

# e-News Letter



## Narsee Monjee College - Dept. Of Accountancy

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# Barclays In A Fix: Slapped With Biggest Fine In The History Of UK

Barclays has been handed the biggest UK bank fine in history as six banks were ordered to pay \$6bn (£3.9bn) over manipulating the foreign exchange markets.

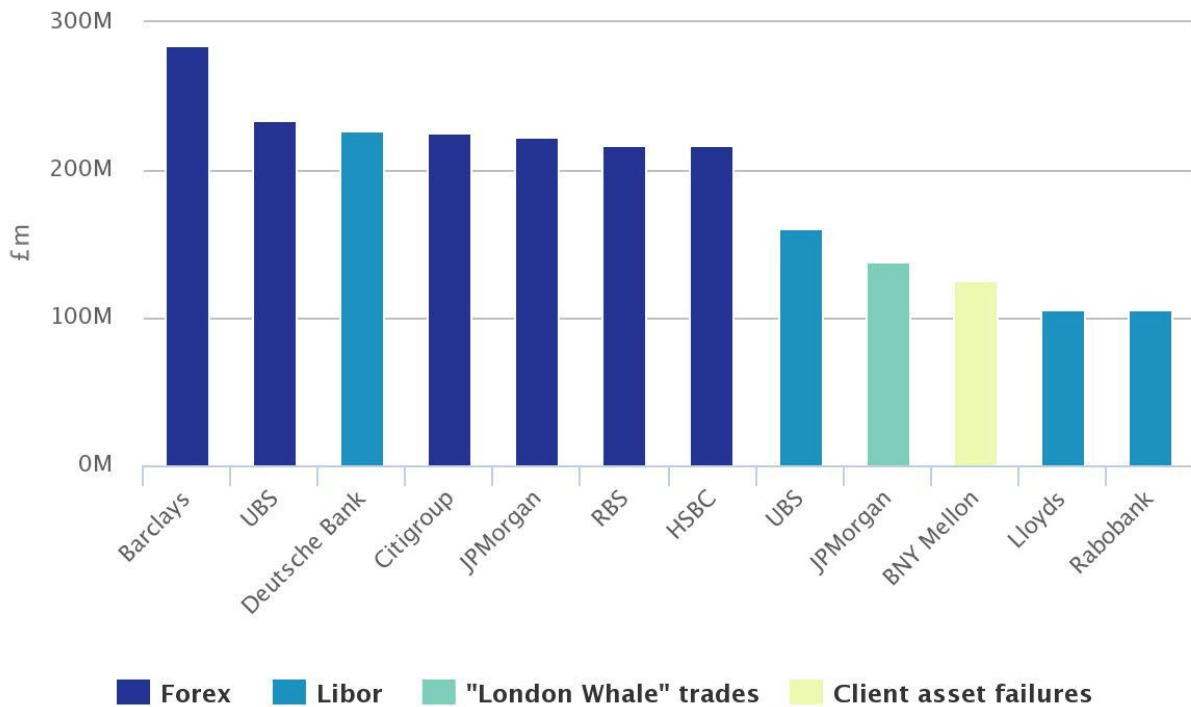
The Financial Conduct Authority ordered Barclays to pay £284.4m as part of the British bank's £1.5bn settlement with the City watchdog and four US regulators.

Royal Bank of Scotland, JP Morgan, UBS, Citigroup and Bank of America were also fined by the Federal Reserve, while all but Bank of America were forced to plead guilty to criminal charges and penalised by the US Department of Justice.

Regulators detailed how traders at the banks, referring to themselves with names such as "The Cartel", colluded to rig euro-dollar currency benchmarks, profiting at the expense of customers.

The bankers attempted to manipulate vital benchmarks used by companies around the world as a peg for foreign exchange transactions in the \$5.3 trillion-a-day market. One Barclays trader wrote in electronic chats: "If you aint cheating, you aint trying."

