

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

**IN THE MATTER OF  
WESTERN UNION FINANCIAL SERVICES, INC.  
Greenwood Village, Colorado**

**No. 2003-02**

**ASSESSMENT OF CIVIL MONEY PENALTY  
WITH UNDERTAKINGS**

**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, Western Union Financial Services Inc. (“Western Union” or the “Company”) has entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY AND UNDERTAKINGS 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. This is a nationwide resolution of Western Union’s liability under the BSA for violations arising out of the facts described below.

Western Union’s CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY AND UNDERTAKINGS, dated March 6, 2003, is incorporated herein by this reference.

**II. JURISDICTION**

Western Union is a money services business, registered with FinCEN under 31 U.S.C. §5330. Western Union, with headquarters in Greenwood Village, Colorado, is a “financial institution” within the meaning of 31 U.S.C. §5312(a)(2) and 31 CFR 103.11(uu).

**III. FINCEN’S DETERMINATIONS**

**A. CTR Requirements**

The BSA requires financial institutions to file currency transaction reports (“CTRs”) for transactions in currency greater than \$10,000 in a single day. 31 U.S.C. §5313 and 31 CFR 103.22. Multiple currency transactions occurring at a financial institution must be aggregated if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during one business day. 31 CFR 103.22(c)(2) (the “Aggregation Rule”).

During a routine examination of Western Union's operations in New York, the New York State Department of Banking ("Department of Banking") discovered that, although Western Union was aggregating multiple currency transactions totaling more than \$10,000 that occurred during one business day and were sent or received through the same agent, Western Union was not aggregating multiple currency transactions totaling more than \$10,000 that occurred during one day through multiple agents for purposes of CTR reporting. That is, Western Union did not review whether the same person engaged in currency transactions with different Western Union agents on the same day that totaled more than \$10,000 in determining whether to file a CTR. The Department of Banking therefore requested a FinCEN Ruling on the issue of whether an MSB must file a CTR for multiple currency transactions across agents totaling more than \$10,000 in a single day under the Aggregation Rule.

On October 3, 2002, FinCEN responded to the Department of Banking's question and advised that a financial institution must aggregate multiple currency transactions occurring across multiple agents for CTR reporting when the financial institution has knowledge that they are by or on behalf of any person and meet the CTR reporting threshold, citing the regulatory definition of a financial institution, which it explained includes all of its agents and branches. See 31 CFR 103.11(n). Western Union immediately began a review of all of its transactions in the State of New York and filed late CTRs for those transactions that had not been aggregated properly. Western Union also immediately changed its practices nationwide and began filing CTRs for aggregated transactions across agent locations. The failure to aggregate transactions among agents for CTR reporting, among other allegations, was the subject of an administrative action by the Department of Banking under New York State law in which Western Union agreed to pay an \$8 million fine.

In light of the findings by the Department of Banking, on December 18, 2002, FinCEN requested that Western Union review transactions throughout the rest of the country aggregating transactions across agents to determine whether additional CTRs must be filed. At FinCEN's request and to resolve this matter, Western Union promptly instituted comprehensive national corrective actions, reviewed its currency transactions nationwide, and identified for FinCEN the number of reportable multiple currency transactions that occurred through multiple agents from January 1, 2002, through October 8, 2002. As discussed in the Undertakings below, Western Union has agreed to late-file CTRs on certain of these.<sup>1</sup>

In addition, because Western Union had failed to aggregate properly for CTR purposes, FinCEN questioned whether Western Union had also failed to file SARs for transactions across agents on a single day and transactions through the same and different agents over several days. Although Western Union, for transactions in New York and throughout the country, reviewed all multiple transactions through different agents on a single day, Western Union conducted a limited review of multiple transactions through the same or different agents over time. Thus, Western Union has not identified all transactions which may have been structured over several days or weeks. For example, the Department of Banking found examples of customers wiring numerous multiple transactions of just below \$3,000 to the same person through different agents

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<sup>1</sup> Because of this undertaking and the \$8 million fine Western Union paid to the State of New York, FinCEN believes that further action by FinCEN or other regulatory agencies for the failure to file CTRs or suspicious activity reports ("SARs") would be unnecessary and duplicative.

over several weeks or months, thus avoiding the identification requirements of the BSA's wire transfer rules.

## B. SAR Requirements

FinCEN regulations requiring money services businesses to file reports of suspicious transactions became effective on January 1, 2002. As of that date, a money services business such as Western Union was required to report any transaction involving or aggregating to at least \$2,000 or \$5,000,<sup>2</sup> 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 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 . . . ." 31 CFR 103.20.

The most prevalent type of suspicious activity that is likely to be attempted through a money services business is structuring. Structuring occurs when a person engages in multiple cash transactions divided into amounts low enough to avoid the filing of a CTR or other BSA reporting or recordkeeping requirement. Structuring is prohibited under 31 U.S.C. §5324 and required to be reported under the BSA's suspicious activity reporting provisions in 31 U.S.C. §5318(g) and 31 CFR 103.20. Structuring can take two basic forms. A person can structure by engaging in multiple transactions on a single day through the same or several agents. A person can also structure by engaging in multiple transactions through the same or several agents over a period of days.

