IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

WAYDE MCKELVY,

Defendant.

CRIMINAL ACTION
NO. 15-398-3

OPINION

Slomsky, J. **November 17, 2017**

I. INTRODUCTION

On September 2, 2015, the Government filed a ten-count Indictment charging Defendant Wayde McKelvy, and co-Defendants Troy Wragg and Amanda Knorr, with Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 371 (Count 1), Wire Fraud, in violation of 18 U.S.C. §§ 1342, 1343 (Counts 2-8), Conspiracy to Commit Securities Fraud, in violation of 18 U.S.C. § 371 (Count 9), and Securities Fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2 (Count 10). (Doc. No. 1.) The charges stem from Defendant's alleged participation in a Ponzi scheme involving Mantria Corporation ("Mantria"), a business created by Wragg and Knorr to sell real estate and "green energy" products.

Before the Court is Defendant's Amended Motion to Dismiss Counts 1-8 of the Indictment, Based on the Statute of Limitations.[1] (Doc. No. 105.) Defendant argues that Counts 1 to 8 should be dismissed because the five-year statute of limitations for wire fraud and conspiracy to commit wire fraud set forth in 18 U.S.C. § 3282 applies to these Counts, and the

[1] On March 27, 2017, Defendant filed his Motion to Dismiss Counts 1-8 of the Indictment, Based on the Statute of Limitations. (Doc. No. 97.) On June 14, 2017, Defendant filed an Amended Motion to Dismiss Counts 1-8 of the Indictment. (Doc. No. 105.) Accordingly, the first Motion (Doc. No. 97) will be dismissed as moot.

Indictment was not filed within that five-year period. (Doc. No. 105-2 at 5.) The Government submits, to the contrary, that the five-year statute of limitations is extended to ten years if the offense "affects a financial institution," relying on 18 U.S.C. § 3293(2).[2] (Doc. No. 113 at 4-5.) Because Defendant's conduct affected a financial institution, the Government contends that the ten-year statute of limitations applies and that the Indictment was filed within that limitations period. (Id.) For reasons that follow, the Court will deny Defendant's Motion to Dismiss Counts 1-8. (Doc. No. 105.)

II. BACKGROUND

The Indictment alleges that from approximately March 1, 2005 to April 30, 2010, Defendant, along with Troy Wragg and Amanda Knorr,[3] induced more than 300 investors to turn over approximately $54 million to purchase Mantria's unregistered security offerings in reliance on materially false statements and omissions made by Defendant, Wragg, and Knorr. (Doc. No. 1 ¶¶ 9-10.) Wragg and Knorr created Mantria, which was a company that "claimed to earn millions of dollars in earnings from selling real estate and 'green energy' products." (Id. ¶¶ 1, 5.)

Mantria also owned other affiliated entities, including Mantria Financial, which was a financial institution and mortgage lending business. (Id.) Mantria Financial was licensed in Tennessee to finance real estate mortgages. (Id. ¶ 5.)

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[2] 18 U.S.C. § 3293(2) provides as follows:

> No person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate . . . section 1341 or 1343, if the offense affects a financial institution . . . unless the indictment is returned . . . within 10 years after the commission of the offense.

§ 3293(2). 18 U.S.C. § 1343 is the wire fraud violation.

[3] Troy Wragg and Amanda Knorr have entered guilty pleas in this case.

As part of the alleged scheme, Mantria Financial financed mortgages on Mantria-controlled real estate through funds raised from the sale of unregistered securities to investors. (Id.) Defendant, Wragg, and Knorr used the funds raised by Mantria Financial "to purchase or finance mortgages for undeveloped real estate in Tennessee owned by Mantria or its subsidiaries in order to generate paper profits for Mantria and inflate the value of the undeveloped land." (Id.) Mantria then made small improvements to the real estate to "give the appearance of development to investors." (Id. ¶ 6.) Instead, however, Defendant, Wragg, and Knorr used the funds for "other Mantra-related business and for their own personal enrichment." (Id. ¶ 5.) The Indictment alleges that Mantria had "virtually no earnings, no profits, and was merely using new investor money to repay earlier investors." (Id. ¶ 11.)

