

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

IN THE MATTER OF:	)	
	)	
	)	
	)	Number 2015-08
Bank of Mingo	)	
Williamson, West Virginia	)	

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 Bank of Mingo (“Mingo”), pursuant to the Bank Secrecy Act (“BSA”) and regulations issued pursuant to that Act.<sup>1</sup>

Mingo admits to the facts set forth below and that its conduct violated the Bank Secrecy Act. Mingo consents to the assessment of a civil money penalty and enters 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 the authority to investigate banks for compliance with and violation of the Bank Secrecy Act 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

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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.

activities of all other agencies exercising delegated authority under this chapter.” Mingo was a “financial institution” and a “bank” within the meaning of the Bank Secrecy Act and its implementing regulations during the time relevant to this action. 31 U.S.C. § 5312(a)(2)(A); and 31 C.F.R. §§ 1010.100(d)(1), 1010.100(t).

Bank of Mingo is headquartered in Williamson, Mingo County, West Virginia. Mingo has six branches, all located in Mingo County, with a total of 48 employees. As of December 31, 2014, Mingo reported total assets of \$93.879 million. Mingo provides personal, commercial, and consumer banking products, as well as online banking services. Mingo had systemic BSA violations that derived from its failure to establish and maintain an adequate anti-money laundering program and customer due diligence program. Mingo’s program deficiencies led to its failure to monitor, detect and report suspicious activity and to timely file currency transaction reports. Consequently, from 2008 through 2012, Mingo allowed more than \$9.2 million in structured and otherwise suspicious cash transactions to flow through the institution unreported.

#### **Resolution with U.S. Attorney’s Office for the Southern District of West Virginia**

The U.S. Attorney’s Office for the Southern District of West Virginia and Mingo have entered into a deferred prosecution agreement and forfeiture action based on Mingo’s failure to establish an effective anti-money laundering program, in violation of 31 U.S.C. §§ 5318(h)(1) and 5322(b). Mingo admitted that a particular corporate customer structured hundreds of currency transactions through its accounts at Mingo’s Williamson Branch. The Williamson Branch Manager facilitated the corporate customer’s structured transactions to evade the filing of currency transaction reports (CTRs). Mingo was aware of the Branch Manager’s structuring scheme, yet failed to file the requisite CTRs and suspicious activity reports related to the high

volume of unusual cash transactions conducted by the corporate customer. As part of the deferred prosecution agreement, Mingo has agreed to forfeit \$2.2 million.

### Resolution with Federal Deposit Insurance Corporation

The Federal Deposit Insurance Corporation (“FDIC”) is Mingo’s primary federal regulator and examines banks, including Mingo, for compliance with the BSA and its implementing regulations and similar rules under Title 12 of the United States Code. The FDIC has assessed a civil money penalty against Mingo for violations of 12 U.S.C. §§1818(i)(2)(A), 1829b, 1951-1959; 31 U.S.C. § 5311 et seq.; 31 C.F.R. Chapter X; 12 C.F.R. § 326.8, and 12 C.F.R. Part 353 (collectively, “BSA Regulations”). Mingo has agreed to a \$3.5 million civil money penalty assessed by the FDIC.

The deficiencies in Mingo’s anti-money laundering program had resulted in a Consent Order issued by the FDIC on November 1, 2013, that required Mingo to take a number of steps to improve its BSA compliance. Mingo is currently working to meet its obligations under the Consent Order, which remains in effect.

## II. DETERMINATIONS

Mingo willfully violated the BSA’s program, reporting, and recordkeeping requirements from 2008 through the end of 2013.<sup>2</sup> As described in more detail below, Mingo: (a) failed to implement an adequate anti-money laundering program; (b) failed to develop and implement an

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<sup>2</sup> In civil enforcement of the Bank Secrecy Act 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 Bank Secrecy Act, or that the entity or individual otherwise acted with an improper motive or bad purpose. Bank of Mingo admits to “willfulness” only as the term is used in civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1).

adequate customer identification program; (c) failed to identify and adequately report currency transactions; and (d) failed to detect and adequately report suspicious transactions.

A. Violation of the Requirement to Implement an Anti-Money Laundering Program

Mingo failed to establish and implement an adequate anti-money laundering compliance program as expressly required by the BSA and its implementing regulations. 31 U.S.C. §§ 5318(a)(2) and 5318(h); 31 C.F.R. § 1020.210. The FDIC 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, including an appropriate customer identification program. 12 C.F.R. §§ 326.8(b)(1) and (2).