Even apparently isolated instances of structuring can be part of a larger pattern of transactions involving several individuals and financial institutions. While each financial institution would see only one or two suspicious transactions, SARs filed by all the financial institutions enable law enforcement to see a scheme that stretches across multiple financial institutions. This is an issue that has long been important to law enforcement. FinCEN has seen this type of activity conducted by operators of informal value transfer systems that are trying to evade regulatory and law enforcement scrutiny.

FinCEN has determined that Western Union's old procedures and systems were inadequate to comply with the SAR requirements for reporting structuring because they did not identify all multiple transactions conducted by a customer across agents for a single day.<sup>3</sup> Nor

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<sup>2</sup> The rule requires reporting of suspicious transactions involving or aggregating more than \$2,000 at the "front office" or agent level and at \$5,000 at the "back office" level where review of clearance records or other similar records of money orders or traveler's checks is needed to determine if transactions are suspicious. 31 CFR 103.20(a)(3).

<sup>3</sup> Western Union has a long history of filing SARs voluntarily using its old, partially automated system. Beginning in September 2001, Western Union began to design a new, more automated computer system to monitor transactions for suspicious activity; the system was scheduled to be completed by the end of the calendar year 2001. After the terrorist attacks of September 11, Western Union was involved in an intensive project to aid law enforcement which, among other things, delayed implementation of the new system. Western Union continued to file SARs using a combination of the old and new systems and, in fact, filed about 8,500 SARs in 2002.

did they identify multiple transactions conducted by a customer through the same or different agents over multiple days. Thus, Western Union failed to file SARs for both types of structured transactions.

In connection with the New York action, Western Union had conducted a review of multiple currency transactions through New York agents during a single day to determine whether SARs should have been filed for cross-agent transactions, and Western Union filed an additional 63 SARs as a result of that review. FinCEN requested that Western Union perform the same review for the rest of the country and that it file SARs for those transactions that it deemed to be suspicious and for which SARs were not filed previously. As a result, Western Union has late-filed 662 SARs.

To resolve this action, as discussed in the Undertakings below, Western Union also will review transactions throughout the entire country to identify any additional multiple transactions through the same or different agents over time to determine whether the transactions are suspicious and thus reportable under the BSA, and Western Union will file additional SARs if SARs were not filed previously.

The failure to identify, detect, and report suspicious transactions also affects a financial institution's ability to monitor properly its agents for high-risk business activities, anti-money laundering, and BSA compliance. To resolve this matter, Western Union has undertaken to enhance policies and procedures to screen potential agents, to monitor agents for compliance with anti-money laundering and BSA compliance policies, and to terminate those agents that Western Union determines to be in chronic violation of its policies and procedures and/or a substantial risk for money laundering.

C. Failure to File SARs

FinCEN has determined, based on a review by Western Union of its transactions nationwide, that from January 1, 2002, through October 8, 2002, Western Union failed to file 662 SARs for structured transactions in violation of 31 U.S.C. §5318(g) and 31 CFR 103.20. Western Union has late-filed these SARs.

D. Willful Violations

FinCEN has determined that Western Union's failures to file SARs were willful. Western Union failed to establish SAR reporting procedures that would reasonably assure that it could identify and properly report structured transactions.

#### IV. CIVIL MONEY PENALTY

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By September 9, 2002, Western Union had implemented its new automated system nationwide. That system aggregates transactions by a single customer through any agent location for a single day and across multiple agents and over time. Thus, Western Union's new system properly aggregates multiple transactions to detect and report structuring.

FinCEN has determined that, as described in Section III, above, Western Union willfully violated the suspicious activity reporting provisions of the BSA and a civil money penalty is due pursuant to 31 U.S.C. §5321 and 31 CFR §103.57(f).<sup>4</sup>

## V. CONSENT TO ASSESSMENT AND UNDERTAKINGS

In order to resolve this matter, and only for that purpose, Western Union, without admitting or denying either the facts 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 \$3,000,000.

Western Union agrees to pay the amount of \$3,000,000 within five (5) business days of the ASSESSMENT of the civil money penalty. 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.

Western Union recognizes and states that it enters into this CONSENT 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 Western Union to enter into this CONSENT, except for those specified in this CONSENT.

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

## VI. UNDERTAKINGS

By execution of its CONSENT, Western Union agrees to the following UNDERTAKINGS:

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<sup>4</sup> As noted in footnote 1, *supra*, because of the undertakings and the \$8 million fine Western Union paid to the State of New York, FinCEN believes that further action by FinCEN or other regulatory agencies for the failure to file CTRs or SARs would be unnecessary and duplicative.

