

September 15, 2016

The Honorable Michael E. Horowitz
Department of Justice Inspector General
950 Pennsylvania Ave. NW, Suite 4706
Washington, DC 20530-0001

Dear Mr. Horowitz:

I am writing to request an Inspector General review of the Department of Justice (DOJ) response to referrals made by the Financial Crisis Inquiry Commission (FCIC) for potential violations of securities laws identified during the FCIC's investigation of the causes of the 2008 financial and economic crisis in the United States.

Thousands of FCIC documents were made public for the first time in March 2016. These documents reflect months of work by the FCIC, including hearings and testimony taken under oath, transcribed witness interviews, and thousands of documents collected voluntarily or under subpoena. A review of these documents conducted by my staff has identified 11 separate FCIC referrals of individuals or corporations to DOJ in cases where the FCIC found "serious indications of violation[s]" of federal securities or other laws.¹ Nine individuals were implicated in these referrals (two were implicated twice). The DOJ has not filed any criminal prosecutions against any of the nine individuals. Not one of the nine has gone to prison or been convicted of a criminal offense. Not a single one has even been indicted or brought to trial. Only one individual was fined, in the amount of \$100,000, and that was to settle a civil case brought by the SEC. A second individual recently agreed to a civil settlement with the SEC in which he admitted no wrongdoing and paid no personal fine.²

Similarly, my staff found that FCIC referrals identified potentially illegal activity at 14 corporations (including five that were implicated in multiple referrals). Not one of the 14 - or any of the individuals responsible for potential wrongdoing at these corporations - was criminally indicted or brought to trial. Five of these 14 corporations settled with DOJ - paying fines, but

¹ Memo from FCIC Legal Staff to Commissioners of the FCIC, re: Confidential Referral Memorandum (Sep. 12, 2010) ([https://www.dropbox.com/sh/ufck6e0dmytje66/AADoWsHGMFIsqHFaNiOC1kvIa/BusMtgAgnds_SCREENED/2010_09%20\(September\)/9-14-2010_Agenda_for_BusMtg%20\(1\)_1.docx?dl=0](https://www.dropbox.com/sh/ufck6e0dmytje66/AADoWsHGMFIsqHFaNiOC1kvIa/BusMtgAgnds_SCREENED/2010_09%20(September)/9-14-2010_Agenda_for_BusMtg%20(1)_1.docx?dl=0)).

² Daniel Mudd, former Fannie Mae CEO, reached this settlement in August 2016, under which his former company paid a \$100,000 fine, but Mr. Mudd expended no personal funds. Reuters, *Former Fannie Mae CEO Settles Crisis-Related Lawsuit with SEC* (Aug. 22, 2016) (<http://www.reuters.com/article/us-sec-fanniemaemudd-exclusive-idUSKCN10X1ZI>).

suffering no additional consequences. Of the remaining nine, some were investigated or reached civil settlements, but none suffered any criminal consequences for their alleged violations.

Not every individual or company accused of a crime is guilty of that crime and not every DOJ referral results in a conviction. But the DOJ's failure to obtain any criminal convictions of any of the individuals or corporations named in the FCIC referrals suggests that the department has failed to hold the individuals and companies most responsible for the financial crisis and the Great Recession accountable. This failure requires an explanation.

I am therefore requesting that you conduct an investigation of the DOJ investigations related to these FCIC referrals.

The remainder of this letter provides additional detail on my concerns.

The Financial Crisis Inquiry Commission

The Financial Crisis Inquiry Commission (FCIC) was established by the Fraud Enforcement and Recovery Act of 2009 (P.L. 111-21) to "examine the causes, domestic and global, of the current financial and economic crisis in the United States."³ Over the next two years, "the Commission reviewed millions of pages of documents, interviewed more than 700 witnesses, and held 19 days of public hearings in New York, Washington, D.C., and communities across the country that were hard hit by the crisis."⁴

The FCIC's 633-page report was released in January 2011, finding that "dramatic breakdowns of corporate governance, profound lapses in regulatory oversight, and near fatal flaws in our financial system.... [and] that a series of choices and actions led us toward a catastrophe for which we were ill prepared."⁵ One month later, the FCIC, having completed its statutory requirements, disbanded.

However, the Commission report was not its only product. Under the Fraud Enforcement and Recovery Act, one of the functions of the FCIC was "to refer to the Attorney General of the United States and any appropriate State attorney general any person that the Commission finds may have violated the laws of the United States in relation to such crisis."⁶

³ PL 111-21.

⁴ Financial Crisis Inquiry Commission, Work of the Commission (viewed August 2016) (<https://fcic.law.stanford.edu/about/work>)

⁵ Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the Commission on Causes of the Financial and Economic Crisis in the United States (Jan. 2011) (http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf).

⁶ PL 111-21, §5(c)(4)

Little was known about these referrals – and whether the Department of Justice (DOJ) took action based on them – until March 2016, when the National Archives released large portions of the Commission’s records for the first time.⁷ This release contained thousands of documents: 500 boxes of documents and 13 terabytes of data. Many of these documents were released online. These records included “[m]inutes and notes of commissioner meetings, including internal deliberations concerning the causes of the financial crisis and the drafting of the final report [and] interview summaries and transcripts.”⁸ My staff reviewed thousands of these documents and identified new publicly released information on referrals to the DOJ by the FCIC.

FCIC Referrals to DOJ of Individuals and Corporations Accused of Potential Wrongdoing

The FCIC records released by the National Archives contain several important memoranda prepared by FCIC staff describing 11 referrals of individuals or corporate entities to DOJ, the reasons for the referral, and the outcome of the commission’s vote on the referral.

A September 12, 2010 memo prepared by FCIC Legal Staff and sent to all Commissioners of the FCIC contains information on the majority of referrals. The memo was prepared for discussion at the FCIC business meeting to be held two days later, on September 14, 2010. The memo notes that the commission’s investigation has “generated information that the Commission should consider referring to the Department of Justice...all of the referral matters will require further investigation by the Department of Justice. Nonetheless, the matters presented below constitute serious indications of violation of a number of laws.”⁹

The FCIC voted on each individual referral in this memo at a September 29, 2010 meeting. The records of the votes on these referrals are contained in the minutes of this meeting, which were approved at the October 12, 2010 FCIC meeting.¹⁰

The September 12 memo described seven recommended referrals.

1. **Potential Fraud: False and Misleading Representations of Loan Underwriting Standards by UBS and Other Issuers.** The FCIC memo describes how UBS and other mortgage holders provided disclosures about the quality of holdings “designed to assure

⁷ National Archives, National Archives Opens Financial Crisis Inquiry Commission Records (Mar. 11, 2016) (<https://www.archives.gov/press/press-releases/2016/nr16-45.html>).

