

Swiss Bank Pays Record \$536 Million Fine for OFAC Violations*U.S. Banks May Want to Review Relevant Procedures*

Credit Suisse AG has agreed to pay a fine of \$536 million in global settlement of violations of U.S. economic sanctions and New York State law. This huge penalty, announced in December 2009, is the largest ever in connection with the economic sanctions administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC). It is only the latest of several substantial fines paid by foreign-based financial institutions to settle OFAC violations in recent years. The past fines include a \$350 million fine paid by Lloyds Bank of the U.K. (2009) and \$80 million by the Dutch bank ABN AMRO (2005). OFAC has also levied smaller fines on foreign institutions such as ANZ Bank (\$5.75 million in August 2009).

Actions of Credit Suisse. Documents filed in court indicate that Credit Suisse's conduct was elaborate, well coordinated internally, and carried out over a period covering at least 20 years. In remarks accompanying announcement of the fine, Attorney General Eric Holder described Credit Suisse's "criminal misconduct" in this matter as "simply astounding."

Among other actions, Credit Suisse:

- altered payments to hide from U.S. persons the involvement of sanctioned parties (primarily linked to Iran but also to Sudan, Burma, Cuba, and, formerly, Libya) by stripping out accurate information or supplying false information;
- processed securities trades by its London affiliate through Credit Suisse's U.S. branch on behalf of sanctioned foreign banks utilizing code names to disguise the identities of the sanctioned entities;
- routinely ignored red flags raised by its own employees; and
- expanded its activity in violation of U.S. laws in 2003, when it took over Iranian banks' U.S. dollar clearing business after another international bank (reportedly Lloyds Bank) abandoned the activity.

Remedial Actions. Credit Suisse made an internal decision in late 2005 to discontinue its business with U.S. sanctioned countries and subsequently took a number of related remedial actions. These included hiring an independent consulting firm to conduct an extensive, multi-year review of all relevant payment messages and providing that information to OFAC in a comprehensive report. Going forward, Credit Suisse will be subject to an enhanced global regulatory compliance program, with oversight by the Federal Reserve and the Swiss financial market supervisor.

OFAC'S Reach and Reliance on U.S. Financial Institutions. OFAC restrictions generally apply to:

- all U.S. persons—including U.S. citizens, permanent residents, and branches of U.S. firms—anywhere in the world;
- all persons and entities located within the United States, even if they are foreign citizens or foreign-controlled entities; and
- U.S. controlled companies organized under foreign law (Cuban sanctions program only).

OFAC has long relied on U.S. financial institutions and their extensive screening systems to prevent prohibited transactions from being routed through the U.S. by non-U.S. banks. The comprehensive nature of the information stripping and substitution of false information engaged in by Credit Suisse was clearly designed to avoid the filtering screens utilized by U.S. banks.

Useful Actions by U.S.-Located Banks. In light of these recent revelations, U.S.-located banks with overseas affiliates or that host correspondent accounts may want to review their procedures to ensure that:

- they maintain up-to-date, sophisticated screening systems;
- they have adequate and appropriate practices and procedures to ensure familiarity with and adherence to OFAC regulations; and
- they have effective training programs for all relevant personnel.

In addition, U.S. banks with correspondent accounts may want to review their correspondent relationships to ensure that information received with respect to offshore transactions is complete and adequate. Depending on the circumstances, it might also be helpful to ask for written confirmation from holders of correspondent accounts that:

- they are aware of the OFAC restrictions;
- they realize that these restrictions apply to transactions that are processed through correspondent accounts; and
- they have not altered or omitted information so that sanctioned transactions would escape the filtering systems of U.S. banks.

If you have any questions regarding OFAC sanctions, or would like assistance in considering particular actions, please contact:

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