

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

**IN THE MATTER OF:** )  
 )  
 ) **Number 2016-02**  
**KUSTANDY RAYYAN D/B/A** )  
**THRIFTWAY FOOD MART** )  
**Lexington, Kentucky** )

**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 Kustandy Rayyan pursuant to the Bank Secrecy Act (BSA) and regulations issued pursuant to that Act.<sup>1</sup> Mr. Rayyan owned and operated Thriftway Food Mart (Thriftway).

Mr. Rayyan admits to the facts set forth below and that his conduct violated the BSA. Mr. Rayyan consented to this assessment of a civil money penalty and entered into the CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (CONSENT) with FinCEN.

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

FinCEN has authority to investigate money services businesses (MSBs) for compliance with and violation of the BSA pursuant to 31 C.F.R. § 1010.810, which grants FinCEN “[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. . . .”

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<sup>1</sup> The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951–1959 and 31 U.S.C. §§ 5311–5314, 5316–5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

Thriftway performs check cashing services and sells money orders. During the relevant time period, the company would cash approximately \$1 million worth of checks every month. Thriftway operated as a “financial institution” and a “money services business” within the meaning of the BSA and its implementing regulations during the time relevant to this action.<sup>2</sup> Thriftway is owned and operated as a sole proprietorship by Mr. Rayyan, who also served as Thriftway’s compliance officer.<sup>3</sup>

The Internal Revenue Service, through the Small Business/Self-Employed Division (IRS SB/SE), examines MSBs for compliance with the BSA under authority delegated from FinCEN. Thriftway was the subject of a prior FinCEN investigation based on an IRS SB/SE examination conducted in 2009 that found systemic anti-money laundering (AML) program violations, recordkeeping violations, and reporting violations.<sup>4</sup> At that time, FinCEN issued a warning letter to Thriftway and Mr. Rayyan advising them that, “FinCEN expects [Thriftway] to implement appropriate corrective actions to ensure a satisfactory AML program” and that “the Bank Secrecy Act compliance history of [Thriftway] will be factored into any matters that come to our attention in the future.”

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<sup>2</sup> 31 U.S.C. § 5312(a)(2); 31 C.F.R. § 1010.100(t)(3).

<sup>3</sup> 31 U.S.C. § 5312(a)(2); 31 C.F.R. §§ 1010.100(t)(3) and (ff). A “money services business” is defined in 31 C.F.R. § 1010.100(ff) as “a person...doing...business in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7). . . .” An individual may qualify a “money services business.” *See generally* 31 U.S.C. § 5312(a)(5) (defining “person” for purposes of the BSA); 31 C.F.R. § 1010.100 (defining “person” to include “an individual...and all entities cognizable as legal personalities”).

<sup>4</sup> In addition, Mr. Rayyan did not comply with MSB registration requirements for the period January 1, 2007 through June 24, 2008 (534 days). *See generally*, 31 U.S.C. § 5330; 31 C.F.R. § 1022.380.

In 2013, IRS SB/SE returned to conduct a follow-up examination to evaluate the adequacy of the corrective actions taken by Thriftway to address its AML/BSA violations. FinCEN's current investigation draws on the follow-up examination, which had an examination scope of August 1, 2012 through April 30, 2013.

## **II. DETERMINATIONS**

From 2009 through the present, Mr. Rayyan willfully violated the BSA's program and reporting requirements.<sup>5</sup> Thriftway failed to establish and implement an effective written anti-money laundering program by failing to implement policies, procedures, and internal controls reasonably designed to assure ongoing compliance, failing to designate an adequate compliance officer, failing to provide adequate training, and failing to conduct independent testing of its compliance program. Thriftway also failed to file accurate and timely currency transaction reports (CTRs). During the time relevant to this action, Mr. Rayyan served as the designated AML compliance officer for Thriftway, and as such, was responsible for ensuring that the company complied with its obligations under the BSA and its implementing regulations. As described below, Mr. Rayyan willfully participated in Thriftway's violations of the BSA.<sup>6</sup>

### **A. Violations of the Requirement to Establish and Implement an Effective Written Anti-Money Laundering Program**

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<sup>5</sup> 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. Mr. Rayyan admits to "willfulness" only as the term is used in civil enforcement of the BSA under 31 U.S.C. § 5321(a)(1).

<sup>6</sup> Thriftway had also previously failed to register as a money services business for the period January 1, 2007 through June 24, 2008 (534 days). See 31 U.S.C. § 5330 and 31 C.F.R. § 1022.380.

