

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

IN THE MATTER OF:)
)
) **No. 2006-8**
THE FOSTER BANK)
Chicago, Illinois)

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

Under the authority of the Bank Secrecy Act and regulations issued pursuant to that Act,¹ the Financial Crimes Enforcement Network has determined that grounds exist to assess a civil money penalty against The Foster Bank (“Foster” or “the Bank”). To resolve this matter, and only for that purpose, Foster entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (“CONSENT”) without admitting or denying the findings and determinations by the Financial Crimes Enforcement Network, as described in Sections III and IV below, except as to jurisdiction in Section II below, which is admitted.

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (“ASSESSMENT”) by this reference.

II. JURISDICTION

Foster Bank is an insured, state-chartered non-member bank located in Chicago, Illinois. As of December 31, 2005, Foster had total assets of approximately \$428 million and earnings of approximately \$8.6 million. The Federal Deposit Insurance Corporation is Foster’s Federal functional regulator and examines Foster for compliance with the Bank Secrecy Act and its implementing regulations (collectively, the “Bank Secrecy Act” or the “Act”) and with similar rules under Title 12 of the United States Code. The State of Illinois Office of Banks and Real Estate examines Foster for compliance with requirements under banking laws of the State of Illinois comparable to those of the Bank Secrecy Act.

At all relevant times, Foster was a “financial institution” and a “bank” within the meaning of the Bank Secrecy Act.²

¹ 31 U.S.C. § 5311 *et seq.* and 31 C.F.R. Part 103.

² 31 U.S.C. § 5312(a)(2) and 31 C.F.R. § 103.11(n).

III. DETERMINATIONS

A. Summary

Foster failed to implement an adequate Bank Secrecy Act compliance program, including an anti-money laundering program with internal controls, independent testing and other measures to detect and report potential money laundering, terrorist financing and other suspicious activity. This failure led, in turn, to the Bank's failure to timely file suspicious activity reports, including at least one report concerning a money transmitter business responsible for wiring millions of dollars from primarily cash deposits to beneficiaries in Pakistan, India, and the United Arab Emirates.³ The Bank also improperly exempted two money services business customers from the currency transaction reporting requirements of the Bank Secrecy Act.⁴ As a result of these improper exemptions, the Bank filed at least 674 delinquent currency transaction reports for transactions conducted by the two customers. Finally, the Bank failed to adhere to the prohibition against structuring currency transactions to evade the reporting or recordkeeping requirements of the Bank Secrecy Act.⁵ The details of the Bank's deficiencies in these areas are explained in Sections B, C, D, and E below.

The failures of Foster to comply with the Bank Secrecy Act were significant. The Federal Deposit Insurance Corporation and the State of Illinois Office of Banks and Real Estate imposed a Cease and Desist Order on Foster on March 14, 2003, to address Foster's Bank Secrecy Act deficiencies. The Order was terminated on January 7, 2005.

The Financial Crimes Enforcement Network deferred consideration of the matter until it could determine that no prejudice to other government proceedings would result from the initiation of a civil penalty action. The Financial Crimes Enforcement Network has determined that it is now appropriate to proceed based on the following findings.

B. Violations of the Requirement to Implement an Adequate Anti-Money Laundering Program

The Financial Crimes Enforcement Network has determined that Foster Bank violated the Bank Secrecy Act requirement to establish and implement an adequate anti-money laundering program. Since April 24, 2002, the Act has required banks to establish an anti-money laundering program.⁶ A bank's anti-money laundering program is deemed adequate under the Act if the program complies with the regulations of the bank's Federal functional regulator governing such program. The Federal Deposit Insurance Corporation, Foster's Federal functional regulator, requires each bank under its supervision to establish and maintain an anti-money laundering program that, at a minimum: (a) provides for a system of internal controls to assure ongoing compliance; (b) provides for independent testing for compliance conducted by bank personnel or by an outside party; (c) designates an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (d) provides training for appropriate personnel.⁷

³ The 2006 International Narcotics Control Strategy Report (INCSR) issued by the U.S. Department of State listed Pakistan, India, and the United Arab Emirates as "Jurisdictions of Primary Concern." The "Jurisdictions of Primary Concern" are those jurisdictions that are identified pursuant to the INCSR reporting requirements as "major money laundering countries." Each country has been categorized as a "Jurisdiction of Primary Concern" since at least 2001.

