



NORTH CAROLINA
BANKING INSTITUTE

Volume 19 | Issue 1

Article 12

3-1-2015

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Recommended Citation

Jason A. Burner, *The Tour de Fraud: What Foreign Banks Can Learn From the BNP Paribas Settlement*, 19 N.C. BANKING INST. 191 (2015).

Available at: <http://scholarship.law.unc.edu/ncbi/vol19/iss1/12>

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I. INTRODUCTION

On April 9, 1995, a U.S. college student studying abroad was gravely wounded and subsequently died when a suicide bomber blew up her bus in Israel.¹ The bombing was carried out by the Shaqiqi faction of the Palestinian Islamic Jihad, a terrorist organization funded by the Islamic Republic of Iran (“Iran”).² Distraught over his daughter’s death, Stephen Flatow filed a lawsuit against Iran.³ When Iran did not pay the \$250 million in damages awarded by the court, Mr. Flatow sought to collect damages from the Alavi Foundation, a charity which he alleged was a front for the Iranian government.⁴

A Manhattan district attorney investigated Mr. Flatow’s accusation and discovered that Iran completely controlled the charity.⁵ An examination of the charity’s bank records did not reveal any transactions with Iranian banks as the authorities had suspected, but instead revealed transactions with Credit Suisse AG (“Credit Suisse”).⁶ As this information became public, whistleblowers came forward providing more information about Credit Suisse’s illegal activities.⁷ The success of these whistleblowers led another whistleblower to approach the Manhattan district attorney’s office with stories of BNP Paribas, S.A.’s (“BNPP”) ties to Iran and the genocidal regime then in power in Sudan.⁸ This man’s story would lead to the largest prosecution of a foreign bank in U.S. history and the largest financial

1. *In re Islamic Republic of Iran Terrorism Litig.*, 659 F.Supp.2d 31, 44 (D.D.C. 2009).

2. *Flatow v. Islamic Republic of Iran*, 308 F.3d 1065, 1066–67 (9th Cir. 2002).

3. *Flatow v. Islamic Republic of Iran*, 999 F.Supp. 1, 5 (D.D.C. 1998).

4. Jessica Silver-Greenberg & Ben Protess, *A Grieving Father Pulls a Thread That Unravels BNPs Illegal Deals*, N.Y. TIMES, June 30, 2014, at A1.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

penalty ever levied against a foreign bank.⁹

In June 2014, BNPP settled with the United States Department of Justice (“DOJ”) and the New York Department of Financial Services (“DFS”) for approximately \$8.9 billion.¹⁰ Since BNPP is the largest bank in France and fourth largest in the world by total assets, the settlement is significant because of its potential effect on European and global financial markets.¹¹ This Note examines BNPP’s protracted and deliberate violations of U.S. trade sanctions and analyzes why the settlement was so large. The actions that led to the historic BNPP settlement are: (1) trade sanctions violations at all levels of the company, (2) deliberate attempts to hide continued illegal activity during the investigation of other foreign banks, and (3) lack of cooperation during the investigation of BNPP.¹² This Note specifically addresses BNPP’s prioritization of profit over compliance and its lack of cooperation with regulators’ investigations.¹³ The goal of this Note is to illuminate what other foreign banks can learn from BNPP’s actions.

This Note proceeds in five parts. Part II provides a brief discussion of U.S. trade sanction law.¹⁴ Part III reviews three selected foreign bank settlements prior to BNPP’s settlement.¹⁵ Part IV outlines the BNPP case and the actions that lead to such a large sanction and settlement.¹⁶ Part V discusses BNPP’s lack of cooperation and compliance and how this affected the settlement.¹⁷ Part VI concludes by examining the implications of the sanction and the lessons that foreign banks can learn from BNPP’s actions.¹⁸

9. *Id.*

10. *Id.*

11. Maria Tor & Saad Sarfarz, *Largest 100 Banks in the World*, SNL DATA DISPATCH (Dec. 23, 2013), <https://www.snl.com/InteractiveX/Article.aspx?cdid=A-26316576-11566>.

12. Paul L. Lee, *Compliance Lessons from OFAC Case Studies—Part II*, 131 BANKING L. J. 717, 749 (2014).

13. The phrase “profit over compliance” is taken from a N.Y. TIMES article which posits that one of the issues U.S. regulators want to change through prosecution is the cultural issue of foreign companies putting profit over compliance. Ben Protess & Jessica Silver-Greenberg, *Repeat Offenses Are Suspected on Wall Street*, N.Y. TIMES, Oct. 30, 2014, at A1.

14. *See infra* Part II.

15. *See infra* Part III.

16. *See infra* Part IV.

17. *See infra* Part V.

18. *See infra* Part VI.

II. U.S. TRADE SANCTION LAWS

In the last five years, there have been seven investigations of banks for allegedly violating trade sanctions by failing to comply with the Trading with the Enemy Act of 1917 (“TWEA”) and the International Emergency Economic Powers Act (“IEEPA”).¹⁹ Passed during World War I as a means to curtail the success of the Central Powers,²⁰ TWEA provides that:

[d]uring a time of war, the President may, through any agency that he may designate, . . . investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States.²¹

TWEA’s broad language was supplemented with the passage of IEEPA in 1977.²² IEEPA gives the President the power “to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.”²³ By declaring a national emergency the President may investigate, regulate and prohibit:

19. Paul L. Lee, *Compliance Lessons From OFAC Case Studies—Part I*, 131 *BANKING L. J.* 657, 658 (2014).

20. “Central Powers” is the commonly accepted term used to describe the coalition of forces fought by the United States during World War I, including Germany, Austria-Hungary, the Ottoman Empire, and Bulgaria. M. Cherif Bassiouni, *World War I: “The War to End All Wars” and the Birth of a Handicapped International Criminal Justice System*, 30 *DENV. J. INT’L L. & POL’Y* 244, 245–46 (2002).

21. 50 U.S.C. app. § 5(b)(1) (2012).

22. *Regan v. Wald*, 468 U.S. 222, 228 (1984).

23. 50 U.S.C. § 1701(a) (2012).

(i) any transactions in foreign exchange, (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof, (iii) the importing or exporting of currency or securities, by any person, or with respect to any property, subject to the jurisdiction of the United States.²⁴

IEEPA also directly states that “[i]t shall be unlawful for a person to violate, attempt to violate, *conspire to violate*, or cause a violation of any license, order, regulation, or prohibition issued under this chapter.”²⁵ While TWEA and IEEPA are not the only laws covering trade sanctions, recent cases have been prosecuted under TWEA, IEEPA, and the corresponding legislation from the State of New York.²⁶

The United States currently has issued economic sanctions against twenty-six different entities, twenty of which are countries.²⁷ The recent BNPP settlement involves transactions violating the sanctions against Cuba,²⁸ Sudan,²⁹ and Iran.³⁰ As a result of current

24. § 1702 (a)(1)(A)–(B).

