

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

IN THE MATTER OF:)	
)	
)	
)	Number 2016-06
Bethex Federal Credit Union)	
Bronx, New York)	

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Financial Crimes Enforcement Network (FinCEN) has determined that grounds exist to assess a civil money penalty against Bethex Federal Credit Union (Bethex or the Credit Union), pursuant to the Bank Secrecy Act (BSA) and regulations issued pursuant to that Act.¹

FinCEN has the authority to investigate credit unions for compliance with the BSA pursuant to 31 C.F.R. § 1010.810, which grants FinCEN “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter.” As a credit union, Bethex was a “financial institution” and a “bank” within the meaning of the BSA and its implementing regulations during the time relevant to this investigation. 31 U.S.C. § 5312(a)(2)(E); 31 C.F.R. §§ 1010.100(d)(6) and 1010.100(t). The National Credit Union Administration (NCUA) was Bethex’s federal functional regulator and examines credit unions, including Bethex, for compliance with the BSA and its implementing regulations.

¹ The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951–1959 and 31 U.S.C. §§ 5311–5314, 5316–5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

Bethex was a federally-chartered, low-income-designated, community development financial institution in the Bronx, New York. Since 2002, Bethex maintained internal controls specific to low and moderate-income clientele within its designated field of membership in New York City. In 2011, Bethex began providing banking services to a large number of wholesale, commercial money services businesses (MSBs). Many of these MSBs were located in high-risk jurisdictions outside New York and engaged in high-risk activity, including wiring millions of dollars per month to foreign jurisdictions at risk for money laundering. When Bethex expanded its customer base to include these MSBs, it did not take steps to update its anti-money laundering (AML) program. During this time, Bethex relied on a third party to conduct much of the due diligence and suspicious activity monitoring for these MSBs without appropriate verification or inspection of the third-party's compliance activity. As a result, Bethex was unable to adequately monitor, detect, and report suspicious activity or mitigate the associated risks these MSBs posed, leaving the Credit Union particularly vulnerable to money laundering.

II. DETERMINATIONS

From January 1, 2011 through December 31, 2012, Bethex willfully violated² the BSA's AML program and reporting requirements. Bethex provided banking services to MSBs for which it did not adequately assess or mitigate the risks of money laundering and terrorist financing.

Bethex had a history of AML compliance deficiencies that led to egregious BSA failures starting in 2011. Systemic and continuing AML program deficiencies were cited in ten of the

² In civil enforcement of the BSA under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that the conduct violated the BSA, or that the entity or individual otherwise acted with an improper motive or bad purpose.

thirteen examinations conducted on Bethex between 2005 and 2013. Without addressing its BSA deficiencies, Bethex brought on a substantial new business line devoted to wholesale MSBs. At the same time that Bethex's wholesale MSB activity was increasing, Bethex continued to have internal control and independent testing deficiencies. In 2012, Bethex continued to have internal control deficiencies, as well as training, customer identification program, recordkeeping and reporting deficiencies, and failed to designate an appropriately competent compliance officer. Weaknesses in Bethex's BSA/AML compliance program caused significant reputational and regulatory damage to the Credit Union, contributing in part to its eventual conservatorship by the NCUA in September 2015. The NCUA liquidated Bethex and discontinued its operations in December 2015.

As described in more detail below, Bethex failed to: (a) implement an adequate AML program, 31 U.S.C. § 5318(h); 31 C.F.R. § 1020.210; and (b) detect and adequately report suspicious transactions, 31 U.S.C. § 5318(g); 31 CFR § 1020.320.

A. Violations of the Requirement to Establish and Implement an Effective Anti-Money Laundering Program

Bethex failed to establish and implement an effective AML program. The BSA and its implementing regulations require all federally-chartered credit unions to establish and implement AML programs. 31 U.S.C. § 5318(h) and 31 C.F.R. § 1020.210. A federally-chartered credit union is deemed to have satisfied BSA/AML program requirements if it implements and maintains an AML program that complies with the applicable regulations of the NCUA, its federal functional regulator. 31 C.F.R. § 1020.210. The NCUA requires each credit union under its supervision to establish and maintain a written AML program that, at a minimum: (1) provides for a system of internal controls to assure ongoing compliance; (2) provides for independent testing for compliance to be conducted by bank personnel or by an outside party; (3)

designates an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (4) provides training for appropriate personnel. 12 C.F.R. § 748.2. Bethex failed to implement adequate internal controls or designate a qualified compliance officer.

