An ALM Publication

THE AMERICAN LAWYER

THE AM LAW LITIGATION DAILY

Daily Dicta: For Skadden Client SocGen, a $1.3B Slap on the Wrist

By Jenna Greene
November 20, 2018

File this under the heading "It could have been much worse."

On Monday, Skadden, Arps, Slate, Meagher & Flom client Société Générale S.A. agreed to pay $1.34 billion in fines for violating U.S. economic sanctions by processing transactions with entities in Cuba, Sudan and Iran.

It sounds like a lot of money. But when compared to penalties levied against fellow French banking giants BNP Paribas and Crédit Agricole SA for similar misconduct, it appears the Skadden team led by partners Keith Krakaur, Ryan Junck and Jamie Boucher got SocGen a very good deal indeed.

According to documents filed Monday in Manhattan federal court, SocGen processed more than 2,500 sanctions-violating transactions through U.S. financial institutions, avoiding detection in part "by making inaccurate or incomplete notations on payment messages that accompanied these sanctions-violating transactions."

But despite the deliberate wrongdoing, SocGen didn't enter a guilty plea—the bank got a three-year deferred prosecution agreement.

For a financial institution, a felony conviction could be catastrophic—potentially resulting in the loss of its banking licenses, its ability to manage pension funds, its status at the U.S. Securities and Exchange Commission as a well-known seasoned issuer or other designations.

Photo by Diego M. Radzinschi/NLJ

Skadden, Arps, Slate, Meagher & Flom Washington, D.C. offices. June 19, 2015.

In 2014, BNP Paribas was forced to plead guilty at the parent-company-level to criminal wrongdoing for sanctions violations also involving Cuban, Sudanese and Iranian entities.

(Though in reality, the consequences of the plea weren't so bad—in the end, the biggest thing that happened was the New York State Department of Financial Services made BNP suspend U.S. dollar clearing operations through its New York branch and other affiliates for one year on certain business lines.)

Still, there's no question being spared a criminal plea is a win for SocGen.

SocGen also doesn't have to hire an outside monitor.

For that reprieve, the bank might thank DOJ's new Criminal Division head, Brian Benczkowski, a former partner at Kirkland & Ellis. Last month, he issued new guidelines calling on prosecutors to factor in the burden and cost of imposing monitors against the benefits. Suffice to say it's a popular position with defense counsel.

By contrast, BNP had to hire former Southern District of New York prosecutor Shirah Neiman of SN Compliance as its compliance monitor.

Crédit Agricole SA, which got busted in 2015 for sanctions violations involving Cuba, Sudan and Iran (plus Burma), was required to retain a compliance consultant selected by the New York State Department of Financial Services for one year.

Then there's the question of SocGen's actual fine. It's the second-highest penalty ever for such a sanctions violation—but by one measure, it's still incredibly low.

Here's the way I figure it.

BNP's fine was an eye-popping $9 billion. It covered wrongdoing from 2004 to 2012, and involved allegations of improperly moving $8.8 billion in funds. That works out to just over $1 dollar in penalties for every $1 dollar it illegally moved.

Crédit Agricole's fine was $787 million. It covered wrongdoing from 2003 to 2008 and involved allegations of moving $312 million in funds. That works out to the equivalent of $2.50 in penalties per dollar moved.

And then there's SocGen.

From 2004 to 2010, it allegedly moved nearly $13 billion in funds "that otherwise should have been rejected, blocked, or stopped for investigation," according to the government. And it will pay $1.34 billion in fines.

That's about 10 cents per dollar moved. Or the equivalent of 10 times less than what BNP shelled out, and 25 times less than Crédit Agricole.

Yes, it's a crude metric. Yes, of course there are other variables. For example, DOJ said SocGen undertook a "thorough internal investigation," cooperated with discovery, and has revamped its compliance controls.

But still.

Unless maybe the real reason SocGen got off so lightly was because they had better lawyers than the other banks?

Um. Well. Skadden represented all three.

I can't help but conclude this penalty speaks volumes about the toughness—or lack thereof—of Trump administration prosecutors. They talk the talk in press releases about how "Other banks should take heed: Enforcement of U.S. sanctions laws is, and will continue to be, a top priority of this office and our partner agencies," as SDNY U.S. Attorney Geoffrey Berman put it.

But when you do the math, the penalty looks more like a nuisance than deterrent.

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