⁸ National Archives, National Archives Opens Financial Crisis Inquiry Commission Records (Mar. 11, 2016) (<https://www.archives.gov/press/press-releases/2016/nr16-45.html>).

⁹ Memo from FCIC Legal Staff to Commissioners of the FCIC, re: Confidential Referral Memorandum (Sep. 12, 2010) ([https://www.dropbox.com/sh/ufck6e0dmytje66/AADoWsHGMFIsgHFaNiOC1kvIa/BusMtgsAgnds_SCREENED/2010_09%20\(September\)/9-14-2010_Agenda_for_BusMtnng%20\(1\)_1.docx?dl=0](https://www.dropbox.com/sh/ufck6e0dmytje66/AADoWsHGMFIsgHFaNiOC1kvIa/BusMtgsAgnds_SCREENED/2010_09%20(September)/9-14-2010_Agenda_for_BusMtnng%20(1)_1.docx?dl=0)).

¹⁰ FCIC, Agenda Item 4 for Telephonic Business Meeting of October 12, 2010: Minutes of Business/Retreat Meeting of September 29, 2010 (Oct. 12, 2010).

the prospective investor that the mortgages were of high quality and reasonably secure,” – but failed to disclose that a significant number of those mortgages were actually highly risky.¹¹ The memo described in detail actions taken by UBS; it also noted that “our investigative record is not as complete for other companies,” but listed nine — Credit Suisse, Citigroup, Freddie Mac, Goldman, JP Morgan, Lehman, Merrill, Societe Generale, and Washington Mutual — that appeared to engage in similar activities as they had apparently “waived their established underwriting criteria.”¹²

The memo continued, noting that “there is ‘a substantial likelihood that the disclosure [of this information] would have been viewed by the reasonable investor as having significantly altered the “total mix” of information made available.’ ... The failure to disclose this information potentially violates both the 1933 and 1934 Securities Acts ... [and] may also constitute mail and wire fraud.”¹³

A supplement to the September 12, 2010 memo was sent to Commissioners by Gary Cohen, the FCIC General Counsel, on September 28, 2010.¹⁴ This supplemental memo contained additional information related to this referral obtained from Clayton Holdings (a firm hired by major financial institutions to conduct third-party due diligence on mortgage loans), which reviewed the underwriting procedure used by many of these firms. The FCIC supplemental memo notes that “Regulation AB promulgated by the SEC in late 2004 specifically requires that investors in mortgage backed securities be provided with underwriting criteria used to originate the loans in the pools.”¹⁵ But according to the FCIC memo, Clayton Holdings used criteria that were not designed to provide customers with information about the overall quality of the securities. According to the staff memo, “As testified to by Clayton witnesses, Clayton's due diligence review was never designed to give investors in the total loan pool adequate information concerning all the underlying loans in the pool... [which] may have resulted in disclosure which was untrue.”¹⁶ The memo found that “the pattern evidenced by our investigation of Clayton, one of Clayton's competitors, and a number of underwriters is indicative of two possible areas of misrepresentation” by the companies that hired Clayton: “[f]ailure to disclose the gross numbers waivers [*sic*] of underwriting standards, and inaccuracy in disclosing that not all waived loans had confirmed compensating factors,” meriting consideration for a referral for a potential violation of Section 11 of the Securities Act,

¹¹ FCIC Referral Memo (Sep. 12, 2010).

¹² FCIC Referral Memo

¹³ FCIC Referral Memo (Sep. 12, 2010), citing *Basic v. Levinson*, 485 U.S. 224, 232 (1988).

¹⁴ FCIC, Supplemental to Referral Memo, at 24-26 (sent by Gary Cohen on 9/28/2010)

(https://www.dropbox.com/sh/ufck6e0dmytje66/AAA0Av4StGhKo2STjWavSIGsa/BusMtgsAgnds_SCREENED/2010_10%20October/10-12-2010_Agenda_for_BusMtg_of_FCIC_1.docx?dl=0).

¹⁵ FCIC, Supplemental to Referral Memo (sent by Gary Cohen on 9/28/2010).

¹⁶ FCIC, Supplemental to Referral Memo (sent by Gary Cohen on 9/28/2010).

which creates liability for the misrepresentation of material facts in registration statements.¹⁷

On September 29, 2010, the Commission voted to transmit this referral to DOJ. The vote was 6-0-1-1 in favor, with Commissioners Angelides, Born, Georgiou, Graham, Murren, and Wallison voting Aye, Commissioner Thomas voting Present, and Commissioner Thompson Not Present. Commissioners Hennessey and Holtz-Eakin were absent.¹⁸

2. **Potential Accounting Fraud and False Certifications: Fannie Mae, and Fannie Mae CEO (Daniel Mudd) and CFO (Stephen Swad).** The FCIC memo describes a series of reports indicating that in the run-up to the financial crisis, “Fannie Mae may have overstated assets, earnings and capital through various accounting improprieties...[and] a failure to disclose accurate information about the state of risk management at Fannie Mae.”¹⁹ The memo notes that, “[a]ssuming this information is material, this is a violation of Section 10b-5 of the 1934 Act.”²⁰ FCIC staff noted a second potential violation of law to be referred to the DOJ: “the CEO and CFO of Fannie Mae certified the firm’s annual and quarterly financial statements as disclosing all material information under section 302 of the Sarbanes-Oxley Act. These certifications presume that the CEO and CFO have reviewed and put in place adequate risk management systems” – which they may not have done. The CEO of Fannie Mae that certified these reports was Daniel Mudd, and the CFO was Stephen Swad.²¹

On September 29, 2010, the Commission voted to transmit this referral to DOJ. The vote was 6-0-2 in favor, with Commissioners Angelides, Born, Georgiou, Graham, Murren, and Wallison voting Aye, and Commissioners Thomas and Thompson Not Present. Commissioners Hennessey and Holtz-Eakin were absent.²²

3. **Apparent Selective Disclosures of Imminent Ratings Downgrades by Moody's; Failure by UBS and “Possibly Other Investment Banks” to Disclose Pending Downgrades to Purchasers of Their Securities.** The FCIC memo notes that in July 2007, “[i]nternal e-mails between UBS Investment Bank executives indicate that UBS — and possibly other investment banks — received advance notice of potential downgrades [of asset backed securities] by Moody’s.”²³ The memo did not name other potential

¹⁷ FCIC, Supplemental to Referral Memo (sent by Gary Cohen on 9/28/2010).

¹⁸ FCIC, Agenda Item 4 for Telephonic Business Meeting of October 12, 2010: Minutes of Business/Retreat Meeting of September 29, 2010 (Oct. 12, 2010).