25. § 1705(a) (emphasis added).

26. The relevant New York statutes are Penal Law § 175.05 and § 175.10 which address the falsification of business records. These were the only NY related charges that BNPP plead guilty to and refer to BNPP’s modification and falsification of information on various types of financial transfer documents. Statement of Facts in Support of BNP Paribas Plea Agreement ¶ 7, *United States v. BNP Paribas, S.A.*, No. 14-CR-00460 (S.D.N.Y. July 10, 2014) [hereinafter BNPP Statement of Facts], *available at* <http://www.justice.gov/sites/default/files/opa/legacy/2014/06/30/statement-of-facts.pdf>.

27. *Sanctions Programs and Country Information*, U.S. DEP’T OF THE TREASURY, <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> (last updated Feb. 6, 2015, 3:06 PM).

28. In 1960 and 1962, President John F. Kennedy issued executive orders declaring the Cuban Government a threat to the U.S. These executive orders leveled economic sanctions against the island nation that remain in place today. BNPP Statement of the Facts, *supra* note 26, ¶ 11.

29. In November 1997, President Clinton invoked the power of the IEEPA and issued an executive order imposing trade sanctions against the property and interests of the Government of Sudan in the United States or within the possession or control of U.S. persons. Exec. Order No. 13,067, 3 C.F.R. 59989 (1997). President Bush also employed the executive powers of the IEEPA, strengthening these sanctions in October 2006. Exec. Order No. 13412, 3 C.F.R. 61369 (2006).

30. In March 1995, President Clinton, through the IEEPA, issued Executive Order 12957 and commenced economic sanctions against the Government of Iran. Subsequent

trade sanctions, there is a virtually complete prohibition of trade and investment activities involving the U.S. financial system in these countries.³¹ The processing of U.S. dollar transactions is included in the prohibition.³² Enforcement of trade sanctions falls to the Department of Treasury's Office of Foreign Asset Control ("OFAC").³³ Trade sanctions are enforced through a variety of penalties authorized by IEEPA and TWEA. IEEPA allows for both civil and criminal penalties that carry fines as high as \$250,000 per transaction or a maximum fine of \$1,000,000 respectively.³⁴ TWEA authorizes civil penalties of up to \$65,000 for each transaction.³⁵ Beyond these statutes, many of the country-specific sanctions set up by Congress contain express provisions governing enforcement and penalties.³⁶

III. FOREIGN BANK TROUBLES WITH U.S. SANCTION LAWS

The complex financial regulatory scheme employed by U.S. regulators has been a source of consternation and litigation for foreign banks with branches inside the United States³⁷ One of the primary reasons for this difficulty seems to be the cultural differences on the issue of economic sanctions between the United States and European banks.³⁸ The Executive Vice President of the Federal Reserve Bank of New York explained this issue by saying, "[foreign] institutions looked

executive orders, and regulations issued by OFAC, prohibited substantially all trade and investment activities between the U.S. and Iranian entities. *Id.* ¶ 8; *see also* 31 C.F.R. pt. 560 (2014). Until November 2008, the only transactions financial institutions could conduct on behalf of Iranian entities were "U-Turn" transactions. A "U-Turn" transaction requires the transaction start at an off-shore non-Iranian bank and only pass through the U.S. on the way to another non-Iranian foreign bank. Order Pursuant to Banking Law § 39 at 6–8, *In re* Standard Chartered Bank, New York Branch, N.Y. Dep't of Fin. Servs. (Aug. 6, 2012) [hereinafter Standard Chartered, Order Pursuant to Banking Law § 39], *available at* <http://www.dfs.ny.gov/about/ea/ea120806.pdf>.

31. BNPP Statement of the Facts, *supra* note 26, ¶¶ 3–13.

32. *Id.* ¶ 14.

33. Settlement Agreement ¶ 1, U.S. Dep't of the Treasury and HSBC Holdings PLC (Dec. 11, 2012), *available at* http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/121211_HSBC_Settlement.pdf [hereinafter Settlement Agreement, HSBC].

34. 50 U.S.C. § 1705 (2012).

35. *Frequently Asked Questions and Answers*, OFFICE OF FOREIGN ASSET CONTROL, U.S. DEP'T OF THE TREASURY (Oct. 8, 2013), <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#12>.

36. *See generally* 31 C.F.R. § 560.701 (2014).

37. *See Lee, Part I, supra* note 19, at 659.

38. *Lee, Part II, supra* note 12, at 764.

at [U.S.] economic sanctions very differently [than U.S. institutions]. They looked at economic sanctions as technical ‘American’ rules that were not seen as consistent with the organization’s and the home country’s larger value system.”³⁹

Before the BNPP settlement in June 2014, the DOJ and DFS prosecuted and settled with three other foreign banks—Credit Suisse, HSBC Holdings (“HSBC Group”), and Standard Chartered Bank (“Standard Chartered”).⁴⁰ While the settlements in these three cases were large, none compared to BNPP’s roughly \$9 billion settlement.⁴¹ Understanding the facts of these cases provides a comparison to the actions of BNPP and how U.S. regulators addressed BNPP’s trade sanction violations.

A. *Credit Suisse*

In 2009, Credit Suisse forfeited \$536 million for violating the IEEPA and New York State laws, at the time the largest settlement in history.⁴² Credit Suisse’s violations began in 1995 when it modified wire transfers from Iranian and Sudanese clients to avoid U.S. regulators.⁴³ Credit Suisse helped its clients who were subject to sanctions clear hundreds of millions of dollars through the U.S. financial system by removing material information, such as names and bank information, from wire transfers and training clients to falsify wire transfers.⁴⁴ Under review of its leadership, Credit Suisse purposefully

39. Thomas C. Baxter, Exec. Vice President and Gen. Counsel, Fed. Reserve Bank of N.Y., Remarks at “The New Compliance Landscape: Increasing Roles – Increasing Risks” Conference (Jul. 23, 2014) (transcript available at <http://www.ny.frb.org/newsevents/speeches/2014/bax072314.html>).

40. In addition to the settlements with the aforementioned banks, the DOJ has also settled with ABN AMRO Bank N.V., Lloyds TSB Bank PLC, Barclays Bank PLC, Tokyo–Mitsubishi UFJ, Ltd., and The Royal Bank of Scotland for similar violations of trade sanction laws. Credit Suisse, HSBC Holdings, and Standard Chartered were selected for comparison because of the similarity of the violations and size of penalty. Lee, *Part II*, *supra* note 12, at 717.

