ISSUE 3

Enforcement Actions for U.S. Sanctions Violations Offer Lessons for Compliance

Contents

The federal and state governments, most notably New York, have been assessing increasingly large fines and forfeitures in enforcement actions against large banks since the mid-2000s. There have been several significant actions—some for violations of anti-money laundering (AML) laws, some for violations of U.S. sanctions laws, and some for violations of both. In the case of the latter, government releases, press articles, and other analysis tends to conflate the two laws and when penalty amounts are totaled, the amounts are for both AML and sanctions violations.

This article focuses on significant U.S. sanctions violation cases, some of which also included penalties for AML violations. Recent actions have been taken primarily against foreign banks with U.S. affiliates.

Legal Basis for U.S. Sanctions Enforcement

The US. Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

The primary law under which these actions are taken is the International Emergency Economic Powers Act (IEEPA), Title II of Pub. L. 95–223, 91 Stat. 1626, which was enacted October 28, 1977, and authorizes the President to regulate commerce after declaring a national emergency in response to any unusual and extraordinary threat to the United States which has a foreign source.[1]

Under IEEPA, it is a crime to willfully violate, or attempt to violate, any regulation issued under the act, and institutions that do face criminal enforcement action by the Department of Justice (DOJ). Federal and state financial institution regulators also take enforcement actions against financial institutions for violations of federal laws, including sanctions law. OFAC also takes actions under the Trading with the Enemy Act (TWEA) (40 Stat. 411, enacted 6 October 1917, codified at 12 U.S.C. § 95a et seq.), is a federal law to restrict trade with countries hostile to the United States.[2]

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[1] In the U.S. Code, the IEEPA is Title 50, §§1701-1707. The IEEPA authorizes the president to declare the existence of an "unusual and extraordinary threat... to the national security, foreign policy, or economy of the United States" that originates "in whole or substantial part outside the United States. It further authorizes the president, after such a declaration, to block transactions and freeze assets to deal with the threat. In the event of an actual attack on the United States, the president can also confiscate property connected with a country, group, or person that aided in the attack.

Significant Enforcement Cases

The following seven cases show the evolution of the most significant cases brought against banks for violations of U.S. economic sanctions laws.

ABN AMRO, N.V./ROYAL BANK OF SCOTLAND

The first case in this series, ABN-AMRO, is unusual because the criminal action came four and a half years after the civil action. ABN AMRO, N.V. was penalized civilly in 2005 and then criminally by the DOJ in 2010. In addition, the criminal action was taken against the Royal Bank of Scotland, which acquired ABN AMRO in 2007, for AML and sanctions violations. Total penalties were $580 million.

In a joint press release on December 19, 2005, the Federal Reserve Board, in conjunction with New York and Illinois banking departments, OFAC, and the Financial Crimes Enforcement Network (FinCEN), announced supervisory and penalty actions for both sanctions and AML violations that required ABN AMRO Bank, N.V. to undertake remedial action in its worldwide banking operations and to pay $80 million in penalties to U.S. federal and state regulators. These were civil penalties, no criminal penalties were involved in this case.

The banking regulators, together with De Nederlandsche Bank N.V. (the regulator of Dutch banks), issued a consent Cease and Desist Order against ABN AMRO and its branches in New York, New York and Chicago, Illinois. The Order required ABN AMRO to make improvements to its global compliance and risk management systems to ensure adequate oversight, effective risk management, and full compliance with applicable U.S. laws and regulations.

In addition, according to the press release, the Federal Reserve Board, FinCEN, the New York and Illinois regulators, and OFAC assessed penalties against ABN AMRO based on findings of unsafe and unsound practices; on findings of systemic defects in ABN AMRO's internal controls to ensure compliance with U.S. AML laws and regulations, which resulted in failures to identify, analyze, and report suspicious activity; and on findings that ABN AMRO participated in transactions that violated U.S. sanctions laws. ABN AMRO was also required to take ongoing measures to ensure compliance with U.S. sanctions laws.

In a May 10, 2010 press release, DOJ announced that the former ABN AMRO Bank N.V., now named the Royal Bank of Scotland N.V., agreed to forfeit $500 million to the United States in connection with a conspiracy to defraud the United States, to violate IEEPA and to violate the TWEA, as well as a violation of the Bank Secrecy Act (BSA) (the U.S. AML law). Under IEEPA, it is a crime to willfully violate, or attempt to violate sanctions administered by OFAC. TWEA makes it a crime to willfully engage in financial transactions by, at the direction of, or for the benefit of Cuba or Cuban nationals. Under the BSA, it is a crime to willfully fail to establish an adequate AML program.

The IEEPA and TWEA violations related to ABN AMRO conspiring to facilitate illegal U.S. dollar transactions on behalf of financial institutions and customers from Iran, Libya, the Sudan, Cuba and other countries sanctioned in programs administered by OFAC. According to court documents, from approximately 1995 and continuing through December 2005, certain offices,

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[2] The law gives the President the power to oversee or restrict any and all trade between the U.S. and its enemies in times of war. As of 2008, Cuba is the only country restricted under the act.

branches, affiliates and subsidiaries of ABN AMRO removed or altered names and references to sanctioned countries from payment messages. ABN AMRO implemented procedures and a special manual queue to flag payments involving sanctioned countries so that ABN AMRO could amend any problematic text and it added instructions to payment manuals on how to process transactions with these countries in order to circumvent the laws of the United States. Despite the institution of improved controls by ABN AMRO and its subsidiaries and affiliates after 2005, a limited number of additional transactions involving sanctioned countries occurred from 2006 through 2007.

