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Alert

Federal and State Regulators Target Compliance Officers

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On Dec. 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").[1] 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.[2] 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 implement an effective anti-money laundering ("AML") program ("MoneyGram DPA").[3]

Separately, on Dec. 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.[4] 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

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[1] *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.

[2] *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.

[3] *See* MoneyGram Deferred Prosecution Agreement (Nov. 9, 2012), *available at* http://www.justice.gov/usao/pam/news/2012/MoneyGram_DPA_11_09_2012.pdf.

[4] *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. 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.

Act ("BSA") requirements,[5] 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 authorized to transfer money through MoneyGram's money transfer system — which are owned and/or operated by agents.[6]

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.[7]

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[.]"[8]

Haider's Alleged Failures

According to the Assessment and Complaint ("Charging Documents"), 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

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[5] *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.")

[6] Assessment ¶¶ 22, 23-24.

[7] MoneyGram DPA Statement of Facts ¶¶ 10, 15-25, 28-31.

[8] MoneyGram DPA ¶¶ 4, 8(b), 24.

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.[9]

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:

<u>Failure to Ensure Implementation of Policies for Disciplining Agents and Outlets</u>

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 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."[10]

<u>Failure to Ensure Termination of Agents and Outlets</u>

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.[11] That 2004 Interpretive Release, specifically referenced in the Charging Documents,[12] 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

[9] Assessment ¶¶ 3, 37- 39, 41, 42, 78; Compl. ¶¶ 13, 47-49, 51-52.

[10] Assessment ¶¶ 51-58; Compl. ¶¶ 68-75.

[11] *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/frn/pdf/31cfr12142004.pdf ("2004 Interpretive Release").

[12] Assessment ¶¶ 15-17; Compl. ¶¶ 20-22.

> 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.[13]

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 ten 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.[14]

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."[15]

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.[16] This procedure allegedly resulted in MoneyGram's failure to terminate agents/outlets and/or the delay of such termination.[17]

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[13] 2004 Interpretive Release, 69 Fed. Reg. at 74,441.

[14] Assessment ¶¶ 59, 61; Compl. ¶¶ 76, 78.

[15] Assessment ¶ 62-76; Compl. ¶ 79-93.

[16] 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.

[17] Assessment ¶¶ 77-78; Compl. ¶¶ 94-95.

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 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.[18]

Willful Failure to Ensure Timely Filing of SARs

The Charging Documents next allege that Haider failed to ensure that MoneyGram fulfilled its obligation to file timely SARs. Specifically, it is alleged that MoneyGram's AML program was structured in such a way that the individuals responsible for filing SARs were not provided with information from the Fraud Department's Consumer Fraud Report database, which identified the outlets that had accumulated excessive numbers of consumer fraud reports. Contrary to guidance Haider purportedly received from external AML compliance consultants, he did not ensure that the Fraud Department shared relevant information with SAR analysts or provide adequate direction to staff on when SARs should be filed relating to fraud. In effect, Haider purportedly allowed an arrangement whereby separate "silos" of information were maintained, thus preventing SAR analysts from obtaining relevant information. As a result, SARs against known high-risk agents/outlets were not filed or were filed significantly late. In addition, many SARs that MoneyGram filed purportedly incorrectly listed the victim of the fraud as the subject of the SAR and failed to properly identify the known or suspected complicit agent.[19]

The Charging Documents describe multiple specific examples of outlets/agents that should have been the subject of SARs. Among the factors that the government alleges should have triggered the filing of a SAR were the following: (1) a significant number of consumer fraud reports were filed against the outlet/agent, and there were quantifiable consumer losses; (2) identification by AML and Fraud Department personnel of the outlet as one likely to have participated in a fraudulent scheme; (3) receipt of law enforcement subpoenas regarding the outlets/agents;[20] (4) whether the agent was ultimately convicted of any crimes;[21] and (5) whether the outlet had been recommended to Haider for termination. In numerous instances, the Charging Documents allege that MoneyGram failed to file timely SARs identifying particular agents as suspects during Haider's employment at MoneyGram, but purportedly did so with respect to those same agents and outlets after Haider left the company. According to the Charging Documents, "[a]s a result of MoneyGram's failure to file timely SARs under Haider, the perpetrators of fraudulent schemes were allowed to continue to defraud the public without the requisite notice being provided to FinCEN," and, as a result, its law enforcement objectives were frustrated.[22]

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[18] Assessment ¶¶ 92-95; Compl. ¶¶ 109-12.