⁴ 31 C.F.R. § 103.22.

⁵ 31 C.F.R. § 103.63.

⁶ 31 U.S.C. § 5318(h)(1) and 31 C.F.R. § 103.120.

⁷ 12 C.F.R. § 326.8(c).

In August 2002, the Federal Deposit Insurance Corporation and the State of Illinois Office of Banks and Real Estate commenced a joint Bank Secrecy Act examination of Foster. During the 2002 examination, federal and state regulators determined that Foster's anti-money laundering program was deficient and that the Bank did not adequately identify, monitor and control the risk of money laundering. The 2002 examination indicated that Foster did not have adequate internal systems and controls to manage the risks associated with a large volume of cash transactions and the sale of large amounts of cashier's checks. For example, the Bank issued approximately \$130 million in cashier's checks from January through August 2002. Because Foster issued a large amount of cashier's checks, it was particularly important for the Bank to have adequate procedures and controls in this area. In addition, Foster lacked adequate independent testing, as well as adequate training for appropriate personnel. Furthermore, the Bank is located in a region that has been designated as a High Intensity Drug Trafficking Area (HIDTA) since 1995, as well as a High Risk Money Laundering and Related Financial Crimes Area (HIFCA) since 2001.

1. Internal Controls

The Financial Crimes Enforcement Network has determined, based on available evidence, that Foster lacked adequate systems and controls to detect and report suspicious activity, including transactions involving very large amounts of currency that had no apparent business or lawful purpose, and lacked a reasonable explanation after examining the facts.

At the time of the 2002 examination, the Bank did not have procedures in place to determine whether customer account activity appeared reasonable. Customer files did not contain sufficient information to justify the volume, nature and legitimacy of transactions at the Bank. Bank management failed to engage in adequate due diligence and transaction monitoring to determine the propriety, or potential impropriety, of the large number of currency and funds transfer transactions conducted at the Bank. Similarly, Foster failed to maintain sufficient documentation to ascertain whether its customers' significant funds transfer activities were reasonable for the customers' stated businesses.

Although the Bank utilized a large currency transaction log to identify transactions that appeared to be structured to evade the Bank Secrecy Act reporting requirements, the transaction log did not allow Bank management to evaluate customer activity in the aggregate, over a period of multiple days, to adequately assess whether structuring was actually taking place. When the Federal Deposit Insurance Corporation presented the Bank with a list of customers who appeared to be structuring cash transactions to avoid currency transaction reporting, Bank management reviewed the accounts and filed suspicious activity reports for a majority of the identified transactions.

The Bank's inadequate internal control procedures were also evidenced by the improper exemption of two money services business customers from the currency transaction reporting requirements of the Bank Secrecy Act. Neither entity was eligible for exempt status, as each operated solely as a non-listed money services business. The Bank could not provide adequate documentation or analysis justifying the exemption of these two entities. Furthermore, the Bank's inadequate internal controls resulted in its failure to detect the improper exemptions of the two entities for a significant period of time--over eighteen months for one customer, and over two years for the other customer. As a result, Foster failed to timely file at least 674 currency transaction reports totaling over \$35 million.

2. Independent Testing

The scope of the Bank's independent review, as required under the Bank Secrecy Act, was not adequate. Although Bank management had contracted with two outside firms to perform annual independent testing and review of Foster's compliance with the Bank Secrecy Act, those reviews failed to

identify and address the Bank's weaknesses in monitoring for suspicious activity. Furthermore, the scope of the independent reviews were judged by the Financial Crimes Enforcement Network to be inadequate in view of the elevated risk of money laundering associated with a large volume of funds transfers to countries identified as "Jurisdictions of Primary Concern" for money laundering by the U.S. government, as well as the large volume of monetary instrument transactions conducted at the Bank.

3. *Training for Appropriate Personnel*

Bank management failed to implement adequate training for appropriate personnel to ensure compliance with the suspicious activity reporting requirements of the Bank Secrecy Act. Specifically, training in suspicious activity identification and monitoring, detection of structured transactions, and identification of possible money laundering was deficient.