To procure investors, Defendant McKelvy operated a separate company called Speed of Wealth, LLC. Defendant advertised Speed of Wealth on the radio, the internet, and other media sources to "lure the general public to seminars he offered." (Id. ¶12.) At the seminars, Defendant would advise "prospective investors to liquidate other investments" and "obtain the maximum amount of funds in loans from financial institutions" to "invest the funds in Mantria securities." (Id. ¶¶ 2, 12.) Investors would obtain these funds by liquidating retirement accounts, and obtaining the maximum amount of funds in loans from financial institutions in the form of credit cards, home equity lines of credit, and other loans. (Id. ¶ 2.) Investors then were told that their investments were secured with the Tennessee real estate as collateral. (Id. ¶ 13(b).)

The Indictment alleges that Defendant made "materially false statements and omitted material facts to mislead investors as to the true financial status of Mantria, including grossly overstating the financial success of Mantria and promising excessive returns" on the money invested. (Id. ¶ 10.) One such materially false misstatement made by Defendant was that the

Tennessee real estate was worth twice as much as the investments, even though he knew that the value of the real estate "was substantially less and Mantria's interest in this property was contingent." (Id. ¶ 13(b).) Defendant also failed to inform investors that "a substantial portion of the new investor funds" was used to pay old investors, and that there were significant problems with the Tennessee real estate. (Id. ¶¶ 14(a), (c).) Most of the individuals who invested in Mantria and related entities had attended Defendant's Speed of Wealth seminars. (Id. ¶ 4.) In return for securing these funds for Mantria from investors, Wragg and Knorr paid Defendant approximately $6.2 million in commissions. (Id. ¶ 15.)

The Indictment further alleges that the fraud perpetrated by Defendant, Wragg, and Knorr resulted in a net loss of approximately $37 million to investors. (Id.) In November 2009, the Securities and Exchange Commission ("SEC") commenced civil litigation against Mantria. (Id.) The Government submits that it will offer the testimony of an attorney for Mantria, who will explain that when the Ponzi scheme collapsed in November 2009, Mantria Financial became bankrupt. (Doc. No. 113 at 9.) And based on all this alleged conduct, the Government filed an Indictment against Defendant, Wragg, and Knorr on September 2, 2015. (Doc. No. 1.)

On June 14, 2017, Defendant McKelvy filed the Amended Motion to Dismiss Counts 1-8 of the Indictment, Based on the Statute of Limitations. (Doc. No. 105.) Thereafter, on August 1, 2017, the Government filed a Response to Defendant's Amended Motion. (Doc. No. 113.) On August 28, 2017, Defendant filed a Reply. (Doc. No. 121.) On September 12, 2017, the Court held a hearing on the Motion to Dismiss. The Motion is now ripe for review.

III. ANALYSIS

Ordinarily, the statute of limitations for wire fraud and conspiracy to commit wire fraud is five years. 18 U.S.C. § 3282 provides that "[e]xcept as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, . . . unless the indictment is

found . . . within five years next after such offense shall have been committed." § 3282(a). This five-year statute of limitations, however, can be extended to ten years if the wire fraud and conspiracy to commit wire fraud "affects a financial institution." See, e.g., United States v. Pellulo, 964 F.2d 193, 214 (3d Cir. 1992); United States v. Heinz, 790 F.3d 365, 378 (2d Cir. 2015) (per curiam). As noted, under § 3293(2), "[n]o person shall be prosecuted, tried, or punished for a violation of, or a conspiracy to violate . . . section 1341 or 1343, if the offense affects a financial institution . . . unless the indictment is returned . . . within 10 years after the commission of the offense." § 3293(2).

In United States v. Heinz, 790 F.3d 365 (2d Cir. 2015), the Second Circuit explained in a per curiam opinion the application of the ten-year statute of limitations as follows:

> 18 U.S.C. § 3293(2) extends to ten years the statute of limitations for wire fraud offenses (including conspiracy to commit wire fraud) "if the offense affects a financial institution." 18 U.S.C. § 3293(2). "[T]he verb 'to affect' expresses a broad and open-ended range of influences." United States v. SKW Metals & Alloys, Inc., 195 F.3d 83, 90 (2d Cir. 1999). The plain language of § 3293(2) makes clear that "Congress chose to extend the statute of limitations to a broader class of crimes" than those in which "the financial institution is the object of fraud." United States v. Bouyea, 152 F.3d 192, 195 (2d Cir. 1998) (quotation marks omitted). And so § 3293(2) "broadly applies to any act of wire fraud that affects a financial institution," provided the effect of the fraud is "sufficiently direct." Id. (quotation marks omitted).

Heinz, 790 F.3d at 367.