¹⁹ FCIC Referral Memo (Sep. 12, 2010).

²⁰ FCIC Referral Memo (Sep. 12, 2010).

²¹ Fannie Mae, Annual Report (Form 10-K), for fiscal year ended Dec. 31, 2007, (http://www.fanniemae.com/resources/file/ir/pdf/proxy-statements/2007_annual_report.pdf).

²² FCIC, Agenda Item 4 for Telephonic Business Meeting of October 12, 2010: Minutes of Business/Retreat Meeting of September 29, 2010 (Oct. 12, 2010).

²³ FCIC Referral Memo (Sep. 12, 2010).

recipients of the advance notice. Five days later, Moody's did announce the downgrade; but in the interim UBS had allegedly sold some of these over-valued securities to another investor.

The memo notes that "[t]hese facts potentially implicate three provisions of federal securities law": SEC rule 10b-5, which UBS and other firms may have violated if they were informed of potential downgrades and failed to disclose this information; section 10 of the 1934 Securities Act, which could have been violated by any UBS employee who sold stock or other securities on the basis of the nonpublic information about their imminent downgrades; and SEC Rule FD, which Moody's could have violated through its selective disclosure [to UBS or other bank employees] of the imminent downgrades.²⁴

On September 29, 2010, the Commission voted to transmit this referral to DOJ. The vote was 5-1-2 in favor, with Commissioners Angelides, Born, Georgiou, Graham, and Murren voting Aye, Commissioner Wallison voting Nay, and Commissioners Thomas and Thompson Not Present. Commissioners Hennessey and Holtz-Eakin were absent.²⁵

4. **Potential Fraud and False Certifications: Citigroup, Citigroup CEO Chuck Prince and Citigroup Board of Directors Executive Committee Chair Robert Rubin, Citigroup CFO Gary Crittenden.** The FCIC memo describes a 2010 SEC civil settlement with Citigroup, its former CFO and the head of investor relations arising from the company's "statements to the market in 2007 that the company had only \$13 billion in subprime exposure when, in fact the company ultimately disclosed \$55 billion in subprime exposure."²⁶

The memo notes that "[b]ased on FCIC interviews and documents obtained during our investigation, it is clear that CEO Chuck Prince, and Robert Rubin, chair of the Executive Committee of the Board of Directors, knew this information ... no later than September 9, 2007."²⁷

According to the FCIC memo, the false representations made in October 2007 "appear to have violated SEC Rule 10b-5, which makes it unlawful for 'any person directly or indirectly ... to omit to state a material fact necessary in order to make the statements made . . . not misleading' in connection with 'the purchase or sale of any security' ... [and] the former CEO, Mr. Prince, the former chairman of the Board, Mr. Rubin, and members

²⁴ FCIC Referral Memo (Sep. 12, 2010).

²⁵ FCIC, Agenda Item 4 for Telephonic Business Meeting of October 12, 2010: Minutes of Business/Retreat Meeting of September 29, 2010 (Oct. 12, 2010).

²⁶ FCIC Referral Memo (Sep. 12, 2010).

²⁷ FCIC Referral Memo (Sep. 12, 2010).

of the Board may have been ‘directly or indirectly’ culpable in failing to disclose material information to the markets in violation of . . . 10b-5.”²⁸

The memo also notes another potential violation of the law related to Citigroup’s annual and quarterly reports. According to the memo, “section 302 of the Sarbanes-Oxley Act requires the CEO and CFO to certify that annual and quarterly reports do “not contain any untrue statement . . . or omit to state a material fact.”²⁹ It notes that “[s]ince the CEO and CFO are responsible under the Act for accurate quarterly and annual reports, as well as the adequacy of risk management systems needed to make those reports accurate, referrals for violations of Section 302 of the Sarbanes-Oxley Act appear warranted.”³⁰ Mr. Prince was the CEO and Gary Crittenden was the CFO of Citigroup at the time those reports that the FCIC memo indicated were untrue were filed.³¹

On September 29, 2010, the Commission voted to transmit this referral to DOJ. The vote was 6-0-2 in favor, with Commissioners Angelides, Born, Georgiou, Graham, Murren, and Wallison voting Aye, and Commissioners Thomas and Thompson Not Present. Commissioners Hennessey and Holtz-Eakin were absent.³²

5. Potential Fraud by Goldman Sachs in Connection with Collateral Calls on AIG.

The FCIC memo describes how, by the end of 2006, Goldman had a “net short” or close to “net short” position on real-estate related assets, putting itself in position to profit from reductions in the value of these assets. It also describes how Goldman was responsible for establishing the “marks” (values) on CDOs because they could not be established by their value on an exchange. According to the memo, “Goldman was consistently the most aggressive firm on Wall Street in setting low marks. In fact, in May 2007, Goldman’s CRO Craig Broderick wrote in an email to Dan Sparks that the firm was ‘in the process of considering making significant downward adjustments to the marks and that “this will potentially have a big [profit and loss] impact on us, but also to our clients.’ ... Other evidence indicates Goldman may have known its marks were too low.”³³

The FCIC memo notes two potential legal violations as a result of Goldman’s behavior. “First, with respect to the May 2007 email ... [i]f Goldman knew it was about to lower the values of the securities it was selling ... or if Goldman had a fiduciary relationship with any of the buyers, this could represent a violation of the 1934 Act or other laws

²⁸ FCIC Referral Memo (Sep. 12, 2010).

²⁹ FCIC Referral Memo (Sep. 12, 2010).

³⁰ FCIC Referral Memo (Sep. 12, 2010).

³¹ Citigroup, Annual Report (Form 10-K), for fiscal year ended Dec. 31, 2007

(<http://www.citigroup.com/citi/fin/data/k07c.pdf>).

³² FCIC, Agenda Item 4 for Telephonic Business Meeting of October 12, 2010: Minutes of Business/Retreat Meeting of September 29, 2010 (Oct. 12, 2010).

³³ FCIC Referral Memo (Sep. 12, 2010).

arising from failure to disclose this information to potential buyers. Second, this could also be a 1933 Act violation if this information was omitted from an offering document” for the securities.³⁴

On September 29, 2010, the Commission voted to transmit this referral to DOJ. The vote was 6-0-2 in favor. The vote was a voice vote, with Commissioners Thomas and Thompson Not Present. Commissioners Hennessey and Holtz-Eakin were absent.³⁵

6. **Potential Fraud by AIG CEO Martin Sullivan and AIG CFO Stephen Bensinger in AIG Investor Calls, and PriceWaterhouseCoopers (PWC) Actions as Potential “Aide[r] and Abettor” of Fraud.** The FCIC memo describes a December 5, 2007 investor call with AIG CEO Martin Sullivan during which the company reported that they were “highly confident” there would be “no realized losses” on certain credit default swap portfolios – despite the fact that the company had made “undisclosed adjustments” including a “negative basis” adjustment and a “structured mitigant” adjustment that hid losses of \$5.9 billion. The FCIC investigation revealed, according to the memo, that Mr. Sullivan, AIG CFO Stephen Bensinger, and AIG’s auditors, PWC, were all aware of the “negative basis” adjustment prior to the December 5, 2007 call, and that “the failure to disclose” the adjustments and the “material weakness in the company’s risk management system” ... presents, at a minimum, a potential violation of Section 10b-5 [*sic*] of the 1934 Act.”

