

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

IN THE MATTER OF:

**UNITED BANK FOR AFRICA, PLC
NEW YORK BRANCH
NEW YORK, NEW YORK**

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Number 2008-3

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

Under the authority of the Bank Secrecy Act and regulations issued pursuant to that Act,¹ the Financial Crimes Enforcement Network has determined that grounds exist to assess a civil money penalty against the New York Branch of United Bank for Africa, PLC (“the New York Branch of United Bank for Africa” or “the Branch”). To resolve this matter, and only for that purpose, the New York Branch of United Bank for Africa has entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (“CONSENT”) without admitting or denying the determinations by the Financial Crimes Enforcement Network, as 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 Branch is a Federal branch of a foreign banking organization, United Bank for Africa, PLC (“United Bank for Africa” or the “Bank”). United Bank for Africa is the largest bank in Nigeria, with over 630 offices in Nigeria and offices and subsidiaries in Ghana, Cameroon, Cote d’Ivoire, the Cayman Islands and London, England. As of December 31, 2007, the Branch had assets of approximately \$441 million. The Office of the Comptroller of the Currency (the “OCC”) is the Branch’s Federal functional regulator and examines the Branch for compliance with the Bank Secrecy Act, its implementing regulations and similar rules under Title 12 of the United States Code.

At all relevant times, the Branch was a “financial institution” and a “bank” within the meaning of the Bank Secrecy Act and the regulations issued pursuant to that Act.²

¹ 31 U.S.C. § 5311 et seq. and 31 C.F.R. Part 103.

² 31 U.S.C. § 5312(a)(2) and 31 C.F.R. § 103.11.

III. DETERMINATIONS

A. Summary

The Branch serves as the presence in the United States on behalf of United Bank for Africa, a foreign banking organization with its headquarters in Nigeria. Nigeria has been recognized in varying degrees as a center for criminal financial activity, including money laundering and illicit schemes such as advance fee fraud.³ The Branch provides the customer base of the Bank with access to the United States financial system. The Branch primarily provides correspondent banking services for Nigerian and other African banks as well as banking services for Nigerian and U.S. corporate entities and the government of Nigeria, including banking for diplomatic missions.

The Branch violated the requirement to establish and implement an adequate anti-money laundering program. The Branch repeatedly failed, over the course of multiple examinations with adverse Bank Secrecy Act findings, to establish and implement an adequate anti-money laundering program. To address the Branch's Bank Secrecy Act compliance deficiencies, the OCC, by consent, issued a cease and desist order to the Bank and the Branch on January 18, 2007, and assessed a civil money penalty against the Branch in the amount of \$500,000 on May 2, 2007. After the Branch failed to comply with a majority of the articles of the cease and desist order, the OCC issued a new cease and desist order to the Bank and the Branch on February 29, 2008, requiring the cessation of all wire transfer, dollar draft and pouch transactions for both customers and non-customers of the Branch.

The failure by the Branch to establish and implement an effective anti-money laundering program resulted in extensive violations of the requirement to report suspicious transactions. The Branch failed to detect and timely report approximately \$197 million in suspicious transactions.

B. Violations of the Requirement to Implement an Anti-Money Laundering Program

The Financial Crimes Enforcement Network has determined that the Branch violated the requirement to establish and implement a reasonably designed anti-money laundering program. Since April 24, 2002, the Bank Secrecy Act and its implementing regulations have required financial institutions to establish and implement anti-money laundering programs.⁴ A Federal branch of a foreign bank must implement an anti-money laundering program that conforms with the rules of the Office of the Comptroller of the Currency. Since 1987, the Office of the Comptroller of the Currency has required a program "reasonably designed to assure and monitor

³ Financial Crimes Enforcement Network, *FinCEN Advisory Issue 32: Transactions Involving the Federal Republic of Nigeria* (April 2002), withdrawn by *Advisory Withdrawal Issue 32A: Transactions Involving Nigeria* (May 2007); Financial Action Task Force, *Review to Identify Non-Cooperative Countries or Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures* (22 June 2001); Financial Action Task Force, *Annual Review of Non-Cooperative Countries and Territories 2006-2007: Eighth NCCT Review* (12 October 2007); Department of State, *2008 International Narcotics Control Strategy Report* (March 2008); Central Intelligence Agency, *The 2008 World Factbook* (March 6, 2008).

