Remarks of Superintendent Lawsky on Financial Regulatory Enforcement at the Exchequer Club
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I’d like to thank John Ryan for that very kind introduction.

I’d also like to thank the Exchequer Club for graciously asking me to speak with you here today.

I want to focus the bulk of my remarks on an issue that we’ve been doing a lot of thinking about lately at New York Department of Financial Services (DFS).

And that issue is Wall Street accountability.

Or, rather, what we call an “accountability gap” on Wall Street.

In part, that accountability gap is – we think – the sense shared by many Americans that we had a devastating financial crisis, which inflicted enormous economic damage on millions of families and homeowners.

And more than five years later, no one at the big financial institutions whose actions helped precipitate that crisis – no single senior executive – has really been held to account.

And even today, – after all the lessons of the financial crisis and all that intense public outrage – we’re continuing to see scandal after scandal after scandal crop up on Wall Street.

If it’s not foreclosure fraud, it’s money laundering.

If it’s not money laundering, it’s tax evasion.

If it’s not tax evasion, it’s foreign exchange manipulation.

The list goes on and on and on. And, as a regulator, it's starting to feel a little bit like Groundhog Day.

So, that begs the question: What exactly are we doing wrong?

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I know it's fashionable right now to blame the *culture on Wall Street* for that succession of scandals.

And it's not entirely an unfair point.

But framing the issue primarily as a cultural problem – in certain respects – plays into the “everyone was doing it” defense put forward by some individuals on Wall Street who engage in misconduct.

And it also lets us *regulators* off the hook far too easily.

What do I mean by that?

In some ways, it reminds me of when people call the financial crisis a “hundred-year flood.”

If you unpack that metaphor for a second, it essentially implies that the financial crisis was primarily an unstoppable force of nature.

And that financial regulators are essentially floating along aimlessly – down the river of history – and there's little we can do to beat back against the current.

But I think we can do better than that – even if it's often very challenging to do so.

Indeed, I believe that we as regulators – particularly bank regulators – need to take a good, long, hard look in the mirror and ask whether *we* are part of the problem when it comes to that succession of scandals on Wall Street.

I don't think we have done nearly enough as regulators – DFS included – to hold individuals on Wall Street accountable for misconduct.

I also believe that we have not placed a high enough priority as regulators on our enforcement responsibilities – instead viewing that area as primarily the province of criminal prosecutors.

And that lax enforcement by regulators has contributed to the vicious cycle of scandal after scandal after scandal that we're continuing to see in the financial sector.

Perhaps individuals on Wall Street faced with competitive pressures and the lure of potential profits decide to cheat – in part – because they think they'll never get caught.

Or because they think that if they do get caught, it won't matter all that much because they won't be held personally accountable.

At the very least, when we blame the culture on Wall Street for those scandals, it represents an incomplete explanation.

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To be clear, there are certain broad cultural issues on Wall Street.

And lax enforcement is not an excuse for breaking the rules.

But I also think that most of the individuals who work in the financial sector are good people who are trying to act ethically and conduct their business in the right way.

And it's unfair to paint with an overly broad brush.

That's not the most popular opinion right now, but it's what we believe.

It's important to remember that Wall Street – besides being a physical address in Lower Manhattan – is just a group of thousands and thousands of individual people going about their everyday lives and trying to support their families.

There are some Gordon Geckos or even Bud Fox's on Wall Street, but I don't think that's everybody or even the majority of people who work in the financial sector.

And I also do not believe that they arrive on Wall Street from college or other industries inherently programmed to cheat.

The question for us, then, is how we focus our efforts in a way that helps weed out the bad actors and incentivizes more ethical behavior in the financial services industry at large.

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To me, I think our main focus in achieving that objective should be on deterrence.

We talk a lot about the broad idea of deterrence in the legal community. But it’s important to define that term more precisely.

Ultimately, when Wall Street executives face real, serious consequences for breaking the rules – it helps deter future misconduct.

The type of misconduct that cheats investors, savers, and homeowners, and puts our entire economy at risk.

Putting in place those kinds of deterrents helps ensure that we’re creating a more ethical and stable financial system for the long term.

Now, real deterrence, in my opinion, means a focus not just on *corporate* accountability, but on *individual* accountability.

After all, if you think about it for a second, what is a corporation?

It's just a group of *people*. When we say, "a corporation broke the law" or "a corporation engaged in misconduct," it's a little odd. The corporation itself is just a legal fiction. It hasn't acted.

Corporations are made up of *people*. If there is wrongdoing at a corporation, that wrongdoing was committed by *people*.

Of course, penalties imposed at the corporate level are often an important and necessary tool in our enforcement toolbelt – particularly as it relates to organization-wide failures of oversight or compliance.

But more and more often it feels like we're discussing a corporation's wrongdoing without detailing *who* exactly did *what* wrong. And who in the corporate hierarchy is ultimately responsible for overseeing that conduct.

And, in my opinion, if in any particular instance we cannot find someone, some *person*, to hold accountable, then we are doing something wrong.

Ultimately, we have to ask ourselves whether – through the use of the various tools at our disposal – we have put in place real, effective deterrents against individual misconduct.

I don't know if we as a law enforcement and financial regulatory community have grappled with that issue in a sufficient way.

If we resolve cases with no individuals held to account, and just have firms paying large sums of money, I'm not sure we're getting the full benefits of deterrence.

Think about this for a second: A corporation may pay millions – or even billions – of dollars because they want out from under an investigation or prosecution.

But oftentimes, the settlement that the corporation signs offers little (if any) details about which individuals engaged in misconduct and what they did.

