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## **6 WAYS to SURVIVE the U.S. CONGRESS**

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**COVER IMAGE:** In April and May 2012 large trading losses occurred at JPMorgan's Chief Investment Office, based on transactions booked through its London branch. The unit was run by Chief Investment Officer Ina Drew who has since stepped down. A series of derivative transactions involving credit default swaps (CDS) were entered into, reportedly as part of the bank's "hedging" strategy. Trader Bruno Iksil, nicknamed the London Whale, accumulated outsized CDS positions in the market. The original estimated trading loss of \$2 billion was announced, with the final actual loss expected to be substantially larger. On March 15 2013, five executives of JPMorgan Chase & Co. appeared before a Senate investigative subcommittee to explain \$6.2 billion in losses due to risky trading.

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# Financial Regulators Compete, JPMorgan Loses

Kathleen Wailes & John Lovallo  
Originally Published on LEVICK Daily



**T**he Federal Bureau of Investigation (FBI); the Federal Deposit Insurance Corporation (FDIC); the Commodity Futures Trading Commission (CFTC); the Securities and Exchange Commission (SEC); and the Office of the Comptroller of the Currency (OCC). Right now, no less than five federal agencies are investigating or considering enforcement actions against JPMorgan Chase for alleged improprieties ranging from flawed home loan reviews to prior knowledge of the Bernie Madoff Ponzi scheme. Before all is said and done, even more could enter the fray—including the newly formed Consumer Financial Protection Bureau (CFPB).

We've heard of piling on, but this is ridiculous.

In the wake of the 2008 financial crisis, the passage of Dodd-Frank, and the continued reputational issues impacting the financial services industry, it behooves banks, mortgage lenders, and other financial institutions to examine the factors driving such intense levels of scrutiny. It wasn't long ago that JPMorgan Chase was a D.C. darling. Under the leadership of Chairman and CEO Jamie Dimon, the firm was seen as a prime example of "the way forward" in the post-crisis era. Its cooperative stance and willingness to reform helped strengthen regulator relationships. As a result, many in Washington D.C. saw the bank as a partner, rather than a target, in their efforts to clean up Wall Street.

So how did the relationship sour so quickly?

There are, of course, the alleged misdeeds themselves, none of which can be ignored by financial regulators that continue to come under fire for not doing enough to protect consumers. There is also the reportedly defiant tone that some bank executives have taken with their inquisitors, which is understandable to some in the industry; but only emphasizes the target on JPMorgan's back.

There's little doubt that these are the core issues at the heart of the matter. But as we dig deeper, we see another dynamic at play that might be just as impactful. It's an unintended and somewhat



unforeseen consequence of Dodd-Frank, or any significant restructuring of a regulatory regime in which there are multiple players with often overlapping jurisdictions and responsibilities.

Right now, federal regulators feel as if they have an elephant in their sights—and each one wants their own piece of the prize. Such inter-agency competition is nothing new. Turf wars come with the territory in Washington D.C. But in these early days of the Dodd-Frank era, the competitive instincts among financial regulators have intensified. This is the best chance they will have to stake their claims as leading authorities in the new regime—and bagging big game like JPMorgan Chase will go a long way in solidifying their desired positions moving forward.

That's bad news for JPMorgan Chase, as each new development in multiple investigations presents new enforcement liabilities and does more damage to its brand, reputation, and bottom line. For others in the financial services arena who could find themselves in the midst of a similar regulatory onslaught, the lesson is clear: When one regulator comes knocking, expect more to follow. **L**

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# SIX WAYS TO SURVIVE THE U.S. CONGRESS

Richard S. Levick

Originally Published on Forbes.com

*On March 15, five executives of JPMorgan Chase & Co. appeared before a Senate investigative subcommittee to explain \$6.2 billion in losses due to risky trading. Subsequent coverage featured headlines like “No drama at JPMorgan hearing—just an executive throwing her staff under the bus.”*

It was likewise observed that the hearings swung an “uncomfortable spotlight” on bank Chief Jamie Dimon even though he didn’t appear before the subcommittee. One executive who did appear was “berated” for nearly an hour because he purportedly underestimated salient risks to investors and regulators.

Gosh, it doesn’t sound like any fun at all.