## Biggest UK bank fines



Highcharts.com

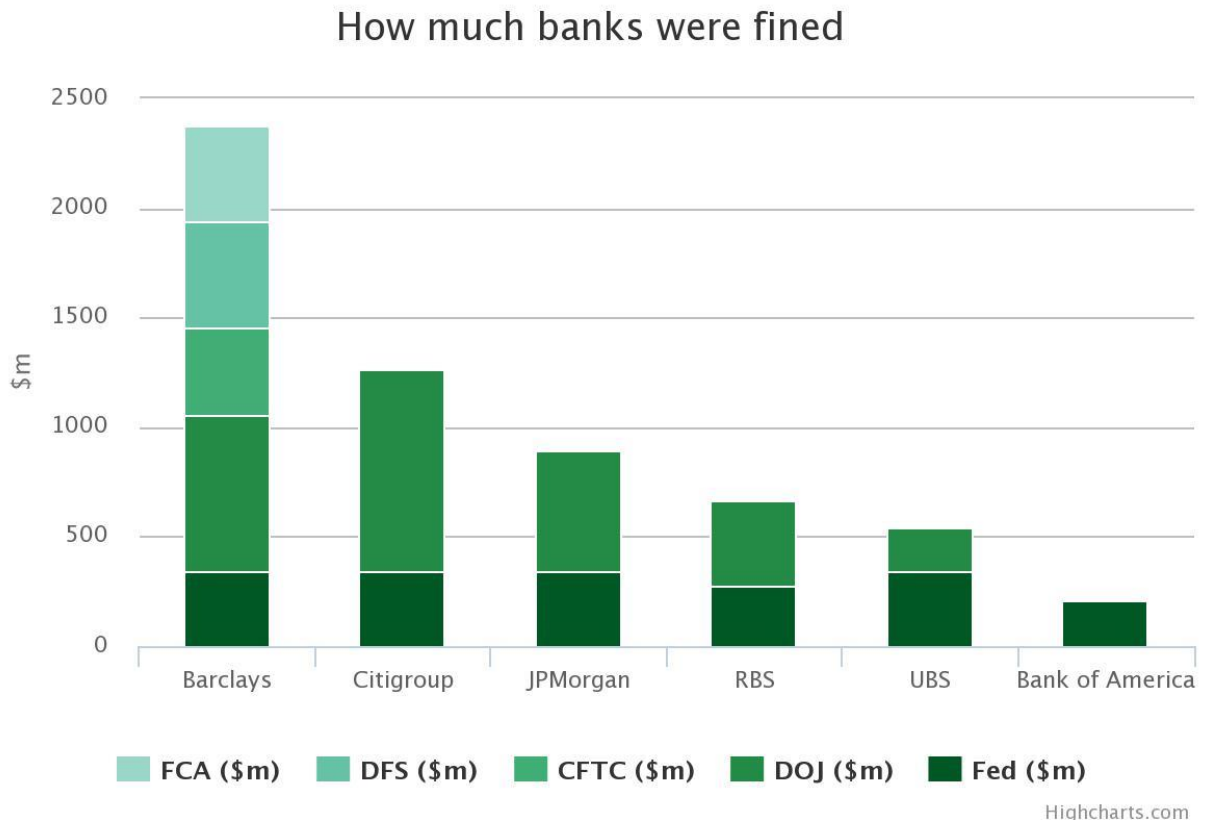
Barclays has fired eight employees as part of its settlement with New York’s Department of Financial Services, and has agreed a separate \$115m fine with the US Commodity Futures Trading Commission for manipulating ISDA fix, a dollar benchmark used to price certain financial products.

Benjamin Lawsky, the head of the DFS, who revealed that he will step down from the job after four years, said: “Put simply, Barclays employees helped rig the foreign exchange market. They engaged in a brazen ‘heads I win, tails you lose’ scheme to rip off their clients.”

The four US regulators and the FCA levied \$5.7bn in fines directly for manipulating foreign exchange benchmarks. Additionally, UBS and Barclays were ordered to pay \$263m to the Department of Justice because their activity violated agreements signed when the banks were fined for Libor rigging.

Barclays, RBS, Citigroup and JP Morgan also took the unprecedented step of pleading guilty to conspiring to fix prices, while UBS, which co-operated

with the US investigation, pleaded guilty to a separate charge of wire fraud related to Libor.



The banks were accused of failings that meant their traders were able to club together to rig FX markets as late as 2013 – the year after the Libor scandal broke. Authorities said they had identified instances of market rigging occurring as early as 2007.

Despite the huge fines, which take combined penalties over foreign exchange manipulation to \$10bn, shares in the banks surged on investors' relief that they were not larger.

