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S. 1005

To stop financial institution crime, require certain officers of companies to certify that they have conducted due diligence relating to criminal conduct or civil fraud, create accountability in deferred prosecution agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 2019

Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To stop financial institution crime, require certain officers of companies to certify that they have conducted due diligence relating to criminal conduct or civil fraud, create accountability in deferred prosecution agreements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ending Too Big to
5 Jail Act”.

6 **SEC. 2. STOP FINANCIAL INSTITUTION CRIME.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) History has shown that the Office of the
2 Special Inspector General for the Troubled Asset
3 Relief Program (referred to in this subsection as
4 “SIGTARP”) has—

5 (A) served as an effective model for—

6 (i) recovering taxpayer dollars; and

7 (ii) bringing accountability by rooting
8 out waste, fraud, and abuse; and

9 (B) proven to be a leader in targeting
10 crimes committed by insiders at financial insti-
11 tutions in order to protect the interests of the
12 people of the United States.

13 (2) The financial crisis in 2008 laid bare one of
14 the biggest vulnerabilities of the United States,
15 which is fraud committed by financial institutions.
16 Fraud committed by financial institutions continues
17 as of the date of enactment of this Act, which dem-
18 onstrates that such fraud does not disappear, but
19 evolves and grows over time, which weakens finan-
20 cial institutions from the inside.

21 (3) There is a need for a permanent law en-
22 forcement agency dedicated solely to investigating
23 fraud committed by financial institutions and insid-
24 ers at financial institutions because that type of
25 fraud—

1 (A) wreaks havoc on the economy of the
2 United States;

3 (B) puts the finances of the United States
4 at risk; and

5 (C) ruins the lives of individuals in the
6 United States.

7 (4) Investigations led by SIGTARP have re-
8 sulted in criminal charges against more than 400 de-
9 fendants, including criminal charges against nearly
10 100 bankers. These criminal charges were related to
11 more than 20 failed banks, with a combined esti-
12 mated loss to the deposit insurance fund of
13 \$7,000,000,000.

14 (5) SIGTARP's investigations led to the De-
15 partment of Justice enforcement actions against 10
16 financial institutions, with 8 having total assets ex-
17 ceeding \$100,000,000,000.

18 (6) SIGTARP has developed unique methods to
19 search for crime by using industry, financial, and
20 human intelligence, including fraudulent conduct
21 that contributed to the failure of financial institu-
22 tions, or that was either in, or impacted, financial
23 institutions.

24 (7) Rather than establishing an entirely new
25 entity, it makes the most sense for taxpayers to rely

1 on SIGTARP’s understanding of complex bank
2 records and bank operations and use of intelligence
3 to—

4 (A) identify anomalies; and

5 (B) investigate, and root out fraud at, fi-
6 nancial institutions.

7 (8) The vast expertise of SIGTARP, and the
8 proven results of SIGTARP with respect to the in-
9 vestigation of crime at financial institutions, should
10 be used on a permanent basis to bring accountability
11 and to deter fraud that jeopardizes financial institu-
12 tions in the United States, especially considering the
13 extent to which the people of the United States rely
14 on those institutions.

15 (b) REDESIGNATION OF THE OFFICE OF THE SPE-
16 CIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET
17 RELIEF PROGRAM AND THE SPECIAL INSPECTOR GEN-
18 ERAL FOR THE TROUBLED ASSET RELIEF PROGRAM.—

19 (1) IN GENERAL.—The Emergency Economic
20 Stabilization Act of 2008 (12 U.S.C. 5211 et seq.)
21 is amended—

22 (A) by striking “Special Inspector General
23 for the Troubled Asset Relief Program” each
24 place the term appears and inserting “Special
25 Inspector General for Financial Institution

1 Crime”, except where the term is used to refer
 2 to the Special Inspector General for the Trou-
 3 bled Asset Relief Program Act of 2009;

4 (B) in section 121 (12 U.S.C. 5231), in
 5 the section heading, by striking “**SPECIAL IN-**
 6 **SPECTOR GENERAL FOR THE TROUBLED**
 7 **ASSET RELIEF PROGRAM**” and inserting
 8 “**SPECIAL INSPECTOR GENERAL FOR FI-**
 9 **NANCIAL INSTITUTION CRIME**”; and

10 (C) in the table of contents, by striking the
 11 item relating to section 121 and inserting the
 12 following:

“Sec. 121. Special Inspector General for Financial Institution Crime.”.