C. Violations of the Requirement to Report Suspicious Transactions

The Financial Crimes Enforcement Network has determined that, on at least twelve occasions, Foster Bank violated the suspicious transaction reporting requirements of the Bank Secrecy Act.⁸ These reporting requirements impose an obligation on banks to report transactions that involve or aggregate to at least \$5,000, are conducted by, at, or through the bank and that the bank "knows, suspects or has reason to suspect" are suspicious.⁹ A transaction is "suspicious" if the transaction: (1) involves funds derived from illegal activities, or is conducted to disguise funds derived from illegal activities; (2) is designed to evade reporting or record keeping requirements under the Bank Secrecy Act; 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 the background and possible purpose of the transaction.¹⁰

Banks must report suspicious transactions by filing suspicious activity reports.¹¹ In general, a bank must file a suspicious activity report no later than thirty calendar days after detecting facts that may constitute a basis for filing a suspicious activity report.¹² If no suspect was identified on the date of detection, a bank may delay the filing for an additional thirty calendar days to identify a suspect, but in no case may the bank file a suspicious activity report more than sixty calendar days after the date of detection.¹³

A financial institution is required to have in place systems and controls to identify transactions that may be high risk for money laundering or that exhibit indicia of suspicious activity, taking into account the type of products and services offered and the nature of its customers. Otherwise, a financial institution cannot ensure that it is, in fact, reporting suspicious transactions as required by the Bank Secrecy Act. The Financial Crimes Enforcement Network has determined that Foster was aware of the suspicious activity reporting requirements and the need to have systems and controls in place to ensure the detection and timely reporting of suspicious activity. Foster had information about its customers and their transactions that caused it to "know, suspect, or have reason to suspect" that many transactions were reportable suspicious transactions, yet the Bank failed to timely report these transactions due to inadequate systems and controls to identify, analyze and report

⁸ 31 U.S.C. § 5318(g) and 31 C.F.R. § 103.18.

⁹ 31 C.F.R. § 103.18(a)(2).

¹⁰ 31 C.F.R. § 103.18(a)(2)(i)-(iii).

¹¹ 31 C.F.R. § 103.18.

¹² 31 C.F.R. § 103.18(b)(3).

¹³ *Id.*

suspicious activity in accordance with the requirements of the Bank Secrecy Act. As a result, Foster violated the suspicious activity reporting requirements of 31 U.S.C. § 5318(g) and 31 C.F.R. § 103.18.

Between January 1998 and July 2002, Foster failed to file at least twelve suspicious activity reports for transactions that it “knew, suspected, or had reason to suspect” were reportable as suspicious under the Bank Secrecy Act. Suspicious activity that Foster failed to report in a timely manner included activity by customers who engaged in patterns of structured transactions to avoid the reporting and recordkeeping requirements of the Bank Secrecy Act. For example, from April 1999 through August 2002, one customer who operated a sportswear business purchased approximately \$674,390 in cashier’s checks, all individually purchased below the \$3,000 Bank Secrecy Act record-keeping threshold for monetary instrument transactions.¹⁴ Concurrently, from April 1999 through August 2002, the same customer engaged in a pattern of structured transactions involving over \$6,199,616 in cash deposits in amounts under \$10,000 per deposit. Ultimately, in December 2002, the Bank discovered that this customer had conducted nearly \$10 million in cash transactions between April 1999 and November 2002.

Another Foster customer routinely made cash deposits in the amounts of \$9,900 up to four times daily. The Bank retained no documentation in its file to support a legitimate business reason for these deposits. Other customers engaged in large aggregate cash transactions, totaling an average of \$300,000 to \$600,000 per month, at least some of which appeared to be designed to avoid currency transaction reporting. Foster did not have documentation supporting the legitimacy of the customers’ banking activities and failed to file timely suspicious activity reports for these customers.

