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Cases against Wall Street lag despite Holder's vows to target financial fraud

By Jerry Markon
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Since taking office at the height of the financial crisis, President Obama has promised to hold Wall Street accountable for the meltdown. Attorney General Eric H. Holder Jr. reinforced that message in November when he vowed to prosecute Wall Street executives and others responsible for the crisis.

"We will be relentless in our investigation of corporate and financial wrongdoing, and we will not hesitate to bring charges," Holder said as he launched a financial fraud task force.

His Justice Department took steps to fulfill that promise this week when it arrested the former chairman of one of the nation's biggest mortgage firms -- the largest crisis-related criminal case -- and announced that 1,215 people have been charged with mortgage fraud since March 1. But that success masks the government's difficulties in the highest-profile investigations: those of Wall Street banks.

Nearly 1 1/2 years into Obama's tenure, despite several cases against mortgage companies whose lending practices contributed to the crisis, the administration has not brought any charges against the big Wall Street banks that took those loans, converted them into toxic securities and pumped them into the world's financial markets. Law enforcement sources say no such charges are imminent.

The blunt words of administration officials have triggered debate over whether they have gone too far in appearing to promise difficult cases that critics say might never be filed, in part because they would essentially criminalize an entire business model in the financial industry.

"The attorney general got out ahead of the facts and the evidence in saying, 'We're going to go down to Wall Street with a pitchfork and roust those fat cats out of their offices and put them in jail,' " said Tim Coleman, who prosecuted major fraud cases before leaving the Justice Department five years ago. "This was a case, in general, of people making business judgments and taking risks and having them go badly. That's not criminal misconduct."

A law enforcement official agreed. "I'm not big on using such strong language before your cases are ready," said the official, who spoke on the condition of anonymity to discuss internal deliberations. Referring to a key Wall Street filed during the Bush administration against two former Bear Stearns executives -- a case lost last year -- the official added: "Look what happened with Bear Stearns."

Justice officials say that Holder did not over-promise and that the task force is targeting all financial fraud, not just on Wall Street. At a news conference Thursday, Holder said the efforts should not be evaluated only in terms of Wall Street cases: "You have to look at the totality of what this task force was supposed to do."

James M. Cole, Obama's nominee for deputy attorney general, reinforced the message during his Senate confirmation hearing Tuesday. "We need to hold people accountable" for the financial crisis, he told the committee. "One of the main ways to do this is to go after the individual executives who are responsible. It is they who will go to jail, they who will suffer the consequences."

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The Justice Department is pouring resources into financial fraud, including 48 FBI investigations of businesses and financial institutions involved in the crisis. Officials say more indictments will come and point to major fraud cases in recent months, including Ponzi schemes, mortgage frauds and the largest insider-trading case in a generation.

But investigators are encountering obstacles in what they call their top-priority cases, which sources said include probes of J.P. Morgan Chase, Citigroup and other household names.

"Not every case can be brought, and it's very easy for people to want to see heads roll and sometimes understandable when they do. But it's not possible to roll the head if you don't have the evidence," said Preet Bharara, the U.S. attorney in Manhattan, who sources said is overseeing some of the highest-priority investigations. He added: "We have never been working harder, have never put so many resources into investigating and prosecuting corporate fraud in this office. . . . If there is anything to get to the bottom of, we will."

Kevin L. Perkins, assistant director for the FBI's Criminal Investigative Division, said Wall Street and other corporate investigations involve "very highly paid, educated and sophisticated" targets who argue that they warned investors of potential risks. Prosecutors must prove a deliberate intent to defraud.

"Is that a valid defense that makes it hard? From a criminal standpoint, it is, yes," Perkins said.

The political imperative to bring cases shows no sign of weakening, with the administration pushing for financial reform legislation and key senators calling for prosecutions.

The administration has also raised expectations. The Justice Department, which secured a 12 percent budget increase to fight financial fraud this year, is requesting 23 percent more in 2011. Neil H. MacBride, the U.S. attorney in Alexandria, recently announced a Virginia financial fraud task force.

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When Holder unveiled the broader task force with some fanfare in November, he embraced the administration's message that "Wall Street does not play by the same rules as Main Street." In his prepared remarks, still posted on the Justice Department's Web site, he warned "unscrupulous executives" and others that "we will investigate you, we will prosecute you, and we will incarcerate you."

The task force is run by Executive Director Robb C. Adkins, 39, a former Enron prosecutor who was chief of the U.S. attorney's office in Orange County, Calif. Adkins works out of the fourth floor of department headquarters.

The administration calls the panel the broadest government coalition ever assembled to combat fraud. More than 20 agencies, from the Securities and Exchange Commission to the Treasury Department's Financial Crimes Enforcement Network, share information and coordinate cases.

The task force also aims to help fraud victims. It has hosted mortgage-fraud "summits" and the Web site, http://www.stopfraud.gov, allows the public to report fraud.

The administration has brought major cases, including Tuesday's arrest of Lee Bentley Farkas, who led Florida-based Taylor, Bean & Whitaker. He is charged in federal court in Alexandria in a $1.9 billion fraud scheme that led to the failure of a large regional bank.

But in two Wall Street cases, both filed in the Bush administration, the record is mixed. Obama Justice Department prosecutors convicted two former Credit Suisse brokers in a $1 billion subprime mortgage fraud, but the two former Bear Stearns executives accused of lying to investors were acquitted.

Among the companies under investigation, law enforcement sources said, are Deutsche Bank, UBS, Goldman Sachs, Morgan Stanley and the former Lehman Brothers.