Here, Defendant contends that the five-year statute of limitations in 18 U.S.C. § 3282, rather than the ten-year statute of limitations in 18 U.S.C. § 3293(2), applies to Counts 1 to 8 of the Indictment because the alleged offenses did not affect a financial institution. Defendant argues that these Counts should be dismissed because the Indictment was filed after the five-year statute of limitations had lapsed.[4]

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[4] The Government does not dispute that if the five-year statute of limitations applied, the Indictment was filed in violation of the statute of limitations. In Count 1, the last overt act

To support his argument, Defendant has submitted proffers of evidence to show that the ten-year statute of limitations should not apply. (Doc. No. 105-2 at 18.) Defendant contends that his proffers were adopted directly from grand jury testimony, deposition testimony from the SEC's civil case, statements made to the Federal Bureau of Investigation, the Government's discovery documents, and stipulations between the parties. (Id.) Defendant argues that based on United States v. DeLaurentis, 230 F.3d 659, 660 (3d Cir. 2000), his Motion to Dismiss can be considered because it is based on a "stipulated record." (Id. at 12.) He argues that based on the "stipulated record," which consists of allegations in the Indictment and Defendant's proffers, the evidence is insufficient as a matter of law to support the application here of the ten-year statute of limitations. (Id. at 12-13, 44.)

Defendant's reliance on DeLaurentis, however, is misplaced. Vacating the district court's dismissal of the indictment, the Court explained that dismissal of an indictment is authorized if:

> its allegations do not suffice to charge an offense, but such dismissals may not be predicated upon the insufficiency of the evidence to prove the indictment's charges. See United States v. Sampson, 371 U.S. 75, 78-79, 83 S. Ct. 173, 9 L.Ed.2d 136 (1962).
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> In civil cases, of course, the summary judgment procedures contemplated by Federal Rule of Civil Procedure 56 may be utilized to test, pretrial, the sufficiency of the evidence to establish triable issues of fact; but there is no corollary in criminal cases. The government is entitled to marshal and present its evidence at trial, and have its sufficiency tested by a motion for acquittal pursuant to Federal Rule of Criminal Procedure 29.

DeLaurentis, 230 F.3d at 661.

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alleged occurred on November 20, 2009. (Doc. No. 1 at 21 ¶ 55.) The Indictment was filed on September 2, 2015. Thus, if the five-year statute of limitations applied, the Indictment would have been filed after the limitations period had lapsed.

In Counts 2 to 8, the Government alleges that the scheme occurred from approximately March 1, 2005 to approximately April 30, 2010. (Id. at 22 ¶ 2.) Therefore, if the five-year statute of limitations applied to those Counts, they would have been filed outside the statute of limitations.

The Court may consider whether the Indictment on its face alleges that the offenses of wire fraud and conspiracy to commit wire fraud affected a financial institution.[5] Where an indictment is "valid on its face," it "may not be dismissed on the ground that it is based on inadequate or insufficient evidence." United States v. Messina, No. 11-CR-31, 2012 WL 463973, at *4 (E.D.N.Y. Feb 13, 2012) (quoting United States v. Fruchter, 104 F. Supp. 2d 289, 298 (S.D.N.Y. 2000)). Only where the Government "has made what can fairly be described as a full proffer of the evidence it intends to present at trial" can the Court address "the sufficiency of the evidence . . . on a pretrial motion to dismiss an indictment." United States v. Gotti, 457 F. Supp. 2d 411, 421 (S.D.N.Y. 2006) (omission in original) (quoting United States v. Alfonso, 143 F.3d 772, 776-77 (2d Cir. 1998)).

The Government submits that the Indictment sufficiently alleges that Defendant's conduct affected a financial institution, and therefore the ten-year statute of limitations applies to

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[5] Pursuant to Federal Rule of Criminal Procedure 7(c)(1), an indictment must contain "a plain, concise, and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). An indictment is sufficient as long as it:

> (1) contains the elements of the offense intended to be charged, (2) sufficiently apprises the defendant of what he must be prepared to meet, and (3) allows the defendant to show with accuracy to what extent he may plead a former acquittal or conviction in the event of a subsequent prosecution.

United States v. Huet, 665 F.3d 588, 595 (3d Cir. 2010) (quoting United States v. Vitillo, 490 F.3d 314, 321 (3d Cir. 2007)). An Indictment, however, need not anticipate affirmative defenses, such as the statute of limitations defense. Smith v. United States, 568 U.S. 106, 111-12 (2013). Instead, Defendant has the burden of raising this defense. Id. at 112.

