

Proposal: 1814(AG65) Regulatory Capital Rule: Risk-Based Capital Surcharges GSIB BHCs; Systemic Risk (FR Y-15)

Description:

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Comment ID: 160534

From: Cory

Proposal: 1814(AG65) Regulatory Capital Rule: Risk-Based Capital Surcharges GSIB BHCs; Systemic Risk (FR Y-15)

Subject: Risk-Based Capital Surcharges for Global Systemically Important BHCs; Systemic Risk Report (FR Y-15)

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Comments:

Date: Jul 10, 2024

Proposal: Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15) [R-1814]

Document ID: R-1814

Revision: 1

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Your comment: Regulatory fines, criminal penalties, and class-action settlements paid by corporations in the United States since 2000 have now surpassed \$1 trillion. Over that period, total annual payouts for corporate misconduct grew from around \$7 billion per year in the early 2000s to more than \$50 billion in recent years. This amounts to a seven-fold increase in current dollars or a 300% increase in constant dollars. These figures are derived from Violation Tracker, a wide-ranging database containing information on more than 600,000 cases from about 500 federal, state, and local regulatory agencies and prosecutors, as well as court data on major private lawsuits. The database shows that 127 large

parent companies have each paid more than \$1 billion in fines and settlements over the past quarter-century.

The most penalized industries are financial services, pharmaceuticals, oil and gas, motor vehicles, and utilities. Bank of America has the largest penalty total at \$87 billion. It and other domestic and foreign banks account for six of the ten most penalized parent companies. The others are BP (mainly because of the Deepwater Horizon disaster), Volkswagen (because of its emissions cheating scandal), Johnson & Johnson (mainly because of significant settlements in cases alleging its talcum powder causes cancer), and PG&E (due to cases accusing it of causing or contributing to wildfires in the West). Recidivism is a significant issue. Half a dozen parent companies; all banks; have each paid \$1 million or more in over 100 cases, led by Bank of America with 225. Two dozen parents have at least 50 of these cases on their record. The top 10 and 95 100 most penalized parent companies are publicly traded. The most penalized privately held company is Purdue Pharma, which is going out of business for its role in causing the opioid crisis. Four of the ten most penalized parents; BP, UBS, Volkswagen, and Deutsche Bank; are headquartered outside the United States. Of the 100 most penalized parents, 37 are based in 14 foreign countries, with the most significant penalty totals imposed upon parents in the United Kingdom and Germany.

Actions relating to the financial crisis of the late 2000s—including the toxic securities whose collapse precipitated the crisis and the shoddy mortgage-origination practices that made those securities toxic; account for the most significant portion of the penalties, nearly one-quarter of the total. Other mega-scandals responsible for significant shares of the penalties include the Deepwater Horizon disaster in the Gulf of Mexico, the marketing of prescription drugs for unapproved purposes, pricing abuses by pharmaceutical companies, the opioid crisis, emissions cheating by Volkswagen, and utility liability for wildfires. In more than 500 cases involving criminal charges, the U.S. Justice Department offered the defendant a deferred prosecution or non-prosecution agreement, thus allowing it to avoid entering a plea. Numerous companies have gotten more than one of these leniency agreements. The Occupational Safety and Health Administration accounts for over one-third of the 600,000 cases in Violation Tracker, including only fines of \$5,000 or more. Because OSHA's fines have been kept artificially low and are often below that threshold, the agency accounts for only \$3 billion of the \$1 trillion total. Cases brought by state and local government prosecutors and regulators account for \$215 billion of the trillion-dollar total. Nearly two-thirds of that amount came from actions brought by groups of state attorneys general or financial regulators acting in concert. California and New York far surpass the rest of the states in the penalties achieved through single-state actions.

We call on prosecutors and regulators to supplement monetary penalties with other remedies, such as forcing companies to divest from lines of businesses where they were engaged in serious misconduct. The Justice Department also needs to be more aggressive in bringing criminal charges against individual corporate executives in the most severe cases. Finally, we call for greater consistency among states in their commitment to enforcement. Introduction: The Road to \$1 Trillion There are many days when the business news reads like a crime blotter. Large corporations are repeatedly being accused of offenses such as accounting fraud, market manipulation, foreign bribery, invasion of privacy, improper marketing of dangerous drugs, wage theft, and predatory lending. Regulatory violations involving pollution, workplace hazards, and faulty products are so common that they draw little attention except in the most egregious cases.

The road to \$1 trillion can be traced back to 2001 when a high-flying energy trading company called Enron fell back to earth. Business journalists, Wall Street analysts, and others who the company's hype had taken in started to raise questions as they cast a more critical eye toward the company's unorthodox accounting practices. It soon appeared that Enron had been engaged in a massive accounting fraud. The company and its auditor, Arthur Andersen, went out of business. Enron was just one of a series of accounting and corruption scandals that erupted in the early 2000s. Others involved companies such as WorldCom, a telecommunications company found to have inflated its assets by billions of dollars; Tyco International, a security systems company whose CEO was convicted of misusing corporate funds to support a lavish personal lifestyle; and Adelphia Communications, whose principals were found guilty of looting the firm. Many of the prosecutions that emerged from these

scandals targeted individual corporate executives, such as Kenneth Lay of Enron, Bernard Ebbers of WorldCom, and Dennis Kozlowski of Tyco International. Yet there were also cases brought against the companies themselves and against banks and auditors accused of enabling the misconduct. More than two dozen entries in Violation Tracker are linked to these scandals, with total penalties exceeding \$6 billion. Mega-Scandals The accounting and corruption cases of the early 2000s constitute one of the categories we label Mega-Scandals.