13 (2) **TECHNICAL AND CONFORMING AMEND-**
 14 **MENTS.—**

15 (A) **ADDITIONAL APPROPRIATIONS PROVI-**
 16 **SION.—**The Helping Families Save Their
 17 Homes Act of 2009 (Public Law 111–22; 123
 18 Stat. 1632) is amended—

19 (i) in section 402 (12 U.S.C.
 20 5231a)—

21 (I) in the section heading, by
 22 striking “**SPECIAL INSPECTOR**
 23 **GENERAL FOR THE TROUBLED**
 24 **ASSET RELIEF PROGRAM**” and in-
 25 serting “**SPECIAL INSPECTOR GEN-**

1 **ERAL FOR FINANCIAL INSTITU-**
 2 **TION CRIME”**; and

3 (II) in subsection (b)(1)(A), by
 4 striking “Special Inspector General of
 5 the Trouble Asset Relief Program”
 6 and inserting “Special Inspector Gen-
 7 eral for Financial Institution Crime”;
 8 and

9 (ii) in the table of contents, by strik-
 10 ing the item relating to section 402 and in-
 11 sserting the following:

“Sec. 402. Special Inspector General for Financial Institution Crime.”.

12 (B) EXEMPTION FROM BUDGET REDUC-
 13 TION.—Section 255(i) of the Balanced Budget
 14 and Emergency Deficit Control Act of 1985 (2
 15 U.S.C. 905(i)) is amended by striking “Special
 16 Inspector General for the Troubled Asset Relief
 17 Program” and inserting “Special Inspector
 18 General for Financial Institution Crime”.

19 (3) REFERENCES.—

20 (A) OFFICE REFERENCES.—Any reference
 21 to the Office of the Special Inspector General
 22 for the Troubled Asset Relief Program in any
 23 law, rule, regulation, certificate, directive, in-
 24 struction, or other official paper in force on the
 25 date of enactment of this Act shall be consid-

1 ered to refer and apply to the Office of the Spe-
 2 cial Inspector General for Financial Institution
 3 Crime.

4 (B) SPECIAL INSPECTOR GENERAL REF-
 5 ERENCES.—Any reference to the Special In-
 6 specter General for the Troubled Asset Relief
 7 Program in any law, rule, regulation, certifi-
 8 cate, directive, instruction, or other official
 9 paper in force on the date of enactment of this
 10 Act shall be considered to refer and apply to
 11 the Special Inspector General for Financial In-
 12 stitution Crime.

13 (c) DUTIES OF SPECIAL INSPECTOR GENERAL FOR
 14 FINANCIAL INSTITUTION CRIME.—

15 (1) IN GENERAL.—Section 121 of the Emer-
 16 gency Economic Stabilization Act of 2008 (12
 17 U.S.C. 5231) is amended—

18 (A) in subsection (b)—

19 (i) by striking paragraph (3); and

20 (ii) by redesignating paragraphs (4),
 21 (5), and (6) as paragraphs (3), (4), and
 22 (5), respectively;

23 (B) by striking subsection (c) and insert-
 24 ing the following:

25 “(c) DUTIES.—

1 “(1) IN GENERAL.—It shall be the duty of the
2 Special Inspector General to conduct, supervise and
3 coordinate—

4 “(A) investigations of fraudulent conduct
5 in, or impacting—

6 “(i) an entity described in any of sub-
7 paragraphs (A) through (F) of section
8 5312(a)(2) of title 31, United States Code;

9 “(ii) a bank holding company, as de-
10 fined in section 2 of the Bank Holding
11 Company Act of 1956 (12 U.S.C. 1841);
12 or

13 “(iii) a savings and loan holding com-
14 pany, as defined in section 10(a) of the
15 Home Owners’ Loan Act (12 U.S.C.
16 1467a(a)); and

17 “(B) audits and investigations of—

18 “(i) the purchase, management, and
19 sale of assets by the Secretary under any
20 program established by the Secretary
21 under section 101; and

22 “(ii) the management by the Sec-
23 retary of any program established under
24 section 102, including by collecting and

1 summarizing the information described in
2 paragraph (2).

3 “(2) INFORMATION REQUIRED.—The informa-
4 tion described in this paragraph is the following:

5 “(A) A description of the categories of
6 troubled assets purchased or otherwise procured
7 by the Secretary.

8 “(B) A listing of the troubled assets pur-
9 chased in each such category described in sub-
10 paragraph (A).