Unless the indictment on its face makes it crystal clear that it was returned in violation of the statute of limitations, the indictment is sufficient for statute of limitations purposes, and a defendant may raise a statute of limitations violation after the Government has presented its evidence at trial. See United States v. Carnesi, 46 F. Supp. 2d 97, 99 (E.D.N.Y. 2006) (denying motion to dismiss based on statute of limitations, explaining that whether defendant participated in or withdrew from conspiracy were issues of fact for jury, and concluding that defendant could renew his motion to dismiss after Government presented evidence at trial).

Counts 1 to 8. (Doc. No. 113 at 5.) The Government advances two independent bases for its position. First, it submits that Defendant's actions affected Mantria Financial, a financial institution. (Id. at 5-6.) Second, it argues that Defendant's conduct affected financial institutions from which the victims of the fraud secured funds to invest in Mantria. (Id. at 6.) The Court will address each of the Government's arguments in turn.

A. Defendant's Motion to Dismiss Will Be Denied Because the Indictment Sufficiently Alleges that Defendant's Actions Affected Mantria Financial, a Financial Institution

First, Defendant argues that Mantria Financial should not be considered a financial institution because it was not in the mortgage lending business. He asserts that Mantria Financial (1) did not engage in traditional lender-borrower relationships, as it operated for fraudulent reasons; (2) was not designed to make a profit, as businesses generally are; and (3) did not issue "mortgages" creating debt to be repaid. (Doc. No. 105-2 at 40, Doc. No. 106 ¶ 28-33.)

Under 18 U.S.C. § 20(10), "the term 'financial institution' means . . . a mortgage lending business (as defined in section 27 of this title) or any person or entity that makes in whole or in part a federally related mortgage loan." § 20(10). Under 18 U.S.C. § 27, "the term 'mortgage lending business' means an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organization, and whose activities affect interstate or foreign commerce." § 27.

The real crux of Defendant's argument here is that since Mantria Financial operated for fraudulent reasons, it was not in the mortgage lending business, as defined in § 27. A financial institution used for fraudulent purposes, however, is still a financial institution under § 27. See United States v. Serpico, 320 F.3d 691, 694 (7th Cir. 2003) (applying ten-year statute of limitations to financial institution that was a willing participant in fraudulent scheme). Moreover, as alleged in the Indictment, Mantria Financial financed real estate mortgages on

Tennessee real estate. (Doc. No. 1 ¶ 5.) It did so using the money investors paid to it in exchange for unregistered securities, secured by the undeveloped Tennessee real estate. (Id.) Mantria Financial, therefore, falls within the § 27 definition of mortgage lending business because it was an organization that financed debt secured by an interest in real estate. § 27. And as a mortgage lending business, Mantria Financial is included in the definition of financial institution under the statute of limitations set forth in § 3293(2).

Next, Defendant contends that even if Mantria Financial was a financial institution as a mortgage lending business, the Indictment has failed to allege sufficiently, and the Government's evidence fails to show, that the fraud affected Mantria Financial, as is required for application of the ten-year statute of limitations. (Doc. No. 105-2 at 40-41.)

The ten-year statute of limitations in 18 U.S.C. § 3293(2) "broadly applies to any act of wire fraud 'that affects a financial institution.'" Pelullo, 964 F.2d at 215-16; see also Heinz, 790 F.3d at 367. Where a financial institution is exposed to a risk of loss and actual loss due to its participation in the fraud, it is "affected" within the meaning of § 3293(2). United States v. Bouyea, 152 F.3d 192, 195 (2d Cir. 1998) (per curiam). In addition, in Heinz, the district court was given proffered evidence by the Government. 790 F.3d at 367. The evidence comprised of non-prosecution agreements and settlement agreements with three co-conspirator banks entered into with the Department of Justice. Id. On appeal, the individual defendants challenged the denial of their motions to dismiss the superseding indictment as time-barred. Id. They argued that the ten-year statute of limitations under 18 U.S.C. § 3293(2) should not apply. Id. The Second Circuit found their arguments unpersuasive and held:

> We conclude that the Defendants' wire fraud offenses "affected" the three banks in this case within the meaning of § 3293(2). It is undisputed that the banks executed the Bank Agreements prompted in part by the fraudulent conduct of the Defendants and their co-conspirators. As a result, the banks incurred significant

> payments and related fees, which were foreseeable to the Defendants at the time of their fraudulent activity. The role of the banks as co-conspirators in the criminal conduct does not break the necessary link between the underlying fraud and the financial loss suffered.
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> Since the relevant charges in the superseding indictment were well within the applicable ten-year statute of limitations, the District Court properly denied the motion to dismiss.

