

SIFMA AML and Financial Crimes Conference
February 27, 2013

***Significant Sanctions Enforcement Actions and Other Financial Crimes
Developments***

I. OFAC Enforcement Actions

- A. OFAC "Stripping" Cases** – Foreign affiliates stripped information from U.S.-dollar payments to avoid detection by U.S. banks of prohibited transactions (DOJ / NYDA / OFAC)
- a. ABN AMRO (Dec. 2005) - \$80 million
 - i. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20051219a.aspx>
 - b. Lloyds TSB Bank PLC (Jan. 2009) - \$350 million
 - i. DOJ action: <http://www.justice.gov/opa/pr/2009/January/09-crm-023.html>
 - ii. OFAC action (Dec. 2009): <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20091222.aspx>
 - c. Australia and New Zealand Bank Group, Ltd. (Aug. 2009) - \$5,750 million
 - i. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/08242009.pdf>
 - d. Credit Suisse (Dec. 2009) - \$536 million
 - i. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/pages/20091216.aspx>
 - e. ABN AMRO (May 2010) - \$500 million
 - i. <http://www.justice.gov/opa/pr/2010/May/10-crm-548.html>
 - f. Barclays (Aug. 2010) - \$298 million
 - i. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20100818.shtml.aspx>
 - g. ING (June 2012) - \$619 million
 - i. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20120612.aspx>
 - h. Standard Chartered Bank
 - i. NYDFS - \$340 million (Aug. 2012)

1. See <http://www.dfs.ny.gov/banking/ea120921.pdf>
- ii. DOJ/OFAC/FRBNY/OCC/DANY - \$327 million (Dec. 2012)
 1. Stripped and non-transparent payment practices in processing wire transactions valued in excess of \$100 million in apparent violation of the Burmese, Iranian, Sudanese, and Libyan sanctions programs. (Allegations by various regulators vary with respect to numbers of transactions and amounts of violations).
 2. SCB in London and Dubai obscured or removed references to Iran in payment instructions sent through the United States
 3. The bank appeared to have misled federal and state bank examiners
 4. OFAC: "While SCB's omission of information affected approximately 60,000 payments related to Iran totaling \$250 billion, the vast majority of those transactions do not appear to have been violations of the Iranian Transactions Regulations . . . due to authorizations and exemptions which were in place at the time."
 5. Voluntary self-disclosure.
 6. See http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/121210_SCB_Settlement.pdf
 7. See also <http://www.justice.gov/opa/pr/2012/December/12-crm-1467.html>
 8. See also <http://manhattanda.org/standard-chartered-bank-reaches-327-million-settlement-illegal-transactions>
 9. See also <http://www.federalreserve.gov/newsevents/press/enforcement/20121210a.htm>
- i. HSBC Holdings PLC ("HSBC") (Dec. 2012)
 - i. DANY - \$375 million

1. See <http://manhattanda.org/press-release/district-attorney-vance-announces-375-million-settlement-hsbc-bank>
- ii. DOJ/FRB/OFAC/FinCEN/OCC - \$1.9 billion
1. See <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html>
 2. See also <http://www.federalreserve.gov/newsevents/press/enforcement/20121211b.htm>
 3. See also http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/121211_HSBC_posting.pdf
 4. See also <http://www.fincen.gov/whatsnew/pdf/20121211.pdf>
 5. See also <http://www.occ.gov/news-issuances/news-releases/2012/nr-occ-2012-173.html>
- iii. Payment practices included the use of 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 Group affiliate as the ordering institution.
- iv. As a result, more than 2,300 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.
- v. HSBC's settlement with OFAC is simultaneous with settlements with the Department of Justice's Asset Forfeiture and Money Laundering Section, the New York County District Attorney's Office, and the Federal Reserve Board of Governors with the cooperation of the UK's Financial Services Authority.
- vi. Separately, this settlement also covers ten transactions totaling approximately \$21 million in apparent violation of the Burmese, Sudanese, Iranian and Zimbabwe sanctions, which OFAC determined were not egregious. One of these transactions involved the transfer of 32,000 ounces of gold bullion for the ultimate benefit of the Central Bank of Iran.