If we're just getting large fines from the corporations – and remember, those fine are typically just hits to shareholders who usually had nothing to do with the violations – are we really deterring future bad conduct?

Are people who work at big banks really saying to themselves: "I need to clean up my act because my company had to pay a fine?"

If the corporation is just going to have to pay back some share of the billions of dollars of profits they made committing the fraud, and no individual wrongdoing is exposed and no individuals are held to account, I’m not sure we’re really deterring much of anything.

Toward Greater Individual Accountability

So how do we move toward greater individual accountability so that we put in place more effective deterrents?

Every case is different. And we should be careful to reserve harsh individual penalties for the most serious instances of wrongdoing, such as facilitating money laundering or foreclosure fraud.

But I think there are two main aspects to achieving greater individual accountability.

First, we should publicly expose – in great detail – the actual, specific misconduct that individual employees engaged in.

If individuals believe that their wrongdoing could be exposed to the stark light of day – to the public, to their friends, to their peers, to their potential future employers – hopefully they’ll think twice about breaking the rules.

Second, – where appropriate – individuals should face real, serious penalties and sanctions when they break the rules.

That can mean putting people in jail when they break the law in the context of criminal prosecutions. But it can also mean suspensions, firings, bonus claw-backs, and other types of penalties in the regulatory context.

Indeed, my view is that to get real deterrence, we need to have individuals who are personally held to account and we need to actually expose, in a very significant, clear, detailed way, what the bad conduct was.

Now, I would argue that resolving matters with firms that engaged in misconduct in a way that does those two things creates real individual deterrence.

And, importantly, I would also argue that approach is actually good for the financial industry at large over the long term.

When you focus more on deterring individuals, you stop sending the message to the world that an entire bank is bad or that the entire financial industry is bad.

When bad things happen at banks, it's because some person or persons decided that it was worth it for them to commit a bad act.

A greater focus on individual accountability may also play a role in incentivizing more ethical behavior and addressing some of the cultural problems on Wall Street others have highlighted.

Granted, focusing on individual accountability may make it more challenging for regulators to resolve these cases. It certainly takes regulators out of their comfort zone, which is maybe where we need to be in order to improve.

Moreover, when you're talking about an employee's reputation, career, or even personal liberty, you have to have a very high degree of confidence that the action you're taking is just and fair.

And you need strong evidence regarding an individual's misconduct before you proceed.

But I think regulators owe it to the public – as well as those people on Wall Street who are committed to acting in an ethical manner – to move in that direction.

Corporate Penalties

Of course, individual accountability is not the only component of an effective enforcement regime.

Creating effective deterrents probably requires a good mix of both individual accountability and some level of appropriate corporate penalties in appropriate cases.

After all, we want to help prevent companies from simply holding out certain lower-level individual employees as scapegoats in these cases.

Moreover, we also need to impose corporate penalties when there are systemic failures of oversight or internal controls.

And there may be specific cases – depending on the facts – where corporate penalties are more appropriate than individual penalties depending on the circumstances.

The real point we need to think long and hard about as regulators is how best to achieve actual deterrence in the future through effective penalties.

We should also, I believe, think more creatively about corporate penalties in a way that will help move the needle when it comes to deterrence.

To be clear, corporations will often end up having to pay fines in resolving certain cases.

Violations of New York Banking Law, for example, provide for corporations to pay civil monetary penalties when they violate the law.

But, in some cases, maybe a fine does not really deter all that much.

As one alternative example, however, we could ban a company from conducting the type of business that was at the heart of its misconduct for an extended period.

That's what DFS did when one well-known consulting firm white-washed a compliance report.

We're considering some new, similar ideas when it comes to our investigations into banks that used their dollar-clearing operations to launder money, but we have not come to any firm conclusions on that issue yet.

That said, using new and creative corporate penalties in resolving those and other cases could help promote our broader objective of deterring misconduct.

Conclusion

Now, again, to be fair, I'm not sure we at DFS have fully squared the circle on the problem of deterring misconduct on Wall Street.

The application of justice and accountability is a complex task. We try and act in a tough but fair manner when it comes to enforcement. But I doubt we get it right in every case.

That said, we are committed to trying to find the right balance that creates real deterrents.

And that's what we'll do in resolving the numerous open investigations we have into money laundering at large banks and in other areas going forward.

To be clear, I'm not naive enough to think that we're going to stamp out all wrongdoing on Wall Street – regardless of the kind of enforcement regime we put in place.

There are always going to be those who take out their mental abacus, calculate the chances of getting caught, and decide that it's still worth it to cheat.

But maybe – if we do a better job on enforcement as regulators – we can alter that calculus somewhat.

Stepping back more broadly to conclude: We live in a complex world where we simultaneously want to address the problems revealed by the financial crisis and other misdeeds, while at the same time we want our economy and our financial system to keep moving forward.

If we spend too much time focused on the sins of the past, we risk losing sight of what is happening now in the financial system and where we are headed.

It’s a very difficult challenge.

As a broader regulatory community, we need to constantly be asking ourselves, as we address these matters, are we being forward-looking?

And are we creating conditions that help strengthen financial stability and prevent serious acts of misconduct at banks. Or are we just fighting the last war.

I think a laser-like, consistent, and long-term focus on deterrence helps strike that balance.

It forces our enforcement work to be geared towards creating a better, future system as opposed to solely seeking retribution for the past with little regard for the consequences.

And that’s what we'll continue to strive for at DFS.

Thank you. And I look forward to taking your questions.