

New Mitigating Factor for OFAC Penalties

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Last week the Office of Foreign Assets Control (OFAC) [announced its settlement](#) with Crédit Agricole Corporate and Investment Bank (CA-CIB) for violations of the Sudanese, Iranian, Cuban, and Burmese Sanctions Regulations. The bank concurrently entered into a deferred prosecution agreement and agreed to pay \$787.3 million in criminal and civil penalties to various federal and state agencies. The New York State Department of Financial Services (DFS) also [ordered](#) the bank to terminate the employment of an identified relationship manager and retain an independent consultant chosen by the Department to conduct a comprehensive review of its AML and OFAC compliance programs.

According to the [OFAC Settlement Agreement](#), CA-CIB and many of its predecessor banks illegally provided Sudan, Iran, Cuba, and Burma access to the U.S. financial system. The banks provided this access to the U.S. Dollar by “stripping” references to the embargoed countries from payment instructions. This stripping led U.S. banks to unknowingly export prohibited financial services.

CA-CIB is now among the growing list of international banks that have cumulatively paid billions in penalties for stripping. These banks include:

- Commerzbank
- BNP Paribas
- Royal Bank of Scotland
- Bank of Tokyo Mitsubishi
- HSBC
- Standard Chartered Bank
- National Bank of Abu Dhabi
- ING Bank
- Lloyds TSB Bank

- Credit Suisse
- Barclays Bank
- Australia and New Zealand Bank Group
- ABN AMRO

OFAC determined that the violations were egregious and not self-disclosed. In addition to the common mitigating factors, such as remediation and cooperation, “OFAC also considered that the majority of the apparent violations occurred between 2003 and 2005 and **prior to the publication of the ABN Amro settlement.**”

The January 2006 \$40 million [settlement with ABN AMRO](#) was the first instance of OFAC publicly announcing that it had targeted a financial institution for stripping. OFAC explained in the announcement that ABN AMRO’s “overseas branches removed or revised references to entities in which the Governments of Libya and Iran had an interest before forwarding wire transfers, letters of credit and U.S. dollar checks to ABN AMRO branches in New York, NY and Chicago, IL.”

Although it has long been a consideration, OFAC has never publicly articulated that a penalty may be mitigated because apparent violations precede a precedential settlement announcement. In fact, [the Economic Sanctions Enforcement Guidelines](#) are silent in regard to the application of settlement agreements to third-parties. This should be considered one of the many unpublished catch-all factors “OFAC deems relevant on a case-by-case basis” under General Factor K.

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