According to court documents, ABN AMRO used similar stripping procedures when processing U.S. dollar checks, traveler's checks, letters of credit and foreign exchange transactions related to sanctioned countries. ABN AMRO and the sanctioned entities knew and discussed the fact that, without such alterations, amendments and code words, the automated OFAC filters at banks in the United States would likely halt the payment messages and other transactions, and, in many cases, the banks would reject or block the sanctions-related transactions and report the same to OFAC. By removing or altering material information, these payments and other transactions would pass undetected through filters at U.S. financial institutions. This scheme allowed U.S. sanctioned countries and entities to move hundreds of millions of dollars through the U.S. financial system.

LLOYDS TSB BANK PLC

The second case in this series, Lloyds TSP Bank PLC (Lloyds), is also somewhat unusual in that there were separate criminal and civil actions. In 2009, Lloyds was penalized criminally by DOJ and the New York County District Attorney (DANY) for both sanctions and AML violations and then civilly by OFAC later in the year for the same activity.

In a January 9, 2009, press release, DOJ announced that Lloyds, a United Kingdom corporation, had entered into a deferred prosecution agreement and agreed to forfeit $350 million to the United States and to DANY in connection with violations of IEEPA. The forfeiture was split evenly between the U.S. government and the state of New York. The violations related to transactions Lloyds illegally conducted on behalf of customers from Iran, Sudan and other countries sanctioned in programs administered by OFAC.

According to court documents, beginning as early as 1995 and continuing until January 2007, Lloyds, in both the United Kingdom and Dubai, falsified outgoing U.S. wire transfers that involved countries or persons on U.S. sanctions lists. Specifically, according to court documents, Lloyds deliberately removed material information—such as customer names, bank names and addresses—from payment messages so that the wire transfers would pass undetected through filters at U.S. financial institutions. This process of "repairing" or "stripping," as Lloyds commonly referred to it, allowed more than $350 million in transactions to be processed by U.S. correspondent banks used by Lloyds that might have otherwise been blocked or rejected due to sanctions regulations or for internal bank policy reasons. According to court documents, the criminal conduct by Lloyds was designed to evade, and to assist its customers in evading, U.S. economic sanctions imposed against Iran, Sudan and other countries.

In a December 22, 2009, press release, OFAC announced a $217 million settlement with Lloyds concerning the bank's intentional manipulation and deletion of information about U.S. sanctioned parties in wire transfer instructions routed through third-party banks located in the United States. This obligation was deemed satisfied by the bank's prior $350 million payment to the DOJ and DANY arising out of the same pattern of conduct.

CREDIT SUISSE AG

The third case in this series, Credit Suisse AG, represents the largest fine, at that time, for sanctions violations.

In a December 16, 2009 press release, DOJ announced that Credit Suisse AG, a Swiss corporation headquartered in Zurich, agreed to enter into a deferred prosecution agreement with DOJ and DANY and forfeit $536 million in connection with violations of IEEPA and New York state law. The bank's forfeiture of $268 million to the United States and $268 million to the state of New York settled DOJ and DANY forfeiture claims and civil claims by OFAC related to the misconduct. At the time, the forfeiture was the largest ever entered against an entity for IEEPA violations. The violations related to transactions Credit Suisse illegally conducted on behalf of customers from Iran, Sudan and other countries sanctioned in programs administered OFAC.

According to court documents, beginning as early as 1995 and continuing through 2006, Credit Suisse, in Switzerland and the United Kingdom, altered wire transfers involving U.S. sanctioned countries or persons. Specifically, Credit Suisse deliberately removed material information, such as customer names, bank names and addresses, from payment messages so that the wire transfers would pass undetected through filters at U.S. financial institutions. Credit Suisse also trained its Iranian clients to falsify wire transfers so that such messages would pass undetected through the U.S. financial system. This scheme allowed U.S. sanctioned countries and entities to move hundreds of millions of dollars through the U.S. financial system.

For its Iranian clients, Credit Suisse promised that no message would leave the bank without being hand-checked by a Credit Suisse employee to ensure that the message had been formatted to avoid U.S. filters. If an Iranian client provided payment messages that contained identifying information, Credit Suisse employees would remove the detectable information so that the message could pass undetected through OFAC filters at U.S. financial institutions. According to court documents, Credit Suisse's communications showed a continuous dialogue about the scheme, assessing how to better process Iranian transactions to ensure increased business from existing and future Iranian clients. For example, in 1998, Credit Suisse provided its Iranian clients with a pamphlet entitled, "How to transfer USD payments," which provided detailed payment instructions on how to avoid triggering U.S. OFAC filters or sanctions. Additionally, Credit Suisse processed 88 payments for those listed as "Specially Designated Nationals" by OFAC. Specially Designated Nationals are individuals and entities specifically named by OFAC to be subject to U.S. sanctions. Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

In its press release, Treasury said that the settlement stemmed from Credit

Suisse's structuring of thousands of wire transfers executed through U.S. banks and securities transactions executed through its U.S. office to ensure that the involvement of sanctioned parties was not apparent. The Federal Reserve Board issued a consent Cease and Desist Order against Credit Suisse in connection with the case. In its press release, the Federal Reserve said that this case arose out of Credit Suisse's processing of thousands of transactions over a 20-year period that concealed the involvement of sanctioned parties and the routing of wire transfers and securities transactions to and through the United States. The great majority of the transactions involved Iran, although there were also transactions that appear to have violated U.S. sanctions on Sudan, Libya, Burma, Cuba, and the former Liberian regime of Charles Taylor.

BARCLAYS BANK PLC

In the fourth case in this series, Barclays Bank PLC (Barclays) was fined criminally and civilly by OFAC; while the banking regulators issued orders but no fines.

