

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

IN THE MATTER OF:

**Shinhan Bank America
New York, NY**

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Number 2023-03

CONSENT ORDER IMPOSING CIVIL MONEY PENALTY

The Financial Crimes Enforcement Network (FinCEN) conducted a civil enforcement investigation and determined that grounds exist to impose a Civil Money Penalty against Shinhan Bank America (SHBA or the Bank) for violations of the Bank Secrecy Act (BSA) and its implementing regulations.¹ SHBA admits to the Statement of Facts and Violations set forth below and consents to the issuance of this Consent Order.

I. JURISDICTION

Overall authority for enforcement and compliance with the BSA lies with the Director of FinCEN, and the Director may impose civil penalties for violations of the BSA and its implementing regulations.²

At all times relevant to this Consent Order, SHBA was a “bank” and a “domestic financial institution” as defined by the BSA and its implementing regulations.³ As such, SHBA was required to comply with applicable FinCEN regulations.

II. STATEMENT OF FACTS

The conduct described below took place from on or about April 1, 2016, through on or about March 29, 2021 (Relevant Time Period), unless otherwise indicated.

¹ The BSA is codified at 12 U.S.C. §§ 1829b, 1951-1960, 31 U.S.C. §§ 5311-5314, 5316-5336 and notes thereto. Regulations implementing the BSA appear at 31 C.F.R. Chapter X.

² 31 U.S.C. § 5321(a); 31 C.F.R. §§ 1010.810(a), (d); Treasury Order 180-01 (Jan. 14, 2020).

³ 31 U.S.C. §§ 5312(a)(2)(B), (b)(1); 31 C.F.R. § 1010.100(d).

A. Bank Secrecy Act

The BSA, together with its implementing regulations, establishes a framework for financial institutions to guard against money laundering, and to report essential financial intelligence to FinCEN. The BSA accomplishes this by, among other things, requiring banks to implement and maintain an effective anti-money laundering (AML) program in order to guard against money laundering through financial institutions.⁴ Additionally, the BSA imposes affirmative duties on banks such as SHBA, including the duty to identify and report suspicious transactions relevant to a possible violation of law or regulation in suspicious activity reports (SARs) filed with FinCEN.⁵ The reporting and transparency that financial institutions provide through these reports is essential financial intelligence that FinCEN, law enforcement, and others use to safeguard the U.S. financial system and combat serious threats, including money laundering, terrorist financing, organized crime, corruption, drug trafficking, and massive fraud schemes targeting the U.S. government, businesses, and individuals.⁶

B. FinCEN

FinCEN is a bureau within the U.S. Department of the Treasury and is the federal authority that enforces the BSA by investigating and imposing civil money penalties on financial institutions and individuals for willful violations of the BSA.⁷ As delegated by the

⁴ 31 U.S.C. § 5318(h); 31 C.F.R. § 1020.210.

⁵ 31 U.S.C. § 5318(g); 31 C.F.R. § 1020.320.

⁶ See FinCEN, FIN-2014-A007, *FinCEN Advisory to U.S. Financial Institutions Promoting a Culture of Compliance* (Aug. 11, 2014).

⁷ 31 U.S.C. § 5321(a). 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. The Bank admits to “willfulness” only as the term is used in civil enforcement of the BSA under 31 U.S.C. § 5321(a)(1).

Secretary of the Treasury, FinCEN has “authority for the imposition of civil penalties” and “[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,” including the Federal Deposit Insurance Corporation (FDIC).⁸

C. FDIC

The FDIC is an independent federal agency that has both delegated authority from Treasury for BSA examinations and separate authority under Title 12 of the United States Code, the Federal Deposit Insurance Act (FDIA), for compliance and enforcement.⁹ Under this authority, the FDIC conducts regular examinations and issues reports assessing a bank’s compliance with the BSA and other laws.

D. SHBA

Throughout the Relevant Time Period, SHBA was a New York-chartered, “state nonmember insured bank,”¹⁰ headquartered in New York, New York and regulated and examined by the New York State Department of Financial Services (NYDFS). SHBA was a wholly-owned subsidiary of Shinhan Bank Co., Ltd. (Parent Bank), a foreign bank based in Seoul, South Korea. SHBA operated as many as 15 branches throughout the United States, primarily in the New York area and Southern California, with a smaller presence in Georgia and Texas, offering a range of banking products and financial services to businesses and retail customers. During the Relevant Time Period, SHBA was a “financial institution” and a “bank” within the meaning of the BSA and its implementing regulations,¹¹ and was subject to an annual examination performed by the FDIC as its Federal functional regulator.

⁸ 31 C.F.R. § 1010.810(a), (b)(3), (d).

⁹ 12 U.S.C. §§ 1818; 1820(b).

¹⁰ 12 U.S.C. § 1813(q)(2)(A).

¹¹ 31 U.S.C. § 5312(a)(2)(A), (B); 31 C.F.R. §§ 1010.100(d)(1), 1010.100(t)(1).

Factual Background

SHBA's willful violations of the BSA stem from repeated notice during the Relevant Time Period that its compliance program did not comply with the BSA.¹² SHBA repeatedly failed to fully remediate these deficiencies to bring the Bank into compliance with the law.

Specifically, beginning by at least 2015, the Bank was notified that it was in violation of the BSA, including for failing to develop and implement an effective AML program that met the minimum requirements of the BSA or the FDIA and for failing to file SARs in accordance with BSA requirements. The BSA violations continued and, as a consequence, on June 12, 2017, the FDIC, with SHBA's consent, issued a Consent Order (2017 Consent Order) requiring certain corrective action to redress the Bank's non-compliance. On October 13, 2022, the FDIC, again with SHBA's consent, issued an Amended and Restated Consent Order (2022 Consent Order) requiring additional corrective action to address the remaining deficiencies and weaknesses identified in SHBA's AML program. SHBA also entered into a Memorandum of Understanding with NYDFS in May 2020 (2020 NYDFS MOU) to address deficiencies in the Bank's BSA/AML compliance program and its internal audit function, which required the Bank to, among other things, submit written reports detailing its remediation of these deficiencies.

