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## Sanctions Enforcement Roars Back: Takeaways from the Société Générale Settlement

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On November 19, 2018, Société Générale S.A. (“Société Générale”), a Paris-based financial institution, announced that it will pay \$1.34 billion, pursuant to coordinated settlements with the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) and other U.S. regulators, to resolve the bank’s liability for 1,077 apparent violations of U.S. sanctions targeting Cuba, Iran, and Sudan.<sup>1</sup> The portion of the settlement allocated to OFAC, \$53,996,916.05, represents the largest OFAC enforcement action in 2018, and the \$1.34 billion total penalty is the second largest sanctions-related settlement in U.S. history.<sup>2</sup>

The Société Générale settlement illustrates that U.S. sanctions enforcement is alive and well, despite below average enforcement activity year to date. The settlement also suggests that OFAC may be shifting its attention back to large financial institutions, after several years of relatively quiet enforcement activity across the financial services industry. In addition, the timing of the settlement announcement—approximately two weeks after the re-imposition of broad-based secondary sanctions targeting Iran—may portend additional enforcement actions to come, consistent with the Trump administration’s pledge to strictly enforce the Iran sanctions following the United States’ withdrawal from the Iran nuclear deal.

### Overview of the Société Générale Settlement

#### *Factual Background*

According to the OFAC settlement agreement, for at least the five-year period between 2007 and 2012, Société Générale processed 1,077 U.S. dollar (“USD”) transactions, valued at \$5,560,452,994.36, in violation of the Cuban Assets Control Regulations (“CACR”), the Iranian Transactions and Sanctions Regulations (“ITSR”),<sup>3</sup> and the Sudanese Sanctions Regulations (“SSR”).<sup>4</sup>

On May 16, 2012, Société Générale notified OFAC of certain transactions that the Paris Rive Gauche Enterprises (“PRGE”) branch of its retail banking division in France, Banque de Détail en France (“BDDF”), had made on behalf of a Sudanese entity majority-owned by the Government of Sudan. In February 2013, Société Générale submitted a voluntary disclosure to OFAC that identified additional Sudan-related issues, as well as potential violations of the Cuba and Iran sanctions. In 2014, following negotiations with the U.S. government, Société Générale agreed to review all USD transactions within (1) BDDF’s six large corporate branches and international private clients branch; (2) Société Générale’s correspondent banking business; and (3) the Global Finance (“GLFI”) division of Société Générale’s Corporate and Investment Bank at Paris, Australia, Canada, Japan, and Singapore. This review identified violations of the SSR, CACR, and ITSR, as summarized below:

<sup>1</sup> Société Générale S.A. entered into a deferred prosecution agreement with the U.S. Department of Justice (“DOJ”), as well as separate settlement agreements with the New York County District Attorney’s Office (“DANY”), the Federal Reserve Board of Governors and the Federal Reserve Bank of New York (collectively, the “Federal Reserve”), and the New York State Department of Financial Services (“NYDFS”).

<sup>2</sup> Société Générale’s \$1.34 billion global settlement amount is second only to the nearly \$8.9 billion in penalties paid by BNP Paribas in June 2014. [The Seven Largest Sanctions-Related Fines Against Banks](#), AMERICAN BANKER (June 30, 2014, 4:00 PM).

<sup>3</sup> During much of the period in question, the ITSR were known as the Iranian Transactions Regulations, or the ITR.

<sup>4</sup> In October 2017, the U.S. government revoked the SSR. However, parties may still face liability for historical violations of the SSR that occurred prior to their revocation.

- **Sudan:** Between May 2007 and November 2008, PRGE originated Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) payment messages for a Sudanese government-owned entity that referenced a mailing address in France, rather than the entity’s physical address in Sudan (the address specified in BDDF’s client database). As a result, the Sudan-related transactions were not flagged by Société Générale’s interdiction software. In addition, between December 2008 and January 2009, PRGE employees manually resubmitted payments—initially flagged by interdiction software—under the French mailing address, to conceal that the payments related to Sudan. In total, between July 2007 and March 2012, Société Générale processed approximately 251 payments, totaling \$22,486,039.61, in violation of the SSR.
- **Cuba:** Between July 2007 and October 2010, Société Générale’s Natural Resources and Energy Financing Department within GLFI participated in numerous credit facilities that involved Cuban parties and that were designed to finance various Cuba-related activities, including Cuban oil exploration and production. The facilities involved revolving loans that were processed in USD and Euros, and Société Générale cleared hundreds of transactions pursuant to the credit facilities through the United States, including through its own U.S. branch. In total, between July 2007 and December 2010, Société Générale processed 796 transactions, totaling \$5,503,813,992.25, in violation of the CACR.
- **Iran:** Between November 2008 and December 2010, Société Générale processed transactions through U.S. financial institutions pursuant to credit facilities that were designed to finance various Iran-related activities. Société Générale’s Tokyo branch agreed to route certain transactions to or through the United States on behalf of one of the parties to the Iran-related credit facilities. Société Générale stopped processing the Iran-related transactions after receiving advice from U.S. outside counsel that any handling by a U.S. person of payments made by Iranian borrowers would violate the ITSR. In total, between November 2008 and December 2010, Société Générale processed 30 transactions, totaling \$34,152,962.50, in violation of the ITSR.

