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

IN THE MATTER OF:	)	
	)	
	)	
	)	**Number 2020-01**
Michael LaFontaine	)	
Saint Croix County, WI	)	

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Financial Crimes Enforcement Network (FinCEN) has determined that grounds exist to assess a civil money penalty against Michael LaFontaine, former Chief Operational Risk Officer (and, before that, Deputy Risk Officer and Chief Compliance Officer) at U.S. Bank National Association (U.S. Bank or the Bank), for his failure to prevent violations of the Bank Secrecy Act (BSA) and regulations issued pursuant to that Act which occurred at the Bank during his tenure.

Mr. LaFontaine admits to the facts set forth below and to his role in the violations of the BSA committed by U.S. Bank. Mr. LaFontaine consents to the assessment of a civil money penalty and has entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (CONSENT) with FinCEN. Among other things, Mr. LaFontaine failed to take sufficient steps to ensure that the Bank's compliance division was appropriately staffed to meet regulatory expectations.

FinCEN has the authority to investigate and impose civil money penalties on financial institutions that willfully violate the BSA, and on current and former employees who willfully participate in such violations.[1] Rules implementing the BSA state that "[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" has been delegated by the Secretary of the Treasury to FinCEN.[2] At all times relevant to this ASSESSMENT OF CIVIL MONEY PENALTY (ASSESSMENT), Mr. LaFontaine was an employee of U.S. Bank, and the Bank was a "financial institution" and a "bank," within the meaning of the BSA and its implementing regulations.[3]

U.S. Bank is a full-service financial institution headquartered in Cincinnati, Ohio. As of June 2019, the Bank had $473 billion in assets, over 74,000 employees, and approximately 3,106 branches nationwide. U.S. Bank is the wholly owned subsidiary of U.S. Bancorp, a bank holding company based in Minneapolis, Minnesota, listed on the New York Stock Exchange under the ticker USB.

II. DETERMINATIONS

Mr. LaFontaine at various times had responsibility for overseeing U.S. Bank's compliance program and therefore shares responsibility for the Bank's violations of the requirements to implement and maintain an effective AML program and file SARs in a timely

[1] 31 C.F.R. § 1010.810(a); Treasury Order 180-01 (July 1, 2014); 31 U.S.C. § 5321(a).

[2] 31 C.F.R. § 1010.810(a).

[3] 31 U.S.C. § 5312(a)(2)(A); 31 C.F.R. §§ 1010.100(d)(1), 1010.100(t)(1).

manner.[4] Both prior to and during Mr. LaFontaine's tenure, the Bank improperly capped the number of alerts generated by its automated transaction monitoring system and failed to adequately staff the BSA compliance function.

A. Background and Context

Beginning in or about January 2005, and continuing through his separation from U.S. Bank in or about June 2014, Mr. LaFontaine held senior positions within the Bank's AML hierarchy, involving oversight of the Bank's AML compliance functions, from approximately 2008 through April 2011, and then from October 2012 through June 2014. He was the Chief Compliance Officer (CCO) of the Bank from 2005 through 2010, at which time he was promoted to Senior Vice President and Deputy Risk Officer. Thereafter, in October 2012, Mr. LaFontaine was promoted again to Executive Vice President and Chief Operational Risk Officer. In this latter position, which Mr. LaFontaine held throughout the remainder of his employment at the Bank, he reported directly to the Bank's Chief Executive Officer (CEO)[5] and had direct communications with the Bank's Board of Directors. As Chief Operational Risk Officer, Mr. LaFontaine oversaw the Bank's AML compliance department (which was referred to internally as Corporate AML), and he supervised the Bank's CCO, AML Officer (AMLO),[6] and AML staff.

[4] In February 2018, FinCEN assessed a civil money penalty on U.S. Bank for, among other things, willfully violating the BSA requirements to implement and maintain an effective AML program and to file SARs in a timely manner. See In re U.S. Bank, N.A., FinCEN Assessment No. 2018-01. In February 2018, FinCEN and US Bank entered into a settlement agreement that resolved the claims asserted by FinCEN in the assessment. See Treasury v. U.S. Bank, N.A., No. 18 Civ. 1358 (RWS), Dkt. No. 4 (S.D.N.Y. Feb. 15, 2018).

[5] From early 2014 to the end of his tenure, Mr. LaFontaine reported to the Bank's new Chief Risk Officer.