11 “(C) An explanation of the reasons the
12 Secretary deemed it necessary to purchase each
13 such troubled asset.

14 “(D) A listing of each financial institution
15 from which those troubled assets were pur-
16 chased.

17 “(E) A listing of and detailed biographical
18 information on each person or entity hired to
19 manage such troubled assets.

20 “(F) A current estimate of the total
21 amount of troubled assets purchased pursuant
22 to any program established under section 101,
23 the amount of troubled assets on the books of
24 the Treasury, the amount of troubled assets

1 sold, and the profit and loss incurred on each
2 sale or disposition of each such troubled asset.

3 “(G) A listing of the insurance contracts
4 issued under section 102.

5 “(3) ADDITIONAL DUTIES.—The Special In-
6 spector General shall—

7 “(A) establish, maintain, and oversee such
8 systems, procedures, and controls as the Special
9 Inspector General considers appropriate to dis-
10 charge the duty under paragraph (1); and

11 “(B) have the duties and responsibilities of
12 inspectors general under the Inspector General
13 Act of 1978 (5 U.S.C. App.).

14 “(4) ADDITIONAL AUTHORITY.—

15 “(A) IN GENERAL.—Except as provided
16 under subparagraph (B), and in addition to the
17 duties specified in paragraphs (1) and (2), the
18 Special Inspector General shall have the author-
19 ity to conduct, supervise, and coordinate an
20 audit or investigation of any action taken under
21 this title as the Special Inspector General deter-
22 mines appropriate.

23 “(B) EXCEPTION.—Subparagraph (A)
24 shall not apply with respect to any action taken
25 under section 115, 116, 117, or 125.”;

1 (C) in subsection (e)—

2 (i) in paragraph (1), by striking sub-
3 paragraph (B) and inserting the following:

4 “(B)(i) Subject to clause (ii), notwithstanding the
5 fact that the Office of the Special Inspector General for
6 Financial Institutions Crime Enforcement is not a tem-
7 porary organization, as defined in subsection (a) of section
8 3161 of title 5, United States Code, the Special Inspector
9 General may exercise the authorities of subsections (b)
10 through (i) of that section.

11 “(ii) If the Special Inspector General exercises the
12 authorities described in clause (i)—

13 “(I) section 3161(b)(2) of title 5, United States
14 Code (relating to periods of appointments), shall not
15 apply; and

16 “(II) with respect to an individual who is hired
17 after the date of enactment of the Ending Too Big
18 to Jail Act, section 3161(b)(3) of title 5, United
19 States Code, shall not apply unless that individual is
20 a reemployed annuitant described in paragraph
21 (5).”; and

22 (ii) in paragraph (5)—

23 (I) in subparagraph (A)—

24 (aa) by striking “(A)”; and

1 (bb) in the first sentence, by
 2 striking “Except as provided
 3 under subparagraph (B), if” and
 4 inserting “If”; and
 5 (II) by striking subparagraph
 6 (B);

7 (D) by striking subsection (g) and insert-
 8 ing the following:

9 “(g) COOPERATION AND COORDINATION WITH
 10 OTHER ENTITIES.—

11 “(1) DEFINITIONS.—In this subsection—

12 “(A) the term ‘bank holding company’ has
 13 the meaning given the term in section 2 of the
 14 Bank Holding Company Act of 1956 (12
 15 U.S.C. 1841);

16 “(B) the term ‘financial institutions’
 17 means an entity described in any of subpara-
 18 graphs (A) through (F) of section 5312(a)(2) of
 19 title 31, United States Code; and

20 “(C) the term ‘savings and loan holding
 21 company’ has the meaning given the term in
 22 section 10(a) of the Home Owners’ Loan Act
 23 (12 U.S.C. 1467a(a)).

24 “(2) REQUIRED COORDINATION.—In carrying
 25 out the duties, responsibilities, and authorities of the

1 Special Inspector General under this section, the
2 Special Inspector General shall work with the enti-
3 ties described in paragraph (3), with a view toward
4 avoiding duplication of effort and ensuring com-
5 prehensive oversight of—

6 “(A) financial institutions, bank holding
7 companies, and savings and loan holding com-
8 panies;

9 “(B) any fraudulent conduct in, or impact-
10 ing, an entity described in subparagraph (A);
11 and

12 “(C) the Troubled Asset Relief Program.

13 “(3) ENTITIES.—The entities described in this
14 paragraph are the following:

15 “(A) The Inspector General of the Depart-
16 ment of the Treasury.

