

If you have any questions about this Advisory, please contact:

DAVID HALL
215.988.8325
dhall@wiggin.com

MATTHEW NETTLETON
203.498.4401
mnettleton@wiggin.com

Former Compliance Officer Assessed Million Dollar Penalty for Role in Company's Money Laundering Violations

Corporate officers with compliance duties, take note: you may face personal liability for your role in failing to prevent your company's violations of federal law. This new reality comes courtesy of the U.S. Department of the Treasury's Financial Crimes Enforcement Network's ("FinCEN") unprecedented assessment, on December 18, 2014, of a \$1,000,000 penalty against Thomas E. Haider, the former chief compliance officer ("CCO") of MoneyGram, a global money services business. On the same day, U.S. Attorney for the Southern District of New York, Preet Bharara, filed a civil complaint against Mr. Haider in the district court seeking an order to enforce the FinCEN penalty and enjoin Mr. Haider from participating in the conduct of any financial institution for "a term of years – to be determined at trial – sufficient to prevent harm to the public."

The claims against Mr. Haider stem from the Justice Department's earlier case against Mr. Haider's former employer, MoneyGram. In November 2012, MoneyGram, the world's second-largest money transfer company, agreed to forfeit \$100 million and admitted it aided and abetted wire fraud and failed to maintain an effective anti-money laundering program in violation of the Bank Secrecy Act ("BSA").

In its penalty assessment against Mr. Haider, FinCEN stated it had determined that he had willfully violated the BSA by failing to ensure that MoneyGram: (1) implemented and maintained an effective anti-money

laundering ("AML") program, and (2) filed timely suspicious activity reports ("SARs") with law enforcement when it knew, suspected, or had reason to suspect that third parties were using its money transfer service to facilitate criminal activity. FinCEN further stated that, as a result of Mr. Haider's AML failures, agents and outlets that MoneyGram personnel knew or suspected were involved in fraud and/or money laundering were allowed to continue to use MoneyGram's money transfer system to facilitate their fraudulent schemes.

Under the BSA and its implementing regulations, individuals responsible for a company's failure to implement and maintain an effective AML program are liable for a civil penalty of \$25,000 for each day that the company lacks an effective AML program. Similarly, individuals responsible for a company's failure to file required SARs are liable for a civil penalty of no less than \$25,000 (and up to \$100,000) for each instance in which the company fails to file a required SAR. See 31 U.S.C. § 5321(a)(1).

The seven-figure penalty against Mr. Haider emphatically punctuates the growing trend in the direction of increased individual liability for BSA violations and an aggressive use of the BSA's enforcement mechanisms. [1] For instance, in 2013, Democrats in the U.S. House of Representatives introduced the Holding Individuals Accountable and Deterring Money Laundering Act, to give financial regulators enhanced civil powers to hold executives accountable

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for misconduct on their watch. That bill is currently in a Congressional subcommittee. FinCEN director Jennifer Shasky Calvery has publicly announced her agency's intention to hold individuals liable for their roles in a company's AML failures.[2] The \$1,000,000 fine against Mr. Haider should remove all doubt in this regard.[3]

FinCEN's enforcement action against Mr. Haider raises serious and immediate questions for all officers responsible for BSA compliance programs and for those individuals considering such a position. Is the company's AML program adequate? What is the structure of the company's compliance program? Who designed the program? Who is responsible for implementation? Might company shareholders have a cause of action against CCOs in light of FinCEN penalties? Will Directors & Officers liability insurance cover a FinCEN monetary penalty?

Persons potentially affected by FinCEN's trend toward individual liability would do well to consult with counsel on these questions.

[1] The trend towards individual liability for CCOs is discussed in 'The Rise of Failure to Prevent' Crimes and CCO Liability by Wiggin and Dana attorneys David Ring and Claire Coleman in the New York Law Journal Compliance Special Section, October 27, 2014, which is available here.

[2] Remarks of FinCEN Director Jennifer Shasky Calvery at Securities Industry and Financial Markets Association Anti-Money Laundering and Financial Crimes Conference (January 30, 2014) http://www.fincen.gov/news_room/speech/html/20140130.html

[3] FinCEN is not the only regulator in the financial industry increasing enforcement against individuals for their role in a company's malfeasance. One very recent example is the New York State Department of Financial Services' settlement, on December 22, 2014, with Bank Leumi over that bank's role in helping its clients evade U.S. taxes. In addition to a \$130 million fine levied against the bank, the settlement requires Bank Leumi to terminate a bank manager and bar another employee from compliance duties.

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