The memo concluded that “Mr. Sullivan and Mr. Bensinger may be an appropriate focus of an enforcement action because they (1) knew about the problems ... (2) they had the power to direct an adequate disclosure, but didn’t use that power; and (3) personally participated in the December call.” The memo continued, noting that, “PWC may also be exposed on these facts.”

FCIC investigators also found that “Mr. Sullivan and Mr. Bensinger may also be liable under Section 302 of the Sarbanes-Oxley Act ... [which] requires the certification of accuracy and the certification of an appropriate risk management section,” and that PWC “may be liable as aiders and abettors of the false representations.”

On September 29, 2010, the Commission voted to transmit this referral to DOJ. The vote was 6-0-2 in favor, with Commissioners Angelides, Born, Georgiou, Graham, and

³⁴ FCIC Referral Memo (Sep. 12, 2010).

³⁵ FCIC, Agenda Item 4 for Telephonic Business Meeting of October 12, 2010: Minutes of Business/Retreat Meeting of September 29, 2010 (Oct. 12, 2010).

Murren, and Wallison voting Aye, and Commissioners Thomas and Thompson Not Present. Commissioners Hennessey and Holtz-Eakin were absent.³⁶

7. **Potential Fraud by Goldman Sachs in Connection with Abacus 2007-18 CDO.** The FCIC memo notes information provided to the Commission by a witness, Mr. Steve Eisman, who described a conversation in which Goldman Sachs' Jonathan Ego and David Lehman did not dispute Mr. Eisman's characterization of Goldman's pricing strategy for this CDO: "the biggest issue with the rating is the correlation of loss, and you presented a correlation analysis that was lower than you actually thought it was, but the ratings agencies were stupid, so they'd buy it anyway." The FCIC memo identifies Mr. Ego's response — "well, I wouldn't put it in those terms, exactly" — as an "adoptive admission" of Goldman's behavior.³⁷

According to the FCIC memo, "this could raise legal issues for Goldman. ... if Goldman did deliberately mislead the ratings agencies through the use of an inaccurate correlation, more of the security may have been rated AAA than should have been ... this could be a material omission for the purposes of the 1934 Act. It could also implicate the 1933 Act if the offering documents for Abacus 2007-18 did not include material information that disclosed how much of the security should have been AAA." The memo continues, noting that the information provided by Mr. Eisman "suggests that Goldman was expecting to lower the value of the security when it was created by Goldman... [and] having other investors would allow Goldman to ... make the marks appear to be more genuine. ... If this was done deliberately by Goldman, it raises a potential 10b-5 violation of the 1934 Act."³⁸

On September 29, 2010, the Commission voted to transmit this referral to DOJ. The vote was 5-1-2 in favor, with Commissioners Angelides, Born, Georgiou, Graham, and Murren, voting Aye, Commissioner Wallison voting Nay, and Commissioners Thomas and Thompson Not Present. Commissioners Hennessey and Holtz-Eakin were absent.³⁹

The Department of Justice did not prosecute Goldman in this referred case. The SEC did file suit against Goldman over a different CDO, Abacus 2007-AC. That civil suit was settled for \$550 million. But no DOJ action or case involved Abacus 2007-18.

³⁶ FCIC, Agenda Item 4 for Telephonic Business Meeting of October 12, 2010: Minutes of Business/Retreat Meeting of September 29, 2010 (Oct. 12, 2010).

³⁷ FCIC Referral Memo (Sep. 12, 2010).

³⁸ FCIC Referral Memo (Sep. 12, 2010).

³⁹ FCIC, Agenda Item 4 for Telephonic Business Meeting of October 12, 2010: Minutes of Business/Retreat Meeting of September 29, 2010 (Oct. 12, 2010).

An additional supplement to the September 10, 2010 memo was sent to Commissioners by the FCIC Legal Staff on October 11, 2010.⁴⁰ This ten-page supplemental memo contained one additional referral recommendation from FCIC staff.

8. **False and Misleading Representations by Merrill Lynch, Former Merrill Lynch CEO Stanley O'Neal, and Former CFO Jeffrey Edwards.** The ten page FCIC October 11, 2010 memo is devoted almost entirely to a detailed discussion of potentially illegal behavior by Merrill and by O'Neal and Edwards. According to the memo, information obtained by the FCIC revealed that between August 2006 and June 2007, Merrill's exposure to asset-backed collateralized debt obligations (CDOs) increased more than four-fold, from \$7.2 billion to \$32.2 billion, and that during this time certain senior executives were aware of the risks from these holdings and aware of potential problems with Merrill's risk management strategy.⁴¹ The FCIC memo cites a summary of a Merrill meeting with the Federal Reserve that Edwards attended that stated that "senior executives were involved in key determinations about the subprime-related business at Merrill throughout 2007."⁴² However, according to the FCIC memo, during a series of earnings calls with investors in 2007, Mr. O'Neal and/or Mr. Edwards repeatedly provided information that indicated that the company had few risky holdings, or implied that the firm's risk management efforts had successfully mitigated potential losses. Ultimately, according to the FCIC, "Merrill's ABS CDO exposures caused Merrill to record tens of billions of dollars in write-downs and related charges."⁴³

The FCIC memo also describes finding "evidence that Merrill Lynch may have violated the federal securities laws by misstating and omitting key facts regarding its issuance of a \$1.5 billion 'hybrid' CDO called 'Norma' which was created and marketed in March 2007."⁴⁴ In this case, the key allegation was that Merrill failed to disclose to investors that assets in the Norma CDO were chosen by an investor that stood to profit if the value of the assets (and their investments in the CDO) declined.⁴⁵

Based on these findings, the FCIC determined that evidence indicates (1) "that former CEO Stanley O'Neal and former CFO Jeffrey Edwards may have violated the federal securities laws by making materially false and misleading representations and omissions;" (2) that "Merrill may have made materially false and misleading representations in the offering documents related to the \$1.5 billion Norma CDO issued

⁴⁰ FCIC, Confidential Referral Memorandum Supplement (at 27-36) (Oct. 11, 2010) ([https://www.dropbox.com/sh/ufck6e0dmytje66/AAA0Av4StGhKo2STjWavSlGsa/BusMtgAgnds_SCREENED/2010_10%20\(October\)/10-12-2010_Agenda_for_BusMtg_of_FCIC_1.docx?dl=0](https://www.dropbox.com/sh/ufck6e0dmytje66/AAA0Av4StGhKo2STjWavSlGsa/BusMtgAgnds_SCREENED/2010_10%20(October)/10-12-2010_Agenda_for_BusMtg_of_FCIC_1.docx?dl=0)).