[6] The AMLO did not report directly to Mr. LaFontaine following the hiring of new Chief AML and BSA officers in the spring and summer of 2012. After these hirings, the AMLO reported to the Bank's CCO, who reported to Mr. LaFontaine.

In February 2010, FinCEN and the Office of the Comptroller of the Currency (OCC) publicly announced regulatory action against another large financial institution, Wachovia Bank, for conduct similar to that underlying the U.S. Bank violations, which were already underway at that time. Wachovia Bank had been improperly capping the number of alerts generated by its automated transaction monitoring system based on the number of compliance personnel that it had available to review transactions. Wachovia's "monitoring system was routinely tuned so that the number of alerts generated by the system with respect to international correspondent banks remained constant at around 300 each month," without any "analysis to determine whether [this] number of monthly alerts was appropriate to actual risk and the number and nature of transactions facilitated." FinCEN's public action against Wachovia also faulted Wachovia for "fail[ing] to adequately staff the BSA compliance function," and employing "as few as three individuals" to monitor all of Wachovia's "correspondent relationships with foreign financial institutions." Although certain subordinates in Mr. LaFontaine's group discounted the applicability of the Wachovia regulatory action to U.S. Bank, Mr. LaFontaine should have known based on his position the relevance of the Wachovia action to U.S. Bank's practices or conducted further diligence to make an appropriate determination.

B. U.S. Bank's Violations of the BSA

Over the course of Mr. LaFontaine's employment, and continuing until May 2015, U.S. Bank failed to establish and implement an adequate AML program and to report suspicious activity.

First, in violation of 31 U.S.C. § 5318(h), the Bank failed to implement and maintain an adequate AML program. U.S. Bank's AML program failed to comply with two of the BSA's principal requirements. Specifically, the Bank adopted AML policies, procedures, and controls

that it knew would cause it to fail to investigate and report suspicious and potentially illegal activity. Such policies, procedures, and controls included caps on the number of alerts U.S. Bank's automated transaction monitoring system would generate for review, a failure to include Western Union money transfers processed at the Bank in the automated transaction monitoring system, and inadequate procedures for identifying and addressing high-risk customers. Second, U.S. Bank employed a woefully inadequate number of AML investigators, thus violating the BSA's requirement that it designate a compliance officer and provide that officer with the resources necessary to fulfill his/her responsibilities. As described below, even when the Bank had more than $340 billion in assets, it employed only approximately 30 AML investigators.

Second, in violation of 31 U.S.C. § 5318(g), U.S. Bank failed to timely file thousands of Suspicious Activity Reports ("SARs"). Bank employees understood through internal testing and other means that the inadequate AML policies described above caused the Bank to fail to identify and report large numbers of suspicious transactions. Subsequent analysis of the Bank's transactions has revealed that it failed to timely file thousands of SARs, including on transactions that potentially laundered the proceeds from crimes.

From 2004 to the end of 2014, U.S. Bank's AML program used SearchSpace, a commercially available software system, to monitor transactions flowing through the Bank for potential money laundering and other types of illicit conduct. While SearchSpace was implemented at the Bank prior to Mr. LaFontaine's tenure, it was a central feature of the Bank's compliance program under Mr. LaFontaine's responsibilities, that is, from 2008 to 2011 and then from 2013 to 2014. The automated monitoring tools that U.S. Bank ran against the data in SearchSpace were "Security Blanket" and Queries. Security Blanket examined transactions that fed into SearchSpace and, on a monthly basis, assigned each transaction a score to reflect the

extent to which it was unusual or unexpected for the customer. The Bank began implementing Queries to complement Security Blanket in 2005. Queries were "rules" that were run against transaction data in SearchSpace to identify indicia of potentially suspicious activity.

Security Blanket and Queries would generate a set of alerts each month. They would do so by reviewing account activity at the Bank, assigning scores to different events that reflected each event's level of potential risk, and then aggregating the event scores for individual accounts or customers. After aggregating event scores, Security Blanket and Queries would generate alerts on the accounts or customers with the highest total risk scores. As described below, U.S. Bank often imposed caps on the number of alerts Security Blanket and certain Queries would generate, which meant that certain accounts or customers with high-risk scores would not generate alerts simply because the Bank had a large number of accounts or customers with even higher risk scores.

Similarly, although U.S. Bank had in place only 22 different Queries, it set numerical caps on alerts arising from the six Queries that typically generated the largest volumes of alerts. The Bank continued to impose numerical caps on most of these alerts until 2014.

