Preface

This monograph is an extension of the other research I have conducted on banking regulation, the financial crisis and white collar crime. Since the start of the most recent financial crisis, a great deal of literature has been written on the crisis and the factors that contributed to it. Many excellent texts and articles have identified such factors, including weak banking regulation, the deregulation of consumer credit laws, high risk banking, greed, the sub-prime mortgage crisis, securitisation, deregulation of banking laws, convenient credit, irresponsible or predatory lending and weak macroeconomic policies. This monograph seeks to offer an alternative interpretation, but one that contributes to the vast area of academic literature by arguing that there is one, previously under-researched factor: white collar crime. The hypothesis of this book is that white collar crime is an important factor that contributed towards the financial crisis. This is demonstrated in Chapters 2 and 3, which seek to illustrate how instances of white collar crime associated with, for example, sub-prime mortgages and LIBOR contributed towards the largest economic crisis since the Wall Street Crash and subsequent Great Depression.

The monograph concentrates on the impact of the global financial crisis in two specific jurisdictions – the United States of America and the United Kingdom. These countries were carefully selected and present a unique opportunity to compare and contrast the different approaches towards combating the problems associated with the global financial crisis. Interestingly, the United States and the United Kingdom have adopted similar financial regulatory policies towards the global financial crisis. This includes, for example, the publication of numerous reviews by the Department of Treasury, the Federal Reserve, the Bank of England, the Financial Services Authority, HM Treasury and official independent inquiries. Similarities are also seen in the plethora of legislative reform enacted in both countries, including the Emergency Economic Stabilization Act 2008, the Housing and Economic Recovery Act 2008, the American Recovery and Reinvestment Act 2009, and the Dodd–Frank Wall Street Reform Act 2012 in the United States. While legislators in the United Kingdom introduced the Banking (Special

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Provisions) Act 2009, the Financial Services Act 2010, the Financial Services Act 2012 and the Banking Reform Act 2013.

Interestingly, the search for the culprits who caused the global financial crisis has demonstrated a number of differences in the approaches of the two countries. For example, one of the first measures introduced by President Barack Obama was the Fraud Enforcement and Recovery Act 2009 and the creation of the Financial Fraud Enforcement Task Force. These measures are of great significance for two reasons. First, the Fraud Enforcement and Recovery Act was introduced as a direct response to white collar crime that was associated with the global financial crisis. Secondly, this legislation also attempted to redress the imbalance created by President George Bush who tasked the Federal Bureau of Investigation with tackling the 'War on Terror' at the expense of white collar crime, by providing the Department of Justice with additional funding. This response can be contrasted with that adopted in the United Kingdom, where there has been no direct legislative response to the white collar crime that is associated with the global financial crisis. The Coalition government has only introduced new criminal offences under the remit of the Financial Services Act 2012 and proposals under the Banking Reform Act 2013.

Another important contrast between the policies adopted in the United States and United Kingdom relates to the prosecution strategies adopted by law enforcement agencies and regulatory bodies. For instance, in the United States the Federal Bureau of Investigation has handled any criminal prosecutions while the Securities and Exchange Commission has used its extensive civil enforcement powers. Importantly, there is a clear division between the roles of both agencies. However, it is important to note that the Department of Justice has failed to secure any high profile convictions of bankers allegedly involved in criminal activity. It has decided to pursue civil fraud actions as opposed to criminal prosecutions.

This monograph also highlights the increasing use of deferred prosecution agreements in the United States, especially in relation to the LIBOR scandal. In the United Kingdom, the enforcement actions have been pursued by the Financial Services Authority and the Serious Fraud Office. However, there has been some reluctance from either agency to actively pursue alleged wrongdoers. For example, both of these agencies were very averse to investigate the alleged manipulation of LIBOR and it will be argued that it was due to pressure from the government and commentators that record financial penalties were imposed on banks and that traders have been arrested and charged. Not one of the bankers purportedly involved in illegal activities during the global financial crisis has been convicted in either the US or UK. Furthermore, in the UK not

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one director has been disqualified under the Company Directors Disqualification Act 1986 for their conduct during the global financial crisis, despite strong rhetoric from the Department of Business, Innovation and Skills. This position can be contrasted with that adopted by the Securities and Exchange Commission. A key part of the discussion of the response in the United Kingdom will emanate from the sparse resources provided for the Serious Fraud Office by the Coalition government. Once again, this is an important contrast between the policies in the United States and the United Kingdom. Furthermore, the monograph will consider the potential impact that the National Crime Agency will have on those involved in white collar crime and it will note that the Coalition government has missed an ideal opportunity by not creating the Economic Crime Agency.

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