[19] Assessment ¶¶ 79-83; Compl. ¶¶ 96-100.

[20] Receipt of law enforcement subpoenas is ordinarily not in and of itself a basis for the filing of a SAR.

[21] It is not clear whether MoneyGram would have known whether the agent was ultimately convicted of any crimes at the time a SAR should have been filed.

[22] Assessment ¶¶ 96-108; Compl. ¶¶ 113-26.

Failure to Ensure Proper Performance of Audits

In addition, although it is not clear why Haider was responsible for conducting the audits, the Charging Documents claim that Haider failed to ensure that MoneyGram conducted effective audits of agents and outlets, including outlets that MoneyGram personnel knew or suspected were involved in fraud and/or money laundering. As alleged in the Charging Documents, under the BSA, AML programs must include "an independent audit function to test [the] program." Specifically, according to the allegations, MoneyGram did not "consistently perform risk-based audits of agents/outlets, even those it had identified as: (1) having accumulated an excessive number of Consumer Fraud Reports; and/or (2) possessing other high-risk characteristics." In fact, some of the agents/outlets were purportedly not audited "precisely because the agents/outlets were understood to be engaging in fraud," based on the concern that sending audit teams to those outlets would put them in "physical danger." Haider was allegedly aware of this policy. Likewise, as a result of the lack of sharing of information between the Fraud and AML Compliance Departments, MoneyGram purportedly did not consider the number of consumer fraud reports that MoneyGram's agents/outlets had accumulated when determining which agents/outlets to audit. Furthermore, the Charging Documents allege that even the audits MoneyGram did perform were "frequently ineffective" because on-site auditors were purportedly not trained to look for warning signs of fraud and did not conduct adequate AML reviews.[23]

Relief Sought

Under the BSA, any financial institution and any "partner, director, officer, or employee" of any such financial institution that "willfully" violates the BSA or its implementing regulations is liable for a "civil penalty of not more than the greater of the amount (not to exceed $100,000) involved in the transaction (if any) or $25,000."[24] As alleged in the Charging Documents, "a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues," including for violations of a financial institution's duty to implement an effective AML program and to timely file SARs.[25] FinCEN may also seek injunctive relief against a person it believes "has violated, is violating, or will violate" the BSA.[26]

Pursuant to that authority, as a result of the alleged failures discussed above, FinCEN's Assessment seeks $1 million from Haider[27] for an assessment period of 190 days,[28] and the U.S. Attorney's Office is seeking an order: (1) reducing that assessment to a judgment; and (2) "enjoining Haider from participating, directly or indirectly, in the conduct of the affairs of any 'financial institution' (as that term is used in the BSA and its implementing regulations) that is located in the United States or conducts

[23] Assessment ¶¶ 6, 86, 88, 90-91; Compl. ¶¶ 16, 103, 105, 107-08.

[24] 31 U.S.C. § 5321(a)(1).

[25] *See id.*; *id.* § 5318(h)(1) ("In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs[.]"); *id.* § 5318(g)(1) ("The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.").

[26] *Id.* § 5320.

[27] The complaint describes this amount as a discount from the $4,750,000 it could have assessed against him. Compl. ¶ 67. According to FinCEN, under the BSA and its implementing regulations, Haider, as an individual responsible for MoneyGram's failure to comply with its AML obligations, is liable for: (1) $25,000 for each day that MoneyGram lacked an effective AML program; and (2) no less than $25,000 (and up to $100,000) for each instance in which the company failed to file a required SAR. Assessment ¶ 6; Compl. ¶ 67.