The Bank Secrecy Act requires a financial institution to file a suspicious activity report “to the extent and in the manner required by this section” by completing a suspicious activity report.¹⁵ When filing a suspicious activity report, the financial institution must provide a detailed description stating why the activity is suspicious. The suspicious activity report form emphasizes that the description of the suspicious activity section of the form “is critical.”¹⁶ 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.”¹⁷ If a financial institution fails to file a complete suspicious activity report, the report may not provide adequate information to alert law enforcement to the existence of potentially serious criminal activity.

The Bank filed several suspicious activity reports that failed to include all relevant information available to the Bank at the time it filed, in violation of 31 U.S.C. § 5318(g) and 31 C.F.R. § 103.18(a)(1). For example, significant cash deposits were conducted in one account at Foster which were then wired by the Bank to beneficiaries located in Pakistan, India and the United Arab Emirates. The Bank initially filed a suspicious activity report for this customer describing approximately \$9,000,000 in wire transactions for the period August through September 2001. However, the activity began prior to 2001, and the total amount of suspicious wire transfers exceeded \$31 million, as identified in a corrected suspicious activity report filed by the Bank in 2003.

On December 13, 2001, Foster filed a suspicious activity report on another customer that failed to disclose important information to explain the suspicious activity. The report described suspicious activity conducted by the customer in November 2001, but failed to include significant

¹⁴ 31 U.S.C. § 5325 and 31 C.F.R. § 103.29.

¹⁵ 31 C.F.R. § 103.18(a).

¹⁶ Part V, Suspicious Activity Report, Form TD F 90-22.47.

¹⁷ *Id.*

daily structuring activity in the customer's two other business accounts. The suspicious activity report filed by the Bank in 2001 reported \$133,400 in suspicious activity, during which time a total of \$262,000 in cash was deposited in the two business accounts, all under the \$10,000 reporting threshold. A subsequent suspicious activity report filed in 2002 stated that similar potential structuring may have gone on for years, but provided no details. In total, Foster Bank failed to file accurate, complete, and/or timely suspicious activity reports for at least \$79 million in suspicious transactions during the relevant time period.

D. Violations of the Currency Transaction Reporting Requirements

The Bank Secrecy Act requires that financial institutions file currency transaction reports for currency transactions greater than an amount specified by the Secretary of the Treasury.¹⁸ The implementing regulations of the Bank Secrecy Act establish the threshold amount as \$10,000.¹⁹ To ease the regulatory burden on banks, the Bank Secrecy Act permits a bank to exempt certain types of customers from currency transaction reporting.²⁰ However, the Bank Secrecy Act also specifically prohibits banks from exempting certain customers from currency transaction reporting. In particular, under the Bank Secrecy Act's implementing regulations, a bank may not exempt, as a non-listed business, money services businesses such as money transmitters and currency exchangers from currency transaction reporting.²¹

The Financial Crimes Enforcement Network has determined that Foster Bank improperly exempted two customers from the currency transaction reporting requirements of the Bank Secrecy Act because both customers were money services businesses. Foster's exemptions of these two customers violated 31 C.F.R. § 103.22, which specifically prohibits money services businesses from exemption as non-listed businesses from the currency transaction reporting requirements under the Bank Secrecy Act.

As a result of the improper exemptions, the Bank failed to timely file at least 379 currency transaction reports for one customer that specialized in international funds transfers, for cash transactions from May 2000 through December 2001, totaling approximately \$25 million. The beneficiaries of the wire transfers were located in Pakistan, India and the United Arab Emirates, countries designated as Jurisdictions of Primary Concern by the U.S. Government. From May 2000 through March 2002, the Bank failed to timely file 295 currency transaction reports totaling over \$10 million in cash transactions for the second customer, a currency exchange. As a result, Foster filed at least 674 delinquent currency transaction reports, in the total amount of \$35 million, for the two customers.

E. Violations of the Prohibition on Structured Transactions

The Bank Secrecy Act requires that financial institutions keep certain records in connection with the sale of monetary instruments with currency in amounts or denominations of \$3,000 or more.²² Furthermore, the Bank Secrecy Act prohibits structuring currency transactions to evade the

¹⁸ 31 U.S.C. § 5313.

¹⁹ 31 C.F.R. § 103.22.

²⁰ 31 U.S.C. § 5313 and 31 C.F.R. § 103.22(d).

