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# Federal and State Regulators Target Compliance Officers—Part I

*Betty Santangelo, Gary Stein, Jennifer M. Opheim, Seetha Ramachandran, and Melissa G.R. Goldstein\**

*In this two-part article the authors discuss enforcement actions against compliance officers. This first part of the article details the Financial Crimes Enforcement Network \$1-million assessment against the former chief compliance officer (“CCO”) at MoneyGram International Inc. (“MoneyGram”). The second part of the article, which will appear in an upcoming issue of The Banking Law Journal, will continue the discussion of the MoneyGram action, and also will discuss Bank Leumi’s consent order with the New York State Department of Financial Services, under which the bank admitted engaging in an illegal cross-border scheme to assist U.S. clients in evading federal and state taxes and agreed to take steps to terminate and/or ban specific employees, including its former CCO, from engaging in compliance functions.*

On December 18, 2014, the Financial Crimes Enforcement Network (“FinCEN”) issued a first-of-its-kind \$1-million assessment against the former Chief Compliance Officer (“CCO”) and Senior Vice President of Government Affairs at MoneyGram International Inc. (“MoneyGram”).<sup>1</sup> FinCEN determined that the CCO “willfully violated” the requirements to: (1) “implement and maintain an effective anti-money laundering program;” and (2) “report suspicious activity.” On the same day, the U.S. Attorney’s Office for the Southern District of New York filed a civil complaint in federal district court seeking to enforce the assessment and bar the former CCO from employment in the financial industry.<sup>2</sup> These actions come two years after MoneyGram entered into a Deferred Prosecution Agreement (“DPA”) with federal prosecutors on charges of aiding and abetting wire fraud and willfully failing to

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<sup>1</sup> *In the Matter of Thomas E. Haider*, FinCEN No. 2014-08, Assessment of Civil Money Penalty (Dec. 18, 2014), available at [http://www.fincen.gov/news\\_room/ea/files/Haider\\_Assessment.pdf](http://www.fincen.gov/news_room/ea/files/Haider_Assessment.pdf).

<sup>2</sup> See Complaint, *U.S. Dep’t of the Treasury v. Haider*, Civ. No. 14-9987 (S.D.N.Y. Dec. 18, 2014). On Jan. 29, 2015, Haider moved to transfer venue of the civil action to the District of Minnesota, where MoneyGram allegedly had its principal place of business.

implement an effective anti-money laundering (“AML”) program (“MoneyGram DPA”).<sup>3</sup>

Separately, on December 22, 2014, Bank Leumi USA and Bank Leumi Le-Israel, B.M. (“Bank Leumi-Israel”) (collectively, “Bank Leumi” or the “Bank”) entered into a consent order with the New York State Department of Financial Services (“DFS”), under which the Bank admitted engaging in an illegal cross-border scheme to assist U.S. clients in evading federal and state taxes and agreed to pay DFS \$130 million and hire an independent monitor.<sup>4</sup> Bank Leumi further agreed to take steps to terminate and/or ban specific employees, including its former CCO, from engaging in compliance functions.

These enforcement actions, discussed below, are part of a growing trend by regulators seeking to hold individuals accountable for company misconduct, including failure to comply with AML and Bank Secrecy Act (“BSA”) requirements,<sup>5</sup> and demonstrate the vulnerability of compliance officers to such actions in this enforcement climate.

## FINCEN ASSESSMENT AGAINST THOMAS HAIDER

### The MoneyGram DPA

MoneyGram is a global money services business that enables customers to transfer money to and from various locations in the United States and abroad. It operates through a global network of outlets—independently owned entities

<sup>3</sup> See MoneyGram Deferred Prosecution Agreement (Nov. 9, 2012), *available at* [http://www.justice.gov/usao/pam/news/2012/MoneyGram\\_DPA\\_11\\_09\\_2012.pdf](http://www.justice.gov/usao/pam/news/2012/MoneyGram_DPA_11_09_2012.pdf).