Id. at 367-68.

Although the Third Circuit has not addressed whether an increased risk of loss, short of actual loss, is sufficient for the ten-year statute of limitations to apply, several other circuits have held that a financial institution is still "affected" for purposes of § 3293(2) when it is exposed to a risk of loss and not actual loss. See, e.g., Serpico, 320 F.3d at 694 (determining that jury instruction was proper for application of ten-year statute of limitations where it read that the scheme affected a financial institution if it "exposed the financial institution[s] to a new or increased risk of loss" even if financial institution suffered no loss); United States v. Mullins, 613 F.3d 1273, 1278-79 (10th Cir. 2010) (finding that broader term "affects" includes a "new or increased risk of loss," which is enough to trigger ten-year statute of limitations). An increased risk of loss to a financial institution is sufficient, as the whole purpose of the ten-year statute of limitations is to deter "would-be criminals from including financial institutions in their schemes." Serpico, 320 F.3d at 694; see also United States v. Ohle, 678 F. Supp. 2d 215, 229 (S.D.N.Y. 2010) (holding that financial institution was affected by fraud where it was exposed to substantial risk through settlements and attorneys' fees paid, even where it was an active participant in the fraud).

In the instant case, the Indictment sufficiently alleges that Defendant McKelvy, Wragg, and Knorr devised their scheme "in circumstances affecting a financial institution," namely Mantria Financial, to warrant application of the ten-year statute of limitations. (Doc. No. 1 at 22

¶ 2.) The Indictment alleges that the fraud perpetrated by Defendant, Wragg, and Knorr resulted in a net loss of approximately $37 million to Mantria investors. (Id. ¶ 15.) Mantria raised funds through the sale of unregistered securities to investors and used the money to purchase or finance mortgages for undeveloped real estate in Tennessee. (Id. ¶ 5.) The land was undeveloped and the price inflated, all to the detriment of Mantria Financial. (See id.) As a result, even though Matria Financial was an active participant in the fraud, it was exposed to substantial risk of loss and actual loss. The Government submits that it will offer the testimony of an attorney for Mantria, who will explain that when the Ponzi scheme collapsed in November 2009, Mantria Financial became bankrupt. (Doc. No. 113 at 9.) Therefore, the fraud directly affected Mantria Financial, and the ten-year statute of limitations applies.

Defendant relies on United States v. Carollo, No. 10 CR 654, 2011 WL 3875322 (S.D.N.Y. Aug. 25, 2011), and United States v. Ghavami, No. 10 CR 1217, 2012 WL 2878126 (S.D.N.Y. July 13, 2012), in arguing that the Indictment fails to sufficiently allege and the Government has failed to provide sufficient proffers to support its allegation that Mantria Financial was affected by Defendants' conduct. (Doc. No. 105-2 at 38-44.) In Carollo, the court held that the ten-year statute of limitations did not apply where "the government ha[d] not alleged that the financial institutions suffered any actual loss or at most the risk of loss [was] de minimis." 2011 WL 3875322, at *2.

In contrast, in Ghavami, the ten-year statute of limitations applied where the Government intended to offer evidence at trial of settlement agreements and non-prosecution agreements to illustrate the increased risk of loss to the financial institutions. 2012 WL 2878126, at *9. There, the court explained that whether the offense affected a financial institution was a question of fact for a jury. Id. at *7. As such, the court had to determine whether the evidence the Government

intended to submit would be sufficient to permit a jury to find that the alleged conduct affected a financial institution. Id. The court concluded that the Government had provided sufficient evidence to permit a jury to find that the alleged conduct affected a financial institution and denied the motion to dismiss. Id. at *10.

Here, unlike in Carollo, the Indictment sufficiently alleges that Mantria Financial was affected by the fraud because it alleges that the fraud resulted in a net loss of $37 million. Moreover, the Government proffers that Mantria Financial went into bankruptcy as a result of the conspirators' fraudulent conduct. Based on the description of the alleged fraud in the Indictment and the Government's proffers, the risk of loss here was not de minimis. And as in Ghavami, the Indictment and the evidence the Government intends to offer at trial sufficiently alleges facts that illustrate that Mantria Financial experienced both a risk of loss and actual loss, and therefore that the fraud affected Mantria Financial, a financial institution, for purposes of § 3293(2). See Heinz, 790 F.3d at 366-67. For these reasons, Defendant's Motion to Dismiss Counts 1 to 8 will be denied.