As a result of the above-referenced alert limits, the transaction monitoring system did not generate alerts for many of the transactions that a risk-based approach would have flagged as potentially suspicious. Ultimately, an alarming number of alerts were suppressed, preventing suspicious activity from being investigated and reported. U.S. Bank's alert practices were non-compliant for years. As this practice contravened a risk-based AML program, the OCC had

repeatedly warned Bank officials not to maintain numerical caps on transaction alerts.[7] Nonetheless, the Bank failed to properly address the numerical caps because those caps, as described below, permitted the Bank to hire fewer employees and investigators in its AML department.

Moreover, U.S. Bank knew that alert limits were causing it to fail to investigate—and file SARs on—significant numbers of suspicious transactions. From 2007 through April 2012, U.S. Bank conducted "below-threshold" testing to evaluate the extent to which the limits it placed on alerts for Queries had caused it to fail to investigate (and file SARs on) suspicious activity. The below-threshold testing involved selecting a sampling of alerts occurring immediately below the alert limits and then having investigators review them in order to determine whether the limits should be adjusted because suspicious activity was occurring below the threshold. This below-threshold testing found a significant amount of suspicious activity occurring below the alert limits that the Bank had employed. For example, in November 2011, the Bank's AML staff concluded that, during the past year, the SAR filing rates for below-threshold testing averaged between 30% and 80%. In other words, between 30% and 80% of the transactions that were reviewed during the below-threshold testing resulted in the filing of a SAR.

C. Mr. LaFontaine's Participation in U.S. Bank's Violations of the BSA

Mr. LaFontaine was advised by two different AMLOs that they believed the existing SearchSpace system, as used by the Bank, was inadequate, because caps were set to limit the number of alerts. The OCC warned U.S. Bank on several occasions that using numerical caps to

[7] The OCC requires each bank under its supervision to develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the BSA's recordkeeping and reporting requirements. 12 C.F.R. § 21.21.

limit the Bank's monitoring programs based on the size of its staff and available resources could result in a potential enforcement action and FinCEN had taken previous public actions against banks for the same activity.

In December 2009, the Bank's AMLO sent a memo to Mr. LaFontaine in which the AMLO stated that, as a result of, inter alia, significant increases in SAR volumes, law enforcement inquiries, and closure recommendations, the AML staff "is stretched dangerously thin." The AMLO noted that the SAR volume for 2009 was projected to be 47% higher than for 2007, law enforcement inquiries were projected to be 123% higher, and closure recommendations were projected to be 160% higher — all with a corresponding staff level increase of only 15.6%. The AMLO added the following:

> *The above numbers are especially distressing give[n] the fact that an increase in the number of alerts worked is imminent and necessary. On a monthly basis, Corporate AML tests a small sample of items that fall less than 10% outside the alert threshold in SearchSpace [i.e., "below-threshold" testing, or BTT]. As of October 2009, Corporate AML had tested 47 such items, 17 of which resulted in a SAR. This is a SAR filing percentage of 36%. . . . A regulator could very easily argue that this testing should lead to an increase in the number of queries worked.*[8]

Based on the results of the below-threshold testing discussed above, certain Bank employees wanted to lower the alert thresholds in order to increase the number of alerts reviewed and ensure that suspicious activity was properly investigated and reported. Nonetheless, the Bank failed to properly address the concerns raised by below-threshold testing. In fact, rather than reducing alert thresholds and investigating a larger number of transactions, the Bank decided to stop conducting below threshold testing in April 2012. By terminating the below threshold

[8] The SAR filing rate described by the AMLO for BTT, i.e., 36%, exceeded the SAR filing rate that the AMLO attributed to alerts during the first ten months of 2009, which was 33.5%.

testing, the Bank undermined its and the OCC's ability to observe that the Bank was failing to address an ongoing problem with the alert caps.

In April 2010, the AMLO sent Mr. LaFontaine another, similar memo. In the April 2010 memo, the AMLO reiterated that despite increases in SAR volumes, law enforcement inquiries, and closure recommendations, staffing had remained "relatively constant" and "dangerously thin." In addition to sending the above memos to Mr. LaFontaine, the AMLO also verbally told him that the Bank did not have enough AML staff to work all of the alerts that it should be working. Mr. LaFontaine failed to take sufficient action when presented with significant AML program deficiencies in the Bank's SAR-monitoring system and the number of staff to fulfill the AML compliance role by his AMLO. While he did take certain steps to upgrade the AML Program, including advocating for and receiving funding for the replacement of the system in its entirety, his actions were inadequate to correct the deficiencies.

