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Foreign Banks Should Remain Wary Of US Sanctions Laws

By **Andrew Zimmitti and Richard Hartunian** (May 10, 2019, 4:02 PM EDT)

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While major enforcement actions against foreign banks for U.S. sanctions violations appear to have subsided over the past few years, recent settlements of sanctions-related claims against three large foreign banks remind us that federal and state authorities continue to aggressively monitor compliance with, and enforce, U.S. sanctions laws.

With the issuance of new sanctions relating to Russia in April 2018, the "snap back" of secondary sanctions against Iran last November and widening sanctions against Venezuelan government-owned businesses this year, the pace and magnitude of U.S. sanctions enforcement actions against foreign banks lacking robust, updated compliance programs will likely increase.

Societe Generale SA

On Nov. 18, 2018, Societe Generale SA, a Paris-based bank, entered into a global settlement to pay $1.34 billion in combined penalties and forfeitures to federal and state authorities primarily for violations of U.S. sanctions laws pertaining to Cuba, Iran and Sudan. It represented the largest U.S. sanctions settlement in 2018 and the second-largest sanctions payment for any financial institution since BNP Paribas' global settlement of $8.9 billion in June 2014.

The global settlement is captured in a deferred prosecution agreement with the Office of the United States Attorney for the Southern District of New York, obligating the bank to forfeit $717.2 million to the United States and pay monetary penalties in the amounts of $162.8 million to the New York County District Attorney's Office, $53.9 million to the Office of Foreign Assets Control of the U.S. Department of the Treasury, approximately $81.27 million to the Federal Reserve and $325 million to the New York State Department of Financial Services.

The statement of facts filed in connection with the deferred prosecution agreement states that from at least 2004 through 2010, SG engaged in more than 2,500 transactions through financial institutions located in the County of New York, valued at close to $13 billion, in violation of the Cuban Assets Control Regulations.[1] SG also engaged in $22.8 million in transactions with a sanctioned Sudanese entity in violation of the Sudanese Sanctions Regulations[2] and with other sanctioned entities in violation of the Iranian Transactions and Sanctions Regulations.[3] A separate settlement with the NY DFS also resolves

persistent deficiencies with SG's New York branch's Bank Secrecy Act/Anti-Money Laundering compliance program.

The bank's detailed admissions in connection with the DPA show that it operated numerous credit facilities that provided significant funding to Cuban banks and entities and to foreign corporations conducting business in Cuba, including a Dutch commodities trading firm and a Cuban corporation with a state monopoly on the production and refining of crude oil in Cuba. The payments cleared through U.S. financial institutions but went undetected due to SG's "concealment practice," by which it made inaccurate or incomplete notations on payment messages that accompanied the transactions.

In one example, an SG manager in the bank's natural resources and energy financing department sent instructions directing that "the USD transfer must not in any case mention the name of the ordering party [a joint venture between a French company and Cuban government entity] or its country of origin, Cuba. The clearing will indeed be carried out in NY." In another example, a senior group compliance department employee directed IT employees to use internal filtering systems — normally designed to identify and prevent transactions with sanctioned entities — to "repair" the transactions so that they did not identify a sanctioned entity.

Notably, SG ultimately cooperated substantially with investigators and engaged in significant remediation efforts, including by creating a central group sanctions compliance function, increasing its group compliance personnel between 2009 and 2017 from 169 to 785 employees, enhancing compliance IT, more than tripling its overall compliance budget and instituting biannual sanctions training.

Standard Chartered Bank

On April 9, 2019, Standard Chartered Bank, a global financial institution based in London, entered into an amended DPA, extending by two years the DPA it entered into in 2012 for its participation in a criminal conspiracy from 2001 through 2007 to violate U.S. sanctions relating to Iran, Sudan, Libya and Burma. The amended DPA added new criminal conspiracy allegations from 2007 to 2011, when the bank illegally processed approximately $240 million in U.S. dollar transactions through the U.S. financial system for the benefit of certain Iranian individuals and entities.

The bank agreed to forfeit the $240 million and pay fines consisting of $292.2 million to the New York County District Attorney's Office, $163.7 million to the Board of Governors of the Federal Reserve, $180 million to the New York Department of Financial Services, GBP £102.2 million to the U.K.'s Financial Conduct Authority and an additional $52.2 million to the U.S. Department of Justice/OFAC (initially assessed at $480 million, but reduced with credit applied for the other fines paid).

SCB admitted to processing nearly 9,400 U.S. dollar transactions through the United States on behalf of companies owned by a wealthy Iranian named Mahmoud Reza Elyassi. Elyassi, who was indicted in a separate criminal proceeding in the United States District Court for the District of Columbia, was charged with conspiring with two former employees of SCB's Dubai branch to willfully violate U.S. Iranian sanctions laws.

Among other methods, Elyassi and his co-conspirators registered numerous supposed trading companies in the UAE and used those companies as fronts for a money-exchange business Elyassi operated in Iran. The misconduct exposed a gap in SCB's AML compliance program that allowed customers to request U.S. dollar transactions from within sanctioned countries, including Iran, via fax and online payment instructions.