17 “(B) The Inspector General of the Federal
18 Deposit Insurance Corporation.

19 “(C) The Inspector General of the Securi-
20 ties and Exchange Commission.

21 “(D) The Inspector General of the Board
22 of Governors of the Federal Reserve System
23 and the Bureau of Consumer Financial Protec-
24 tion.

1 “(E) The Inspector General of the Federal
2 Housing Finance Agency.

3 “(F) The Inspector General of any other
4 entity as appropriate.”;

5 (E) in subsection (h), by striking “until
6 the date of termination of the Office of the Spe-
7 cial Inspector General for the Troubled Asset
8 Relief Program”;

9 (F) by striking subsection (i) and inserting
10 the following:

11 “(i) REPORTS.—

12 “(1) IN GENERAL.—

13 “(A) REQUIREMENT.—Subject to subpara-
14 graph (B), not later than April 30 and October
15 31 of each year, the Special Inspector General
16 shall submit to the appropriate committees of
17 Congress a semiannual report with respect to
18 the 6-month period that ends on March 31 and
19 September 30 of that year, respectively.

20 “(B) INITIAL REPORT.—The first report
21 submitted by the Special Inspector General
22 under subparagraph (A) after the date of enact-
23 ment of the Ending Too Big to Jail Act shall
24 be with respect to the first full 6-month period

1 that ends on March 31 or September 30 after
2 that date of enactment, whichever is earlier.

3 “(2) CONTENTS.—Each report submitted under
4 paragraph (1) shall include a summary of, for the
5 period covered by the report, the relevant actions
6 taken by the Special Inspector General.

7 “(3) RULE OF CONSTRUCTION.—Nothing in
8 this subsection may be construed to authorize the
9 public disclosure of information that is—

10 “(A) specifically prohibited from disclosure
11 by any other provision of law;

12 “(B) specifically required by Executive
13 order to be protected from disclosure in the in-
14 terest of national defense or national security or
15 in the conduct of foreign affairs; or

16 “(C) a part of an ongoing criminal inves-
17 tigation.

18 “(4) PUBLIC AVAILABILITY.—Except as pro-
19 vided under paragraph (3), all reports submitted
20 under this subsection shall be available to the pub-
21 lic.”;

22 (G) in subsection (j), by adding at the end
23 the following:

24 “(3) the amounts made available under section
25 402(c) of the Public-Private Investment Program Im-

1 improvement and Oversight Act of 2009 (12 U.S.C.
2 5231a(c)) shall remain available until expended for any
3 purpose in furtherance of the mission of the Office of the
4 Special Inspector General for Financial Institution Crime;
5 and

6 “(4) the Office of the Special Inspector General for
7 Financial Institution Crime shall receive annual appro-
8 priations from Congress separate and apart from appro-
9 priations made to the U.S. Department of the Treasury.”;
10 and

11 (H) by striking subsection (k).

12 (2) CONTINUING SERVICE.—If the individual
13 serving as the Special Inspector General for the
14 Troubled Asset Relief Program on the day before
15 the date of enactment of this Act was appointed to
16 that position by the President, by and with the ad-
17 vice and consent of the Senate, that individual shall
18 continue to serve as the Special Inspector General
19 for Financial Institution Crime.

20 (d) AUTHORITY OF SPECIAL INSPECTOR GEN-
21 ERAL.—Section 121 of the Emergency Economic Sta-
22 bilization Act of 2008 (12 U.S.C. 5231) is amended by
23 adding at the end the following:

24 “(l) DISCLOSURE.—

1 “(1) IN GENERAL.—Without approval of the
2 Special Inspector General, no person, financial insti-
3 tution (as defined in section 5312(a) of title 31,
4 United States Code), bank holding company (as de-
5 fined in section 2 of the Bank Holding Company Act
6 of 1956 (12 U.S.C. 1841)), savings and loan holding
7 company (as defined in section 10(a) of the Home
8 Owners’ Loan Act (12 U.S.C. 1467a(a))), or any
9 other entity, including an entity that lawfully pos-
10 sesses non-public information and records of the
11 Special Inspector General, may disclose information
12 and records with respect to the duties of the Special
13 Inspector General under this section unless—

14 “(A) the Special Inspector General has ap-
15 proved a request for that information or those
16 records, as applicable, under procedures estab-
17 lished by the Special Inspector General; or

18 “(B)(i) an appropriate court of the United
19 States has ordered that information or those
20 records, as applicable, be released; and

21 “(ii) the Special Inspector General had the
22 opportunity to oppose the release of the mate-
23 rial described in clause (i) in a proceeding be-
24 fore the court described in that clause.

