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INSIGHT: What *Societe Generale* Tells Financial Institutions About the Future of Enforcement



BY MIKE CASEY, ZACH BREZ AND NATHALIE PETRITIS

On November 19, 2018, French bank Société Générale agreed to pay $1.34 billion to U.S. federal and state regulators to settle allegations that it processed and concealed billions of dollars in transactions with sanctioned countries over a multi-year period. This is the second-highest fine ever imposed on a sanctions violator, and will be divided among five regulators: the U.S. Attorney's Office for the Southern District of New York, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), the U.S. Federal Reserve Bank, the New York County District Attorney's Office, and the New York State Department of Financial Services ("NYSDFS"). Société Générale incurred liability by facilitating U.S. dollar transactions on behalf of a wide range of sanctioned customers. These settlements illustrate that federal and state regulators continue to vigorously enforce sanctions laws and that violations can have severe consequences.

Factual Background & Settlement

Société Générale's Sanctions Violations

Although each regulator entered into a separate agreement with Société Générale, the common theme that emerged across all five settlements was the bank's violations of U.S. sanctions targeting Cuba. From approximately 2004 through 2010, Société Générale operated 21 credit facilities for the benefit of Cuban banks, state-controlled entities, and corporations conducting business in Cuba (collectively, the "Cuban Credit Facilities") in violation of the Trading with the Enemy Act ("TWEA") and the Cuban Asset Control Regulations. During this time period, Société Générale engaged in over 2,500 prohibited transactions, which caused U.S. financial institutions to process close to $13 billion in transactions that should have been rejected or blocked. Société Générale covertly processed payments to other sanctioned countries as well, including Sudan ($333 million), Iran ($140 million), Libya ($145 million), Myanmar ($14 million), and North Korea ($500,000).

To evade regulatory scrutiny, Société Générale processed these transactions in a "non-transparent manner" by removing, omitting, obscuring, or otherwise failing to include references to sanctioned countries in information sent to U.S. banks involved in the transactions. For instance, Société Générale carried out transactions on behalf of Sudanese entities by using a French address in payment messages sent to U.S. financial institutions, developed a procedure that instructed employees on "international settlement with countries under USD embargo," and engaged in "wire stripping" in connection with payments involving Iran.

In December 2004, a senior member of Société Générale's Group Compliance Department became aware of the sanctions violations, and warned senior management that the Cuban Credit Facilities transactions ran the risk of attracting "the most stringent punishment" from U.S. regulators. Société Générale's senior management purportedly decided to stop problematic transactions as soon as possible, but the bank continued to violate U.S. sanctions for years thereafter.

The Settlement

On November 19, 2018, five U.S. federal and state regulators announced sanctions-related settlements with Société Générale totalling $1.34 billion. The bank agreed to pay $717.2 million to the United States through a civil forfeiture action. The bank will also pay $162.8 million to the New York County District Attorney's Office, $53,966,916 to OFAC, $81,265,000 to the Federal Reserve Bank, and $325 million to the NYSDFS. In addition to the sanctions settlement, the

NYSDFS imposed an additional $95 million fine on the bank for anti-money laundering (''AML'') violations. The U.S. Department of Justice declined to impose a compliance monitor, and entered into a three-year deferred prosecution agreement with Société Générale.

Key Takeaways

Historic Sanctions Enforcement Action

This settlement is among the most significant sanctions resolutions in U.S. history. The total financial penalties that Société Générale incurred amounted to more than $1.3 billion, which represents the second largest sanctions penalty ever imposed. The only case involving more stringent penalties occurred when BNP Paribas plead guilty to violating U.S. federal law and paid $8.97 billion to resolve its potential liability.

While Société Générale agreed to hefty fines, the bank was not required to plead guilty to violating federal law to settle this matter. Instead, Société Générale entered into a deferred prosecution agreement with the DOJ. Provided that Société Générale abides by the terms of its settlement agreement for three years, the Government will seek to drop the charges that the bank conspired to violate the Trading with the Enemy Act and the Cuban Asset Control Regulations. Furthermore, Société Générale was not required to have a corporate compliance monitor.

Société Générale's Conduct Was Not Unique

Société Générale ran afoul of U.S. sanctions by processing U.S. dollar payments on behalf of customers based in countries targeted by comprehensive sanctions. To ensure that these transactions were completed, Société Générale took a number of steps to disguise the involvement of embargoed countries. These steps included utilizing so-called ''cover payments,'' and otherwise including inaccurate or incomplete information in payment messages for U.S. dollar transactions. Société Générale developed formal procedures to service customers in sanctioned countries, and the bank continued to engage in unlawful conduct after some of its internal compliance personnel raised concerns about these practices.

