U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 19, 2010

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy:

Enclosed please find responses to questions for the record stemming from the appearance of Lanny Breuer, Assistant Attorney General for the Criminal Division, before the Committee on December 9, 2009, at a hearing entitled "Mortgage Fraud, Securities Fraud, and the Financial Meltdown: Prosecuting Those Responsible." We hope that this information is of assistance to the Committee.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions
Ranking Member

QUESTIONS FROM SENATOR SPECTER FOR LANNY BREUER,

ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

U.S. DEPARTMENT OF JUSTICE

1. Mr. Breuer, in the R. Allen Stanford prosecution you note in your written statement that "defendant Stanford is alleged to have bribed the head of Antiguan Financial Services Regulatory Commission to ensure that it did not conduct a thorough examination of the Bank's books and records." Yet no charges under the Foreign Corrupt Practices Act were included in the indictment. **Why not**?

   RESPONSE: As a general matter, there are often a number of criminal charges that may be brought against a particular defendant, and there are a variety of factors that go into the ultimate determination regarding which charges are the most appropriate to bring, including considerations related to the facts, the law, charging policies, and prosecution strategy. These factors are outlined in the Principles of Federal Prosecution, and we are guided in our charging decision by these principles. The charges in the Stanford indictment reflect appropriate consideration of these principles. Because the Department does not discuss details of ongoing cases, including the litigation strategies pursued in such cases, we are not in a position to comment further in response to your question.

2. Mr. Breuer, in listing significant criminal enforcement efforts by the Department you include in your written statement two prosecutions where the sentences imposed vary greatly. The first case was a prosecution of a former vice president of American International Group (AIG) for his role in manipulating the company's financial statement through a sham $250 million re-insurance transaction. For that $250 million fraud, the defendant's sentence was just 36 months—or three years. In another case involving much less money –a $44 million Ponzi scheme – the defendant, Michael Riolo, received a 293 month sentence—or 24.5 years. **Can you explain these disparate sentences**? **Are they grounded in the discretionary nature of the U.S. Sentencing Guidelines in this post-Booker era**?

   RESPONSE: As your question suggests, the *Booker* decision and its progeny gave sentencing judges a large degree of discretion in imposing criminal sentences, and both the data and our experience since the decision show greater variation in sentencing decisions. Indeed, the district court judges in the cases of the former Vice President of AIG and Mr. Riolo responded very differently to the facts and circumstances of the two cases and, therefore, the sentences were significantly different.

In the AIG case, the Government argued that the loss could reasonably be determined to exceed $400 million, in contrast to the pre-sentence report, which represented that the gain was only $5 million, under an alternative sentencing calculation. Under either calculation, the defendant would have received a substantial term of imprisonment under the federal sentencing guidelines. The Government's calculation, pursuant to the sentencing guidelines, resulted in a total offense level of 43, for which the guidelines recommended a life term. In contrast, the pre-sentence report recommended a total offense level of 35, which would have resulted in a sentencing guidelines range of 168 to 210 months of imprisonment. After a hearing, the court accepted the government's calculation of the sentencing range. Nevertheless, the court stated that: "This is a non-guidelines sentence based principally on the lack of motivation of direct, immediate, personal gain from the criminal conduct of the defendant. In addition, the goals of specific and general deterrence are satisfied, as well as the other factors set forth in 18 U.S.C. § 3553(a)." Based on these statements, the court sentenced the former AIG vice-president to 48 months. In contrast, the sentencing court for Michael Riolo adhered to the sentencing range of between 235 to 293 months recommended in the pre-sentence report and the sentencing guidelines, with which the Government concurred, and sentenced defendant Riolo to 293 months.

3. Mr. Breuer, as Chairman of this Committee in 2006, I held a series of hearings on hedge funds and insider trading.

   a) On June 28, 2006, I chaired a hearing titled, "**Hedge Funds and Independent Analysts: How Independent Are Their Relationships**?"
   b) On September 26, 2006, I chaired a hearing titled, "**Illegal Insider Trading: How Widespread is the Problem and is there Adequate Criminal Enforcement?**"
   c) On December 5, 2006, I chaired a hearing titled, **"Examining Enforcement of Criminal Insider Trading and Hedge Fund Activity."**

Will you commit to charging your subordinates who are also on the Financial Fraud Enforcement Task Force with reading these hearing transcripts—which can be provided—to get a sense of the significance of the problem and several witnesses' ideas about how to avert further crisis in the financial markets?

RESPONSE: The Chief of the Criminal Division's Fraud Section will review these transcripts. Like other financial crimes, any fraud perpetrated through illegal hedge fund activity is a serious problem. Investigation of hedge fund activity is presently complicated by the fact that most hedge funds generally are not required to report their equity positions to the Securities and Exchange Commission because they are generally exempt from registration under the Securities Act of 1933, the Exchange Act of 1934, or the Investment Company Act of 1940. Notwithstanding this serious challenge, when fraudulent acts in violation of other federal criminal laws are uncovered and investigated, they are prosecuted. For example, Lancer Hedge

Fund Group officers and managers, and officers of companies in which the fund invested, were indicted in the Southern District of Florida and charged with conspiracy and wire fraud.