[28] FinCEN and Haider entered into tolling agreements, pursuant to which the parties agreed that any statute of limitations applicable here would be tolled from and including Nov. 15, 2103, through and including Dec. 19, 2014. Accordingly, FinCEN based its assessment against Haider on conduct occurring between November 15, 2007 and May 23, 2008 (the date of Haider's separation from MoneyGram). Compl. ¶¶ 65-67.

business within the United States, for a term of years — to be determined at trial — sufficient to prevent future harm to the public."[29]

Bank Leumi DFS Consent Order

The Dec. 22, 2014 consent order between Bank Leumi[30] and the DFS ("Consent Order") represents another example of an enforcement action aimed specifically at a CCO.[31] In the Consent Order, Bank Leumi admitted that "[f]rom at least 2000 through 2011, it operated a wrongful cross-border banking business that knowingly and willfully aided and assisted U.S. clients, including New York clients, in opening and maintaining undeclared accounts in a foreign country, concealing their offshore assets and income from the Internal Revenue Service and other federal and state authorities, and filing false tax returns and other documents with such authorities."[32] Bank Leumi admitted that in furtherance of that scheme:

- Bank Leumi-Israel and other foreign affiliates "regularly sent private bankers to the United States, including to New York," and, in connection with those visits: (1) falsely claimed upon entering the United States that the primary purpose of the bankers' visits were not business-related; (2) met with prospective customers to discuss opening accounts; (3) met with existing customers to discuss their undeclared accounts held abroad; and (4) brought bank statements to the United States for review by U.S. clients;[33] and
- Bank Leumi-Israel assisted clients in concealing accounts through the use of: (1) "hold mail" accounts; (2) "assumed name" and "numbered" accounts; (3) referrals of U.S. clients to outside lawyers and consultants who would establish offshore corporations to hold the undeclared accounts; and (4) suggestions to U.S. clients that they open accounts through Bank Leumi Trust to add an "extra level of secrecy" to the account.[34]

According to the Consent Order, Bank Leumi USA assisted in the scheme in at least two ways. First, Bank Leumi USA introduced Bank Leumi-Luxembourg executives to a U.S. tax return preparer who had clients who wanted to open undeclared accounts. Second, it assisted U.S. clients by providing them with loan products that enabled the clients to access their undeclared funds and until 2011 did not identify the U.S. taxpayer who applied for such loans on the loan paperwork.[35]

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[29] Compl. ¶ 2.

[30] Bank Leumi-Israel, one of Israel's largest banks with a subsidiary in the United States and an agency in New York, provides private banking, wealth management and other financial services to individuals and entities around the world, including in the United States and New York. Consent Order at 1.

[31] This is not the first time the DFS has specifically sought sanctions against a compliance officer. In June 2014, the DFS entered into a Consent Order with BNP Paribas S.A. ("BNP"), pursuant to which BNP represented that it had fired, among others, the former Group Head of Compliance and the former Head of Ethics and Compliance North America and agreed, as part of its settlement, that it would "not in the future, directly or indirectly, retain" either individual, "as either an officer, employee, agent, consultant, contractor of [BNP], or any affiliate … in any other capacity." *See In the Matter of BNP Paribas, S.A.*, DFS Administrative Proceeding, at ¶¶ 57-58 (June 30, 2014), *available at* http://www.dfs.ny.gov/about/ea/ea140630.pdf.

[32] Consent Order ¶ 1.

[33] Consent Order ¶ 2.

[34] Consent Order ¶ 3.

[35] Consent Order ¶¶ 4-17.