- j. Bank of Tokyo-Mitsubishi UFJ, Ltd. ("BTMU") (Dec. 2012)
 - i. \$8,571,634 penalty
 - ii. Pursuant to written operational instructions utilized in a Tokyo operations center, BTMU employees systematically deleted or omitted from payment messages any information referencing U.S. sanctions targets that would cause the funds to be blocked or rejected, prior to sending the transactions through the United States.
 - iii. As a result of these practices, BTMU processed at least 97 funds transfers, with an aggregate value of approximately \$5,898,943, through BTMU's New York branch or other banks in the United States
 - iv. See http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20121212_btmu.pdf

B. Other OFAC Enforcement Actions

- a. JP Morgan Chase Bank N.A. (Aug. 2011)
 - i. \$88.3 million penalty
 - ii. Violations of multiple OFAC sanctions programs between December 2005 and March 2006:
 - 1. 1,711 wire transfers for \$178.5 million involving Cuban nationals in violation of Cuban Assets Control Regulations
 - 2. \$2.9 million trade loan involving vessel blocked due to affiliation with Islamic Republic of Iran Shipping Lines
 - iii. Failed to respond promptly and completely to an OFAC administrative subpoena. JPM falsely represented that it had no additional responsive documents.
 - iv. See Settlement Agreement between the OFAC and JPMorgan Chase Bank N.A. MUL-546197 *available at* <http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/jpmorgan.pdf>
 - v. See related AML/BSA action (OCC/FRB, January 2013)
 - 1. Cease and desist orders require JP Morgan to take corrective action to enhance its program for compliance with the OFAC, BSA and other AML requirements

2. See <http://www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-8a.pdf> and <http://www.federalreserve.gov/newsevents/press/enforcement/enf20130114a2.pdf>
- b. Wells Fargo Bank (Dec. 2010)
 - i. \$67,500 penalty
 - ii. Between 2005 and 2006, provided financial services in the U.S. to a customer located in Iran
 - iii. See <http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/12212010.pdf>
 - c. Yokozuna Pearls & Gems, Inc. (Oct. 2010)
 - i. \$25,000 penalty
 - ii. Sent a \$220,000 wire transfer to Myanmar Foreign Trade Bank in violation of the Burmese Sanctions Regulations.
 - iii. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/10292010.pdf>
 - d. Banco Colpatria, S.A. (Aug. 2010)
 - i. \$90,000 penalty
 - ii. Processed 26 dollar-denominated wire transfers on behalf of a corporate client after OFAC designated the client's beneficial owners as Specially Designated Narcotics Traffickers (SDNTs).
 - iii. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/08192010.pdf>
 - e. Compass Bank (Aug. 2010)
 - i. \$607,500 penalty
 - ii. Initiated 3 funds transfers on behalf of a client without OFAC license or outside OFAC license related to the petroleum or petrochemical industries in Sudan.

- iii. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/08132010.pdf>
- f. United Nations Federal Credit Union (July 2010)
 - i. \$500,000 penalty
 - ii. Engaged in unauthorized financial transactions on behalf of customers who were blocked Cuban nationals.
 - iii. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/07152010.pdf>
- g. Innospec Inc. (March 2010)
 - i. \$2.2 million to settle CACR violation, and violations of the UN Oil for Food Program and FCPA
 - ii. After acquiring a foreign corporation that maintained a local sales office in Cuba, Innospec continued to conduct business in Cuba
 - iii. entered into contracts with Cuban power companies, employed Cuban nationals, and held bank accounts with Cuban financial institutions
 - iv. Innospec received mitigation because it self-disclosed violations to OFAC and cooperated with OFAC's investigation
 - v. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/03192010.pdf>
- h. Hilton International Co. (Apr. 2010)
 - i. \$735,000 penalty
 - ii. Between 2002 and 2006, violated Sudanese Sanctions Regulations 142 times through unlicensed operation of two Hilton brand hotels in Sudan.
 - iii. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/04232010.pdf>
- i. Genesis Asset Managers, LLP (May 2012)

