

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

IN THE MATTER OF:

**Eric Powers
Kern County, California**

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Number 2019-01

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 Eric Powers, pursuant to the Bank Secrecy Act (BSA) and regulations issued pursuant to that Act.¹

Mr. Powers admits to the facts set forth below and that his conduct violated the BSA. Mr. Powers consents to the assessment of a civil money penalty and enters into 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 assess civil money penalties on money services businesses (MSBs) that violate the BSA. Rules implementing the BSA state that “[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” has been delegated by the

¹ The BSA is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the BSA appear at 31 C.F.R. Chapter X.

Secretary of the Treasury to FinCEN.² At all relevant times, Mr. Powers was a “money transmitter” as defined at 31 C.F.R § 1010.100(ff)(5) and a “financial institution” as defined at 31 C.F.R § 1010.100(t).

II. DETERMINATIONS

Mr. Powers willfully violated the BSA’s registration, program, and reporting requirements from December 6, 2012 through September 24, 2014.³ As described in more detail below, Mr. Powers failed to: (a) register as an MSB with FinCEN; (b) establish and implement an effective written anti-money laundering (AML) program; (c) detect and adequately report suspicious transactions; and (d) report currency transactions.

A. Failure to Register as a Money Services Business

Since 2001, the BSA and its implementing regulations have required MSBs to register with FinCEN by filing a Registration of Money Services Business, and renewing the registration every two years.⁴ Mr. Powers was required to register as an MSB with FinCEN because he operated as an exchanger of convertible virtual currency.⁵ Between December 6, 2012 and September 24, 2014, Mr. Powers conducted over 1,700 transactions as a money transmitter. He did so as a peer-to-peer

² 31 C.F.R. § 1010.810(a).

³ 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. Mr. Powers 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).

⁴ 31 U.S.C. § 5330; 31 C.F.R. § 1022.380.

⁵ FIN-2013-G001, “Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies,” March 18, 2013.

exchanger⁶ of the convertible virtual currency bitcoin, purchasing and selling bitcoin to and from others. Mr. Powers was not simply a “user” of virtual currency (i.e., someone who obtains and uses convertible virtual currency to purchase real or virtual goods or services for his own benefit). Exchangers of convertible virtual currency, like Mr. Powers, are “money transmitters” as defined in 31 C.F.R § 1010.100(ff)(5),⁷ as well as “financial institutions” as defined in 31 C.F.R § 1010.100(t), and must comply with BSA regulations.

Through postings made on web fora, such as bitcointalk.org and bitcoin-otc.com, Mr. Powers advertised his intent to purchase and sell bitcoin for others. He completed sales and purchases by either physically delivering or receiving currency in person, sending or receiving currency through the mail, or coordinating transactions by wire through a depository institution. Internet postings Mr. Powers made also indicate that he would direct transactions at other virtual currency exchangers (such as Mt. Gox) on behalf of his customers. Mr. Powers participated in online discussions pertaining to AML compliance, including specific conversations about registering as an MSB, which demonstrate his awareness of the relevant BSA requirements. Nevertheless, Mr. Powers failed to register—even after FinCEN issued guidance in March 2013 stating that exchangers of convertible virtual currency (such as Mr. Powers) are money transmitters and must register as MSBs.

⁶ A peer-to-peer exchanger is a natural person engaged in the business of buying and selling convertible virtual currency, who typically advertises and markets his or her services through classified ads, specifically designed web platform websites, online forums, other social media, and word of mouth.

⁷ FIN-2013-G001, “Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies,” March 18, 2013.

B. Violations of the Requirement to Establish and Implement a Written Anti-Money Laundering Program

The BSA and its implementing regulations require MSBs like Mr. Powers 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.⁸

Mr. Powers was required to implement a written AML program that, at a minimum: (a) incorporates policies, procedures and internal controls reasonably designed to assure ongoing compliance; (b) designates an individual responsible to assure day-to-day compliance with the program and Bank Secrecy Act 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.⁹

Mr. Powers failed to implement an adequate AML program. Mr. Powers failed to produce written policies, procedures, and internal controls after they were requested by FinCEN. In fact, in March 2013 Mr. Powers publicly stated on the Internet he would assist customers that wanted to circumvent AML obligations. Further, while acting as a virtual currency exchanger, Mr. Powers did not file any BSA reports and had no written procedures for doing so. A written AML program would have: (1) designated an individual responsible for ensuring day-to-day compliance; (2) included an AML training or education program; and (3) provided for independent review to monitor and maintain an adequate program.

⁸ 31 U.S.C. § 5318(a)(2) and (h); 31 C.F.R. § 1022.210(a).

⁹ 31 U.S.C. § 5318(a)(2) and (h)(1); 31 C.F.R. § 1022.210(c) and (d).

