

SEC INSPECTOR GENERAL: YES, BOA GOT SPECIAL TREATMENT

The WaPo reports that an SEC Inspector General report shows that the SEC gave Bank of America lenient treatment when it fined BoA for its funny business surrounding the Merrill Lynch acquisition, but did not place limits on BoA's ability to issue securities that would normally be placed on a firm that violates securities law.

The inspector general found that the SEC showed leniency in the first settlement. He did not find that Bank of America's status as a bailed-out bank affected the settlement's price tag. Rather, he found that the SEC exempted Bank of America from other sanctions.

Like many of its competitors, Bank of America has long enjoyed a special status with the SEC that allows it to issue securities more easily.

Customarily, a firm that agrees to settle violations of securities law related to disclosures would lose this special status, thereby penalizing the firm with a lengthier and costlier process for issuing securities.

In settlement discussions with the SEC, Bank of America asked to retain that special status. The SEC, at first, declined, insisting that firms that violate the disclosure requirements of securities laws must suffer the consequences of those actions.

The agency reversed course in a last-minute meeting with Bank of America before the full commission voted to approve the settlement.

“In this meeting, BofA argued that the dire state of the financial markets made it critical that it be able to raise money quickly” by issuing securities, according to the inspector general’s report.

SEC officials decided to allow the bank to retain the special status because it had received taxpayer bailouts and “it would not be in the interest of the market or investors to prevent them from getting to the market,” according to the report.

This first settlement, btw, was the one Judge Jed Rakoff rejected, saying this of the settlement itself:

Overall, indeed, the parties submissions, when carefully read, leave the distinct impression that the proposed Consent Judgment was a **contrivance** designed to provide the S.E.C. with the **façade of enforcement** and the management of the Bank with a quick resolution to an embarrassing inquiry...

Mind you, this IG finding appears to represent the facade of oversight. In addition to finding the teeny fine and the way it was assessed to be no problem, SEC’s IG also had no problem with the way Treasury and the Fed were involved in the merger of BoA and Merrill Lynch.

The whole thing sort of makes you wonder about what other special treatment BoA has been getting all this time, all in an effort to avoid admitting that it is insolvent. Maybe Julian Assange can help us out there?