⁴ 31 U.S.C. § 5318(h)(1) and 31 C.F.R. § 103.120.

compliance” with reporting and recordkeeping requirements under the Bank Secrecy Act.⁵ Reporting requirements under the Bank Secrecy Act include the requirement to report suspicious transactions.⁶ An anti-money laundering program must contain the following elements: (1) a system of internal controls; (2) independent testing for compliance; (3) the designation of an individual, or individuals, to coordinate and monitor day-to-day compliance; and (4) training of appropriate personnel.⁷ The Branch failed to implement an adequate system of internal controls to ensure compliance with the Bank Secrecy Act and manage the risk of money laundering or other suspicious activity, or to conduct adequate independent testing to allow for the timely identification and correction of Bank Secrecy Act compliance deficiencies.

1. Internal Controls

The Branch failed to implement internal controls reasonably designed to ensure compliance with the Bank Secrecy Act and manage the risk of money laundering or other suspicious activity. The Branch lacked adequate policies, procedures and controls reasonably designed to assess the risks of potential money laundering or other suspicious activity and ensure the detection and timely reporting of suspicious transactions.

The Branch failed to implement effective procedures for conducting due diligence on customers of the Branch. The Branch failed to implement effective procedures to gather and review critical information to establish risk profiles, including information on business activities, source of funds, financial capacity, and normal ranges of transaction activity. Branch procedures for identifying politically exposed persons and managing the risks associated with such account relationships did not exist as of June 2006, despite the fact that the Branch maintained accounts and processed transactions for high-level politically exposed persons, including senior foreign political figures in Nigeria. The Branch also failed to implement effective procedures to manage risks associated with foreign correspondent bank accounts, embassy and foreign consulate accounts, foreign based cash intensive businesses and money services businesses, import-export companies, jewelry and precious metal dealers, foreign exchange houses and offshore corporations. The failure of the Branch to implement effective due diligence procedures prevented it from performing effective assessments of the risks associated with particular customers. Furthermore, the absence of effective due diligence procedures prevented the Branch from incorporating adequate risk profiles into its system for monitoring transactions for potential money laundering and other suspicious activity.

The Branch failed to implement effective procedures and controls to monitor transactions for money laundering and other suspicious activity. Policies and procedures for investigating and reporting suspicious activity were far too general and did not provide adequate instructions to Branch personnel. Procedures did not effectively address the identification and reporting of known or suspected violations of Federal law. The Branch also lacked effective procedures to detect and respond to suspicious activity involving wire transfers that the Branch processed for originators and beneficiaries with accounts at the Branch, the Bank and other foreign and domestic correspondent banks, and dollar drafts and pouch transactions from the Bank and other

⁵ 12 C.F.R. § 21.21(b).

⁶ 31 C.F.R. § 103.18.

⁷ 12 C.F.R. § 21.21(c).

foreign correspondent banks. Furthermore, the Branch lacked written procedures specifying the responsibilities of compliance and operations personnel, including procedures for the approval and documentation of transactions. Operations personnel had authority to approve transactions without compliance intervention or approval, as appropriate, when the automated transaction monitoring system flagged transactors from the Branch's internal watch list. The Branch routinely processed these exceptional transactions without requiring supporting documentation to validate, as necessary and appropriate, the legal or business purpose of the transactions. In addition, compliance personnel had authority to remove persons from the internal watch list without approval from appropriate levels of management at the Branch.

2. Independent Testing

Independent testing at the Branch was not effective to ensure compliance with the Bank Secrecy Act. In light of the risk levels, audits conducted at the Branch suffered from significantly limited scope reviews, and limited transaction testing to assess internal control processes for the identification and reporting of suspicious transactions. The limited scope audits and negligible sampling of accounts and transactions were longstanding and persisted through three examinations, including the audit required by the OCC in the cease and desist order issued on January 18, 2007.