<sup>4</sup> See *In the Matter of Bank Leumi USA, Bank Leumi Le-Israel, B.M.*, DFS Administrative Proceeding (Dec. 22, 2014), *available at* [http://www.dfs.ny.gov/about/po\\_bank\\_lemui\\_12222014.pdf](http://www.dfs.ny.gov/about/po_bank_lemui_12222014.pdf). On the same day, Bank Leumi entered into a DPA with the DOJ, in which Bank Leumi admitted that it conspired to aid and assist U.S. taxpayers in preparing and presenting false tax returns to the Internal Revenue Service by hiding income and assets in offshore bank accounts. In the DPA, Bank Leumi agreed, among other things, to pay the United States \$270 million and that two subsidiaries will cease providing banking and investment services for all accounts held or beneficially owned by U.S. taxpayers. Press Release, U.S. Dep’t of Justice, Bank Leumi Admits to Assisting U.S. Taxpayers in Hiding Assets in Offshore Bank Accounts (Dec. 22, 2014), *available at* <http://www.justice.gov/opa/pr/bank-leumi-admits-assisting-us-taxpayers-hiding-assets-offshore-bank-accounts>.

<sup>5</sup> See Press Release, U.S. Dep’t of Justice, Manhattan U.S. Attorney Sues Thomas E. Haider, Former Chief Compliance Officer of Moneygram International, Inc., for Violating the Bank Secrecy Act (Dec. 18, 2014), *available at* <http://www.justice.gov/usao/nys/pressreleases/December14/ThomasHaiderComplaintPR.php> (quoting U.S. Attorney Preet Bharara as saying: “As this case demonstrates, we are committed to working with FinCEN to enforce the requirements of the Bank Secrecy Act and hold individuals such as Mr. Haider accountable.”)

authorized to transfer money through MoneyGram’s money transfer system—which are owned and/or operated by agents.<sup>6</sup>

In 2012, MoneyGram entered into a DPA with the Department of Justice (the “DOJ”) in connection with its AML program. In the MoneyGram DPA’s agreed Statement of Facts, the DOJ criticized MoneyGram’s failure to ensure that its agents and outlets were not engaging in fraud or money laundering, as early as 2003 and continuing into 2009. The DOJ concluded that MoneyGram “knew that specific MoneyGram [a]gents] were involved in” various fraud schemes and assisted and profited from the agents’ fraud schemes by failing to terminate agents that it knew were engaging in fraud and by allowing the agents to increase their transactions by, among other things, opening new outlets. According to the Statement of Facts, MoneyGram also willfully failed to implement an effective AML program, having failed to:

- (1) implement policies or procedures governing the termination of agents involved in fraud and money laundering;
- (2) timely file adequate suspicious activity reports (“SARs”) on agents MoneyGram knew were involved in fraud;
- (3) structure its AML program so that individuals responsible for filing SARs had access to the company’s fraud department report database;
- (4) sufficiently staff and resource its AML program;
- (5) conduct audits on outlets involved in fraud and money laundering;
- (6) implement policies or procedures to review certain checks of agents known or suspected to be involved in check pooling; and
- (7) conduct adequate due diligence on both prospective MoneyGram agents and agents seeking additional MoneyGram outlets.<sup>7</sup>

As part of the DPA, MoneyGram agreed to forfeit \$100 million to the DOJ and to appoint an independent monitor. Notably, the MoneyGram DPA did not protect any of its “present or former officers, directors, employees, agents, agent employees and consultants” from further prosecution, or “bind any other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities[.]”<sup>8</sup>

### **Haider’s Alleged Failures**

According to the Assessment and Complaint (“Charging Documents”),

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<sup>6</sup> Assessment ¶¶ 22, 23–24.

<sup>7</sup> MoneyGram DPA Statement of Facts 10, 15–25, 28–31.

