

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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September 16, 2015

The Honorable Mary Jo White  
Chair, Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Dear Chairwoman White:

I am writing to request information about waivers the Securities and Exchange Commission (SEC) granted earlier this year to five banks following their admissions of guilt to felony charges. These waivers are of particular concern given the fact that all five banks have a history of receiving fines and penalties for prior criminal and civil misconduct.

The information I am requesting will help the American people and those they have elected to represent them understand the SEC's decisions to grant waivers to these banks despite their past misconduct. This information will also assist Congress in evaluating whether additional laws are needed to help prevent financial institutions from engaging in repeated misconduct.

### Background

On May, 20, 2015, Citicorp (Citi), JPMorgan Chase & Co. (JPMorgan), Barclays PLC (Barclays), UBS AG (UBS), and The Royal Bank of Scotland plc (RBS) all pleaded guilty to criminal violations of the law.<sup>1</sup> As part of those guilty pleas, each admitted to conspiring to fix prices and rig bids for U.S. dollars and euros traded on the foreign currency exchange (FX) spot market in the United States and elsewhere.<sup>2</sup> According to the plea agreements, traders within each bank—who identified themselves as “The Cartel” or “The Mafia”—manipulated currency prices on the FX spot market twice daily through an exclusive electronic chat room and used coded language to manipulate benchmark exchange rates in an effort to increase their profits.<sup>3</sup>

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<sup>1</sup> *5 Big Banks Expected to Plead Guilty to Felony Charges, but Punishments May Be Tempered*, New York Times (May 13, 2015) (online at [www.nytimes.com/2015/05/14/business/dealbook/5-big-banks-expected-to-plead-guilty-to-felony-charges-but-punishments-may-be-tempered.html?\\_r=1](http://www.nytimes.com/2015/05/14/business/dealbook/5-big-banks-expected-to-plead-guilty-to-felony-charges-but-punishments-may-be-tempered.html?_r=1)).

<sup>2</sup> Department of Justice, *Five Major Banks Agree to Parent-Level Guilty Pleas* (May 20, 2015) (online at [www.justice.gov/opa/pr/five-major-banks-agree-parent-level-guilty-pleas](http://www.justice.gov/opa/pr/five-major-banks-agree-parent-level-guilty-pleas)).

<sup>3</sup> *U.S. v. Barclays Plc*, No. 3:15-cr-00077-SRU, Plea Agreement (D. Conn. May 20,

Under their plea agreements, each bank agreed to pay a criminal fine proportional to its involvement in the FX market conspiracy and to undergo a three-year period of probation.

In connection with their guilty pleas, the banks requested from the SEC certain waivers and exemptions to avoid being barred from industry activities and from making securities offerings on the advantaged terms available to Well-Known Seasoned Investors (WKSI). All of the banks applied for and received WKSI waivers.<sup>4</sup> Barclays and UBS also applied for and received “bad actor” waivers, which allowed these two banks to continue benefiting from registration exemptions and to raise unlimited amounts of money.<sup>5</sup> In addition, Citi, JPMorgan, RBS, and UBS received exemptions from provisions of Section 9(a) of the Investment Company Act.<sup>6</sup>

### **Prior Repeated Instances of Misconduct by the Banks**

Securities laws require that before the SEC grants waivers, applicants must provide a showing of “good cause” and, in certain instances, demonstrate that a waiver is consistent with the public interest and the protection of investors.<sup>7</sup> The SEC’s decision to grant waivers and exemptions to these banks raises serious concerns given the severity of the criminal conduct and the fact that several banks are repeat offenders.

All of the banks had received previous SEC waivers for civil misconduct prior to their guilty pleas in connection with their roles in the FX market manipulation. Since the 2008 financial crisis, at least 30 waivers have been issued to these banks for misconduct and failures to comply with pertinent securities statutes and rules.<sup>8</sup> The violations for which these waivers were issued have produced more than \$5 billion in disgorgements, prejudgment interest, civil penalties, and criminal penalties.

According to the Department of Justice (DOJ), Barclays and UBS were also the subjects of non-prosecution agreements in connection with their manipulation of the London Interbank Offered Rate (LIBOR) and other benchmark interest rates. These banks’ FX spot market misconduct directly violated the principal terms that were set forth in their prior non-prosecution agreements. As a result, UBS pled guilty to wire fraud, and an additional \$60 million criminal

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2015) (online at [www.justice.gov/file/440481/download](http://www.justice.gov/file/440481/download)).

<sup>4</sup> 17 C.F.R. § 230.405.

<sup>5</sup> 17 C.F.R. § 230.506.

<sup>6</sup> 15 U.S.C. § 80a-9.

<sup>7</sup> See, e.g., 15 U.S.C. §§ 77z-2, 78u-5.

<sup>8</sup> Securities and Exchange Commission, Division of Corporation Finance, *No-Action, Interpretive and Exemptive Letters* (online at [www.sec.gov/divisions/corpfin/cf-noaction.shtml](http://www.sec.gov/divisions/corpfin/cf-noaction.shtml)) (accessed July 31, 2015); Securities and Exchange Commission, *Investment Company Act Notices and Orders Category Listing* (online at [www.sec.gov/rules/icreleases.shtml#ineligiblefirm](http://www.sec.gov/rules/icreleases.shtml#ineligiblefirm)) (accessed July 31, 2015).

penalty was imposed on Barclays in addition to a \$650 million fine for manipulating the FX spot market.

