

Press release

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Inadequate risk management of US sanctions:

FINMA closes proceedings against BNP Paribas (Suisse)

The Swiss Financial Market Supervisory Authority FINMA conducted enforcement proceedings against BNP Paribas (Suisse) SA. The proceedings focused on the bank's compliance with US sanctions, especially those issued against Sudan. FINMA has concluded that in particular between 2002 and 2007 the bank persistently and seriously violated its duty to identify, limit and monitor the inherent risks, subsequently breaching supervisory provisions. FINMA has ordered additional capital requirements for operational risks and banned the bank from conducting business with companies and persons subject to EU and US sanctions.

The US authorities conducted an investigation against the BNP Paribas (Group) regarding the violation of US sanctions against Cuba, Iran and Sudan. FINMA also examined whether the Swiss company, the BNP Paribas (Suisse) SA (= BNP Suisse), had breached Swiss supervisory law in this regard. During the probe, FINMA examined how BNP Suisse identified, limited and monitored the risks emanating from its cross-border trading business from 2002 to 2011. Business developments with business partners in countries sanctioned by the US, the bank's business and monitoring policy since 2002 and compliance with internal rules and regulations were also examined.

Serious violation of US sanctions by the Swiss company

The probe conducted by FINMA revealed that, particularly in the case of Sudan, the bank had ignored and violated US sanctions up to 2011, particularly during the period from 2002 and 2007. Its specific findings are as follows:

- **Dollar transfers:** Sudanese and Iranian clients instructed BNP Suisse to avoid any references to Sudan and actual clients when handling transfers in order to avoid payment transactions getting blocked by international payment transaction filters. BNP Paribas (Suisse) followed those instructions, thus enabling the settlement of payments.

- **Transfers via third-party banks:** BNP Suisse made transactions for Sudanese clients using accounts managed by a third bank. BNP switched to a third-party US clearer and inserted third-party banks between it and the client. It was therefore not evident to the US bank that Sudanese clients were involved in the transactions. For its part, the BNP Suisse believed that US sanction law did not apply to foreign banks, particularly where transactions were settled via a US third-party bank. BNP Suisse did, nonetheless, have grave doubts about the legal implications of this practice. No fewer than 20 legal opinions were sought concerning this matter.
- **Foreign exchange transactions:** BNP Paribas (Suisse) SA made a considerable number of exchange transactions outside the US for clients affected by the embargo. The transactions were concealed by BNP Suisse and BNP Paris. By acting in this manner, the background and involvement of Sudanese clients were not evident to third parties.
- **Letters of credit:** BNP Suisse provided a large amount of credit to finance Sudanese oil trading. Here it was also the case that the bank managed to conceal from third parties payments that had a Sudanese link.
- **Incomplete implementation of group-internal directives:** BNP Suisse implemented its group-internal directives on preventing business with Sudanese clients only in part. This meant that the Sudanese links were not recorded in the system and the transactions were not stopped.

Violation of organisation and governance rules

FINMA has issued a decree and has thus concluded its enforcement proceedings against BNP Paribas (Suisse) SA. It has established that the bank seriously violated its duty to identify, limit and monitor the risks involved in making transactions with business partners in countries subject to US sanctions. The bank exposed itself to unduly high legal and reputational risks and violated requirements for adequate organisation under Swiss supervisory law. On the other hand, FINMA found no indications of Swiss sanctions having been breached.

The proceedings also found that BNP Suisse had in the meantime adapted its procedures for making transactions with business partners in countries subject to sanctions in order to avoid any further breaches in compliance. FINMA will engage an independent third party to review the consistent implementation of those measures.

The supervisory authority will also order additional capital adequacy requirements for operational risks and impose a two-year ban on conducting business with companies and persons subject to EU and/or US sanctions. It will also continue its probe into determining the extent to which the board of directors, management and other BNP Suisse employees were involved in the misconduct.

FINMA reiterates the legal risks relating to foreign sanctions

FINMA based its assessment of the handling of foreign sanctions on Swiss supervisory law, which sets out that a bank must at all times assure proper business conduct and have an adequate organisation, including risk management. Financial institutions must analyse, reduce and adequately control the legal and reputational risks emanating from foreign law. This also applies to the handling of respective sanctions (see [link](#)).

This particular case again illustrates the possible consequences financial institutions face that are not in full control of their operational risks, especially with regard to compliance.

US proceedings against BNP Paribas (Group) concluded

BNP Paribas (Group) announced today its agreement with the U.S. Department of Justice (DoJ) and the New York Department of Financial Services (DFS) concerning the circumvention of US sanctions imposed against Cuba, Iran and Sudan. The agreement with the DoJ involves the Group's guilty plea and payment of a fine totalling 8.97 billion dollars to the US authorities. The DFS also issued sanctions against the Group including the temporary exclusion from dollar clearing for certain business units.

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