<sup>8</sup> MoneyGram DPA ¶¶ 4, 8(b), 24.

Thomas Haider was MoneyGram's CCO from 2003 through May 23, 2008. In that capacity, he supervised the company's Fraud and AML Compliance Departments. According to the Charging Documents, Haider had significant responsibilities and authority. He allegedly was the "architect of MoneyGram's AML program" and was responsible for assuring MoneyGram's day-to-day compliance with its AML program and with the requirements of the BSA and its implementing regulations. He had the authority to terminate and discipline MoneyGram agents and outlets as a result of compliance concerns, as well as to decline to approve new agents/outlets. Beginning in 2006, Haider was a member of MoneyGram's Senior Leadership Team, reporting "directly to MoneyGram's Chief Executive Officer." In that role, Haider had an open line of communication to MoneyGram's Audit Committee and made unscreened presentations to the committee, keeping MoneyGram's board of directors apprised of developments in MoneyGram's AML program.<sup>9</sup>

But notwithstanding his authority and responsibilities, Haider purportedly failed to ensure that MoneyGram implemented and maintained an effective AML program and fulfilled its obligations to file timely SARs. Haider was effectively deemed responsible for nearly all of MoneyGram's failures identified in the MoneyGram DPA. In particular, the Charging Documents allege the following:

***Failure to Ensure Implementation of Policies for Disciplining Agents and Outlets***

The Charging Documents allege that Haider, despite his authority to do so, failed to ensure that MoneyGram implemented a policy for disciplining MoneyGram agents and outlets that MoneyGram knew or suspected were involved in fraud and/or money laundering. According to the Charging Documents, the Fraud Department proposed policies in 2006 and March 2007 that would have required that outlets be terminated or otherwise disciplined if, within a defined period of time, they accumulated a certain number of consumer fraud reports or reached a certain dollar amount of consumer fraud payouts. Haider allegedly received at least the March 2007 policy, but "not only failed to implement it, but also failed to implement any policy for terminating or otherwise disciplining high-risk agents/outlets during his employment at MoneyGram." The Charging Documents highlight this failure as "particularly egregious" given that: (1) MoneyGram represented to the FTC and external auditors that it had plans to implement such policies; (2) the Director of Fraud had created a presentation recommending such a policy and included a

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<sup>9</sup> Assessment ¶¶ 3, 37–39, 41, 42, 78; Compl. ¶¶ 13, 47–49, 51–52.



notation that he was to discuss those recommendations with Haider; and (3) Haider “was on notice that numerous MoneyGram agents/outlets presented a high risk of fraud and money laundering.”<sup>10</sup>

### *Failure to Ensure Termination of Agents and Outlets*

The Charging Documents also allege that Haider failed to ensure that MoneyGram terminated agents and outlets that MoneyGram knew were involved in fraud and money laundering. In late 2004, FinCEN issued interpretive guidance on AML program requirements for money services business with foreign agents or foreign counterparties.<sup>11</sup> That 2004 Interpretive Release, specifically referenced in the Charging Documents,<sup>12</sup> provides, in relevant part, that such money services businesses must have procedures that:

provide for the implementation of corrective action on the part of the foreign agent or counterparty or for the termination of the relationship with any foreign agent or counterparty that the Money Services Business determines poses an unacceptable risk of money laundering or terrorist financing, or that has demonstrated systemic, willful, or repeated lapses in compliance with the Money Services Business’ own anti-money laundering procedures or requirements.<sup>13</sup>

In that regard, the Charging Documents allege that, from January 2004 through May 2008, MoneyGram customers filed more than 30,000 consumer fraud reports involving MoneyGram agents/outlets in the United States and Canada, totaling approximately \$60 million in alleged consumer losses. The Fraud Department compiled this information in a database (the “Consumer Fraud Report database”), from which Haider purportedly received information and reports. These consumer fraud reports included the top ten Canadian outlets where fraud was occurring, and the percentage of money transfers that were reported as fraudulent at each one. According to the Charging Documents, of the top 10 outlets, only one was terminated by MoneyGram during Haider’s employment. The remaining nine outlets were terminated within one year of Haider’s leaving the company.<sup>14</sup>

<sup>10</sup> Assessment ¶¶ 51–58; Compl. ¶¶ 68–75.

