June 7, 2018

Société Générale and Legg Mason to Pay Nearly $650 Million to Resolve DOJ Investigation of Libyan Bribery Scheme

On June 4, 2018, the U.S. Department of Justice ("DOJ") announced a pair of Foreign Corrupt Practices Act ("FCPA") resolutions, one involving Paris-based Société Générale S.A. ("Société Générale") and its wholly-owned subsidiary, SGA Société Générale Acceptance N.V. ("SGA N.V."), and the other involving Maryland-based Legg Mason, Inc.[1] Both resolutions related to the same scheme to bribe Libyan government officials. The Société Générale resolution also covered other charges.

Société Générale and SGA N.V. agreed to pay over $860 million in penalties to resolve criminal charges in the United States and France in connection with charges of bribery and interest rate manipulation. Of the penalty assessed, $585 million related to the bribery charges—with the DOJ crediting half the amount (over $292 million) to Société Générale for payments the company will make to the French financial prosecutorial authority, the Parquet National Financier ("PNF")—and $275 million related to the interest rate manipulation charges.[2] Société Générale agreed to enter into a three-year deferred prosecution agreement ("DPA") with the DOJ to resolve charges of conspiracy to violate the anti-bribery provisions of the FCPA[3] and transmission of false commodities reports.[4] SGA N.V. entered a guilty plea on June 5, 2018 to the charge of conspiracy to violate the FCPA's anti-bribery provisions.[5] In addition to the criminal penalties levied, Société Générale will also pay $475 million in regulatory penalties and disgorgement to the U.S. Commodity Futures Trading Commission ("CFTC") in connection with the interest rate manipulation charges.

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1 *See* Press Release, Dep't of 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), available at https://www.justice.gov/opa/pr/soci-t-g-n-rale-sa-agrees-pay-860-million-criminal-penalties-bribing-gaddafi-era-libyan; and Press Release, Dep't of 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), available at https://www.justice.gov/opa/pr/legg-mason-inc-agrees-pay-64-million-criminal-penalties-and-disgorgement-resolve-fcpa-charges.

2 Société Générale Press Release.

3 The DOJ charged Société Générale with one count of conspiracy, 18 U.S.C. § 371, to violate the anti-bribery provisions of the FCPA, specifically, 15 U.S.C. §§ 78dd-2 and 78dd-3. *See* Deferred Prosecution Agreement, Société Générale S.A. (June 5, 2018).

4 Société Générale DPA.

5 Plea Agreement, SGA Société Générale Acceptance, N.V. (June 5, 2018).

Investment management firm Legg Mason entered into a three-year non-prosecution agreement ("NPA") with the DOJ and agreed to pay $64.2 million to resolve the DOJ's investigation into violations of the FCPA in connection with Legg Mason's participation in the same Libyan bribery scheme. The $64.2 million payment includes a penalty of $32.625 million and disgorgement of $31.617 million, which will be credited against disgorgement paid to other law enforcement authorities within the first year of the agreement.[6]

The DOJ's enforcement actions are a result of the Department's over four-year investigation of banks, private equity firms, and hedge funds for potential bribery in connection with their dealings with Libya's government-run investment fund.[7] Settlements with the U.S. Securities and Exchange Commission ("SEC") may be forthcoming. In November 2017, Société Générale announced in a quarterly financial filing that it was close to a settlement agreement with the DOJ and SEC.[8] While the DOJ settlement announcement acknowledges the SEC's cooperation and assistance, the SEC was not a party to the resolution.[9] On June 4, 2018, Legg Mason informed its stakeholders that it "soon expect[s] to reach a settlement in principle with the [SEC]."[10]

Factual Allegations

According to the DPA Statement of Facts, from 2004 to 2009, Société Générale paid bribes to high-level Libyan government officials through a Libyan intermediary in order to secure investments[11] for Société Générale from Libyan state-owned financial institutions. Société Générale employees concealed the bribes by terming them payments for "introduction" services and using coded language.[12] Cumulatively, the company paid the intermediary more than $90 million—derived from payments of 1.5% to 3% commissions

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6 Legg Mason Press Release. Legg Mason has indicated that one of these law enforcement authorities may be the U.S. Securities and Exchange Commission ("SEC"). Legg Mason, Letter to Stakeholders (June 4, 2018), available at https://www.leggmason.com/content/dam/legg-mason/documents/en/corporate-press-releases/corporate-announcement/2018/lm-joe-sullivan-doj-letter.pdf.