⁴¹ FCIC, Confidential Referral Memorandum Supplement (at 27-36) (Oct. 11, 2010) .

⁴² FCIC, Confidential Referral Memorandum Supplement (Oct. 11, 2010).

⁴³ FCIC, Confidential Referral Memorandum Supplement (Oct. 11, 2010).

⁴⁴ FCIC, Confidential Referral Memorandum Supplement (Oct. 11, 2010).

⁴⁵ FCIC, Confidential Referral Memorandum Supplement (Oct. 11, 2010)

in March 2007;” and (3) that “Merrill may have aided and abetted fraud or breaches of fiduciary duty by collateral managers to the investors in the CDOs they managed ... because Merrill told the collateral managers that they would not be retained as collateral managers unless they purchased collateral from Merrill for the CDOs they managed.”⁴⁶

On October 12, 2010, the Commission voted “to make the finding and referral to Justice of the persons cited in the Merrill Lynch memo.”⁴⁷ The vote was 6-1-1-1-1 in favor, with Commissioners Angelides, Thomas, Born, Georgiou, Murren, and Thompson voting Aye, Commissioner Hennessey voting Nay, Commissioner Wallison Present, Commissioner Holtz-Eakin Not Present, and Commissioner Graham absent.⁴⁸

A second supplemental memo regarding a referral for actions taken by Fannie Mae was also sent to Commissioners by the FCIC Legal Staff on October 11, 2010.⁴⁹

9. **Fannie Mae Subprime Disclosure.** The FCIC memo addresses concerns raised by Commissioner Wallison regarding whether Fannie Mae appropriately disclosed the amount of holdings of subprime and Alt-A loans in the period from 2004-2008. The memo finds that “it appears that Fannie Mae certainly could have made better disclosure of its exposure to subprime and Alt-A loans in 2005 through 2008 ... However, much of the information concerning Fannie Mae’s exposure to these types of loans was available in 2006 and 2007 ... [and] we have no information to indicate that their form of disclosure was intentionally deceptive or reckless (scienter) which is necessary for a claim under Section 10(b) of the Exchange Act.”⁵⁰

Based on these findings, the FCIC staff concluded that “we do not believe a referral is warranted in these circumstances...this issue does not rise to the level of other issues that the FCIC has referred to the Attorney General.”⁵¹ Despite this conclusion by FCIC staff, on October 12, 2010, the FCIC Commissioners voted to “make the finding and referral to

⁴⁶ FCIC, Confidential Referral Memorandum Supplement (Oct. 11, 2010)

⁴⁷ FCIC, Minutes of Telephonic Business Meeting of October 12, 2010 (approved at FCIC Business Meeting on November 4, 2010) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgsAgnds_SCREENED/2010_11%20\(November%203-4%20RETREAT%20and%20Business%20Mtg\)/Agenda%20Item%203%20-%20Minutes%20of%2010-12-2010%20Meeting_1.doc](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgsAgnds_SCREENED/2010_11%20(November%203-4%20RETREAT%20and%20Business%20Mtg)/Agenda%20Item%203%20-%20Minutes%20of%2010-12-2010%20Meeting_1.doc)).

⁴⁸ FCIC, Minutes of Telephonic Business Meeting of October 12, 2010 (approved at FCIC Business Meeting on November 4, 2010).

⁴⁹ FCIC Memo to FCIC Commissioners from FCIC Legal Staff, Fannie Mae’s Subprime Disclosure/Commissioner Wallison’s Request, at 37-40 (Oct. 11, 2010) ([https://www.dropbox.com/sh/ufck6e0dmytje66/AAA0Av4StGhKo2STjWavSlGsa/BusMtgsAgnds_SCREENED/2010_10%20\(October\)/10-12-2010_Agenda_for_BusMtg_of_FCIC_1.docx?dl=0](https://www.dropbox.com/sh/ufck6e0dmytje66/AAA0Av4StGhKo2STjWavSlGsa/BusMtgsAgnds_SCREENED/2010_10%20(October)/10-12-2010_Agenda_for_BusMtg_of_FCIC_1.docx?dl=0)).

⁵⁰ FCIC Memo to FCIC Commissioners from FCIC Legal Staff, Fannie Mae’s Subprime Disclosure/Commissioner Wallison’s Request (Oct. 11, 2010).

⁵¹ FCIC Memo to FCIC Commissioners from FCIC Legal Staff, Fannie Mae’s Subprime Disclosure/Commissioner Wallison’s Request (Oct. 11, 2010).

Justice of the persons cited in the Fannie Mae memo.”⁵² The vote was 7-1-1-1 in favor, with Commissioners Angelides, Thomas, Born, Georgiou, Murren, Thompson, and Wallison voting Aye, Commissioner Hennessey voting Nay, Commissioner Holtz-Eakin Not Present, and Commissioner Graham absent.⁵³

The FCIC also discussed two additional referrals at the February 9, 2011 meeting.⁵⁴

10. **Citigroup’s Purchase and Resale of Prime Mortgages: Breakdown in Internal Controls.** Information provided to the Commissioners described allegations by former Citigroup Business Chief Underwriter Richard Bowen that “Citigroup knowingly sold Fannie Mae and Freddie Mac loans that were not underwritten to GSE standards and/or failed to contain necessary documentation to support the quality of the loans.”⁵⁵ “According to Mr. Bowen, 40-60% of the sample files for which his group performed diligence failed to meet the minimum contractual underwriting criteria of the respective loan originator and/or had documentation missing from the files. Moreover, the 40-60% fail rate was not accurately being reported within CitiMortgage.” Mr. Bowen testified to the FCIC that he emailed Robert Rubin, Chuck Prince, and other senior Citigroup executives regarding these problems.

The FCIC staff memo found that the “allegations, if true, may evidence internal control violations of the Securities and Exchange Act (section 13(b)(2)), or fraud (section 10(b)).”