The Consent Order also criticizes Bank Leumi for soliciting customers of exiting Swiss banks and customers of other foreign banks who had been the subject of cease-and-desist orders for violations of the BSA and AML regulations.[36]

Of particular interest here, Bank Leumi agreed under the Consent Order, among other things, to pay a substantial monetary penalty, retain an independent monitor and take specified actions against certain of its employees, including Bank Leumi USA's former CCO in the United States, as well as individuals located outside the United States.[37] The action by the DFS against the CCO, under which that person cannot "assume any duties, responsibilities, or activities while employed at the Bank that involve compliance in any way," seems to have been motivated by two factors. First, before being appointed as CCO in 2008, the individual had no compliance experience. Second, also in 2008, the CCO was responsible for permitting a policy whereby the Bank "continued to accept and maintain files in the United States that did not contain customer names, so long as the foreign affiliates maintained applicant names and current KYC information in their files." Bank Leumi briefly implemented a policy change that would have required loan documentation to include the applicant's full name and address. After pushback from customers and "extensive internal discussions," Bank Leumi USA's CCO rescinded the policy change in conformance with the request of the foreign affiliate.[38]

Conclusion

While it remains to be seen whether FinCEN and the U.S. Attorney's Office for the Southern District of New York will be able to prove what they have alleged in the Haider action, there are lessons to be learned from that action, as well as the Bank Leumi enforcement action:

- AML Compliance departments should have access to all sources of information that might reveal fraud or money laundering concerns. Law enforcement agencies will look critically upon companies that are structured such that information is "siloed" and not shared with compliance departments, particularly with the individuals in those departments who are responsible for filing SARs. As indicated above in the MoneyGram case, FinCEN is highly critical of such arrangements.[39]
- AML Compliance personnel may be targeted for enforcement action even in instances where they did not participate in the underlying fraud or money laundering conduct. As noted in the MoneyGram case, they can be targeted for being the architect of a program that is viewed as having deficiencies or for failing to cause the institution to file SARs in a timely manner.

[36] Consent Order ¶¶ 18-19.

[37] Bank Leumi was also required to terminate the current Head of Bank Leumi Trust, who served as Regional Manager during the relevant time period or, if that is not permissible under Israel law, ensure that that employee "shall not be allowed to hold or assume any duties, responsibilities, or activities involving compliance or any matter relating to U.S. operations." Consent Order ¶ 28. Moreover, the Consent Order states that the DFS's investigation resulted in the resignation of a former Branch Manager and Senior Relationship Manager, both of whom "played a central role in the improper conduct discussed in [the] Order." *Id.* ¶ 29.

[38] Consent Order ¶¶ 14, 22, 27.

[39] In a recent advisory, FinCEN advised companies to develop a "culture of compliance," one hallmark of which is that relevant information from the various departments within the organization is shared with compliance staff to further BSA/AML efforts. *See* FIN-2014-A007, "Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance" (Aug. 11, 2014), *available at* http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-A007.pdf.

- Although somewhat obvious, companies should make sure that compliance personnel, including AML officers, are qualified to fulfill their responsibilities. Companies should not, for example, place an individual in the position of CCO if that individual does not have any prior compliance experience, as was allegedly the case in the Bank Leumi matter.
- When presented with evidence of potentially fraudulent or illegal conduct passing through one's company, and a decision is made not to take certain steps — particularly steps that are recommended by other company personnel or outside consultants — compliance personnel should document their rationale for declining to take those steps in order to justify their actions years later. In MoneyGram, Haider was apparently unable to explain to FinCEN's satisfaction why he had not terminated certain outlets, apparently lacking a written record as to why those decisions had been made notwithstanding the Fraud Department's recommendations that the outlets should be terminated.
- Compliance officers should take steps to ensure that their companies do not bow to pressure from foreign affiliates to engage in conduct that is not permitted in the United States (as in the Bank Leumi case) or to take on business, agents or clients that have been rejected by other companies (as was the case in the MoneyGram matter), particularly where the rejection is potentially connected to alleged fraudulent or money laundering activities.

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