7 *See* The Wall Street Journal, *Probe Widens into Dealings between Finance Firms, Libya* (Feb. 3, 2014), available at https://www.wsj.com/articles/probe-widens-into-dealings-between-finance-firms-libya-1391403417?mod=article_inline&mod=article_inline; Global Investigations Review, *Société Générale could be 'weeks or months' away from FCPA settlement* (Nov. 7, 2017), available at https://globalinvestigationsreview.com/article/jac/1149848/societe-generale-could-be-%E2%80%98weeks-or-months%E2%80%99-away-from-fcpa-settlement; and Legg Mason Letter to Stakeholders.

8 Global Investigations Review.

9 Société Générale Press Release.

10 Legg Mason Letter to Stakeholders.

11 Specifically, Société Générale sold structured notes, issued by its subsidiaries, to these Libyan state-owned organizations.

12 Société Générale DPA, at A-7 and A-8.

on each of fourteen transactions by the state institutions—some of which was diverted to high-level officials in Libya. These fourteen transactions, including thirteen investments and one restructuring of a state-run business, resulted in $523 million in profits for Société Générale. Société Générale partnered with Legg Mason's subsidiary, Permal Group Ltd. ("Permal"), to carry out the corrupt arrangement, agreeing with Permal that some of the money invested by the Libyan state-owned organizations would be placed in funds managed by Permal.

Ultimately, Legg Mason, through Permal, managed seven of the aforementioned thirteen investments. According to the NPA Statement of Facts, low-to-mid-level employees of Permal knew that the Libyan intermediary was paying bribes and providing other improper financial benefits to government officials in order to solicit investments for Société Générale, but nevertheless continued to use the intermediary.[13] Société Générale paid commissions to the intermediary on behalf of itself and Permal.[14] The total value of these seven transactions was approximately $950 million, and Permal earned net revenues of approximately $31.6 million.[15]

Separately, Société Générale admitted that, between May 2010 and October 2011, it publicized falsely deflated U.S. Dollar London InterBank Offered Rate (LIBOR) submissions, at the direction of senior executives. This manipulation made it appear as if Société Générale was permitted to borrow money at more favorable interest rates and was a stronger company than it actually was. The DOJ stated that the misconduct affected financial products globally by frequently altering the daily rate at which the U.S. Dollar LIBOR was set.[16] In addition, certain company employees collaborated to manipulate Japanese Yen LIBOR submissions in 2006.

Implications of the Enforcement Actions

The Société Générale FCPA enforcement action is notable as the first coordinated action between French authorities and the DOJ in a foreign corruption case[17] and as among the top five FCPA settlements in DOJ history.[18]

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13 Legg Mason NPA, at A-7.

14 *Id.*

15 *Id.*

16 Société Générale Press Release.

17 *Id.* UK and Swiss authorities also cooperated in this investigation.

18 The FCPA Blog, *SocGen pays $585 to resolve Libya FCPA offenses* (June 4, 2018), available at http://www.fcpablog.com/blog/2018/6/4/socgen-pays-585-million-to-resolve-libya-fcpa-offenses.html.

Previously, the United States has acted alone in enforcement actions against French companies on corruption charges, including FCPA actions against Technip S.A. and Alcatel-Lucent S.A.[19] In fact, as recently as October 2014, the Organisation for Economic Co-operation and Development ("OECD") criticized France for being "insufficiently in compliance with the Anti-Bribery Convention,"[20] and France fined only one company for foreign corruption between 2010 and 2016.[21] In late 2016, France adopted an enhanced anti-corruption law,[22] which may help explain the large penalty PNF levied against Société Générale, as well as French collaboration with the DOJ.

The DOJ's significant penalty against Société Générale is the fifth largest assessed for FCPA violations.[23] The DOJ cited the company's failure to self-disclose voluntarily its misconduct and the high value of the bribes paid as aggravating factors. Nevertheless, the DOJ did not require Société Générale to retain an independent monitor, reportedly in acknowledgement of Société Générale's substantial cooperation with the Department and its remediation efforts. The DOJ also cited the fact that Société Générale is subject to ongoing monitoring by France's anti-corruption authority.[24]