### *Settlement*

OFAC determined that Société Générale committed 1,077 violations of U.S. sanctions that, despite being voluntarily disclosed, constituted egregious violations. OFAC calculated a base penalty of \$101,630,490.80, which was reduced to a final settlement amount of \$53,996,916.05.

In determining the settlement amount, OFAC identified several aggravating factors, including Société Générale’s reckless disregard for U.S. sanctions compliance (as well as actual knowledge of the violations by certain employees), Société Générale’s size and commercial sophistication, and the value of the underlying violations and attendant harm to the policy objectives of multiple U.S. sanctions programs. Société Générale received mitigating credit for voluntary self-disclosure of the apparent violations, history of sanctions compliance, extensive cooperation with OFAC (including a thorough internal investigation and multiple statute of limitation tolling agreements), and remedial actions. OFAC noted, in particular, that Société Générale (1) created a centralized sanctions compliance function; (2) hired new compliance personnel and tripled the size of its compliance budget; and (3) implemented an enhanced sanction compliance training program that includes group-wide general compliance training as well as more targeted, in-person training for higher risk employees. In addition, pursuant to a separate, \$420 million settlement with NYDFS, Société Générale is required to engage an independent compliance consultant to review and assess the bank’s improvements to its anti-money laundering compliance program.<sup>5</sup>

<sup>5</sup> Press Release, NYDFS, [DFS Fines Société Générale SA and its New York Branch \\$420 Million for Violations of Law Governing Economic Sanctions and Violations of New York Anti-Money Laundering and Recordkeeping Laws](#) (Nov. 19, 2018).

## Key Takeaways

### *OFAC Enforcement Activity Has Not Halted*

Prior to the Société Générale settlement, OFAC enforcement activity in 2018 was trending toward a historic low, with only three enforcement actions announced year to date (one of which marked the final resolution of a penalty originally issued in 2014). The lull in enforcement activity prior to this settlement led some observers to question whether OFAC, under the Trump administration, had de-prioritized enforcement of U.S. sanctions. The Société Générale settlement demonstrates that the temporary slow down in enforcement activity likely was due instead to the natural ebb and flow of enforcement actions, as well as the significant regulatory developments that OFAC has been busy implementing over the past year. Of note, most of the underlying sanctions violations occurred between 6 and 11 years ago, illustrating that major OFAC enforcement actions can take years to resolve.

### *Financial Institutions Remain Under Scrutiny*

Between 2004 and 2015, OFAC and other U.S. regulators completed a sweep of the financial services industry, which produced over a dozen major sanctions settlements with leading U.S. and non-U.S. financial institutions. The conduct described in the Société Générale settlement agreement is similar to the conduct at issue in these past enforcement actions targeting financial institutions. And, in fact, the OFAC settlement states that: “Beginning in mid-2004, various units within [Société Générale] began undertaking a number of efforts to improve sanctions compliance at the bank, partly in response to certain U.S. government enforcement actions against non-U.S. banks for sanctions-related violations.” In response to the industry sweep, many financial institutions made significant investments in their economic sanctions compliance programs.

Since 2015, sanctions-related enforcement activity has largely focused on non-financial institutions’ compliance with U.S. economic sanctions. For example, many significant enforcement actions over the past two years involved companies operating in the telecommunications (Zhonxing Telecommunications Equipment Corporation (“ZTE”) and CSE TransTel Pte. Ltd (“TransTel”)), oil and gas (National Oilwell Varco and ExxonMobil), and life sciences (Alcon Laboratories, Inc.) industries.