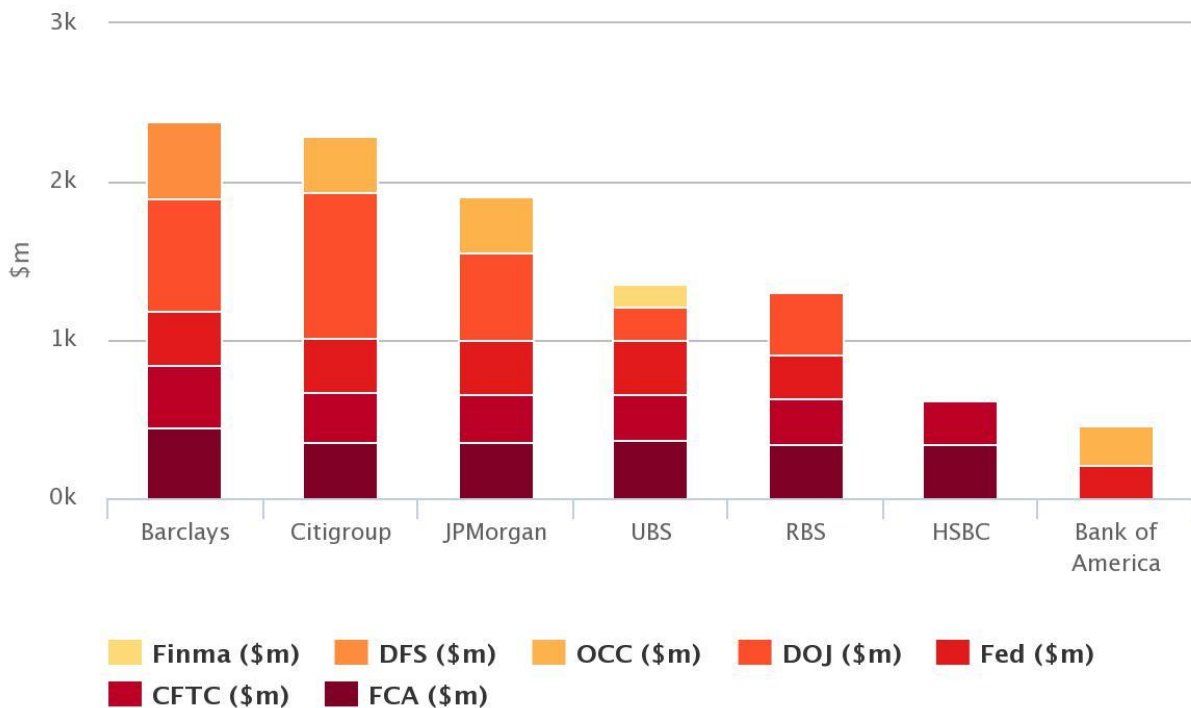
## The Reason Why Are The Banks Being Fined For Foreign Exchange Rigging?

Barclays rose more than 3pc, adding £1.48bn to the bank's value – almost as much as it was forced to pay. The bank had set aside more than £2bn in relation to the probes, while it was not judged to have breached a deferred prosecution agreement with the DoJ.

RBS, which is 80pc owned by the taxpayer, rose 1.78pc. The bank had set aside £704m for potential fines but its penalties on Wednesday totalled just £430m.

Barclays' total fines related to currency rigging are the biggest out of the seven banks to have been penalised, and it is still being pursued by the DFS over potential electronic rigging of currency benchmarks.

Total bank fines for forex



Highcharts.com

The regulator is investigating whether the bank's employees set up automated systems to manipulate markets.

“While today’s action concerns misconduct in spot trading, there is additional work ahead. The Department’s investigation of electronic foreign exchange trading – which makes up the vast majority of transactions in this market – will continue,” Mr. Laws said.

The DFS does not regulate the other banks involved and thus fined only Barclays, but is also investigating Deutsche Bank over potential automated rigging.

Antony Jenkins, Barclays’ chief executive, said: “The misconduct at the core of these investigations is wholly incompatible with Barclays’ purpose and values and we deeply regret that it occurred.”

The bank, unlike the other institutions to be fined, had not settled with the FCA and CFTC in November, when HSBC was also penalised in a settlement that totalled \$4.3bn. This meant it only qualified for a 20pc settlement discount with the watchdog, compared with the 30pc the other banks received.

The FCA said Barclays’ systems and controls over its FX business were “inadequate” and “gave traders in those businesses the opportunity to engage in behaviours that put Barclays’ interests ahead of those of its clients”.

The regulator, which sends most of the money it raises via fines to the Treasury, has now ordered banks to pay £1.4bn over forex manipulation, almost double the bill for Libor rigging. The FCA has said it will not fine any more banks over the scandal.