²¹ 31 C.F.R. § 103.22(d)(6)(viii).

²² 31 C.F.R. § 103.29.

Bank Secrecy Act's reporting or recordkeeping requirements.²³ The Act also prohibits any person from assisting another in structuring any transaction.²⁴

The Financial Crimes Enforcement Network has determined that Foster Bank, through its former President and former Bank Director, purchased large amounts of cashier checks to avoid the recordkeeping requirements of 31 C.F.R. § 103.29, and in violation of 31 C.F.R. § 103.63. On August 20, 2002, Foster's former President and former Bank Director both resigned at the request of the Bank's Board of Directors. The Federal Deposit Insurance Corporation prohibited the former President and Director of Foster from banking on November 19, 2003, and March 10, 2004, respectively.

From April 1999 through August 2002, the former President of Foster Bank engaged in a pattern of structured transactions involving \$419,162 in cashier's checks, purchased on behalf of his son's businesses, for amounts under \$3,000 in order to avoid the Bank Secrecy Act's recordkeeping requirements for the sale of monetary instruments. These transactions were often conducted twice daily, before and after the teller cut-off time. The former President also conducted similar structured transactions for the former Director. From June through September 2001, the former President engaged in a pattern of structured transactions involving \$122,000 in monetary instruments purchased with cash for the benefit and at the request of the former Director.

Because these transactions were conducted by senior management of the Bank, the Bank knew, or should have known, that it was structuring or assisting in conducting transactions that appeared to be designed to evade the reporting or recordkeeping requirements of the Bank Secrecy Act. Moreover, many other customers of the Bank appeared to have engaged in similar purchases of cashier's checks to avoid the recordkeeping requirements in the Bank Secrecy Act.

The Bank's procedures for the purchase of monetary instruments were not adequate to assure compliance with the Bank Secrecy Act's record-keeping requirements, or to identify potential structuring. Because Foster issued a large amount of cashier's checks (approximately \$130 million in cashier's checks from January through August 2002), it was particularly important for the Bank to have procedures and controls in this area.

IV. CIVIL MONEY PENALTY

Under the authority of the Bank Secrecy Act,²⁵ the Financial Crimes Enforcement Network has determined that a civil money penalty is due from Foster for the Bank's violations of the Bank Secrecy Act as described in this ASSESSMENT.

Based on the seriousness of the violations at issue in this matter, and the financial resources available to Foster, the Financial Crimes Enforcement Network has determined that the appropriate penalty in this matter is \$2,000,000.

V. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, Foster, without admitting or denying either the facts or the 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 against it in the

²³ 31 U.S.C. § 5324 and 31 C.F.R. § 103.63.

²⁴ 31 U.S.C. § 5324(a)(3) and 31 C.F.R. § 103.63(c).

²⁵ 31 U.S.C. § 5321 and 31 C.F.R. § 103.57.

sum of \$2,000,000. This assessment shall be satisfied by payment of \$2,000,000 to the United States Department of the Treasury.

Foster recognizes and states that it enters into the CONSENT freely and voluntarily, and that no offers, promises, or inducements of any nature whatsoever have been made by the Financial Crimes Enforcement Network or any employee, agent, or representative of the Financial Crimes Enforcement Network, to induce Foster to enter into the CONSENT, except for those specified in the CONSENT.

Foster understands and agrees that the CONSENT embodies the entire agreement between Foster and the Financial Crimes Enforcement Network relating to this enforcement matter only, as described in Section III above. Foster further understands and agrees that there are no express or implied promises, representations, or agreements between Foster and the Financial Crimes Enforcement Network other than those expressly set forth or referred to in this document and that nothing in the CONSENT or this ASSESSMENT is binding on any other agency of government, whether federal, state, or local.

VI. RELEASE

Foster understands that its execution of the CONSENT and compliance with the terms of this ASSESSMENT and the CONSENT, constitute a complete settlement of civil liability for the violations of the Bank Secrecy Act described in the CONSENT and in this ASSESSMENT.

By: Robert W. Werner 12/14/2006
Robert W. Werner, Director
FINANCIAL CRIMES ENFORCEMENT NETWORK
U.S. Department of the Treasury

Date: 12/14/2006