By the terms of both the 2017 Consent Order and the 2020 NYDFS MOU, SHBA agreed to take certain corrective action to bring the Bank into compliance with the BSA. However, despite these agreements and SHBA's prior awareness of its non-compliance with

¹² See In the Matter of Shinhan Bank America, Consent Order, FDIC-16-0237b (June 12, 2017) available at <https://orders.fdic.gov/sfc/servlet.shepherd/document/download/069t0000002Z6HvAAK?operationContext=S1>; In the Matter of Shinhan Bank America, Amended and Restated Consent Order, FDIC-16-0237b (Oct. 13, 2022) available at <https://orders.fdic.gov/sfc/servlet.shepherd/document/download/069t000000gizPAAQ?operationContext=S1>.

the BSA, SHBA failed to make all of the critical changes needed to bring the Bank into full compliance with the BSA. For example, while SHBA management made improvements to its AML program during the Relevant Time Period in response to certain of the Consent Order provisions, it struggled even to retain a consistent compliance officer during parts of the Relevant Time Period, let alone to fully address its more systemic violations. SHBA's failure to take the required corrective action and the identification of the remaining deficiencies and weaknesses resulted in NYDFS notifying the Bank on May 14, 2021, that it was in material breach of the 2020 NYDFS MOU.

As of the end of the Relevant Time Period, SHBA remained out of compliance with several provisions of the 2017 Consent Order, and failed to implement and maintain a satisfactory AML program and to detect and report suspicious activity to FinCEN. SHBA's recurrent failure to remedy its BSA violations demonstrates an inability during the Relevant Time Period to comply with the legal requirements imposed on all regulated financial institutions in the United States.

E. The Bank Failed to Implement an Adequate Anti-Money Laundering Program

In order to guard against money laundering and the financing of terrorism through financial institutions, the BSA and its implementing regulations require banks to establish an AML program that is reasonably designed to assure and monitor BSA compliance, and includes at a minimum: (a) the development of internal policies, procedures, and controls; (b) an independent audit function to test programs; (c) designation of a compliance officer; (d) an ongoing employee training program; and (e) appropriate risk-based procedures for conducting ongoing customer due diligence (CDD).¹³ Additionally, a bank supervised by a Federal

¹³ 31 U.S.C. § 5318(h); 31 C.F.R. § 1020.210; 12 C.F.R. §§ 21.21(c)(1), 21.21(d).

functional regulator is required to implement and maintain an AML program that “[c]omplies with the regulation of its Federal functional regulator governing such programs.”¹⁴ The Bank willfully failed to implement an AML program that met these BSA requirements during the Relevant Time Period.

As designed, SHBA’s AML program was intended to have functioned as follows. The Bank should have conducted CDD on new customers during the onboarding process, which would entail gathering general and risk-specific information about the customer. A customer’s CDD should have been periodically updated to reflect changes that impacted the customer’s money laundering or other risk. The Bank should then calculate and assign the customer a customer risk rating (CRR) score based on the data points collected during CDD, which would reflect the customer’s risk for money laundering and other risks. SHBA should then have monitored its customers’ transactions through an automatic transaction monitoring (TM) system, which would run monitoring scenarios dependent on a customer’s CRR, in order to take account of that customer’s overall risk. Alerts or cases generated by the TM system would then be investigated by compliance personnel for possible escalation for SAR filing. However, throughout the Relevant Time Period and as described below, SHBA’s AML program experienced repeated failures in performing each of these steps. The program’s deficiencies were brought to the attention of the Bank’s Board of Directors (Board) during the Relevant Time Period, although due to governance and change management weaknesses, the Board was unable to bring SHBA into compliance with the BSA.

¹⁴ 31 C.F.R. § 1020.210(c) (2016) and 31 C.F.R. § 1020.210(a)(3) (2020).

1. Customer Due Diligence / Customer Risk Rating

The BSA and its implementing regulations require banks to have “[a]ppropriate risk-based procedures for conducting ongoing customer due diligence.”¹⁵ Under this requirement, a bank’s AML program must include procedures for understanding the nature and purpose of customer relationships to develop a customer risk profile. A bank must also conduct ongoing monitoring to maintain and update customer information, on a risk basis. FinCEN guidance clarifies that banks “must establish policies, procedures, and processes for determining whether and when, on the basis of risk, to update customer information to ensure that customer information is current and accurate.”¹⁶ It further states that a bank “should have an understanding of the money laundering, terrorist financing, and other financial crime risks of its customers to develop the customer risk profile.”¹⁷ Additionally, the determination of customer risk profiles “should be sufficiently detailed to distinguish between significant variations in the risks of its customers.”¹⁸

SHBA’s policies required first-line employees to collect information on anticipated account activity from each customer at account opening. However, at times, this information was not validated or transferred over to the TM system to establish a baseline for evaluating the customer’s activity. Instead, TM baselines were established using 90 days of actual activity, impairing management’s ability to determine whether the actual account activity was unusual for the customer or not. In other words, SHBA measured whether its customers’ activity was unusual solely against a benchmark that was set based on the

¹⁵ 31 C.F.R. § 1020.210(a)(2)(v).

¹⁶ See “Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions,” FIN-2020-G002 (Aug. 3, 2020), available at https://www.fincen.gov/sites/default/files/2020-08/FinCEN_Guidance_CDD_508_FINAL.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

customers' prior account activity, and not based on relevant information obtained at account opening.