C. Failure to File Suspicious Activity Reports

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 transactions are conducted or attempted by, at, or through the MSB, and the transactions involve or aggregate to at least \$2,000 in funds or other assets.¹⁰ A transaction is “suspicious” if the transaction: (a) involves funds derived from illegal activity; (b) is designed to evade reporting requirements; (c) has no business or apparent lawful purpose, and the MSB knows of no reasonable explanation for the transaction after examining the available facts, including background and possible purpose; or (d) involves use of the money services business to facilitate criminal activity.¹¹

As a money transmitter, Mr. Powers processed transactions that bore strong indicia of illicit activity. Mr. Powers’ bitcoin wallet addresses were associated with over a hundred transactions with customers doing business on the darknet website Silk Road, aggregating over \$12,000. On October 2, 2013, federal law enforcement authorities shut down and seized the Silk Road site following a highly publicized indictment alleging that it served as a marketplace for narcotics, malicious software, forgeries, false identification documents, and other illicit products and services, and promoted money laundering by concealing source of funds.

Information retrieved from Mr. Powers’ own records shows that he conducted 49 transactions with a customer who had an email address with the suffix “@tormail.org,” aggregating over \$86,000. Mr. Powers also conducted four transactions with a different customer with an “@tormail.org” email address, which aggregated over \$3,000. Both these email addresses used The Onion Router (TOR) – an anonymizing torrent service that directs internet traffic through a series of

¹⁰ 31 U.S.C. § 5318(g)(1); 31 C.F.R. § 1022.320(a)(2).

¹¹ 31 U.S.C. § 5318(g)(1); 31 C.F.R. § 1022.320(a)(2)(i)-(iv).

layers to conceal a user's location and identity and that is used to access the darknet. While use of TOR in and of itself is not suspicious, transactions through a torrent service may be a strong indicator of potential illicit activity when no additional due diligence is conducted to determine customer identity and whether or not funds are not derived from illegal activity.

Mr. Powers conducted transactions with one customer three times for approximately \$170,000 after the customer appeared in news media commenting on alternate ways to access darknet marketplaces following the shutdown of Silk Road. A basic search on the internet for the customer's screen name revealed identifying information for the customer, including the customer's name, yet this information was not listed in Mr. Powers' records. In addition, on one occasion, Mr. Powers offered to exchange convertible virtual currency for fiat currency, knowing that the fiat currency constituted the proceeds of illegal activity.

D. Failure to File Currency Transaction Reports

An MSB is required to report, through the filing of a currency transaction report (CTR), each transaction conducted "by, through, or to" the MSB that involves the physical transfer of more than \$10,000 in currency.¹² A CTR must be filed within 15 calendar days after the transaction occurs.¹³ Multiple transactions must be treated as a single transaction if the MSB has knowledge that the transactions are conducted by or on behalf of the same person and result in currency received or currency disbursed totaling more than \$10,000 during any one business day.¹⁴ A copy of the CTR must be maintained by the MSB for five years from the date filed.¹⁵

¹² 31 U.S.C. § 5313(a); 31 C.F.R. § 1010.311.

¹³ 31 U.S.C. § 5313(a); 31 C.F.R. § 1010.306(a)(1).

¹⁴ 31 U.S.C. § 5313(a); 31 C.F.R. § 1010.313(b).

¹⁵ 31 U.S.C. § 5313(a); 31 C.F.R. § 1010.306(a)(2).

Mr. Powers conducted numerous transactions involving the physical transfer of more than \$10,000 in currency, yet failed to file a single CTR. For instance, Mr. Powers purchased for a customer nearly \$19,000 worth of bitcoin from a business and mailed the payment in cash. Similarly, Mr. Powers conducted approximately 160 purchases of bitcoin for approximately \$5 million through in-person cash transactions with an individual identified through a bitcoin forum. Of these cash transactions, 150 were in-person and conducted in separate instances for over \$10,000 during a single business day. Each of these 150 transactions necessitated the filing of a CTR. Likewise, Mr. Powers made a purchase of 216 bitcoins from the same individual in exchange for a payment of approximately \$30,000 in cash sent through the mail. Further, Mr. Powers paid approximately \$60,000 in cash to a customer in exchange for approximately 500 Bitcoins. These transactions combined should have resulted in the filing of 243 CTRs, yet no CTRs were filed.

III. CIVIL MONEY PENALTY

FinCEN has determined that Mr. Powers willfully violated the registration, program, and reporting requirements of the BSA and its implementing regulations, as described in the CONSENT, and that grounds exist to assess a civil money penalty for these violations. FinCEN has determined that the penalty in this matter will be \$35,350.

FinCEN may impose a civil money penalty of \$25,000 for each willful violation of AML program requirements that occurs on or before November 2, 2015.¹⁶ The authorized penalty for each violation of MSB registration requirements that occurs on or before November 2, 2015 is \$5,000.¹⁷ The BSA states in either instance that a “separate violation” occurs “for each day that the

¹⁶ 31 U.S.C. § 5321(a)(1). For each willful violation of AML program requirements that occurs after November 2, 2015, a civil money penalty of \$55,907 may be imposed. 31 C.F.R. § 1010.821.

