IV. FOREX Scandal: Top Banks Face Antitrust Fines

A. Introduction

Foreign exchange, more popularly known as "Forex" or "FX," is the "conversion of one currency into another."[1] Forex is a virtual, global market where users continuously buy and sell currencies at an exchange rate, which is "the price paid for one currency in exchange for another."[2] Big banks and other providers control the electronic platforms where trading occurs.[3] The Forex market is the "largest financial market in the world," with daily trade volumes exceeding $5 trillion,[4] even though physical money rarely exchanges hands.[5] While there are numerous global currencies, most international Forex trading is conducted using the U.S. Dollar, Yen, and Euro.[6]

In 2013, evidence revealing deliberate manipulation of Forex rates by traders at several large banks came to light.[7] In what later became known as the "Forex Scandal,"[8] Forex traders conspired to rig market rates in order to accrue substantial financial gains, to the

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[1] *Foreign Exchange*, INVESTOPEDIA, http://www.investopedia.com/terms/f/foreign-exchange.asp [http://perma.cc/3P26-6WYT].

[2] Matt Cavallaro, *The Forex Market: Who Trades Currency and Why*, INVESTOPEDIA, http://www.investopedia.com/articles/forex/11/who-trades-forex-and-why.asp [http://perma.cc/8QXA-H939] ("An exchange rate is the price paid for one currency in exchange for another."); Philip Augar, *How the Forex Scandal Happened*, BBC (May 20, 2015), http://www.bbc.com/news/business-30003693 [http://perma.cc/2K9Z-GHUJ].

[3] Augar, *supra* note 2.

[4] BANK FOR INT'L SETTLEMENTS, TRIENNIAL CENTRAL BANK SURVEY – FOREIGN EXCHANGE TURNOVER IN APRIL 2013: PRELIMINARY GLOBAL RESULTS 3, (2013), *available at* http://www.bis.org/publ/rpfx13fx.pdf [http://perma.cc/8SJZ-H656] ("Trading in foreign exchange markets averaged $5.3 trillion per day in April 2013.").

[5] Augar, *supra* note 2; Cavallaro, *supra* note 2.

[6] Cavallaro, *supra* note 2.

[7] *See* David McLaughlin et al., *Six Banks Pay $5.8 Billion, Five Guilty of Market Rigging*, BLOOMBERG BUS. (May 20, 2015, 12:56 PM), http://www.bloomberg.com/news/articles/2015-05-20/six-banks-pay-5-8-billion-five-plead-guilty-to-market-rigging [http://perma.cc/JWG2-389M].

[8] *See, e.g.*, Augar, *supra* note 2.

detriment of counterparties who were unaware of the collusion.[9] In response, regulators imposed severe monetary penalties against the banks for antitrust violations and mandated the firing of individuals involved.[10] Though some have questioned whether the fines will serve as an effective deterrent,[11] they are notable in that they represent some of the largest antitrust penalties levied against big banks in history.[12]

This Article traces the details of the Forex Scandal and its ramifications in the banking world. First, Part B outlines the charges against the banks involved in the scandal. Second, Part C explains how the banks manipulated the Forex rates for their own financial benefit. Third, Part D discusses the plea agreements and punishments that ended the investigations. Fourth, Part E considers what circumstances in the Forex market helped contribute to this scandal and what attempts at reform have been made. Lastly, Part F concludes with a discussion of reactions to the outcome of the investigation and concerns about the efficacy of the fines in deterring illegal banking practices.

1. Development of Forex

Forex trading emerged as a method for people and businesses to exchange currency when traveling or doing business

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[9] Press Release, Dep't of Justice, Office of Pub. Affairs, Five Major Banks Agree to Parent-Level Guilty Pleas (May 20, 2015), *available at* http://www.justice.gov/opa/pr/five-major-banks-agree-parent-level-guilty-pleas [https://perma.cc/SB2G-2DM4?type=source] ("'The charged conspiracy fixed the U.S. dollar – euro exchange rate, affecting currencies that are at the heart of international commerce and undermining the integrity and the competitiveness of foreign currency exchange markets which account for hundreds of billions of dollars worth of transactions every day,' said Assistant Attorney General Baer.").

