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September 15, 2009

One Year Later: Where are the Perp Walks

By Scott Cohn

One year after the collapse of Lehman, the bailout of AIG, and the near-implosion of the U.S. financial system, not a single Wall Street CEO has been called to account by criminal authorities. Some are starting to ask why.

"Investors expect to see the feds prosecuting top executives who committed securities fraud and misled investors," said New York attorney Jacob Zamansky, who represents investors in various claims against Wall Street firms.

High-profile arrests have been a staple in previous financial crises. Then-U.S. Attorney Rudolph Giuliani made a name for himself in the 1980s when traders were escorted from their firms in handcuffs.

The arrests and "perp walks" of former WorldCom CEO Bernard Ebbers and former Enron Chairman Kenneth Lay were carefully choreographed by authorities and widely covered by the media in 2004 .

But in the current crisis, the only Wall Street executives charged thus far are two mid-level Bear Stearns executives—Ralph Cioffi and Matthew Tannin, who presided over the collapse of two hedge funds in 2007. The two have pleaded not

guilty to fraud and conspiracy charges, and are scheduled to go on trial next month.

There have been high profile fraud cases, including admitted swindler Bernard Madoff and accused Ponzi schemer Allen Stanford, but they were exposed by the Wall Street crisis rather than causing it.

Leslie Caldwell, who headed the Justice Department's Enron Task Force from 2002 to 2006 and is now a partner at Morgan, Lewis & Bockius in New York, recalls the public anger over Enron's collapse.

"There was a lot of outrage about, why is Ken Lay not in Jail," she said, noting that Enron's collapse--and the names of Lay and former CEO Jeffrey Skilling were in the news almost daily for months.

Caldwell says the current crisis is different. "Here, you can't lay the blame at any particular person's feet. It's really a systemic collapse."

Even if there was criminal wrongdoing--and Caldwell says that is not clear--it would be difficult to prove, particularly in just one year. "It's not the kind of thing that you can just unravel it like pulling a string," she said.

Immediately following the crisis in the Fall of 2008, prosecutors across the country launched investigations. The Justice Department refused to confirm the investigations, and refused to comment on a report by the Wall Street Journal that prosecutors in Brooklyn, New York, are preparing to impanel a grand jury in their investigation of American International Group's financial products division.

If the report is true, the investigation would be one of many. In the New York area alone, according to sources, federal prosecutors in Manhattan, Brooklyn and New Jersey have all trained their sights on Wall Street. But legal experts say uncovering any criminal activity in a crisis that hit practically every player in the financial world—let alone proving it—is extremely complicated.

For example, one area where investigators initially focused was how firms valued the real estate assets on their books. If prosecutors could show that firms intentionally inflated the values reported to investors, authorities could allege securities fraud. But even today, the proper value of those assets is the subject of widespread debate.

The lack of clear-cut evidence of fraud leads to another issue that may be hampering prosecutors: Unlike in previous crises, there have been few lower level employees rushing to plead guilty. Prosecutors typically use plea agreements to gather evidence against higher-level officials.

And there are other issues beyond the merits of any individual case: One former Justice Department official, who did not wish to be identified because the official's firm represents one of the Wall Street firms in question, notes that few U.S. Attorney positions have yet been filled by the Obama administration.

In the Southern District of New York, which typically handles the most complex securities fraud cases, U.S. Attorney Preet Bharara was not confirmed by the Senate until August. While investigations are typically carried out by career prosecutors, leadership in any U.S. Attorney's office is critical, the source said.

Federal prosecutors are not the only ones investigating Wall Street. New York Attorney General Andrew Cuomo, who is weighing charges against Bank of America executives over bonuses paid prior to the bank's takeover of Merrill Lynch last year, has also attacked the roots of the crisis. Cuomo has taken on Wall Street rating agencies, and sued Swiss banking giant UBS over its marketing of auction rate securities.

At the Securities and Exchange Commission, Director of Enforcement Robert Khuzami told a New York City Bar Association gathering in August, "The credit crisis remains the highest priority of the Division of Enforcement."

In June, the SEC sued former Countrywide Financial CEO Angelo Mozilo and two former executives with fraud for allegedly misrepresenting the quality of the mortgages the firm underwrote. Mozilo has denied the charges and an accompanying civil charge of insider trading.

But criminal authority—including the ability to make arrests—is in the hands of the Justice Department. And for now, the image of Wall Street executives in handcuffs, which may be satisfying to some investors, remains elusive. The Justice Department refuses to speculate on when—or if—any criminal cases are forthcoming.

In the meantime, an inter-agency Corporate Fraud Task Force, created by President George W. Bush in 2002, technically still exists. But multiple sources tell CNBC the structure and functions of the Task Force are under review. In the meantime, the group has not issued a formal

report since April, 2008, long before the worst of last year's crisis.