

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

**IN THE MATTER OF  
KOREA EXCHANGE BANK  
New York, New York**

**No. 2003-04**

**ASSESSMENT OF CIVIL MONEY PENALTY**

**I. INTRODUCTION**

The Secretary of the United States Department of the Treasury has delegated to the Director of the Financial Crimes Enforcement Network (“FinCEN”) the authority to determine whether a financial institution has violated the Bank Secrecy Act, 31 U.S.C. §§5311 et seq. and 31 CFR Part 103 thereunder (“BSA”), and what, if any, sanction is appropriate.

In order to resolve this matter, and only for that purpose, Korea Exchange Bank (the “Bank”) has entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (“CONSENT”) dated June 20, 2003 without admitting or denying FinCEN’s determinations described in Sections III and IV below, except as to jurisdiction in Section II below, which is admitted.

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

**II. JURISDICTION**

The Bank was established under the laws of the Republic of Korea in 1967. In the United States, it operates wholesale branches in New York, New York and Seattle, Washington, and an agency in Los Angeles, California, retail branches in New York, New York and Chicago, Illinois, and a majority-owned subsidiary bank with 12 branches in Los Angeles, California. As of December 31, 2002, the Bank had \$1.4 billion in assets in the U.S. and its retail branch in New York, New York (the “Broadway Branch” or the “Branch”) had \$82.8 million in assets. The Bank and the Broadway Branch are “financial institutions” and “banks” within the meaning of 31 U.S.C. §5312(a)(2) and 31 CFR §103.11. The Federal Deposit Insurance Corporation (“FDIC”) is the Broadway Branch’s primary federal supervisory agency and examines the Branch for BSA compliance.

### III. FINCEN'S DETERMINATIONS

#### A. The Broadway Branch's Violations of the SAR Requirements

FinCEN has determined that between March 1998 and May 2001, the Broadway Branch failed to file approximately thirty-nine (39) suspicious activity reports ("SARs") involving nearly \$32 million in suspicious transactions, in a timely manner in violation of 31 U.S.C. §5318(g) and 31 CFR §103.18.

A bank must report any transaction involving or aggregating to at least \$5,000 that it "knows, suspects, or has reason to suspect" (i) involves funds derived from illegal activities or is conducted to disguise funds derived from illegal activities, (ii) is designed to evade the reporting or recordkeeping requirements of the BSA (*e.g.*, structuring transactions to avoid currency transaction reporting) or (iii) "has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction." 31 USC §5318(g) and 31 CFR §103.18.

As an FDIC-supervised bank, the Broadway Branch was on notice of the SAR requirements and the need to have policies and procedures in place to ensure these requirements are met. Section 326.8(b) of the FDIC's regulations requires a bank to develop and administer a program to assure compliance with the BSA. According to the FDIC, at a minimum, the bank's system of internal controls must be designed to "identify reportable transactions at a point where all of the information necessary to properly complete the required reporting forms can be obtained." See, FDIC Manual of Exam Policies, Financial Recordkeeping and Reporting Regulations, Section 9.4. The system must also "ensure that all required reports are completed accurately."

Information in the reports of examination of the Broadway Branch by the FDIC shows that the Branch knew, suspected or had reason to suspect that certain transactions were "suspicious" within the meaning of the BSA but failed to file SARs for these transactions. In its March 31, 1999 examination report, the FDIC specifically cited the Branch for the failure to establish or implement an adequate system of internal controls for the identification, investigation, documentation, and reporting of suspicious transactions. The FDIC also found inadequate BSA and SAR compliance in the October 18, 1999 and March 31, 2001 examinations of the Branch.<sup>1</sup>

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<sup>1</sup> As a result of deficiencies found in the 1999 examinations, the FDIC, the Board of Governors of the Federal Reserve System, and four state banking agencies issued a nationwide Order Issued Upon Consent for the Bank on May 16, 2000. After the 1999 examinations, the Bank retained a law firm to conduct an internal investigation for potentially suspicious transactions. The Bank late-filed 26 SARs as a result of that investigation.

To comply with the SAR rule, a financial institution must be able to determine whether transactions are in fact reportable. Therefore, a financial institution is required to have in place systems to identify the kinds of transactions that may be a high risk for money laundering or that exhibit indicia of suspicious activity, taking into account the type of products and services it offers and the nature of its customers. Otherwise, a financial institution cannot assure that it is in fact reporting suspicious transactions as required by the BSA. In this case, the record shows that during the relevant time period, the Broadway Branch had information about its customers and their transactions that caused it to “know, suspect, or have reason to suspect” that many transactions were reportable suspicious transactions, yet the Branch failed to report these transactions because its procedures to identify, analyze, document, or report suspicious activity were not properly implemented. As a result, the Broadway Branch violated the SAR requirements of 31 U.S.C. §5318(g) and 31 CFR §103.18.<sup>2</sup>

#### 1. Frequent Large Cash Deposits

The Broadway Branch’s review of cash deposits in large amounts was inadequate for the identification of suspicious patterns of activity. As a result, the Branch failed to timely file SARs regarding suspicious transactions by at least five (5) customers in violation of 31 U.S.C. §5318(g) and 31 CFR §103.18(a)(2)(iii).