[10] McLaughlin et al., *supra* note 7 ("Six of the world's biggest banks will pay $5.8 billion and five of them agreed to plead guilty to charges tied to a currency-rigging probe as they seek to wind down almost half a decade of enforcement actions. . . . As part of its settlement with New York banking superintendent Benjamin Lawsky, Barclays agreed to terminate eight employees . . . .").

[11] *See infra* notes 104-117 and accompanying text.

[12] *See Record Fines for Currency Market Fix*, BBC (May 20, 2015), http://www.bbc.com/news/business-32817114 [http://perma.cc/97QH-JYVM].

overseas.[13] Speculation—the practice of engaging in risky financial transactions with the expectation of substantial gain[14]—was limited through the 1944 Bretton Woods Agreement, which rooted exchange rates to the price of gold.[15] However, once this agreement ended in the 1970s, exchange rates began to fluctuate and "financial institutions saw a new opportunity to make money from the increased size and volatility of the Forex market."[16] Today, nearly all Forex trading is speculative.[17]

Today's Forex market appeals to a variety of users.[18] Large banks are the most active participants in Forex trading.[19] In particular, the central banks that supervise monetary systems in each country[20] are vital to the successful operation of the Forex market because they are in charge of "[F]orex fixing," which determines the "rate regime" under which a currency will trade.[21] Other users include investment managers, hedge funds, corporations, and, to a lesser extent, individual investors.[22]

2. The FX Spot Market

Forex trading can be conducted through a variety of different transaction types that tie to an underlying currency.[23] One subset of the Forex trading marketplace is the "FX Spot Market," where currencies are traded in pairs.[24] The FX Spot Market is an over the counter (OTC) market, so trading occurs outside the surveillance of a

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[13] Augar, *supra* note 2.
[14] *Speculation*, INVESTOPEDIA, http://www.investopedia.com/terms/s/speculation.asp [http://perma.cc/8YLZ-ERX7].
[15] Augar, *supra* note 2.
[16] *Id.*
[17] *Id.*
[18] Cavallaro, *supra* note 2.
[19] *Id.*
[20] *Central Bank*, INVESTOPEDIA, http://www.investopedia.com/terms/c/centralbank.asp [http://perma.cc/X2VE-HPEP].
[21] Cavallaro, *supra* note 2 ("Floating, fixed and pegged are the types of exchange rate regimes.").
[22] *Id.*
[23] *Id.*
[24] Plea Agreement at 3, U.S. v. Barclays PLC, No. 3:15-cr-00077 (D. Conn. May 20, 2015), *available at* http://www.justice.gov/file/440481/download [http://perma.cc/PT2R-53SJ] [hereinafter Barclays Plea Agreement].

regulated exchange.[25] In an OTC market, users trade through a variety of digital media, including phones, email, and electronic platforms.[26] Transparency problems can arise with these methods because users can complete trades without the counterparty knowing the price at which the trade was completed.[27] Financial companies are very important in OTC markets because they act as dealers, or "market makers," who buy and sell currency to facilitate "the continued functioning of the market."[28] When a party wishes to purchase or sell a currency, it can make contact with a dealer, and once they agree on a price, the dealer proceeds to trade with other dealers in the "interdealer market," where only representatives of banks and other financial companies conduct trades.[29] Whether the dealer has agreed to buy or sell currency from a customer, if the currency's price changes before the dealer trades with someone else in the interdealer market, the dealer bears the corresponding risk or reward resulting from the rate shift.[30]

A dealer can also take "fix orders" from Forex investors.[31] These orders trade at a "fix rate," which means the dealer agrees to complete the transaction at a rate to be defined later on via interdealer trading.[32] The European Central Bank fix, which occurs every day at 2:15 PM (CET), and the World Markets/Reuters fix, which occurs every day at 4:00 PM (GMT) are two widely-used timed benchmarks to set the fix rate.[33] When a fix occurs at one of these given times, the daily exchange rate is frozen.[34] Since prices within the Forex market fluctuate so often, the fix gives companies and investors a valuation tool for assets and liabilities held in multiple currencies.[35] Until recently, the fix "was based on actual

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[25] *Id.* at 4 ("The FX Spot Market is an over-the-counter market, and as such, is decentralized and requires financial institutions to act as dealers willing to buy or sell a currency.").