Mingo failed to establish and maintain an adequate anti-money laundering program that, at a minimum: (1) provides for a system of internal controls to assure ongoing compliance; (2) provides for independent testing for compliance to be conducted by bank personnel or by an outside party; (3) designates an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (4) provides training for appropriate personnel. 31 U.S.C. §§ 5318(a)(2) and 5318(h)(1); 31 C.F.R. § 1020.210; 12 C.F.R. § 326.8(c). Mingo's compliance program also did not include a customer identification program that was appropriate for its size and type of business. 31 C.F.R. § 1020.220.

1. Internal Controls

Mingo failed to implement an effective system of internal controls reasonably designed to ensure compliance with the BSA and its implementing regulations. 31 U.S.C. § 5318(h)(1)(A); 31 C.F.R. § 1020.210. It did not adequately assess its money laundering risk or design an anti-money laundering compliance program to address those risks. As a result, and as described in

detail below, Mingo serviced high-risk customers without effectively monitoring their respective accounts, and further failed to detect and report unusual large currency transactions and otherwise suspicious activities.

Mingo's procedures for monitoring, detecting, and reporting suspicious activity were ineffective. Banks, and other financial institutions, are required to implement such procedures, and file reports of suspicious activity with FinCEN. Like other BSA filings, suspicious activity reports ("SARs") play an important role in detecting possible criminal activity. FinCEN and law enforcement use SARs to investigate money laundering, terrorist financing and other serious criminal activity, among other things. Although Mingo used a software system to monitor its accounts for unusual activity going through the bank; it did not use it to detect and report suspicious activity. As a result, Mingo undermined the existing reporting mechanism to alert law enforcement and regulators to suspicious and potentially illicit activities.

Mingo also failed to assess the money laundering risks associated with its customers. Risk assessment procedures are a vital part of a compliance program, as they permit a financial institution to assess its particular risks associated with its business lines, practices, and clientele and to design a program that can reasonably assure and monitor BSA compliance given those risks. Mingo did not properly risk rate its high-risk customers and their respective accounts leaving the bank ill-equipped to adequately monitor transactions based on a customer's particular level of risk or the account's purpose and expected activity. For instance, Mingo did not risk rate its customers during the account opening process or classify their respective accounts. Consequently, Mingo failed to properly designate numerous customers as high-risk. Because Mingo failed to properly designate these customers and their accounts as high-risk, it could not adequately monitor them and therefore failed to detect the unusual currency transactions or

suspicious activities in which the customers engaged. It was only after law enforcement issued subpoenas to Mingo requesting information related to these high-risk customers, that Mingo added the customers to its high-risk list for enhanced due diligence and monitoring.

Mingo's risk assessment procedures were also inadequate because they were not tailored to address Mingo's inherent risks. Mingo failed, for example, to address procedures to handle check cashing, payroll activity, and cash intensive customers. The failure to complete a comprehensive risk assessment to account for such significant risks severely limited the effectiveness of Mingo's anti-money laundering program.

## 2. Independent Testing

A bank's anti-money laundering program must provide for independent compliance testing to monitor and maintain an adequate program. 31 U.S.C. § 5318(h)(1)(D); 31 C.F.R. § 1020.210. Mingo's annual independent testing was inadequate. For example, Mingo's most recent BSA independent compliance testing, conducted in December 2011, failed to include the high-risk activities cited above, and failed to determine whether appropriate controls were in place to detect, monitor, and report suspicious activity and large currency transactions.

## 3. Designation of BSA Compliance Officer

A bank is required to designate a person responsible for ensuring day-to-day compliance with BSA requirements. 31 U.S.C. § 5318(h)(1)(B); 31 C.F.R. § 1020.210. Although Mingo designated a BSA Officer, it did not provide the BSA Officer with sufficient resources and time to adequately oversee Mingo's BSA compliance program. Specifically, Mingo assigned the BSA Officer multiple non-BSA responsibilities that left him unable to adequately fulfill his BSA obligations. Mingo was aware of this situation but failed to designate an additional person to support the BSA Officer or otherwise remedy the situation.

#### 4. Training

A bank's anti-money laundering program must provide for education and training of personnel regarding their responsibilities under the program, including monitoring, detecting and reporting suspicious transactions. 31 U.S.C. § 5318(h)(1)(C); 31 C.F.R. § 1020.210. Mingo's training program was ineffective. Its employees lacked the knowledge and skills to identify high-risk accounts; recognize and report suspicious activities and currency transactions; and appropriately aggregate large cash transactions for BSA reporting requirement. As of October 2013, Mingo still had not implemented a training program that would provide comprehensive training tailored to the needs of specific positions, departments, board members and other personnel.

