
The Banking Sector

Scandals, Intrigues and Investigations

Dr Hans-Patrick Schroeder, 23 May 2016

Why bother about investigations?

1. New regulatory environment

- Significantly more regulation in place
- More active regulators and prosecutors
- Cooperation and information exchange

2. Scandals have serious effects

- Drastic fines
- Private litigation
- Dismissal of employees and/or senior management
- Reputational damage

Scandals and Intrigues

*Benchmark Manipulation, Price Fixing,
Sanctions, Tax Evasion*

Section **1**

Benchmark Manipulation

1. London Interbank Offered Rate (LIBOR)

- Submission of false interest rates for the calculation of LIBOR
- Estimated global fines: ~ \$9 billion

2. Foreign exchange market

- Manipulation of foreign exchange rates
- Estimated global fines : ~ \$10 billion

3. Precious metals

- Potential collusive manipulation of prices in precious metals
- Currently under regulatory spotlight

Price Fixing

1. Competition authorities

- Financial market behavior is subject to competition law
- EU Commission investigates financial firms

2. An example: the “EIRD cartel”

- Traders discussed submissions for the calculation of EURIBOR
- Benchmark manipulation considered price fixing (Art. 101 TFEU)
- Fines imposed by the EU Commission:

Participants	Duration of Participation	Leniency Reduction (%)	Fine (EUR)
Barclays	32 months	100%	0
Deutsche Bank	32 months	30%	465 861 000
Sciété Générale	26 months	5%	227 718 000
Royal Bank of Scotland	8 months	50%	131 004 000

Sanctions

US sanctions: Major recent penalties (banks)

Entity	Alleged illegal conduct	Penalty
Deutsche Bank (November 2015)	Used non-transparent methods and practices to clear 27,200+ USD payments on behalf of sanctioned persons	\$258 million settlement with US Federal Reserve and NY Dept. of Financial Services, also install independent monitor and sack six employees
Crédit Agricole (October 2015)	4,297 violations related to disguising USD transactions involving Iran, Sudan, Cuba and Myanmar	\$787 million settlement with OFAC, Dept. of Justice, the NY County DA, US Federal Reserve and NY Dept. of Financial Services
Commerzbank (March 2015)	Violations of sanctions, AML and banking regulations, including stripping out information identifying sanctioned clients and aiding Olympus accounting fraud	\$1.45 billion in aggregate penalties to the US Federal Reserve, Dept. of Justice, OFAC, US Attorney for Southern District of NY, NY Dept. of Financial Services and Manhattan DA
BNP Paribas (June 2014)	Disguising USD transactions involving Iran, Sudan and Cuba	\$8.9 billion penalty, criminal guilty plea and temporary suspension of authority to clear USD transactions

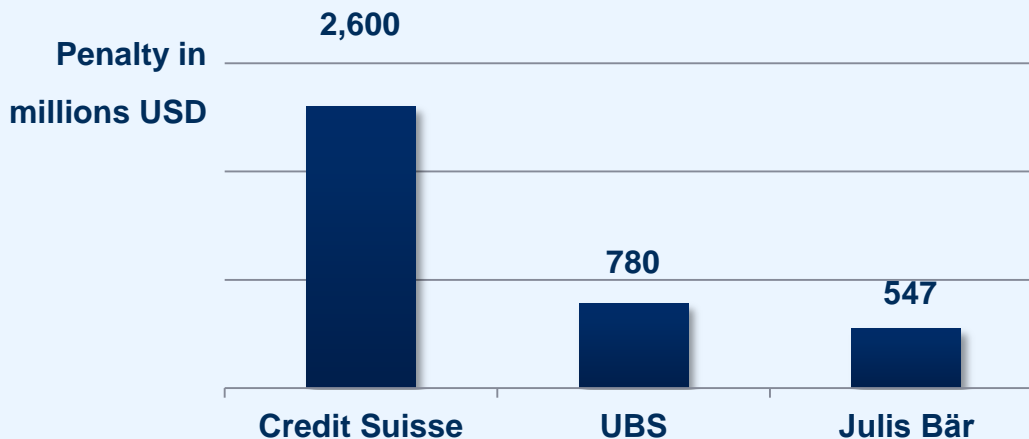
Tax Evasion

1. Facilitation of tax evasion

- Borderline between tax evasion and tax mitigation
- Practices of banks around the world

2. Prosecution of Swiss banks in the U.S.

- Investigations by the U.S. Department of Justice
- High penalties imposed:



Investigations

Why and how to conduct internal investigations?

Section **2**

What is an Investigation?

1. Internal investigations

- *„[A]n inquiry conducted by, or on behalf of, a company and/or its board of directors in an effort to discover facts relating to possible improper acts or omissions that may have occurred at the company.“*
(Lomas/Kramer, Corporate Internal Investigations, 2nd Ed. 2013)

2. Management's perspective

- Knowledge about unlawful conduct
- Duty to investigate
- Response to regulator

3. Cooperation with regulator

- Most advanced form of cooperation
- Better outcomes in government investigations

Conducting an Investigation

1. Scope

a. Subject of the investigation

- actual allegations of wrongdoing
- other possible violations uncovered during the investigation

b. Jurisdictions

c. Regulators and/or prosecutors

- Investigative powers
- Regulatory matters

d. Work plan

2. Team

a. Internal responsibilities

- corporate group entity
- Supervisory board
- Audit committee

b. External advisors

- Law firm
- Accountant
- IT specialist

c. Confidentiality

- Important:
legal privilege

Conducting an Investigation

3. Documents

a. Sources

- Countries/jurisdictions
- Hard copies
- Electronic files
 - Email servers
 - Hard drives
 - Laptops
 - Mobile devices

b. Preservation

- Document hold notices
- Lock down of IT Systems

c. Review

- Law firm/accountant

4. Interviews

a. Individuals being interviewed

- Group of interviewees
- Duty to cooperate

b. Conducting the interviews

- Group of interviewers (usually lawyers)
- Formalities to be observed
- Advice on legal rights
- Requirement of legal presentation



Conducting an Investigation

5. Data protection laws

- a. Applicable laws
- b. Personal Data
 - Information relating to an individual
 - E-Mail addresses, telephone numbers, etc.
- c. Data Transfer
 - External advisors
 - Regulator
 - Consent

6. Employment laws

- a. Cooperation
 - Requirement to cooperate
 - Self-Incrimination
- b. Suspension
 - Suspension for the course of the investigation
 - Other disciplinary sanctions
- c. Whistleblower protection

Conducting an Investigation

7. Communication

- a. Internal
- b. External
 - Public relations
 - Investor Relations
- c. Capital markets disclosure
 - Ad hoc disclosure
 - Periodic disclosure

8. Self-reporting

- a. Self-reporting obligation
- b. Whistleblowing/Leniency
 - EU Commission Leniency Notice
 - U.S. Dodd Frank Act
- c. Settlement options

Conducting an Investigation

9. Report

a. Addressee

- Senior management
- Regulator

b. Form

- Oral briefing
- Written report

10. Effects

a. Management decisions

- Stop duty breach
- Litigation

b. Disciplinary actions

- Management
- Employees

c. Regress

d. Insurance Cover

Biography



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At the Centre for Negotiation and Mediation at the Ludwig-Maximilians-University of Munich, he was certified as a mediator for economic disputes (Wirtschaftsmediator). Patrick frequently publishes articles on arbitration, commercial law and contract law. Patrick was admitted to the German bar in 2005 and qualified as a Solicitor (England & Wales) in 2010. He joined the firm in 2005. Patrick speaks German, English and French.

Biography



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