On August 18, 2010, DOJ announced that Barclays, a United Kingdom corporation headquartered in London, agreed to forfeit $298 million to the United States government and to the state of New York DANY as part of deferred prosecution agreements with DOJ and DANY in connection with violations of IEEPA and TWEA. The forfeiture was split evenly between the two agencies to settle the claims. The violations related to transactions Barclays illegally conducted on behalf of customers from Cuba, Iran, Sudan and other countries sanctioned in programs administered by the OFAC.

According to court documents, from as early as the mid-1990s until September 2006, Barclays knowingly and willfully moved or permitted to be moved hundreds of millions of dollars through the U.S. financial system on behalf of banks from Cuba, Iran, Libya, Sudan and Burma, and persons listed as parties or jurisdictions sanctioned by OFAC in violation of U.S. economic sanctions. Court documents stated that Barclays followed instructions, principally from banks in Cuba, Iran, Libya, Sudan and Burma, not to mention their names in U.S. dollar payment messages sent to Barclays' branch in New York and to other financial institutions located in the United States. Barclays routed U.S. dollar payments through an internal Barclays account to hide the payments' connection to OFAC-sanctioned entities and amended and reformatted the U.S dollar payment messages to remove information identifying the sanctioned entities. Barclays also deliberately used a less transparent method of payment messages, known as cover payments, as another way of hiding the sanctioned entities identifying information.

OFAC also entered into a settlement agreement with Barclays for IEEPA violations for $176 million, which was concurrent with and deemed satisfied by the forfeiture paid as a result of the deferred prosecution agreements. The Federal Reserve Board and the New York State Banking Department, also announced the issuance of a consent order to cease and desist against Barclays Bank PLC, London and the bank's branch in New York. The order required Barclays to improve its program for compliance with U.S. economic sanctions requirements on a global basis. The regulators did not impose a monetary penalty against the bank.

ING BANK, N.V.

The fifth case in this series, ING Bank N.V. (ING) paid what was then the largest penalty ever for sanctions violations.

On June 12, 2012, DOJ announced that ING, a financial institution headquartered in Amsterdam, agreed to forfeit $619 million as part of deferred prosecution agreements with DOJ and DANY for conspiring to violate IEEPA and TWEA and for violating New York state laws by illegally moving billions of dollars through the U.S. financial system on behalf of sanctioned Cuban and Iranian entities. The forfeiture was split evenly between the two agencies to settle the claims. The bank also entered into a parallel settlement agreement with OFAC. Also on August 12, OFAC announced a $619 million settlement with ING to settle potential liability for apparent violations of U.S. sanctions. ING's settlement with OFAC was simultaneous with settlements with DOJ and DANY and the penalty was deemed satisfied by ING's forfeiture. At the time, the concurrent $619 million forfeiture and OFAC penalty marked the largest civil or criminal fine ever imposed for violations of U.S. sanctions laws and regulations.

According to court documents, starting in the early 1990s and continuing until 2007, ING violated U.S. and New York state laws by moving more than $2 billion illegally through the U.S. financial system – via more than 20,000 transactions – on behalf of Cuban and Iranian entities subject to U.S. economic sanctions. ING knowingly and willfully engaged in this criminal conduct, which caused unaffiliated U.S. financial institutions to process transactions that otherwise should have been rejected, blocked or stopped for investigation under OFAC regulations relating to transactions involving sanctioned countries and parties. Court documents stated ING committed its criminal conduct by, among other things, processing payments for ING's Cuban banking operations through its branch in Curaçao on behalf of Cuban customers without reference to the payments' origin, and by providing U.S. dollar trade finance services to sanctioned entities through misleading payment messages, shell companies and the misuse of ING's internal suspense account.

Furthermore, ING eliminated payment data that would have revealed the involvement of sanctioned countries and entities, including Cuba and Iran; advised sanctioned clients on how to conceal their involvement in U.S. dollar transactions; fabricated ING endorsement stamps for two Cuban banks to fraudulently process U.S. dollar traveler's checks; and threatened to punish certain employees if they failed to take specified steps to remove references to sanctioned entities in payment messages. Court documents stated that this conduct occurred in various business units in ING's wholesale banking division and in locations around the world with the knowledge, approval and encouragement of senior corporate managers and legal and compliance departments. Over the years, several ING employees raised concerns to management about the bank's sanctions violations. However, no action was taken.

In its June 12, 2012, press release, Treasury said that OFAC's settlement with ING resolved OFAC's investigation into ING's intentional manipulation and deletion of information about U.S.-sanctioned parties in more than 20,000 financial and trade transactions routed through third-party banks located in the United States between 2002 and 2007, primarily in apparent violation of the Cuban Assets Control Regulations, 31 C.F.R. part 515, but also of the Iranian Transactions Regulations, 31 C.F.R. part 560; the Burmese Sanctions Regulations, 31 C.F.R. part 537; the Sudanese Sanctions Regulations, 31 C.F.R. part 538; and the now-repealed version of the Libyan Sanctions Regulations, 31 C.F.R. part 550, which was in effect until 2004.