Specifically, in mid-2012, U.S. Bank hired a new CCO and a new AMLO, both of whom had significant AML experience and had been recruited by Mr. LaFontaine. By the end of 2012, the new AMLO had (1) become aware of the Bank's practice of capping security blanket alerts, (2) raised the issue with the CCO, and (3) discussed the issue with both the prior AMLO[9] and Mr. LaFontaine, identifying it as a serious risk. The new CCO also raised the alert caps with Mr. LaFontaine — along with other AML-related issues. The new CCO told Mr. LaFontaine the issues were so significant that they should be acting as though the Bank was under a virtual OCC consent order. Again, Mr. LaFontaine failed to take sufficient action when presented with significant AML program deficiencies.

[9] Upon the hiring of the new AMLO, the prior AMLO remained at the Bank, but was assigned to a different position.

Prior to December 2013, the AMLO became aware that the Bank was also capping Query alerts, and as with the Security Blanket alert caps, he and the CCO raised the issue with Mr. LaFontaine, identifying it as a significant problem. Mr. LaFontaine, however, again failed to take prompt action to properly investigate and remediate the issue.

In or about November 2013, a meeting was scheduled, at the request of the Bank's CEO, so that the AMLO and CCO could update the CEO on the Bank's AML program. In advance of that meeting, the AMLO and CCO prepared a PowerPoint presentation that began with an "Overview of Significant AML Issues," the first of which was "Alert volumes capped for both [Security Blanket] and [Q]uery detection methods." The AMLO and CCO put the alert caps issue first because, from their perspective, it was the most pressing of the Bank's AML issues. The PowerPoint identified the alert caps as a "[c]overage gap" that "could potentially result in missed Suspicious Activity Reports." It also said that the "[s]ystem configuration and use could be deemed a program weakness, with potential formal actions including fines, orders, and historical review of transactions." Prior to the meeting with the CEO, Mr. LaFontaine reviewed the PowerPoint, yet failed to raise the issue of the alert caps with the CEO during the meeting, choosing instead to prioritize other compliance-related issues.

The above-described conduct by Mr. LaFontaine continued until May 2014 when the AMLO bypassed Mr. LaFontaine and sent an email to the Bank's then-Chief Risk Officer referencing the alert caps issue. The AMLO outlined the steps necessary to address the alert caps issue, which included (1) removing the caps and replacing them with a risk-based transaction monitoring system; (2) ensuring that the AML compliance department had sufficient staff to review all of the alerts that would be produced by an appropriately risk-based system; (3) conducting a look-back analysis to identify suspicious transactions that would have been

reviewed under an appropriately risk-based transaction monitoring system; and (4) filing SARs on such transactions.

The Bank did not begin to address its deficient policies and procedures for monitoring transactions and generating alerts until June 2014, when questions from the OCC and reports from an internal complainant caused the Bank's Chief Risk Officer to retain outside counsel to investigate the Bank's practices. At that point, the Bank had maintained inappropriate alert caps for no less than five years.

III. CIVIL MONEY PENALTY

Under the BSA, a civil money penalty of $25,000 may be imposed for each willful violation of the AML program requirement occurring on or before November 2, 2015.[10] The BSA provides that a "separate violation" of the AML program requirement occurs "for each day that the violation continues."[11] Violations of AML program requirements include the lack of one or more AML program "pillars."[12]

Furthermore, a penalty not to exceed the greater of the amount involved in the transaction (but capped at $100,000) or $25,000 may be imposed for each willful violation of the SAR-filing requirement occurring on or before November 2, 2015.[13]

[10] 31 U.S.C. § 5321(a)(1). Violations of the AML program requirement all occurred before November 2, 2015.

[11] 31 U.S.C. § 5321(a)(1).

[12] Banks must implement what are known as the four "pillars": (1) internal controls; (2) training; (3) independent testing; and (4) designation of one or more individuals to assure day-to-day compliance with the BSA.