41. Lee, *Part I*, *supra* note 19, at 674-75.

42. Press Release, U.S. Dep’t of Justice, Credit Suisse Agrees to Forfeit \$536 Million in Connection with Violations of the International Emergency Economic Powers Act and New York State Law (Dec. 16, 2009) [hereinafter Press Release, Credit Suisse], *available at* <http://www.justice.gov/opa/pr/2009/December/09-ag-1358.html>.

43. *Id.*

44. Factual Statement in Support of Credit Suisse Deferred Prosecution Agreement ¶¶ 5–6, *United States v. Credit Suisse AG*, No. CR-09-352 (D.D.C. Dec. 16, 2009) [hereinafter Credit Suisse Factual Statement], *available at*

put this system in place in order to help increase current and future business with Iranian entities.⁴⁵ In 1998, to protect the New York branch of Credit Suisse and Iranian clients, the company reorganized and transferred all activities pertaining to Iran away from the New York office to other Credit Suisse branches or other non-affiliated U.S. banks.⁴⁶ After successfully moving Iranian transactions away from the New York branch and U.S. regulators, Credit Suisse published a pamphlet for Iranian clients entitled, “[h]ow to transfer USD payments.”⁴⁷ In the pamphlet, Credit Suisse explained how to circumvent OFAC filters and prevent U.S. government investigations.⁴⁸

While Credit Suisse intentionally tried to deceive U.S. regulators about its transactions on behalf of Iranian clients, its cooperation after terminating these relationships helped lessen the penalty handed down by OFAC.⁴⁹ When asked by the DOJ for information and assistance in its investigation, Credit Suisse provided all the relevant information possible and discontinued the illegal activities.⁵⁰ Moreover, Credit Suisse conducted its own internal investigation into U.S. dollar-clearing services for Specially Designated Nationals (“SDNs”)⁵¹ and a six-year review of incoming and outgoing Society for Worldwide Interbank Financial Telecommunication (“SWIFT”)⁵² payments.⁵³ The DOJ noted the concerted efforts by

<http://www.justice.gov/criminal/pr/documents/12-16-09-CreditSuisse-factualstatement.pdf>.

45. Press Release, Credit Suisse, *supra* note 42.

46. Credit Suisse Factual Statement, *supra* note 44, ¶ 22.

47. Press Release, Credit Suisse, *supra* note 42.

48. Credit Suisse Factual Statement, *supra* note 44, ¶ 24.

49. *See id.* ¶ 57–58.

50. *Id.* ¶ 58.

51. The U.S. Dep’t of Treasury defines SDNs as “individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. [The SDN list also includes] individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific.” OFFICE OF FOREIGN ASSET CONTROL, *supra* note 35.

52. SWIFT messages are the standard messages used in various types of bank transfers. For this Note, only SWIFT MT 202 and 103 messages are relevant as they were the SWIFT messages most often modified by the banks. SWIFT MT 202 is the standard message used for bank-to-bank credit transfers. SWIFT MT 103 is the standard message for cross-border customer credit transfers. These messages require information on the originating party and the beneficiary of the payment. MT 202 messages do not require any disclosure of information about originator or beneficiary of the payment. Lee, *Part I*, *supra* note 19, at 667.

53. Credit Suisse Factual Statement, *supra* note 44, ¶ 58; *see also* Press Release, Credit Suisse, *supra* note 42.

Credit Suisse in identifying mistakes and rectifying the problem, since discovering it in 2006.⁵⁴ On its own accord, Credit Suisse changed its corporate policies, designated employees with the sole purpose of monitoring compliance with U.S. sanctions programs, added U.S. sanctions materials to training for new employees, and implemented new filters for screening transactions.⁵⁵

B. HSBC Group's Violations and Settlement

In December 2012, approximately three years after the Credit Suisse settlement, HSBC Group settled with the DOJ for \$1.256 billion for violating the IEEPA and TWEA.⁵⁶ The actions that led to the HSBC Group settlement began when HSBC Group helped customers circumvent sanctions imposed on them by OFAC.⁵⁷ Specifically, from the mid-1990s through 2006, HSBC Group processed over \$600 million in transactions for these customers by omitting names from payment messages, removing information identifying sanctioned countries, and utilizing cover payments to avoid detection by bank filters.⁵⁸ Compliance officers at the U.S. branch of HSBC Group voiced concerns about the use of cover payments and other methods used to shield OFAC sanctioned countries.⁵⁹ In 2005, HSBC Group Compliance issued a policy prohibiting all HSBC affiliates from processing U.S. dollar transactions that were prohibited by OFAC.⁶⁰ Despite the issuance of this policy, the transactions continued to occur.⁶¹ Once the U.S. regulators' investigation began, HSBC Group closed U.S. dollar accounts of Burmese, Cuban, and Sudanese affiliate banks at all affiliate locations, in addition to terminating and prohibiting all new

54. Press Release, Credit Suisse, *supra* note 42.

55. Credit Suisse Factual Statement, *supra* note 44, ¶¶ 57–58.

56. Press Release, U.S. Dep't of Justice, HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement (Dec. 11, 2012) [hereinafter Press Release, HSBC Holdings], available at <http://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations>.

57. HSBC conducted transactions on behalf of Cuba, Iran, Libya, Sudan, and Burma (Myanmar). *Id.*

58. *Id.*

59. Settlement Agreement, HSBC, *supra* note 33, ¶¶ 5–7.

60. *Id.* ¶ 10.

61. *Id.* ¶ 11.

business with Iranian customers.⁶² OFAC noted in the settlement agreement with HSBC Group that HSBC Group had conducted its own internal review of transactions and had provided written statements about transactions that appeared to have violated sanction laws.⁶³ OFAC also noted how HSBC Group responded promptly to OFAC's requests for information and provided substantial and well-organized material so as to aid in its investigation.⁶⁴

C. *Standard Chartered's Violations and Settlement*

Later in December 2012, the DOJ entered into a \$227 million settlement with Standard Chartered for IEEPA violations.⁶⁵ Standard Chartered came under investigation by the DOJ, OFAC, and DFS for allegedly conducting U.S. dollar transactions on behalf of Iranian, Sudanese, Libyan, and Burmese entities.⁶⁶ In order to ensure that the transactions cleared bank regulators, Standard Chartered employed the following techniques: changing the banking code in payment messages; deleting payment data that revealed the identity of sanctioned entities; and replacing the name of sanctioned entities with special characters.⁶⁷ The New York office of Standard Chartered processed millions of these U.S. dollar-clearing transactions for sanctioned countries, but did not tamper with the transactions.⁶⁸ The tampering primarily took place in the London and Dubai offices of Standard Chartered, where senior corporate management and compliance officials in London knew and approved of these activities.⁶⁹

Senior global management knew of Standard Chartered's illegal

62. *Id.* ¶ 28.

63. *Id.* ¶ 29.

