June 5, 2018

Two Financial Services FCPA Resolutions Highlight Continuing FCPA Enforcement Trends

On June 4, 2018, the U.S. Department of Justice (DOJ) announced related settlements under the Foreign Corrupt Practices Act (FCPA) against Société Générale, the Paris-based global financial services firm, and Legg Mason, a Maryland-based investment management firm, involving third-party bribes paid to secure investments from agencies of the Libyan government.[1] (The settlement with Société Générale also included a resolution of unrelated charges relating to its conduct on the financial markets—*see below*). The resolutions highlight DOJ's continued focus on the practices of the financial services industry to secure business from state-owned entities in emerging markets, the continuing expansion of DOJ's cooperation with international anti-corruption regulators, and application of its formal FCPA corporate enforcement program.

The FCPA Resolutions with Société Générale and Legg Mason

Société Générale admitted to paying over $90 million to a Libyan broker, part of which was then paid to Libyan government officials in order to secure investments from Libyan state institutions valued at approximately $3.66 billion. The bank earned profits of approximately $532 million over the course of the five-year scheme, which began in 2004. To resolve the allegations, Société Générale entered into a deferred prosecution agreement (DPA) charging it with conspiracy to violate the anti-bribery provisions of the FCPA and agreed to pay $585 million in penalties. A subsidiary of the bank, SGA Société Générale Acceptance N.V., will plead guilty to conspiracy to violate the anti-bribery provisions of the FCPA. DOJ highlighted Société Générale's "failure to voluntarily self-disclose the companies' misconduct to the Department" and the "company's substantial, though not full, cooperation" as reasons for why the Department had entered into the DPA. Société Générale also agreed to pay the French financial services prosecutor, the Parquet National Financier, nearly $293 million to resolve its liability under French law over similar conduct, which will be credited against the U.S. criminal penalty. Additionally, DOJ noted that a monitor was not necessary because of the "ongoing monitoring by L'Agence Française Anticorruption."

Legg Mason also entered into a non-prosecution agreement involving related conduct in Libya, and, as part of the agreement, will pay $64.2 million in penalties, split nearly evenly between a penalty of $32.625 million and disgorgement of $31.617 million. Legg Mason admitted that lower-level employees at one of its subsidiaries had helped Société Générale solicit business from state-owned financial institutions in Libya and then managed a portion of those ill-gotten funds, earning approximately $31.6 million in profits. DOJ noted that Legg Mason had failed to voluntarily self-disclose its conduct but that it had fully cooperated with DOJ's investigation.

Key Take-Aways

- *International Law Enforcement Cooperation.* The Société Générale settlement was DOJ's first FCPA resolution involving coordination with France's anti-corruption authorities, and specifically the Parquet National Financier. This represents a continuing trend among Western European countries of bolstering their international anti-corruption enforcement regimes and signals that France will now be a major anti-corruption enforcement partner of the DOJ.
- *Disclosure and Cooperation Credit.* DOJ denied both Société Générale and Legg Mason the full cooperation credit that they could have earned under DOJ's new formal FCPA Corporate Enforcement Policy, which was announced in November 2017.[2] Under that policy, companies that self-disclose and fully cooperate can earn as much as 50% off the sentencing range determined under the U.S. Sentencing Guidelines. The fact that DOJ noted that both Société Générale and Legg Mason failed to voluntarily self-disclose indicates that they could have received significantly lighter penalties under the new policy. Société Générale may have been further penalized because DOJ deemed its cooperation less than complete.
- *Independent Monitor.* As we recently noted in our 2018 Litigation Trends, under the Trump Administration, the DOJ may be moving away from the use of independent monitors in FCPA resolutions.[3] In the case of Société Générale, notwithstanding the significant nature of the allegations and the simultaneous announcement of other unrelated misconduct (*see* discussion below), DOJ declined to impose a monitor because it stated that the bank would be subject to continued monitoring by the French anti-corruption authorities.
- *Continued Compliance Reporting.* DOJ credited Legg Mason for making improvements to its anti-corruption program after the investigation began. Nevertheless, notwithstanding its receipt of a more lenient non-prosecution agreement, Legg Mason will still be required to enhance its anti-corruption program and to report to DOJ on its compliance remediation efforts during the term of the agreement. This reflects DOJ's formal FCPA policy, which requires prosecutors to assess the role of compliance when assessing appropriate prosecutorial action.[4]

LIBOR Manipulation

Société Générale simultaneously resolved with DOJ separate violations stemming from the bank's manipulation of the London InterBank Offered Rate (LIBOR), for which it agreed to pay $275 million. Additionally, Société Générale has agreed to pay the Commodity Futures Trading Commission approximately $475 million in regulatory penalties and disgorgement in connection with LIBOR-related violations. Société Générale admitted that senior executives engaged in a scheme, between May 2010 and at least October 2011, of fraudulently deflating its LIBOR submissions to give the false impression that the bank could borrow at rates that were better than those actually being offered to it in the market and thus appear more creditworthy. Other employees in London and Tokyo engaged in a separate scheme in 2016 to manipulate Japanese Yen LIBOR submissions to benefit the trading positions of a Société Générale employee. To resolve these allegations, the Société Générale DPA also included one count of transmitting false commodities reports. Société Générale thus becomes the latest of a number of global financial services firms that have been caught in DOJ's ongoing investigation of manipulation into LIBOR and the foreign exchange markets, demonstrating again the need for vigilant and effective compliance programs over in-house trading activities.

[1] Press Release, U.S. Attorney's Office EDNY, U.S. Dep't Justice, Société Générale S.A. Agrees to Pay $860 Million in Criminal Penalties for Bribing Gaddafi-Era Libyan Officials and Manipulating Libor Rate (June 4, 2018), https://www.justice.gov/usao-edny/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan; Press Release, U.S. Attorney's Office EDNY, U.S. Dep't Justice, Legg Mason, Inc. Agrees to Pay $64 Million in Criminal Penalties and Disgorgement to Resolve FCPA Charges Related to Bribery of Gaddafi-Era Libyan Officials (June 4, 2018), https://www.justice.gov/opa/pr/legg-mason-inc-agrees-pay-64-million-criminal-penalties-and-disgorgement-resolve-fcpa-charges.

[2] *See* U.S. Dep't of Justice, U.S. Attorneys' Manual § 9-47.120 (2017) (FCPA Corporate Enforcement Policy); Weil Client Alert, *DOJ Formalizes Corporate Enforcement Policy Regarding FCPA Violations* (Dec. 2017), available here: https://www.weil.com/~/media/publications/alerts/2017/white_collar_alert_dec2017.pdf.

[3] *See* Weil Client Alert, *Litigation Trends 2018*, at 29 (Mar. 2018), available here: https://www.weil.com/~/media/publications/alerts/2018/litigation_trends_2018_report.pdf.

[4] *See* U.S. Dep't of Justice, U.S. Attorneys' Manual § 9-47.120 (2017).

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