

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

**IN THE MATTER OF
GREAT EASTERN BANK OF FLORIDA
Miami, Florida**

No. 2002-02

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Secretary of the United States Department of the Treasury has delegated to the Director of the Financial Crimes Enforcement Network ("FinCEN") the authority to determine whether a financial institution has violated the Bank Secrecy Act, 31 U.S.C. §§5311 et seq. and 31 CFR Part 103 thereunder ("BSA"), and what, if any, sanction is appropriate.

In order to resolve this matter, and only for that purpose, Great Eastern Bank of Florida ("Great Eastern") has entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY without admitting or denying FinCEN's determinations described in Sections III and IV below, except as to jurisdiction in Section II below, which is admitted.

Great Eastern's CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY, dated August 23, 2002, is incorporated herein by this reference.

II. JURISDICTION

Great Eastern, located in Miami, Florida, had total assets of approximately \$55 million as of December 31, 2001, and earnings of approximately \$250,000 for fiscal year 2001. As of June 30, 2002, Great Eastern had net income of approximately \$40,000. Great Eastern is a "financial institution" within the meaning of 31 U.S.C. §5312(a)(2)(A) and 31 CFR §103.11(c). Great Eastern is a state-chartered non-member bank subject to examinations for BSA compliance by the Federal Deposit Insurance Corporation ("FDIC"), its primary federal supervisory agency.

III. FINCEN'S DETERMINATIONS

A. The SAR Requirements

FinCEN has determined, based on evidence gathered from the FDIC's examinations of Great Eastern, that in 1997 and 1998 ("the relevant time period"), Great Eastern failed to file complete suspicious activity reports ("SARs") in a timely manner for reportable transactions by at least 20 customers in violation of 31 U.S.C. §5318(g) and 31 CFR §103.18.

A financial institution must report any transaction involving or aggregating to at least \$5,000 that it "knows, suspects, or has reason to suspect" (i) involves funds derived from illegal activities or is conducted to disguise funds derived from illegal activities, (ii) is designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act (e.g., structuring transactions to avoid currency transaction reporting), or (iii) "has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and *the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.*" (emphasis added). 31 CFR §103.18.

The SAR rule requires a financial institution to file SARs "to the extent and in the manner required by this section" by "completing" a SAR. 31 CFR §103.18(a). When filing a SAR, the financial institution must provide a detailed description of why the activity is suspicious. The SAR form emphasizes that the description of the suspicious activity section of the SAR form "is critical." Part V, SAR Form, TD F 90-22.47. The form directs that the care with which the description of the activity is written "may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood." It requires a financial institution to provide "a chronological and *complete* account" of the transaction (emphasis in the original). The SAR form describes particular information that the financial institution must report including, among other things, a description of any monetary instruments involved in the transaction. If a financial institution fails to comply with the requirements to file a complete SAR, the SAR may not provide adequate information to alert law enforcement to the existence of potentially serious criminal activity. Of particular importance here, the failure to describe the factors making the transaction suspicious undermines the very purpose of the SAR and makes it less likely the report will be useful to law enforcement.

B. Great Eastern's Violations of the SAR Requirements

As an FDIC-supervised bank, Great Eastern was on notice of the SAR requirements and the need to have policies and procedures in place to ensure they are followed. Section 326.8(b) of the FDIC's regulations requires a bank to develop and administer a program to assure compliance with the BSA. According to the FDIC, at a minimum, the bank's system of internal controls must be designed to "identify reportable transactions at a point where all of the information necessary to properly complete the required reporting forms can be obtained." See, FDIC Manual of Exam Policies,

Financial Recordkeeping and Reporting Regulations, Section 9.4. The system must also “ensure that all required reports are completed accurately.”

The FDIC repeatedly warned the Bank that it had seriously deficient BSA compliance procedures, particularly in the area of a suspicious transaction reporting. The FDIC had found deficiencies in the Bank’s BSA compliance program resulting in a 1995 Compliance Memorandum of Understanding that required the Bank’s board of directors to implement a program to preclude future violations. The FDIC found additional BSA compliance deficiencies in 1998, including deficiencies in Great Eastern’s compliance with SAR provisions. As a result, in 1998, Great Eastern entered into a Cease and Desist Order with the FDIC. As late as 1999, the FDIC found that Great Eastern’s suspicious transaction monitoring procedures had been only partially implemented.