C. Violations of the Requirement to Report Suspicious Transactions

The Financial Crimes Enforcement Network has determined that the Branch violated the suspicious transaction reporting requirements of the Bank Secrecy Act and regulations issued pursuant to that Act.⁸ These reporting requirements impose an obligation on financial institutions to report transactions that involve or aggregate to at least \$5,000, are conducted by, at, or through the financial institution, and that the institution "knows, suspects or has reason to suspect" are suspicious.⁹ A transaction is "suspicious" if the transaction: (1) involves funds derived from illegal activities, or is conducted to disguise funds derived from illegal activities; (2) is designed to evade reporting or record keeping requirements under the Bank Secrecy Act; or (3) has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.¹⁰

Financial institutions must report suspicious transactions by filing suspicious activity reports and must generally do so no later than thirty (30) calendar days after detecting facts that may constitute a basis for filing such reports.¹¹ If no suspect was identified on the date of detection, a financial institution may delay the filing for an additional thirty (30) calendar days in order to identify a suspect, but in no event may the financial institution file a suspicious activity report more than sixty (60) calendar days after the date of initial detection.¹²

⁸ 31 U.S.C. § 5318(g) and 31 C.F.R. § 103.18.

⁹ 31 C.F.R. § 103.18(a)(2).

¹⁰ 31 C.F.R. § 103.18(a)(2)(i)-(iii).

¹¹ 31 C.F.R. § 103.18(b)(2).

¹² 31 C.F.R. § 103.18(b)(3).

The absence of effective internal controls and independent testing at the Branch resulted in numerous violations of the requirement to timely report suspicious transactions. The Branch lacked adequate policies, procedures and controls necessary to monitor for and timely report suspicious activity, as required by the Bank Secrecy Act. From 2005 through February 1, 2008, the Branch failed to timely file 140 suspicious activity reports, involving, in the aggregate, more than \$197 million. Thirty four reports were filed at least six months late, including five that were filed more than three years late. The suspicious activity reports filed over three years late included reports describing transfers to accounts at the Branch of approximately \$120 million of suspected proceeds of corruption in Nigeria. Other suspicious activity that the Branch failed to report in a timely manner included laundering of the proceeds of advance payment fraud, structuring of wire transfers to avoid the reporting and recordkeeping requirements of the Bank Secrecy Act, and transactions by an apparent unlicensed money remitter and a possible shell bank in Nigeria. The 140 suspicious activity reports that the Branch failed to file in a timely manner represented 60% of the suspicious activity reports filed by the Branch from 2005 through February 1, 2008. These delays significantly impaired the usefulness of the information in the suspicious activity reports by failing to provide it to law enforcement on a more timely basis.

IV. CIVIL MONEY PENALTY

Under the authority of the Bank Secrecy Act and the regulations issued pursuant to that Act,¹³ the Financial Crimes Enforcement Network has determined that a civil money penalty is due for violations of the Bank Secrecy Act and the regulations implementing that Act, as described in this ASSESSMENT.

Based on the seriousness of the violations at issue in this matter, and the financial resources available to the New York Branch of United Bank for Africa, the Financial Crimes Enforcement Network has determined that the appropriate penalty in this matter is \$15,000,000.

V. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, the New York Branch of United Bank for Africa, 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 in the sum of \$15,000,000. This assessment is being issued concurrently with a \$15,000,000 civil money penalty assessed by the Office of the Comptroller of the Currency against the New York Branch of United Bank for Africa, and shall be satisfied by one payment of \$15,000,000 to the Department of the Treasury.

The New York Branch of United Bank for Africa recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by the Financial Crimes Enforcement Network or any employee, agent, or representative of the Financial Crimes Enforcement Network to induce the New York Branch of United Bank for Africa to enter into the CONSENT, except for those specified in the CONSENT.

¹³ 31 U.S.C. § 5321 and 31 C.F.R. § 103.57.

The New York Branch of United Bank for Africa understands and agrees that the CONSENT embodies the entire agreement between the New York Branch of United Bank for Africa and the Financial Crimes Enforcement Network relating to this enforcement matter only, as described in Section III above. The New York Branch of United Bank for Africa further understands and agrees that there are no express or implied promises, representations, or agreements between the New York Branch of United Bank for Africa and the Financial Crimes Enforcement Network 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.

VI. RELEASE

The New York Branch of United Bank for Africa understands that execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, constitute a complete settlement and release of the Branch's civil liability for the violations of the Bank Secrecy Act and regulations issued pursuant to that Act as described in the CONSENT and this ASSESSMENT.

By:

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James H. Freis, Jr., Director
FINANCIAL CRIMES ENFORCEMENT NETWORK
U.S. Department of the Treasury

Date:

 4/22/2008