Further, as designed, SHBA's CDD was supposed to be used to establish a CRR for its customers. However, for much of the Relevant Time Period and even as the Bank made improvements to its CRR process over time, SHBA consistently failed to implement a CRR methodology that was comprehensive and risk-based.¹⁹ Prior to July 2020, SHBA utilized an automated system that assigned CRRs 90 days after account opening based on six factors that were weighed equally: country, zip code, tax identification number code, occupation/business type, product/account type, and transaction activity. This rigid calculation did not appropriately take into consideration the fact that a significant portion of the Bank's customer base consisted of cash-intensive individuals with a high volume of domestic and international wire activity. A review of the Bank's wire transfer log and large cash transaction report identified customers with significant transaction volumes that were not regarded as high risk because their transaction volumes only accounted for a small, incommensurate portion of their CRR.

In addition, the CRR feature of the Bank's TM system was determined on an account-by-account basis, not by looking at the entire customer relationship. As such, SHBA did not connect individuals and businesses that were the primary owners of accounts to other accounts for which they were signatories. This resulted in inconsistent CRRs for the same customer across accounts, despite attempts by the Bank to manually apply the most severe of the various risk ratings to all related accounts. The Bank's failure here detrimentally impacted its ability to properly execute TM that fundamentally depended on the CRR being

¹⁹ As a result of these deficiencies, NYDFS required the Bank to make enhancements to its CRR methodology as part of the 2020 NYDFS MOU.

accurate.

2. Transaction Monitoring

SHBA's TM system did not function to effectively monitor the Bank's transactions. For example, for years, the TM system lacked basic predetermined scenarios needed to flag abnormal activity, such as for:

- wire transfers sent to several beneficiaries from a single originator, or sent from several originators to a single beneficiary;
- transactions passing through a large number of jurisdictions; and
- transactions conducted using Remote Deposit Capture, a service that allows checks to be deposited remotely with a scanned or photographic image and cleared electronically.

Further, the TM system failed to cluster accounts belonging to the same customer relationship to comprehensively assess the customer's overall financial activity.²⁰

The TM system's gaps impaired the Bank's ability to detect and report patterns of potentially suspicious activity. For example, the Bank's TM coverage did not aggregate transaction activity across all transaction types, which created gaps in the monitoring of abnormal patterns of activity by SHBA's customers. This meant that a large cash or check deposit into an account could immediately be wired out of the account without generating a suspicious activity alert (as was the case in a SAR failure described further below) because the TM system neither aggregated the volume of the deposit and withdrawal nor accounted for the rapid succession of transactions in evaluating whether the activity was unusual.

Additionally, the Bank lacked policies and procedures to ensure regular testing and

²⁰ These failures resulted in NYDFS notifying the Bank that it was required to make enhancements to its transaction monitoring process as set forth in the 2020 NYDFS MOU.

effective tuning of its TM system. As such, SHBA management, at times, did not detect systemic errors, improper configurations and transaction monitoring coverage gaps. For example, SHBA’s TM system had an Automated Clearing House (ACH)²¹ “spike scenario” that was designed to detect substantial changes in the volume of ACH transactions. However, from August 2016 through January 2018, the Bank inaccurately classified over 150,000 transactions (approximately 10% of the Bank’s total ACH transactions for that period) in this TM system by aggregating transactions transmitted to the same beneficiary bank. This meant the Bank’s TM system undercounted the total number of transactions, while simultaneously increasing the overall volume of the average transaction. Consequently, the ACH spike scenario could not accurately alert on the true nature and volume of ACH transactions processed at SHBA. SHBA did not have the procedures in place to detect this systemic failure sooner, and so the ACH spike scenario failure persisted. Ultimately this resulted in a 17-month backlog of alerts that the Bank had to review for potentially suspicious activity—a review that further strained the Bank’s limited compliance resources.

Moreover, while the Bank relied on a primary TM system to oversee transactions related to its retail banking products and services, it utilized a separate TM system to track and manually review correspondent banking activity. This correspondent banking TM system had extensive deficiencies related to its data sourcing and mapping, monitoring scenarios, and transaction thresholds. SHBA ultimately chose to suspend its correspondent banking services in late 2018 to reduce its risk profile.

²¹ ACH transactions are bank-to-bank transfers through an established electronic network.

3. Suspicious Activity Alerts

For much of the Relevant Time Period, SHBA lacked formalized, comprehensive procedures to govern the process for handling the review of alerts for potentially suspicious activity or to ensure timely detection and reporting of suspicious activity. However, in practice, the Bank generally adhered to a 90-day timeline to file SARs. This included 30 days to initiate a case and assign it to an analyst for investigation when the TM system generated an alert. The analyst then had another 30 days to investigate and recommend whether a SAR should be filed or not. When the Bank determined that a SAR should be filed, a supervisor had 30 days to prepare and file the SAR. However, the lack of formalized procedures often caused significant delays, sometimes over 100 days, between an analyst recommending that a SAR be filed and a supervisor approving and filing the SAR.

At times, SHBA under-resourced its compliance program, which created a self-reinforcing cycle that undercut BSA compliance: the Bank did not hire adequate compliance management or staff, which overtaxed existing employees and resulted in high rates of turnover. At the management level, SHBA experienced difficulty ensuring continuity in leadership, particularly in the BSA compliance officer role. For example, the Bank had five different BSA compliance officers in 2019 alone, with a total of seven different individuals in that position since 2019. This excessive turnover rate created disorganization and interruptions that were detrimental to the Bank's attempts to improve its BSA compliance.