¹⁷ 31 U.S.C. § 5330(e)(1); 31 C.F.R. § 1022.380(e). For each willful violation of MSB registration requirements that occurs after November 2, 2015, a civil money penalty of \$8,249 may be imposed. 31 C.F.R. § 1010.821.

violation continues.”¹⁸ FinCEN may impose a penalty not to exceed the greater of the amount involved in the transaction (but capped at \$100,000) or \$25,000 for each willful violation of SAR or CTR requirements that occurs on or before November 2, 2015.¹⁹

FinCEN considered the severity and duration of the violations, and the fact that Mr. Powers conducted transactions as an unregistered MSB. Mr. Powers failed to meet any of his BSA obligations during the years covered in FinCEN’s investigation. FinCEN considered the fact that Mr. Powers facilitated transactions supporting illicit activity such as those including the darknet marketplace Silk Road. FinCEN also considered the size and sophistication of Mr. Powers’ operations as a peer-to-peer virtual currency money transmitter. Mr. Powers conducted millions of dollars in transactions with customers across the United States, and did not have an international customer base. FinCEN conducted a forensic financial audit of Mr. Powers ability to pay, which also included financial statements provided by Mr. Powers. FinCEN considered penalties, sanctions, and remedies imposed on Mr. Powers by other state or federal agencies, including civil or criminal forfeitures imposed in the amount of \$100,000 and 237.53575 bitcoin.²⁰ FinCEN also considered the extensive cooperation provided by Mr. Powers with FinCEN’s investigation. Finally, FinCEN considered its recent enforcement actions against other exchangers of convertible virtual currency, and other MSBs, and the likely impact of FinCEN’s action against Mr. Powers on compliance measures within the virtual currency industry. This includes the importance for peer-to-

¹⁸ 31 U.S.C. §§ 5321(a)(1) and 5330(e)(2); 31 C.F.R. § 1022.380(e).

¹⁹ For each willful violation that occurs after November 2, 2015, the ceiling is increased from \$100,000 to \$223,629, and the floor is increased from \$25,000 to \$55,907. 31 CFR § 1010.821.

²⁰ *United States of America v. Eric D. Powers*, JKB-15-854 (D. Md.).

peer virtual currency money transmitters to comply with the BSA and its implementing regulations regardless of the size and sophistication of their operations.

IV. CONSENT TO ASSESSMENT AND UNDERTAKINGS

Mr. Powers consents to the assessment of a civil money penalty in the amount of \$35,350.

Mr. Powers agrees to immediately and permanently cease providing “money transmission services,” as the term is defined in regulations implementing the BSA, and to not engage in any activity that would make him a “money services business” for purposes of regulations implementing the BSA. Mr. Powers agrees to not participate, directly or indirectly, in the conduct of the affairs of any “financial institution,” as the term is defined at 31 U.S.C. § 5312(a)(2), that is located within the United States or does business in the United States. Mr. Powers agrees that if FinCEN files a complaint against Mr. Powers seeking injunctive relief, he will consent to an order requiring him to comply with these undertakings.²¹

V. ADMISSIONS

Mr. Powers admits to the facts set forth in Section II of the CONSENT, that his conduct violated the BSA and that these violations of the BSA were willful. Mr. Powers understands and agrees that in any administrative or judicial proceeding that FinCEN may bring against him, including any proceeding in which FinCEN seeks civil money penalties or equitable remedies, Mr. Powers will be precluded from disputing the facts and violations of the BSA set forth in Section II of the CONSENT.

VI. RELEASE

Execution of the CONSENT, and compliance with the terms of the CONSENT, settles all claims that FinCEN may have against Mr. Powers for the conduct described in Section II of the

²¹ The BSA authorizes courts to impose equitable remedies for violations of the BSA. 31 U.S.C. § 5320.

CONSENT. Execution of the CONSENT, and compliance with the terms of the CONSENT, does not release any claim FinCEN may have for conduct by Mr. Powers other than the conduct described in Section II of the CONSENT, or any claim that FinCEN may have against any party other than Mr. Powers, including current or former employees or agents of Mr. Powers. Upon request, Mr. Powers 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 his current or former employees or agents.

Mr. Powers understands and agrees that the CONSENT embodies the entire agreement between the parties. He further understands and agrees that there are no express or implied promises, representations, or agreements between the parties other than those expressly set forth or referred to in the CONSENT, and that nothing in the CONSENT is binding on any other agency of government, whether Federal, State or local.

VII. PUBLIC STATEMENTS

Mr. Powers agrees that neither he, his employees nor any person authorized to speak on his behalf shall make any public statement contradicting either the acceptance of responsibility in the CONSENT or any fact set forth in Section II of the CONSENT. If a contradictory statement is made, Mr. Powers may avoid a breach of the CONSENT by repudiating the statement, in writing, within 48 hours. The foregoing restrictions do not apply to any statement made by an employee or agent of Mr. Powers in the course of any criminal, regulatory, or civil case initiated against such individual, unless Mr. Powers later ratifies such claims, directly or indirectly. Mr. Powers agrees that, upon notification by FinCEN, Mr. Powers will repudiate in writing statements made in such proceedings that are not ratified by Mr. Powers, to the extent the statements contradict either his acceptance of responsibility or any fact set forth in Section II of the CONSENT. FinCEN has sole discretion to determine whether any statement made by Mr. Powers, or by an employee of Mr.