These are cases involving more severe wrongdoing, often affecting large numbers of consumers, workers, or community residents. Fines and settlements in these matters run well into the millions of dollars; and sometimes billions. Multiple companies frequently commit the offenses. They may be pervasive in an industry. Table 1 shows the ten largest mega-scandals whose penalties account for the most significant portions of our trillion-dollar total. Lists of the individual cases linked to the mega-scandals have been added to the Summaries page of the Violation Tracker website. Here, we provide snapshots of some of the largest mega-scandals. Table 1. Penalty Totals for Cases Linked to 10 Mega-Scandals Mega-Scandal Penalty Total Toxic Securities \$148,424,000,000 Mortgage Abuses \$84,104,995,766 Opioid Crisis \$70,852,909,664 Price Fixing \$43,560,101,570 Deepwater Horizon \$35,854,750,000 Emissions Cheating \$32,409,305,116 Sanctions Violations \$25,622,319,767 Pharmaceutical Hazards \$23,392,652,203 Improper Drug Marketing \$20,653,020,587 Foreign Bribery \$19,467,027,661 Toxic Securities. The magnitude of the Enron era cases would be dwarfed by another mega-scandal that erupted in the 2000s. It was the outgrowth of a period of financial deregulation that allowed Wall Street to create a slew of complex investment products backed by shaky home mortgages.

When the housing market softened, and many of those mortgages became delinquent, the value of residential mortgage-backed securities plunged. They came to be known as toxic securities. By 2008, some of the most prominent players on Wall Street were teetering. Lehman Brothers went under. Bear Stearns had to be rescued and taken over by JPMorgan Chase, which was also pressured to take over the failing Washington Mutual, an aggressive subprime lender. Merrill Lynch avoided bankruptcy only by agreeing to be acquired by Bank of America, which also took over Countrywide Financial, another major player in the subprime market. Hundreds of billions of dollars from the federal government's Troubled Asset Relief Program propped up many other banks. Wall Street and the country avoided a total financial collapse. Still, there were significant legal and monetary consequences for the financial institutions responsible for devising and marketing the risky securities.

They found themselves the target of significant lawsuits from the federal government, state government, institutional investors, etc. Banks ended up paying more than \$148 billion in fines and settlements. The biggest hit was taken by Bank of America, which shelled out \$24 billion, much of it from lawsuits brought against Merrill Lynch and Countrywide. The total for JPMorgan Chase was \$18 billion, and for Citigroup, it was \$16 billion. The following foreign banks, active in marketing what turned out to be toxic securities, each paid more than \$10 billion: Deutsche Bank, NatWest, and UBS (whose total includes cases brought against Credit Suisse, which it would later acquire). Mortgage Abuses. The financial institutions that originated those shaky home mortgage loans behind the toxic securities also felt the legal fallout from the financial crisis. In some cases, they were part of the same banks that marketed the securities. Banks were sued for luring low-income consumers into unsustainable mortgages and misleading investors about those practices. Far and away, the biggest payout in this category came from Bank of America, whose \$53 billion total resulted from giant settlements with the U.S. Justice Department, state attorneys general, the loan guarantee agency Fannie Mae, and others. JPMorgan Chase and Wells Fargo each racked up nearly \$9 billion in payouts. The mortgage abuse cases resulted in fines and settlements of more than \$80 billion. Deepwater Horizon. The following corporate mega-scandal burst onto the scene shortly after the financial crisis. It began on April 20, 2010, when an explosion occurred at the Deepwater Horizon drilling rig operated by BP in the Gulf of Mexico.

The accident killed 11 crew members and released a vast amount of oil into the gulf. It turned out to be the largest oil spill in history. BP and the rig's owner, Transocean, and Halliburton, which helped construct it, faced a wave of litigation alleging deficiencies in their actions before, during, and after the

accident. They ended up paying about \$36 billion in settlements, most of which came from BP. Improper Drug Marketing. Apart from financial services, pharmaceuticals account for most penalties documented in the Violation Tracker. Drugmakers have been responsible for a variety of mega-scandals. Among them is the practice of marketing products for use that the U.S. Food and Drug Administration does not approve. There are times when doctors may need to prescribe medications for off-label uses, but the drug companies have been accused of promoting products to users who the unapproved use may harm. Violation Tracker documents more than 60 significant cases, accounting for around \$20 billion of fines and settlements. Many of these cases were resolved in the early 2000s; for example, in 2004, Warner-Lambert, now part of Pfizer, agreed to plead guilty and pay more than \$430 million to resolve criminal charges and civil liabilities in connection with what was alleged to be illegal and fraudulent promotion of unapproved uses of its Neurontin anti-seizure drug. Drug Pricing Abuses. Another pharmaceutical mega-scandal involves manipulating the wholesale price levels companies must report to state Medicaid agencies, which are used in determining how much they receive for their products. This reporting is supposed to ensure that the prices being paid by Medicaid are not out of line with those charged to other parties. Drugmakers have repeatedly been accused of reporting inflated prices to Medicaid and have paid out large amounts in settlements.

For instance, in 2016, Pfizer and its subsidiary Wyeth paid \$784 million to resolve allegations that Wyeth knowingly reported false and fraudulent prices on two of its proton pump inhibitor drugs to the government. Then there is the issue of rebates. Pharmaceutical companies often offer them to private-sector customers to promote their products, but they frequently fail to provide the same benefit to government health programs. Violation Tracker contains numerous cases where drugmakers were accused of shortchanging government agencies on rebates. In 2021, Bristol-Myers Squibb paid \$75 million to settle one such case. Generic Pay for Delay. Generic producers are supposed to help reduce drug prices, but they often do the opposite. Along with price-fixing, they often engage in schemes called pay for delay. These deals receive payments from producers of brand-name drugs whose patent protection is ending to look the other way as those producers use tricks to extend their exclusivity.