[26] *Over-the-Counter Market*, INVESTOPEDIA, http://www.investopedia.com/terms/o/over-the-countermarket.asp [http://perma.cc/J9Y4-8JTJ].

[27] *Id.*

[28] Barclays Plea Agreement, *supra* note 24, at 4.

[29] *Id.* at 4-5; *Interdealer Market*, INVESTOPEDIA, http://www.investopedia.com/terms/i/interdealer-market.asp [http://perma.cc/S7L3-9NUK].

[30] *See id.* at 4-5.

[31] *Id.* at 5.

[32] *Id.*

[33] *Id.*

[34] *See* Augar, *supra* note 2.

[35] *Id.*

currency deals that took place in a window 30 seconds before and 30 seconds after" the designated time.[36] The exchange "then calculated the fix rates based on these observed transactions, which form[ed] the benchmarks for that day."[37] Since real transactions influenced the fix, FX Spot Market users were able to manipulate this very important standard on which numerous financial markets rely.[38]

B. The Charges

As of May 2015, the Department of Justice (DOJ) reported that five key banks: JPMorgan Chase & Co., Citicorp, Barclays PLC, The Royal Bank of Scotland (RBS) PLC, and UBS AG had pleaded guilty to felony charges.[39] JPMorgan, Citicorp, Barclays, and RBS all pleaded guilty to manipulating the rates of U.S. Dollars and Euros on the FX Spot Market in violation of the Sherman Antitrust Act.[40] These four banks will collectively pay criminal fines to the DOJ in excess of $2.5 billion.[41] The Federal Reserve (Fed) fined Bank of America $205 million as well for failing to detect its traders' chatroom activities, but the bank avoided a guilty plea with the DOJ.[42] In addition to Bank of America's fine, the Fed separately fined the five banks in the DOJ action more than $1.6 billion for "unsafe and unsound business practices."[43]

C. How Did They Do It?

From roughly December 2007 to January 2013, traders at JPMorgan, Citicorp, Barclays, and RBS were dealers in the FX Spot Market.[44] These individuals formed exclusive online chat rooms,

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[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] Press Release, Dep't of Justice, Office of Pub. Affairs, *supra* note 9.
[40] *Id.*
[41] *Id*.
[42] Karen Freifeld et al., *Global Banks Admit Guilt in Forex Probe, Fined Nearly $6 Billion*, REUTERS (May 20, 2015, 6:28 PM), http://www.reuters.com/article/2015/05/20/us-banks-forex-settlement-idUSKBN0O50CQ20150520#fl4lJfsZ7KUDPGmO.97 [http://perma.cc/PC6M-K6DG].
[43] McLaughlin et al., *supra* note 10.
[44] Barclays Plea Agreement, *supra* note 24, at 5.

which insiders called "the cartel" or "the mafia."[45] Participation in these chat rooms was limited to Euro and U.S. Dollar traders who were affiliated with one of the four banks.[46] The purpose of these chat rooms was to devise plans to manipulate Forex prices, particularly prices around the daily fix, for their financial benefit.[47] Traders in these chat rooms enjoyed significant advantages over the investing public because they were privy to information that was unavailable to outsiders.[48] They exchanged private information about their "clients' orders and trading positions."[49] Armed with this information, traders in the cartel could submit a rush of orders or purchases in the thirty-second window before or after the fix to influence the rate, and profit from the resulting shift in prices.[50] Specifically, in a scheme called "building ammo," one trader would "amass a large position in a currency and, just before or during the fix, would exit that position" in order to push the price in a favorable direction.[51] This benefited other chat room participants because they knew in advance which trading activities would maximize their profit.[52] The collaboration also helped mitigate the risk of loss because the traders could withhold bids and offers so as to avoid making trades that would adversely affect their co-conspirators.[53] They would use code language like "lhs" (left hand side) or "rhs" (right hand side) to signal whether they should sell the first or second currency in the currency pair they were discussing.[54] Group participation was key because the more participants, the easier it was

