JEB HENSARLING, TX , CHAIRMAN

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

March 8, 2013

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20500

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Secretary Lew and Attorney General Holder:

We write today to express our deep concern regarding recent comments by the Attorney General and the Undersecretary for Terrorism and Financial Intelligence at the Treasury Department, David Cohen, relating to criminal prosecutions of large financial institutions. Yesterday, according to press reports, in testimony before the Senate Banking Committee, Undersecretary Cohen stated that the Treasury Department declined to provide the Justice Department with an opinion on the "impact to the financial system" of filing charges against HSBC. The Justice Department solicited this information in connection with its investigation of violations of federal anti-money laundering laws and related statutes that ultimately resulted in a deferred prosecution agreement and HSBC's payment of $1.9 billion in fines. Undersecretary Cohen explained that in regard to the HSBC matter, "we [Treasury] weren't in a position to offer any meaningful assessment of what the impact might be."

In testimony on March 6, 2013, before the Senate Judiciary Committee, in response to a question from Senator Grassley regarding the Justice Department's prosecution of high-profile financial companies or individuals, Attorney General Holder testified that the size of certain financial institutions was hindering the Justice Department's ability to prosecute:

> I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy. And I think that is a function of the fact that some of these institutions have become too large. . . . I think it has an inhibiting influence – [an] impact on our ability to bring resolutions that I think would be more appropriate.

And on December 19, 2012, in announcing the Justice Department's settlement with UBS for manipulation of the London Inter-Bank Offered Rate (LIBOR), Attorney General Holder noted that the Justice Department was relying on outside experts in making prosecutorial decisions:

> The impact on the stability of the financial markets around the world is something we take into consideration. We reach out to experts outside of the Justice Department to talk about what are the consequences of actions that we might take, what would be the impact of those actions if we want to make particular prosecutive decisions or determinations with regard to a particular institution.

These statements by the Attorney General and Undersecretary Cohen raise important questions regarding our financial system and the economic analyses the Justice Department is relying upon to make its prosecutorial decisions in cases involving large, complex financial institutions. Accordingly, in order to assist the Committee in evaluating these issues and to prepare for possible hearings on this matter, please provide the following:

(1) All records[1] related to the economic impact on the financial system of the United States of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution[2] has been or may be a party, including without limitation records in the nature of analysis, forecasts, legal or other memoranda, and correspondence, whether or not actually prepared by you or any other individual employed by, or working on behalf of, your agency.

(2) All records related to a request by any division, department, agency, instrumentality, or other authority of the federal or a state government, or by any individual, that the Department of Justice consider the economic impact on the financial system of the United States when determining whether to commence a criminal prosecution, civil lawsuit, or administrative enforcement action, in a matter in which a financial institution has been or may be a party.

(3) All records in your possession generated by the Office of the Comptroller of the Currency ("OCC") related to the economic impact on the financial system of the United States of any actual or potential prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party, within the jurisdiction of the OCC.

(4) For purposes of this request only, the term "You" means the Secretary of the Treasury in his capacity as Chairperson of the Financial Stability Oversight Council ("FSOC"). All records in the possession of FSOC related to the economic impact on the financial system of the United States of any actual or potential criminal prosecution, civil lawsuit, or administrative enforcement action, in which a financial institution has been or may be a party, including without limitation records in the nature of analysis, forecasts, legal or other memoranda, and correspondence,

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[1] The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

[2] For purposes of this letter, "financial institution" means any legal entity that is predominantly engaged in financial activities.

whether or not actually prepared by you or any other individual employed by, or working on behalf of, FSOC.

Please work with the Financial Services Committee staff to provide the requested documents and communications as soon as practicable but not later than March 22, 2013. We appreciate your prompt attention to this matter. If you have questions regarding this request, please contact Joseph Clark of Committee staff at (202) 225-7502.

Sincerely,

JEB HENSARLING
Chairman
Committee on Financial Services

PATRICK McHENRY
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Maxine Waters
The Honorable Al Green