UBS has also been the subject of two previous criminal enforcement actions. According to DOJ, in February 2009:

UBS entered into a Deferred Prosecution Agreement with the Department's Tax Division for conspiring to defraud the United States of tax revenue through secret Swiss bank accounts for United States taxpayers (which conduct occurred prior to 2008), and agreed to pay \$780 million.<sup>9</sup>

In May 2011, UBS entered into a non-prosecution agreement with the DOJ's Antitrust Division to resolve allegations of bid-rigging in the municipal bond derivatives market.

Permitting repeat offenders to continue business as usual poses a severe risk to investors and the American economy. It undermines the public's confidence in the ability and willingness of regulators to protect against illegal, improper, and abusive conduct. As one SEC Commissioner, Kara M. Stein, noted in her dissent to the Banks' waiver request:

There are compelling reasons to reject these requests to waive the automatic disqualifications required by statute or rule. Chief among them, however, is the recidivism of these institutions.<sup>10</sup>

As America continues to recover from the 2008 financial crisis, our citizens depend on transparent and effective administration of the nation's securities laws to punish regulatory and criminal violations. Commissioner Stein's dissent indicates that, like many Americans, she is troubled by repeated instances of misconduct by these global financial institutions.

For these reasons, I request that you answer the questions set forth below:

1. Please explain the processes by which the SEC evaluated each of the waiver requests filed by the banks, determined that the factual circumstances met applicable legal standards, and granted waivers to the banks following their guilty pleas to the charges arising from these Banks' manipulation of the FX spot market.
2. Did the SEC's review of the waiver requests arising from the banks' guilty pleas to criminal charges take into consideration their recidivism? If so, how was this factored

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<sup>9</sup> *U.S. v. UBS AG*, No. 3:15-cr-00076-RNC, Plea Agreement (D. Conn. May 20, 2015) (online at [www.justice.gov/file/440521/download](http://www.justice.gov/file/440521/download)).

<sup>10</sup> Securities and Exchange Commission, *Dissenting Statement Regarding Certain Waivers Granted by the Commission for Certain Entities Pleading Guilty to Criminal Charges Involving Manipulation of Foreign Exchange Rates by Commissioner Kara M. Stein* (May 21, 2015) (online at [www.sec.gov/news/statement/stein-waivers-granted-dissenting-statement.html](http://www.sec.gov/news/statement/stein-waivers-granted-dissenting-statement.html)).

- into the review processes? What was the SEC's justification for granting waivers to the banks in light of their recidivism?
3. With regards to Barclays and UBS, how did those banks' manipulation of LIBOR factor into the review processes?
  4. Did the SEC review prior waivers granted to the banks to ensure their guilty pleas to criminal charges did not violate the terms and conditions of the existing waivers, and, if so, what was the process for these reviews?
  5. What tools, collaborative with other administrative agencies and DOJ or otherwise, will the SEC use to monitor the banks during their three-year period of corporate probation?
  6. How will the granting of these waivers for criminal activities affect the SEC's consideration of any future waiver requests from these banks?
  7. Please provide the SEC's written guidance for considering waiver requests for each of the statutory and regulatory disqualification provisions the SEC administers.
  8. Does the SEC have guidance for conditioning waivers of any of the statutory and regulatory disqualification provisions it administers?
  9. What specific information does the SEC request from a financial institution when processing a waiver request?
  10. What counseling, if any, do SEC staff members provide to companies seeking waivers?
  11. What information, obtained from a waiver requestor and otherwise, is provided to Commissioners prior to their consideration of any waiver request?
  12. What information, obtained from a waiver requestor and otherwise, is provided to Commissioners when a waiver request does not receive a vote from the five Commissioners?
  13. How is the decision made regarding whether a waiver request will be considered by the five Commissioners or by the Division of Corporation Finance?
  14. Have there been any instances in which the SEC has denied a company's request for a waiver following that company's conviction (or guilty plea) of a felony or misdemeanor? If so, please identify the corporation(s) that sought the waiver(s), the violations for which the waivers were sought, the reasoning for the denial of the waiver(s), and whether the waiver was denied by the Division of Corporation Finance or by a vote of the Commissioners.
  15. Have there been any instances in which the SEC has denied a company's request for a waiver following that company's violation of civil statutes? If so, please identify the corporation(s) that sought the waiver(s), the violations for which the waivers were

sought, the reasoning for the denial of the waiver(s), and whether the waiver was denied by the Division of Corporation Finance or by a vote of the Commissioners.

16. Have there been any instances in which the SEC has rescinded an existing waiver due to a corporation's subsequent criminal or civil misconduct? If so, please identify the corporations and briefly describe those instances. Please also identify whether the decision to rescind the waiver was made by the Division of Corporation Finance or by the Commissioners.
17. What disclosure to the public does the SEC provide in instances in which the Commission has denied a company's request for a waiver or rescinded an existing waiver?
18. Why has the SEC limited the public's ability to review information regarding waiver votes to the agency's reading room?

Please provide the requested information by October 14, 2015. If you have any questions about this request, please contact Lucinda Lessley at (202) 225-5501. Thank you for your cooperation with this matter.

Sincerely,

  
Elijah E. Cummings  
Ranking Member

cc: The Honorable Jason Chaffetz, Chairman