##### B. Violation of Requirement to Develop and Implement an Adequate Customer Identification Program

As part of its anti-money laundering compliance program, a bank must implement a written Customer Identification Program ("CIP") appropriate for its size and type of business. The program must include risk-based identity verification, recordkeeping, and retention procedures. In general, the minimum information a bank must obtain prior to opening an account is the customer's name, date of birth, and a residential or business street address. 31 C.F.R §§ 1020.210, 1020.220(a)(2)(i). A CIP helps a financial institution determine the risks posed by a particular customer, allowing the institution to ensure that it has the proper controls in place, including suspicious activity monitoring procedures, and to monitor and report on the risks of a particular client. Mingo did not have a sufficient CIP. For example, a review of the opening account documentation for 53 new customers revealed that 26 percent of those accounts were opened with P.O. Box addresses instead of physical street addresses as required.

C. Violation of the Requirement to File Currency Transaction Reports

Mingo violated its currency transaction reporting requirements. The BSA and its implementing regulations impose an obligation on financial institutions to report currency transactions that involve or aggregate to more than \$10,000. 31 U.S.C. § 5313(a); 31 C.F.R. §§ 1010.311, 1010.313. A bank must file a CTR within 15 days after the transaction triggering the reporting requirement is conducted. 31 C.F.R. § 1020.310; 31 C.F.R. § 1010.306(a)(1). A person is prohibited from structuring a transaction in any manner for the purpose of evading the CTR requirement. 31 U.S.C. § 5324(a); 31 C.F.R. §§ 1010.314, 1010.100(xx). From 2007 to 2013, Mingo failed to file 619 CTRs, in violation of the BSA and its implementing regulations. Of those, 438 CTRs were related to one particular corporate customer. Mingo's records and daily transaction logs revealed that the corporate customer conducted multiple currency transactions through its accounts at Mingo's Williamson Branch. Despite this knowledge, Mingo failed to aggregate those transactions for purposes of filing corresponding CTRs. Specifically, in early 2008, Mingo's Williamson Branch Manager approved a \$50,000 Line of Credit ("LOC") for the corporate customer, which was to be used for payroll. The investigation demonstrated that the Williamson Branch Manager knowingly acted to facilitate the corporate customer's structured transactions to evade the filing of CTRs. Specifically, as part of this scheme, the Branch Manager instructed the corporate customer to fax a "Request for Advance" form to the Williamson Branch for each cash withdrawal from the line of credit account. The Branch Manager or his assistant would approve the Requests for Advance, and a teller would then prepare a cashier's check in the name of the corporate customer's employee for amounts just under \$10,000. The employee was allowed to cash the check without depositing it into the checking account of the corporate customer. From 2008 to 2012, the corporate customer made



981 cash withdrawals from its LOC, which averaged \$9,417 per withdrawal, just under the \$10,000 currency reporting requirement, totaling over \$9.2 million. During 2012 alone, the corporate customer's employees cashed 113 cashier's checks from Mingo totaling over \$1,106,678.

In November 2013, the corporate customer was charged and pleaded guilty in the United States District Court for the Southern District of West Virginia to conspiring to structure currency transactions, in violation of 18 U.S.C. § 371 and 31 U.S. C. § 5324. As part of the plea agreement, the corporate customer admitted that it had knowingly engaged in structured transactions totaling at least \$2.2 million through accounts at the Bank of Mingo. The Williamson Branch Manager also pleaded guilty to lying to federal agents regarding his knowledge of the cash withdrawals. The Branch Manager separately agreed with the FDIC that he would be permanently barred from working for an FDIC covered financial institution.

Mingo was on notice since at least September 2008 of the manner in which its Williamson Branch Manager allowed this corporate customer to structure cash withdrawals from the LOC. Despite the high volume of unusual cash transactions conducted by the corporate customer, Mingo failed to timely file 438 CTRs relating to the cash intensive transactions and structured transactions conducted through the Bank.

The BSA Officer monitored such activity through handwritten teller logs. This practice was an inadequate control given the volume of cash activity going through the bank and allowed a high volume of structured transactions to go undetected and, therefore, unreported. In sum, Mingo failed to perform the required account monitoring; aggregate and report appropriate transactions; and identify structured transactions.