To comply with the SAR rule, a financial institution must be able to determine whether or not transactions are in fact reportable. Therefore, a financial institution is required to have in place systems to identify the kinds of transactions that may be high risk for money laundering or that exhibit indicia of suspicious activity, taking into the account the type of products and services it offers and the nature of its customers. Otherwise, a financial institution cannot assure that it is in fact reporting suspicious transactions as required by the BSA. In this case, the record shows that during the relevant time period, Great Eastern had information about its customers and their transactions that caused Great Eastern to “know, suspect, or have reason to suspect” that many transactions were reportable suspicious transactions, yet the Bank failed to report these transactions because it did not have procedures to identify or analyze or report suspicious activity properly. As a result, Great Eastern violated the SAR requirements of 31 U.S.C. §5318(g) and 31 CFR §103.18.¹

Great Eastern offered a variety of banking services to a wide-ranging customer base, including international businesses and customers who engaged in international transactions. However, Great Eastern did not have procedures to identify potentially suspicious activity transactions that were a high risk for money laundering or that exhibited indicia of suspicious activity. As a result, Great Eastern failed to identify structuring of multiple cash deposits in amounts under \$10,000 to avoid currency transaction reporting. Great Eastern also failed to identify as suspicious large cash deposits immediately followed by international wire transfers, a pattern engaged in routinely by a number of its customers, and which is known in the industry to present a high risk for money laundering. Great Eastern failed to identify as suspicious large deposits of sequentially numbered money orders and traveler’s checks, also indicia of potential money laundering. For a number of transactions that Great Eastern did identify

¹ At the time of the violations, FinCEN’s regulations did not independently require banks to have anti-money laundering programs; rather, such requirements were imposed through the rules of the federal banking regulators such as the FDIC. Therefore, FinCEN is not charging Great Eastern with failing to have an anti-money laundering program. Rather, Great Eastern’s failure to have an adequate program is relevant to its willfulness in violating the SAR rule. As of April 29, 2002, it is now a BSA requirement for a bank to maintain an anti-money laundering program in compliance with the rules of its federal regulator. See 31 CFR §103.121.

as suspicious, it failed to provide a complete and sufficient description of the transaction in the SARs or to maintain the required supporting documentation in its files. These failures stem from Great Eastern's lack of procedures to collect, analyze, and maintain material in its files necessary to fulfill the requirements of the SAR rule.

1. Failure to File SARs

During the relevant time period, Great Eastern failed to file SARs on transactions for at least six customers that it "knew, suspected, or had reason to suspect" were reportable as suspicious under the BSA. For example, Great Eastern failed to file a SAR on a customer that engaged in suspicious wire transfer activity in one Great Eastern account. The account received over \$900,000 in 29 wire transfers from a foreign company, most of which was wired out the following day to the customer's account at another bank. The activity could not be supported by the normal operations of the customer's business. Indeed, this same customer engaged in nearly identical activity in another account at Great Eastern, and Great Eastern did file a SAR on the customer's activity in the other account, thus demonstrating that it did in fact recognize such behavior as suspicious.

In addition, Great Eastern failed to file a timely SAR for a customer that had millions of dollars of incoming and outgoing wires transfers, many from the same source. Great Eastern only analyzed the transaction after it was specifically required to do so by the FDIC in 1999, and only then determined that there was no apparent business reason for the large amounts of wire transfer activity for this customer and filed a SAR. The information available to Great Eastern when it finally filed the SAR two years after the fact was the same information available to it at the time of the transaction. Great Eastern should have detected this transaction and have filed a SAR before being required to do so by the FDIC, two years after the transaction occurred.

2. Failure to File Complete SARs

For at least 14 other customer transactions, Great Eastern filed SARs, but in these SARs the Bank failed to include required information about the suspicious activity that it had in its files at the time it filed the SAR. For example, during the relevant time period, as noted above Great Eastern filed a SAR on a customer identifying wire transfers totaling over \$900,000 that were wired out of the account almost immediately, but did not file a SAR on identical transactions engaged in by the same customer in another Great Eastern account. As an alternative to filing a second SAR, Great Eastern could have included this activity in the SAR that was filed, but it failed to do so, thus understating the scope of the suspicious activity by one-half.

During the relevant time period, Great Eastern filed a SAR which merely stated that a customer made a \$71,250 deposit to an account that had minimal activity prior to that time. The report did not adequately describe the alleged suspicious activity and, therefore, the SAR failed to include important required information that was readily available to Great Eastern – that is, why it was filing the SAR. The SAR failed to report

that six of the checks in the deposit were sequentially numbered checks from a single account in even thousand dollar amounts. Furthermore, the SAR failed to report that the traveler's check portion of the deposit was comprised of 236 checks from 10 banks. The SAR failed to report that wire transfers shortly after the deposit transferred the majority of the funds out of the account. This failure to indicate on the form why the Bank thought the transaction was suspicious undermines the utility of the SAR in alerting law enforcement to transactions that deserve investigation.

