

# Client Alert

December 2014

## **FinCEN Assesses \$1 Million Penalty Against Former MoneyGram Compliance Officer, Emphasizes Individual Accountability**

On December 18, 2014, the Financial Crimes Enforcement Network (FinCEN) issued a \$1 million civil penalty against former MoneyGram International, Inc. (MoneyGram) Chief Compliance Officer Thomas E. Haider. In a [press release](#) announcing the assessment, FinCEN alleged that during Haider's oversight of compliance for MoneyGram, he failed to adequately respond to thousands of customer complaints regarding schemes that utilized MoneyGram to defraud consumers. In coordination with FinCEN, the US attorney's office in the Southern District of New York filed a civil [complaint](#) on the same day, seeking a \$1 million civil judgment against Haider to collect on the assessment and requesting injunctive relief barring him from participating in the affairs of any financial institution located or conducting business in the United States.

According to the complaint, Haider was the CCO for MoneyGram from 2003 to 2008 and privy to complaints received by the fraud department regarding numerous fraud schemes utilizing MoneyGram to induce transfers of funds from victims. The complaint outlines claims that Haider was personally responsible for MoneyGram's failure to meet its legal obligations under the Bank Secrecy Act (BSA): namely, to implement and maintain an effective anti-money laundering (AML) compliance program, and to timely file Suspicious Activity Reports (SARs). The judgment sought is based on provisions of the BSA and implementing regulations that authorize a \$25,000 per day penalty for willful failure to maintain an AML compliance program and file SARs.

The complaint references prior enforcement actions against MoneyGram, including a 2012 Deferred Prosecution Agreement (DPA) between the money transmitter and the Department of Justice for the same BSA violations. The DPA included numerous admissions of wrongdoing by MoneyGram and an agreement to pay a \$100 million forfeiture penalty as part of the resolution.

The case against Haider follows a series of statements from FinCEN Director Jennifer Shasky Calvery and other regulators emphasizing individual accountability. In addition, the allegations appear to parallel aspects of FinCEN's advisory in August 2014, "[Promoting a Culture of Compliance](#)." The allegations against Haider relating to MoneyGram's AML compliance program include:

- Failure to ensure communication between MoneyGram's fraud department and analysts responsible for filing SARs;
- Failure to terminate high-risk agents based on reports of an excessive number of fraud-induced wire transfers;
- Failure to conduct effective audits of high-risk agents;
- Failure to screen new agents and conduct adequate due diligence; and
- Failure to implement a policy for disciplining high-risk agents facilitating criminal activity.

The government's theory as to the failure to file SARs is not that no SARs were filed by MoneyGram, but that MoneyGram failed to file SARs listing the agents as subjects. It appears that SARs were filed on

suspicious transactions and the names of agents/outlets where the transactions occurred were at times included in the SAR. However, the complaint alleges that SARs should have been filed on the agents as subjects based on activities that should have been obvious to the agents.

In addition, the complaint makes repeated references to recommendations and findings made by an “outside AML consultant” apparently hired by MoneyGram during Haider’s tenure as CCO. The government intends to rely on the recommendations to establish Haider’s willful failure to take steps to increase the effectiveness of an AML program he is alleged to have created.

FinCEN’s increased use of civil enforcement tools to hold compliance officers and senior management individually liable for BSA deficiencies is a noted enforcement trend that will likely continue in 2015. Financial institutions of all types should take note and consider internal compliance assessments conducted at the direction of legal counsel to ensure that their AML programs meet regulators’ expectations as outlined by FinCEN in the August 2014 advisory (FIN-2014-A007).

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