In fact, congressional investigations—including fact-finding by staffers that may or may not lead to a public hearing before elected officials who may or may not be driven by self-interested political considerations—provide at least as perilous a venue for corporate executives as any trial in open court (short of a televised criminal trial).

The comparison to litigation is more than metaphorical. It’s no accident that lawyers like John Merrigan, who prepare and guide clients through the arduous process, apply the language of litigation practice in describing how they approach Congressional investigations.

“You must first assess the client’s overall exposure and you must have a consistent ‘theory of the case’ at every juncture,” says Merrigan, co-chair of the Federal Law and Policy practice group at DLA Piper. “It’s all about due diligence during the investigation as well as the enforcement period after the hearing,” he adds. “What is the government trying to accomplish, and how does the company’s involvement in the investigation further that objective?”



Also as in litigation, the collaboration between client and counsel is essential to a positive outcome. No different than with any investigation or trial, it's not just in the hands of the lawyer. The behavior of the defendants is decisive throughout and, in turn, that behavior is usually based on how well they understand the process itself. The bad news is that most business leaders who receive a formal letter of inquiry from Congress have no idea what's in store, how to respond, or what's at stake.

The good news is that—for first-time witnesses questioned about a defense contract no less than the CEOs of major banks who appear before

by the government relations people. In fact, you should take it with all the same deadly seriousness as if it were, again, a court of law. Assume that a fair-minded hearing will occur if only in order to better ensure that your demeanor won't appear contentious or uncooperative.

It's their ballpark. At the same time, understand how the investigation and especially the hearing itself differ from litigation. In some cases, committees do not recognize privilege, as John Merrigan points out. "There are no rules of procedure that assure you will have the time to make your case, and the committee members hold all the cards,"

**Assume that a fair-minded hearing will occur if only in order to better ensure that your demeanor won't appear contentious or uncooperative.**

Congress with excruciating regularity—the process is not so formidable as to be inexplicable. And it's the job of your lawyer to play Virgil shepherding Dante through the spiraling circles of Beltway hell.

In that context, here's an introductory practicum with a few specific tips culled from leading Congressional investigations experts. As Merrigan advises, committee objectives vary from instance to instance. Some may involve nothing worse than simple oversight. Other legislators have specific agendas; Sen. Carl Levin, for example, is determined to eradicate abusive tax shelters. That said, we trust the following best practices are sturdy enough guideposts no matter what kind of investigatory landscape you and your company enter on.

Check your outrage at the door. You may instinctively resent a Congressional investigation as a political hatchet job in disguise or at best a photo op for the committee members. You may be wondering why the whole matter isn't handled

adds Ted Hester, senior partner at King & Spalding. No appeals process is available to overturn the committee's report because a committee member happened to speak out of turn.

Again, the purpose is to manage your own expectations with respect to the ordeal that lies ahead and, by so doing, condition how you will look and what you will say. Whatever vexatious twists and turns the proceedings ensue, you must appear unceasingly receptive and eager to be helpful.

Facts, facts, and more facts. Immerse yourself in all the relevant specifics of the case, says Coleen Middleton, Of Counsel at Wilson Elser, and anticipate the toughest related questions. Know all the relevant documents that your lawyer has produced to the committee, Hester cautions; know them backward and forward. The more closely you hew to the facts, the less room you allow for ideologically motivated flourishes from the bench.

Smart ideologues will respect the truth if only because they won't want to jeopardize or discredit their own agendas by peremptorily dismissing expert opinion or irrefutable facts. "They don't want to appear as if they're on a witch hunt," adds Middleton.

Know your audience. Assume a fair-minded hearing but prepare for as many possible political agendas as there are congressmen sitting on the committee. As Merrigan advises, one strategy to assess the committee's ideological proclivities is by looking at the majority-minority party mix, and the dynamics that may result (in one direction or another). There's no foolproof barometer, however. When it seems that agendas will indeed drive or at least color the hearing, a number of best practices are palliative.

As Hester advises, coordinate with your communications and government relations people at every juncture; likewise coordinate with in-house and outside lawyers handling related litigation and investigations by other government agencies, not just the ones handling the investigation. Monitor all media, both the news and social media, for clues as to what individual members are thinking and intending. Information is still power, even when you're on the vulnerable end of a Congressional investigation.