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[45] Michael Corkery & Ben Protess, *Banks Admit Scheme to Rig Currency Price*, N.Y. TIMES, May 21, 2015, at A1.
[46] Barclays Plea Agreement, *supra* note 24, at 5-6.
[47] *See* Freifeld, et al., *supra* note 42; *Record Fines for Currency Market Fix*, *supra* note 12.
[48] *See* Sebastian Chrispin, *Forex Scandal: How to Rig the Market*, BBC (May 20, 2015), http://www.bbc.com/news/business-26526905 [http://perma.cc/WN2Q-YWUV].
[49] *Id.*
[50] *See id.*
[51] *See Record Fines for Currency Market Fix*, *supra* note 12.
[52] *See id.*
[53] Barclays Plea Agreement, *supra* note 24, at 6.
[54] Kevin McCoy, *Forex Traders Plotted Strategy in Secret Chats*, USA TODAY (Nov. 12, 2014, 4:49PM), http://www.usatoday.com/story/money/business/2014/11/12/banks-forex-chat-room-excerpts/18901819/ [http://perma.cc/89DV-P3FY].

to manipulate the rate.[55] The more people changing positions, the more drastically prices moved, and the larger the profits.[56]

Preliminary investigations into this conduct began in June 2013 after Bloomberg reported that traders were conspiring to fix "benchmark currency rates and profit at clients' expense."[57] In October 2013, regulators commenced formal investigations.[58] Within weeks, foreign exchange trading employees at banks "including Citigroup, JPMorgan and Barclays were fired, suspended or put on leave."[59]

D. The Plea Agreements and Punishment

The Sherman Antitrust Act prohibits contracts or conspiracies that restrain trade or commerce among the states or foreign nations.[60] Specifically, the charges against JPMorgan, Citigroup, Barclays, and RBS alleged: (1) the existence of a conspiracy between December 2007 to January 2013; (2) the banks' knowing involvement in the conspiracy; and (3) the resulting substantial effect upon interstate and U.S. import commerce in goods or services, or the flow of the same.[61] The plea agreements describe these banks engaging as co-conspirators in carrying out their common scheme "to eliminate competition in the purchase and sale" of U.S. Dollars and Euros through the various methods discussed above.[62] These four banks sold high volumes of U.S. Dollars and Euro currency pairs in the United States and in foreign markets, and thus influenced and participated in the flow of interstate and U.S. import commerce in goods and services.[63] Since JPMorgan, Citicorp, Barclays, and RBS have all pleaded guilty to conspiring to manipulate the price of U.S. Dollars and Euros traded in the FX Spot Market, each bank will pay criminal fines to the DOJ in proportion to its involvement in the conspiracy.[64] Citicorp will pay a fine of $925

[55] Chrispin, *supra* note 48.
[56] *Id.*
[57] McLaughlin et al., *supra* note 7.
[58] *Id.*
[59] *Id.*
[60] 15 U.S.C. § 1 (2012).
[61] Barclays Plea Agreement, *supra* note 24, at 7.
[62] *Id.* at 5-6; *supra* notes 42-48 and accompanying text.
[63] *Id.*
[64] Press Release, Dep't of Justice, Office of Pub. Affairs, *supra* note 9.