## Forex rigging: Timeline

How the currency manipulation scandal unfolded

### **June 2013**

Financial Conduct Authority begins preliminary investigation into potential manipulation of foreign exchange benchmarks

### **October 2013**

FCA confirms a formal investigation into forex followed by Department of Justice. Banks announce they are co-operating

### **January 2014**

Various banks fire and suspend traders amid internal probes

### **March 2014**

Bank of England suspends Martin Mallett, its head of currency trading, amid an internal investigation into what the Bank knew

### **July 2014**

UK's Serious Fraud Office opens investigation into forex

### **September 2014**

FCA reaches its conclusions and begins negotiations with banks

### **November 2014**

After banks set aside huge sums, they are fined \$4.3bn by US, UK and Swiss authorities. Bank of England review concludes that officials did not know about rigging, but Bank fires Mr. Mallett for unrelated matters

### **December 2014**

Police make first arrest in SFO investigation, of former RBS trader in Essex

### **April 2015**

Barclays makes new £800m provision, taking its total bill to £2bn as it awaits fines

### **May 2015**

Banks receive more than \$5bn in fines from US and UK authorities

# Thinking Of Starting A Company?

## Parliament Makes It Easier Now

Taking forward its commitment with respect to ensuring and facilitating ease of doing business in India, the Government got passed in the Rajya Sabha the much awaited and needed Companies (Amendment Bill), 2014, which was earlier passed by the Lok Sabha. Coming as a welcome relief to corporate India, as many as 16 amendments have been made to the Companies Act, 2013, mainly removing various practical difficulties in the law. Primarily, the requirement of minimum capital is being done away with, common seal is optional now, transactions between holding company and wholly owned subsidiary are exempt, and except offences of fraud, all other offences are bailable and winding up cases would be heard by a two-member bench instead of three-member bench, etc. These amendments were the need of the hour as there have been complaints from the corporates about the problems ever since the law had been enacted in 2013. The Finance Minister mentioned that various queries were received that are being addressed through issuance of Notifications/Amendment in Rules and some of them have been addressed through these amendments.

However, these 16 amendments are not enough to cover everything. As such, it is welcome that the Finance Minister has stated: *...a broad-based committee will continue to go into this question for the next few months as to where the shoe pinches, and this may not be the last amendments which we are bringing in.*

The Expert Committee comprising representatives of bodies of company secretaries, chartered accountants, industry chambers and officials will look into the discrepancies and suggest changes. From the perspective of accountancy profession, provisions with respect to auditors being required to report suspected frauds at the companies audited by them are particularly important. It includes a major amendment for the auditors



which The Institute of Chartered Accountants of India was pursuing, i.e., an amendment in Section 143 (12) of the Act which prescribes that the auditor is required to report to the Central Government any fraud which is above the threshold. The Finance Minister in his speech mentioned that earlier even a small fraud of Rs.20 was required to be reported to the Central Government; now fraud above only a threshold is required to be reported to the Central Government. This would bring great relief to both corporate as well as auditors. For ease of doing business, some amendments have also been made in Section 185- Inter-company Loans and Section 188- Related Party Transactions which is the major area of concern. Section 134(3)(ca) provides details in respect of frauds reported by auditors under sub-Section (12) of Section 143 other than those which are reportable to the Central Government. In Section 134 sub-Section (3) after clause (c) additional clause has been inserted. In a nutshell, other amendments pertain to prohibition of public inspection of Board Resolutions with the Registrar of Companies that would help the company to protect its confidential and competitive information.

Also, allowing related parties to vote on the resolutions where they are interested would help the companies to take the decision on the contracts or arrangements. Further, maximum penalty of rupees 10 crore is provided for acceptance of deposits in violation of the Companies Act, 2013. The onerous provisions were dissuading entrepreneurs to incorporate companies and prompting them to set up limited liability partnership (LLP) firms for carrying out business.

Among the major concerns of stakeholders were protecting confidentiality of board resolutions as the practice of public scrutiny of board resolutions was not being followed anywhere in the world. An amendment approves prescribing specific punishment for raising illegal deposits from public, a condition that was left out in the act inadvertently. Among other amendments, the Companies (Amendment) Bill includes the winding up of companies that would be heard by a two-member instead of three-member bench. Also, the bail restrictions will apply only for offence relating to fraud under Section 447 of the Companies Act, 2013. Now, except in case of

serious frauds, normal CrPC (code of criminal procedure) provisions would apply.

It is appreciated that the changes have also been cleared to fast-track the approval process for draft notifications aimed at granting exemptions from various provisions of the Companies Act. All in all, the amendments in Companies Act, 2013 come at a very opportune time when corporate India was craving for speeding up of reforms and ease of doing business.

However, as also stressed by the Finance Minister, this should be taken as just a beginning and the proposed “broad-based committee” should do more to repair the areas “where the shoe pinches” as promised.

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