GlobalResearch
Center for Research on Globalization

Nobody Should Shed a Tear for JP Morgan Chase

By Matt Taibbi
Theme: Global Economy, Law and Justice
Global Research, October 28, 2013
Rolling Stone 25 October 2013

Was Bernie Madoff's pyramid scheme really so different from what some of the biggest banks have done?

A lot of people all over the world are having opinions now about the ostensibly gigantic $13 billion settlement Jamie Dimon and JP Morgan Chase have entered into with the government.

The general consensus from most observers in the finance sector is that this superficially high-dollar settlement – worth about half a year's profits for Chase – is an unconscionable Marxist appropriation. It's been called a "robbery" and a "shakedown," in which red Obama and his evil henchman Eric Holder confiscated cash from a successful bank, as *The Wall Street Journal* wrote, "for no other reason than because they can and because they want to appease their left-wing populist allies."

Look, there's no denying that this is a lot of money. It's the biggest settlement in the history of government settlements, and it's just one company to boot. But this has been in the works for a long time, and it's been in the works for a reason. This whole thing, lest anyone forget, has its genesis in a couple of state Attorneys General (including New York's Eric Schneiderman and Delaware's Beau Biden) not wanting to sign off on any deal with the banks that didn't also address the root causes of the crisis, in particular the mass fraud surrounding the sale and production of subprime mortgage securities.

Those holdouts essentially forced the federal government's hand, leading Barack Obama to create a federal working group on residential mortgage-backed securities (widely seen as the AGs' price for okaying the $25 billion robosigning deal), headed up by Schneiderman, whose investigation of Chase and its affiliates led to the deal that's about to be struck. Minus all of that, minus those state holdouts in those foreclosure negotiations, this settlement probably would never even take place: The federal government seemed more than willing previously to settle with the banks without even addressing the root-cause issues that are at the heart of this new Chase deal.

So let's not forget that – that even this $13 billion settlement, which is actually a $9 billion settlement (see below), came very close to never happening. But now it is happening, and the business press is going nuts about how unfair it all is.

In fact, this deal is actually quite a gift to Chase. It sounds like a lot of money, but there are myriad deceptions behind the sensational headline.

Read Matt Taibbi's Feature on the Gangster Bankers Who Are Too Big to Jail

First of all, the settlement, as the folks at *Better Markets* have pointed out, may wipe out between $100 billion and $200 billion in potential liability – meaning that the bank might just have settled "for ten cents or so on the dollar." The Federal Housing Finance Agency alone was suing Chase and its affiliates for $33 billion. The trustee in the ongoing Bernie Madoff Ponzi scandal was suing Chase for upwards of $19 billion.

Obviously, those plaintiffs may never have gotten that kind of money out of Chase. But just settling the mere potential of so much liability has huge value for the bank. It's part of the reason the company's share price hasn't exactly cratered since the settlement was announced.

Moreover, the settlement is only $9 billion in cash, with $4 billion earmarked for "mortgage relief." Again, as *Better Markets* noted, we've seen settlements with orders of mortgage relief before, and banks seem to have many canny ways of getting out of the spirit of these requirements.

In the foreclosure settlement, most of the ordered "relief" eventually came in the form of short sales, with banks letting people sell their underwater houses and move out without paying for the loss in home value. That's better than nothing, but it's something very different than a bank working to help families stay in their homes.

There's also the matter of the remaining $9 billion in fines being tax deductible (meaning we're subsidizing the settlement), and the fact that Chase is reportedly trying to get the FDIC to assume some of Washington Mutual's liability.

But overall, the key to this whole thing is that the punishment is just money, and not a crippling amount, and not from any individual's pocket, either. In fact, the deal that has just been completed between Chase and the state represents the end, or near the end, of a long process by which people who committed essentially the same crimes as Bernie Madoff will walk away without paying any individual penalty.

What Washington Mutual and Bear Stearns (Chase's guilty acquisitions) were doing in the mortgage markets was little more than an elaborate take on a Madoff-style Ponzi scheme. Actually, most of the industry was guilty of the same thing, but in the cases of these two banks in particular the concrete evidence of fraud is extensive, and the comparison to a Madoff-style caper isn't a fanciful metaphor but more like evidentiary fact.

Madoff's operational fiction was his own personality. He used his charm and his lifestyle and his social status to con rich individuals into ponying up money into an essentially nonexistent investment scheme.

In the cases of both WaMu and especially Bear, the operating fictions were broad, carefully-crafted infrastructures of bogus guarantees, flatlined due diligence mechanisms, corrupted ratings agencies and other types of legal chicanery. These fake guarantees and assurances misled investors about they were buying. Most thought they were investing in home mortgages. What they were actually investing in was a flow of cash from new investors that banks like Bear and WaMu were pushing into a rapidly-overheating speculative bubble.