million; Barclays will pay a fine of $650 million; JPMorgan will pay a fine of $550 million; and RBS will pay a fine of $395 million.[65] UBS AG also received a fine stemming from its December 2012 violation of a non-prosecution agreement (NPA), involving manipulation of the London Interbank Offered Rate (LIBOR) and other benchmark interest rates.[66] All five banks also agreed to a three-year period of corporate probation under court supervision and regular reporting to authorities.[67] Furthermore, the banks will cooperate with further investigations by assisting the DOJ in prosecuting the individuals that were responsible for these illegal activities.[68] JPMorgan, Citicorp, Barclays, and RBS agreed to send disclosure notices to customers and counterparties alerting them that the banks' conduct may have affected them.[69] State regulators and other federal agencies also imposed fines for the banks' violations of laws in their respective jurisdictions.[70] In June 2015, Bank of America, Barclays, Citigroup, HSBC, JPMorgan, RBS, and UBS AG were all named in a class action lawsuit by investors who suffered losses as a result of the Forex manipulation.[71]

In addition to these fines, Barclays has acknowledged that its conduct violated a June 2012 NPA, which, similar to UBS, had involved Barclays's involvement in the LIBOR scandal.[72] As a result, Barclays will pay an extra $60 million for violating the NPA.[73]

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[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] Antoine Gara, *Four Banks Plead Guilty of Foreign Exchange Collusion, UBS Pleads Guilty to Wire Fraud*, FORBES (May 20, 2015), http://www.forbes.com/sites/antoinegara/2015/05/20/four-banks-plead-guilty-to-foreign-exchange-collusion-ubs-pleads-guilty-to-wire-fraud/ [http://perma.cc/3NQB-T4M7] (discussing UBS's additional fines payable to the Fed and to the Connecticut Department of Banking, and Barclays's fines owed to the New York State Department of Financial Services, the UK Financial Conduct Authority, the Commodities Futures and Trading Commission, and the Fed).
[71] Dani Kass, *Investors Sue Big Banks for Forex Rigging*, LAW 360 (June 25, 2015), http://www.law360.com.ezproxy.bu.edu/articles/672197/investors-sue-big-banks-for-forex-rigging [http://perma.cc/KM2T-SRB6].
[72] *See* Press Release, Dep't of Justice, Office of Pub. Affairs, *supra* note 9.
[73] *Id.*

However, the punishment continues for Barclays. On top of a previous $485 million state fine, the New York State Department of Financial Services has also recently levied an additional $150 million penalty against Barclays for its improper use of an electronic feature that automatically rejected Forex trade requests from its customers if the trade would be unprofitable for the bank.[74] Piggybacking on these additional allegations, a New York investment adviser brought another class action suit against Barclays, pointing to the "significant damages" suffered by its trading partners as a result of the bank's unlawful Forex trade rejections.[75]

Attorney General Lynch has stated that these settlement agreements are part of "ongoing efforts to investigate and prosecute financial crimes," and that the DOJ will "vigorously prosecute" people "who tilt the economic system in their favor," "subvert our marketplaces," and seek to profit "at the expense of American consumers."[76] Assistant Attorney General Baer added that the U.S. Dollar and Euro exchange rate is at the "heart of international commerce" and these banks' illegal practices undermined the "integrity and the competiveness" of the Forex marketplace.[77]

The settlement agreements are significant in that they represent the first time in decades that parent companies of American financial institutions, rather than their subsidiaries, have pleaded guilty to criminal charges.[78] U.S. regulatory authorities almost never sought criminal convictions against the parents of global financial institutions until recently.[79] Rather, authorities would settle with parent companies' smaller foreign subsidiaries in an effort to avoid large fines against the parent company, which would have potential

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[74] Press Release, N.Y. State Dep't of Fin. Servs., NYDFS Announces Barclays to Pay Additional $150 Million Penalty, Terminate Employee for Automated, Electronic Foreign Exchange Trading Misconduct (Nov. 18, 2015), *available at* http://www.dfs.ny.gov/about/press/pr1511181.htm [http://perma.cc/3CEZ-CLJD].