Pay-for-delay arrangements are frequently challenged via class action lawsuits, and both brand-name and generic drugmakers have paid billions in settlements. Earlier this year, for instance, Gilead Sciences agreed to pay over \$246 million to settle litigation alleging it entered into an improper deal to delay the introduction of a generic version of its HIV medications. Pay for delay is so profitable that nine-figure settlements have not dented it. Opioid Crisis. Yet another pharmaceutical mega-scandal comes out of the reckless promotion of dangerously addictive painkillers such as oxycodone. The biggest culprit, of course, was Perdue Pharma, which in 2020 agreed to pay \$8 billion to resolve criminal and civil charges. The settlement required the company to plead guilty to fraud and other felonies. While in bankruptcy, the company agreed to leave the pharmaceutical business and use its resources to fund opioid addiction treatment. Still, the settlement was challenged because of a provision shielding the Sackler family, which controlled the company, from liability.

The dispute went to the U.S. Supreme Court, which heard the case in December 2023 but has not yet ruled. While the fate of the Sacklers remains uncertain, many other companies have faced legal consequences for their role in the opioid crisis. Along with other drugmakers, these include wholesalers and pharmacy chains accused of ignoring the extraordinary volume of prescriptions coming from dubious sources such as shady pain clinics known as pill mills. Among the big wholesalers, AmeriSource Bergen and Cardinal Health have each paid over \$6 billion in opioid-related settlements, while McKesson has paid over \$8 billion. Pharmacy giants CVS and Walgreens have each paid over \$5 billion. More cases are pending. Overall, Violation Tracker documents more than 80 major opioid-related cases with total penalties of about \$70 billion, making it the biggest mega-scandal after toxic securities and mortgage abuses. Emissions Cheating. Automakers have long grumbled about fuel efficiency standards and rules governing tailpipe emissions. In 2015, it came to light that Volkswagen was circumventing these restrictions by programming the engines in its diesel vehicles to give readings during emissions testing that were far different from the amount of pollution the cars were spewing into the air during everyday driving. What came to be called Dieselgate would seriously taint VW's reputation and bring about a wave of enforcement actions and lawsuits against the company.

In multiple cases brought by the Justice Department, the Environmental Protection Agency, the Federal Trade Commission, state attorneys general, and others, VW paid over \$25 billion in fines and settlements. VW was not the only automaker to have an emissions cheating scandal. Mercedes-Benz paid about \$2 billion to settle similar allegations; Fiat Chrysler, now part of Stellantis, paid over \$1 billion. Bogus Bank Accounts. In the early 2010s, managers at Wells Fargo began putting enormous pressure on bank employees to generate more revenue by persuading existing customers to open additional accounts of various kinds. Faced with impossible demands, many of these low-level bankers found that the only way to meet their quotas was to create the accounts themselves without notifying the customer. In many cases, supervisors sanctioned this fraudulent activity. The scam came to light in 2016 when the Consumer Financial Protection Bureau announced a \$100 million fine against the bank, which also agreed to pay \$35 million to the Office of the Comptroller of the Currency and \$50 million to the City and County of Los Angeles. These cases were the first in a series that would ultimately cost Wells Fargo more than \$8 billion. Wildfire Liability. The devastating wildfires that have swept through parts of the western U.S. in recent years have brought about a new kind of mega-scandal: accusations that significant utility companies caused or contributed to those disasters by failing to properly maintain the areas around their power lines.

The primary target of these allegations has been PG&E Corporation, whose operations span northern and central California. Over the past five years, PG&E has paid over \$16 billion in fines and settlements in cases brought by state regulators, the state attorney general's office, and other parties. Edison International, whose subsidiary Southern California Edison is the primary electric utility in southern California, has paid over \$1 billion in wildfire cases. Findings Throughout the past quarter-century, the annual fines and settlements paid by corporations grew from around \$7 billion per year in the early 2000s to more than \$50 billion in recent years (see Table 2).

This amounts to a seven-fold increase in current dollars or a 300% increase in constant dollars. As the table shows, there have been some years in which the total has spiked, only to fall back the following year. That reflects an unusual cluster of cases, especially class action lawsuits. For example, 2008 saw a sharp rise due to several cases in which Wall Street banks were accused of misleading customers into investing in volatile auction-rate securities. Table 2. Annual Totals of Corporate Fines and Settlements documented in Violation Tracker Year Penalty Total 2000 \$7,529,107,408 2001 \$7,396,596,552 2002 \$11,462,249,016 2003 \$14,841,257,009 2004 \$15,897,434,371 2005 \$19,935,111,915 2006 \$20,019,502,443 2007 \$22,965,708,659 2008 \$65,736,192,185 2009 \$19,399,409,048 2010 \$24,017,664,734 2011 \$21,186,614,396 2012 \$67,945,706,476 2013 \$74,445,638,229 2014 \$74,331,104,344 2015 \$80,610,161,543 2016 \$52,951,689,646 2017 \$59,034,967,859 2018 \$43,713,582,073 2019 \$42,667,788,516 2020 \$69,613,806,023 2021 \$53,446,420,906 2022 \$71,194,610,927 2023 \$52,546,365,431 2024 \$9,891,677,229 \*The 2024 figure is through early March Most Penalized Companies Given its involvement in many giant toxic securities and mortgage abuse settlements, Bank of America has accumulated the largest penalty total of any parent company. The list of the most penalized parents in Table 3 shows that it and other banks, both domestic and foreign, dominate the top tier. Non-bank parents in the top ten include BP (due to Deepwater Horizon), Volkswagen (due to its emissions cheating), and PG&E (due to its wildfire liabilities). One parent in that group that has not yet been discussed is Johnson & Johnson.