Treasury's press release stated that ING Bank's apparent violations, which totaled more than $1.6 billion routed through the United States despite U.S. sanctions, arose out of policies at multiple offices of ING Bank's Wholesale Banking Division. Neither ING's insurance nor its banking operations in the United States were subjects of this investigation. Beginning in the 1990s, at the instruction of senior bank management, ING employees in Curacao began omitting references to Cuba in payment messages sent to the United States in order to prevent U.S. financial institutions from identifying and interdicting prohibited transactions. The practice of removing and omitting such information was also used by other branches of ING's Wholesale Banking Division, including in France, Belgium, and the Netherlands, in processing U.S. dollar payments and trade finance transactions through the United States. In addition, ING's senior management in France authorized, advised in the creation of, and ultimately provided fraudulent endorsement stamps for use by Cuban financial institutions in processing traveler's check transactions, which disguised the involvement of Cuban banks in these transactions when they were processed through the United States. Moreover, ING's Trade and Commodity Finance business at its Wholesale Banking branch in the Netherlands routed payments made on behalf of U.S.-sanctioned Cuban clients through other corporate clients to obscure the sanctioned clients' identities and its Romanian branch omitted details from a letter of credit involving a U.S. financial institution in order to finance the exportation of U.S.-origin goods.

Treasury stated that, in parallel with OFAC's civil enforcement action, OFAC referred this matter for criminal investigation in light of the sheer number of apparent violations, the array of stratagems employed by ING to conceal its actions, and the seriousness of the conduct, which in some cases was ongoing for a very long period of time. ING agreed to settle potential liability for its apparent violations of Treasury regulations for $619 million with the obligation deemed satisfied by payment of that amount to DOJ and DANY for the same pattern of conduct.

STANDARD CHARTERED BANK

The sixth case, Standard Chartered Bank (SCB), is unusual in that the State banking regulator penalized the bank several months before the federal government and the district attorney took action.

In 2012, SCB paid penalties totaling $667 million for U.S. sanctions violations to both federal and state government agencies; however, these penalties were not assessed in a global settlement. In August 2014, the state banking regulator imposed an additional $300 million penalty for failures to remediate AML compliance problems as required in the SCB's 2012 settlement.

On August 6, 2012, New York State Department of Financial Services (NYDFS)[3] asserted in an order pursuant to New York banking law that Standard Chartered Bank, a financial institution headquartered in London, hid the involvement of Iranian entities in approximately 60,000 transactions over the course of almost a decade. NYDFS asserted that SCB knowingly violated U.S. law in processing transactions worth over $250 billion. As a result of these assertions, SBC faced the possible loss of its New York banking license. NYDFS directed SCB to appear and explain apparent violations of law on August 15, 2012. Subsequently, on August 14, 2012, NYDFS announced that it had reached an agreement with SCB, which settled the matters raised in the August 6 order. NYDFS and SCB agreed that the conduct at issue involved transactions of at least $250 billion. Terms of the settlement included SCB agreeing to pay a civil penalty of $340 million to NYDFS and the adjournment of the hearing scheduled for August 15. This settlement was unusual in that the NYDFS acted alone while the other regulators continued to consider the nature of SCB's violations.

In late 2012, the federal government and DANY took action against SCB. On December 10, DOJ announced that SCB agreed to forfeit $227 million to the U.S. government for conspiring to violate IEEPA. The bank agreed to the forfeiture as part of deferred prosecution agreements with DOJ and DANY. According to court documents, from 2001 through 2007, SCB violated U.S. and New York state laws by moving millions of dollars illegally through the U.S. financial system on behalf of Iranian, Sudanese, Libyan and Burmese entities subject to U.S. economic sanctions. SCB knowingly and willfully engaged in this criminal conduct, which caused SCB's branch in New York and unaffiliated U.S. financial institutions to process over $200 million in transactions that otherwise should have been rejected, blocked or stopped for investigation under OFAC regulations relating to transactions involving sanctioned countries and parties.

Court documents stated that SCB engaged in this criminal conduct by, among other things, instructing a customer in a sanctioned country to represent itself using SCB London's unique banking code in payment messages, replacing references to sanctioned entities in payment messages with special characters and deleting payment data that would have revealed the involvement of sanctioned entities and countries using wire payment methods that masked their involvement. This conduct occurred in various business units within SCB in locations around the world, primarily SCB London and SCB Dubai, with the knowledge and approval of senior corporate managers and the legal and compliance departments of SCB. In addition to evading U.S. economic sanctions, SCB made misleading statements to regulators to further conceal its business with sanctioned countries. During an extensive examination of all transactions at, by, or through SCB New York to detect suspicious activity, SCB failed to disclose to the Federal Reserve Bank of New York and NYDFS payments for customers in sanctioned countries. As a result of SCB's failure to disclose these transactions, the regulators were misled about the nature and extent of SCB's business with sanctioned countries.

[3] In 2011, the New York State Banking Department and the New York State Insurance Department were consolidated into the New York State Department of Financial Services.

In its press release the Federal Reserve Board announced the issuance of a consent order to cease and desist and a civil money penalty assessment of $100 million against the bank. The orders addressed unsafe and unsound practices related to inadequate and incomplete responses to examiner inquiries as well as insufficient oversight of its compliance program for U.S. economic sanctions, BSA, and AML requirements. A significant portion of the penalty was assessed in connection with the alleged unsafe and unsound practices related to information provided to Federal Reserve examiners, and represented one of the largest penalties assessed by the Board for such practices.

On August 19, 2014, in a press release, NYDFS announced an order regarding SCB's failures to remediate AML compliance problems as required in the Bank's 2012 settlement. Under the order, SCB will suspend dollar clearing through its New York Branch for high-risk retail business clients at its SCB Hong Kong subsidiary; exit high-risk client relationships within certain business lines at its branches in the United Arab Emirates; not accept new dollar-clearing clients or accounts across its operations without prior approval from DFS; pay a $300 million penalty; as well as take other remedial steps. SCB's compliance remediation failures were uncovered by NYDFS' independent monitor, which NYDFS installed at SCB as part of the 2012 agreement. The monitor's review of SCB's transaction monitoring systems found that the Bank failed to detect a large number of potentially high-risk transactions for further review. A significant amount of the potentially high-risk transactions the system failed to detect originated from its Hong Kong subsidiary and SCB's branches in the United Arab Emirates, among others. In addition to submitting a comprehensive remediation action plan, the order also requires SCB to extend the engagement of the monitor for two additional years.