<sup>11</sup> See Interpretive Release 2004-1—Anti-Money Laundering Program Requirements for Money Services Businesses With Respect to Foreign Agents or Foreign Counterparties, 69 Fed. Reg. 74,439 (Dec. 14, 2004), available at [http://www.fincen.gov/statutes\\_regs/fn/pdf/31cfr12142004.pdf](http://www.fincen.gov/statutes_regs/fn/pdf/31cfr12142004.pdf) (“2004 Interpretive Release”).

<sup>12</sup> Assessment ¶¶ 15–17; Compl. ¶¶ 20–22.

<sup>13</sup> 2004 Interpretive Release, 69 Fed. Reg. at 74,441.

<sup>14</sup> Assessment ¶¶ 59, 61; Compl. ¶¶ 76, 78.

In addition, the Charging Documents allege that Haider received periodic recommendations from the Fraud Department to terminate specific agents and/or outlets on account of suspected fraud, which were supported by data from the Consumer Fraud Report database. According to the Charging Documents, most of those agents/outlets were not terminated while Haider was employed at MoneyGram. Specifically, in April 2007, Haider allegedly received a recommendation to terminate 49 Canadian outlets. Of those 49 outlets, only seven were terminated by MoneyGram while Haider was employed, and at least 33 were still affiliated with MoneyGram at the time Haider left the company. Of those 33 outlets, four were owned by an agent who was purportedly brought to Haider's attention by way of email, in which the Director of AML Compliance and Fraud informed Haider that the Toronto Police Department regarded the agent as "dirty." According to the Charging Documents, MoneyGram terminated each of those 33 outlets after Haider left the company—some not until August 2009. Haider purportedly later admitted that at least certain of the outlets should have been terminated and could not explain why they had not been other than he "must have dropped the ball somewhere," acknowledging that "the buck stop[ped] with" him with respect to the failure to terminate one of the outlets owned by an agent that the Toronto Police Department regarded as "dirty." Although the Charging Documents acknowledge that Haider took certain remedial steps with respect to certain outlets that the Fraud Department had recommended be terminated, FinCEN viewed those remedial measures as "clearly inadequate."<sup>15</sup>

Further, the Charging Documents allege that Haider improperly allowed a procedure by which the Fraud Department had to consult with the Sales Department before terminating an agent/outlet.<sup>16</sup> This procedure allegedly resulted in MoneyGram's failure to terminate agents/outlets and/or the delay of such termination.<sup>17</sup>

### *Failure to Ensure Adequate Due Diligence on New and Existing Agents*

Likewise, the Charging Documents allege that Haider failed to ensure that MoneyGram conducted adequate due diligence on prospective agents, or existing agents seeking to open additional outlets. This purportedly resulted in MoneyGram's granting: (1) agents the authority to operate outlets out of

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<sup>15</sup> Assessment ¶ 62–76; Compl. ¶ 79–93.

<sup>16</sup> Assessment ¶ 77; Compl. ¶ 94. This criticism seems to ignore the role of the business unit in ferreting out fraudulent conduct and providing information to compliance about the agent/outlet.

<sup>17</sup> Assessment ¶¶ 77–78; Compl. ¶¶ 94–95.

locations, such as residential areas, where it was clear that they were not offering legitimate money transmission services; (2) outlets to agents who had previously been terminated by other money transmission companies; and (3) additional outlets to agents who MoneyGram personnel knew or suspected were involved in fraud and/or money laundering.<sup>18</sup>

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<sup>18</sup> Assessment ¶¶ 92–95; Compl. ¶¶ 109–12.