The company ended up there mainly because of the growing costs of litigation alleging that its talc-based baby powder causes ovarian cancer. In 2023, J&J agreed to provide up to \$9 billion over 25 years to resolve current and future talc claims. Table 3. Parent Companies with the Largest Penalty Totals Rank Current Parent Name Total Penalties Cases 1 Bank Of America \$87,286,650,890 328 2 JPMorgan Chase \$39,340,688,209 275 3 BP \$36,486,562,463 409 4 UBS \$31,069,299,125 179 5 Wells Fargo \$27,616,269,231 266 6 Citigroup \$26,945,611,792 181 7 Volkswagen \$26,154,445,505 111 8 Johnson & Johnson \$24,497,162,770 88 9 Deutsche Bank \$20,011,467,563 99 10 PG&E Corp. \$19,952,607,075 134 Looking beyond the top 10, there are 127 parent companies with penalty totals of \$1 billion or more. Ownership Status.

The ten companies with the most significant cumulative penalties are publicly traded; the same is true for 95 of the top 100. Cases linked to public parents make up about 83% of the \$1 trillion total in

Violation Tracker. The most penalized privately held parents are Purdue Pharma (which is going out of business), Binance Holdings (a cryptocurrency company that was fined over \$4 billion last year for anti-money-laundering deficiencies), JUUL Labs (which has faced allegations of marketing vaping products to minors), Knauf (a German building materials company which paid a \$1 billion settlement related to defective drywall), and Koch Industries (the industrial conglomerate whose founders are known for being staunch opponents of regulation). Violation Tracker also collects data on penalties paid by large non-profit entities, especially health systems. The most penalized non-profit is California-based Sutter Health. Headquarters Location.

Four of the ten most penalized parents; BP, UBS, Volkswagen, and Deutsche Bank; are headquartered outside the United States. Of the 100 most penalized parents, 37 are based in 14 foreign countries. Of those, the nation that accounts for the most significant penalty total is the United Kingdom, mainly due to BP, banks such as NatWest and Barclays, and pharmaceutical companies such as GlaxoSmithKline. Germany, home to Volkswagen and Deutsche Bank, is second, followed by Switzerland and France. Repeat Offenders Some companies appear in the Violation Tracker only once; others repeatedly appear. Among the latter, there is significant variation in caseloads depending in part on which regulatory agencies the company deals with. For example, the big railroads each have more than 1,000 entries because the Federal Railroad Administration regulates safety by imposing large numbers of relatively minor penalties. We calculated the \$1 million or more penalties linked to each parent to determine which companies have the worst records for more severe cases.

As shown in Table 4, the "winners" of this competition are the big banks. Six have been at the losing end of more than 100 such cases. At the top is Bank of America, with a remarkable total of 225 such cases. Besides the banks, the parents with the most major penalty cases are CVS Health, AT&T, Walmart, and Teva Pharmaceuticals. Two dozen parents have 50 or more. Table 4. Parent Companies with the Most Cases Involving Penalties of \$1 Million or More Rank Parent Cases 1 Bank Of America 225 2 Wells Fargo 169 3 JPMorgan Chase 167 4 Citigroup 125 5 UBS 122 6 Morgan Stanley 102 7 CVS Health 88 8 AT&T 86 9 Deutsche Bank 82 10 Walmart 67 Most Penalized Industries We have noted that financial services and pharmaceuticals account for the most significant shares of total penalties. Table 5 shows how the other industries rank. Oil and gas are in third place mainly because of BP's fines and settlements related to the Deepwater Horizon disaster. Motor vehicles are fourth primarily because of Volkswagen's penalties from the emissions cheating scandals. Still, Toyota has also received large payouts regarding allegations that its vehicles were prone to sudden, unintended acceleration.

Table 5. Parent Industries with the Largest Penalty Totals Rank Parent Industry Penalty Total Cases 1 Financial Services \$387,559,149,282 7,719 2 Pharmaceuticals \$116,245,163,450 1,270 3 Oil And Gas \$55,565,445,820 6,561 4 Motor Vehicles \$46,950,728,206 1,100 5 Utilities And Power Generation \$46,373,492,557 3,085 6 Retailing \$28,334,341,503 6,328 7 Chemicals \$28,035,317,907 5,505 8 Wholesalers \$25,293,969,880 1,086 9 Healthcare Services \$23,311,696,485 13,343 10 Information Technology \$16,433,932,542 435 Utilities are in fifth place because of the wildfire liabilities of PG&E and major environmental settlements signed by companies such as American Electric Power and Duke Energy. Retailing ranks sixth because of the giant opioid payouts by pharmacy chains Walgreens and CVS Health. Chemicals are seventh mainly because of liabilities incurred by the German company Bayer after it acquired Monsanto, whose Roundup allegedly caused cancer. Wholesalers are in eighth place because of the large opioid payouts by the major drug distributors. Healthcare services come in at ninth due to numerous False Claims Act charges brought against for-profit hospital chains such as Tenet and HCA for unlawful billing of Medicare and Medicaid. The information technology industry ranks in 10th place due to significant privacy and antitrust cases involving companies such as Meta Platforms, Alphabet Inc., and Microsoft.