These banks created huge masses of mortgage securities they knew to be highly risky and/or fraudulent. At Bear, one deal manager jokingly nicknamed one pool of mortgages, SACO-2006-08, the "SACK OF SHIT" deal. In another case, Bear's securitization company, EMC, obtained a pool of mortgages from a sketchy mortgage originator called AHM, and found out that as much as 60 percent of the batch was delinquent.

Yet they continued to buy these mortgages and throw them into the great hamburger-machine, turning them into securities that would in turn be bought by everyone from pension funds to Fannie and Freddie. And then they pushed sales even harder, relying upon the influx of new buyers of these securities to keep the value of the old securities stable.

This is exactly what Bernie Madoff did, it's what Charles Ponzi did, and it's what Allen Stanford did – using cash from new investors to pay off the old investors. The supermarket-bank version of this game was just more elaborate, involved more moving parts and threatened indescribably greater damage.

Bernie Madoff ultimately caused about $18 billion in losses. When he got caught, the state threw the book at him, giving him a 150-year jail sentence.

Meanwhile, just the subset of Bear Stearns defendants, according to a complaint against Chase filed last year by Eric Schneiderman, caused $22.5 billion in losses in just two years, 2006 and 2007.

And while it is true that the federal government in this latest $13 billion settlement is ostensibly reserving the right to continue to pursue criminal charges, don't hold your breath. The arc of this story suggests that the whole purpose of this agreement has been to find the highest price Chase is willing to pay to a) stay in business b) keep employees out of jail.

So again, $13 billion sounds like a lot of money. But Bernie Madoff is doing 150 years, and nobody in this cast of characters will personally pay a dollar in fines. Nobody will do one day in jail. That's a huge, huge discrepancy.

Of course, Bernie Madoff today is reviled on Wall Street, even by papers like the *Wall Street Journal*. This is mainly because he ripped off other finance-sector hotshots, but also because he gave Wall Street a bad name.

Post-2009 coverage of Madoff from the financial press has focused intently on the failure of the government (and in particular the SEC) to aggressively investigate the scandal in a timely fashion. This has followed a rhetorical line that frequently emanates from the finance sector, in which white-collar crime is somehow less the fault of criminals than of the police who failed to stop it.

These "Where were the regulators?" cries generally never show up in financial-press coverage of Wall Street scandals until those same pundits have first exhausted all attempts to argue that no crime was ever committed by the bank/broker/hedge fund in question.

Remember, for instance, that there was a time when papers like the *Journal* thought Bernie Madoff was one of their own, didn't want to make trouble for him, and bluntly refused to investigate him. The *Journal* was infamously given the whole seedy Madoff story by investigator Harry Markopolos in 2005 (see p. 16 of this devastating testimony), and though reporter John Wilke wanted to follow up on the piece, it appeared his superiors at the paper never gave him the go-ahead.

But after Madoff came forward weeping and confessing in late 2008, and there was no longer any possibility of denying his monstrous guilt, suddenly the *Journal*turned into an ardent critic of soft government enforcement, ragefully denouncing everyone from Eliot Spitzer to the SEC for failing to catch Madoff. In its December 17th, 2009 editorial, *To Catch a Thief*, for instance, the paper blasted the financial cops of the world for failing to protect

Madoff's investors and the good name of honest Wall Street business:

> The real lesson is that financial enforcement nearly always fails to protect investors, and this Ponzi scheme is merely typical . . . In 1999, trader Harry Markopolos wrote that "Madoff Securities is the world's largest Ponzi Scheme," in a letter to the SEC. More recently, multiple SEC inquiries and exams in 2005 and 2007 found only minor infractions… Neither current AG Andrew Cuomo nor Mr. Spitzer appears to have had a clue about Mr. Madoff's conduct.

As noted by multiple media outlets at the time, the paper conveniently left out of these thundering denunciations the damning fact that the *Journal* itself had been contacted by Markopolous years before, and had blown him off even more completely than the SEC.

So now we, and they, are talking about the Chase scandal. This is Madoff all over again, only on a much huger scale. Ten years from now, bet on it, the *Wall Street Journal* will be denouncing everyone from Eric Holder to Lanny Breuer to the SEC and DOJ officials in the Bush administration for failing to protect investors from predatory companies like Bear Stearns, Washington Mutual and their parent, JP Morgan Chase.

Right now, however, these papers are still stuck in the denial phase, which is to be expected, I suppose. But it doesn't mean we have to take these ridiculous editorials about Chase's victimhood seriously.