HSBC HOLDINGS PLC AND HSBC BANK USA N.A.

The seventh case in this series, HSBC, represents the largest global settlement to date both in terms of the size of the penalties and the number of government agencies involved.

In December 2012, DOJ, bank regulators, FinCEN, OFAC, and DANY entered into a global settlement with HSBC Holdings PLC and HSBC Bank USA for both sanctions and AML violations. In total, the U.S. government assessed more than $1.9 billion in penalties for HSBC's conduct in violation of the BSA and U.S. sanctions – by far the largest penalty to date.

On December 11, 2012, DOJ announced that HSBC Holdings plc (HSBC Group) – a United Kingdom corporation headquartered in London – and HSBC Bank USA N.A. (HSBC Bank USA) (together, HSBC) – a federally chartered banking corporation headquartered in McLean, Va. – had agreed to forfeit $1.256 billion and enter into a deferred prosecution agreement with DOJ for HSBC's violations of the BSA, IEEPA and TWEA. DANY participated in the investigation with DOJ and also entered into a deferred prosecution agreement with HSBC. In addition to forfeiting $1.256 billion as part of its deferred prosecution agreement with DOJ, HSBC also agreed to pay $665 million in civil penalties – $500 million to the Office of the Comptroller of the Currency (OCC) and $165 million to the Federal Reserve Board. The OCC penalty also satisfied a $500 million FinCEN civil money penalty. The bank's $375 million settlement agreement with OFAC was satisfied by the forfeiture to DOJ.

According to court documents, HSBC Bank USA violated the BSA by failing to maintain an effective AML program and to conduct appropriate due diligence on its foreign correspondent account holders. The HSBC Group violated IEEPA and TWEA by illegally conducting transactions on behalf of customers in Cuba, Iran, Libya, Sudan and Burma – all countries that were subject to sanctions enforced by OFAC at the time of the transactions. Court documents stated that, from the mid-1990s through September 2006, HSBC Group allowed approximately $660 million in OFAC-prohibited transactions to be processed through U.S. financial institutions, including HSBC Bank USA. HSBC Group followed instructions from sanctioned entities such as Iran, Cuba, Sudan, Libya and Burma, to omit their names from U.S. dollar payment messages sent to HSBC Bank USA and other financial institutions located in the United States. The bank also removed information identifying the countries from U.S. dollar payment messages; deliberately used less-transparent payment messages, known as cover payments; and worked with at least one sanctioned entity to format payment messages, which prevented the bank's filters from blocking prohibited payments.

Court documents further stated that HSBC Group became aware of this improper practice in 2000. In 2003, HSBC Group's head of compliance acknowledged that amending payment messages "could provide the basis for an action against [HSBC] Group for breach of sanctions." Notwithstanding instructions from HSBC Group Compliance to terminate this practice, HSBC Group affiliates were permitted to engage in the practice for an additional three years through the granting of dispensations to HSBC Group policy. As early as July 2001, HSBC Bank USA told HSBC Group's head of compliance that it was concerned that the use of cover payments prevented HSBC Bank USA from confirming whether the underlying transactions met OFAC requirements. From 2001 through 2006, HSBC Bank USA repeatedly told senior compliance officers at HSBC Group that it would not be able to properly screen sanctioned entity payments if payments were being sent using the cover method. These protests were ignored.

In its press release, Treasury said OFAC's settlement resolves an investigation into HSBC's apparent violations of the Iranian Transactions Regulations, 31 C.F.R. part 560; the Burmese Sanctions Regulations, 31 C.F.R. part 537; the Sudanese Sanctions Regulations, 31 C.F.R. part 538; the Cuban Assets Control Regulations, 31 C.F.R. part 515; and the Libyan Sanctions Regulations, 31 C.F.R. part 550 (which were in effect until 2004). For a number of years, up to and including 2007, HSBC affiliates in Europe, the Middle East, and Asia processed transactions through U.S. financial institutions that involved countries, entities, or individuals subject to U.S. sanctions. HSBC Group's London head office and Dubai branch engaged in payment practices that interfered with the implementation of U.S. economic sanctions by financial institutions in the United States, including HSBC Bank USA. Payment practices included the use of Society for Worldwide Interbank Financial Telecommunication (SWIFT) payment messages in a manner that obscured references implicating U.S. sanctions, removal of information from SWIFT messages, and forwarding of payment messages to U.S. financial institutions that falsely referenced an HSBC affiliate as the ordering institution. As a result, payments totaling approximately $430 million were routed through U.S. banks for or on behalf of sanctioned parties in apparent violation of U.S. sanctions.

The OCC's consent order and $500 million civil money penalty was levied for failure to comply fully with a remedial order issued by OCC in 2011 addressing BSA and sanctions violations. The Federal Reserve Board issued a consent cease and desist order against HSBC Holdings plc, London, United Kingdom, and assessed a $165 million civil money penalty against HSBC Holdings and its subsidiary in the United States, HSBC North America Holdings, Inc., New York, New York. In its press release, the Federal Reserve Board said the $165 million civil money penalty was the largest the Federal Reserve has assessed as a result of unsafe and unsound practices related to insufficient compliance with BSA and AML requirements, and U.S. economic sanctions.

BNP PARIBAS S.A.

