US in sweetheart deal with JPMorgan over complicity in Madoff Ponzi scheme

By Barry Grey
17 December 2013

The Obama administration is preparing once again to shield JPMorgan Chase and its CEO, Jamie Dimon, from criminal prosecution for their illegal activities, this time in connection with the $20 billion Ponzi scheme operated by Bernard Madoff.

Multiple news outlets reported last week—exactly five years after Madoff, the former chairman of the NASDAQ stock exchange, was arrested at his Manhattan penthouse—that JPMorgan is about to reach a settlement with the Justice Department over charges that the bank failed to alert US authorities about its suspicions that Madoff's investment firm was a fraud.

JPMorgan, the biggest US bank, was Madoff's primary banker for more than two decades. The bank collected lucrative fees from Madoff's firm, which moved billions of dollars through its accounts.

At the time of Madoff's arrest, the *World Socialist Web Site* wrote: "Madoff's scam could not have been carried out without the complicity of the highest echelons of the financial elite and the government." (See: "The Madoff scandal"). The settlement between the government and JPMorgan, expected to be finalized and formally announced before the end of the year, confirms this analysis.

Madoff himself, interviewed from prison by the *Financial Times* in 2011, said, "JPMorgan doesn't have a chance in hell of not coming up with a big settlement… There were people at the bank who knew what was going on."

Despite ample evidence that this was the case, the Justice Department is reportedly offering a deal in which JPMorgan agrees to pay penalties of between $2 billion and $2.5 billion—about 10 percent of its annual profit—while avoiding a criminal indictment or admission of guilt.

The settlement reportedly includes a so-called "deferred prosecution" agreement, in which US prosecutors list all of the bank's alleged crimes, but stop short of an indictment as long as the bank pays the fines and acknowledges the facts presented in the government's complaint.

According to the *New York Times*, the deferred prosecution agreement is expected to accuse JPMorgan of a "programmatic violation" of the Bank Secrecy Act, which requires banks to maintain controls against money laundering and report suspicious activities to the authorities.

The bank filed a suspicious activity report in Britain in 2008, stating that Madoff's investment returns "appear too good to be true—meaning that it probably is." But JPMorgan failed to file a similar warning with US authorities or close Madoff's account.

Yet no one at the bank will be accused of wrongdoing, and the bank itself will not be criminally charged under the agreement being worked out with the Obama administration.

The fact that the bank alerted British authorities to the phony character of Madoff's operation makes it all the more unlikely that US regulators were unaware of widespread suspicions regarding Madoff's firm. At least one prominent investor repeatedly complained to the Securities and Exchange Commission that Madoff was operating a Ponzi scheme, but he was essentially ignored.

Deferred prosecution and non-prosecution agreements, which have become commonplace in federal investigations of the legal transgressions of US corporations and banks, are not the same as plea bargains, in which defendants actually plead guilty to a crime. These legal free passes for corporate crime have proliferated under the Obama administration, in accordance with its policy of not prosecuting major banks or corporations.

Last March, Attorney General Eric Holder spelled out this policy in testimony before the Senate Judiciary Committee. Holder said the big banks are so large and powerful that “if we do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy.”

This is an open statement that the financial elite is above the law. Like aristocracies of old, it is not subject to the laws that apply to the lower orders.

Not a single leading banker has been criminally prosecuted, let alone jailed, since the financial crash of 2008, despite multiple congressional and other government investigations that have documented pervasive law-breaking and fraud by Wall Street banks.

In an op-ed piece in the *New York Times* on Saturday, David M. Uhlmann, a law professor at the University of Michigan, discussed the vast expansion of non-prosecution and deferred prosecution agreements under the Bush and Obama administrations. He pointed out that from 2004 through 2012, the Justice Department entered into 242 such agreements with corporations, as compared to only 26 in the preceding 12 years.

He further noted that from 2010 to 2012, the criminal division of the Justice Department reached twice as many deferred prosecution and non-prosecution agreements with corporations as there were plea agreements.

These included a settlement with HSBC Bank in 2012, in which the bank acknowledged it was involved in nearly a trillion dollars’ worth of money laundering, much of it from drug trafficking. Another deal was made with Massey Energy in connection with the 2012 Upper Big Branch mine disaster that killed 29 West Virginia coal miners. Massey had concealed over 300 safety violations at the mine from government inspectors.

The impending deal over the Madoff scandal is the latest in a series of settlements by the JPMorgan in relation to fraudulent activities. Just last month, the bank agreed to pay a nominal $13 billion (the actual cash penalty will be substantially less) to settle charges that it defrauded investors by selling toxic mortgage-backed securities in the run-up to the collapse of the housing bubble in 2007 and 2008.

Earlier this year, it paid $4.5 billion to settle charges that it defrauded pension funds and other institutional investors to whom it sold mortgage bonds.

In September, the bank paid $920 million to settle a US probe into its 2012 “London Whale” trading and accounting scandal. The same month, it paid another $390 million in refunds and $80 million in penalties for billing credit card clients for identity theft protection they never received.

Last July, JPMorgan paid $410 million in penalties and repayments to settle charges it manipulated California and Midwest electricity markets.

The bank is also under investigation for its role in the Libor-rigging scandal, in which major international banks manipulated the world’s benchmark interest rate to increase their profits.

Evidence showing that JPMorgan long knew of Madoff’s scam has emerged in a number of legal complaints against the bank. One claim is that the bank knew about the fraud as far back as 1997, when it was alerted to “round-trip transactions” to and from Madoff’s JPMorgan account.

One bank executive acknowledged that Madoff’s “Oz-like signals” were “too difficult to ignore.”

According to one complaint in 2007, almost 18 months before Madoff’s Ponzi scheme was exposed, a senior risk officer at JPMorgan said, “For whatever it’s worth, I am sitting at lunch with Matt Zames, who just told me that there is a well-known cloud over the head of Madoff and that his returns are speculated to be part of a Ponzi scheme.”

Zames is now co-chief operating officer at the bank.