

# US settlement shields Deutsche Bank from criminal prosecution for rigging Libor

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The US Justice Department announced a monetary settlement last week with global banking giant Deutsche Bank that shields the bank and its executives from criminal liability for participating in a conspiracy to rig the key international interest rate, Libor.

By means of a so-called “deferred prosecution,” the multi-millionaire bankers who defrauded millions of mortgage borrowers, credit card holders, student loan debtors, retirees dependent on fixed investments and others in order to increase their profits and bonuses will be let off the hook in exchange for a nominal fine of \$2.5 billion.

While Deutsche Bank, Germany’s largest bank, agreed to have a London-based subsidiary plead guilty to wire fraud, the deferred prosecution provision of the deal allows the parent company to evade any admission of guilt.

As in previous deferred prosecution settlements involving such banks as JPMorgan Chase, the actual amount paid by Deutsche Bank will be considerably less than the headline figure, in part because the penalties are tax deductible. Such fines, which have become commonplace in the context of massive law-breaking by financial institutions, are considered part of the “cost of doing business.”

Libor (London interbank offered rate) is supposed to measure the average cost of short-term loans between major banks. It determines the interest rates for loans and investments that affect hundreds of millions of people around the world. Banks can rig Libor, Tibor (Tokyo interbank offered rate) or Eurolibor (European interbank offered rate) by falsely reporting the rates they pay to borrow money from other banks.

Libor underpins \$350 trillion of debt worldwide. It is used to set borrowing rates on at least \$10 trillion in mortgages, student loans and credit cards. Some 90

percent of US commercial and mortgage loans are linked to the rate. When the scandal broke in 2012, with Britain’s Barclays Bank admitting to rigging the benchmark rate and agreeing to pay a fine, the *Financial Times* called the illegal manipulation of the rate “the financial equivalent of contaminating the water supply.”

The settlement announced Thursday with Deutsche Bank involved, in addition to the US Justice Department, the US Commodities Futures Trading Commission, the New York Department of Financial Services and the UK Financial Conduct Authority.

Deutsche Bank is just one of six banks that have thus far admitted to manipulating the rate. At least ten other banks, including JPMorgan, Citigroup and Bank of America, are under investigation by authorities in the US and other countries. Besides Barclays and Deutsche Bank, Swiss-based UBS and the Royal Bank of Scotland have so far agreed to pay fines in the Libor-rigging scandal.

The US Justice Department found that from at least 2003 and until 2011, “employees at Deutsche Bank illegally manipulated interest rates around the globe... in the hope of fraudulently moving the market to generate profits for their traders at the expense of the bank’s counterparties.”

In the words of Bloomberg News, Deutsche Bank rigged rates on “an industrial and effective scale.” Britain’s Financial Conduct Authority said the abuses were not “limited to a few individuals” and the rigging was “deeply ingrained.”

In an email made public by the Justice Department, an unnamed Deutsche Bank vice president wrote, “Tibor is a corrupt fixing and DB [Deutsche Bank] is part of it!”

In the course of the investigation, Deutsche Bank was

caught lying to the Financial Conduct Authority, falsely claiming it was prohibited by a German regulatory agency from turning over documents. The FCA said Deutsche Bank made a “false attestation” about its Libor controls, destroyed 482 tapes of telephone calls, and “failed to provide timely, accurate and complete information.”

The current Co-CEO of Deutsche Bank, Anshu Jain, joined the bank after working on interest rates at Merrill Lynch. When Deutsche Bank began fraudulently manipulating the Libor rate, Jain was in charge of the division involved in the rigging.

The Libor rate itself is controlled by the British Bankers’ Association (BBA), a private banking trade and lobby group, whose head is Marcus Agius, the chairman of Barclays. Agius was never removed from the BBA, despite Barclays’ admission of “misconduct” and acceptance of a \$463 million fine.

Notwithstanding announcements of fines such as that levied on Deutsche Bank, the government continues to systematically facilitate and cover up the criminal activities of banks and hedge funds. Last December, the US Appeals Court for the Second Circuit overturned the insider trading convictions of two hedge fund executives, imposing a highly restrictive standard for prosecuting financial criminals who use insider information to rig the markets for their personal gain. The court’s ruling opens the way for overturning other insider trading convictions, while giving speculators a green light to manipulate the markets at will.

The incestuous relationship between the banks and the regulators who ostensibly police them is summed up in the example of former Deutsche Bank official Robert Khuzami. He was the bank’s general counsel for the Americas from 2004 to 2009, when Deutsche Bank was deeply involved in Libor-rigging, marketing toxic sub-prime home mortgages, and illegally concealing losses from regulators and the public.

That did not prevent him from heading up the enforcement division of the US Securities and Exchange Commission from 2009 to 2013. In December of 2012, Khuzami had to recuse himself from an SEC investigation into charges that Deutsche Bank concealed \$12 billion in losses between 2007 and 2009, during the time he served as a top lawyer for the firm.

Six months after leaving the SEC, Khuzami took a \$5

million-per-year job at the Wall Street-linked law firm Kirkland & Ellis.



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