The Commissioners voted to refer this potential violation to the DOJ by a vote of 5-2.⁵⁶ Commissioners Angelides, Born, Georgiou, Murren and Thompson voted Aye;

⁵² FCIC, Minutes of Telephonic Business Meeting of October 12, 2010 (approved at FCIC Business Meeting on November 4, 2010) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2010_11%20\(November%203-4%20RETREAT%20and%20Business%20Mtg\)/Agenda%20Item%203%20-%20Minutes%20of%2010-12-2010%20Meeting_1.doc](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2010_11%20(November%203-4%20RETREAT%20and%20Business%20Mtg)/Agenda%20Item%203%20-%20Minutes%20of%2010-12-2010%20Meeting_1.doc)).

⁵³ FCIC, Minutes of Telephonic Business Meeting of October 12, 2010 (approved at FCIC Business Meeting on November 4, 2010).

⁵⁴ FCIC, Agenda for Financial Crisis Inquiry Commission Telephonic Concluding Meeting (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Agenda%20for%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Agenda%20for%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf)).

⁵⁵ FCIC, Agenda Item 7 for FCIC Business Meeting of February 9, 2011, Discussion and Vote on Referral to Justice -1 (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Agenda%20for%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Agenda%20for%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf)).

⁵⁶ FCIC, Agenda for FCIC Telephonic “Concluding” Meeting, Staff Notes (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/GKN%20Notes.%20Agnda%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/GKN%20Notes.%20Agnda%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf)). The staff notes indicate that Commissioner Holtz Eakin voted aye, but email from Commissioner Holtz Eakin indicates he voted No.

Commissioners Thomas and Holtz Eakin voted no,⁵⁷ Commissioners Graham, Wallison⁵⁸ and Hennessey abstained.⁵⁹

11. **Redacted Referral.** One other referral was discussed at the February 9, 2011 meeting.⁶⁰ However, the identity of the entity that was referred and all background information on the referral was redacted from the document.

The Commissioners voted to refer this potential violation to the DOJ by a vote of 5-2.⁶¹ Commissioners Angelides, Born, Georgiou, Murren and Thompson voted Aye; Commissioners Thomas and Holtz Eakin voted no,⁶² Commissioners Graham, Wallison⁶³ and Hennessey abstained.⁶⁴

The Outcome of FCIC Referrals to DOJ

My staff has identified eleven referrals from the FCIC to the DOJ. These referrals provided DOJ with evidence that nine individuals — former Fannie Mae CEO Daniel Mudd, former Fannie Mae CFO Stephen Swad, former Citigroup CEO Chuck Prince, former Citigroup

⁵⁷ Electronic mail from Douglas Holtz Eakin to Cassidy Waskowicz, Deputy General Counsel, FCIC (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Holtz-Eakin%20vote%20ActItems%20of%202-9-2011%20Cnclng%20Mtg_1.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Holtz-Eakin%20vote%20ActItems%20of%202-9-2011%20Cnclng%20Mtg_1.pdf)).

⁵⁸ Electronic mail from Peter Wallison to Cassidy Waskowicz, Deputy General Counsel, FCIC (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Wallison%20vote%20on%20Action%20Items%20of%202-9-2011%20Concluding%20Meeting_1.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Wallison%20vote%20on%20Action%20Items%20of%202-9-2011%20Concluding%20Meeting_1.pdf)).

⁵⁹ Electronic mail from Keith Hennessey to Cassidy Waskowicz, Deputy General Counsel, FCIC (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Hennessey%20vote%20ActItems%20of%202-9-2011%20Cnclng%20Mtg_1_Sanitized.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Hennessey%20vote%20ActItems%20of%202-9-2011%20Cnclng%20Mtg_1_Sanitized.pdf)).

⁶⁰ FCIC, Agenda Item 7 for FCIC Business Meeting of February 9, 2011, Discussion and Vote on Referral to Justice - 1 (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Agenda%20for%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Agenda%20for%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf)).

⁶¹ Agenda for FCIC Telephonic “Concluding” Meeting, Staff Notes (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/GKN%20Notes.%20Agnda%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/GKN%20Notes.%20Agnda%20FCIC%20Mtg%202-9-2011_1_Sanitized.pdf)). The staff notes indicate that Commissioner Holtz Eakin abstained, but email from Commissioner Holtz Eakin indicates he voted No.

⁶² Electronic mail from Douglas Holtz Eakin to Cassidy Waskowicz, Deputy General Counsel, FCIC (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Holtz-Eakin%20vote%20ActItems%20of%202-9-2011%20Cnclng%20Mtg_1.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Holtz-Eakin%20vote%20ActItems%20of%202-9-2011%20Cnclng%20Mtg_1.pdf)).

⁶³ Electronic mail from Peter Wallison to Cassidy Waskowicz, Deputy General Counsel, FCIC (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Wallison%20vote%20on%20Action%20Items%20of%202-9-2011%20Concluding%20Meeting_1.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Wallison%20vote%20on%20Action%20Items%20of%202-9-2011%20Concluding%20Meeting_1.pdf)).

⁶⁴ Electronic mail from Keith Hennessey to Cassidy Waskowicz, Deputy General Counsel, FCIC (Feb. 9, 2011) ([http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20\(Feb%209th%20Business-Concluding%20Meeting\)/Hennessey%20vote%20ActItems%20of%202-9-2011%20Cnclng%20Mtg_1_Sanitized.pdf](http://fcic-static.law.stanford.edu/NARA.FCIC.2016-03-11/BusMtgAgnds_SCREENED/2011_02%20(Feb%209th%20Business-Concluding%20Meeting)/Hennessey%20vote%20ActItems%20of%202-9-2011%20Cnclng%20Mtg_1_Sanitized.pdf)).

Board of Directors Executive Committee Chair Robert Rubin, former Citigroup CFO Gary Crittenden, former AIG CEO Martin Sullivan, AIG CFO Stephen Bensinger, former Merrill Lynch CEO Stanley O’Neal, and former Merrill Lynch CFO Jeffrey Edwards — may have violated securities or other laws. Mr. Prince and Mr. Rubin were each cited in two referrals.

An FCIC referral alone does not indicate guilt. And not every DOJ investigation results in a criminal conviction. Nonetheless, the DOJ record of action on these individuals, nearly six years after DOJ received the referrals, is abysmal. The DOJ has not criminally charged or taken any of these nine individuals to trial. None have been convicted or sent to prison. Not one paid a fine commensurate with their alleged actions. In fact, only one of these nine individuals – Mr. Crittenden — paid any penalty at all: a meager \$100,000 civil fine as part of Citigroup’s 2010 civil settlement with SEC over securities fraud,⁶⁵ while a second, Mr. Mudd, recently agreed to a settlement in which he admitted no wrongdoing and paid no personal fine.⁶⁶ The other seven individuals paid no personal fines, served no prison time, and appear to have gotten off scot-free despite the role they played in the financial crisis.

