhaps options on those contracts, but certainly not long-dated futures maturing in a year or more," the bank said, quoting from his plea agreement. "With no overlap between the 'market' at issue in Mr. Edmonds' plea agreement and the 'market' here, discovery regarding Mr. Edmonds' misconduct will not yield relevant evidence."

JPMorgan added that it would be "particularly inappropriate" to allow the additional discovery considering the traders had the chance to quiz the three men on short-dated futures and options trading activity during their initial depositions but "chose not to do so."

"The pending Daubert motions should end or substantially circumscribe the case, and there is no basis to further prolong this expensive litigation," the bank said.

JPMorgan's letter comes after Judge Engelmayer gave the bank a Nov. 27 deadline to weigh in on the traders' request, saying that their bid to reopen the three bank employee depositions "appears, on initial review, well-founded, if not compelling."

That directive, **issued two days before Thanksgiving**, also ordered the government to elaborate on a request it made in a Nov. 19 filing to intervene and stay the litigation for six months in light of a "broader investigation" that's underway. Judge Engelmayer had balked at this request, calling the government's four-page filing "singularly unhelpful" and saying that it wasn't clear how the proposed redepositions would interfere with the government's investigation.

The government supplemented its request on Monday with an eight-page filing that addressed in more detail why it believed a six-month stay wouldn't prejudice either the traders or the bank, stressing the lack of opposition from the two sides and the limited length of the stay. In the meantime, the criminal investigation "could narrow and focus the issues in dispute in these civil actions," the government said.

The supplement also expanded on the government's argument that allowing the additional depositions would hurt its investigation, but those details — the bulk of the filing — were redacted.

In an order Tuesday, Judge Engelmayer said he appreciated the expanded explanation provided by the government but still has some questions about the investigation. Those answers will help him understand how the investigation and Edmonds' plea are connected to the case, the judge said.

"Among other matters, the court wishes to determine whether it is correct, as J.P. Morgan argues, that the subject matter of this litigation does not materially overlap with the government's investigation," Judge Engelmayer wrote.

The judge said he'll schedule a conference call with the government's legal team later this week to go over these questions and hopes soon after "to be able to resolve the need for a stay."

The trader plaintiffs in the consolidated suits, including hedge fund manager Daniel Shak, have alleged that JPMorgan manipulated silver futures, causing other traders to lose big. Shak contends that the company wrongfully gamed the closing range of deferred futures spreads in silver on a daily basis. He brought the action in New York state court and it was removed to federal court in early 2015. The other two cases, filed by Thomas Wacker and Mark Grumet, make similar claims.

Representatives for JPMorgan and the government did not immediately return requests for comment on Tuesday.

The traders are represented by David E. Kovel, Andrew M. McNeela and Karen M. Lerner of Kirby McInerney LLP.

JPMorgan Chase & Co. is represented by Amanda F. Davidoff, Austin L. Raynor and Karl L. Bock of Sullivan & Cromwell LLP.

The government is represented by Avi M. Perry and Matthew F. Sullivan of the U.S. Department of Justice's Fraud Section.

The cases are Shak et al., v. JPMorgan Chase & Co. et al., case number 1:15-cv-00992, Wacker v. JPMorgan Chase & Co. et al., case number 1:15-cv-00994, and Grumet v. JPMorgan Chase & Co. et al., case number 1:15-cv-00995, all in the U.S. District Court for the Southern District of New York.

--Additional reporting by Matt Bernardini and Jody Godoy. Editing by John Campbell.
