



## Historic Civil Penalties in U.S. Sanctions Case Offer a Warning to Companies Involved in International Trade

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The U.S. Department of Treasury's recent settlement agreement with Dutch-based ING Bank, N.V. ("ING") wherein ING agreed to pay \$619 million in civil penalties for its role in alleged violations of U.S. sanctions is the largest Office of Foreign Assets Control ("OFAC") settlement of any kind in history. This appears to be part of OFAC's ongoing efforts targeting financial institutions that violate U.S. sanctions.

ING's Wholesale Banking Division engaged in more than 20,000 financial and trade transactions in violation of U.S. sanctions, according to a June 12, 2012, Treasury Department press release. ING's Wholesale Banking Division serves other financial institutions by executing their transactions and assisting with financing. The facts of the case offer lessons for other companies engaged in business abroad and warrant close study.

The Treasury Department alleged that the illegal transactions funneled more than \$1.6 billion through U.S. banks over a five-year span between 2002 and 2007. The transactions primarily involved violations of Cuban sanctions, but also included violations of sanctions against Iran, Burma, Sudan and Libya. The alleged illegal acts included:

- The removal and omission of references to Cuba so as to prevent U.S. financial institutions from recognizing illegal transactions involving Cuban funds;
- Routing payments involving Cuban clients through third parties to avoid detection by U.S. institutions;
- Obscuring details on a letter of credit to facilitate financing of exportation of U.S. goods to Iran; and
- Authorizing fraudulent endorsement stamps for Cuban financial institutions to process travelers checks.

The extraterritorial reach of the U.S. sanctions is especially highlighted when considering that many of the alleged activities involved ING's European-based operations directly with a U.S. sanctioned nation. For example, ING's senior management in France authorized the endorsement stamps for the travelers checks to be processed in Cuba. ING's Romanian branch omitted information on the letter of credit funding U.S. exports to Iran. ING's Trade and Commodity



Finance business in the Netherlands funneled funds through non-sanctioned clients to hide the identities of Cuban clients from U.S. banking institutions.

In other words, the long arm of U.S. sanctions runs far off the shores of the United States and reflects the much broader goals of national security and foreign policy interests. Indeed, Adam Szubin, Director of OFAC, explained that the settlement with ING should serve as a “clear warning” to those who seek to profit from violating U.S. sanctions.

Furthermore, not only has ING paid over half a billion dollars in civil penalties, but it is now also the subject of a criminal investigation for the same violations. OFAC referred the matter for criminal investigation because of the volume of violations, the wide range of efforts ING deployed to conceal its violations, and the gravity of ING’s actions. In addition, ING has further taken steps to enhance its internal compliance and related policies as well as terminating relationships with sanctioned parties.

While ING, a large international financial institution, was caught in the crosshairs of U.S. sanctions, the Treasury Department has stated without reservation that “anyone who would consider profiting by evading U.S. sanctions” is subject to civil and criminal penalties. “Anyone” means just that – from large multinational firms to small family-owned operations, and as this settlement demonstrates violating U.S. sanctions – willfully or out of ignorance – is an expensive proposition.

For more information on the matters discussed in *Locke Lord QuickStudy*, please contact the authors:

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