The BSA and its implementing regulations require MSBs to develop, implement, and maintain an effective written AML program that is reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities.<sup>7</sup> Mr. Rayyan was required to implement a written AML program that, at a minimum: (a) incorporates policies, procedures and internal controls reasonably designed to assure ongoing compliance; (b) designates an individual responsible for assuring day to day compliance with the program and BSA requirements; (c) provides training for appropriate personnel, including training in the detection of suspicious transactions; and (d) provides for independent review to monitor and maintain an adequate program.<sup>8</sup>

#### **1. Policies and Internal Controls**

As noted above, during the initial 2009 IRS SB/SE examination, examiners found systemic BSA/AML program deficiencies and instructed Thriftway on improvements to bring the program into compliance. Despite Thriftway's assurances to implement these improvements, and even after the examiner assisted Mr. Rayyan in drafting an AML program for his business during the 2009 IRS SB/SE examination, Thriftway failed to maintain and implement an effective written AML program that adequately addressed the four minimum requirements described above. Since the drafting of the AML program in 2009, Thriftway failed to update the AML program to include regulatory changes to BSA regulations. And, as described below, Thriftway failed to implement its program as written.

Thriftway lacked proper internal controls to ensure ongoing compliance. For instance, Thriftway failed to monitor for suspicious transactions, and also failed to retain certain records that

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<sup>7</sup> 31 U.S.C. §§ 5318(a)(2), 5318(h); 31 C.F.R. § 1022.210.

<sup>8</sup> 31 C.F.R. §§ 1022.210(c) and (d).

were required to be kept by the regulations. And, for some customers, Thriftway failed to collect identification altogether. Mr. Rayyan informed examiners during the 2009 examination that he did not request identification from his regular customers because he feared losing their business. In certain circumstances – such as when Mr. Rayyan traveled overseas for several months – the business continued to conduct financial transactions without properly trained employees, resulting in several required reports being filed late or not at all. In short, on several fronts, Thriftway lacked appropriate internal controls – and Mr. Rayyan, as Thriftway’s compliance officer, failed to implement those controls – which would have prevented the serious AML deficiencies outlined below.

## **2. Training**

Under the BSA and its implementing regulations, money services businesses are required to provide adequate AML compliance training to their personnel.<sup>9</sup> Thriftway’s AML program provided that training of personnel must occur at least annually. Despite the regulatory requirements, despite Thriftway’s own policy, and despite its agreement to improve its AML compliance after the 2009 examination, no training was conducted for employees of Thriftway or even for Mr. Rayyan, who had designated himself as the AML compliance officer for Thriftway.

## **3. Independent Review**

Money services businesses, like other financial institutions, are required to provide for an independent review to monitor and maintain an adequate BSA/AML compliance program.<sup>10</sup> During

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<sup>9</sup> 31 C.F.R. § 1022.210(d)(3).

<sup>10</sup> 31 C.F.R. § 1022.210(d)(4).

the 2009 examination, examiners discovered that Thriftway had never conducted an independent review, and instructed Thriftway to conduct such a review. Thriftway's AML program, developed after the 2009 examination, states that an independent review would be conducted annually, and would be documented by a signed, dated checklist. Despite this, and despite FinCEN's warning letter, Thriftway did not conduct the review until March 2013, after IRS SB/SE started its follow-up examination.

#### **4. Compliance Officer**

Money services businesses are required to designate a person to ensure day to day compliance with the BSA and its implementing regulations.<sup>11</sup> Thriftway's written AML program designated Mr. Rayyan as its compliance officer after the 2009 IRS SB/SE examination. However, no one actually performed the duties of an AML compliance officer. Mr. Rayyan failed to implement proper corrective actions after violations and deficiencies were identified during the course of the 2009 IRS SB/SE examination. Thriftway continued to operate in non-compliance with the BSA. During the 2013 exam, Mr. Rayyan was unfamiliar with various parts of Thriftway's AML program. For example, during an interview with examiners, he claimed to have forgotten that the AML program provided for an independent review. Moreover, Mr. Rayyan stated that he believed that the AML program manual covered only money order sales, and not check cashing activities – a remarkable fact given that Thriftway's money order sales averaged between 10 to 16 thousand

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<sup>11</sup> 31 C.F.R. § 1022.210(d)(2).

dollars every month, while check cashing accounted for about a million dollars each month.<sup>12</sup> And, as noted above, he failed to ensure that personnel were provided with appropriate training.

Despite the initial warnings from the IRS and FinCEN stemming from the initial exam in 2009, Thriftway operated for years without an effective AML compliance program.

### **B. Violations of Reporting Requirements**

The BSA requires MSBs to file a CTR for each deposit, withdrawal, exchange of currency or other payment or transfer which involves a transaction in currency of more than \$10,000.<sup>13</sup> MSBs must report currency transactions exceeding \$10,000, and must do so within 15 calendar days after the transaction occurs.<sup>14</sup> Multiple transactions must be aggregated – treated as a single transaction – if the financial institution has knowledge that (1) they are by or on behalf of the same person, and (2) they result in currency received (cash in) or currency disbursed (cash out) by the financial institution totaling more than \$10,000 during any one business day.<sup>15</sup>

The 2013 IRS SB/SE examination found that Thriftway filed a total of 43 CTRs for the transactions conducted during the examination scope. However, over one-third of the CTRs (15 of the 43) were filed late (16-56 days late), and 95% of the CTRs were filed with incomplete or inaccurate information. The majority of the incomplete or inaccurate CTRs filed by Thriftway failed to include critical identification information such as a social security or taxpayer identification number, type and number of identification reviewed and date of birth. Many of the CTRs were filed

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<sup>12</sup> For example, in September 2012, Thriftway sold \$11,260 in money orders. In that same month, Thriftway cashed \$1.15 million in checks.