SHBA also did not adequately staff its BSA compliance program at the line level, which was attributable in part to compensation packages that lacked market salary competitiveness. From November 2016 through October 2017, a team of only seven to nine employees was responsible for handling all alerts generated by the Bank's TM system, which meant that BSA analysts often did not have enough time to review supporting

documentation, even though this information was readily available.

A third-party vendor communicated the issues surrounding the Bank's compliance staffing deficiencies in late 2017. In response, in 2018, the Bank increased the number of full time-employees in its BSA department, though its staffing remained insufficient to ensure compliance with the BSA. In 2019, Bank management conducted a staff capacity assessment of its BSA compliance department and engaged in additional hiring. Even then, the staff capacity assessment did not take into account the qualifications and expertise of its existing compliance staff, and overlooked SHBA's practice of staffing its compliance department with employees from other parts of the Bank who had no prior AML or BSA experience. Management knew that some compliance staff did not have the requisite experience or training, but did not take immediate and necessary actions to remedy the situation.

SHBA's chronic understaffing meant that its suspicious activity alerts were at times not handled timely in accordance with the BSA and the Bank's own internal policies. At one point, the Bank had a backlog of over 10,000 alert events (within more than 700 pre-cases) that had not been reviewed. Further, the Bank's internal policies required analysts to consider and append documentation on any alerts raised by the TM system. However, analysts often lacked the time to process these alerts consistent with these policies, and so, at times, cleared these alerts without adhering to these policies. As a result of these issues, NYDFS required the Bank to allocate adequate resources for its BSA/AML compliance function, including allowing for sufficient staffing levels in the 2020 NYDFS MOU.

4. Corporate Governance and Change Management

Compounding the issues surrounding SHBA's AML program were problems of corporate governance and change management. As part of the 2017 Consent Order, SHBA's Board agreed to create the Compliance Committee of the Board (CCOB) to oversee

compliance with the provisions of the 2017 Consent Order. The 2017 Consent Order further required the CCOB to report directly to the Board itself “at each regularly scheduled Board meeting, regarding the Bank’s compliance with the 2017 Consent Order, the BSA/AML laws and regulations, and the Bank’s BSA/AML Compliance Program.” Despite requiring supervision by the Board, the Board did not adequately oversee remediation of the AML program consistent with the terms of the 2017 Consent Order.

One factor inhibiting effective oversight by the Board was insufficient focus on the Bank’s necessary remediation. Certain of the Board’s meeting minutes following the 2017 Consent Order reflect a lack of urgency and adequate planning to address the Bank’s extensive and recurring AML program failures. Further, the minutes from the Board’s meetings, which were attended by independent directors, reveal a concern by one independent director regarding potentially conflicting instructions from the Parent Bank that may have caused strategic and operational confusion adversely impacting the Bank’s ability to develop and execute a tenable plan for achieving regulatory compliance. A third-party report issued in 2019 identified SHBA’s absence of change management procedures for its BSA/AML systems as a “critical” deficiency in the Bank’s internal controls.

The weaknesses in SHBA’s corporate governance and change management processes were further evidenced by the rollout of a new TM system following the 2017 Consent Order—a system which was necessary to bring the Bank’s internal controls into compliance with the BSA. This new TM System, which represented a substantial investment, was initially scheduled for deployment in late 2019, which gave the Bank two years to prepare for its implementation. Instead, because of a lack of strategic planning and insufficient control mechanisms to guide the new system’s implementation, the transition had to be delayed until

July 2020. Even with the extra time, once the new TM system came online it had substantial coverage gaps and generated a significant backlog of alerts and cases. For example, a parallel testing report issued in November 2020 identified 468 alerts that led to SAR filings under the old TM system but which failed even to generate an alert in the new TM system. Furthermore, eight months after implementation, compliance employees had yet to receive any training on the new TM system.

5. Requirements of SHBA's Federal Functional Regulator

SHBA failed to meet the regulatory requirements of its Federal functional regulator concerning its AML program. Specifically, the FDIC, with the consent of SHBA, issued two orders requiring the Bank to take action to correct identified deficiencies and weaknesses in its AML program, the 2017 Consent Order and the 2022 Amended and Restated Consent Order.

F. The Bank Failed to File Suspicious Activity Reports

The BSA and its implementing regulations require 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”: (a) involve funds derived from illegal activities, or is conducted to disguise funds derived from illegal activities; (b) are designed to evade the reporting or recordkeeping requirements of the BSA or regulations implementing it; or (c) have no business or apparent lawful purpose or are not the sort in which the customer normally would be expected to engage, and the bank knows of no reasonable explanation for the transactions after examining the available facts, including background and possible purpose of the transactions.²² A bank is generally required to file a SAR no later than 30 calendar days after the initial detection by the bank of the facts that may constitute a basis for

²² 31 C.F.R. §§ 1020.320(a)(2)(i)-(iii).

filing a SAR.²³

SHBA failed to develop and implement an effective process for detecting and reporting suspicious activity in a timely manner. These AML failures resulted in the below willful failure to timely file several hundred SARs. Along with the deficiencies enumerated above, which inhibited the Bank's ability to detect and report suspicious activity, some compliance analysts responsible for investigating alerts generated by the Bank's TM system lacked the training and experience needed to reach well-supported alert dispositions. At times, the justification for clearing an alert, as opposed to escalating it, relied on whether the Bank previously filed a SAR or a currency transaction report, rather than on an analysis of the actual account activity and a determination of its reasonableness. FinCEN's investigation revealed that the Bank filed several hundred SARs an average of approximately 119 days late during the Relevant Time Period (a significant percentage of the approximately 3,600 SARs that the Bank filed during this period). These SARs were filed on potentially suspicious customer activity totaling tens of millions of dollars.

