

Analysis of Sanctions Enforcement Actions

DOES OFAC PLAY FAVORITES?

**ERIC SOHN, DIRECTOR OF BUSINESS PRODUCT,
DOW JONES RISK & COMPLIANCE**

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While there are many pieces of U.S. sanctions-related legisla-

These amounts are applicable to all violations with respect to which enforcement action is pending or commenced on or after October 16, 2007. OFAC interprets this provision to mean that the new civil penalty provisions apply to all violations with respect to which a Final Penalty Notice had not been issued as of October 16, 2007.

This explains why, with (l)-1elome exceptions for proceedings already in

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Analysis of the enforcement

Clearstream Banking¹⁷ and BNP Paribas.¹⁸ And OFAC reduces penalties in large cases when the firms agree to settle; the firms where this wording appears in the enforcement action paid just over 58% of the base penalty, which is well within the range between the averages paid by firms with the aforementioned aggravating factors, and those paid by firms whose settlements mentioned the corresponding mitigating factors.

OTHER CONSIDERATIONS

Since the American Express Travel Related Services and JPMorgan Chase enforcement actions are the only US-based firms to draw fines of note, one must look to non-regulatory reasons to determine why foreign financial firms seem to draw more civil monetary penalties of higher amounts.

– Compared to the number of foreign financial institutions with U.S. operations, the number of U.S. firms with foreign operations is very small. There are only a handful of U.S. banks with significant overseas business, with Bank of America, JPMorgan Chase, BNY Mellon, Citibank, Northern

not. The violations committed by the domestic firms are either a result of program deficiencies (systems, training or procedures) and/or negligence in addressing identified sanctions exposures. It is likely that willful behavior is regarded as significantly more serious than recklessly negligent behavior, which would raise the overall penalty amount.

When behavior by American firms was particularly egregious, the penalties reflected that fact, to the extent available under the regulations. The penalty meted out to American Express Travel Related Services, for example, was 44% higher than the base penalty.¹⁹ And the Bank of America CMP, while only around 20% of the base penalty, was still over 18,000 times larger than the amount of the underlying transactions. None of the largest penalties to foreign financial firms showed either of those characteristics (although ING Bank's final penalty in 2012²⁰ was almost as large as the base amount).

WHAT'S NEXT?

Beyond the March 2015 enforcement action against Commerzbank AG, which drew a combined \$1.45 billion penalty paid to a mix of federal and state agencies, and any other investigations already in prog(o)-15.11v w

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