In Violation Tracker, private equity is treated as an industry in which majority-owned portfolio companies are considered subsidiaries. We collect data on penalties linked to the holdings of more than 40 of the largest private equity companies. Their combined total is about \$4 billion, making private equity the 20th most penalized industry. The largest private equity company is Apollo Global Management, with the most significant penalty total at \$1.2 billion. Offense Groups Each entry in the

Violation Tracker is tagged with one of nine broad offense groups. As shown in Table 6, financial offenses which include categories such as toxic securities, mortgage abuses, and accounting fraud account for the most significant portion of the penalty dollars by far. Competition-related offenses, which include price-fixing cases, market manipulation, and bribery, rank second. Yet, regarding the number of cases, the top group is safety-related offenses.

That is mainly because of the enormous caseload of the Occupational Safety and Health Administration, which is responsible for more than one-third of all the entries in Violation Tracker. Since its fine structure has been kept artificially low, OSHA's penalty total (applying our threshold of \$5,000) is only \$3.3 billion far below that of other regulators such as the Environmental Protection Agency and the Securities and Exchange Commission.

Offense Group	Total Penalties	Cases
1 Financial Offenses	\$286,391,284,995	10,968
2 Competition-Related Offenses	\$151,879,762,284	4,566
3 Consumer-Protection-Related Offenses	\$147,306,892,156	25,126
4 Environment-Related Offenses	\$127,586,364,325	85,227
5 Safety-Related Offenses	\$108,562,339,261	313,921
6 Healthcare-Related Offenses	\$82,244,259,391	41,076
7 Government-Contracting-Related Offenses	\$56,610,292,888	3,865
8 Employment-Related Offenses	\$36,221,987,043	141,883
9 Miscellaneous Offenses	\$5,977,184,595	1,510

Civil vs. Criminal Most of the 600,000-plus cases in Violation Tracker are designated as civil actions. Only about 2,000, or .32%, are criminal matters. Yet they account for more than 13% of penalty dollars. These involve a variety of offenses, such as fraud, violation of economic sanctions, foreign bribery, anti-money laundering deficiencies, marketing of drugs for unapproved purposes, and more egregious environmental violations.

Over 500 parent companies have paid criminal penalties totaling about \$135 billion. Twenty-six of those parents paid \$1 billion or more. Table 7 shows the parents that have paid out the most. The French bank BNP Paribas is at the top because of a 2015 case in which it was ordered to forfeit nearly \$9 billion and pay a \$140 million fine for the illegal processing of billions of dollars of transactions through the U.S. financial system on behalf of Sudanese, Iranian, and Cuban entities subject to U.S. economic sanctions. The other parent on the list not previously discussed is the German insurance company Allianz, which in 2022 agreed to plead guilty to securities fraud in connection with a scheme in which institutional investors, including public pension funds, were encouraged to invest in risky, complex products, resulting in heavy losses. Allianz agreed to pay more than \$3 billion in restitution to the innocent victims of this fraud, pay a criminal fine of approximately \$2.3 billion, and forfeit approximately \$463 million to the federal government.

Parent	Penalties In Criminal Cases
1 BNP Paribas	\$9,123,383,000
2 Purdue Pharma	\$8,944,000,000
3 Allianz	\$5,763,000,000
4 BP	\$4,345,500,000
5 Binance Holdings	\$4,316,126,163
6 Volkswagen	\$4,300,000,000
7 UBS	\$4,201,529,916
8 GlaxoSmithKline	\$3,750,000,000
9 Pfizer	\$3,270,600,000
10 Wells Fargo	\$3,198,000,000

Note: Includes penalties from cases with both criminal and civil components. In many cases, companies can resolve criminal charges without a plea. That is because the Justice Department extensively uses deferred prosecution and non-prosecution agreements.

These are leniency deals by which companies pay substantial penalties but avoid a criminal conviction. Violation Tracker documents more than 500 cases involving a DPA or an NPA with more than \$50 billion in penalties. Among the companies that have paid the most in these cases are Wells Fargo (bogus account creation), Goldman Sachs (foreign bribery), Boeing (737 Max safety scandal), and JPMorgan Chase (dealings with the scam artist Bernard Madoff). The theory behind these leniency agreements is that companies will learn from their mistakes and clean up their conduct. Yet there have been numerous instances of companies that signed a DPA or NPA ending up embroiled in another scandal. Amazingly, some of these companies were offered another leniency agreement, thus making a mockery of the deterrence concept. The double-dippers are American International Group, Barclays, Boeing, Deutsche Bank, HSBC, and Teva Pharmaceuticals. State Enforcement In addition to enforcing state-level regulations, state governments share responsibility for applying some federal laws, such as the Clean Air Act and the Clean Water Act. Of the \$215 billion in total state penalties documented in Violation Tracker, nearly two-thirds came from cases in which state attorneys general brought a group action, usually against a large company operating nationwide.

State securities and insurance regulators often do the same thing. Financial and consumer protection offenses account for the most significant portions of multi-state penalties. The most prominent case to date was a 2008 settlement with the Swiss bank UBS, which agreed to pay \$11 billion to resolve allegations that it misled investors in the marketing and sale of auction rate securities. That same year, Countrywide Home Loans paid nearly \$9 billion to resolve predatory home mortgage practices allegations. Multi-state litigation is also ordinary in enforcing healthcare violations, particularly the role of pharmaceutical manufacturers and distributors in the opioid crisis. Excluding multi-state cases, state regulation focuses primarily on financial, consumer protection, and environmental offenses. Financial cases account for nearly \$23 billion in penalties soaring above every other category. Consumer protection and environmental violations are \$15 billion and \$13 billion, respectively. The most significant single-state case was a \$2.2 billion penalty paid by BNP Paribas to the New York State Department of Financial Services in 2014. This was part of a more significant case involving the federal government. In 2020, the California Public Utilities Commission imposed a \$1.9 billion fine on PG&E for its role in Northern California's catastrophic 2017 and 2018 wildfires. Variations in state legislation, size, population, or funding can cause wide discrepancies in the penalty totals of the states.

