



Department of Justice

STATEMENT OF
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U. S. DEPARTMENT OF JUSTICE

BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON FINANCIAL SERVICES
U. S. HOUSE OF REPRESENTATIVES

ENTITLED
“WHO IS TOO BIG TO FAIL: ARE LARGE FINANCIAL
INSTITUTIONS IMMUNE FROM FEDERAL PROSECUTION?”

PRESENTED

MAY 22, 2013

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Acting Assistant Attorney General, Criminal Division
U.S. Department of Justice
Before the Subcommittee on Oversight and Investigations
Committee on Financial Services
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Chairman McHenry, Ranking Member Green, and distinguished Members of the Subcommittee: Thank you for inviting the Department to appear before you today about the Department of Justice's enforcement efforts to combat financial crime. I am pleased to be here and to oversee the important work of the Criminal Division.

The Justice Department is committed to aggressively investigating allegations of wrongdoing at financial institutions and, along with our many law enforcement partners, holding individuals and corporations to account for their conduct. Over the past four years, we have stood firm in our approach that no person or corporation is above the law.

Our track record in recent years shows our commitment to pursuing the most challenging and complex financial crime investigations in the country. Over the last three fiscal years alone, the Department has filed nearly 10,000 financial fraud cases against nearly 14,500 defendants. These prosecutions have led to stiff prison sentences for many defendants. Last year, for example, the Criminal Division and the U.S. Attorney's Office in Houston secured a 110-year sentence for Robert Allen Stanford for orchestrating a 20-year, \$7 billion investment fraud scheme – just one of numerous investment fraud schemes the Department has prosecuted in recent years. Indeed, over the past several years, well over 100 defendants have been sentenced to 10 years or more in prison in cases involving bank fraud, investment fraud, procurement fraud or healthcare fraud, with more than 50 being sentenced to 20 years or more.

We have been just as aggressive with cases involving the manipulation of the markets, as seen by the extraordinary success of the U.S. Attorney's Office in Manhattan in an unprecedented string of insider trading cases over the last several years. Since August 2009, the Manhattan U.S. Attorney's Office has convicted more than 70 insider trading defendants. Among others, the office successfully prosecuted Raj Rajaratnam, General Partner of Galleon Management L.P., and Rajat Gupta, a former Goldman Sachs board member, for their involvement in the largest hedge fund insider trading scheme in history.

Our prosecutors and agents also continue to doggedly pursue health care fraudsters. Our Medicare Fraud Strike Force has convicted over 1,000 defendants of felony health care fraud offenses since the Strike Force's inception, and the average sentence in Strike Force cases is approximately 45 months in prison. In this past fiscal year alone, Strike Force prosecutors brought charges against 278 defendants who collectively billed Medicare more than \$1.5 billion.

Our fight against foreign bribery, too, is as robust as it has ever been. Just since last month, we have announced charges against several key defendants in ongoing, active Foreign Corrupt Practices Act investigations, one case involving an alleged bribery scheme to secure mining rights in the Republic of Guinea, another involving an alleged bribery scheme to secure power contracts in Indonesia, and, just two weeks ago, an alleged bribery scheme to obtain financial trading business from Venezuela's state economic development bank.

Similarly, our investigation of the manipulation at various banks of interbank lending rates, including LIBOR, has had reverberations across the globe. Thus far, the consequences for several multinational banking institutions have been far reaching, ranging from replacement of senior leaders at Barclays, to criminal charges against individuals, to detailed admissions of criminal wrongdoing and the payment of substantial penalties by three global banks, to felony guilty plea agreements by subsidiaries of banks at which much of the misconduct took place. In December 2012, Swiss-based UBS AG and its Japanese investment banking subsidiary agreed to pay \$1.5 billion in criminal and regulatory penalties and disgorgement for their role in the manipulation of the bank's LIBOR submissions. As part of that resolution, UBS Securities Japan, which played a direct role in the criminal conduct, agreed to plead guilty to felony wire fraud. In addition, the Department charged two former UBS traders with felony counts for allegedly manipulating LIBOR submissions. In February 2013, the Japanese investment banking subsidiary of the Royal Bank of Scotland agreed to plead guilty to felony wire fraud for its direct role in manipulating LIBOR submissions and, together with its parent company, RBS plc, agreed to pay approximately \$612 million in criminal and regulatory penalties and disgorgement.

As is evident from this track record, we are deeply committed to holding wrongdoers – whether individuals or business entities – to account for their crimes. In doing so, we follow long-standing Justice Department policy.

In our investigations of business entities, in particular, we are guided by firmly rooted Department policy, set out in the U.S. Attorneys' Manual, which requires our prosecutors to consider a number of factors in determining how and whether to proceed. Those factors include, among other considerations, the nature and seriousness of the offense; the pervasiveness of wrongdoing within the corporation; the existence and effectiveness of the corporation's pre-existing compliance program; the corporation's timely and voluntary disclosure of wrongdoing, and cooperation with the Department's investigation; the corporation's history of similar misconduct; the potential collateral consequences of prosecution, including on innocent third parties; and the adequacy of alternative remedies such as civil or regulatory enforcement actions.

There has been some discussion in recent months about one of those factors – the potential collateral consequences of charging a corporate entity – and we appreciate your interest in better understanding the extent to which the Department may consider possible

collateral consequences, including potentially to the economy, of criminal prosecutions against large, complex financial institutions.

As I noted, the U.S. Attorneys' Manual requires federal prosecutors to consider the potentially adverse impact a prosecution may have on investors, pension holders, customers, employees, and the public, including on innocent people who had nothing to do with the criminal conduct. Of course, as a threshold matter, federal prosecutors must determine that a business entity's conduct actually constitutes a federal crime. If prosecutors determine that the conduct does not constitute a federal crime, they need not even reach the question of assessing potential collateral consequences (including those affecting the public or the economy). And, of course, we do not consider such factors in deciding whether or not to charge individual executives and employees.

The consideration of collateral consequences and other factors when determining whether to charge a corporation has been required by the U.S. Attorneys' Manual since 2008. But the basic principles underlying those USAM provisions have a much longer history at the Department. The first Department-wide memo on this subject was issued in 1999, and those basic principles have been reaffirmed multiple times since then, including in 2003, 2006, and 2008.

When we do consider potential collateral consequences, we may, as the Attorney General has previously said, consult with experts outside the Justice Department – that is, with relevant domestic and foreign regulators. When the Department consults with relevant regulators, or hears from the companies that are the subjects of the Department's investigations and their counsel regarding potential collateral consequences, neither those agencies nor the companies receive any compensation from the Department.

None of the factors set forth in the U.S. Attorneys' Manual that I've mentioned, including potential collateral consequences, acts as a bar to prosecution, or has prevented the Justice Department from aggressively pursuing investigations and seeking criminal penalties in cases involving large, complex financial institutions. No individual or institution is immune from prosecution, and we intend to continue our aggressive pursuit of financial fraud with the same strong commitment with which we pursue other criminal matters of national and international significance.

Thank you for the opportunity to provide the Subcommittee with this overview of our financial fraud enforcement efforts. I look forward to answering any questions you may have.