Your lawyers handling the investigation will confirm ahead of time what the scope of the hearing is. Doing so may not keep all the congressmen on the reservation, but it is a useful precautionary measure to neutralize narrow political motives as much as possible.

Strategically engage committee members. There are often important junctures during the hearing when it's advisable to proactively address the committee members. For example, it may be shrewd to simply ask how you're doing: Was that information helpful, Congressman? Have I answered your question, Congressman? In other instances, it may serve your interests to directly—but very politely—



confront a committee member who's off on some ideological tangent or playing fast and loose with documented fact. At such moments, counsel will advise if it is wise to respectfully disagree with your interrogator. The operative word is "respectfully."

Lay the groundwork ahead of time. Committee members typically have only five minutes allotted to strut their stuff during the hearing. They won't relinquish control of those precious moments. Hester says the congressional staffers are therefore key: If you can effectively make your case to them in-camera, it naturally affects how the committee handles it in public.

Of course not everyone who appears before Congress has the facts on their side. If the actual facts are bad enough, allows Hester, there are a thousand-and-one ways to implicate yourself during a Congressional hearing. At the reputational level, the Fifth Amendment is a fatal choice for you and your company while the news cameras are running.

But the alternative could be the worst of both worlds: a business disaster and jail time. It's been known to happen. **L**

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# How to Protect Your Brand

## from Twitter Hacking

Peter LaMotte

Originally Published on PRWeek.com



**A**fter the Burger King and Jeep Twitter accounts were hacked earlier this year, we heard a lot of talk about big brands abandoning the platform. You can put that notion to rest right now. With more than 200 million active users and a dizzying array of brand building tools, Twitter is an essential element of smart communications strategy. It personalizes customer services, bypasses the traditional media filter and wields significant influence on the conversations that matter to brands.

Twitter's vast popularity makes it a huge target for hackers. But the potential for mischief is a risk well worth taking. The relative ease with which Burger King and Jeep handled their hacks is another reason brands won't flee. Both companies quickly contacted Twitter, suspended their accounts and pulled down the hackers' false messages.

When they were up and running again both companies cleared up any lingering confusion with simple statements explaining the hacking and correcting the misinformation. Before long, both Burger King and Jeep reclaimed their brand identities.

Jeep's tweet to Burger King inviting it to "grab a burger and swap stories" put an end to the episode with the good humor that defines smart social media strategy.

Burger King's tweet welcoming the additional 34,000 followers it garnered as a direct result of the hacking was similarly well played. In the end, both companies ended up with a stronger foothold in the social media space than they occupied before.

While Twitter hacking is an acceptable risk for most brands, it is also one that needs to be mitigated with strategies that enhance security and increase preparedness. With potential upticks in both the frequency and severity of future hacks on the horizon, every brand needs to operate as if it is next on hackers' hit lists.

### Social Security

On the security front, four best practices have

emerged as key tactics for reducing the points of vulnerability that hackers exploit. Each represents an increasing level of protection and all deserve the consideration of any brand seeking to neutralize the threat.

**1. Diverse passwords** Too many organizations use the same passwords to access and manage all of their social media properties. Instead, organizations should diversify their passwords by creating uniformed segments within the password specific to the company, the user and the platform.

**2. Strategic access** Limit access to social media passwords to only those in the organization who need them to do their jobs. The fewer people that are aware of the password, the fewer opportunities there are for it to fall into malicious hands.

**3. Factor authentication** For the more cautious brands factor authentication represents the most intense level of password security available. When seeking access to social media properties account managers enter login information and then are sent a random password to an email address or mobile device. They then enter that password for total access.

**4. Testing** If fear morphs into outright paranoia, organizations can hire outside experts to test their security much like they would probe IT infrastructure for vulnerabilities. These experts essentially act as would-be hackers seeking to exploit the any holes in the organization's system.

### First Responders

Even state-of-the-art security measures aren't enough to provide total protection. As such, Twitter hacking needs be addressed in every organizational social media crisis plan. The plan should emphasize the following strategic imperatives:

**1. Contact Twitter to pull the page down.** The moment a hack is detected, suspend the account until passwords can be reset and security can be reestablished.