For example, in a span of two months thirty-seven cash deposits in excess of \$10,000, totaling almost \$1.2 million, were made to the account of a company that imported wigs for wholesale sales. Despite the unusual cash deposit activity on the customer’s account that lacked any apparent legal or business purpose, the Branch failed to detect and report the suspicious pattern of transactions. The FDIC noted in its March 31, 1999 report of examination that, because the customer had such an exceptionally high volume of cash deposits over the past year, the FDIC was unable to review more than two months of activity in the account. In June 1999, the Branch filed a SAR in response to the FDIC’s citation of the Branch in its examination findings for SAR filing violations.

#### 2. Frequent Large Cash Deposits Followed by Wire Transfers

The Broadway Branch failed to implement adequate procedures to detect suspicious patterns of activity involving numerous cash deposits in large amounts followed by outgoing wire transfers. As a result, the Branch failed to timely file at least eleven (11) SARs for suspicious transactions by at least five (5) customers in violation of 31 U.S.C. §5318(g) and 31 CFR §103.18(a)(2)(iii).

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<sup>2</sup> At the time of the violations, FinCEN’s regulations did not independently require banks to have anti-money laundering programs; rather, such requirements were imposed through the rules of the federal banking regulators such as the FDIC. Therefore, FinCEN is not charging the Broadway Branch with failing to have an anti-money laundering program. Rather, the Broadway Branch’s failure to have an adequate program is relevant because it shows the Branch’s willfulness in violating the SAR rule. As of April 29, 2002, it is now a BSA requirement for a bank to maintain an anti-money laundering program in compliance with the rules of its federal regulator. See 31 CFR §103.121.

For example, one customer, an individual who imported wigs and purported to be a business partner of the company discussed above, made numerous cash deposits in amounts over \$10,000 to his accounts at the Bank that aggregated to over \$13 million from 1986 through 1999 and to his account at the Branch that aggregated to over \$3.8 million from May 1998 through February 1999. The Branch did not know or make an attempt to verify the business relationship between the two businesses or to determine the actual origin of these funds. Most of the currency placed in the account that the individual opened at the Branch in May 1998 was wired out shortly after its deposit. Withdrawals on this account included over seventy (70) wire transfers, through foreign banks, to a number of beneficiaries primarily located in Korea and Japan. The Branch did not attempt to determine the actual business of the majority of the beneficiaries of these transfers and all of the requests for transfer were submitted by facsimile from the company rather than the individual customer. In June 1999, the Branch filed a SAR on these transactions in response to the FDIC's examination findings.

### 3. Wire Transfers Structured to Avoid Recordkeeping Requirements

The Broadway Branch's review of its inward and outward wire remittance was inadequate for the identification of suspicious patterns of activity designed to evade the regulations promulgated under the BSA. As a result, FinCEN determined that the Branch failed to file SARs for suspicious transactions by at least four (4) non-customers and two (2) customers in violation of 31 U.S.C. §5318(g) and 31 CFR §103.18(a)(2)(ii).

For example, in one instance, the FDIC noted sixty-five (65) wire transfers, all but two of which were between \$2,950 and \$2,980, from the same group of non-bank customers to the same group of beneficiaries. These transactions, all of which were conducted in cash, appear to have been structured to circumvent the recordkeeping requirements for funds transfers of \$3,000 or more appearing in 31 CFR §103.33(e). In its March 31, 2001 report of examination, the FDIC concluded that the Branch should have filed SARs regarding these transactions, given the volume, frequency, and commonality of the customers involved.

### 4. Cash Deposits Structured to Avoid CTR Reporting Requirements

While the Broadway Branch identified successive cash deposits of just under \$10,000 by certain customers as potentially suspicious activity that warranted investigation, the Branch did not undertake the due diligence necessary to make an informed decision or meaningful analysis of whether the activity was actually suspicious and whether a SAR should be filed. The Branch's process for documenting client profiles and investigating suspicious activity was inadequate. As a result, the Branch failed to timely file SARs for suspicious transactions by at least three (3) customers in violation of 31 U.S.C. §5318(g) and 31 CFR §§103.18(a)(2)(ii) and 103.18(b)(3).

For example, the Branch identified the high volume of cash transaction activity within the business checking account of one customer as potentially suspicious and

included the activity on the Branch Suspicious Activity Investigation Log for investigation. For a period of 15 months, the customer made one hundred fifty-five (155) cash deposits to the account, aggregating \$766,000. Of these transactions, twenty-nine were in amounts ranging from \$8,000 to \$10,000, including five at exactly \$10,000. None of the deposits was over the CTR threshold of \$10,000. These transactions appeared to have been structured to circumvent the Branch's obligation to report any cash deposit over \$10,000 on a CTR as described in 31 CFR §103.22.