A summary of the FCIC referrals of individuals can be seen in Table 1.

⁶⁵ SEC, *SEC Charges Citigroup and Two Executives for Misleading Investors about Exposure to Subprime Mortgage Assets* (July 29, 2010) (<https://www.sec.gov/news/press/2010/2010-136.htm>).

⁶⁶ Mr. Mudd reached this settlement in August 2016, under which his former company paid a \$100,000 fine, but Mr. Mudd expended no personal funds. Reuters, *Former Fannie Mae CEO Settles Crisis-Related Lawsuit with SEC* (Aug. 22, 2016) (<http://www.reuters.com/article/us-sec-fanniemae-mudd-exclusive-idUSKCN10X1ZI>).

Table 1: Summary of FCIC Referrals of Individuals to DOJ and Case Outcomes			
Individual	Allegations	Potential Legal Violation	DOJ Outcome
Daniel Mudd, Fannie Mae CEO	Accounting Fraud and False Certifications	Section 302 of Sarbanes-Oxley Act	No DOJ Prosecution; SEC settlement required that Fannie Mae pay \$100,000 fine, but imposed no personal penalty on Mr. Mudd.
Stephen Swad, Fannie Mae CFO	Accounting Fraud and False Certifications	Section 302 of Sarbanes-Oxley Act	No DOJ Prosecution
Chuck Prince, Citigroup CEO	Fraud and False Certifications about Subprime Exposure	SEC Rule 10b-5; Section 302 of Sarbanes-Oxley Act	No DOJ Prosecution
Robert Rubin, Citigroup Board of Directors Executive Committee Chair	Fraud and False Certifications about Subprime Exposure	SEC Rule 10b-5	No DOJ Prosecution
Gary Crittenden, Citigroup CFO	Fraud and False Certifications about Subprime Exposure	Section 302 of Sarbanes-Oxley Act	No DOJ Prosecution; SEC civil fine of \$100,000
Martin Sullivan, AIG CEO	Fraud in Investor Calls Regarding "Adjustments" to Credit Default Swap Portfolio	Section 10(b) of the Securities Exchange Act of 1934; Section 302 of Sarbanes-Oxley Act	No DOJ Prosecution
Stephen Bensinger, AIG CFO	Fraud in Investor Calls Regarding "Adjustments" to Credit Default Swap Portfolio	Section 10(b) of the Securities Exchange Act of 1934; Section 302 of Sarbanes-Oxley Act	No DOJ Prosecution;
Stanley O'Neal, Merrill Lynch CEO	False and Misleading Statements About Subprime Loan Exposure	Securities Act of 1933 and Securities Exchange Act of 1934, "materially false and misleading representations and omissions."	No DOJ Prosecution
Jeffrey Edwards, Merrill Lynch CFO	False and Misleading Statements About Subprime Loan Exposure	Securities Act of 1933 and Securities Exchange Act of 1934, "materially false and misleading representations and omissions."	No DOJ Prosecution
Chuck Prince, Citigroup CEO	Purchase and Resale of Prime Mortgages: Breakdown of Internal Controls	Section 13(b)(2) and 10(b) of the Securities Exchange Act of 1934	No DOJ Prosecution
Robert Rubin, Citigroup Board of Directors Executive Committee Chair	Purchase and Resale of Prime Mortgages: Breakdown of Internal Controls	Section 13(b)(2) and 10(b) of the Securities Exchange Act of 1934	No DOJ Prosecution

The record of DOJ action based on the FCIC referrals of banks and other corporations for potential violations of securities law and other laws is similarly bleak. The 11 FCIC referrals identified by my staff name 14 corporate entities – AIG, Citigroup, Credit Suisse, Fannie Mae, Freddie Mac, Goldman Sachs, JP Morgan, Lehman, Merrill Lynch, Moody's, PriceWaterhouseCoopers, Societe Generale, UBS, and Washington Mutual – may have committed violations of securities or other laws. There were a total of 21 different allegations of potential legal violations; Citigroup, Goldman, and Merrill Lynch were each named in three different referrals and Fannie Mae and UBS were each named in two.

But DOJ reached a settlement in only four cases, ultimately taking action against only five of 14 corporate entities. Each settlement resolved civil, not criminal, claims. DOJ reached a \$13 billion settlement in 2013 with JP Morgan to settle federal and state civil claims (this settlement also covered actions taken by Washington Mutual, which was taken over by JP Morgan in 2008) related to the company's alleged false and misleading representation of loan quality⁶⁷; a \$7 billion settlement with Citigroup for similar federal and state civil claims in 2014;⁶⁸ a \$17 billion settlement with Bank of America/Merrill Lynch in 2014; and a \$5 billion settlement with Goldman Sachs in 2016.⁶⁹

Criminal violations of the law by large banks and financial firms can result in the loss of privileges with financial regulators (such as reductions in paperwork and filing requirements) and can even result in corporations losing their charters. But in the case of these settlements, the guilty parties agreed only to a variety of civil penalties, including paying federal and state civil fines; offering consumer aid; and agreeing to host independent monitors to assess their compliance with settlement terms while suffered no additional consequences.

While the civil fines paid by the companies appeared to be quite large, in reality they represented small amounts relative to the assets held and profits earned by these large banks. And the fine print of these settlements - which can allow the companies to treat fines as tax deductions and receive monetary credits for other actions - can significantly reduce the actual amount paid.⁷⁰

⁶⁷ DOJ, Justice Department, Federal and State Partners Secure Record \$13 Billion Global Settlement with JPMorgan for Misleading Investors About Securities Containing Toxic Mortgages (November 19, 2013) (<https://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-13-billion-global-settlement>).

⁶⁸ DOJ, Justice Department, Federal and State Partners Secure Record \$7 Billion Global Settlement with Citigroup for Misleading Investors About Securities Containing Toxic Mortgages (July 21, 2014) (<https://www.justice.gov/opa/pr/justice-department-federal-and-state-partners-secure-record-7-billion-global-settlement>).

⁶⁹ DOJ, Goldman Sachs Agrees to Pay More Than \$5 Billion in Connection with its Sale of Residential Mortgage-Backed Securities (Apr. 2016) (<https://www.justice.gov/opa/pr/goldman-sachs-agrees-pay-more-5-billion-connection-its-sale-residential-mortgage-backed>).

⁷⁰ See, e.g., New York Times, *In Settlement's Fine Print, Goldman May Save \$1 Billion* (Apr. 11, 2016) (http://www.nytimes.com/2016/04/12/business/dealbook/goldman-sachs-to-pay-5-1-billion-in-mortgage-settlement.html?_r=0).