SCB provided substantial cooperation with investigators into this criminal conduct, turning over information incriminating SCB customers and employees, and engaged in a significant remediation of its U.S. economic sanctions compliance program.

UniCredit Group

On April 15, 2019, federal and state regulators and law enforcement, led by the DOJ, announced that agreements were reached with UniCredit Group Banks requiring a guilty plea to a violation of the International Emergency Economic Powers Act, nonprosecution agreements, payments, and forfeiture of over $1.3 billion as a result of the processing of millions of dollars of transactions through the U.S. financial system on behalf of entities subject to U.S. economic sanctions. The agreement involved UniCredit Bank AG, headquartered in Munich; UniCredit Bank BA, headquartered in Vienna; and parent company UniCredit SpA, which agreed to ensure that the obligations of its subsidiaries are fulfilled.

The conduct was spelled out in detailed court documents. In a one-count criminal information to which UCB AG will plead guilty in federal court in the District of Columbia, UCB AG is charged with knowingly and willfully conspiring to commit violations of the IEEPA and to defraud the United States from 2002 through 2011.

UCB AG used "a non-transparent method of payment messages, known as cover payments, to conceal the involvement of Sanctioned Entities, including banks and other entities located in or controlled by countries subject to U.S. sanctions, including Iran, in U.S. dollar transactions processed through U.S. financial institutions located in New York, New York." The bank created a policy manual that instructed employees to process transactions in an "OFAC-neutral" manner and open "safe (U.S. dollar) accounts" for a sanctioned entity, and used the accounts to send payments through the United States in a manner that concealed originator or beneficiary information.

In a nonprosecution agreement, UCB BA admitted that between 2002 and 2012 it conspired to violate state and federal laws by knowingly and willfully "processing sixteen transactions worth at least $20 million through the United States involving persons located or doing business in Iran and other countries subject to U.S. economic sanctions or otherwise subject to U.S. economic sanctions, (thereby) willfully causing financial services to be exported from the United States to sanctioned customers in Iran and elsewhere in violation of U.S. sanctions laws and regulations."

These U.S. dollar transactions, the agreement spells out, should otherwise have been rejected or halted for investigation pursuant to U.S. sanctions laws and regulations. Notably, UCB BA received credit for cooperation with the Justice Department and avoided the appointment of a compliance monitor by conducting a thorough internal investigation; voluntarily making employees available for interviews; collecting, organizing and producing voluminous evidence; providing all relevant facts known to it; engaging in remedial measures on sanctions compliance; and committing to enhance its sanctions compliance program.

Lessons Learned

While there has been a downward trend in the number of sanctions-related enforcement actions during the present administration, the SG, SCB and UniCredit actions should be seen not as a shift in enforcement strategy, but rather as a continuation of prior administrations' enforcement efforts going back a number of years. Such cases take years to develop, and these are no exception. Most of the violations at issue occurred between the mid-2000s and the early 2010s, which shows that major

sanctions enforcement cases can take years to develop and bring to resolution.

The offending practices that ensnared these institutions are also unsurprisingly similar to those employed by other large foreign financial institutions that processed large volumes of U.S. dollar payments abroad through U.S. correspondent accounts or branches located in the U.S. around the same period of time.

A common method of skirting U.S. sanctions laws involved "stripping" sanctioned country information from Society for Worldwide Interbank Financial Telecommunication messages to mask the illicit origin of U.S. dollar payments. Stripping was employed by Commerzbank as reported in its $258 million settlement with OFAC in 2015, by BNP as reported in its criminal sentencing in 2014, by Royal Bank of Scotland as reported in its $100 million settlement in 2013 and by SCB as reported in its initial $667 million resolution in 2012.

As the wave of prosecutions and settlements for major U.S. sanctions violations that occurred during this time period may be trailing off, what, going forward, should financial institutions expect will be likely areas of focus in sanctions enforcement? The Trump administration's reimposition of secondary sanctions against Iran effective Nov. 4, 2018, are likely to be a focus of U.S. authorities as foreign financial institutions and businesses continue to engage in U.S. dollar transactions with Iran.

The sanctions imposed in April 2018 against certain Russian businesses, senior Russian government officials and businessmen are also likely to generate close interest in enforcement given the interconnected nature of those businesses to the U.S. economy, notwithstanding recent delistings. The expansion of sanctions against Venezuelan government-owned businesses like Petroleos de Venezuela and the Venezuelan central bank, Banco Central de Venezuela, also will become a priority for U.S. investigators as regime change in Venezuela becomes a more urgent national security issue.

As these and other sanctions regimes continue to expand over the course of 2019, it is critical that foreign financial and nonfinancial institutions be particularly vigilant in updating their U.S. sanctions compliance functions and engage in regular reassessments of their risk profiles to ensure they have appropriately lessened the risk of major U.S. sanctions violations.

Once violations become known, mitigating potential civil and criminal penalties through voluntary self-reporting, cooperation and remediation — even if it requires dealing with multiple overlapping state and federal agencies — can be very effective, and companies are wise to seek experienced counsel to help navigate those sometimes perilous waters.

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[1] 31 C.F.R., Part 515

[2] 31 C.F.R., Part 538

[3] 31 C.F.R., Part 560