[13] 31 U.S.C. § 5321(a)(1); 31 C.F.R. § 1010.820(f). Violations of the SAR-filing requirement all occurred before November 2, 2015

FinCEN has determined that a civil money penalty of $450,000 imposed on Mr. LaFontaine is appropriate, for his role in the violations of the BSA and its implementing regulations described in Section II of this ASSESSMENT.[14]

IV. UNDERTAKING

By executing the CONSENT, Mr. LaFontaine has represented and agreed that, for a period of six years, beginning on the date he left employment with the Bank in June 2014, and continuing until February 26, 2020, he has not performed a compliance management function for any "financial institution," as the term is defined at 31 C.F.R. § 1010.100(t). Mr. LaFontaine has also agreed that if FinCEN files a complaint against Mr. LaFontaine seeking injunctive relief, he will consent to an order requiring him to comply with this undertaking.[15]

V. CONSENT AND ADMISSIONS

Mr. LaFontaine has consented to the assessment of a civil money penalty in the sum of $450,000, and to the undertaking set forth in Section IV above.

Mr. LaFontaine has admitted to the facts set forth in Section II of this ASSESSMENT and admitted that the Bank violated the BSA, that Mr. LaFontaine participated in these violations, and that the conduct of the Bank and Mr. LaFontaine demonstrated recklessness or reckless disregard.[16] Mr. LaFontaine understands and has agreed that in any administrative or judicial proceeding that FinCEN may bring against him, including any proceeding in which

[14] 31 U.S.C. §§ 5318(a) and 5321; 31 C.F.R. § 1010.810(a).

[15] The BSA authorizes courts to impose equitable remedies for violations of the BSA. 31 U.S.C. § 5320.

[16] 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 reckless disregard. The government need not show that the entity or individual had knowledge that the conduct violated the Bank Secrecy Act, or that the entity or individual otherwise acted with an improper motive or bad purpose.

FinCEN seeks civil money penalties or equitable remedies, Mr. LaFontaine will be precluded from disputing the facts and determinations set forth in Section II of this ASSESSMENT.

Mr. LaFontaine recognizes and has stated that he entered into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN, or by any employee, agent, or representative of FinCEN, to induce Mr. LaFontaine to enter into the CONSENT, except for those specified in the CONSENT.

Mr. LaFontaine understands and has agreed that the CONSENT embodies the entire agreement between Mr. LaFontaine and FinCEN. Mr. LaFontaine further understands and has agreed that there are no expressed or implied promises, representations, or agreements between the parties other than those expressly set forth or referred to in the CONSENT, and that nothing in the CONSENT is binding on any other agency of government, whether Federal, State or local.

VI. RELEASE

Execution of the CONSENT, and compliance with the terms of the CONSENT, settles all claims that FinCEN may have against Mr. LaFontaine for the conduct described in Section II of this ASSESSMENT. If FinCEN determines, in its sole judgment, that Mr. LaFontaine has breached any portion of the CONSENT, FinCEN may void, in its sole discretion, the release contained in the CONSENT and reinstitute enforcement proceedings against Mr. LaFontaine, subject to written notice and a reasonable opportunity to cure. Mr. LaFontaine has agreed to waive any statute of limitations or other defense based on the passage of time that may apply to an action based on the conduct described in Section II of this ASSESSMENT, and further agreed not to contest any finding set forth in Section II of this ASSESSMENT or the admissions described in Section V of this ASSESSMENT.

VII. PUBLIC STATEMENTS

Mr. LaFontaine has agreed that neither he, nor any agent of Mr. LaFontaine or any other person authorized to speak on behalf of Mr. LaFontaine, shall make any public statement contradicting either his acceptance of responsibility in the CONSENT or any fact set forth in Section II of this ASSESSMENT. If a contradictory statement is made, Mr. LaFontaine may avoid a breach of the CONSENT by repudiating the statement, in writing, within 48 hours. The foregoing restrictions do not apply to any statement made by an agent of Mr. LaFontaine in the course of any criminal, regulatory, or civil case initiated against such person, unless Mr. LaFontaine later ratifies such claims, directly or indirectly. Mr. LaFontaine has agreed that, upon notification by FinCEN, Mr. LaFontaine will repudiate in writing statements made in such proceedings that are not ratified by Mr. LaFontaine, to the extent the statements contradict either his acceptance of responsibility in the CONSENT or any fact set forth in Section II of this ASSESSMENT. FinCEN has sole discretion to determine whether any statement made by Mr. LaFontaine, or by any agent of Mr. LaFontaine or any other person authorized to speak on behalf of Mr. LaFontaine, is contradictory, and whether Mr. LaFontaine has in fact repudiated such statement.

By:

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Kenneth A. Blanco Date:
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury