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Regulator Benjamin Lawsky Is the Man Banks Fear Most

By Lynnley Browning

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When France's BNP Paribas, one of the world's largest banks, was targeted by U.S. investigators for conducting billions of dollars of illicit business with Iran, Sudan and Cuba, it thought the Treasury Department and the Justice Department were its biggest headaches. It was wrong. It soon got body-slammed by an obscure New York banking regulator named Benjamin Lawsky.

The miscalculation was understandable. Unlike Treasury and Justice, the nascent civil agency Lawsky leads, the Department of Financial Services (DFS), has no power to conduct criminal investigations or file criminal charges. Still, Lawsky, a former federal prosecutor and former top deputy in the New York's attorney general's office, can subpoena confidential documents and force executives to testify as part of his civil investigations. But the cudgel that has made him a formidable—and controversial—player in international finance is the power to cripple or potentially kill a major bank by yanking its license to do business in New York, the nerve center for the global economy.

Criminal defense lawyers fear ticking him off. "The ability to fight him is very constrained," says a former federal prosecutor who dealt with Lawsky in recent years and is now in private legal practice. "He can pull your charter; then you're screwed." Adds Judith Lee, a criminal defense lawyer at Gibson Dunn who represents corporations that violate sanctions and money-laundering laws: "He is extremely aggressive. He has the ultimate death penalty at his discretion."

Lawsky, 44, is raking in billions of dollars for New York by demanding, and getting, big cuts of the six- and seven-figure settlements stemming from investigations mostly initiated and driven by other agencies. The cases involve questionable banking in foreign countries, but if they even lightly brush up against state regulations, Lawsky wants a piece. Sighs a senior person briefed on BNP Paribas's case: "He is a very major player, and he's taking a very major role here."

BNP Paribas spent the last weekend in June in feverish negotiations with DFS, the Justice Department, the Federal Reserve and Manhattan prosecutors; all may announce a settlement as soon as Monday afternoon, according to sources. As of Sunday evening, the bank had agreed in principle to plead guilty to criminal charges of violating Treasury Department sanctions against dealings with blacklisted countries and pay perhaps $8.9 billion, according to persons briefed on the matter. If that's true it would be the largest such fine ever. The case has been handled since its beginning around 2007 by Manhattan federal prosecutors and the Manhattan District Attorney's office, but Lawsky emerged in recent months to crank up the pain for BNP. Among his early prizes: forcing out several senior bank executives and insisting on novel limits to the bank's ability to process dollar-denominated payments for international clients—a harsh and untested penalty that digs deep into a type of financial plumbing known as dollar-clearing, a standard feature of banking. The likely reward for DFS once the settlement is sealed: around a quarter of the fine, or nearly $2 billion.

Lawsky has been the gatekeeper of those all-important New York licenses since August 2011, when he was appointed head of the newly-created DFS. He has never actually yanked a bank's license, but he routinely threatens to do so—even when a company agrees to a guilty plea—and that's usually enough to get DFS (and New York State) in on the pay-out.

Lawyers for BNP Paribas from Sullivan & Cromwell learned just how close Lawsky's cudgel was to the bank's head in a series of meetings and communications with him in recent months. In early March, the bank's lawyers gave Lawsky a list of employees it was willing to sacrifice—either by docking their annual bonuses this year or, for less senior staffers, firing them. Three senior executives, Georges Chodron de Courcel, a chief operating officer at the bank; Dominique Remy, head of the bank's global commodities finance unit (where many illicit transactions took place); and Vivien Levy-Garboua, a senior adviser who was once head of global compliance, were teed up to have their bonuses docked. Lawsky, wasn't satisfied; in early April he told the lawyers he had "significant concerns."

A few weeks later, Lawsky met with prosecutors and New York Federal Reserve executives, who all agreed that the bank, whose more than $2.4 trillion in assets place it firmly in the category of "too big to fail," should be forced to plead guilty to one or more felonies, an ugly but survivable charge, rather than indicted, usually a death knell. That's when Lawsky ramped up his demands that the bank feel additional pain.

Days after a May 8 meeting at Lawsky's office in which BNP Paribas' chief executive officer, Jean-Laurent Bonnafe, begged for mercy, Lawsky told the bank de Courcel and the two other senior executives had to go. He also declared that the bank would have to agree to a temporary suspension of its New York-based dollar-clearing operations involving several key outposts related to oil and gas and trade finance.

In late May, BNP caved, sources say, and on June 12, the bank announced that de Courcel and Remy had "retired;" the bank also agreed to nudge out Levy-Garboua, and agreed in principle to a ban on dollar-clearing operations.

The bank is conducting separate negotiations with each of the agencies pursuing it, but over the weekend, the settlement with DFS appeared to be the thorniest. Amid "shouting over the finer points," according to a person briefed on the matter, DFS worked to close any legal loopholes BNP Paribas might use to circumvent the ban on dollar-clearing, such as moving clients served through New York to other affiliates or subsidiaries or shifting the New York business to other major cities. Lacking the legal authority to fire any executives, it also crafted language to ensure that none of the terminated employees—some dozen in all—could come back to the bank.

BNP spokeswoman Cesaltine Gregorio declined to comment.

That sounds like a pretty good result for a banking regulator whose agency didn't even exist two years ago, and in a time when the public perception is that regulators are afraid to punish big banks in the wake of the 2008 collapse, right? Yes, unless you're one of those banks, or one of those prosecutors getting pushed out of the limelight.

Some of the people doing the dirty work that leads to those billion-dollar settlements are rankled that Lawsky is muscling in on their beat, expanding his powers from regulation into enforcement. An official at a prominent criminal investigatory agency who declined to be named because that agency works with Lawsky's office on BNP Paribas and other cases, complains that "other people have done the work and shared it with [DFS], but they take the credit."

Take the case of Credit Suisse, the Swiss bank giant that on May 19 agreed to a $2.6 billion settlement with federal authorities for selling offshore tax evasion services to wealthy Americans. Through its negotiations with the bank, Lawsky's agency won a $715 million cut of that haul and the right to install inside the bank an independent monitor—Neil Barofsky, the former watchdog of the government's bank-bailout program—despite having gotten involved in the probe only last February, more than four years after the Justice Department began investigating the bank.

James Cox, a professor of corporate and securities law at Duke University's law school, says Lawsky "is piling on. Somebody else has already tackled the company, is taking them down, and he climbs on top of the heap."

At the Manhattan attorney general's office, which has no involvement in the BNP case, "it's no secret they've tried to step onto our turf a little," says a person familiar with the matter, citing Lawsky's recent creation of a consumer fraud unit.

Defense lawyers complain that his aggressiveness in seeking large fines can make it tougher to resolve cases during the tense bargaining between a bank and prosecutors over how much weight to assign to fines as opposed to specific criminal charges. "Sometimes it's the most aggressive regulator, not the most knowledgeable one, who determines the solution," says Andrew Sandler, the chairman and executive partner of financial-services law firm BuckleySandler. Some snicker that Lawsky, a former lieutenant to then-Attorney General Andrew Cuomo, now New York's governor, has his eyes on higher political office. Still others wonder if he's overstepping his legal authority. "There's an issue of double jeopardy in being charged at both the state and federal levels," argues Mark Calabria, director of financial regulation studies at Cato Institute, a liberal think tank. He adds that "it's just not clear what business BNP is to DFS—the bank violated Treasury rules, but is it violating its New York charter?"

Lawsky is quick to defend his approach. With BNP Paribas, he tells *Newsweek*, "a lot of our information" about the senior executives "we got from our analysis and from the bank's lawyers. It was basically our own investigation of these guys."

