

Securities Regulation Daily Wrap Up, ENFORCEMENT—Stein dissents to waivers due to recidivism of major banks, (May 26, 2015)

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By John Filar Atwood

SEC Commissioner Kara Stein has dissented to waivers granted last week to UBS AG, Barclays Plc, Citigroup Inc., JPMorgan Chase & Co. and the Royal Bank of Scotland Group Plc (RBS) after they pleaded guilty to participating in a conspiracy to manipulate exchange rates in the foreign currency exchange spot market. Stein believes there were compelling reasons to reject the waiver requests, including the recidivism of the banks involved.

Repeat offenders. The waivers allow the banks to remain eligible for well-known seasoned issuer (WKSI) status under the 1933 Act. Stein noted that the Commission has granted 23 WKSI waivers to these five banks in the past nine years. UBS has received seven waivers, and JPMorgan Chase has received six, since 2008. Citigroup has received four waivers since 2006, but triggered the WKSI disqualifications another time for which it lost its WKSI status between 2010 and 2013.

LIBOR manipulation. In her dissenting statement, Stein noted that the latest criminal charges come shortly after actions against UBS, Barclays, and RBS for their manipulation of the London Interbank Offered Rate (LIBOR). As part of the settlements in that case, UBS, Barclays and RBS each agreed not to commit additional crimes during the term of the agreements. Stein said that allowing the banks to continue business as usual after multiple violations poses risks to investors and the American public that are being ignored.

She also pointed out that after the LIBOR guilty pleas, UBS was granted a WKSI waiver that was explicitly conditioned on compliance with the judgment in the LIBOR-related matter. That condition has now been violated, she noted, but the Commission still granted a new waiver. The type of recidivism the banks have displayed should lead to revocations of prior waivers, not the granting of a whole new set of waivers, she said.

Symbolic convictions. Stein said that she is troubled by repeated instances of noncompliance at these global financial institutions, which may be indicative of a culture that does not support legal and ethical behavior. The latest series of actions has effectively rendered criminal convictions of financial institutions largely symbolic, she concluded.

Companies: UBS AG; Royal Bank of Scotland Group plc; JPMorgan Chase & Co.; Citigroup Inc.; Barclays PLC.
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