

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

**IN THE MATTER OF:**

**BPI, Inc.  
Newark, New Jersey**

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**Number 2014-06**

**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 BPI, Inc. (“BPI” or “the MSB”), pursuant to the Bank Secrecy Act (“BSA”) and regulations issued pursuant to that Act.<sup>1</sup>

BPI admits to the facts set forth below and that its conduct violated the BSA. BPI 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 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.” BPI was a

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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.

“financial institution” and a “money services business” within the meaning of the BSA and its implementing regulations during the time relevant to this action. 31 U.S.C. § 5312(a)(2) and 31 C.F.R. § 1010.100(t). 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. Since 2006, IRS SB/SE has conducted two examinations of BPI that identified repeated violations of the BSA by BPI. In addition, the New Jersey Department of Banking and Insurance (“NJDBI”) examined BPI for anti-money laundering (“AML”) compliance and found violations in examinations conducted in 2005 and 2006. In March 2014, BPI ceased operation as an MSB.

## **II. DETERMINATIONS**

FinCEN has conducted an investigation and determined that, from March 2011 through March 2012, BPI willfully violated the BSA’s program, reporting, and recordkeeping requirements.<sup>2</sup> Many of these violations were cited by both the IRS SB/SE and state authorities in three separate examinations.

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

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. 31 U.S.C. §§

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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. BPI 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).

5318(a)(2) and 5318(h); 31 C.F.R. § 1022.210. BPI was required to implement an 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. 31 C.F.R. §§ 1022.210(c) and (d). BPI failed to develop, maintain, and implement an effective AML program that adequately addressed three of the four minimum requirements.

### **1. Internal Controls**

BPI's policies, procedures, and internal controls (1) were inadequate to monitor, detect and report suspicious activities; (2) failed to obtain and retain required identification information for fund transfers of \$3,000 or more; and (3) had known deficiencies that constituted repeated BSA violations. First, with respect to suspicious activities, BPI's AML program manual erroneously stated "[w]hile nonbank financial institutions are not required to report suspicious transactions, as a matter of policy, BPI reports suspicious transactions voluntarily using the SAR applicable to banks and other depository institutions . . . ." Although this provision of its AML manual advised that the company would file suspicious activity reports or "SARs" "as a matter of policy," the statement minimized the legal requirement by essentially advising its employees – improperly – that this was not a legal obligation. Moreover, notwithstanding BPI's policy that it would "voluntarily" file suspicious activities reports, it failed to file even a single SAR prior to the 2011 BSA examination conducted by IRS SB/SE. Significantly, the 2011 IRS SB/SE examination team identified more than a dozen suspicious transactions or pattern of transactions occurring over a six-month period that warranted the filing of SARs.

Second, BPI lacked adequate policies, procedures, and internal controls to obtain required identifying information for transactions conducted on behalf of a party other than the person conducting the transaction. BPI's computer system was not able to capture information on individuals conducting transactions on behalf of others. 31 C.F.R. § 1010.410(e)(2)(i). As a result, BPI compromised its ability to detect suspicious transactions, and those individuals actually conducting or otherwise responsible for those transactions. BPI also failed to adequately update expired identification documents, which resulted in recordkeeping violations for funds transfers of \$3,000 or more. 31 C.F.R. § 1010.410(e).

Finally, and notably, BPI failed to adequately address a number of concerns that had been previously raised by the IRS SB/SE examiners in 2006, as well as by NJDBI, which found repeated AML program violations in 2005 and 2006. IRS SB/SE and NJDBI previously cited BPI for failing to maintain an adequate AML program, including for deficiencies in internal controls, independent testing, and training. These repeated violations, discovered in 2011, several years after federal and state authorities had issued warnings and corrective actions to BPI, highlight BPI's failure to maintain an effective AML program.