1 “(2) APPLICATION OF PRIVILEGE.—No Federal
2 or State financial institutions regulatory agency, in-
3 cluding the Office of the Comptroller of the Cur-
4 rency, the Board of Governors of the Federal Re-
5 serve System, the Federal reserve banks, the Federal
6 Deposit Insurance Corporation, the Bureau of Con-
7 sumer Financial Protection, the Federal Housing Fi-
8 nance Agency, and any State banking agency, may,
9 on the basis of any common law privilege, including
10 the bank examiner privilege, deny the Special In-
11 spector General access to information or records
12 after the Special Inspector General has requested
13 that information or those records, as applicable.”.

14 **SEC. 3. CERTIFICATION.**

15 (a) DEFINITIONS.—In this section—

16 (1) the term “appropriate entity” means—

17 (A) the Special Inspector General for the
18 Troubled Asset Relief Program or any successor
19 entity; or

20 (B) if the Program or entity described in
21 subparagraph (A) does not exist, the Attorney
22 General;

23 (2) the terms “bank holding company” and
24 “savings and loan holding company” have the mean-

1 ings given those terms in section 10(a) of the Home
2 Owners' Loan Act (12 U.S.C. 1467a(a)); and

3 (3) the term "financial institution" has the
4 meaning given the term in section 5312(a) of title
5 31, United States Code.

6 (b) CERTIFICATION.—The chief executive officer,
7 chief financial officer, chief operating officer, and chief
8 compliance officer of a financial institution, a bank hold-
9 ing company, or a savings and loan holding company with
10 assets greater than \$10,000,000,000, shall submit to the
11 appropriate entity, subject to section 1001 of title 18,
12 United States Code, an annual certification that the offi-
13 cers have conducted due diligence and found that there
14 is no criminal conduct or civil fraud in the financial insti-
15 tution, bank holding company, or savings and loan holding
16 company, as applicable, that has not been disclosed in full
17 to the Department of Justice or the applicable regulator.
18 If a disclosure to the Department of Justice or the appli-
19 cable regulator has been made, the certification shall ex-
20 plicitly describe all of the details of the conduct that has
21 been disclosed, including but not limited to, the date of
22 disclosure, and the person to whom the disclosure was
23 made.

24 (c) REGULATIONS.—Not later than 1 year after the
25 date of enactment of this Act, the appropriate entity shall

1 promulgate regulations on the process under which certifi-
2 cations made under subsection (b) shall be submitted.

3 (d) WEBSITE.—The appropriate entity shall, on the
4 website of the appropriate entity—

5 (1) within 90 calendar days following the pro-
6 mulgation of regulations under subsection (c), and
7 on an annual basis thereafter, publish a list of all
8 financial institutions, bank holding companies, and
9 savings and loan holding companies subject to the
10 upcoming year’s annual certification requirement
11 under subsection (b); and

12 (2) maintain on the homepage a direct link for
13 the public to report alleged misconduct pertaining to
14 any entity listed under paragraph (1).

15 (e) EFFECTIVE DATE.—Subsection (b) shall take ef-
16 fect on the effective date of the regulations promulgated
17 under subsection (c).

18 (f) ENFORCEMENT.—

19 (1) INJUNCTIONS.—When the Secretary of the
20 Treasury believes a person has violated, is violating,
21 or will violate this section or a regulation prescribed
22 under this section, the Secretary may bring a civil
23 action in the appropriate district court of the United
24 States or appropriate United States court of a terri-
25 tory or possession of the United States to enjoin the

1 violation or to enforce compliance with the section or
2 regulation. An injunction or temporary restraining
3 order shall be issued without bond.

4 (2) CIVIL PENALTIES.—

5 (A) IN GENERAL.—A chief executive offi-
6 cer, chief financial officer, chief operating offi-
7 cer, and chief compliance officer of a financial
8 institution, a bank holding company, or a sav-
9 ings and loan holding company, willfully vio-
10 lating this section or a regulation prescribed
11 under this section is liable to the United States
12 Government for a civil penalty of not more than
13 \$25,000.

14 (B) NEGLIGENCE.—

15 (i) IN GENERAL.—The Secretary of
16 the Treasury may impose a civil money
17 penalty of not more than \$500 on any
18 chief executive officer, chief financial offi-
19 cer, chief operating officer, and chief com-
20 pliance officer of a financial institution, a
21 bank holding company, or a savings and
22 loan holding company who negligently vio-
23 lates any provision of this section or any
24 regulation prescribed under this section.