64. *Id.*

65. Press Release, U.S. Dep't of Justice, Standard Chartered Bank Agrees to Forfeit \$227 Million for Illegal Transactions with Iran, Sudan, Libya, and Burma (Dec. 10, 2012) [hereinafter Press Release, Standard Chartered], available at <http://www.justice.gov/opa/pr/2012/December/12-crm-1467.html>.

66. *Id.*

67. Standard Chartered, Order Pursuant to Banking Law § 39, *supra* note 30, at 2.

68. Press Release, Standard Chartered, *supra* note 65.

69. *Id.*; see also Standard Chartered, Order Pursuant to Banking Law § 39, *supra* note 60, at 8 (“[Standard Chartered’s] success in U.S. dollar-clearing for Iranian Clients stems from the documented willingness of its most senior management to deceive regulators and violate U.S. law. Worse yet, [Standard Chartered] apparently adopted this strategy with full knowledge of the risks involved.”).

transactions on behalf of sanctioned clients and eventually disclosed the violations to OFAC.⁷⁰ As early as 2007 and before OFAC's investigation even began, Standard Chartered terminated its existing business with sanctioned parties and prohibited new business with them.⁷¹ After the investigation began, Standard Chartered cooperated fully by conducting a historical review of its transactions, providing information on apparent violations, and waiving attorney-client privilege in order to provide additional relevant information.⁷² Upon settling with Standard Chartered, New York County District Attorney Cyrus Vance, Jr. remarked that "[t]hese cases give teeth to sanctions enforcement, send a strong message about the need for transparency in international banking, and ultimately contribute to the fight against money laundering and terror financing."⁷³

D. European Banks and U.S. Sanction Laws

Because there were no parallel European sanctions in place for the banks discussed above, the U.S. sanctions were simply without merit.⁷⁴ Additionally, many banks did not understand how the U.S. sanctions applied to their transactions, since they were only connected to the United States through the clearing of U.S. dollar transactions.⁷⁵ While this excuse was viewed as plausible for some time, the prevalence of U.S. regulators' actions concerning U.S. dollar-clearing transactions since 2005 and the revelation that many banks sought U.S. counsel's opinion on the issue casts a shadow over this excuse.⁷⁶ The reason these banks all conducted U.S. dollar-clearing transactions is

70. Settlement Agreement at 6, U.S. Dep't of the Treasury and Standard Chartered Bank (Dec. 10, 2012) [hereinafter Settlement Agreement, Standard Chartered Bank], available at http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/121210_SCB_Settlement.pdf.

71. *Id.*

72. *Id.*

73. Press Release, Standard Chartered, *supra* note 65.

74. Baxter, *supra* note 39.

75. *See Lee, Part I, supra* note 19, at 658-59.

76. The first actions against banks for trade sanction violations in the modern era occurred in 2005 with ABN AMRO Bank N.V. *Id.* at 659. *See generally* Standard Chartered Bank, Order Pursuant to Banking Law § 39, *supra* note 30, at 11 (detailing how Standard Chartered sought outside counsel on the issue of evading U.S. sanction law); BNPP Statement of the Facts, *supra* note 26, at ¶ 30 (detailing how BNPP sought outside counsel on the issue of OFAC sanctions and compliance).

because the U.S. dollar serves as the leading currency for international trade and debt denomination.⁷⁷ It was not until they were investigated by the DOJ that these banks understood the true commitment of U.S. regulators to U.S. sanction laws.

IV. THE BNPP SETTLEMENT

BNPP settled with the U.S. government and the State of New York for approximately \$8.9 billion.⁷⁸ In addition to the financial penalties, BNPP was required to terminate thirteen employees and implement a one-year suspension of all U.S. dollar-clearing operations for the business lines that caused the misconduct.⁷⁹ The actions of BNPP come under both state and federal jurisdiction because there is a branch office of BNPP headquartered in New York, New York.⁸⁰

One of BNPP's core international business lines, and one of the lines involved in the misconduct, is its Corporate Investment Bank ("CIB").⁸¹ The CIB came under scrutiny because it provided certain sanctioned clients with syndicated loans and letters of credit to aid in financing.⁸² In support of these operations, BNPP operates numerous business lines, including the Energy Commodities Export Project ("ECEP").⁸³ The ECEP focuses on providing financing related to oil, petroleum gas, and other commodities.⁸⁴

77. See Linda Goldberg, *What is the Status of the International Roles of the Dollar?*, VOX CTR. FOR ECON. POLICY RESEARCH (Mar. 31, 2010), <http://www.voxeu.org/article/dollar-s-international-roles>; Thierry Bracke & Irina Bunda, *Exchange Rate Anchoring—Is there Still a De Facto US Dollar Standard?* 31 (Jun. 3, 2011) (European Central Bank Working Paper No. 1353), available at <http://ssrn.com/abstract=1857395>.

78. Press Release, U.S. Dep't of Justice, BNP Paribas Agrees to Plead Guilty and to Pay \$8.9 Billion for Illegally Processing Financial Transactions for Countries Subject to U.S. Economic Sanctions (June 30, 2014) [hereinafter Press Release, BNP Paribas], available at <http://www.justice.gov/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial>.

79. *Id.*

80. BNPP Statement of the Facts, *supra* note 26, ¶¶ 1–2; see also Consent Order Under New York Banking Law § 44 at 1, *In re BNP Paribas, S.A.*, New York Branch, N.Y. Dep't of Fin. Servs. (Sept. 21, 2012) [hereinafter BNP Paribas, Consent Order under New York Banking Law § 44], available at <http://www.dfs.ny.gov/about/ea/ea140630.pdf>.

81. BNPP Statement of the Facts, *supra* note 26, ¶ 1.

82. BNP Paribas, Consent Order Under New York Banking Law § 44, *supra* note 80, at 11.

83. *Id.*

84. *Id.*

As a financial institution operating inside the United States, “BNPP [is] prohibited from participating in certain financial transactions for persons, entities, and countries subject to various U.S. economic sanctions.”⁸⁵ The majority of prohibited transactions involve SDNs, which consist of individuals and companies that have their assets blocked from entry into the U.S. financial system.⁸⁶ SDN assets are blocked because they are either owned, controlled, or acting on behalf of specific countries, individuals, groups, or entities against which the United States has leveled sanctions.⁸⁷ In BNPP’s case, the sanctioned countries at issue are Cuba, Sudan, and Iran.⁸⁸

BNPP’s illicit activities began as far back as 1997 and continued through 2012.⁸⁹ During this time, BNPP conspired with and used other banks and financial entities located in or controlled by Sudan, Cuba, and Iran in order to move approximately \$8.9 billion in total through the U.S. financial system on behalf of the sanctioned entities.⁹⁰ During the fifteen years of BNPP’s illicit activity, the conspiracy to benefit the sanctioned countries was conducted in numerous ways including: cover payments,⁹¹ manipulation of information,⁹² and the use of satellite banks.⁹³

A. *BNPP’s Violations with Regard to Sudan*

BNPP created an elaborate system of information manipulation and satellite banks in order to help the Sudanese regime.⁹⁴ The relationship between Sudan and BNPP began after the United States enacted sanctions against Sudan in 1997, as BNPP became the sole correspondent bank for Sudan in Europe.⁹⁵ In this role, BNPP held U.S. dollar accounts for Sudan and allowed it to process U.S. dollar

85. BNPP Statement of the Facts, *supra* note 26, ¶ 2.

86. *Id.*

87. *Id.*

88. *Id.* ¶¶ 3, 8, 11.

