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E.C. Chief Defends Agency's Handling of Bank Punishment

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Mary Jo White, the chairwoman of the Securities and Exchange Commission. Ernst/Reuters

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One of Wall Street's top regulators on Thursday shot back at criticism that the nation's biggest banks enjoy special treatment in Washington, delivering a sweeping defense of the government while also rebuking the financial industry's "repeated and disturbing violations of law."

In a [speech](#) at Georgetown University, [Mary Jo White](#), the chairwoman of the [Securities and Exchange Commission](#), publicly addressed for the first time a growing debate over whether her agency allowed banks to avoid certain repercussions for their misdeeds.

The debate centers on criticism — from Congressional Democrats and even some of the S.E.C.'s own commissioners — that the agency routinely

provided banks valuable “waivers” from so-called bad actor bans that arose when a bank settled an S.E.C. case or pleaded guilty to a crime. The waivers, critics say, offer a free pass from bans that would disqualify banks from most private offerings of securities.

At the heart of Ms. White's rebuttal was previously unreleased data suggesting that her agency did not simply rubber stamp Wall Street's requests for waivers. The data, she said, shows that the S.E.C. rejected 14 “bad actor” waiver requests and granted 13 over the last year and a half.

“Some have said that the commission and its staff routinely grant waivers without rigorous analysis,” she said, a veiled reference to some of her colleagues at the S.E.C. “That is simply not true.”

Ms. White's speech represents her fullest rebuttal of criticism that her agency has adopted a light touch with Wall Street, a concern that traces to the aftermath of the 2008 financial crisis. The speech also provided a long-awaited moment for Ms. White, who joined the agency two years ago next month with the reputation as a tough-on-crime former federal prosecutor, to stem the rising wave of doubt about the S.E.C.'s waiver policy.

The waiver issue has become an unlikely cause célèbre for consumer advocates and liberal lawmakers, and one that has divided the S.E.C.'s five commissioners. The commission's liberal wing has been pitted against the agency's two Republican commissioners, creating a conundrum for Ms. White, a political independent and the deciding fifth vote.

Simmering for a while, tension erupted last month over the handling of [Oppenheimer & Company](#), which settled a case that set off a bad actor ban. Despite a pattern of recidivism at Oppenheimer — with at least 30 regulatory actions over the last decade — the S.E.C. granted the company a waiver.

“Given the long record of broken promises, the commission must demand more accountability from this firm and its leadership,” Kara M. Stein and Luis A. Aguilar, the agency's Democratic commissioners, [wrote in a joint dissent](#) at the time.

In her speech, Ms. White detailed her own approach to the issue, striking a balance between the populist uproar over waivers and the cases in which they might be warranted.

“These are important provisions that enable the commission to safeguard investors and our capital markets from those whom we do not think should be able to fully function in them because of their past misconduct,” Ms. White said.

Ms. White emphasized that banks were no more likely to receive a waiver than any other public company, saying, “We should and do treat large financial institutions exactly the same as any other firm or person when considering whether a waiver is appropriate — no better, and no worse.”

But Ms. White also outlined the cases in which, at least in her judgment, the S.E.C. should grant the waivers. The rules governing waivers, she noted, allow for exemptions for “good cause” or in the “public interest.” Other times, she said, the rules direct the S.E.C. to grant waivers “if the disqualification would be unduly or disproportionately severe.”

Doing so, she said, might “temper the potential over-breadth of the

disqualification provisions.”

Ms. White also drew a distinction between waivers, which are overseen by the agency's division of corporation finance, and the penalties that the S.E.C.'s enforcement division imposes on companies that misbehave. Unlike the penalties, she said, waivers were “never intended to be, and we should not use them as, an additional enforcement tool designed to address misconduct.”

In defending her agency's approach to punishing Wall Street, Ms. White finds herself in an unexpected position. As the former United States attorney in Manhattan — a role in which she prosecuted banks and financial frauds — she sailed through Senate confirmation with little concern.

Now, in articulating her agency's enforcement agenda, she is leaning on her prosecutorial past.










“We have seen repeated and disturbing violations of law by major financial institutions, both before and after the financial crisis,” she said. And the debate over waivers, she added, “should never obscure or distract from our overall commitment to rigorous enforcement.”

Ms. White also addressed concerns that Wall Street, by nature of its size and importance to the economy, avoids meaningful punishment.

“One series of questions that has been raised in the dialogue is whether financial institutions that are potentially subject to disqualifications are too big to indict or otherwise charge, too big to jail, or even too big to bar. My answer to all of these and similar questions is a resounding, ‘No.’”

A version of this article appears in print on March 13, 2015, on page B6 of the New York edition with the headline: Chief Rebutts Criticism That S.E.C. Has Pulled Punches.
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