Additionally, a sampling of SHBA customer transactions from 2018 through 2019 exposed 16 failures to file SARs on transactions that had no business or apparent lawful purpose, or were not the type of transactions in which the customer would normally be expected to engage.²⁴ Eleven of these failures involved new customer accounts that were opened with a significant amount of cash (LCD Accounts), ranging from \$30,000 to \$100,000, where the source of the cash could not be determined or was not adequately explained. For example, some of these LCD Accounts were opened by individuals who purported to be

²³ 31 C.F.R. § 1020.320(b)(3).

²⁴ These failures resulted in NYDFS requiring the Bank to enhance its suspicious activity monitoring and reporting by the terms of the 2020 NYDFS MOU.

unemployed, others by individuals who arrived in the U.S. only a day or two prior to opening the account. LCD Account customers who opened a Demand Deposit Account did not generate an alert for the activity, while those who opened a Certificate of Deposit did. Certain LCD Account customers rapidly withdrew the funds via check and subsequently deposited the check at another financial institution, but the SHBA's TM system did not generate any alerts.

The following are examples of the Bank's willful failure to file SARs.

- Customer A was a small title company based in New York that became an SHBA customer in 2015. Customer A's account alerted for possible suspicious activity in early July 2019 due to a single incoming wire transfer of \$1.8 million dollars from a trust company located in Bermuda—a transaction that was abnormal based on the customer's historical activity. Customer A withdrew the funds rapidly the following day in five outgoing wire transfers to pay off the mortgage for a commercial property and various legal fees. SHBA noted that the counterparty to the large incoming transfer was located in a tax haven jurisdiction and that the counterparty was also named in media reports. Customer A refused to provide the names of the buyer and seller involved in the real estate transaction. No SAR was timely filed on this activity.
- Customer B opened multiple personal and business accounts at SHBA in 2016, including one for conducting real estate business and one for a non-profit foundation whose stated purpose was supporting missionary work, the local Korean community, cultural activities, music, and scholarships. Over a period of two years, Customer B engaged in a pattern of pass-through activity indicative of tax evasion, with approximately \$4.7 million cycling from Customer B's real estate business account, to the non-profit account, to the personal accounts of the non-profit's authorized signers,

and then back to the business account or to similarly titled accounts at other financial institutions. This immediate and circular movement of funds through the non-profit account did not involve any activity related to the indicated purpose of the non-profit organization. The Bank's platform alerted on this pattern of activity and Bank analysts reviewed the case in December 2017, but SHBA did not file an initial SAR until June 2019.

- Customer C was a cosmetic surgeon in New York and an SHBA customer since 2007. In late 2016, Customer C was indicted on one count of second-degree manslaughter related to a botched medical procedure that led to the death of Customer C's patient. In mid-2017, Customer C was sued for medical malpractice related to the 2016 incident. From around the time of Customer C's indictment until December 2017, Customer C engaged in a large volume of unusual transactions, totaling approximately \$2.7 million, from and to different investment, personal, and business accounts in what appeared to be an attempt to hide personal assets. SHBA did not file a SAR until at least one year after suspicious activity concluded.

III. VIOLATIONS

FinCEN has determined that SHBA willfully violated the BSA and its implementing regulations during the Relevant Time Period. Specifically, FinCEN has determined that SHBA willfully failed to implement and maintain an AML program that met the minimum requirements of the BSA, in violation of 31 U.S.C. § 5318(h) and 31 C.F.R. § 1020.210. Additionally, FinCEN has determined that SHBA willfully failed to accurately and timely report suspicious transactions to FinCEN, in violation of 31 U.S.C. § 5318(g) and 31 C.F.R. § 1020.320.

IV. ENFORCEMENT FACTORS

FinCEN considered all of the factors outlined in the Statement on Enforcement of the BSA, issued August 18, 2020, when deciding whether to impose a civil money penalty in this matter.²⁵ The following factors were particularly relevant to FinCEN's evaluation of the appropriate disposition of this matter:

- **Nature and seriousness of the violations, including the extent of possible harm to the public and the amounts involved:** SHBA's violations of the BSA and its implementing regulations were serious, prolonged, and caused significant possible harm to the public. During the Relevant Time Period, SHBA's compliance operations were insufficient to combat the risks associated with its customer base, geographic footprint, and products and services. The Bank was aware that its AML program needed significant reform. Still, despite ample notice and opportunity to fully address identified deficiencies and weaknesses in its AML program, the Bank failed to do so in the Relevant Time Period. SHBA's willful failure to implement effective internal controls and CDD processes seriously undermined its ability to maintain an adequate AML program and ensure the timely reporting of potentially suspicious activity to FinCEN. As a result, several hundred SARs filed by the Bank during the Relevant Time Period were filed late, which concurrently deprived law enforcement of timely and critical financial information pertaining to suspicious activity. However, SHBA was a community bank operating primarily in the New York area and Southern California, which may have lessened the extent of the possible harm to the public caused by its violations.

As an additional source of risk, although all of SHBA's departments and employees should have reported to the Board of Directors, which in turn communicated with the Parent Bank, some

²⁵ FinCEN, Statement on Enforcement of the BSA (Aug. 18, 2020).

employees had reporting lines that included the Parent Bank. In FinCEN's view, this weakness regarding SHBA's corporate structure and governance, and the lack of clear guidelines on the channels of communications between SHBA and its Parent Bank, potentially contributed to strategic and operational confusion impacting the Bank's efforts to achieve full regulatory compliance.