The final case in this series is BNP Paribas S.A. (BNPP), a global financial institution headquartered in Paris, France. On June 30, 2014, BNPP agreed to enter a guilty plea and pay the largest penalty ever imposed in the United States for violations of U.S. economic sanctions laws—almost $9 billion.

Overview

In its press release, the Department of Justice (DOJ) stated that this was the first time a global bank had agreed to plead guilty to large-scale, systematic violations of these laws, specifically conspiring to violate the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA), by processing billions of dollars through the U.S. financial system on behalf of Sudanese, Iranian, and Cuban entities subject to U.S. economic sanctions. Specifically, BNPP was charged in a one-count felony criminal information, with knowingly and willfully conspiring to commit violations of IEEPA and TWEA, from 2004 through 2012. The plea agreement, which was subject to approval by the court, provided that BNPP will pay total financial penalties of $8.9736 billion, including forfeiture of $8.8336 billion and a fine of $140 million.

In addition to the forfeiture judgment made by DOJ's Criminal Division and the Office of the U.S. Attorney for the Southern District of New York, the New York County District Attorney's Office (DANY) also announced that BNPP pleaded guilty in New York State Supreme Court to falsifying business records and conspiring to falsify business records. In addition, the Federal Reserve Board announced that BNPP agreed to a cease and desist order, to take certain remedial steps to ensure its compliance with U.S. law in its ongoing operations, and to pay a civil money penalty of $508 million. The New York State Department of Financial Services (NYDFS) announced that BNPP agreed to, among other things, terminate or separate from the bank 13 employees, suspend U.S. dollar clearing operations through its New York Branch and other affiliates for one year for business lines on which the misconduct centered, extend for two years the term of a monitorship put in place in 2013, and pay a monetary penalty to NYDFS of $2.2434 billion. In satisfying its criminal forfeiture penalty, BNPP received credit for payments it was making in connection with its resolution of these related state and regulatory matters. The Treasury Department's Office of Foreign Assets Control (OFAC) also levied a fine of $963 million, which was satisfied by payments made to the DOJ. This case was investigated by the IRS-Criminal Investigation's Washington

Field Division and FBI's New York Field Office. DANY also conducted its own investigation alongside DOJ on this investigation. No individuals were charged at the time of the enforcement action against the bank, but U.S. authorities said they have not wrapped up their probes. According to press reports, the Manhattan District Attorney said in an interview that "the case which BNPP is pleading to now is against the corporation alone, but our investigation into potential individual culpability is continuing." In its order, the Federal Reserve also said it is also pursuing enforcement actions against individuals who may have personally violated U.S. sanctions laws.

DOJ

According to publicly released documents, over the course of eight years, BNPP knowingly and willfully moved more than $8.8 billion through the U.S. financial system on behalf of sanctioned entities, including more than $4.3 billion in transactions involving entities that were specifically designated by the U.S. Government as being cut off from the U.S. financial system. BNPP engaged in this criminal conduct through various sophisticated schemes designed to conceal from U.S. regulators the true nature of the illicit transactions. BNPP routed illegal payments through third party financial institutions to conceal not only the involvement of the sanctioned entities but also BNPP's role in facilitating the transactions. BNPP instructed other financial institutions not to mention the names of sanctioned entities in payments sent through the United States and removed references to sanctioned entities from payment messages to enable the funds to pass through the U.S. financial system undetected.

Further, according to these documents, including a detailed statement of facts admitted to by BNPP, BNPP acknowledged that, from at least 2004 through 2012, it knowingly and willfully moved over $8.8 billion through the U.S. financial system on behalf of Sudanese, Iranian and Cuban sanctioned entities, in violation of U.S. economic sanctions. The majority of illegal payments were made on behalf of sanctioned entities in Sudan, which was subject to U.S. embargo based on the Sudanese government's role in facilitating terrorism and committing human rights abuses. BNPP processed approximately $6.4 billion through the United States on behalf of Sudanese sanctioned entities from July 2006 through June 2007, including approximately $4 billion on behalf of a financial institution owned by the government of Sudan, even as internal emails showed BNPP employees expressing concern about the bank assisting the Sudanese government in light of its role in supporting international terrorism and committing human rights abuses during the same time period. One way in which BNPP processed illegal transactions on behalf of Sudanese sanctioned entities was through a sophisticated system of "satellite banks" set up to disguise both BNPP's and the sanctioned entities' roles in the payments to and from financial institutions in the United States. As early as August 2005, a senior compliance officer at BNPP warned several legal, business and compliance personnel at BNPP's subsidiary in Geneva that the satellite bank system was being used to evade U.S. sanctions.

Similarly, BNPP provided Cuban sanctioned entities with access to the U.S. financial system by hiding the Cuban sanctioned entities' involvement in payment messages. From October 2004 through early 2010, BNPP knowingly and willfully processed approximately $1.747 billion on behalf of Cuban sanctioned entities. In the statement of facts, BNPP admitted that it continued to do U.S. dollar business with Cuba long after it was clear that such business was illegal in order to preserve BNPP's business relationships with Cuban entities. BNPP further admitted that its conduct with regard to the Cuban embargo was both "cavalier" and "criminal," as evidenced by the bank's 2006 decision, after certain Cuban payments were blocked when they reached the United States, to strip the wire messages for those payments of references to Cuban entities and resubmit them as a lump sum in order to conceal from U.S. regulators the bank's longstanding, and illicit, Cuban business.