<sup>13</sup> 31 C.F.R. § 1010.311.

<sup>14</sup> 31 C.F.R. § 1010.306(a)(1).

<sup>15</sup> 31 C.F.R. § 1010.313(b).

for repeat customers, which afforded Thriftway multiple opportunities to request the missing information necessary to file complete and accurate CTRs, but it failed to do so. Thriftway also failed on multiple occasions to aggregate transactions conducted by or on behalf of the same individual that totaled more than \$10,000 in currency in any one business day. Thriftway failed to file 12 CTRs for reportable cash transactions (approximately 21% of all CTR filings) conducted during the examination scope. The delinquent CTRs were subsequently filed by Thriftway at the direction of IRS SB/SE. Additionally, Thriftway failed to retain copies of 23 CTRs filed during the examination scope.

### **III. CIVIL MONEY PENALTY**

FinCEN has determined that Mr. Rayyan willfully violated the program and reporting requirements of the BSA and its implementing regulations. FinCEN has also determined that grounds exist to assess a civil money penalty for these violations.<sup>16</sup>

FinCEN has determined that the penalty in this matter will be \$10,000.

### **IV. CONSENT TO ASSESSMENT**

To resolve this matter, and only for that purpose, Mr. Rayyan consents to this ASSESSMENT of a civil money penalty in the sum of \$10,000 and admits that he violated the BSA's anti-money laundering program and reporting requirements.

Mr. Rayyan recognizes and states that he enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN

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<sup>16</sup> 31 U.S.C. § 5321(a)(1); 31 C.F.R. § 1010.820.



or any employee, agent, or representative of FinCEN to induce Mr. Rayyan to enter into the CONSENT, except for those specified in the CONSENT.

Mr. Rayyan understands and agrees that the CONSENT embodies the entire agreement between him and FinCEN relating to this enforcement matter only, as described in Section II above. Mr. Rayyan further understands and agrees that there are no express or implied promises, representations, or agreements between Mr. Rayyan and FinCEN other than those expressly set forth or referred to in this document and that nothing in the CONSENT or in this ASSESSMENT is binding on any other agency of government, whether Federal, State or local.

#### **V. PUBLIC STATEMENTS**

Mr. Rayyan expressly agrees that he shall not, nor shall his attorneys, agents or employees, or any other person authorized to speak on his behalf, make any public statement contradicting either his acceptance of responsibility set forth in the CONSENT or any fact in the DETERMINATIONS section of the CONSENT. FinCEN has sole discretion to determine whether a statement is contradictory and violates the terms of the CONSENT. If Mr. Rayyan, or anyone claiming to speak on behalf of Mr. Rayyan, makes such a contradictory statement, Mr. Rayyan may avoid a breach of the agreement by repudiating such statement within 48 hours of notification by FinCEN. If FinCEN determines that Mr. Rayyan did not satisfactorily repudiate such statement(s) within 48 hours of notification, FinCEN may void, in its sole discretion, the releases contained in the CONSENT and reinstitute enforcement proceedings against Mr. Rayyan. Mr. Rayyan expressly agrees to waive any statute of limitations defense to the reinstated enforcement proceedings and further agrees not to contest any admission or other findings made in the CONSENT.

This paragraph does not apply to any statement made by any present or former employee or agent of Mr. Rayyan in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of Mr. Rayyan or Mr. Rayyan later ratifies such claims,

directly or indirectly. Mr. Rayyan further agrees that, upon notification by FinCEN, Mr. Rayyan will repudiate such statement to the extent it contradicts either his acceptance of responsibility or any fact in the DETERMINATIONS section of the CONSENT.

## **VI. RELEASE**

Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, settles all claims that FinCEN may have against Mr. Rayyan for the conduct described in Section II of the CONSENT. Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, does not release any claim that FinCEN may have for conduct by Mr. Rayyan other than the conduct described in Section II of the CONSENT, or any claim that FinCEN may have against any party other than Mr. Rayyan, including any employee or agent of Mr. Rayyan. Upon request, Mr. Rayyan shall truthfully disclose to FinCEN all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to the participation of parties other than Mr. Rayyan, including employees or agents of Mr. Rayyan, or others.

If FinCEN determines, in its sole judgment, that Mr. Rayyan has breached any portion of this agreement, FinCEN may void, in its sole discretion, the releases contained in the CONSENT and reinstitute enforcement proceedings against Mr. Rayyan. Mr. Rayyan expressly agrees to waive any

statute of limitations defense to the reinstated enforcement proceedings, and further agrees not to contest any admission or other findings made in the CONSENT.

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Jennifer Shasky Calvery  
Director  
FINANCIAL CRIMES ENFORCEMENT NETWORK  
U.S. Department of the Treasury

March 24, 2016

Date