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

IN THE MATTER OF:
GULF CORPORATION
MIAMI, FLORIDA

No. 2005-1

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 the authority to determine whether a financial institution has violated the Bank Secrecy Act and the regulations issued pursuant to that Act,[1] and what, if any, sanction is appropriate.

Under the authority of the Bank Secrecy Act and regulations issued pursuant to that Act,[2] the Financial Crimes Enforcement Network has determined that grounds exist to assess a civil money penalty against Gulf Corporation ("Gulf"). The Financial Crimes Enforcement Network is executing this ASSESSMENT OF CIVIL MONEY PENALTY ("ASSESSMENT") without the consent of Gulf, because Gulf has refused to enter into a consent to this ASSESSMENT.

II. JURISDICTION

Gulf is a corporation organized under Florida law. In 2004, PanAmerican Bank purchased certain assets of Gulf, and assumed certain liabilities. Prior to the transaction, Gulf had engaged, under the name "Gulf Bank," in the business of commercial banking, pursuant to a charter from Florida. After the transaction, Gulf changed its name to "Gulf Corporation" and relinquished its authority from Florida to engage in the business of commercial banking. In addition, Gulf terminated its membership in the Federal Reserve System and terminated insurance of its accounts by the Federal Deposit Insurance Corporation. However, the existence of Gulf as a Florida corporation continued.

At all relevant times, Gulf was a "financial institution" and a "bank" within the meaning of the Bank Secrecy Act and the regulations issued pursuant to that Act.[3]

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[1] 31 U.S.C. §§ 5311 et seq. and 31 CFR Part 103.
[2] 31 U.S.C. § 5321 and 31 CFR § 103.57.
[3] 31 U.S.C. § 5312(a)(2) and 31 CFR § 103.11.

III. DETERMINATIONS

A. Summary

This matter arises from Gulf's willful violations of the currency transaction and suspicious activity reporting requirements of the Bank Secrecy Act and the regulations issued pursuant to that Act. As a result of numerous deficiencies in its procedures for currency transaction reporting, Gulf failed to timely file 2,434 currency transaction reports from February 1998 through June 2001. In addition, Gulf had inadequate procedures to detect and report suspicious activity, in accordance with the Bank Secrecy Act. Gulf employees displayed a general lack of knowledge about certain types of high-risk activity at the bank. These weaknesses resulted in Gulf's failure to timely file at least forty-seven suspicious activity reports. In November 2001, the Federal Reserve and the Florida Department of Banking and Finance issued a Cease and Desist Order against Gulf for Bank Secrecy Act related deficiencies, and the matter was referred to the Financial Crimes Enforcement Network for consideration of whether a civil penalty was warranted.[4] The Financial Crimes Enforcement Network deferred consideration of the matter until it could determine that no prejudice to other 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, and, based on the following findings, will assess a civil money penalty.

B. Violations of the Currency Transaction Reporting Requirements

The Financial Crimes Enforcement Network has determined that Gulf violated the currency transaction reporting requirements of the Bank Secrecy Act and regulations issued pursuant to that Act.[5] Banks are required to file currency transaction reports for transactions in currency greater than $10,000 in a single day. These reports must be completed and filed in the form prescribed by the Secretary of the Treasury.[6]

Gulf failed to timely file 2,434 currency transaction reports. Gulf failed to file any currency transaction reports for at least 32 months. To the extent Gulf actually completed currency transaction reports, its compliance officer failed to mail the forms, and systems and controls failed to detect the problem over an extended period of time. In addition, Gulf failed to aggregate multiple transactions for related customers in a single day. In fact, despite the availability of such information, the compliance officer failed to review large cash reports for aggregation purposes. In other cases, when a customer conducted both cash-in and cash-out transactions in a single day, the cash-out transactions were not treated as reportable. In still other cases, monetary instrument purchases for over $10,000 in currency were not treated as reportable for currency transaction reporting purposes. Moreover, training deficiencies resulted in excessive currency transaction reporting error rates at the branch level. A random sample of currency transaction reports, in the spring of 2002, showed that Gulf personnel failed to identify 32% of reportable currency transactions for complete and accurate reporting under the Bank Secrecy Act. In sum, Gulf exhibited a systemic breakdown in currency transaction reporting compliance for nearly three years.