1. Internal Controls

Bethex failed to implement an effective system of internal controls reasonably designed to ensure compliance with the BSA. In 2011, Bethex opened its doors to wholesale, commercial MSBs and, by the end of 2012, had established relationships with over 70 money transmitters and check cashing companies. Bethex's MSB expansion resulted in an increase in volume from \$657 million in transactions processed in 2010, all of which were domestic, to over \$4 billion in domestic and international transactions processed in 2012 – an annual increase of more than 300%. Although the MSB program had grown to substantial volume and scope, Bethex failed to make commensurate changes in compliance controls to account for the money laundering and terrorist financing risks posed by those MSBs, many of which were located in high-risk jurisdictions overseas. For the level of funds transfer activity at Bethex, which generated significant fee income for the institution, it should have had a robust AML and transaction monitoring program. Instead, Bethex's program remained tailored to primarily low and middle income individual account holders in New York.

a. Risk Assessment

From 2011 through 2012, Bethex failed to conduct a risk assessment that incorporated all of its products and services including wire transfers processed for its domestic and international MSB accounts. Bethex processed transactions for MSB customers in over 30 countries, including jurisdictions with high money laundering risks such as Mexico, Ghana, Bangladesh,

China, Pakistan, and South Korea.³ Bethex failed to conduct any risk assessment in 2011 and conducted an inadequate risk assessment in 2012 because it did not assess the risk of its MSB clients. An operational and organizational risk assessment is a vital part of a compliance program, as it permits the financial institution to assess the particular risks posed by its business lines, practices, and clientele and establish appropriate controls to mitigate those risks. Bethex's failure to conduct an adequate risk assessment left Bethex ill-equipped to implement necessary AML controls when its MSB transaction activity nearly quadrupled from \$1.3 billion in 2010, to \$2.7 billion in 2011, and finally to \$4.0 billion in 2012.

b. Due Diligence

Bethex did not perform the due diligence necessary on its MSBs to determine the money laundering risks or their expected volume and pattern of activity. Bethex failed to require and maintain documentation to identify the business type, use, and associated business partners of its MSBs and did not provide for annual or periodic monitoring and updating. For instance, Bethex maintained four MSB accounts that shared the same address in an office suite. Each of the accounts belonged to a U.S.-based shell company subsidiary of a Mexican MSB, but Bethex failed to appropriately identify and incorporate this information into its monitoring system. By not knowing its customers and their profiles, Bethex was incapable of understanding MSB transactional behavior and was unable to place them under appropriate monitoring for suspicious activities.

³ At the time of the MSB activity, Mexico, Ghana, Bangladesh, China, Pakistan, and South Korea were classified by the United States Department of State as "Countries of Primary Concern" or "Countries of Concern" in the 2012 United States Department of State International Narcotics Control Strategy Report, which classifies countries based on money laundering risk. See <http://www.state.gov/documents/organization/185866.pdf>.

c. Transaction Monitoring

Bethex failed to implement an effective suspicious activity monitoring system relative to the scale and scope of the currency and electronic funds transmission activity conducted on behalf of its MSBs. Bethex did not assign its MSB members a proper risk category. It failed to implement enhanced monitoring on higher risk entities to adequately monitor for and detect suspicious activity. These failures exposed the U.S. financial system to serious risks of money laundering.

Bethex also failed to maintain an adequate level of staffing to ensure it could effectively monitor its MSB customers. In 2011, Bethex had 22 full-time employees for the entire Credit Union, many of which Bethex assigned to handle the operational side of its wholesale MSB activity. Its independent auditor notified Bethex that 22 full-time employees were insufficient to handle the AML risks of processing the \$657 million in transactions conducted during 2010. In response, Bethex increased its staff by four people. But, at the same time, transactions had increased annually from \$657 million to over \$4 billion, due in large part to transactions that Bethex processed for wholesale MSBs. Bethex failed to maintain sufficient staff necessary to monitor the significant amount of wholesale MSB transactions. At the same time, customers engaged in dramatically increasing volumes of transactions at increasing average amounts per transaction.

2. Designation of BSA Compliance Officer

A credit union is required to designate a person responsible for ensuring day to day compliance with BSA requirements. 31 C.F.R. § 1020.210. Bethex failed to designate a person who was technically competent to oversee ongoing compliance efforts for the risks and scope of the products and services it provided and the customers it served.