89. *Id.* ¶¶ 14, 19.

90. *Id.* ¶ 14 (representing the total amount of money that the DOJ could determine conclusively that BNPP transacted on behalf of the sanctioned parties).

91. *Id.* ¶ 16.

92. *Id.*

93. *Id.* ¶ 18.

94. *Id.* ¶¶ 17–18.

95. *Id.* ¶ 19.

transactions in addition to developing credit for its banks.⁹⁶ Since at least 2002, BNPP served as the “de facto” bank of the Government of Sudan.⁹⁷ BNPP became one of the key financiers of Sudan’s oil industry by providing 90% of the letters of credit in U.S. dollars, which helped to build that industry.⁹⁸ Through BNPP Geneva, BNPP conspired with numerous Sudanese banks and entities as well as financial institutions outside Sudan to violate the U.S. sanctions and provide Sudanese banks and entities access to the U.S. financial system.⁹⁹ In 2003, a senior compliance officer from BNPP Paris told CIB executives that the Geneva office was using cover payments to prevent U.S. investigators from discovering Sudanese transactions.¹⁰⁰ These cover payments required BNPP to modify payment messages from Sudanese entities.¹⁰¹ For example, BNPP Geneva wrote instructions to personnel and sanctioned parties stating, “Do not list in any case the name of Sudanese entities on messages transmitted to American banks or to foreign banks installed in the U.S.”¹⁰²

Another strategy used by BNPP was employing a network of artificially constructed satellite banks that received funds from Sudanese banks in order to mask the transactions on BNPP’s books.¹⁰³ These satellite banks contained accounts specifically used for U.S. dollar transactions, as was made clear by the account opening documents’ statement: “As requested, we hereby confirm that we wish to open the account to facilitate transfers of funds for our mutual

96. *Id.*

97. Kara Scannell, *Payback for BNP, Sudan’s ‘De Facto’ Bank*, FIN. TIMES, (July 1, 2014, 12:12 AM) (quoting James Cole, a senior DOJ official), <http://www.ft.com/intl/cms/s/0/64073d84-00a6-11e4-9a62-00144feab7de.html?siteedition=intl#axzz3EphPufQ7>.

98. BNPP Statement of the Facts, *supra* note 26, ¶ 19.

99. *Id.* ¶ 17.

100. *Id.* ¶ 27.

101. *Id.* ¶ 22.

102. BNP Paribas, Consent Order under New York Banking Law § 44, *supra* note 80, at 6.

103. BNPP Statement of the Facts, *supra* note 26, ¶ 23–24. BNPP developed a two-step process with the regional banks to ensure that no connection could be made to Sudanese entities. First the Sudanese bank would transfer the money to BNPP Geneva and an account specially held by the satellite bank for U.S. dollar transactions. Next, the satellite bank transferred the money through a U.S. bank without any reference to the Sudanese bank. This process meant that all of the transactions looked like they were coming from satellite bank as opposed to a Sudanese bank. BNP Paribas, Consent Order under New York Banking Law § 44, *supra* note 80, at 7.

Sudanese customers.”¹⁰⁴ BNPP leadership recognized the advantages of the satellite banks to Sudanese transactions and believed the banks had a “significant commercial potential, not only in connection with Sudan.”¹⁰⁵ This practice of passing payment through various steps and layers to obscure the origination of the transaction as well as the party involved is called fronting.¹⁰⁶

The majority of these transactions were conducted on behalf of a financial institution owned by the Government of Sudan.¹⁰⁷ In May 2007, OFAC officials and BNPP New York executives discussed the issue of BNPP Geneva conducting U.S. dollar business with Sudan.¹⁰⁸ OFAC requested that BNPP begin an internal investigation of transactions with Sudan and report back to OFAC.¹⁰⁹ The investigation led to the cessation of BNPP U.S. dollar-clearing transactions for Sudan, but not before approximately \$6.4 billion in transactions were processed through BNPP New York.¹¹⁰

B. BNPP’s Violations with Regard to Cuba

BNPP employed a similar system of satellite banks and information manipulation to assist sanctioned Cuban entities in conducting U.S. dollar-clearing transactions.¹¹¹ From 2000 to 2010, the Paris headquarters of BNPP processed U.S. dollar-clearing transactions for Cuban entities in violation of U.S. sanctions against Cuba.¹¹² BNPP manipulated and changed messages on transactions in order to keep them from being blocked by U.S. regulators and participated in eight “Cuban Credit Facilities.”¹¹³ These Cuban Credit Facilities were protected from detection by a fronting scheme approved by BNPP

104. BNP Paribas, Consent Order under New York Banking Law § 44, *supra* note 80, at 7.

105. BNPP Statement of the Facts, *supra* note 26, ¶ 38.

106. *Id.* ¶ 53.

107. BNP Paribas, Consent Order Under New York Banking Law § 44, *supra* note 80, at 6.

108. BNPP Statement of the Facts, *supra* note 26, ¶ 40.

109. *Id.*

110. *Id.* ¶ 41; *see also* BNP Paribas, Consent Order Under New York Banking Law § 44, *supra* note 80, at 6.

111. *Id.* ¶ 50.

112. *Id.* ¶ 49.