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[4] Following the acquisition by PanAmerican Bank, the Cease and Desist Order was no longer in effect.
[5] 31 U.S.C. § 5313 and 31 CFR § 103.22.
[6] 31 CFR § 103.27(d).

C. Violations of the Requirement to Report Suspicious Activity

A bank 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."[7]

The regulation on the reporting of suspicious activity by banks, issued pursuant to the Bank Secrecy Act, requires a bank to file reports "to the extent and in the manner required by this section" by "completing" a suspicious activity report.[8] A bank must file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing the form.[9] If no suspect is identified on the date of the detection of the incident requiring the filing, a bank may delay filing a report for an additional 30 calendar days to identify a suspect. In no case is reporting to be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.

To comply with the regulation, a bank must be able to determine whether transactions are in fact reportable. Therefore, a bank is required to establish and implement systems and controls to identify transactions and accounts that may be high risk for money laundering, or exhibit indicia of suspicious activity, considering the type of products and services it offers and the nature of its customers. Otherwise, a bank cannot assure that it is reporting suspicious transactions as required by the Bank Secrecy Act.

The Financial Crimes Enforcement Network has determined that Gulf violated the suspicious activity reporting requirements of the Bank Secrecy Act and regulations issued pursuant to that Act. Gulf failed to file, or delinquently filed, at least forty-seven suspicious activity reports. These failures resulted from Gulf's lack of adequate procedures to identify, monitor and report suspicious activity.

Gulf had a number of international accounts commonly viewed as higher risk for potential money laundering, including accounts for customers such as casas de cambio, bearer share entities and accounts engaged in high volumes of international wire and pouch activity. However, Gulf lacked basic information on many of its riskiest accounts and failed to implement minimum measures to identify and manage the risk of money laundering and non-compliance with the Bank Secrecy Act. Customer files at Gulf, including those for international account relationships, lacked key information such as identification of principals, type of business, source of funds, expected activity levels, financial statements and distinction of the largest customer relationships. In some cases, it was difficult to determine the identity of the actual owners and/or signatories on an account, including bearer share accounts based in the British Virgin Islands.

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[7] 31 U.S.C. § 5318(g) and 31 CFR § 103.18.
[8] 31 CFR § 103.18(a).
[9] 31 CFR § 103.18(b)(3) and Instructions to the suspicious activity report, TD F 90-22.47.

Gulf personnel exhibited a significant lack of knowledge concerning the identification of suspicious activity. For example, an account officer opened bearer share accounts for two entities incorporated in an offshore jurisdiction, without understanding the nature of a bearer share company. Other international accounts, generated by agents working to promote deposits for Gulf, were of obscure origins, and the account officer lacked adequate knowledge of the accounts or the beneficial owners. Wire transfer activity and daily pouch activity were not adequately monitored for potential suspicious activity.

When Gulf became aware of the possibility of suspicious activity, it failed to follow through on the information by reviewing, analyzing, and making appropriate filings. In one case, Gulf's external auditor identified a pawnbroker that used two accounts for check cashing. In a fifteen-month period, this customer withdrew $28 million in cash, prompting the external auditor to raise concerns about the account in the audit report. Gulf's response was to note that the company was for sale, and that Gulf would consider exempting the customer from currency transaction reporting if the sale fell through (an impermissible exemption under the Bank Secrecy Act). When Gulf attempted to get information from the customer to file an exemption, the customer refused and eventually moved the account from Gulf. Gulf performed no further diligence regarding this customer and did not timely file a suspicious activity report.