[75] Suzanna Barlyn, *Class Action Suit Against Barclays Alleges Forex Rigging Losses*, REUTERS (Nov. 27, 2015), http://www.reuters.com/article/2015/11/27/barclays-forex-classaction-idUSL1N13M14N20151127#gR4IT0s35mw8E08P.97 [http://perma.cc/ZQV7-YAXD].

[76] Press Release, Dep't of Justice, Office of Pub. Affairs, *supra* note 9.

[77] *Id.*

[78] Freifeld et al., *supra* note 42.

[79] *Id.*

repercussions on the financial system and bank customers.[80] The fines are also of historic proportions: the $925 million fine facing Citigroup is the "largest single fine ever imposed for a violation of the Sherman Act."[81]

E. Forex Vulnerabilities and Attempts to Reform

i. How Did the Forex Scandal Happen?

Forex trading is attractive to banks because it has historically been a minimally regulated market.[82] Prior to the Forex Scandal, regulators believed the Forex market was too big to be manipulated, negating any need for substantial regulatory oversight.[83] After the financial crisis of 2008, Congress actually attempted to regulate the Forex market, but the Treasury department "exempted portions of it from certain new rules."[84] Currently, there is no single government agency supervising Forex trading.[85] Instead, a mix of committees, some that are bank-run, set the rules.[86] These allowances, combined with the potential for gaining a considerable amount of money with relatively low risk, made Forex trading a "breeding ground for crime."[87] Forex trading is also more vulnerable to manipulation because although its participants can make money, Forex trading is comparatively less profitable than other investment activities, which increases motivation "to break the rules" in order to maximize profit margin.[88]

ii. Changes in the Aftermath

The Forex Scandal had a far-reaching impact.[89] The banks are facing financial losses as a result of the fines, and may face

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[80] *Id.*
[81] Corkery & Protess, *supra* note 45.
[82] *Id.*
[83] Augar, *supra* note 2.
[84] Corkery & Protess, *supra* note 45.
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *See* Chrispin, *supra* note 48 (stating that the biggest losers are the banks that will have to pay up, but also that the banks' clients may have suffered financially due to the distorted rates that resulted from the collusion).

further lawsuits from aggrieved customers and counterparties as well.[90] Some believe that these guilty pleas will make it easier for pension funds and investment managers to sue banks for losses on their trades.[91] In addition, banks have been forced to terminate employees who were involved, and regulators may prosecute individual traders in the future.[92] In general, banks are rightfully facing embarrassment.[93] JPMorgan's Chairman and CEO stated that the government's description of the bank's conduct was a "great disappointment," and JPMorgan "expect[s] better of its people."[94] RBS's CEO, Ross McEwan, also acknowledged the gravity of the allegations against RBS.[95] He stated that the bank's guilty plea was a "stark reminder of how badly [RBS had] lost its way and how important it is for [RBS] to regain trust."[96] Regaining trust will be especially important as banks recover from this scandal and attempt to win back customers who have suffered losses as a result of their actions.[97]

The Fed has also implemented new rules in light of the scandal.[98] The five banks in the DOJ investigation plus Bank of America will be required to enhance their supervision of Forex activity, including improving "internal controls, risk management, and internal audit polices and procedures for their [Forex] activities and for similar kinds of trading activities."[99] The Fed, like the DOJ, is also requiring these organizations to cooperate in actions against

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90 *Id.*; Howard Mustoe, *How Criminal Charges Became Another Day at the Office for Banks*, BBC (May 21, 2015), http://www.bbc.com/news/business-32818635 [http://perma.cc/BJH3-52F5].

91 Freifeld et al., *supra* note 42.

92 McLaughlin et al., *supra* note 10; McCoy, *supra* note 54.

93 *See* McLaughlin et al., *supra* note 10.

94 *Id.*

95 *Record Fines for Currency Market Fix*, *supra* note 12.

96 *Id.*

97 *See* Chrispin, *supra* note 48.