113. “Cuban Credit Facilities” provided financing for Cuban entities wanting to do U.S. dollar business with Cuban entities. *Id.* ¶ 50.

compliance officers.¹¹⁴ The fronting scheme involved manipulation of transfers by Cuban entities by removing any mention of Cuba or a related entity, so as to not only avoid detection by U.S. regulators, but also by BNPP New York's screening system.¹¹⁵ ECEP employees at BNPP Paris purposefully excluded references to Cuba and had other banks do the same in order to ensure the transactions were not halted because of sanctions.¹¹⁶ When three transactions were blocked for referencing Cuba, BNPP employees stripped all the references to Cuba and combined the transactions into one transaction in order to fool regulators into thinking the three original transactions were an unrelated new single transaction.¹¹⁷ In total, BNPP conducted at least \$1.747 billion in U.S. dollar transactions on behalf of Cuban entities.¹¹⁸

C. *BNPP's Violations with Regard to Iran*

BNPP created and executed a specific plan to help Iranian entities circumvent U.S. sanctions.¹¹⁹ In 1995, BNPP circulated a memorandum to staff with directions for U.S. dollar denominated transactions involving Iranian clients.¹²⁰ The memorandum told employees, "Do not stipulate in any case the name of Iranian entities on messages transmitted to American banks or to foreign banks installed in the U.S.A."¹²¹

Beginning in 2006, BNPP transacted payments on behalf of an Iranian client ("Iranian Controlled Company 1") regarding three letters of credit.¹²² Iranian Controlled Company 1 was controlled by an Iranian energy group based in Tehran, Iran ("Iranian Energy Group 1").¹²³

114. *Id.*; see also BNP Paribas, Consent Order Under New York Banking Law, *supra* note 80, at 13 (detailing the actions under taken by Cuban Credit Facilities which were very similar to the satellite banks set up to hide transactions on behalf of Sudanese clients).

115. BNPP Statement of the Facts, *supra* note 26, ¶ 54.

116. *Id.*

117. *Id.* ¶ 56.

118. *Id.* ¶ 49.

119. BNP Paribas, Consent Order Under New York Banking Law § 44, *supra* note 80, at 10–11.

120. *Id.* at 3–4.

121. *Id.* at 4. This memorandum was later followed up with a policy directive entitled, *Operating Application for Filtering of Transactions Under the Group Policy on Iran*. *Id.* at 10–11.

122. BNPP Statement of the Facts, *supra* note 26, ¶ 42.

123. *Id.*

BNPP knew that Iranian Controlled Company 1 was owned entirely by Iranian Energy Group 1, which was owned outright by an Iranian citizen.¹²⁴ At the time of Iranian Controlled Company 1's first transactions, they were not illegal under "U-Turn" provisions.¹²⁵ However, in November 2008, with the renewal of sanctions against Iran, the transactions conducted on behalf of Iranian Controlled Company 1 became illegal.¹²⁶ Despite the change in the law, BNPP continued to clear U.S. dollar transactions for the client through November 2012, after OFAC's investigation had begun.¹²⁷

V. WHY THE BNPP SETTLEMENT WAS SO HIGH

When BNPP and the DOJ reached a \$8.9 billion settlement in June 2014, it was the highest banking settlement in history.¹²⁸ As of publication of this Note, the BNPP settlement is currently the highest settlement for a violation of U.S. trade sanctions.¹²⁹ Because HSBC Group, Standard Chartered, and Credit Suisse made mistakes similar to those made by BNPP, the rationale for an exponentially higher settlement merits investigation. Although Standard Chartered, HSBC Group, and Credit Suisse were all found to be doing the same types of activities as BNPP, none of those banks exhibited the emphasis on profit over compliance or lack of cooperation that BNPP did when the investigation began.

A. *Lack of Compliance with U.S. Sanction Laws*

BNPP's disregard for U.S. sanctions stemmed from a desire to maintain existing relationships with and cash flows from clients in

124. *Id.* ¶ 43.

125. *Id.* ¶ 44. The U-Turn Provision or Exception was a statutory allowance for U.S. banks to process certain U.S. dollar transactions involving Iran. U.S. banks and branches of foreign banks' U.S. offices could process dollar payments involving Iran if the payment started and ended with a non-Iranian bank outside of the U.S. The U-Turn Provision was created in 1995 but was repealed in November 2008. Lee, *Part I, supra* note 19, at 663-64.

126. BNPP Statement of the Facts, *supra* note 26, ¶ 44.

127. *Id.*

128. See Lee, *Part I, supra* note 19, at 657.

129. Kevin McCoy, *Banks Face Intensified Sanctions Probes in U.S.*, USA TODAY (July 9, 2014), <http://www.usatoday.com/story/money/business/2014/07/09/banks-us-sanctions/12354389/>.

Sudan, Iran, and Cuba.¹³⁰ BNPP's elevation of profits over the rule of law is exemplified in an email from BNPP management that summarized a meeting to discuss concerns over processing U.S. dollar transactions for Sudanese SDNs.¹³¹ The email stated that "The relationship with this body of [Sudanese] counterparties is a historical one and the commercial stakes are significant. For these reasons, Compliance does not want to stand in the way of maintaining this activity for ECEP and [BNPP Geneva]."¹³² The preference given to commercial priorities over U.S. sanctions illustrates a deep apathy for sanction laws and what they seek to accomplish. Another example of the disregard shown by BNPP's leadership towards U.S. sanctions came in 2005 after a compliance employee at BNPP Geneva warned: "As I understand it, we have a number of Arab Banks (nine identified) on our books that only carry out clearing transactions for Sudanese banks in dollars This practice effectively means that we are circumventing the US embargo on transactions in [U.S. dollars] by Sudan."¹³³

Other high-ranking BNPP Geneva employees voiced the same concern while others explained that these types of transactions "had received the full support of our General Management in Paris."¹³⁴ An extreme example of the disregard for U.S. sanctions was seen at a meeting of senior compliance officers from BNPP Geneva and BNPP executives, including the Chief Operating Officer.¹³⁵ At this meeting the same concerns about U.S. sanctions against Sudan were summarily dismissed by a senior BNPP executive who requested that no minutes of the meeting be recorded.¹³⁶

In March 2007, another senior BNPP compliance officer reminded other high-level BNPP compliance and legal employees that certain Sudanese banks BNPP dealt with, "play a pivotal part in the support of the Sudanese government which . . . has hosted Osama Bin Laden and refuses the [U.N.] intervention in Darfur."¹³⁷ Later, in May

130. Lee, *Part II*, *supra* note 12, at 750.

131. BNPP Statement of the Facts, *supra* note 26, ¶ 37.

132. *Id.*

133. *Id.* ¶ 32; *see also* BNP Paribas, Consent Order Under New York Banking Law § 44, *supra* note 80, at 8.

134. BNPP Statement of the Facts, *supra* note 26, ¶ 32.

135. BNP Paribas, Consent Order Under New York Banking Law § 44, *supra* note 80, at 9; *see also* BNPP Statement of the Facts, *supra* note 26, ¶ 33.

136. BNPP Statement of the Facts, *supra* note 26, ¶ 33.

137. *Id.* ¶ 20.