- **Pervasiveness of wrongdoing within the institution, including management's complicity in, condoning or enabling of, or knowledge of the conduct underlying the violations:** The Bank's violations were systemic and impacted multiple business lines. The Bank's Board was notified that the Bank was in violation of the BSA. Despite this knowledge, and the establishment of the CCOB to address these issues, the Bank consistently failed to develop and carry out an effective, long-term strategy for correcting its BSA violations, opting instead for an approach that hinged on compliance leadership. However, the Bank struggled to consistently retain a BSA officer, which undercut its AML program and work toward improvement.

- **History of similar violations, or misconduct in general, including prior criminal, civil, and regulatory enforcement actions:** SHBA has struggled to implement and demonstrate sustainable compliance with the BSA and its implementing regulations. The FDIC issued, with SHBA's consent, a public enforcement action requiring the Bank to take certain corrective action to bring its compliance program into compliance with the BSA in 2017. Although SHBA agreed to implement these remedial measures, the Bank did not come into full compliance during the Relevant Time Period.

- **Presence or absence of prompt, effective action to terminate the violations upon discovery, including self-initiated remedial measures:** SHBA's remedial measures during the Relevant Time Period were insufficient. As noted, the Bank has been on notice of its compliance

failures for years and agreed to specific remedial measures to bring its compliance program into accord with the law more than five years ago. While the Bank dedicated additional resources to improving its AML program during the Relevant Time Period, including an investment in a more sophisticated transaction monitoring system and an approximate tripling in BSA staffing, it ultimately failed to make the critical changes needed to bring the Bank into compliance with the law. Following the Relevant Time Period and supported by a \$50 million infusion by the Parent Bank, SHBA has engaged in greater and more comprehensive remediation efforts, including hiring new leadership with significant BSA/AML experience for its BSA Department, implementing minimum hiring requirements for BSA employees, and adopting improved BSA policies and procedures. Additionally, in February 2022—after FinCEN notified SHBA of its investigation—the Bank hired a consulting firm to undertake a comprehensive review and assessment of the Bank’s BSA remediation efforts, assist with the development and implementation of corrective action plans to comprehensively address all open items, and work with the Bank on the subsequent remediation process. The Bank has also hired additional vendors and consultants, including to validate and tune its transaction monitoring system, and has taken steps to reinforce the appropriate channels of communication between it and the Parent Bank.

- **Timely and voluntary disclosure of the violations to FinCEN:** SHBA did not voluntarily disclose the violations described in this memorandum to FinCEN or the FDIC.

- **Quality and extent of cooperation with FinCEN and other relevant agencies, including as to potential wrongdoing by its directors, officers, employees, agents, and counterparties:** SHBA has shown significant cooperation and responsiveness to requests from the FDIC, NYDFS, and FinCEN. In addition to the lookback reviews required by the 2017 Consent Order and the 2022 Consent Order, the Bank has provided status updates, progress reports, and briefings to regulators. SHBA also agreed to waive as to FinCEN any defense related to the statute of limitations for conduct occurring during the Relevant Time Period described in this order.

- **Systemic Nature of the Violations. Considerations include, but are not limited to, the number and extent of violations, failure rates (e.g., the number of violations out of total number of transactions), and duration of violations:** SHBA's AML program had deficiencies throughout the Relevant Time Period. The FDIC has had a public enforcement action requiring AML-related corrective action in place since June 12, 2017 and issued the 2022 Consent Order requiring additional AML-related corrective action. FinCEN's review revealed that during the Relevant Time Period the bank filed several hundred late SARs.

- **Whether another agency took enforcement action for related activity. FinCEN will consider the amount of any fine, penalty, forfeiture, and/or remedial action ordered:** On October 13, 2022, the FDIC issued, with the Bank's consent, the 2022 Consent Order to address its outstanding AML deficiencies. The 2022 Consent Order includes a Management Study, a transactional lookback, and the enhancement of various areas of the Bank's AML program, including transaction monitoring validation, risk assessment, training, policies and procedures, and resourcing. Both the FDIC and NYDFS will impose additional penalties for SHBA's conduct arising from similar facts at issue in this Consent Order.

V. CIVIL PENALTY

FinCEN may impose a Civil Money Penalty of up to \$62,689 per day for willful violations of the requirement to implement and maintain an effective AML program occurring after November 2, 2015.²⁶

For each willful violation of a SAR reporting requirement occurring after November 2, 2015, FinCEN may impose a Civil Money Penalty not to exceed the greater of the amount involved in the transaction (capped at \$250,759) or \$62,689.²⁷

After considering all the facts and circumstances, as well as the enforcement factors discussed above, FinCEN is imposing a Civil Money Penalty of \$15,000,000 in this matter. FinCEN will credit the \$5,000,000 civil money penalty imposed by the FDIC. Accordingly, SHBA shall make a payment of \$10,000,000 to the U.S. Department of the Treasury pursuant to the payment instructions that will be transmitted to SHBA upon execution of this Consent Order.

VI. CONSENT AND ADMISSIONS

To resolve this matter, and only for that purpose, SHBA admits to the Statement of Facts and Violations set forth in this Consent Order and admits that it willfully violated the BSA and its implementing regulations. SHBA consents to the use of the Statement of Facts, and any other findings, determinations, and conclusions of law set forth in this Consent Order in any other proceeding brought by or on behalf of FinCEN, or to which FinCEN is a party or claimant, and agrees they shall be taken as true and correct and be given preclusive effect without any further proof. SHBA understands and agrees that in any administrative or judicial proceeding brought by or on behalf of FinCEN against it, including any proceeding to

²⁶ 31 U.S.C. § 5321(a)(1); 31 C.F.R. § 1010.821.

²⁷ 31 U.S.C. § 5321(a)(1); 31 C.F.R. § 1010.821.

enforce the Civil Money Penalty imposed by this Consent Order or for any equitable remedies under the BSA, SHBA shall be precluded from disputing any fact or contesting any determinations set forth in this Consent Order.