Similarly, Great Eastern filed a SAR that simply reported a \$50,000 deposit of money orders. The SAR did not describe the monetary instruments by denomination, issuer, or place of origin as explicitly required by the instructions to the SAR form. The SAR did not state that there was little activity in the account but for the deposit and did not indicate that the customer withdrew the funds soon after the deposit. Again, the SAR did not provide law enforcement with important information about the transaction and why it believed the transaction was suspicious based on information that was readily available to the bank.

In addition, Great Eastern failed to maintain sufficient documentation to support the filing of numerous SARs. With respect to SARs filed on 14 customers, the files contained only a portion of the necessary documentation required by the SAR regulations. In some cases, documents included in the file as supporting documentation were not legible. Supporting documentation is an important means of preserving evidence and enabling law enforcement to follow up on a SAR. Therefore, Great Eastern failed to file SARs that were timely and complete in accordance with 31 U.S.C. §5318(g) and 31 CFR §103.18.

C. Willful Violations

FinCEN has determined that Great Eastern's violations were willful. Great Eastern was on notice after repeated findings by the FDIC that there were material deficiencies in its SAR compliance program that could result in failing to file timely and complete SARs. Great Eastern failed to establish procedures that would reasonably assure that it could identify and properly report suspicious transactions, including the recognition of "red flags" such as successive wire transfers in and out of an account that are not consistent with the customer's operations.² And, when Great Eastern did file SARs in the instances described above, it showed that it recognized certain conduct as suspicious, but then failed to document the reasons that it did so. On these facts, Great Eastern's conduct was willful.

A financial institution that fails to establish procedures to adequately identify, document, and report suspicious transactions, particularly after it was put on notice repeatedly of serious compliance deficiencies, is following a course of conduct that shows a reckless disregard for compliance with the SAR provisions of the BSA. Because

² Great Eastern's recognition of certain wire transfer activity as suspicious, as evidenced by its SAR filing on one \$900,000 transaction, and its failure to file a SAR on the same activity in another account, is further evidence of willfulness.

Great Eastern did not have procedures to identify or analyze even the most conspicuous suspicious activity, or to properly document and maintain records for those that it did report, and failed to comply with these SAR requirements in numerous instances, the Bank willfully violated the SAR reporting provisions of 31 U.S.C. §5318 and 31 CFR §103.18.

IV. CIVIL MONEY PENALTY

FinCEN has determined that by failing to file timely and complete SARs as described in Section III above, Great Eastern willfully violated the suspicious activity reporting provisions of the BSA and a civil money penalty is due pursuant to 31 U.S.C. §5321 and 31 CFR §103.57(f).

V. ASSESSMENT

THEREFORE, the Department of the Treasury assesses against Great Eastern a civil money penalty of \$100,000.

By the execution of its CONSENT, Great Eastern, without admitting or denying FinCEN's determinations described in Sections III and IV above, except as to jurisdiction in Section II, which is admitted, consents to the assessment of a civil money penalty in the sum of \$100,000.

THEREFORE, Great Eastern shall, under the terms of its CONSENT:

Pay the amount of \$100,000 in the following manner: \$50,000 within five (5) business days of the date of this ASSESSMENT and \$50,000 no later than March 31, 2003. Such payment shall be:

- a. made by certified check, bank cashier's check, or bank money order;
- b. made payable to the United States Department of the Treasury;
- c. hand-delivered or sent by overnight mail to Nicholas A. Procaccini, Assistant Director and Chief Financial Officer, FinCEN, P.O. Box 39, Vienna, VA 22183; and
- d. submitted under a cover letter, which references the caption and file number in this matter.

VI. RELEASE

Execution of the CONSENT by Great Eastern and compliance with the terms of the ASSESSMENT OF CIVIL MONEY PENALTY and the CONSENT constitute a complete settlement of civil liability for reporting violations of the Bank Secrecy Act, and the regulations promulgated thereunder, which were identified by FinCEN in its letter to Great Eastern dated August 10, 2001.

By: //signed//
James F. Sloan, Director
FINANCIAL CRIMES ENFORCEMENT
NETWORK

09/04/02
Date