D. Suspicious Activity Reporting Violations

Mingo failed to adequately monitor, detect and timely report suspicious activity. The BSA and its implementing regulations impose an obligation on banks to report transactions that involve or aggregate to at least \$5,000 are conducted by, at, or through the bank, and that the bank “knows, suspects, or has reason to suspect” are suspicious. 31 U.S.C. § 5318(g) and 31 C.F.R. § 1020.320. 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 the reporting or recordkeeping requirements of the BSA or regulations under the BSA; 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 bank knows of no reasonable explanation for the transaction after examining the available facts, including background and possible purpose of the transaction. 31 C.F.R. § 1020.320(a)(2)(i) - (iii). Mingo failed to file SARs concerning a high volume of cash transactions that had no apparent lawful purpose and, as described above, that were designed to evade the BSA reporting requirements.

In addition to the structured transactions described above, which should have prompted the bank to file SARs, at least two of Mingo’s other customers also demonstrated unusual transaction patterns raising significant red flags that Mingo should have detected and evaluated to determine whether a SAR should have been filed. One customer, with a cash intensive business, opened a commercial account at Mingo in July 2007, using only a P.O. Box address (which also reflects Mingo’s weak CIP by failing to require a physical address). This customer made frequent and unusually large cash deposits and withdrawals that were allegedly used for payroll purposes. In just the first quarter of 2013, the customer cashed checks totaling \$431,000.00. The customer also had an LOC with Mingo, out of which he took cash advances to

be converted into cashier's checks payable to his employees. Three to four times a year, the customer conducted three to six principal advances in a given month and then paid down the LOC to near zero. This account activity was inconsistent with his customer profile and expected transactions. Raising further concerns, when presented with these findings, Mingo's BSA Officer stated that he was not only unaware of this account's activity but also suggested that Mingo did not have other accounts with similar transactions, although Mingo did.

A second customer, whose activity raised significant red flags, conducted a large volume of questionable and unusual cash transactions through his account at Mingo. In 2012, this customer deposited approximately \$310,000 in cash, compared to only \$72,000 deposited in checks. The significant amount of cash deposits, particularly compared to the substantially lesser amount deposited by check, is unusual account activity from what was expected from this customer's customer profile and expected account activity. In addition, the customer's file contained an account closure statement issued by a different bank for inappropriate activity. Notwithstanding the ongoing suspicious activity, Mingo failed to conduct account monitoring, failed to detect and report suspicious activity and failed to conduct enhanced due diligence with respect to this customer.

### III. CIVIL MONEY PENALTY

FinCEN has determined that Mingo willfully violated the anti-money laundering program, reporting, and recordkeeping requirements of the Bank Secrecy Act and its implementing regulations, as described in the CONSENT, and that grounds exist to assess a civil money penalty for these violations. 31 U.S.C. § 5321; 31 C.F.R. § 1010.820.

FinCEN has determined that the penalty in this matter will be \$4.5 million. The penalty will run concurrent with the FDIC \$3.5 million penalty, of which \$2.2 million is concurrent with

the amount forfeited pursuant to the deferred prosecution agreement with the U.S. Attorney's Office for the Southern District of West Virginia. Accordingly, this penalty will be deemed satisfied by an immediate payment of \$1 million to the U.S. Department of the Treasury with the remaining balance satisfied by payment of the FDIC civil money penalty and the U.S. Attorney's Office for the Southern District of West Virginia forfeiture of criminal proceeds.

#### IV. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, Mingo consents to the assessment of a civil money penalty in the sum of \$4.5 million and admits that it violated the BSA's program, recordkeeping, and reporting requirements.

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

Mingo understands and agrees that the CONSENT embodies the entire agreement between Mingo and FinCEN relating to this enforcement matter only, as described in Section II above. Mingo further understands and agrees that there are no express or implied promises, representations, or agreements between Mingo 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. RELEASE

Execution of the CONSENT, and compliance with all of the terms of this ASSESSMENT and the CONSENT, settles all claims that FinCEN may have against Mingo 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 Mingo other than the conduct described in Section II of the CONSENT, or any claim that FinCEN may have against parties other than Mingo, including, without limitation, any current or former partner, director, officer, or employee of Mingo. Upon request, Mingo 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 conduct of its current or former directors, officers, employees, agents, or others.

By:

/s/

6/15/2015

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Jennifer Shasky Calvery

Date

Director

FINANCIAL CRIMES ENFORCEMENT NETWORK

U.S. Department of the Treasury