Société Générale's conduct is consistent with the activities undertaken by other financial institutions targeted by the U.S. government for sanctions violations. Indeed, many other banks that were prosecuted engaged in similar misconduct (i.e., USD clearing activities for sanctioned persons, wire stripping and cover payments, formal procedures to disguise involvement of sanctioned persons, etc.). In that sense, the Société Générale settlement does not represent a new enforcement trend, but rather is a continuation of the U.S. government's past practices.

Renewed Focus on Prosecuting Financial Institutions for Sanctions Violations

Between 2009 and 2015, the U.S. government announced the resolution of a series of high-profile, big dollar enforcement actions against financial institutions. However, no major sanctions settlements involving financial institutions have occurred since Deutsche Bank's 2015 agreement. In 2017, enforcement actions targeting non-financial institutions accounted for all but two of the settlements announced, as well as over 99 percent of the civil penalties collected by OFAC that year. These developments spawned speculation that U.S. government authorities had moved on from scrutinizing financial institutions and were focusing their enforcement efforts on non-financial institutions.

The Société Générale settlement illustrates that speculation regarding the demise of enforcement actions targeting financial institutions was premature. Rather, the recent slowdown in enforcement actions targeting financial institutions appears to have been attributable to the irregular timing of settlement agreements. Resolving cases that involve multiple federal and state government agencies and the imposition of significant financial penalties take time. Given that the underlying conduct in this case dated back to at least 2003, it would not be surprising to see the government bring more cases against other financial institutions in the future.

Multi-Agency Enforcement Actions Are The New Normal

Five different federal and state government agencies played a role in this matter and extracted penalties from Société Générale. Given the alleged criminal and civil sanctions violations, the Department of Justice's and OFAC's participation is not surprising. Likewise, the Federal Reserve has been involved in some, but not all, of the high-profile sanctions enforcement actions brought against financial institutions.

The NYSDFS's role in this matter illustrates an emerging trend: The State of New York seeks to play an integral role in major sanctions cases. The State of New York claimed jurisdiction over Société Générale because the improper U.S. dollar transactions were cleared through New York banks. Through its investigation, NYSDFS found that Société Générale had executed thousands of illegal and non-transparent U.S. dollar payment comprising billions of dollars involving Iran, Sudan, Cuba, Libya, North Korea, and Myanmar. The impermissible transactions violated federal law, but Société Générale also ran afoul of New York state banking, internal controls, and reporting laws. The consequences of the state law violations were substantial; Société Générale paid $325 million to settle these claims. This significant penalty will encourage New York—and possibly other states—to bring claims against sanctions violators in future cases.

International Risk Regimes Are Linked

Société Générale's recent experience highlights the interlinkages between sanctions, AML laws, and anti-corruption laws. In June, Société Générale entered into a separate $1.3 billion settlement with the U.S. government to resolve alleged violations of the Foreign Corrupt Practices Act and for its role in the LIBOR scandal. Between 2004 and 2009, a Libyan ''broker'' engaged by Société Générale paid bribes to Libyan government officials to secure investments by Libyan state-owned financial institutions. From May 2010 until at least October 2011, Société Générale promulgated falsely deflated U.S. dollar LIBOR submissions to create the appearance that the bank was able to borrow money at more favorable interest rates than was actually possible.

In addition, as part of the most recent settlement, Société Générale agreed to pay $95 million to resolve its liability under New York state law for failing to maintain an adequate AML compliance program. In 2009, Société Générale entered into an agreement with the State of New York to revamp its New York branch's AML compliance program. While Société Générale initially made improvements, more recent examinations carried out by New York state authorities identified ''fundamental deficiencies'' in the bank's AML policies and procedures and due diligence protocol. Société Générale is required to retain an independent consultant to evaluate the improvements the bank makes to its AML compliance program pursuant to this settlement.

These events illustrate two trends. First, financial institutions that have compliance challenges with one set of international risk laws are likely to have issues with similar legal regimes as well. A weakness in one aspect of a company's or a bank's compliance program frequently is representative of problems in related areas. Second, government authorities are increasingly aware of these linkages and structure their investigations accordingly. While Société Générale is the most recent example, a number of other financial institutions and multinational companies have entered into settlements with government authorities for violating economic sanctions, export controls, anti-corruption laws, and anti-money laundering laws. The more issues that are within the scope of an investigation, the more time-consuming, expensive, and intrusive the investigation will be for the targeted party.

Conclusion The Société Générale settlement demonstrates the severe consequences that financial institutions can face when they run afoul of the U.S. sanctions. In light of the potential penalties, sanctions compliance remains critically important, and is especially challenging given the increasingly complex nature of the U.S. sanctions regime.

Kirkland & Ellis partners Mike Casey (London), Zach Brez (New York) represent private equity firms, Fortune 100 companies, investment advisors, and bulge bracket banks in investigations, transactional diligence, and regulatory counseling related to economic sanctions, export controls, money laundering, and international corruption. They are also Bloomberg Law contributors. Nathalie Petritis (New York) is an associate who assists financial institutions, broker-dealers and investment advisers with internal investigations and regulatory matters.