To resolve this matter, SHBA agrees to and consents to the issuance of this Consent Order and all terms herein and agrees to make a payment of \$10,000,000 to the U.S. Department of the Treasury within ten (10) days of the Effective Date of this Consent Order, as defined further below. If timely payment is not made, SHBA agrees that interest, penalties, and administrative costs will accrue.²⁸ If SHBA fails to pay the \$5,000,000 penalty arising out of its FDIC violations, it must pay the entire \$15,000,000 penalty imposed by this Consent Order.

SHBA understands and agrees that it must treat the Civil Money Penalty paid under this Consent Order as a penalty paid to the government and may not claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any payments made to satisfy the Civil Money Penalty. SHBA understands and agrees that any acceptance by or on behalf of FinCEN of any partial payment of the Civil Money Penalty obligation will not be deemed a waiver of SHBA's obligation to make further payments pursuant to this Consent Order, or a waiver of FinCEN's right to seek to compel payment of any amount assessed under the terms of this Consent Order, including any applicable interest, penalties, or other administrative costs.

SHBA affirms that it agrees to and approves this Consent Order and all terms herein freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN or any employee, agent, or representative of FinCEN to induce

²⁸ 31 U.S.C. § 3717; 31 C.F.R. § 901.9.

SHBA to agree to or approve this Consent Order, except as specified in this Consent Order.

SHBA understands and agrees that this Consent Order implements and embodies the entire agreement between SHBA and FinCEN, and its terms relate only to this enforcement matter and any related proceeding and the facts and determinations contained herein. SHBA further understands and agrees that there are no express or implied promises, representations, or agreements between SHBA and FinCEN other than those expressly set forth or referred to in this Consent Order and that nothing in this Consent Order is binding on any other law enforcement or regulatory agency or any other governmental authority, whether foreign, Federal, State, or local.

SHBA understands and agrees that nothing in this Consent Order may be construed as allowing SHBA, its holding company, subsidiaries, affiliates, Board, officers, employees, or agents to violate any law, rule, or regulation.

SHBA consents to the continued jurisdiction of the courts of the United States over it and waives any defense based on lack of personal jurisdiction or improper venue in any action to enforce the terms and conditions of this Consent Order or for any other purpose relevant to this enforcement action. Solely in connection with an action filed by or on behalf of FinCEN to enforce this Consent Order or for any other purpose relevant to this action, SHBA authorizes and agrees to accept all service of process and filings through the Notification procedures below and to waive formal service of process.

VII. COOPERATION

SHBA shall fully cooperate with FinCEN in any and all matters within the scope of or related to the Statement of Facts, including any investigation of its current or former directors, officers, employees, agents, consultants, or any other party. SHBA understands that its

cooperation pursuant to this paragraph shall include, but is not limited to, truthfully disclosing all factual information with respect to its activities, and those of its present and former directors, officers, employees, agents, and consultants. This obligation includes providing to FinCEN, upon request, any document, record or other tangible evidence in its possession, custody, or control, about which FinCEN may inquire of SHBA. SHBA's cooperation pursuant to this paragraph is subject to applicable laws and regulations, as well as valid and properly documented claims of attorney-client privilege or the attorney work-product doctrine.

VIII. RELEASE

Execution of this Consent Order and compliance with all of the terms of this Consent Order settles all claims that FinCEN may have against SHBA for the conduct described in this Consent Order during the Relevant Time Period. Execution of this Consent Order, and compliance with the terms of this Consent Order, does not release any claim that FinCEN may have for conduct by SHBA other than the conduct described in this Consent Order during the Relevant Time Period, or any claim that FinCEN may have against any current or former director, officer, owner, or employee of SHBA, or any other individual or entity other than those named in this Consent Order. In addition, this Consent Order does not release any claim or provide any other protection in any investigation, enforcement action, penalty assessment, or injunction relating to any conduct that occurs after the Relevant Time Period as described in this Consent Order.

IX. WAIVERS

Nothing in this Consent Order shall preclude any proceedings brought by, or on behalf of, FinCEN to enforce the terms of this Consent Order, nor shall it constitute a waiver of any right, power, or authority of any other representative of the United States or agencies thereof,

including but not limited to the Department of Justice.

In consenting to and approving this Consent Order, SHBA stipulates to the terms of this Consent Order and waives:

- A. Any and all defenses to this Consent Order, the Civil Money Penalty imposed by this Consent Order, and any action taken by or on behalf of FinCEN that can be waived, including any statute of limitations or other defense based on the passage of time;
- B. Any and all claims that FinCEN lacks jurisdiction over all matters set forth in this Consent Order, lacks the authority to issue this Consent Order or to impose the Civil Money Penalty, or lacks authority for any other action or proceeding related to the matters set forth in this Consent Order;
- C. Any and all claims that this Consent Order, any term of this Consent Order, the Civil Money Penalty, or compliance with this Consent Order, or the Civil Money Penalty, is in any way unlawful or violates the Constitution of the United States of America or any provision thereof;
- D. Any and all rights to judicial review, appeal or reconsideration, or to seek in any way to contest the validity of this Consent Order, any term of this Consent Order, or the Civil Money Penalty arising from this Consent Order;
- E. Any and all claims that this Consent Order does not have full force and effect, or cannot be enforced in any proceeding, due to changed circumstances, including any change in law; and
- F. Any and all claims for fees, costs, or expenses related in any way to this enforcement matter, Consent Order, or any related administrative action, whether arising under common law or under the terms of any statute, including, but not limited to, under the

Equal Access to Justice Act. SHBA agrees to bear its own costs and attorneys' fees.