His debut shot, at British bank Standard Chartered, infuriated Treasury and Justice, which had been conducting probes of the bank over violations of American sanctions against Iran, Sudan and Cuba. In August 2012, Lawsky unexpectedly barged ahead of those agencies by filing civil charges against the bank and disclosing internal bank emails alleging some $250 billion worth of money-laundering for transactions linked to sanctioned countries. Only one month after the bank got a letter from Lawsky saying that its New York banking license would be revoked unless it settled up, it agreed to pay Lawsky's agency $340 million. Six months later, the Justice

Department, the Federal Reserve, the Treasury Department and the Manhattan district attorney's office settled their cases against the bank, which agreed to pay them an additional $327 million.

Lawsky's startling move there won him one key ally: Preet Bharara, Manhattan's top federal prosecutor and de facto policeman of Wall Street, who told him that "he'd be willing to pursue top penalties" in similar cases, including BNP Paribas, according to a person with knowledge of the case. A spokeswoman for Bharara's office declined to comment.

The Standard Chartered case exposed another target: a DFS probe of a unit of the Big Four consulting firm Deloitte that was conducting a review of money-laundering and sanctions-violation issues for the bank. Last June, in a move that shocked many in financial circles, Lawsky slapped a $10 million fine on the unit, Deloitte Financial Advisory Services, and banned it from working for any DFS-regulated banks or insurers, including the New York offices of Deloitte clients like Morgan Stanley, for one year. No other federal or state authorities were part of that case.

In the Deloitte case, Lawsky used an obscure banking regulation known as 36-10. The 19th-century regulation allows DFS to revoke a consultant's access to confidential information gleaned from its work as a supervisor for a bank or insurer if the consultant shares that information with anyone other than DFS. Lawsky alleged that the Deloitte unit illegally gave Standard Chartered confidential information about money-laundering activities at other banks that were Deloitte clients, hoping that the information would serve as a "template" for the final Deloitte report to DFS on Standard Chartered—a clear violation, Lawsky asserted, of the 36-10 rule. "We scoured the books, and we saw the 36-10," a DFS spokesman tells *Newsweek*. "We plan to increasingly use this lever to try to rein in consultants."

For some settlements involving sanctions violations, Lawsky gets far more money than Treasury does, even though it initiated the charges. When Treasury settled with Japan's Bank of Tokyo-Mitsubishi for violating American sanctions against Myanmar, Cuba, Sudan and Iran in 2012, it forced an $8.2 million fine from the bank. Lawsky got a separate $250 million fine out of the bank for the same violations in June 2013.

DFS is also "actively probing a series of other banks" over violations of trade sanctions, including French banks Societe Generale and Credit Agricole and Germany's second-largest bank, Commerzbank, a person briefed on the matter tells *Newsweek*. The agency is also scrutinizing a dozen or so Swiss and other foreign banks still under federal criminal investigation for selling offshore tax evasion services, to see if those violations touch New York regulations. And it's exploring whether to review some prior settlements with banks to see if they've violated their terms, the source says.

Lawsky's office is also taking on payday lenders, which are illegal in New York; crafting regulations governing Bitcoin; and upsetting giant insurers like AIG with probes that test the boundaries between state licensing rules and foreign insurance products. Last February he blocked Ocwen Financial Corp's $2.7 billion purchase from Wells Fargo of servicing rights to $39 billion in mortgages, part of a DFS probe of Ocwen abusive practices to homeowners. That DFS probe is an outgrowth of Ocwen's settlement last December with the Consumer Financial Protection Bureau and 49 states on the same issue.

In March he fined Met Life Inc., the largest life insurer in the United States, $50 million, a DFS record amount against an insurer, after accusing its subsidiaries of drumming up business in the state without a license; the Manhattan district attorney's office, which conducted the joint probe, got only $10 million. Insurance giant AIG, which sold the subsidiaries to MetLife in 2010, sued Lawsky's office last April, saying that it was overreaching. AIG's Financial Products unit is already under a separate probe by Lawsky for work with derivatives that nearly brought down the company in 2008.

Gibson Dunn's Lee says that many criminal lawyers "perceive the [DFS] settlements to be unfair, because they have so much leverage and are able to use that leverage as a threat to coerce" banks into paying large fines." Unfair or not, she adds, "the banks are caving."