Further according to court documents, BNPP engaged in more than $650 million of transactions involving entities tied to Iran, and this conduct continued into 2012 – nearly two years after the bank had commenced an internal investigation into its sanctions compliance and had pledged to cooperate with the Government. The illicit Iranian transactions were done on behalf of BNPP clients, including a petroleum company based in Dubai that was effectively a front for an Iranian petroleum company, and an Iranian oil company.

NYDFS

In its June 30, 2014, press release, NYDFS said that BNPP's violations were particularly egregious in part because they continued for many years after other banks were sanctioned for similar violations; involved numerous schemes expressly designed to deceive regulators; and were committed with the knowledge of multiple senior executives. In addition to wire stripping, BNPP also engaged in a series of other forms of subterfuge to conceal its illicit transactions.

In its press release, NYDFS further explained the methods BNPP used to hide its transactions for Sudan. Soon after the imposition of U.S. sanctions against Sudan in 1997, BNPP Geneva established account relationships with a network of nine unaffiliated regional banks located in Africa, Europe and the Middle East, some with no other business purpose than to clear payments for Sudanese clients. The accounts with the regional banks were created and established to provide a means to circumvent U.S. sanctions. Specifically, BNPP utilized the regional banks in a two-step process designed to enable BNPP's Sudanese clients to evade U.S. sanctions. In the first step, a Sudanese bank seeking to move U.S. dollars out of Sudan transferred funds internally within BNPP Geneva to a BNPP Geneva account specifically maintained by a regional bank to facilitate U.S. dollar transfers from Sudan. In the second step, the regional bank transferred the money to the Sudanese bank's intended beneficiary through a U.S. bank without reference to the Sudanese bank. As a result, it appeared to the U.S. bank that the transaction was coming from the regional bank rather than a Sudanese bank. In order to further disguise the true nature of the regional bank transactions, employees at BNPP Geneva frequently worked with the regional banks to wait between one and two days after the internal transfer before making a dollar-for-dollar, transaction-by-transaction, clearing of funds through the United States, artificially delinking the U.S. transfer of funds from the prior transfer involving the regional banks so that financial institutions in the United States and U.S. authorities would be unable to link the payments to the involved sanctioned party.

In addition to monetary penalties, in its press release, NYDFS outlined other significant regulatory sanctions for BNPP in order for the bank to retain its New

York Branch license. These included accountability—including terminations—for individual executives involved in the misconduct. At NYDFS's direction, 13 individuals were terminated by or separated from the bank as a result of the investigation, including the group chief operating officer and other senior executives. In total, including those terminated, the bank disciplined 45 employees in connection with this investigation, with levels of discipline ranging from dismissals, to cuts in compensation, demotion, and other sanctions. Sanctions also include the suspension of U.S. dollar clearing for business lines in which the misconduct centered. Under the agreement, BNPP is to implement a one year-long suspension of U.S. dollar clearing services through its New York Branch or any U.S. BNPP affiliate or any bank in which it has a controlling interest. BNPP is not to seek to avoid or circumvent the suspension by moving, or causing to be moved, any client relationship to any other branch or affiliate or business line of BNPP. The suspension, which is unprecedented, will primarily affect BNPP's oil and gas finance business. It is to begin on January 1, 2015 and terminate on December 31, 2015 and encompass the following:

- Suspension of all U.S. dollar clearing for oil and gas finance business at BNPP Geneva; BNPP Paris; BNPP Singapore;
- Suspension of all U.S. dollar clearing for trade finance business at BNPP Milan;
- Suspension of all U.S. dollar clearing for oil and gas-related clients at BNPP Rome;
- Suspension of all U.S. dollar clearing of deposits by unaffiliated third-party banks at BNPP London.

In addition, for a period of two years, BNPP will prohibit all U.S. dollar clearing as a correspondent bank for unaffiliated third-party banks in New York and London.

Among other tasks, the monitor installed by NYDFS at BNPP will review the U.S. dollar clearing suspension at the bank. In addition to helping ensure compliance with the suspension, the monitor's review will help inform the potential imposition and degree of similar penalties by NYDFS at other banks – where appropriate.

OFAC

In two June 30, 2014 press releases, Treasury and OFAC announced a $963 million settlement with BNPP to settle potential liability for apparent violations of U.S. sanctions saying that it was the largest OFAC settlement of any kind to date. The settlement resolved OFAC's investigation into BNPP's systemic practice of concealing, removing, omitting, or obscuring references to information about U.S.-sanctioned parties in 3,897 financial and trade transactions routed to or through banks in the United States between 2005 and 2012 in apparent violation of the Sudanese Sanctions Regulations, 31 C.F.R. part 538; the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560; the Cuban Assets Control Regulations, 31 C.F.R. part 515; and the Burmese Sanctions Regulations, 31 C.F.R. part 537. It was deemed satisfied by the bank's payment of that amount to DOJ for the same pattern of conduct. Under the settlement agreement, BNPP was required to put in place and maintain policies and procedures to minimize the risk of the recurrence of such conduct in the future. BNPP was also required to provide OFAC with copies of submissions to the Federal Reserve Board relating to the OFAC compliance review that it will be conducting as part of its settlement with the Board.

Federal Reserve Board

In its June 30, 2014, press release, the Federal Reserve Board announced a $508 million penalty against BNPP—the largest penalty ever assessed by the agency—for violations of U.S. sanctions laws. The Federal Reserve also issued a joint cease and desist order with the Autorité de Contrôle et de Prudentiel et de Résolution (ACPR), the home country supervisor of BNPP. The cease and desist order required BNPP to implement a program to ensure global compliance with U.S. sanctions laws. The Federal Reserve stated that BNPP continues to operate branches in New York, Chicago, and San Francisco, and an agency in Houston, all of which are covered by the enhanced policies and procedures required by the order.