1 (ii) PATTERN OF NEGLIGENT ACTIV-
2 ITY.—If any chief executive officer, chief
3 financial officer, chief operating officer,
4 and chief compliance officer of a financial
5 institution, a bank holding company, or a
6 savings and loan holding company engages
7 in a pattern of negligent violations of any
8 provision of this section or any regulation
9 prescribed under this section, the Secretary
10 of the Treasury may, in addition to any
11 penalty imposed under clause (i) with re-
12 spect to any such violation, impose a civil
13 money penalty of not more than \$50,000
14 on the chief executive officer, chief finan-
15 cial officer, chief operating officer, and
16 chief compliance officer of a financial insti-
17 tution, a bank holding company, or a sav-
18 ings and loan holding company.

19 (3) CRIMINAL PENALTIES.—

20 (A) IN GENERAL.—A chief executive offi-
21 cer, chief financial officer, chief operating offi-
22 cer, and chief compliance officer of a financial
23 institution, a bank holding company, or a sav-
24 ings and loan holding company willfully vio-
25 lating this section or a regulation prescribed

1 under this section shall be fined not more than
2 \$250,000, or imprisoned for not more than 5
3 years, or both.

4 (B) OTHER LAWS.—A chief executive offi-
5 cer, chief financial officer, chief operating offi-
6 cer, and chief compliance officer of a financial
7 institution, a bank holding company, or a sav-
8 ings and loan holding company willfully vio-
9 lating this section or a regulation prescribed
10 under this section while violating another law of
11 the United States or as part of a pattern of any
12 illegal activity involving more than \$100,000 in
13 a 12-month period, shall be fined not more than
14 \$500,000, imprisoned for not more than 10
15 years, or both.

16 **SEC. 4. ACCOUNTABILITY IN DEFERRED PROSECUTION**
17 **AGREEMENTS.**

18 Section 3161(h)(2) of title 18, United States Code,
19 is amended—

20 (1) by striking “Any” and inserting “(A) Any”;

21 and

22 (2) by adding at the end the following:

23 “(B)(i) If the defendant described in subpara-
24 graph (A) is a person other than an individual, the
25 court may not approve an agreement described in

1 that subparagraph unless the court determines that
2 the agreement is in the public interest, including ex-
3 tending the term of such an agreement.

4 “(ii) In making the determination under clause
5 (i), the court shall consider—

6 “(I) whether any reforms required under
7 the agreement are likely to prevent similar un-
8 lawful behavior in the future;

9 “(II) whether any penalties under the
10 agreement are sufficient to compensate victims
11 and deter future unlawful actions;

12 “(III) if the defendant has previously been
13 convicted or entered into a deferred prosecution
14 agreement with the Government in connection
15 with related activity, the court may not, without
16 good cause, approve such an agreement.

17 “(iii) Any period of delay during which the
18 court is making the determination under this sub-
19 paragraph shall be included in the period of delay
20 described in subparagraph (A).

21 “(C)(i) The court may, on its own or on motion
22 of any party or of an independent monitor, if one is
23 appointed pursuant to an agreement described in
24 subparagraph (A), review the implementation or ter-
25 mination of the agreement, and take any appropriate

1 action, to assure that the implementation or termi-
2 nation is in the public interest.

3 “(ii) The court may order a party or an inde-
4 pendent monitor to file evidence with the court to
5 aid the court in making the determination under
6 clause (i).

7 “(D)(i) Except as provided in clause (ii), the
8 Attorney General shall make available on the public
9 website of the Department of Justice—

10 “(I) the text of any agreement described in
11 subparagraph (A) between an attorney for the
12 Government and a defendant that is a person
13 other than an individual; and

14 “(II) all the terms and conditions of any
15 agreement or understanding between an inde-
16 pendent monitor appointed pursuant to the
17 agreement described in subclause (I) and the
18 defendant.

19 “(ii) The information described in clause (i)
20 and subparagraph (C)(ii) shall not be made publicly
21 available if, upon petition by any interested party,
22 the court finds that there is good cause to not make
23 such information public, including that the informa-
24 tion is proprietary, confidential, a trade secret, or

- 1 meets the requirements of rule 49.1 of the Federal
- 2 Rules of Criminal Procedure.”.

○