As shown in Table 8, those totals range from over \$21 billion in California and New York to less than \$9 million in South Dakota. California and New York account for more than half of all state penalties apart from the multi-state cases. Sixteen other states have totals between \$1 billion and \$3.5 billion. When state penalties are broken down into nine offense groups, California and New York are at the top in every category except for healthcare-related offenses. The leader in that area is Florida, which has handed out nearly \$2 billion in healthcare penalties since 2000, primarily related to nursing home violations involving resident health and safety. Washington State renowned for its medical care comes in second with more than \$830 million in penalties.

Enforcement between states can be difficult to compare because of inconsistent approaches toward regulation. Several factors influence this: the regulatory legislation itself, enforcement capacity, and disclosure of information. Depending on the state's political culture, there may be a gap at these stages. Some disparities among state penalty totals are likely due to inadequate disclosure practices rather than an actual lack of enforcement. We collect all the enforcement data posted online and then file open records requests for the rest. Those requests are not always honored. Some states, such as Arkansas, deny requests from non-residents. Others take extended periods to fulfill requests. This may be due to underfunding, understaffing, or reluctance to release the comprehensive data we request. One notable example is the New York Department of Labor, which has failed to disclose any enforcement data to us despite several requests.

Table 8: State Penalty Totals

State	State Penalty Total	Multi-State Actions
California	\$21,373,319,716	\$133,984,652,349
New York	\$21,254,741,342	
Texas	\$3,533,312,600	
Massachusetts	\$3,015,438,519	
New Jersey	\$2,880,816,922	
Florida	\$2,482,309,692	
Ohio	\$1,897,877,124	
Washington	\$1,697,411,806	
Arizona	\$1,686,036,138	
Michigan	\$1,395,011,101	
Illinois	\$1,297,321,221	
Connecticut	\$1,284,936,355	
Pennsylvania	\$1,250,805,393	
Minnesota	\$1,212,532,773	
North Carolina	\$1,179,843,799	
West Virginia	\$1,177,206,084	
New Mexico	\$1,143,400,009	
Oregon	\$1,081,082,450	
Alaska	\$967,296,828	
Mississippi	\$871,613,040	
Maryland	\$849,613,845	
Colorado	\$763,233,434	
Alabama	\$667,947,199	
Kentucky	\$627,737,343	
New Hampshire	\$533,512,475	
Missouri	\$531,611,885	
Nevada	\$502,415,228	
Virginia	\$462,596,869	
Oklahoma	\$440,243,127	
District Of Columbia	\$396,352,131	
Louisiana	\$388,494,243	
Hawaii	\$323,180,502	
Indiana	\$261,294,469	
Delaware	\$245,893,142	
Wisconsin	\$238,427,446	
Montana	\$221,506,666	
Iowa	\$184,907,318	
Tennessee	\$172,894,873	
Georgia	\$163,868,705	
Arkansas	\$141,270,583	
Idaho	\$94,561,339	
Rhode Island	\$93,939,610	
South Carolina	\$92,022,994	
Vermont	\$71,254,548	
Kansas	\$55,366,641	
North Dakota	\$50,229,848	
Wyoming	\$44,157,772	
Maine	\$40,618,147	
Nebraska	\$39,945,213	
Utah	\$29,000,701	
South Dakota	\$8,755,288	
Grand Total	\$215,403,818,845	

Local Enforcement Local governments generally bring enforcement actions against small businesses, and many penalties are below the \$5,000 threshold used in the Violation Tracker. Yet there are some notable exceptions. These are seen mainly in California, where county district attorneys and city attorney offices in several municipalities often bring substantial cases against larger companies. They do so both individually and in multi-district joint actions. Regional air quality management districts in the state are also active in enforcement. Violation Tracker contains more than



3,500 entries from local prosecutors and regulators in California, with more than \$3 billion in total penalties

The most prominent case was a \$1 billion settlement between 18 local public entities and PG&E concerning three significant wildfires. Another local prosecutor that has brought significant cases is the Manhattan District Attorney's Office in New York. Its most significant actions have targeted large foreign banks for violating economic sanctions. Other active local regulators include the New York City Commission on Human Rights, the Allegheny County Health Department in Pennsylvania (which enforces air pollution laws), and the regional clean air agencies in Washington State. Also worth mentioning are units being created in more prominent localities to combat wage theft. Conclusion The fact that penalties have reached the 10-figure level suggests that during the past quarter century, we have been living through a continuous corporate crime wave. Companies pay billions of dollars annually for a wide range of offenses. Many large corporations are repeatedly fined or enter settlements for the same or similar misconduct. Monetary penalties are meant to deter future transgressions, but no indication is happening. Instead, the fines and settlements seem to be regarded as little more than a cost of doing business. Presumably, the profits from wrongdoing outweigh the penalties.