The cease and desist order, which the Federal Reserve issued jointly with the ACPR, requires BNPP's global U.S. sanctions compliance program to include creation of a U.S. OFAC compliance office located in the United States with authority over all of the U.S. sanctions compliance programs of BNPP's global offices and business lines. According to the joint order, the U.S. compliance office will be subject to oversight by U.S. regulators, have the authority to audit any transaction and overall compliance efforts by any office or business line of the institution regarding U.S. sanctions laws. BNPP and its branches, affiliates, and global business lines must also comply with payment messaging standards that prohibit the omission, deletion, or alteration of information in payment messages to conceal relevant information from other financial institutions in the payment process. The Federal Reserve and the ACPR, as BNPP's home country supervisor, have the authority to enforce the provisions of this order with respect to BNPP's operations on a worldwide basis.

The Federal Reserve order also prohibits BNPP from re-employing or otherwise engaging 11 individuals who were involved in the actions that resulted in the violations of U.S. sanctions laws. The Federal Reserve said it is pursuing separate enforcement actions against these individuals, which could include fines and orders prohibiting them from participating in the business of banking, including working for any institution subject to the jurisdiction of U.S. federal banking supervisors. The Federal Reserve said it is also pursuing enforcement actions against individuals who may have personally violated U.S. sanctions laws, and is investigating whether other individuals may have been involved in the conduct underlying the enforcement actions against the institution. BNPP agreed to cooperate in these investigations, but is not the subject of these investigations.

Conclusions

These cases demonstrate that the U.S. government aggressively enforces U.S. economic sanctions laws and regulations against non-U.S. companies—particularly foreign banks and other foreign financial institutions that have or now conduct business with countries subject to U.S. economic sanctions while also maintaining financial ties to the United States. Further, these cases represent the significant risks to foreign persons and foreign financial institutions doing business with sanctioned countries, particularly Iran and Cuba, but also Sudan and others, if some nexus to the United States exists in connection with the transactions. These cases also show that financial institutions need to be aware of U.S. state laws that apply to international financial transactions as these cases were brought by both federal and state civil and criminal agencies.

In their documents, criminal and civil agencies show the banks exhibited a willful disregard for U.S. law and actively sought methods to circumvent the sanctions. All financial institutions should recognize the inherent risk with respect to hiding or failing to provide information about sanctioned country customers or parties to a transaction that may involve the United States or a U.S. person. Voluntary disclosure of violations, early cooperation with U.S. investigators, and prompt corrective actions all have an effect on the size of the penalties.

All of the cases leading up to BNPP were resolved through deferred prosecution agreements and the payment of civil and criminal penalties. The terms of the agreements ranged from one year (ABN AMRO) to five years (HSBC). Lloyds, Credit Suisse, Barclays and SCB were two-year agreements. ING was 18 months. In all of these cases, the banks waived federal indictment and accepted responsibility. In its press releases for ABN, Lloyds, Credit Suisse and Barclays, DOJ stated the bank had "accepted and acknowledged responsibility for its criminal conduct," while for ING, SCB, and HSBC, DOJ stated the bank had "accepted responsibility for its criminal conduct and that of its employees." Each case required the bank to undertake remedial actions and imposed conditions on the bank that had to be met for the bank to have the deferred prosecution agreement dismissed. In the HSBC press release, the Manhattan District Attorney emphasized that while the deferred prosecution agreement was designed to impose a substantial punishment on HSBC and to send a strong message of deterrence to other banks, important mitigating factors led to the agreement to defer prosecution. Those factors included HSBC's cooperating throughout the investigation and devoting significant resources to both its internal investigation and the investigations conducted by DANY and DOJ. The BNPP action represents the first time a bank pleaded guilty—there was no deferred prosecution agreement. At the press conference announcing the BNPP action, FBI and DOJ officials said that BNPP's penalty was harsher because the bank "hindered" their work. The Deputy Attorney General said that BNPP's lack of cooperation early in the investigation prevented prosecutors from going after "some of the most significant violator individuals" in the bank.

These cases illustrate coordinated efforts among federal and state civil and criminal agencies and, in most cases, a global settlement. Although some of these cases were for only for U.S. sanctions violations while others were for AML and sanctions violations, the BNPP penalties and the other conditions imposed on the bank in the settlement are an indication of the seriousness with which federal and state civil and criminal agencies take these violations and their intent to strictly enforce against entities that violate these U.S. laws. In the HSBC case, in addition to the five-year period, DOJ imposed significant conditions on the bank in the agreement including the inclusion of an independent monitor of HSBC's internal programs who is required to file periodic reports with DOJ. The intent of the monitor is to ensure that HSBC makes the corrective actions that it has agreed to. However, there are those, particularly in Congress, who believe the HSBC penalties were still too small and that further action should have been taken against the bank and individual bankers, including prosecution rather than allowing the bank to waive the indictment and enter into a deferred prosecution agreement.

In the BNPP case, federal and state agencies imposed the most significant conditions on a bank to date for violations of U.S. sanctions laws—requiring it to terminate employees, including a group chief operating officer and other senior executives, and suspend some U.S. dollar clearing activities. This was the first time a settlement agreement for U.S. sanctions violations required the termination of employees. The HSBC settlement required the bank's top executives to defer part of their bonuses for the whole of the five-year period of the monitorship, while bonuses were clawed back from a number of former and current executives, including those in the United States directly involved at the time. NYDFS, the state agency that licenses BNPP, did not revoke the bank's charter, which would have ended its New York operations. According to press reports, the NYDFS Superintendent had proposed the ban as one condition for not revoking BNPP's license to operate in New York.

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