2007, a BNPP executive with responsibilities for compliance across all BNPP branches warned in a memorandum that “In a context where the International Community puts pressure to bring an end to the dramatic situation in Darfur, no one would understand why [BNPP] persists [in Sudan] which could be interpreted as supporting the leaders in place.”¹³⁸ While the actions at the executive level are troubling, it is the pervasiveness of the conspiracy that seems to merit such a high punishment. Investigations into BNPP’s actions with regard to Sudan revealed that employees would frequently flag transactions from Sudan and note names, accounts, and other vital information that needed changing in order to specifically circumvent U.S. sanctions.¹³⁹

The disregard for compliance with U.S. laws encompassed actions at all levels of BNPP that not only supported transactions for Sudan, but also Iran. In early 2010, the New York County District Attorney’s Office and the DOJ questioned BNPP about conducting transactions on behalf of sanctioned entities, specifically Iran.¹⁴⁰ BNPP agreed to conduct an internal investigation and cooperate with the authorities; however, it continued clearing transactions for an Iranian company referred to by the DOJ as Iranian Controlled Company 1.¹⁴¹ While some BNPP employees may not have been aware that Iranian Controlled Company 1 was in fact owned by an Iranian national, in late 2011 and early 2012 red flags arose making it clear that this client was Iranian.¹⁴² Several other European banks blocked payments and transactions by Iranian Controlled Company 1 on the basis that it was “controlled from Iran.”¹⁴³ In the year after Iranian Controlled Company 1 was blocked by other European banks, BNPP processed approximately \$586.1 million in U.S. dollar transactions for the Company.¹⁴⁴ Additionally, in June 2012, a BNPP compliance officer noticed that Iranian Controlled Company 1 was transferring money from its BNPP account to an Indian Bank (“Indian Bank 1”) with known links to Iran.¹⁴⁵ According to the Statement of the Facts issued

138. *Id.*

139. *Id.* ¶ 22.

140. *Id.* ¶ 45.

141. *Id.*

142. *Id.* ¶ 46.

143. *Id.*

144. *Id.* ¶ 47.

145. *Id.* ¶ 46.

by the DOJ and BNPP, “despite these warnings—and despite claiming to be cooperating fully with the Government’s investigation into sanctions violations—BNPP continued to process U.S. dollar transactions for Iranian Controlled Company 1 until November 2012.”¹⁴⁶

B. Lack of Cooperation with Investigation

The second key difference between BNPP’s actions and those of Standard Chartered, HSBC, and Credit Suisse, is BNPP’s lack of cooperation with the DOJ’s investigations. The conspiracy to cover up transactions from SDNs permeated all levels of BNPP and implicated personnel in varied roles from multiple branches.¹⁴⁷ Everyone from employees processing payments from SDNs to the highest level of corporate compliance and governance knew about the dollar-clearing transactions and worked to keep the lucrative operation going.¹⁴⁸ For instance, Credit Suisse provided the DOJ with relevant information for the investigation and did not continue the illegal activities while under investigation.¹⁴⁹ Additionally, Credit Suisse began its own internal investigation into U.S. dollar-clearing services for SDNs and an in-depth review of ingoing and outgoing SWIFT payments.¹⁵⁰ The DOJ noted the concerted efforts by Credit Suisse, since discovering the problem in 2006, to not only identify the violations, but also rectify the problems.¹⁵¹

In contrast, BNPP was aware as early as 1997 of the illegal nature of some of the transactions it was conducting on behalf of certain clients.¹⁵² BNPP received various legal opinions confirming the illegality of these transactions, yet despite those opinions, the transactions continued to occur.¹⁵³ In 2004, the Federal Reserve Bank

^{146.} *Id.*

^{147.} Federal documents indicate that BNPP’s illicit activities stemmed from the Geneva and Paris offices and include actions by personnel ranging from senior management making policy decisions for the organization to tellers who pulled and edited the message on cover payments. BNPP Statement of the Facts, *supra* note 26, ¶¶ 22, 27.

^{148.} *Id.*

^{149.} Credit Suisse Factual Statement, *supra* note 44, ¶¶ 57–58.

^{150.} *Id.*; *see also* Press Release, Credit Suisse, *supra* note 42.

^{151.} Press Release, Credit Suisse, *supra* note 42.

^{152.} BNPP Statement of the Facts, *supra* note 26, ¶ 19.

^{153.} *Id.* ¶ 70.

of New York (“FRB-NY”) and DFS informed BNPP that they had “identified systemic failures in BNPP’s compliance with the Bank Secrecy Act, and specifically highlighted deficiencies in [the New York branch]’s monitoring of transactions with overseas clients.”¹⁵⁴ BNPP entered into a Memorandum of Understanding (“MOU”) with FRB-NY and DFS that required “that BNPP New York improve its system for compliance with U.S. banking secrecy and sanctions laws.”¹⁵⁵ Instead of complying with the MOU, BNPP continued to hide violations from regulators.¹⁵⁶ Internal documents reveal that even after being informed of the illegal conduct, compliance and legal staff supported the conduct instead of reporting it as required by the MOU.¹⁵⁷

Not long after entering into the MOU, senior executives from BNPP Paris and executives from BNPP Geneva met and discussed current U.S. embargoes against specific nations and the impact of those sanctions on BNPP’s business with those countries.¹⁵⁸ As a result of this discussion, BNPP switched the processing of transactions involving payments to U.S. sanctioned countries from locations in these sanctioned countries to a non-affiliated bank in the United States (“U.S. Bank 1”).¹⁵⁹ After shifting their illegal actions away from the New York branch of BNPP in 2004, many in the company thought BNPP did not need to worry about U.S. sanction laws.¹⁶⁰ This belief, based on the legal opinion of a U.S. law firm (“U.S. Law Firm 1”), was wrong.¹⁶¹ In 2006, BNPP received a second opinion from another U.S. law firm (“U.S. Law Firm 2”) that clarified the errors of U.S. Law Firm 1. The opinion explained that sanctions still applied to BNPP despite using U.S. Bank 1 and that U.S. authorities were “sensitive to the use of ‘cover payments’ by foreign banks that omitted underlying details about the nature of transactions” and the parties involved.¹⁶² In response to

154. *Id.* ¶ 28.

155. *Id.*

156. BNP Paribas, Consent Order Under New York Banking Law § 44, *supra* note 80, at 16.

157. *Id.*

158. BNPP Statement of the Facts, *supra* note 26, ¶ 29.

159. The Statement of the Facts does not identify the non-affiliated bank that BNPP used for these transactions. *See id.*

160. *Id.* ¶ 30.

161. *Id.* (documenting the history between BNPP and its legal counsel, but never disclosing the names of the law firms or the Iranian companies in question).

162. *Id.* ¶ 35.