**2.** Ensure no other social media properties have been compromised. As alluded to above, a hack one social media property increases the probability that another will be compromised. In the hours following a hack, monitoring efforts need to be intensified to ensure that organization understands the full scope of the problem.

**3.** Change all passwords. Don't assume the YouTube channel or Facebook profile is safe because the hack was limited to Twitter. Change the passwords on every social property.

**4.** Address the hacking and correct misinformation. As soon as possible, the organization should articulate the fact that it suffered a social media hack and correct any misinformation that has permeated the social media space.

**5.** Don't let the hacking be the story. Once the account is secure and the record is corrected, don't hesitate to get back to branding again. Here, the Jeep and Burger King examples provide ideal response templates. Their playful tweets following the hacks effectively communicated that the ordeal was over, even as they reminded followers of what their brands are all about. Remember, the sooner an organization moves on from the hacking, the sooner its followers will as well. **L**

*Peter LaMotte is a senior VP at LEVICK and Chair of the company's Digital Practice.*

“Don't assume the YouTube channel or Facebook profile is safe because the hack was limited to Twitter. Change the passwords on every social property.”

# BLOGS worth following



## THOUGHT LEADERS

### Amber Naslund

[brasstackthinking.com](http://brasstackthinking.com)

Amber Naslund is a coauthor of *The Now Revolution*. The book discusses the impact of the social web and how businesses need to “adapt to the new era of instantaneous business.”

### Brian Halligan

[hubspot.com/company/management/brian-halligan](http://hubspot.com/company/management/brian-halligan)

HubSpot CEO and Founder.

### Chris Brogan

[chrisbrogan.com](http://chrisbrogan.com)

Chris Brogan is an American author, journalist, marketing consultant, and frequent speaker about social media marketing.

### David Meerman Scott

[davidmeermanscott.com](http://davidmeermanscott.com)

David Meerman Scott is an American online marketing strategist, and author of several books on marketing, most notably *The New Rules of Marketing and PR* with over 250,000 copies in print in more than 25 languages.

### Guy Kawasaki

[guykawasaki.com](http://guykawasaki.com)

Guy Kawasaki is a Silicon Valley venture capitalist, bestselling author, and Apple Fellow. He was one of the Apple employees originally responsible for marketing the Macintosh in 1984.

### Jay Baer

[jaybaer.com](http://jaybaer.com)

Jay Baer is coauthor of, “*The Now Revolution: 7 Shifts to Make Your Business Faster, Smarter and More Social.*”

### Rachel Botsman

[rachelbotsman.com](http://rachelbotsman.com)

Rachel Botsman is a social innovator who writes, consults and speaks on the power of collaboration and sharing through network technologies.

### Seth Godin

[sethgodin.typepad.com](http://sethgodin.typepad.com)

Seth Godin is an American entrepreneur, author and public speaker. Godin popularized the topic of permission marketing.

## INDUSTRY BLOGS

### Holmes Report

[holmesreport.com](http://holmesreport.com)

A source of news, knowledge, and career information for public relations professionals.

### NACD Blog

[blog.nacdonline.org](http://blog.nacdonline.org)

The National Association of Corporate Directors (NACD) blog provides insight on corporate governance and leading board practices.

### PR Week

[prweekus.com](http://prweekus.com)

PRWeek is a vital part of the PR and communications industries in the US, providing timely news, reviews, profiles, techniques, and ground-breaking research.

### PR Daily News

[prdaily.com](http://prdaily.com)

PR Daily provides public relations professionals, social media specialists and marketing communicators with a daily news feed.

## BUSINESS RELATED

### FastCompany

[fastcompany.com](http://fastcompany.com)

Fast Company is the world's leading progressive business media brand, with a unique editorial focus on business, design, and technology.

### Forbes

[forbes.com](http://forbes.com)

Forbes is a leading source for reliable business news and financial information for the World's vvbusiness leaders.

### Mashable

[mashable.com](http://mashable.com)

Social Media news blog covering cool new websites and social networks.

# LEVICK IN THE NEWS

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## ■ ARTICLES

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*Forbes* | MARCH 28, 2013

Trademarking 101: 9 Red Flags Before Naming Your Startup

*Bloomberg News* | MARCH 27, 2013

BRICS Nations Make Headway in Push for More Global Clout

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