4. Mr. Breuer, public accounts of the Galleon Management L.P. case involving billionaire Raj Rajaratnam suggest that at least some of the defendants in that case engaged in counter-surveillance activities normally reserved for the Mafia. For instance, some defendants were charged with using throwaway cell phones to avoid detection. **In your professional opinion does evidence like that tend to show (a) an acknowledgment of the illegal activity (insider trading) suggesting *mens rea*; and (b) an organized criminal conspiracy?**

   RESPONSE: We cannot comment on this ongoing investigation, nor, given the pendency of the investigation, would it be prudent to opine more generally on the import of such evidence.

5. Mr. Breuer, we hear from Mr. Khuzami of the SEC that at the SEC Division of Enforcement they have undertaken a top-to-bottom self-assessment of their operations and processes to improve. **Have you done that in the Criminal Division's Fraud Section to see how you can work smarter, swifter, and more strategically**?

   RESPONSE: We are continuously examining ways to investigate and prosecute fraud cases in a smarter, swifter and more strategic manner, just as you suggest. For instance, because the Fraud Section was retooled in 2004, the Section's Medicare Fraud Strike Force (MFSF) has been able to operate in a smarter, swifter and more strategic way. The MFSF has been very successful in conducting proactive intelligence-driven investigations and prosecutions. We hope to duplicate this real-time enforcement effort in the mortgage fraud arena as well.

   In addition, the Fraud Section is streamlining securities fraud indictments to sufficiently charge conduct that precipitated victims' losses, but also to limit the issues presented at trial, thereby reducing the length and complexity of trials. The success of our strategy is reflected in the trial of complex securities cases in less than six weeks, with reduced numbers of witnesses. For example, with trials lasting less than six weeks, convictions were obtained in the Southern District of Ohio in the National Century Financial Enterprises cases, with losses of $2 billion, and in the District of Connecticut, in the AIG/Gen Re cases, with losses of $500 million. Similarly, in the District of Colorado, Joseph P. Nacchio, former Chief Executive Officer and a member of the Board of Directors of Qwest Communications International, Inc., was convicted of a $52 million insider trading scheme in a trial that lasted only 15 days. The Fraud Section will continue to employ this successful strategy of streamlining its prosecution of complex fraud matters. And we will continue to monitor closely the workings and functions of the Fraud Section to ensure that it has the tools, resources, and necessary operating structure to accomplish its crucial mission.

6. Specifically, the SEC has created 5 new national specialized investigative groups – asset management, market abuse, structured and new products, foreign corrupt practice cases and municipal securities (pay-to-play cases). **Would it make sense for the fraud division to structure itself in the same way to coordinate and bring expertise to these prosecutions**?

RESPONSE: The different missions and responsibilities of the SEC and the Fraud Section do not readily recommend parallel organizational structures. For example, the SEC's specialized groups will generate administrative, civil, and criminal enforcement cases, which is a broader universe than the work of the Fraud Section. Also, while the criminal cases that are referred to the Department of Justice may be undertaken by the Fraud Section, they may also be independently investigated and prosecuted by United States Attorney's Offices (USAOs). However, the Fraud Section will be alert to the volume and complexity of referrals from each of the SEC investigative groups. As has been its practice, the Fraud Section will continue to be flexible in timely assigning resources to matters that are not referred to individual USAOs, while continuing to monitor the volume of other matters for which it is responsible. As you know, the Fraud Section has about 70 attorneys, covering a wide range of criminal frauds beyond corporate, securities, and commodities fraud -- including health-care fraud, procurement and grant fraud, foreign corruption, mortgage fraud, financial institution fraud, mass-marketing fraud, payments fraud, identity theft, and many other kinds of fraudulent schemes. Nevertheless, as noted in the immediately preceding response, we are always exploring ways to investigate and prosecute fraud cases more efficiently, swiftly, and strategically. Thus, for example, the Fraud Section has a unit devoted solely to foreign corruption matters. As part of our ongoing efforts to improve the functioning, effectiveness, and efficiency of the Fraud Section and other sections, we will consider whether additional specialized groups are necessary to accomplish our mission. Indeed, the recently hired new Chief of the Fraud Section, Denis McInerney, will be examining the structure and operations of the Fraud Section and recommending any necessary and appropriate changes.

Question for the Record to the Honorable Lanny Breuer, Assistant Attorney General,

Department of Justice

From Senator Charles E. Schumer

December 9, 2009

FIGHTING REAL ESTATE FRAUD ACT

According to the FBI's *2008 Mortgage Fraud Report*, mortgage fraud Suspicious Activity Reports referred to law enforcement increased 36 percent over reports in 2007. Furthermore, the report found an increase of 83.4 percent in reported financial losses from such fraud over the previous year. While I commend the President's creation of the interagency Financial Fraud Enforcement Task Force, I believe that there is still more that can be done.

Given the complexities of prosecuting such crimes, the Brooklyn DA established a special Mortgage Fraud Unit for the purpose of focusing exclusively on real estate schemes. District Attorney Hynes and his staff have done a superb job of demonstrating the effectiveness of such a model. I have introduced legislation with Senators Kyl and Whitehouse that would establish a competitive grant program in the Department of Justice to develop similar specialized units in the offices of State and local prosecutors.

1. **Will you commit to working with me on this bipartisan legislation and provide an official Departmental views letter at the appropriate juncture?**

Response:

Thank you for your invitation to work with you on this legislation. As you know, mortgage fraud and the concomitant societal harms that flow from it are serious problems, and therefore are concerns for the Department of Justice. As in the case of any legislation affecting the Department, we are committed to working with you and your staff to provide you with the necessary technical assistance and, where appropriate, an official Administration position about the legislation that you describe.