U.S. Law Firm 2’s legal advice and revised reports from U.S. Law Firm 1, BNPP issued a policy that stated, “If a transaction is denominated in [U.S. dollars], financial institutions outside the United States must take American sanctions into account when processing their transactions.”¹⁶³ Despite this policy, BNPP continued to obscure information in order to process U.S. dollar transactions for clients subject to U.S. sanctions.¹⁶⁴ In December 2009, BNPP became aware of U.S. law enforcement concerns about BNPP’s potential sanctions violations.¹⁶⁵ During the course of that investigation and those that followed, BNPP not only failed to correct mistakes it made, but continued to engage in the very conduct that led to the initial investigations.¹⁶⁶

In 2010, BNPP had another chance to comply with the demands of U.S. financial regulators.¹⁶⁷ BNPP told regulators that it was conducting an internal investigation into its compliance with U.S. sanctions and promised to cooperate with United States and New York regulators.¹⁶⁸ Instead of cooperating, BNPP, once again, continued to conduct transactions on behalf of Iranian Controlled Company 1—in direct violation of the MOU entered into with regulators in 2004.¹⁶⁹ Even after the DOJ investigation began in December 2009, BNPP continued to conduct dollar-clearing transactions for Iranian clients until November 2012.¹⁷⁰

BNPP’s failure to provide information to the DOJ complicated the investigation. An exhibit to the Deferred Prosecution Agreement includes an entire section on “BNPP’s Failure to Timely Provide Relevant Information to the Government.”¹⁷¹ The DOJ specifically references BNPP’s failure to provide meaningful documentation and materials from BNPP Geneva until May 2013, almost four years after the investigation began.¹⁷² Had BNPP cooperated with investigators as opposed to dragging its feet once the investigation began, the almost \$9

163. *Id.*

164. *Id.* ¶ 36.

165. *Id.* ¶ 71.

166. *Id.* ¶ 69.

167. BNP Paribas, Consent Order Under New York Banking Law § 44, *supra* note 80, at 11.

168. *Id.* at 11–12.

169. *Id.* at 12.

170. BNPP Statement of the Facts, *supra* note 26, ¶¶ 44, 71.

171. *Id.* ¶ 71.

172. BNPP Statement of the Facts, *supra* note 26, ¶ 72.

billion sanction against BNPP might have been reduced.¹⁷³

VI. CONCLUSION AND IMPLICATIONS OF THE SETTLEMENT

Although the facts of BNPP's violations of U.S. trade sanctions are unique, the resulting settlement has important lessons for other foreign banks with operations in the United States. Beyond showing the reach and zeal of U.S. regulators, previous settlements and the BNPP settlement show that regulators value banks cooperating with investigations and taking actions to recognize and rectify prior mistakes.¹⁷⁴ Unlike HSBC and Credit Suisse, BNPP did not cooperate with the OFAC investigation and actually continued to conduct transactions once the investigation began.¹⁷⁵ According to Deputy Attorney General Cole, "[BNPP's] failure to cooperate had a real effect—it significantly impacted the government's ability to bring charges against responsible individuals, sanctioned entities and satellite banks. This failure together with [BNPP's] prolonged misconduct mandated the criminal plea and the nearly \$9 billion penalty that we are announcing today."¹⁷⁶

Current financial filings show that as of July 2014, six banks were under investigation for or have been approached by U.S. regulators about activities similar to those undertaken by BNPP.¹⁷⁷ For these banks and others with branches inside the United States, the most important things to take away from the BNPP settlement and the previous settlements are the importance of cooperation with investigations, ownership of previous failures, and continued vigilance over compliance with U.S. laws and audits of previous transactions.¹⁷⁸

173. Shane Strowmatt, Fabio Benedetti & Sonia Sirletti, *BNP's \$8.97 Billion U.S. Fine Resets Bar for European Banks*, [2014] Banking Daily (BNA) No. 127 (July 2, 2014).

174. See Settlement Agreement, HSBC, *supra* note 33, ¶¶ 28–29.

175. Compare Press Release, Credit Suisse, *supra* note 42 (detailing Credit Suisse's cooperation with the OFAC investigation), and Settlement Agreement, HSBC, *supra* note 33, ¶¶ 5–7 (providing details of HSBC's cooperation), with Strowmatt, *supra* note 171 (explaining that BNPP continued to conduct transactions after the investigation began).

176. Press Release, BNP Paribas, *supra* note 76 (quoting Deputy Attorney General Cole).

177. McCoy, *supra* note 128.

178. Grayson Yeargin & Lindsey Nelson, *BNP Paribas OFAC Settlement – Another Warning to Banks*, LAW360 (July 10, 2014, 9:11 AM), <http://www.law360.com/articles/555440/bnp-paribas-ofac-settlement-another-warning-to-banks>.

Credit Agricole S.A. and Societe Generale S.A., the next two largest French banks behind BNPP, are both under review for sanction violations.¹⁷⁹ Both of these banks seem to have learned from the mistakes of BNPP. Unlike BNPP, each of these banks has voluntarily commenced an internal review of the transactions it has processed and each appears to be cooperating with OFAC's investigations.¹⁸⁰ As a result, U.S. regulators will likely be less punitive should the investigation lead to either a prosecution or settlement.

Germany's second largest bank, Commerzbank, also seems to have learned from the mistakes of BNPP. Upon receiving notice of the investigation from U.S. regulators, the bank turned over its financial records and voluntarily gave OFAC information on previous transactions that potentially involved clients in sanctioned countries.¹⁸¹ Germany's largest bank, Deutsche Bank, is also under investigation for violations of U.S. trade sanctions.¹⁸² Regulators have requested information "concerning [Deutsche Bank's] historical processing of U.S. dollar payment orders through U.S. financial institutions for parties from countries subject to U.S. embargo laws."¹⁸³ As with BNPP, the only reason these three banks have fallen under U.S. regulators' jurisdictions is because the transactions went through the banks' U.S. branch offices.¹⁸⁴

The implications of this detail are unclear, but U.S. regulators and legislators should watch carefully as burdensome regulation and trade sanctions could lead to capital flight and a shift away from conducting major business transactions in U.S. dollars.¹⁸⁵ The supremacy of the dollar and the resulting power it gives to U.S. financial regulators comes from the primacy of the U.S. dollar in international trade and debt denomination.¹⁸⁶ However, recent analysis concerning the international use of currency has revealed that other currencies, such as the Euro, have gained prominence for international

179. McCoy, *supra* note 128.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. Suzanne Katzenstein, *Dollar Unilateralism: The New Frontline of National Security*, 90 IND. L.J. 293, 295 (2015).

186. Goldberg, *supra* note 77, at 5.

transactions, a field of business that has long been the U.S. dollar's territory.¹⁸⁷ As use of the Euro expands, U.S. regulators should be wary of creating a burdensome regulatory system that incentivizes foreign banks to conduct international transactions in currencies other than the U.S. dollar.¹⁸⁸

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187. *Id.* at 30.

188. *See Lee, Part II, supra* note 12, at 764 (quoting Valéry Giscard D'Estaing saying that "[t]he 'exorbitant privilege' that attaches to the position of the U.S. dollar may be accepted by other countries, but not without resentment").