

JPM AND ING: SOME TRADING WITH THE ENEMY IS MORE EQUAL THAN OTHER TRADING WITH THE ENEMY

ING just signed a \$619M settlement with Treasury for sanctions violations, largely with Cuba, but also with Iran, Burma, North Korea, Sudan, and Syria. Aside from the fact that that's the biggest sanctions settlement ever, I'm interested in it because of just how different Treasury's publication of ING's settlement looks from JPMC's \$88.3M settlement last August.

The difference largely comes down to one big detail: Treasury didn't release the actual settlement with JPMC, but did with ING. Rather than the JPMC settlement, Treasury released just a PDF version of the public announcement on a blank sheet of paper (compare smaller civil penalties, for example, where they release just a link and a PDF of the details, link and PDF). With ING, the settlement appears in full, on letterhead, with the signatures of ING's General Counsel and Vice Chair at the bottom, not far below the terms of the settlement. And the settlement reads like an indictment, with a 6 pages of factual statements. Indeed, ING signed Deferred Prosecution Agreements with both the NY DA and DC US Attorneys Offices.

And the information included in the settlement is quite interesting. Most interestingly, the settlement describes how ING manipulated SWIFT reporting to hide its transfers with restricted countries.

Beginning in 2001, ING Curacao increasingly used MT 202 cover payments to send Cuba-related payments to unaffiliated U.S. banks, which would not have to include originator or

beneficiary information related to Cuban parties. For serial payments, up until the beginning of 2003, NCB populated field 50 of the outgoing SWIFT MT 103 message with its own name or Bank Identifier Code. Beginning in the second quarter of 2003, NCB populated field 50 with its customer's name, but omitted address information. ING Curacao also included its customer's name, but no address information, in field 50 of outgoing SWIFT messages.

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ING Wholesale Banking's branch in The Netherlands ("ING Netherlands") used care not to include references to U.S. sanctioned countries in USD SWIFT messages because they believed doing so was necessary to avoid the payment being blocked by unaffiliated U.S. correspondent banks in accordance with OFAC regulations.

The first of those references is tied to Cuba—not exactly the terrorist target Treasury is supposed to be using SWIFT to investigate; though the mention of generic "US sanctioned countries" in the second reference might include an actual terrorist-sanctioned country like Iran. The DPA with the NY DA also requires ING to maintain its database of SWIFT records. To the extent this settlement suggests Treasury is using SWIFT to investigate banks for helping non-terrorists launder money, it may set off fear among banks and European civil liberties defenders.

Mind you, there are differences in the behavior described in the two settlements that might explain their different treatment from Treasury. At least for the actions described, ING's alleged actions were far larger in terms of dollars; just the transfers involving Cuba amounted to over \$1.6B, transfers involving Burma amounted to \$15M, with another couple

million involving Iran. By contrast, the actions listed in the JPMC settlement amounted to hundreds of millions, plus the 2 tons of bullion transferred for an Iranian bank (though the JPMC settlement covers a shorter period; JPMC had been busted for other transfers in earlier years). So perhaps the order of magnitude larger alleged actions explains the different treatment (though JPMC did more trade more recently with Iran).

But then there's the cooperation involved. The ING transfers involved clear fraud. And after an employee tried to stop it, an ING attorney told them not to worry. But Treasury determined that OFAC cooperated by identifying weaknesses in its compliance program and providing substantial information—though on occasions, after multiple requests and in redacted form.

While Treasury said JPMC cooperated, what we know about the investigation showed less cooperation.

After a third party financial institution reported to JPMorgan management that they had flagged the transactions as potential sanctions violations, but Treasury says "the bank failed to take adequate steps to prevent further transfers," and did not self-report to Treasury.

Treasury said that a considerable portion of the transfers happened after JPMorgan had been notified of the potential sanctions violation.

"The point of these flags being raised is for people to act on them and cease the conduct, and that didn't happen here," said a Treasury official.

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"I view their conduct as willful," the official said. He added that Treasury has no indication that any actual weapons of mass destruction were shipped

in the incident, and in fact views that as unlikely because such shipments are rare. The problem, the official said, is that the loan undermined the US government's ability to put pressure on Iranian shipping.

In a third apparent violation, Treasury said that it issued a subpoena to JPMorgan for documents related to a specific wire transfer referencing "Khartoum," the capital of Sudan. But JPMorgan "repeatedly stated" it had no additional responsive documents. However, after Treasury listed the specific documents it wanted based on a tip from a third party, JPMorgan eventually produced "more than 20 responsive documents."

"Certainly, JPMorgan knows where Khartoum is," the official said. "This is one of those that I, at least, find most troubling," the official said, because it goes to the heart of the government's ability to get documents by subpoena.

And they involved some of the same people.

The Treasury official said that much of the conduct at JPMorgan included the same officials in the bank's counsel and compliance offices.

That is, ING seemed to be avoiding American sanctions it, as an international bank, didn't take very seriously. JPMC seemed to be deliberately toying with Treasury (even in the days after they had been rescued by taxpayers).

Of course there's one more detail that may explain the difference in treatment, particularly why we didn't see the terms of settlement. As I have reported, the Scary Iran Plot money came into an American bank in Manhattan with a 5-character name just weeks

before JPMC's settlement. So maybe the settlement demanded cooperation on Iranian investigations. Or maybe the settlement described far more transfers, involving the Quds Force.

Or maybe Treasury just hid all the details of how JPMC traded with the enemy because they're **our** corrupt bank, whereas ING is just a foreign bank, and we can't have anyone understand how disloyal Jamie Dimon's bank is to the country that bailed it out.