B. Defendant's Motion to Dismiss Also Will Be Denied Because the Indictment Sufficiently Alleges that Defendant's Actions Affected Other Financial Institutions

The Government argues that the ten-year statute of limitations also applies because other unnamed financial institutions were affected when they lent money to Mantria's investors and many of the investors were unable to repay those loans. (Doc. No. 113 at 13-14.) In response, Defendant argues that § 3293(2) is inapplicable based on this rationale because the Indictment does not sufficiently allege, and the discovery does not provide, the identity of the financial institutions affected, how the fraud directly caused the loss to these financial institutions, and the amount of loss or if any loss was new or increased. (Doc. No. 105-2 at 53-55.)

The Government submits, to the contrary, that the Indictment sufficiently alleges that the offenses affected investors' financial institutions and that the discovery materials support the Government's argument. (Doc. No. 113 at 13.) The Government contends that the discovery materials it provided to Defendant include ample evidentiary support for the allegation that the financial institutions of the investors were affected by the fraud. (Id.) The Government points to discovery disc #4, which describes victims' experiences with Mantria and Defendants. (Id.) Among other examples, the Government discusses victims DB and PB, who saw Defendant McKelvy on television advertising his company, Speed of Wealth. (Id. at 14.) The Government contends that these victims subsequently attended Defendant's seminar and, based on Defendant's advice, withdrew money from a credit card and took out a home equity line of credit to invest in Mantria. (Id.)

As noted, § 3293(2) applies broadly and includes "any act of wire fraud 'that affects a financial institution.'" Pelullo, 964 F.2d at 215-16. An allegation of new or increased risk of loss, short of actual loss, is sufficient for application of the ten-year statute of limitations. Serpico, 320 F.3d at 694. And "the verb 'to affect' expresses a broad and open-ended range of influences." United States v. Allen, 160 F. Supp. 3d 698, 706 (S.D.N.Y. 2016) (quoting Heinz, 790 F.3d at 367) (explaining that "if a juror conclude[ed] that a bank would have made different investment decisions if it had known of the fraud, then a juror could legitimately conclude that a bank was 'affected'").

Here, the Indictment and the discovery materials provided to Defendant sufficiently allege that the fraud affected the financial institutions of the victims, within the meaning of

§ 3293(2).[6] The Government provided many examples in its discovery materials of investors who took out cash advances on credit cards, home equity lines of credit, and other loans from financial institutions to invest in Mantria. From this evidence, it may be concluded that the fraud exposed these financial institutions to a risk of loss. See Bouyea, 152 F.3d at 195 (holding that ten-year statute of limitations for wire fraud applied where subsidiary borrowed money from parent for a transaction with defendant, subsidiary suffered a monetary loss, and parent financial institution was affected). The financial institutions may have made different investment decisions had they known of the fraud. See Allen, 160 F. Supp. 3d at 706.

Defendant again relies on Carollo in arguing that the Government has not sufficiently alleged the extent of loss or that the impact of the fraud was "more than de minimis." 2011 WL 5023241, at *4. But the Government has apparently provided evidence of how much money each victim withdrew from their respective financial institutions and evidence to prove that the impact of the fraud was severe. Based on this additional rationale, Defendant's conduct may affect a financial institution, and the ten-year statute of limitations would apply.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss Counts 1-8 of the Indictment, Based on the Statute of Limitations (Doc. No. 105) will be denied. An appropriate Order follows.

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[6] Of course, the Government at trial must support these allegations with evidence. See United States v. Carnesi, 46 F. Supp. 2d 97, 99 (E.D.N.Y. 2006) (explaining that Government must prove at trial that acts occurred within applicable limitations period). And whether the wire fraud and conspiracy to commit wire fraud affected a financial institution is a jury question. See United States v. Bouyea, 152 F.3d 192, 195 (2d Cir. 1998) (stating that where indictment was filed six years after wire fraud occurred, "the district court charged the jury that in order to convict, the government was required to prove that Bouyea's wire fraud against Center Capital affected a financial institution"); United States v. Vallem, No. 02 CR 1204, 2003 WL 1989619, at *2 (N.D. Ill. Apr. 28, 2003) ("Whether the wire fraud actually did affect a financial institution is a jury question.").