## **2. Training**

BPI failed to provide adequate training to its employees to identify and report suspicious activity and to comply with the funds transfer record keeping requirements of the BSA. This deficient training resulted in BPI's failure to identify and report suspicious transactions or patterns of transactions identified during the 2011 BSA examination. Similarly, BPI employees allowed customers to conduct transactions without verifying and retaining required identification information, and also allowed customers to conduct money transfers by using expired identification documents, including identification documents that were more than ten years past their expiration.

As with the internal controls deficiencies discussed above, IRS SB/SE and NJDBI had previously noted AML training to BPI as an area of weakness in prior examinations conducted. Thus, BPI was aware of its deficient training program as early as 2005, yet failed to take adequate action to correct the noted deficiencies.

### **3. Independent Testing**

BPI failed to conduct an independent test of its AML program for a period of more than three years. BPI arranged for an independent review in November 2007. BPI did not arrange for another such independent test until November 2011, and did so only after its initial meeting with IRS-SB/SE commencing the 2011 BSA/AML examination. Moreover, BPI failed to conduct independent testing even though its own policies required such testing to be conducted at least annually, and its independent auditor recommended in 2008 that such testing be conducted at least every 18 months. BPI had been cited for failure to provide for an independent review by the NJDBI in 2005 and 2006, and also by the IRS SB/SE in 2006. Thus, as with the other BSA violations discussed above, BPI was on notice of this deficiency in its independent testing.

In summary, BPI willfully and repeatedly violated the BSA/AML program requirements by failing to implement adequate internal controls, failing to adequately train appropriate personnel, and failing to conduct adequate independent review for compliance.

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

The BSA and its implementing regulations require MSBs to report transactions that the MSB “knows, suspects, or has reason to suspect” are suspicious, if the transaction is conducted or attempted by, at, or through the MSB, and the transaction involves or aggregates to at least \$2,000 in funds or other assets. 31 C.F.R. § 1022.320(a)(2). A transaction is “suspicious” if the transaction: (a) involves funds derived from illegal activity; (b) is intended or conducted in order to

hide or disguise funds or assets derived from illegal activity, or to disguise the ownership, nature, source, location, or control of funds or assets derived from illegal activity; (c) is designed, whether through structuring or other means, to evade any requirement in the BSA or its implementing regulations; (d) serves no business or apparent lawful purpose, and the MSB knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (e) involves use of the MSB to facilitate criminal activity. *Id.*

The BSA examination identified 25 suspicious transactions, or pattern of transactions, for which BPI failed to file SARs. As described above, prior to the 2011 BSA examination, BPI had never filed a SAR. BPI subsequently agreed with 18 of the 25 suspicious transactions identified and filed SARs.

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

FinCEN has determined that BPI willfully violated the program, reporting, and recordkeeping requirements of the Bank Secrecy Act and its implementing regulations, as described in this CONSENT, and that grounds exist to assess a civil money penalty for these violations. 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820. FinCEN has determined that the penalty in this matter will be \$125,000.

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

To resolve this matter, and only for that purpose, BPI consents to the assessment of a civil money penalty in the sum of \$125,000, and admits that it violated the BSA's program, recordkeeping, and reporting requirements.

BPI 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 BPI to enter into this CONSENT, except for those specified in the CONSENT.

BPI understands and agrees that the CONSENT embodies the entire agreement between BPI and FinCEN relating to this enforcement matter only, as described in Section II above. BPI further understands and agrees that there are no express or implied promises, representations, or agreements between BPI 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 the ASSESSMENT and the CONSENT, settles all claims that FinCEN may have against BPI 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 BPI other than the conduct described in Section II of this ASSESSMENT, or any claim that FinCEN may have against any director, officer, owner, employee, or agent of BPI, or any party other than BPI. Upon request, BPI 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

<u>/s/</u>	August 28, 2014
Jennifer Shasky Calvery	Date
Director	
FINANCIAL CRIMES ENFORCEMENT NETWORK	
U.S. Department of the Treasury	