

Behind Crédit Agricole Talks, Renewed ‘Friction’ Over Iran U-Turn Transactions

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Settlement negotiations with Crédit Agricole CIB have revived a longstanding disagreement among U.S. agencies over whether a bank should be penalized for not disclosing legal transactions linked to Iran, sources say.

The French bank disclosed earlier this month that it had set aside an additional €350 million in expectation of a deal with U.S. authorities resolving alleged sanctions violations. The transactions targeted by American officials include banned payments made on behalf of Iranian and Sudanese clients, according to individuals with knowledge of the investigation.

As part of the global settlement, the New York State Department of Financial Services (NYSDFS) will also cite so-called “u-turn” transactions made on behalf of Iranians and processed before the November 2008 revocation of a U.S. general license permitting the payments, they said.

The deal will mark another instance of NYSDFS penalizing a bank for transactions allowed under federal sanctions rules, and at least the second time the state regulator’s plans have drawn criticism from other agencies involved in negotiations. New York officials have previously said that banks violated recordkeeping rules by stripping information from the transactions and failing to disclose the payments.

“The friction is there,” said a person with knowledge of the investigation, who asked not to be named. “The federal government is saying one thing and the state regulator is saying another.”

The friction stems in part from the belief that citing the federally permitted transactions in enforcement penalties galvanizes bank resistance and delays the finalization of the deals, according to sources.

“There is a little bit of a tension in that you are trying to discourage and penalize for transactions that should not be conducted, but at the same time there is a competing desire to make sure that legit transactions are still able to proceed, and you need to make sure that you don’t have broader effect than you’re intending to,” said a former U.S. sanctions official, who spoke on the condition of anonymity.

Under the exemption revoked in 2008, banks with U.S. operations were allowed to process indirect transactions between two offshore financial institutions acting on

behalf of Iranian entities provided that the payments did not begin or end with an Iranian or American bank, and did not involve sanctioned entities.

“It was an accommodation to allow for oil deals to proceed in [U.S.] dollars,” said Juan Zarate, a former U.S. Treasury Department official. “The financial institutions had to make sure [the class of transactions] fit into that exemption.”

The Treasury Department ended the exemption after the Financial Action Task Force and American officials accused Iran of exploiting it to finance its nuclear and missile programs and terrorist activities.

In a settlement reached nearly four years later, the U.S. Office of Foreign Assets Control (OFAC) fined Standard Chartered Bank \$132 million for transactions violating sanctions against Iran, Sudan and Libya. But the vast majority of the 60,000 Iranian payments identified by the agency were not in violation of U.S. rules because of the u-turn exemption, OFAC said at the time.

The agency’s fine came as part of broader settlement package finalized in December 2012 with the U.S. Justice Department and the Manhattan District Attorney’s Office, which penalized the U.K. bank for falsifying business records with the intent to violate federal sanctions laws. Standard Chartered paid a total \$327 million to resolve the allegations.

The bank had by then inked a deal the previous August to settle NYSDFS charges that it had violated a books-and-records statute and five other state laws by falsifying or failing to disclose both permitted and prohibited transactions linked to Iran.

The state monetary penalty totaled \$340 million, \$13 million more than the combined outlays ordered by the Justice Department, OFAC and the Manhattan office, none of which penalized the bank for u-turn transactions made before November 2008.

The Standard Chartered deal established that a transaction considered compliant under federal regulations may still be in violation of provisions of New York’s books-and-records statutes, said NYSDFS spokesman Matthew Anderson. The agency intends to continue to enforce the standard in sanctions evasion cases, he said.

“We have our responsibility to enforce New York banking law,” said Anderson. “That’s our domain.”

The distinction between federal and state oversight arose again in penalties against Bank of Tokyo-Mitsubishi UFJ Ltd.

In December 2012, the Japanese bank agreed to pay OFAC \$8.6 million for stripping information from prohibited transactions. Six months later, it settled with NYSDFS for \$250 million.

An OFAC spokesman attributed the significant difference in penalties to the fact that the federal agency focused on “apparent violations of federal sanctions law,” *Bloomberg* reported then.

U.S. officials have launched sanctions investigations into two more French banks, Société Générale and UniCredit, according to financial disclosures and media reports.

The differences between New York regulators and other agencies in such cases reflect the fact that “they’re not all following the same formula,” said Aaron Wolfson, a former assistant district attorney at the New York County District Attorney’s Office.

“The regulators continue to focus on u-turn transactions because they feel that’s one of the main things that affects the safety and soundness of the banks, while prosecutors are looking for potentially criminal activity,” he said.

A spokesperson for Crédit Agricole declined to comment.