A few more notes on the deal. This latest settlement reportedly came about when CEO Jamie Dimon picked up the phone and called a high-ranking lieutenant of Attorney General Holder, who was about to hold a press conference announcing civil charges against the bank. The Justice Department meekly took the call, canceled the presser, and worked out this hideous deal, instead of doing the right thing and blowing off the self-important Wall Street hotshot long used to resolving meddlesome issues with the gift of his personal attention.

Only on Wall Street does the target of a massive federal investigation pick up the telephone and call up the prosecutor expecting to make the thing go away – and only in recent American history would such a tactic actually work.

Considering the scale of the offenses involved (one could make the argument that Bear Stearns and Washington Mutual by themselves did enough damage and cranked out enough toxic loans to cause the 2008 crash) the state could have taken the hardest of hard lines. Instead, they once again took a big fat check to walk away.

Papers like the *Journal* have particularly complained that Chase should not be held responsible for the offenses committed by companies long before Chase acquired them. What they forget is that Chase has made a fortune off its acquisitions of Bear and Washington Mutual, two purchases which were massively subsidized by the state. Nobody complained about potential liability back when all those two deals were doing for Chase was helping its executives buy overpriced art and summer homes.

And remember, this sort of liability was basically the only risk Chase took in these deals. The government took on most of the rest, in order to make the acquisitions happen.

Chase got to buy Bear Stearns with $29 billion in Fed guarantees, with the state setting up a special bailout facility, Maiden Lane, to unwind all of the phony-baloney loans created through Bear's Ponzi-mortgage-mechanism described above. So Chase got to acquire one of the world's biggest investment banks for pennies on the dollar, and then got the Fed to buy up all the toxic parts of the bank's portfolio, essentially making the public the involuntary customer of Bear's criminal inventory.

Later on, Chase took $25 billion in TARP money, bought Washington Mutual and its $33 billion in assets for the fire-sale price of $1.9 billion, and then repeated the Bear scenario, getting another Maiden Lane facility to take on the deadliest parts of Washington Mutual's portfolio (including, for instance, a pool of mortgages in which 94 percent of the loans had limited documentation).

Incidentally, the notion that Chase was somehow dragged kicking and screaming by the government and forced to buy these two massive companies essentially for free is almost as laughable and ridiculous as the oft-cited explanation for the financial crisis, that the government forced banks to lend to the poor.

Chase, as has been reported by multiple outlets, had already tried on its own to buy both companies before the state arranged its infamous shotgun weddings. Only after both firms collapsed, the economy was in crisis, and Chase was able to get the Fed to eat the toxic portfolios of both companies did these already-longed-for acquisitions take place.

Chase was too big to fail before the crash, but it's even Too-Bigger-To-Failier now, thanks to the expanded market share afforded by these two Fed-sterilized acquisitions. *Bloomberg* reported that Bear's book value has soared by $36 billion since it swallowed up those two firms with the public's help. Its retail banking earnings have soared nearly 1000 percent. It has more than doubled the size of its banking deposits. Chase didn't have a single branch in Florida or California before this deal: It's now a top-5 banking presence in both states.

So nobody should be crying for poor Chase now, just because it's no longer able to simply sit back and collect gobs and gobs of essentially free cash from the ill-gotten market share "won" by its two crooked acquisitions.

Incidentally, I don't remember hearing anything from Jamie Dimon at the time Chase was acquiring these banks about any reluctance to buy up two firms that had just spent years helping to blow up the world economic system with phony loans. As one friend of mine on Wall Street noted earlier this week, if there was a single document anywhere with Dimon's name on it expressing reluctance about these new bedfellows, it would have been produced ages ago and "that dickhead Sorkin would have put it in his movie."

These guys at Chase knew exactly what they were buying when they took on these companies. They just thought they were getting the deal of the century, by taking on the still-functioning businesses of two finance giants for a song, giving Chase a state-subsidized push into the pole position of American banking. And they figured, very nearly correctly, that they would never have to pay any serious freight for all the offenses committed by their new acquisitions.

Now they'll have to write a big check, which sucks for them, but what about the victims? To those critics crying about a "shakedown": Would you prefer that Chase merely be required to pay back every dollar to those investors wiped out by these schemes? Because that would be a hell of a lot more than $13 billion.

It would be great if everyone covering Wall Street could sign a pact, and agree: No more crying, please, about no-jail, no-individual-penalty settlements in which companies use shareholder money to pay fines at huge discounts relative to the actual damage they caused. And again, wake me up when even one of these guys goes to jail. There are only about a million Americans doing time for less.

Comment on Global Research Articles on our Facebook page

Become a Member of Global Research

Articles by: Matt Taibbi