At one time, companies were more concerned about being labeled rule-breakers or lawbreakers. These days, there is so much misconduct that only the most egregious transgressions stand out. And even in those cases, companies can assume their sins will be forgotten before long. That seems to be what is happening with the likes of Volkswagen and Wells Fargo, which have spent heavily to repair their images after the emissions cheating and bogus bank account scandals. It is odd that amid a move to return to more rigid policies to combat street crime, there is no analogous effort to crack down on corporate crime. Instead, the Justice Department continues to employ leniency agreements that have frequently been ineffective in getting rogue companies to change their ways. The DOJ also remains reluctant to bring criminal charges against corporate executives, except in the most flagrant circumstances. In a few cases, the DOJ has experimented with different approaches, including forcing companies to exit lines of business where they behaved illegally. Last year, for example, Teva Pharmaceuticals and Glenmark Pharmaceuticals were fined not only for scheming to fix the prices of several generic drugs but also had to divest their operations relating to one of the drugs. That kind of penalty should shake up companies more than fines alone and thus should be used more frequently.

The DOJ also needs to be more aggressive in bringing criminal charges against individual corporate executives in the most severe cases. Under the Biden Administration, many federal regulatory agencies have been pursuing their mission diligently, though they have to contend with understaffing and inadequate budgets. Agencies such as the Consumer Financial Protection Bureau and the Federal Trade Commission also face corporate-instigated legal challenges to their power.

At the same time, the Supreme Court may soon issue a ruling that would weaken all federal regulators. State governments generally do an excellent job targeting larger companies in their multi-state actions, though some states participate in only a limited number of those cases. As for single-state enforcement, states like South Dakota and Utah must increase their activity. Taking what appears to be a half-hearted approach to enforcement deprives residents of the protections contained in state regulations and the federal laws the states help enforce. Numerous states also need to improve their disclosure practices so that the public can see how much enforcement they do. More vigorous enforcement is also needed at the local level in most states to duplicate the achievements of county and city agencies in California and New York. Critical Problems in the Banking Sector

1. Undercapitalization of Banks: - Large banks often lack sufficient capital to absorb losses, leading to taxpayer-funded bailouts during crises. For instance, the collapse of Silicon Valley Bank, Signature Bank, and First Republic Bank in 2023 resulted in significant government interventions to prevent broader economic fallout.

2. Moral Hazard: - The "too-big-to-fail" doctrine creates a moral hazard where prominent bank CEOs are incentivized to engage in high-risk activities, knowing that potential failures will likely result in

bailouts rather than bankruptcies. This was evident during the 2008 financial crisis and again in 2023.

3. Regulatory Evasion and Lobbying: - Financial institutions frequently lobby against stringent capital requirements and exploit regulatory processes to delay and dilute new rules. For example, before their details were released, Wall Street's CEOs opposed proposed capital rules.

4. Shadow Banking Risks: - Increased regulation of traditional banks often shifts risky financial activities to less regulated shadow banks, which are deeply interconnected with the more extensive financial system. This systemic risk was highlighted during the 2008 financial crisis and remains a concern today.

5. Historical and Ongoing Financial Crimes: - Large financial institutions have a history of engaging in illegal activities such as money laundering, fraudulent misrepresentation, and manipulation of financial markets. Examples include JPMorgan Chase's repeated violations and the widespread mortgage fraud leading to the 2008 crisis.

6. Lack of Transparency: - Financial institutions often lack transparency in their operations and risk exposures, which can conceal significant vulnerabilities until they become crises. Enhanced public disclosures and standardized risk assessments are needed to improve transparency. Solutions and Regulatory Reforms

1. Enhanced Capital Requirements: - Strengthening capital requirements for large banks is crucial to ensure they can absorb losses and prevent failures. Recommendations include adopting risk-sensitive standardized approaches and maintaining higher leverage ratios for systemically important banks.
2. Interim Final Rules (IFRs): - To counteract the abuse of the rule-making process by financial institutions, regulators should use IFRs to implement essential rules quickly and adjust them based on public comments. This approach can prevent delays in enforcing necessary regulations.
3. Regulation of Shadow Banking: - Properly regulating systemically significant nonbanks, including requiring adequate capital and risk management practices, can mitigate the risks posed by the shadow banking system. This would complement the regulation of traditional banks and reduce systemic vulnerabilities.
4. Stronger Stress Testing: - Revamping stress tests to be more rigorous and reflective of actual risks can ensure that banks maintain sufficient capital levels to withstand financial shocks. Fundamental changes include assuming continuous capital distributions during stress periods and incorporating more dynamic risk assessments.
5. Transparency and Disclosure: - Increasing the transparency of financial institutions through standardized public disclosures and consistent risk measurement can help stakeholders better understand and mitigate risks.

This includes revising qualitative disclosure requirements and aligning regulatory reporting forms with new capital rules.

Historical Context and Trends

1. The Great Depression (1929): - Bank failures and lack of sufficient capital led to widespread economic collapse, prompting the creation of regulatory bodies like the FDIC to insure deposits and promote stability in the banking system.
2. Savings and Loan Crisis (1980s): - Deregulation and high-risk lending practices failed numerous savings and loan institutions, costing taxpayers approximately \$124 billion for the bailout.
3. The 2008 Financial Crisis: - Massive failures of undercapitalized banks and nonbanks triggered the most severe economic downturn since the Great Depression. The crisis led to over \$29 trillion in bailouts and significant reforms, including the Dodd-Frank Act to increase capital requirements and reduce systemic risk.
4. Recent Bank Failures (2023): - The collapse of Silicon Valley Bank, Signature Bank, and First Republic Bank highlighted ongoing vulnerabilities in the financial system, particularly the risks posed by undercapitalized banks and insufficient regulatory oversight.