In addition to the DOJ settlements, reports indicate that DOJ opened investigations of several entities named in FCIC referrals that did not result in criminal prosecution, convictions or settlements. And SEC or FHFA reached civil settlements or non-prosecution agreements that imposed financial penalties on Fannie Mae, UBS, Morgan Stanley, and others.⁷¹ But like the DOJ settlements, these settlements imposed no criminal liability.

A summary of the outcome of the FCIC corporate referrals to DOJ can be seen in Table 2.

⁷¹ Federal Housing Finance Agency , FHFA's update on Private-Label Securities Action (viewed Sep. 2016) (<http://www.fhfa.gov/Media/PublicAffairs/pages/fhfas-update-on-private-label-securities-actions.aspx>).

Table 2: Summary of FCIC Referrals of Corporate Entities to DOJ and Case Outcomes			
Entity	Allegations	Potential Legal Violation	DOJ Case Outcome
AIG	Fraud in Investor Calls Regarding "Adjustments" to Credit Default Swap Portfolio	Section 10(b) of the Securities Exchange Act of 1934	No DOJ Prosecution
Citigroup	Loan Underwriting Standards	Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	\$7 billion DOJ Settlement
Citigroup	Fraud and False Certifications about Subprime Exposure	SEC Rule 10b-5	Same \$7 billion DOJ Settlement
Citigroup	Purchase and Resale of Prime Mortgages: Breakdown of Internal Controls	Section 13(b)(2) and 10(b) of the Securities Exchange Act of 1934.	Same \$7 billion DOJ Settlement
Credit Suisse	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	No DOJ Conviction
Fannie Mae	Accounting Fraud and False Certifications	Violation of SEC Rule 10b-5	No DOJ Conviction
Fannie Mae	Disclosure of Subprime Loan Holdings	Section 10(b) of the Securities Exchange Act of 1934	No DOJ Conviction
Freddie Mac	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	No DOJ Conviction
Goldman Sachs	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	\$5.1 billion DOJ settlement.
Goldman Sachs	Fraud in Connection with Abacus CDO	Failure to disclose material information under Securities Act of 1933 and the Securities Exchange Act of 1934; violation of SEC Rule 10b-5	No DOJ Conviction
Goldman Sachs	Fraud in Connections with AIG Collateral Calls	Failure to disclose required information under Securities Act of 1933 and the Securities Exchange Act of 1934	No DOJ Conviction
JP Morgan	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	\$13 billion DOJ Civil Settlement
Lehman	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	No DOJ Conviction
Merrill Lynch (acquired by Bank of America)	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	\$17 billion DOJ Civil Settlement.
Merrill Lynch (acquired by Bank of America)	False and Misleading Statements About Subprime Loan Exposure and in Loan Offering Documents	Securities Act of 1933 and "[M]aterially false and misleading representations and omissions" under Securities Exchange Act of 1934.	Same \$17 billion DOJ Settlement.
Moody's	Failure to Disclose Pending Downgrades	SEC Rule FD	No DOJ Conviction
PWC	Fraud in Investor Calls Regarding "Adjustments" to Loan Portfolio	"Aiders and abettors of ... false representations"; 18 U.S. C. § 2	No DOJ Conviction
Societe General	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	No DOJ Conviction
UBS	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	No DOJ Conviction
UBS	Failure to Disclose Pending Downgrades	Violation of SEC Rule 10b-5; Violation of Section 10 of 1934 Securities Exchange Act	No DOJ Conviction
Washington Mutual	Loan Underwriting Standards	Violation of Securities Act of 1933 and the Securities Exchange Act of 1934; Mail or Wire Fraud	\$13 billion settlement (WaMu taken over by JPMorgan)

Request for DOJ Inspector General Investigation

The FCIC performed important work in the years after the financial crisis. The commission conducted a detailed and thorough investigation, produced a 633-page report, and sent 11 separate referrals to DOJ. These referrals named 14 different corporations and nine different individuals (some multiple times) who the Commission believed may have violated securities or other laws.

But the DOJ failed to bring criminal charges against and failed to obtain a single criminal conviction of even one of the nine named individuals. Similarly, the DOJ failed to obtain a single criminal conviction or settlement with nine of the fourteen named corporations – and the settlements they did reach included large fines, but no other significant adverse actions against these companies. And no individuals in these 14 corporations were criminally prosecuted for the potential crimes referred to DOJ by the FCIC.

The FCIC reported that in some cases it had substantial evidence pointing to potentially guilty parties, while in others it was more limited. In one case, the FCIC staff recommended against referral, but commissioners voted in favor. Evidence can be difficult to obtain and interpret. Entities that appear to be in violation of securities law may in fact have merely taken advantage of loopholes in the law and cannot be prosecuted. DOJ, like all federal agencies, has been operating with a limited budget. And corporations and their CEOs and CFOs have virtually limitless funds to fight DOJ and other enforcement agencies, giving them an advantage in costly, protracted litigation.

But regardless of these mitigating circumstances, the outcome of the referrals by the FCIC to the DOJ represents an abysmal failure. It means that key companies and individuals that were responsible for the financial crisis and were the cause of substantial hardship for millions of Americans faced no criminal charges.

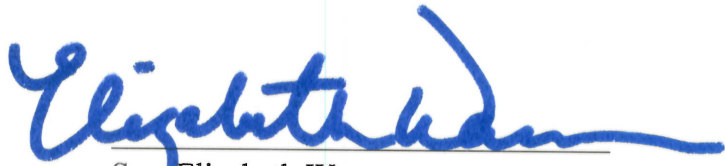
This failure is outrageous and baffling, and it requires an explanation.

I am therefore requesting that you conduct an investigation of the DOJ response to these FCIC referrals. The investigation should include an analysis of the process by which FCIC referrals were obtained and analyzed by the DOJ; a determination of whether DOJ and the responsible individuals at DOJ took appropriate actions and devoted appropriate resources to these referrals; and an analysis of whether DOJ obtained acceptable outcomes with regard to these referrals. I also ask that your review provides recommendations for both administrative and legislative action to ensure that, now and in the future, individuals and corporations responsible for systemic economic fraud can be held responsible for their actions.

It has been almost a decade since the subprime mortgage market began to collapse, and the individuals and corporations responsible for the resulting financial crisis have still not been held responsible. It is not too late to do so; and I urge your office to act quickly to open an investigation into the process by which DOJ handled FCIC referrals of corporate and individual misbehavior that harmed millions of Americans.

Please contact Brian Cohen of my staff if you have any additional questions about this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Warren", with a long horizontal flourish extending to the right.

Sen. Elizabeth Warren
Ranking Minority Member
Subcommittee on Economic Policy