Bethex failed to ensure that its BSA officer had sufficient experience, authority, and resources to ensure day-to-day compliance with the BSA. From 2011 to 2012, Bethex's designated BSA compliance officer maintained multiple different roles at the Credit Union including its Chief Operating Officer and business manager of the MSB relationship and funds transfer operations. While having a BSA compliance officer fill multiple roles in a smaller institution is not a violation, as the amount of transactions grew to over \$4 billion annually, Bethex's BSA compliance officer was unable to adequately fulfill his multiple responsibilities to assure BSA compliance. Despite receiving repeated notification from independent auditors and the NCUA of deficiencies in its AML program, Bethex did not take steps to address its deficiencies until years after the fact. For example, Bethex's own annual independent BSA audit in March 2011 identified lack of internal controls to detect structuring, an overdue BSA risk assessment, insufficient know your customer or customer due diligence policies for Bethex-serviced MSBs, and no written process to determine high-risk accounts. Its August 2012 audit identified those same deficiencies over a year later. This audit also put Bethex on notice that it had failed to develop adequate written procedures for wire transfers and lacked protocols to detect and report illicit wire transactions. These items continued to remain outstanding several months later when the NCUA conducted its examination of Bethex. For over two years, Bethex's leadership allowed significant AML compliance concerns to persist without taking sufficient steps to address the deficiencies.

In addition, given Bethex's reliance on the proceeds generated by the MSB business and the BSA compliance officer's additional role as business manager of the MSB customers, a conflict of interest that was not sufficiently mitigated degraded the BSA compliance officer's ability to evaluate whether clients were engaged in reportable suspicious activity, including

layering and structuring. For example, Bethex employees' willingly disregarded internal controls in order to complete transactions for large, revenue generating customers over which the BSA officer was the business manager. Specifically, Bethex had written controls that limited the value of wire transfers conducted on behalf of a customer in a business day. To avoid these limits for its high-revenue generating customers, Bethex would send multiple wires below its internal control limit from the same originator to the same beneficiary on the same day.

B. Suspicious Activity Reporting Violations

The BSA and its implementing regulations impose an obligation on financial institutions to report transactions that involve or aggregate to at least \$5,000, that are conducted by, at, or through the institution, and that the institution "knows, suspects, or has reason to suspect" are suspicious. 31 U.S.C. § 5318(g) and 31 C.F.R. § 1020.320. A transaction is "suspicious" if the transaction: (1) involves funds derived from illegal activities or is intended or conducted to hide or disguise funds or assets derived from illegal activities; (2) is designed to evade any requirement in the BSA or regulations implementing the BSA; or (3) has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including background and possible purpose of the transaction. 31 C.F.R. §§ 1020.320(a)(2)(i)–(iii).

Bethex failed to timely detect and report suspicious activity to FinCEN. In 2013, Bethex late-filed 28 SARs as a result of a look back. The look-back covered the period from January 2010 to March 2013. The majority of the suspicious activity underlying these SARs involved high-volume, large amount transfers by MSBs capable of exploiting Bethex's AML weaknesses.

Some MSB customers also wired large volumes of funds to foreign jurisdictions with a high risk of money laundering, terrorism or drug trafficking, including Mexico, Pakistan and Yemen.⁴

In addition, the majority of the 28 late-filed SARs were inadequate. The SARs contained short, vague narratives that broadly summarized multiple and unrelated instances of suspicious activity. For example, one SAR described suspicious transactions involving amounts that aggregated to over \$906 million. The overuse of boilerplate language and lack of sufficient detail in this SAR provided little benefit to law enforcement investigations. Broad summary SARs with poor-quality narratives such as these, reduce the value of the suspicious activity reporting.

III. CIVIL MONEY PENALTY

FinCEN has determined that Bethex willfully violated the program and reporting requirements of the BSA and its implementing regulations, and that grounds exist to assess a civil money penalty for these violations. 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820. FinCEN has determined that the appropriate penalty in this matter is \$500,000.

/s/	12/14/16
Jamal El-Hindi	Date
Acting Director	
FINANCIAL CRIMES ENFORCEMENT NETWORK	
U.S. Department of the Treasury	

⁴ At the time of the MSB activity, Mexico, Pakistan, and Yemen were classified by the United States Department of State as “Countries of Primary Concern” or “Countries of Concern” in the 2012 United States Department of State International Narcotics Control Strategy Report, which classifies countries based on money laundering risk. See <http://www.state.gov/documents/organization/185866.pdf>.