

Appeals court backs executive branch whitewash of Wall Street

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A federal appeals court has overturned a judge's 2011 decision to reject a wrist-slap deal between the Securities and Exchange Commission (SEC) and Citibank over fraudulent mortgage derivatives. The June 4 ruling effectively gives the executive branch complete discretion, independent of the courts, and further enshrines the domination of the financial aristocracy.

The appellate decision explicitly establishes that the judicial system should not pursue the facts and truth of alleged crimes when reviewing deals between the SEC and Wall Street. It insists that the duty of the judicial system is to ensure that such deals, largely worked out behind closed doors, are “pragmatic” and that judges show “significant deference” to the SEC, an arm of the executive branch.

The original 2011 decision by federal district judge Jed Rakoff blocked the SEC and Citibank from reaching a sweetheart deal over allegations that Citibank had fraudulently sold \$1 billion worth of derivatives in 2007.

Rakoff refused to allow his court to be a “mere handmaiden to a settlement privately negotiated on the basis of unknown facts, while the public is deprived of ever knowing the truth in a matter of obvious public importance.” Rakoff also described the fine imposed on Citibank as “pocket change” for the bank.

The three-judge appellate panel stated that Rakoff had failed to promote justice because he did not give “significant deference” to the SEC. The lower court must be “pragmatic,” they argued. By demanding that facts be established, Rakoff had “abused [his] discretion by applying an incorrect legal standard.”

The court ruling declares that the judge had no jurisdiction in determining what is in the public interest and that only the SEC, an organization run by the

former and future lawyers for the big banks, could decide that.

Citibank was accused by the SEC of creating a billion dollar fund in 2007, composed largely of junk mortgage assets, which the bank sold to investors with the lie that the assets were selected by an independent adviser. Then, without telling its investors, Citibank took out a short (a bet, through financial markets, that an investment would fail) against its own junk fund.

Citibank successfully palmed off the worthless derivatives. In addition to protecting itself against a huge, expected, loss on its billion-dollar investment, the SEC claimed that Citibank achieved a \$160 million profit. Duped investors lost over \$700 million.

As in nearly all of its dealings with Wall Street crime, the SEC avoided criminal prosecution and even avoided charging the bank with fraudulent intent. Instead, the SEC simply charged “negligence.”

The SEC negotiated behind closed doors and reached a settlement in which the bank would not admit to any wrongdoing and no serious investigation would occur. Citibank would hand over the profits it made, interest that profit accrued, and a \$95 million dollar fine.

In his 2011 court order, Rakoff stated that the settlement was “unfair, unreasonable, and inadequate” and “obviously” did not serve the public interest. He argued that if the court agreed to the settlement “without a modicum of independence,” it would be rubber-stamping the SEC’s settlement with Citibank, thus violating the constitutionally guaranteed separation of the judiciary and the executive branch.

Rakoff targeted the SEC’s policy of shielding banks from any wrongdoing. He wrote, “in any case like this that touches on the transparency of financial markets whose gyrations have so depressed our economy and debilitated our lives, there is an overriding public

interest in knowing the truth. In much of the world, propaganda reigns, and truth is confined to secretive, fearful whispers.”

At one point Rakoff concluded that “the injunctive power of the judiciary is not a free-roving remedy to be invoked at the whim of a regulatory agency... If its deployment does not rest on facts—cold, hard, solid facts, established either by admissions or by trials—it serves no lawful or moral purpose and is simply an engine of oppression.”

The corporate-controlled legal system has no toleration for the likes of Rakoff. The overturning of his court order evinces the increasingly dictatorial powers of the executive branch, sanctioned by the courts, and the dominant role of the major banks and corporations.



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