98 *See* Press Release, Fed. Reserve, Federal Reserve Announces Fines Totaling More than $1.8 Billion Against Six Major Banking Organizations for Their Unsafe and Unsound Practices in the Foreign Exchange (FX) Markets (May 20, 2015), *available at* http://www.federalreserve.gov/newsevents/press/enforcement/20150520a.htm [http://perma.cc/98ZR-3F7A].

99 *Id.*

individuals affiliated with these illegal practices and is preventing them from re-employing these individuals in any capacity.[100]

Lastly, changes have been made to the Forex market itself.[101] The Financial Stability Board, a regulatory body that supervises international financial markets,[102] has formed a task force to reform the Forex market.[103] One such change is that the daily fix will now be calculated over five minutes instead of one minute, making it more difficult to rig the rate.[104] If the time frame that determines the fix is longer, trades can be monitored more accurately with the hope that traders can no longer cheat the system.[105] The Bank for International Settlements, which manages central banks, is also attempting to have all banks agree to a "unified code of conduct."[106]

F. Conclusion

In spite of the regulatory changes that were prompted by the Forex Scandal, critics remain skeptical of whether the banks have truly been punished, and whether these fines will change their ways.[107] As one industry commenter noted, banks that engaged in misconduct historically risked losing their banking licenses, a result that would likely never occur today.[108] Indeed, some banks have already obtained waivers from the SEC to resume normal business operations.[109] JPMorgan and Citigroup representatives even acknowledged that they do not anticipate any significant operational changes.[110] Other critics claim that the banks' collective decision to settle with the DOJ was a calculated move designed to limit liability because it forced the DOJ to cease all investigations, and thus conceal any undiscovered misconduct.[111]

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[100] *Id.*
[101] *See* Augar, *supra* note 2.
[102] *About the FSB*, FIN. STABILITY BD., http://www.financialstabilityboard.org/about/ [http://perma.cc/WS2Z-FS7A].
[103] Augar, *supra* note 2.
[104] *Id*.
[105] *See id.*
[106] *Id.*
[107] *See* Mustoe, *supra* note 90.
[108] *Id.* (quoting Boston University's Cornelius Hurley, Director of the Boston University Center for Finance, Law & Policy).
[109] Corkery & Protess, *supra* note 45.
[110] McLaughlin et al., *supra* note 57.
[111] *Id.*

Critics have also questioned whether the settlements present any benefit aside from government subsidization.[112] Imposing only a fine creates a dual advantage for federal regulators: they avoid the hassle of proving criminal conduct while bringing in substantial sums of money for the government.[113] As one Stanford professor pointed out, corporations cannot go to jail in the same manner as individuals, but a monetary penalty is unlikely to have the same deterrent effect.[114] A former assistant attorney general cautioned that large fines may help "reduce the federal deficit," but will have little effect on the "culture of corruption" that pervades the banking industry.[115]

Despite the critiques, it appears that the federal government is not yet done with its attempts to reveal illegal banking practices related to Forex, and to the market generally.[116] These recent settlements demonstrate a firm commitment to expose and eliminate these unlawful activities and ensure that banks face the consequences of their actions.[117]

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[112] *See* Mustoe, *supra* note 90.
[113] *Id.*
[114] *Id.* (quoting Professor Anat Admati).
[115] Kevin McCoy & Kevin Johnson, *5 Banks Guilty of Rate-Rigging, Pay More Than $5B*, USA TODAY (May 20, 2015, 7:35 PM), http://www.usatoday.com/story/money/2015/05/20/billions-in-bank-fx-settlements/27638443/ [http://perma.cc/PKB5-DDSL].
[116] *See Record Fines for Currency Market Fix*, *supra* note 12.
[117] *See id.* (Attorney General Lynch stated, "[The DOJ] will not hesitate to file criminal charges for financial institutions that reoffend. Banks that cannot or will not clean up their act need to understand—it will be enforced.").
[118] Student, Boston University School of Law (J.D. 2017).