- i. Investment manager's London-based subsidiary purchased approximately \$3 million of shares in the First Persian Equity Fund (FPEF)
 - ii. FPEF is a Cayman Islands company that invests exclusively in Iranian securities and for which Genesis Asset Managers acts as investment advisor
 - iii. \$112,500 penalty
 - iv. See http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/05212012_genesis_notice.pdf
- j. DHL (August 2009)
 - i. Between August 2002 and March 2007, DHL allegedly made numerous shipments to Iran and Sudan in violation of the OFAC Regulations and failed to maintain records with respect to other shipments to those countries.
 - ii. \$9.4 million penalty
 - iii. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/08062009.pdf>
- k. Gold & Silver Reserve, Inc. (September 2009)
 - i. Gold & Silver Reserve, Inc. exported financial services to Iran, without a license, by activating 56,739 "e-currency" accounts through its website for persons located in Iran and dealt in blocked property in the form of 69 "e-currency" accounts in which Cuban Nationals had an interest
 - ii. \$2.9 million penalty
 - iii. See <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/10012009.pdf>

II. International Emergency Economic Powers Act (IEEPA) Cases

- A. U.S. v. Woodford (E.D.N.Y, Nov. 2009)
 - a. Laura WangWoodford, a U.S. citizen who served as a director of Monarch Aviation Pte Ltd., a Singapore company that imported and exported military and commercial aircraft components for more than 20 years, was sentenced in the Eastern District of New York to 46

months in prison and ordered to forfeit \$500,000 for conspiring to violate the U.S. trade embargo by exporting controlled aircraft components to Iran

b. See http://www.justice.gov/opa/pr/2008/February/08_nsd_083.html

A. People v. Islamic Republic of Iranian Shipping Lines (IRISL), indictment no. 11-02924 (N.Y. Sup. Ct., N.Y. County June 20, 2011).

a. New York DA Indictment:

<http://manhattanda.org/sites/default/files/IRISL%20Indictment.pdf>

b. *See also* FinCEN advisory at http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ofac_irisl_advisory_07192012.pdf

III. Foreign Corrupt Practices Act (FCPA) Cases

A. SEC v. Garth R. Peterson (April 2012)

a. *See* <http://www.sec.gov/litigation/complaints/2012/comp-pr2012-78.pdf>

b. SEC charged former executive at Morgan Stanley with violating the FCPA as well as securities laws for investment advisers by secretly acquiring millions of dollars' worth of real estate investments for himself and an influential Chinese official who in turn steered business to Morgan Stanley's funds.

c. Morgan Stanley, which is not charged in the matter, cooperated with the SEC's inquiry and conducted a thorough internal investigation to determine the scope of the improper payments and other misconduct involved. *See* <http://www.sec.gov/news/press/2012/2012-78.htm>

IV. Other Federal Criminal Prosecutions

B. People v. Abacus Federal Savings Bank et al., indictment no. 2480/2012 (N.Y. Sup. Ct., N.Y. County May 31, 2012).

a. Employees and managers charged with mortgage fraud (routinely submitting false documents to Fannie Mae)

b. *See* <http://manhattanda.org/press-release/da-vance-abacus-bank-and-19-individuals-charged-large-scale-mortgage-fraud-conspiracy>

V. Other Sanctions Programs

- A. FSA requires action of HSBC (Dec. 2012)
 - a. FSA, working closely with relevant US authorities, brought a separate action against HSBC, requiring HSBC to:
 - i. Establish a committee of the HSBC Board with a mandate to oversee matters relating to anti-money laundering, sanctions, terrorist financing and proliferation financing;
 - ii. Review relevant Group policies and procedures to ensure that all parts of the HSBC Group are subject to standards equivalent to those required under UK requirements;
 - iii. Appoint a Group Money Laundering Reporting Officer (MLRO) who will be an FSA approved person, with responsibility for ensuring that systems and controls are in place across the Group, to ensure the Group is in compliance with all relevant legal and regulatory requirements; and
 - iv. Employ an independent monitor to oversee the Group's compliance with UK anti-money laundering, sanctions, terrorist financing and proliferation financing requirements and to provide independent reporting to the HSBC Board committee and regulators.
 - b. See <http://www.fsa.gov.uk/library/communication/pr/2012/111.shtml>

VI. Other Investigations

- A. HSBC Senate Report
 - a. 334-page report of the Permanent Subcommittee on Investigations describing AML and OFAC deficiencies of HSBC.
 - b. *See* United States Senate, Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, “U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History” (July 17, 2012), pp. 113-188 (for discussion of OFAC), *available at* <http://www.hsgac.senate.gov/subcommittees/investigations/reports>