Massive bank crimes receive the usual token slap

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On Monday we pointed to the latest example of the Justice Department's unwillingness to prosecute Wall Street criminals when we remarked that the decision not to prosecute Citi for gaming LIBOR proves that the modus operandi at the DOJ has not changed when it comes to white glove treatment for white collar crime. We've also recently documented how, even after Wall Street firms essentially admit to committing egregious fraud by ponying up billions to settle allegations of manipulation, policies put in place to ensure that deep pockets don't allow big banks to simply sweep scandals under the rug once settlements are doled out are systematically skirted. The latest example of this was Deutsche Bank, who, after paying $2.5 billion to settle allegations its traders conspired to manipulate all manner of -BORs, worked with the CFTC to have language inserted in the settlement agreement exempting the bank from a Dodd Frank rule that restricts so-called "bad actors" from taking advantage of exempt securities transactions. Here's what we said earlier this month:

As we noted when the news first broke, no one will go to jail for this of course, but theoretically, the settlement (which included payments to the NYDFS, the DOJ, the UK's FCA, and the CFTC) should have landed Deutsche Bank on the SEC's "bad actors" list, which is kind of like the Dodd-Frank equivalent of 'time out' and restricts the offender from participating in exempt securities offerings. Well as you might imagine, that's no fun if you're a Wall Street bank and it could end up costing you quite a bit of money in lost underwriting fees, but fortunately, there's a way around it — you simply convince the regulator you settle with to exempt you from the SEC "bad actor" ban.

No restrictions after massive manipulation

The bank later successfully applied for an SEC waiver, meaning that in the end, Deutsche Bank faces no restrictions in connection with the massive manipulation of the world's benchmark interest rates.

Given all of this it should come as no surprise that although multiple TBTF banks are reportedly set to settle FX rigging allegations and (gasp) plead guilty to the charges, concerns about the "disruption of business" will very likely allow Wall Street to dodge many of the consequences that should, by law, accompany their admissions of guilt.

Via Reuters:

The parent companies or main banking units of as many as five major banks, rather than their smaller subsidiaries, are expected to plead guilty to U.S. criminal charges over manipulation of foreign exchange rates, people familiar with the matter said.

A handful of banks will likely resolve forex-rigging investigations by the U.S. Justice Department as soon as this week: JPMorgan Chase & Co, Citigroup, British banks Royal Bank of Scotland and Barclays and Swiss bank UBS...

If parent companies of U.S.-based JPMorgan and Citigroup plead guilty, it would be the first time in decades that a major American financial institution has done so. Last year, when Swiss bank Credit Suisse AG pleaded guilty in the United States to helping wealthy Americans evade taxes, it became largest institution in over 20 years to plead to criminal wrongdoing. It was soon followed by French banking giant BNP Paribas.

Fearing unintended reverberations…

U.S. authorities, fearing unintended reverberations such as the layoffs of innocent employees, have rarely sought criminal convictions against major global financial institutions and instead have allowed their smaller foreign subsidiaries to take the bullet.

Guilty pleas trigger a cascade of consequences. Banks may have to negotiate regulatory exemptions to avoid serious disruptions of business.

It has been called the "Arthur Andersen effect" after the demise of the big 5 accounting firm after its indictment in 2002 over charges related to Enron Corp's accounting scandal. Some 28,000 employees at the firm lost their jobs.

The guilty pleas with the U.S. Department of Justice, which will likely be to antitrust charges for colluding by traders to rig foreign currency rates, could take place as soon as Wednesday, people familiar with the matter have said. The banks also are expected to pay penalties of some $1 billion or more, and the collective settlement is expected to exceed the $4.3 billion in fines paid by a half-dozen banks to global regulators last November...

Authorities now may seek to limit the fallout from guilty pleas with assurances from various regulators that banking licenses will not be automatically revoked. Institutions also may obtain waivers if the pleas would otherwise prohibit them from business activities such as participating in certain private offerings, or trading billions of dollars in government securities.

Granting waivers to big banks that break the law

Granting waivers to big banks that break the law has become a flash point at the Securities and Exchange Commission and other U.S. regulators. Democrats have questioned whether the agencies were simply rubber-stamping those requests and being too soft on repeat offenders...

The last major financial institution to enter a comparable guilty plea in the United States is Drexel Burnham Lambert in 1989, Garrett said. Bankers Trust pleaded guilty in 1999.

Hand over their $1 billion token payment

This is par for the course. While the guilty pleas will undoubtedly be trotted out by the Justice Department and cited as evidence that the US is serious about holding Wall Street accountable for conspiring to rig, fix, or otherwise manipulate every market on the face of the planet, the reality is that each bank will hand over their $1 billion token payment and that, as they say, will be that. The excuse for allowing these institutions to avoid the type of penalities which would actually matter to the firms is that subjecting them to restrictions on their business activities — especially capital raising and lucrative private placements — would pose a systemic risk and would put "innocent" people's jobs in harms way. Perhaps regulators would do well to recall just how many "innocent" people lost their jobs and watched in horror as their 401ks were cut in half when the very same type of chicanery to which these banks are now pleading guilty collapsed the entire system and plunged the world into the deepest recession since 1930.