The Need for Transparency and Accountability

1. Public Trust and Confidence: - Transparency in financial operations is essential for maintaining public trust and confidence in the banking system. Clear and consistent disclosures about risks and capital adequacy can help prevent panic and instability during economic downturns.
2. Preventing Financial Crimes: - Robust regulatory oversight and stringent enforcement of laws against financial crimes are critical to deterring illegal activities and protecting consumers. Historical examples of widespread fraud, such as manipulating mortgage-backed securities leading to the 2008 crisis, underscore the need for vigilant supervision.
3. Ensuring Market Stability: - Adequate capital buffers and comprehensive risk assessments can ensure financial institutions remain stable and resilient,

reducing the likelihood of crises necessitating taxpayer-funded bailouts. This stability is crucial for supporting sustainable economic growth and protecting the broader economy from financial shocks.

As a concerned professional in the financial industry, I strongly support the implementation and rigorous enforcement of the Basel III reforms. These rules are essential to ensuring the stability and resilience of our financial system. The recent proposals aim to enhance the consistency and transparency of capital requirements for large banking organizations, which is crucial given the alarming scale of their current exposures. Financial Risks and Legal Issues Financial institutions continue to hold trillions in derivatives, posing significant systemic risks. For instance, the six largest U.S. banks collectively received over \$8.2 trillion in bailouts during the 2008 financial crisis. Despite these bailouts, these institutions have been involved in 351 significant legal actions, resulting in nearly \$200 billion in fines and settlements. This indicates a persistent pattern of risky and illegal behavior that has not diminished since the crisis. Off-Balance Sheet Liabilities On top of their on-balance sheet liabilities, banks also carry trillions in off-balance sheet liabilities.

Off-balance sheet exposure further exacerbates the risks, effectively turning the financial system into a dangerous game of hot potato where the ultimate fallout from these liabilities is uncertain and potentially devastating. According to the OCC's recent report, JPMorgan Chase Bank's total derivatives exposure is \$1.0 trillion, Goldman Sachs Bank USA's is \$50 trillion, Citibank's is \$45.9 trillion, and Bank of America's is \$22.7 trillion. Advanced Technologies in Financial Manipulation These same institutions have leveraged advanced technologies such as supercomputers, quantum computers, and sophisticated algorithms to engage in high-frequency trading and other complex financial activities. The regulatory landscape has yet to adequately address the implications of these technologies, which can be used to manipulate markets and engage in illicit activities with greater efficiency and opacity. Allowing institutions with nearly 300 felonies to continue operating with such tools without stringent oversight is a recipe for disaster. Public Accountability and Legal Consequences We, the people, should not be responsible for the financial misdeeds of these institutions simply because their failure would endanger the entire economy.

No one, including high-profile figures such as Jamie Dimon, Kenneth C. Griffin, and Vincent Viola, should be above the law. It is imperative that everyone in the financial sector is held to the same standards and faces appropriate consequences for their actions. To strengthen the regulatory framework, it is crucial to implement additional measures: 1. Lobbying Restrictions: Financial institutions with a history of significant legal violations should be prohibited from lobbying lawmakers or serving on the boards of regulatory bodies like the DTCC (Depository Trust & Clearing Corporation) or OCC (Office of the Comptroller of the Currency). 2. Eliminating Non-Prosecution Agreements (NPAs) and Acceptances of Waivers of Consent (AWCs): Institutions and individuals who have committed financial crimes should face criminal charges and penalties rather than settling through NPAs and AWCs.

As evidenced by countries like South Korea, where naked short-selling can lead to life sentences, stricter penalties can be a strong deterrent against financial misconduct. 3. Enhanced Technological Oversight: Regulatory bodies must establish frameworks to monitor and control the use of advanced trading technologies to prevent their misuse for market manipulation and other illegal activities. Recent Bank Failures and Financial Instability The enforcement of Basel III reforms is a critical step toward ensuring financial institutions operate safely and soundly, minimizing the risk of another catastrophic financial crisis.

By holding these institutions accountable and implementing stronger regulations, we can protect the public's interests and maintain our financial system's integrity. Adding to our concerns is the deceptive conduct by financial committees that mislead the American public about the actual state of the economy. Notably, figures like Secretary Yellen, who received \$800,000 to speak at Citadel Securities, appear disconnected from the everyday struggles of average Americans, such as paying \$10 for a gallon of milk. This disconnect is highlighted when one compares the price of lemons purchased online in 2002 to the prices now, which have quadrupled. Furthermore, the recent reports highlight the vast scale of derivative exposures and the significant financial risks these institutions pose. The largest

banks continue to hold staggering amounts in derivatives, necessitating robust oversight to prevent another financial meltdown.

The Federal Deposit Insurance Corporation (FDIC) reports that unrealized losses on investment securities have dramatically increased, with held-to-maturity and available-for-sale securities showing significant declines. Additionally, the number of banks on the "problem bank list" has fluctuated, indicating ongoing instability within the sector. Shocking Revelations and Public Perception The continuous legal issues central banks face highlights the need for stringent oversight. For example, despite being a primary recipient of bailout funds, JPMorgan Chase has been involved in multiple scandals, including money laundering and manipulation of financial markets.

The recent statement from Markets Insider notes that the recent bank failures have exposed significant vulnerabilities in the banks' balance sheets, which are not being adequately addressed. Furthermore, nearly 200 banks risk facing the same fate as Silicon Valley Bank (SVB), highlighting the systemic risks within the banking sector. The quote from Thomas Jefferson in 1802 remains eerily relevant today, emphasizing the dangers banking institutions pose to public safety and economic stability. In conclusion, regulatory frameworks like Basel III must be supported and strengthened to include measures against lobbying by criminally implicated institutions, the elimination of NPAs and AWCs, and stringent oversight of advanced trading technologies. These steps are necessary to ensure that no one is above the law, regardless of their position, and to safeguard the financial system on nure cuses