The Branch did not file a SAR regarding these transactions because the U.S. Compliance Officer concluded that the cash activity appeared normal and that there was no indication of suspicious activity.<sup>3</sup> During its March 31, 2001 examination of the Branch, the FDIC noted that the Branch could not produce any analysis or documentation to support the U.S. Compliance Officer's assertion that the cash activity appeared normal. If an investigation and analysis was performed by the Branch, it was not documented. The FDIC concluded that the Branch should have filed SARs regarding these transactions.

B. The Broadway Branch's Violations of the Recordkeeping Requirements

Pursuant to 31 CFR §103.33(e)(3)(i), a bank must verify the identity of a non-customer beneficiary of an incoming wire transfer of \$3,000 or more who collects the proceeds in person, and retain a copy of the identification. In addition, a bank must record the beneficiary's name and address, the type of identification reviewed, the number of the identification document (*e.g.* driver's license number) and taxpayer identification number, alien identification number, or passport number or the fact that the beneficiary lacks such a number. 31 CFR §103.33(e)(3)(i).

Although the Branch was aware of this regulation, it failed to comply with the requirements for at least ten months. During its October 18, 1999 examination, the FDIC confirmed that, while the Branch Operations Manager was aware of all of the information to be obtained from non-customers, the Branch in fact did not obtain the information. The "Receipt" forms that the Branch required non-customers to complete and sign upon collection of wired money was missing pertinent information (often the social security number or passport number) and/or a copy of the proper identification was not attached to the Receipt. The Branch did not revise the "Receipt" form or attempt to comply with the regulation in a different manner. In consequence, the Branch failed to collect all of the required information from non-customer beneficiaries for most of 1999 in violation of 31 CFR §103.33(e)(3)(i).

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<sup>3</sup> Moreover, if a customer is structuring transactions to avoid BSA reporting or recordkeeping, whether the source of the funds is suspicious is irrelevant. Structuring is itself reportable as a suspicious transaction. 31 U.S.C. §5318(g) and 31 CFR §103.18.

C. Willful Violations

FinCEN has determined that the violations of the Broadway Branch were willful. The Broadway Branch was on notice that the material deficiencies in its BSA compliance program could result in its failure to file timely SARs and to keep required records. The Branch's BSA compliance program was based on written policies and procedures that addressed the minimum requirements of Treasury's reporting and recordkeeping regulations. However, some of the parameters set out in the policies and procedures were inadequate to detect several major categories of suspicious activity. Moreover, the Branch failed to implement an adequate system of internal controls and to perform the necessary due diligence to ensure compliance with its policies and procedures and the BSA's requirements. In addition, Branch management had actual knowledge of the recordkeeping requirements for non-customer beneficiaries of wire transfers and that the Branch's procedures were ineffective in gathering the required information, but failed to change Branch procedure for almost an entire year.

IV. CIVIL MONEY PENALTY

FinCEN has determined that by failing to file timely SARs and to keep certain records identifying non-customer beneficiaries of incoming wire transfers as described in Section III, above, the Broadway Branch willfully violated the suspicious activity reporting and recordkeeping provisions of the BSA and a civil money penalty is due pursuant to 31 U.S.C. §5321 and 31 CFR §103.57(f).

V. CONSENT TO ASSESSMENT

In order to resolve this matter, and only for that purpose, Korea Exchange Bank, without admitting or denying either the facts or determinations described in Sections III and IV above, except as to jurisdiction in Section II, which is admitted, consents to the assessment of a civil money penalty against it in the sum of \$1.1 million.

Korea Exchange Bank agrees to pay the amount of \$1.1 million within five (5) business days of the execution of this ASSESSMENT. Such payment shall be:

- a. made by certified check, bank cashier's check, or bank money order;
- b. made payable to the United States Department of the Treasury;
- c. hand-delivered or sent by overnight mail to Nicholas A. Procaccini, Assistant Director and Chief Financial Officer, FinCEN, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182; and
- d. submitted under a cover letter, which references the caption and file number in this matter.

Korea Exchange Bank recognizes and states that it entered into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever were made by FinCEN or any employee, agent, or representative of FinCEN to induce Korea Exchange Bank to enter into the CONSENT, except for those specified in the CONSENT.

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

## VI. RELEASE

Korea Exchange Bank understands that its execution of the CONSENT and compliance with the terms of this ASSESSMENT and the CONSENT constitute a complete settlement of civil liability for reporting and recordkeeping violations of the BSA, and the regulations promulgated thereunder, which were identified by the FDIC in the examinations described in this ASSESSMENT as well as the CONSENT.

By:                               //s//                                
                James F. Sloan, Director  
                FINANCIAL CRIMES ENFORCEMENT NETWORK  
                U.S. Department of the Treasury

Date:                               June 24, 2003