Singapore Fines a UK Bank and the US Imposes a Consent Order on a Chinese Bank: A Tale of Two Enforcement Actions

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Less than a week apart, two major financial institutions (“FIs”) have been hit with penalties for failing to implement adequate anti-money laundering (“AML”) protections. But the penalties imposed by the involved regulators are different. In this post, we report on the enforcement actions recently lodged against Standard Chartered PLC and the Industrial & Commercial Bank of China Ltd. by the Monetary Authority of Singapore and the United States Federal Reserve, respectively. We also consider the approaches of these two regulators to the banks and the differing outcomes of the enforcement actions.
Standard Chartered PLC

On March 19, 2018, the Monetary Authority of Singapore ("MAS") announced that it had imposed fines totaling $4.9 million USD against two local arms of U.K.-based Standard Chartered PLC. The penalties arise out of the transfer of trusteeships that occurred between Standard Chartered branches in Guernsey and Singapore in December 2015 and January 2016. Standard Chartered’s customers apparently completed this transfer intending to evade Guernsey’s then-upcoming adoption of the reporting requirements of the Common Reporting Standard ("CRS"), about which we have blogged previously. The CRS was created by the Organisation for Economic Co-operation and Development ("OECD") to combat international tax evasion through an automatic exchange of financial account information among countries. It has been reported that the transfer of assets at issue involved approximately $1.4 billion USD.

According to MAS, Standard Chartered’s inadequate monitoring systems pre-CRS caused the suspicious activity to go undetected and unreported. Standard Chartered eventually conducted an internal review of the relevant trust structures and “proactively reported it[s review] to the authorities.” MAS indicated that, when determining the appropriate penalties to impose, it considered Standard Chartered’s forthcoming disclosure and its “strong commitment” to making improvements to its AML regime.

Industrial & Commercial Bank of China

Just a week earlier on March 12, 2018, the Board of Governors of the U.S. Federal
Reserve (“the Fed”) and the Industrial & Commercial Bank of China Ltd. (“ICBC”) entered into a consent Cease and Desist Order. As we have previously blogged, ICBC is no stranger to AML investigations, and has been the subject of a significant money laundering investigation in Spain. More recently, the Federal Reserve Bank of New York (the “Reserve Bank”) examined ICBC’s New York City branch (the “Branch”) and discovered “significant deficiencies in the Branch’s risk management and compliance with applicable federal and state laws, rules, and regulations relating to” AML compliance.

Within 60 days of the Order, ICBC must submit in writing to the Fed: (1) a plan to enhance Bank and Branch managements’ oversight over the Branch’s compliance with AML requirements as articulated in the Bank Secrecy Act (“BSA”) and other regulations; (2) a revised BSA/AML compliance program; (3) a revised customer due diligence program for the Branch; (4) a program reasonably designed to ensure the identification of timely, accurate, and complete reporting by the Branch of all known or suspected violations of law; (5) a plan to enhance the Bank’s compliance with OFAC regulations; and (6) a revised internal audit program for the Branch.

Moreover, within 30 days of the Order, the Bank and Branch must engage an independent third party acceptable to the Reserve Bank to review and report on the Branch’s transaction activity for the latter half of 2016 to assess whether suspicious activity was properly identified and reported. No monetary penalties have been imposed, and no additional details regarding the “significant deficiencies” identified have been released.

**Weighing the Penalties – Monetary Fine or Binding Agreement?**

Some critics might wonder if the Fed has given ICBC a break by not imposing any financial penalties. In contrast, MAS has leveraged a financial penalty against Standard Chartered, despite the self-disclosure and cooperation by the bank. Certainly, both regulators’ actions signal to FIs the importance of developing and maintaining adequate AML monitoring procedures.

The course of action taken against ICBC here is not unusual for the Fed. Among other recent actions, the Fed issued a strikingly similar Cease and Desist Order against the Agricultural Bank of China (“AgBank”) in September 2016. Here again, the Fed found “significant deficiencies” in AgBank’s risk management and AML compliance procedures and did not impose a monetary penalty. But only two months later, the New York State Department of Financial Services ordered AgBank to pay a $215 million penalty. So although ICBC hasn’t faced monetary penalties from the Fed, it still may see fines from state regulators.

We have no details on the “significant deficiencies” found in ICBC’s AML program; in contrast, the MAS identified a specific instance in which suspicious activity involving over a billion dollars occurred, and failed to detect and report that activity. Given the lack of information regarding ICBC’s alleged violations, and given the possibility that future enforcement actions and fines by other regulators may follow against ICBC, it is difficult to draw clear conclusions about, and parallels between, the two actions involving ICBC and Standard Chartered. But the fact that Standard Chartered received a fine, despite self-reporting a “single” incident and
demonstrating to the regulator a strong commitment to future compliance, in part must result from the enormous dollar value of the conduct at issue. Presumably, the fine would have been considerably more onerous in the absence of the bank’s cooperative stance.

Finally, Standard Chartered is surely not the only international bank facing the risk that some of its customers may be maneuvering to evade the reporting obligations of the CRS, which now has been adopted by over 140 countries – although not by the United States.

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