The Legg Mason enforcement action is interesting for being markedly more modest than Société Générale's. While the DOJ cited the fact that Legg Mason did not voluntarily self-disclose its conduct, the Department also noted that the company had fully cooperated in the DOJ's investigation and fully remediated.[25] The DOJ also referenced the fact that the company's misconduct involved only mid-to-lower level former

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19 *See* Press Release, Dep't of Justice, *Technip S.A. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay $240 Million Criminal Penalty* (June 28, 2010), available at https://www.justice.gov/opa/pr/technip-sa-resolves-foreign-corrupt-practices-act-investigation-and-agrees-pay-240-million; and Press Release, Dep't of Justice, *Alcatel-Lucent S.A. and Three Subsidiaries Agree to Pay $92 Million to Resolve Foreign Corrupt Practices Act Investigation* (Dec. 27, 2010), available at https://www.justice.gov/opa/pr/alcatel-lucent-sa-and-three-subsidiaries-agree-pay-92-million-resolve-foreign-corrupt.

20 OECD, *Statement of the OECD Working Group on Bribery on France's implementation of the Anti-Bribery Convention* (Oct. 23, 2014), available at http://www.oecd.org/newsroom/statement-of-the-oecd-working-group-on-bribery-on-france-s-implementation-of-the-anti-bribery-convention.htm.

21 Margot Sève, Program on Corporate Compliance and Enforcement at New York University School of Law, *Sapin II: Is the Era of Compliance and Criminal Settlements Upon France?* (June 15, 2017), available at https://wp.nyu.edu/compliance_enforcement/2017/06/15/sapin-ii-is-the-era-of-compliance-and-criminal-settlements-upon-france/.

22 *See* Paul, Weiss Client Memorandum, *FCPA Enforcement and Anti-Corruption Developments: 2016 Year In Review* (Jan. 20, 2017), available at https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/fcpa-enforcement-and-anti-corruption-developments-2016-year-in-review?id=23567.

23 The FCPA Blog.

24 Société Générale Press Release.

25 Legg Mason Press Release.

employees of a subsidiary company and "was not pervasive throughout the Company."[26] In addition, the DOJ cited as mitigating factors that Legg Mason did not maintain the relationship with the Libyan intermediary or originate or lead the corruption scheme (Société Générale did) and that Legg Mason's earned profits from the corrupt transactions were a fraction (less than 10%) of Société Générale's profits.[27] While the Legg Mason NPA, like the Société Générale resolution, does not impose an independent monitor requirement, it provides for self-monitoring.[28]

In both enforcement actions, the DOJ is crediting the companies for payments made to other enforcement authorities.

For companies, this settlement highlights several important considerations:

- The high value the DOJ places on voluntary self-disclosure, cooperation, and remediation.

- The potential for multi-jurisdictional coordination between government authorities in investigating alleged misconduct, and specifically the fact that France is now one of the countries working with the DOJ on cross-border foreign bribery investigations.

- The DOJ's adherence to Deputy Attorney General Rod Rosenstein's May 2018 policy against "piling on" (i.e., the assessment of multiple penalties by different enforcement agencies for the same conduct).[29] Legg Mason's NPA specifically states that the DOJ will "credit any disgorgement paid by [Legg Mason] to another law enforcement authority," which may be an allusion to Legg Mason's potential upcoming settlement with the SEC.[30]

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26 Legg Mason NPA, at 2.

27 *Id.*

28 *Id.* at 3 and Att. B.

29 On May 9, 2018, DOJ Deputy Attorney General Rod Rosenstein announced a new policy, in the form of an addition to the United States Attorneys' Manual ("USAM"), concerning the coordination of corporate resolution penalties in cases involving penalties imposed by more than one regulator or law enforcement authority for the same misconduct. Specifically, the new policy requires DOJ attorneys to "coordinate with one another to avoid the unnecessary imposition of duplicative fines, penalties and/or forfeiture against [a] company," and further instructs DOJ personnel to "endeavor, as appropriate, to . . . consider the amount of fines, penalties and/or forfeiture paid to federal, state, local or foreign law enforcement authorities that are seeking to resolve a case with a company for the same misconduct." *See* Paul, Weiss Client Memorandum, *DOJ Issues New Policy on Coordination of Corporate Penalties to Address "Piling On"* (May 10, 2018), available at https://www.paulweiss.com/practices/litigation/anti-corruption-fcpa/publications/doj-issues-new-policy-on-coordination-of-corporate-penalties-to-address-piling-on?id=26402.

30 Legg Mason NPA, at 5.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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