However, the Société Générale settlement is one of several indicators that OFAC continues to scrutinize financial institutions. Last month, OFAC imposed a \$5.26 million penalty against JPMorgan Chase Bank, N.A. to resolve apparent violations of CACR, ITSR, and the Weapons of Mass Destruction Proliferators Sanctions Regulations. In addition, according to public reporting, there are additional enforcement actions targeting non-U.S. financial institutions in the pipeline. Standard Chartered PLC, which paid a multimillion dollar penalty in 2012 to resolve sanctions violations, reportedly is in negotiations with U.S. regulators regarding additional violations, with fines expected to exceed \$1 billion.<sup>6</sup> And, CBZ Bank of Zimbabwe has been negotiating with OFAC to resolve several thousand apparent violations of U.S. sanctions, with significant potential exposure.<sup>7</sup>

Also noteworthy is that the Société Générale settlement focused, in part, on the bank’s stripping of sanctioned country information from SWIFT messages. The OFAC settlement agreement states that Société Générale “processed certain transactions in a non-transparent manner that removed, omitted, obscured, or otherwise failed to include references to OFAC-sanctioned parties in the information sent to the U.S. financial institutions that were involved in the transactions.”

In connection with the recent re-imposition of secondary sanctions targeting Iran, the U.S. has threatened to pursue sanctions against SWIFT if the network processes payments for sanctioned Iranian financial institutions. The efficacy of the re-imposed Iran sanctions will depend, in significant part, on the cooperation (voluntary or coerced) of the SWIFT

<sup>6</sup> Margot Patrick and Aruna Viswanatha, [Standard Chartered Seeks Resolution With U.S. Over Iran Sanctions Breaches](#), THE WALL STREET JOURNAL (Oct. 9, 2018, 2:08 PM).

<sup>7</sup> *CBZ not worried by OFAC penalty*, BUSINESS DAILY (Sept. 7, 2018).

network and non-U.S. financial institutions, and therefore it is likely that OFAC will closely scrutinize these entities' activities in the coming months.

### *OFAC's Reach Is Wide*

Recent enforcement actions—including the ZTE and TransTel actions—have demonstrated OFAC's willingness to aggressively pursue non-U.S. entities for violations of U.S. sanctions, even where the underlying conduct primarily occurred outside of the United States. The Société Générale settlement underscores the particular difficulty of processing USD payments without invoking U.S. jurisdiction, as most USD transactions ultimately are cleared through an account in the United States or at the foreign branch of a U.S. financial institution. According to a DOJ press release, Société Générale's internal investigation "was triggered by the blocking [of transactions] by other U.S. financial institutions," which is a common way that OFAC violations are surfaced.<sup>8</sup>

### *Cooperation And Effective Remediation Can Go A Long Way With OFAC*

Despite committing over 1,000 egregious sanctions violations—which included the creation of documented procedures for evading U.S. sanctions—Société Générale received significant mitigation credit, and ultimately paid only 53% of the base penalty amount calculated by OFAC. In addition to submitting a voluntary disclosure and agreeing to toll the statute of limitations (which increasingly appears to be an OFAC expectation to secure cooperation credit), Société Générale appears to have undertaken an extensive internal investigation, spanning multiple years and business lines. In addition, the bank appears to have implemented significant compliance enhancements, at significant financial cost (tripling its compliance budget). The Société Générale settlement underscores that parties who voluntarily disclose U.S. sanctions violations and cooperate with OFAC have a realistic expectation of securing meaningful mitigation credit.

### *Continued Multiagency Enforcement Complicates The Self-Disclosure Analysis*

In recent years, multiagency enforcement of sanctions violations has become increasingly common and, in some cases, has resulted in the imposition of massive civil and criminal monetary penalties. In addition to the \$53,996,916.05 owed to OFAC, Société Générale will be required to forfeit \$717,200,000 to DOJ and to pay additional penalties of \$162,800,000 to DANY, \$81,265,000 to the Federal Reserve, and \$325,000,000 to NYDFS.

In a world where self-disclosure foreseeably may result in multiple penalty payments for overlapping conduct—as well as a prolonged and expensive resolution process involving multiple government agencies—parties may be tempted to forego voluntary disclosure, notwithstanding OFAC's strong track record of according meaningful disclosure and cooperation credit.

## **Conclusion**

The Société Générale settlement represents the largest enforcement action of 2018 thus far and may signal additional, aggressive enforcement actions against both financial institutions and non-financial institutions. As U.S. sanctions continue to increase in complexity and extraterritorial scope, U.S. and non-U.S. entities should consider re-assessing their sanctions risk profile and related controls in order to mitigate the risk of a debilitating compliance event.

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<sup>8</sup> Press Release, DOJ, [Manhattan U.S. Attorney Announces Criminal Charges Against Société Générale S.A. For Violations Of The Trading With The Enemy Act](#) (Nov. 19, 2018).