Gulf failed to follow up on other indicia of suspicious transactions identified by its auditors. For example, its external auditors identified three accounts with inappropriate levels of cash activity for their businesses, but Gulf failed to follow up and investigate these matters for potential suspicious activity even after law enforcement subpoenas were received. In one case, the originator of several wires into the account was convicted of money laundering in 2001, but Gulf never filed a suspicious activity report. In another case, two seizure warrants were executed and the account finally closed at the request of law enforcement. In the third case, Gulf finally closed the account due to suspicions of money laundering. Gulf filed suspicious activity reports in the latter two cases three years after the activity was brought to its attention.

D. Willful Nature of the Violations

The Financial Crimes Enforcement Network has determined that the violations by Gulf of the Bank Secrecy Act and the regulations issued pursuant to that Act were willful. In the context of a civil enforcement action, the term "willful" has been held to mean acting with a reckless disregard for obligations under law or regulation.[10] First, as an institution subject to supervision by the Federal Reserve, Gulf was aware of the currency transaction and suspicious activity reporting requirements of the Bank Secrecy Act and the regulations issued pursuant to that Act. In addition, Gulf was on notice of prior deficiencies in its Bank Secrecy Act compliance program, having been cited for Bank Secrecy Act compliance program deficiencies in repeated examinations, and in the Cease and Desist Order from the Federal Reserve and the Florida

[10] *Appalachian Resources Development Corporation v. Bureau of Alcohol, Tobacco, and Firearms*, 387 F.3d 461 (2004); *Perri v. Bureau of Alcohol, Tobacco, and Firearms*, 637 F.2d 1332 (1981); *Intercounty Construction Company v. Occupational Safety and Health Review Commission*, 522 F.2d 777 (1975); *Wehr v. the Burroughs Corporation*, 619 F.2d 276 (1980); *Georgia Electric Company v. F. Ray Marshall*, 595 F.2d 309 (1980).

Department of Banking and Finance. Finally, Gulf's violations were serious, ongoing, and systemic. For all of these reasons, the conduct of Gulf demonstrates a reckless disregard for the obligations of Gulf under the Bank Secrecy Act and the regulations issued pursuant to that Act.

IV. CIVIL MONEY PENALTY

Under the authority of the Bank Secrecy Act and the regulations issued pursuant to that Act,[11] the Financial Crimes Enforcement Network has determined that a civil monetary penalty is due for the violations of the Bank Secrecy Act and the regulations issued pursuant to that Act. By failing to file timely currency transaction reports and suspicious activity reports, as described in Section III, Gulf willfully violated the currency transaction and suspicious activity reporting provisions of the Bank Secrecy Act and its implementing regulations.

The Financial Crimes Enforcement Network may impose civil money penalties or take additional enforcement action against a financial institution for willful violations of the Bank Secrecy Act and the regulations issued pursuant to that Act. A penalty, not to exceed the greater of the amount (but capped at $100,000) involved in the transaction (if any) or $25,000, may be imposed on a financial institution for each willful violation of a reporting requirement.[12] After considering the seriousness of the violations and the financial resources of Gulf, the Financial Crimes Enforcement Network has determined that the appropriate penalty in this matter is $700,000.

V. ASSESSMENT

To resolve this matter, and only for that purpose, Gulf shall pay the amount of $700,000 within five (5) business days of the date of this ASSESSMENT. Such penalty 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 the Financial Crimes Enforcement Network, Attention: Associate Director, Administration & Communications Division, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182; and

d. Submitted under a cover letter, which references the caption and file number in this matter.

By compliance with the terms of this ASSESSMENT, Gulf will not admit or deny either the facts or determinations described in Sections III or IV above, except as to jurisdiction in Section II, which will be admitted.

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[11] 31 U.S.C. § 5321 and 31 CFR § 103.57.
[12] 31 U.S.C. § 5321(a)(1) and 31 CFR § 103.57(f).

VI. RELEASE

Compliance with the terms of this ASSESSMENT will constitute a complete settlement of civil liability for the violations of the Bank Secrecy Act and regulations issued pursuant to that Act as described in this ASSESSMENT.

By: _____

William J. Fox, Director
FINANCIAL CRIMES ENFORCMENT NETWORK
U.S. Department of the Treasury

Date: 5-July-2005