X. VIOLATIONS OF THIS CONSENT ORDER

Determination of whether SHBA has failed to comply with this Consent Order, or any portion thereof, and whether to pursue any further action or relief against SHBA, shall be in FinCEN's sole discretion. If FinCEN determines, in its sole discretion, that a failure to comply with this Consent Order, or any portion thereof, has occurred, or that SHBA has made any misrepresentations to FinCEN or any other government agency related to the underlying enforcement matter, FinCEN may void any and all releases or waivers contained in this Consent Order; reinstitute administrative proceedings; take any additional action that it deems appropriate; and pursue any and all violations, maximum penalties, injunctive relief, or other relief that FinCEN deems appropriate. FinCEN may take any such action even if it did not take such action against SHBA in this Consent Order and notwithstanding the releases and waivers herein. In the event FinCEN takes such action under this paragraph, SHBA expressly agrees to toll any applicable statute of limitations and to waive any defenses based on a statute of limitations or the passage of time that may be applicable to the Statement of Facts in this Consent Order, until a date 180 days following SHBA's receipt of notice of FinCEN's determination that a misrepresentation or breach of this agreement has occurred, except as to claims already time barred as of the Effective Date of this Consent Order.

In the event that FinCEN determines that SHBA has made a misrepresentation or failed to comply with this Consent Order, or any portion thereof, all statements made by or on behalf of SHBA to FinCEN, including the Statement of Facts, whether prior or subsequent to this Consent Order, will be admissible in evidence in any and all proceedings brought by or on behalf of FinCEN. SHBA agrees that it will not assert any claim under the Constitution of the United States of America, Rule 408 of the Federal Rules of Evidence, or any other law or

federal rule that any such statements should be suppressed or are otherwise inadmissible. Such statements will be treated as binding admissions, and SHBA agrees that it will be precluded from disputing or contesting any such statements. FinCEN shall have sole discretion over the decision to impute conduct or statements of any director, officer, employee, agent, or any person or entity acting on behalf of, or at the direction of SHBA in determining whether SHBA has violated any provision of this Consent Order.

XI. PUBLIC STATEMENTS

SHBA expressly agrees that it shall not, nor shall its attorneys, agents, partners, directors, officers, employees, affiliates, or any other person authorized to speak on its behalf or within its authority or control, take any action or make any public statement, directly or indirectly, contradicting its admissions and acceptance of responsibility or any terms of this Consent Order, including any fact finding, determination, or conclusion of law in this Consent Order.

FinCEN shall have sole discretion to determine whether any action or statement made by SHBA, or by any person under the authority, control, or speaking on behalf of SHBA contradicts this Consent Order, and whether SHBA has repudiated such statement.

XII. RECORD RETENTION

In addition to any other record retention required under applicable law, SHBA agrees to retain all documents and records required to be prepared or recorded under this Consent Order or otherwise necessary to demonstrate full compliance with each provision of this Consent Order, including supporting data and documentation. SHBA agrees to retain these records for a period of six years after creation of the record, unless required to retain them for a longer period of time under applicable law.

XIII. SEVERABILITY

SHBA agrees that if a court of competent jurisdiction considers any of the provisions of this Consent Order unenforceable, such unenforceability does not render the entire Consent Order unenforceable. Rather, the entire Consent Order will be construed as if not containing the particular unenforceable provision(s), and the rights and obligations of FinCEN and SHBA shall be construed and enforced accordingly.

XIV. SUCCESSORS AND ASSIGNS

SHBA agrees that the provisions of this Consent Order are binding on its owners, officers, employees, agents, representatives, affiliates, successors, assigns, and transferees to whom SHBA agrees to provide a copy of the executed Consent Order. Should SHBA seek to sell, merge, transfer, or assign its operations, or any portion thereof, that are the subject of this Consent Order, SHBA must, as a condition of sale, merger, transfer, or assignment obtain the written agreement of the buyer, merging entity, transferee, or assignee to comply with this Consent Order.

XV. MODIFICATIONS AND HEADINGS

This Consent Order can only be modified with the express written consent of FinCEN and SHBA. The headings in this Consent Order are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Order or its individual terms.

XVI. AUTHORIZED REPRESENTATIVE

SHBA's representative, by consenting to and approving this Consent Order, hereby represents and warrants that the representative has full power and authority to consent to and approve this Consent Order for and on behalf of SHBA, and further represents and warrants that SHBA agrees to be bound by the terms and conditions of this Consent Order.

XVII. NOTIFICATION

Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Order, they shall be made in writing and sent via first-class mail and simultaneous email, addressed as follows:

To FinCEN: Associate Director, Enforcement and Compliance
Division, Financial Crimes Enforcement Network,
P.O. Box 39, Vienna, Virginia 22183

To SHBA: Mr. Ji Young Yook
CEO & President
Shinhan Bank America
475 Park Avenue South, 4th Floor
New York, New York 10016

Notices submitted pursuant to this paragraph will be deemed effective upon receipt unless otherwise provided in this Consent Order or approved by FinCEN in writing.

XVIII. COUNTERPARTS

This Consent Order may be signed in counterpart and electronically. Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

XIX. EFFECTIVE DATE AND CALCULATION OF TIME

This Consent Order shall be effective upon the date signed by FinCEN. Calculation of deadlines and other time limitations set forth herein shall run from the effective date (excluding the effective date in the calculation) and be based on calendar days, unless otherwise noted, including intermediate Saturdays, Sundays, and legal holidays.

By Order of the Director of the Financial Crimes Enforcement Network.

/s/

Andrea Gacki
Director

Date:

Consented to and Approved By:

/s/

Mr. Ji Young Yook
President and CEO
Shinhan Bank America

Date: