

U.S. Department of Justice



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NEWS RELEASE:

WACHOVIA ENTERS INTO DEFERRED PROSECUTION AGREEMENT

Bank Agrees to Pay \$160 Million

Wachovia Bank, N.A. ("Wachovia"), one of the largest banks in the United States, has entered into a deferred prosecution agreement with the U.S. Attorney's Office in the Southern District of Florida and the Asset Forfeiture and Money Laundering Section of the Criminal Division of the Department of Justice to resolve charges that it willfully failed to establish an anti-money laundering program. Today's agreement is the result of an investigation into Wachovia's transactions with Mexican currency exchange houses, commonly known as "casas de cambio" ("CDCs"), announced Jeffrey H. Sloman, United States Attorney for the Southern District of Florida, Lanny A. Breuer, Assistant Attorney General for the Criminal Division of the Department of Justice, Mark R. Trouville, Special Agent in Charge, Drug Enforcement Administration (DEA), Miami Field Division, Daniel W. Auer, Special Agent in Charge, Internal Revenue Service, Criminal Investigation Division ("IRS-CID"), John C. Dugan, Comptroller of the Currency, Office of the Comptroller of the Currency (OCC), and James H. Freis, Jr., Director, Financial Crimes Enforcement Network (FinCEN). The agreement also resolves Wachovia's admitted failure to identify, detect, and report suspicious transactions in third-party payment processor accounts.

A criminal information, filed March 12, 2010 and unsealed today, charges Wachovia with willfully failing to maintain an anti-money laundering program from May 2003 through June 2008, in violation of the Bank Secrecy Act ("BSA"). According to the information and other documents filed with the court today, including a detailed Factual Statement and a Deferred Prosecution Agreement ("the Agreement"), Wachovia failed to monitor for potential money laundering activity more than \$420 billion in financial transactions with the CDCs.

As part of the Agreement filed today, Wachovia has agreed to forfeit \$110 million to the United States, which represents proceeds of illegal narcotics sales that were laundered through Wachovia. FinCEN also assessed a \$110 million Civil Money Penalty that is deemed satisfied by the forfeiture to the U.S. government, for serious and systemic BSA violations. Moreover, pursuant to the terms of the Agreement and the OCC's separate Cease and Desist and Civil Money Penalty Orders, Wachovia has agreed to pay an additional \$50 million fine to the U.S. Treasury. The total sum of \$160 million is due within five days from the date of the Agreement.

In light of Wachovia's willingness to acknowledge responsibility for its actions and omissions, its cooperation and remedial actions to date, and its promised continued cooperation and remedial actions in the future, the government has agreed to defer prosecution of the criminal charge in the information for 12 months. If Wachovia fully complies with its obligations under the Agreement, the U.S. agrees to dismiss the criminal information at the end of the 12 months. Earlier today, the Agreement was accepted in federal court in Miami by U.S. District Judge Joan A. Lenard.

According to the documents filed with the court, Wachovia was aware, as early as 1996 and through 2004, of the high risk that drug money was being of laundered through the CDCs. Wachovia was also aware that other U.S. banks had stopped doing business with the CDCs because of these concerns. Wachovia, however, continued to expand its business with the CDCs. Indeed, from at least May 2004 through December 2007, Wachovia provided correspondent banking services to various Mexican CDCs, including wire transfer, bulk cash, and pouch and remote deposit capture services, among others.

According to the documents, Wachovia allowed CDCs to wire transfer funds through accounts at Wachovia to recipients throughout the world. Wachovia also offered a "bulk cash" service to CDCs, through which the CDCs collected large sums of dollars that would be physically transported to the United States for deposit. In addition, Wachovia offered a "pouch" deposit service and later, a "remote deposit capture" ("RDC") service, which allowed the CDCs to deposit at Wachovia items drawn on U.S. banks, including checks and traveler's checks, presented by their Mexican customers. According to the documents filed today, Wachovia did not have an effective anti-money laundering policy or procedure to monitor these transactions to detect and report potential money laundering activity, as required by the BSA. As a result, from May 1, 2004 through May 31, 2007, at least \$373 billion in wire transfers were made from the CDCs to Wachovia accounts; more than \$4 billion in bulk cash was transported from the CDCs in Mexico to accounts at Wachovia; and approximately \$47 billion was deposited at Wachovia accounts through the RDC service. These monies included millions of dollars that were subsequently used to purchase airplanes for narcotics trafficking operations. Ultimately, more than 20,000 kilograms of cocaine were seized from these airplanes.

According to court documents, Wachovia also maintained account relationships with certain third-party payment processors for the telemarketing industry from 2003 to 2008. These processors deposited more than \$418 million using remotely-created checks into Wachovia accounts on behalf of the telemarketers. Remotely-created checks are created when the holder of a checking account authorizes a payee to draw a check on that account but does not actually sign the check. In place of the account-holder's signature, the remotely-created check generally bears a statement that the customer authorized the check. These checks were often returned as "unauthorized" resulting in return rates that, in some cases, exceeded 40 percent of the deposited checks. Wachovia admitted that it failed to identify, detect, and report the suspicious transactions in the third-party payment processor accounts, as required by the BSA, due to deficiencies in its anti-money laundering program. Specifically, Wachovia failed to conduct appropriate customer due diligence by delegating most of this responsibility to business units instead of compliance personnel. Wachovia also failed to monitor high return rates for remotely-created checks and report suspicious wire transfer activity from the processors' accounts.

U.S. Attorney Jeffrey H. Sloman stated, "On the heels of the UBS international banking case, in which we held accountable the largest bank in Switzerland, today we announce the deferred prosecution of Wachovia, one of the largest banks in the United States. Wachovia's blatant disregard for our banking laws gave international cocaine cartels a virtual carte blanche to finance their operations by laundering at least \$110 million in drug proceeds. Corporate citizens, no matter how big or powerful, must be held accountable for their actions. Today's historic agreement makes it clear that such conduct will not be tolerated and imposes the largest penalty in any BSA case prosecuted to date."

"As this case demonstrates, financial institutions - no matter how large - will be held accountable when they allow dirty money to pollute the U.S. banking system," said Assistant Attorney General Lanny A. Breuer of the Criminal Division. "With billions of dollars flowing through our financial institutions each day, it is imperative that banks maintain robust anti-money laundering controls to identify possible illegal activity."

"A narcotics investigation always involves two things: drugs and money," said Mark R. Trouville, Special Agent in Charge, Drug Enforcement Administration, Miami Field Division. "DEA Agents and our law enforcement partners investigating a multi-national drug trafficking organization were able to seize drugs and identify the associated financial trail. Diligent investigative work exposed how this organization capitalized on weak anti-money laundering practices at Wachovia to further their drug trafficking abilities."

Daniel W. Auer, Special Agent in Charge of the IRS-CID in Miami, stated, "The law requires all banks, including Wachovia, to notify the Department of Treasury when they detect suspicious activity. By failing to maintain an adequate anti-money laundering program, Wachovia disregarded numerous financial transactions that should have raised "red flags" and caused their bank to act as a conduit to launder money."

"The practices targeted by today's enforcement actions reflect a totally unacceptable breakdown in the standards expected of banks' anti-money laundering systems and compliance. Today's actions by the OCC and other agencies demonstrate our firm commitment to the highest standards of compliance in this arena and the success of continued coordinated efforts by the Department of Justice, OCC, and FinCEN to ensure compliance with the requirements of the Bank Secrecy Act," said John C. Dugan, Comptroller of the Currency. "Financial institutions must maintain anti-money laundering compliance programs and policies that are adequate to identify, analyze and report suspicious activity and are commensurate with the risks being undertaken. With these actions, we are sending another strong message that we will not tolerate use of the U.S. financial system to launder illegal monies."

"In the recent past, Wachovia was the fourth largest commercial bank in the United States, and held itself out as a global leader in correspondent banking," said James H. Freis, Jr., FinCEN Director. "During FinCEN's joint investigation with our law enforcement and regulatory agency partners, it became evident that, despite such a prominent role in the domestic and international banking sectors and accompanying resources, Wachovia did not institute systems, controls and other measures to manage risk commensurate with the scope and magnitude of its products, services and business lines, particularly foreign correspondent banking."

Wachovia Bank will merge into Wells Fargo Bank later this month. The Agreement binds Wells Fargo, as Wachovia's successor, to continue to implement remedial measures to fully bring Wachovia into BSA compliance.

The CDC-portion of this matter was investigated by the DEA's Miami Field Division, IRS-CID's Miami Office, FinCEN, and OCC. The case is being prosecuted by Assistant U.S. Attorneys Andrea G. Hoffman and Jared E. Dwyer of the U.S. Attorney's Office for the Southern District of Florida. The investigation of the third-party payment processors was prosecuted by Trial Attorneys Constantine Lizas and Matthew Haslinger of the Criminal Division's Asset Forfeiture and Money Laundering Section. This portion of the case was investigated by the Internal Revenue Service Criminal Investigation, Philadelphia Field Office and the U.S. Postal Inspection Service, Philadelphia Division.

A copy of this press release may be found on the website of the United States Attorney's Office for the Southern District of Florida at www.usdoj.gov/usao/fls. Related court documents and information may be found on the website of the District Court for the Southern District of Florida at www.flsd.uscourts.gov or on <http://pacer.flsd.uscourts.gov>. A copy of the OCC's Consent Order to a Civil Money Penalty and to Cease and Desist can be found at the OCC's website at www.occ.gov. FinCEN's Assessment and Civil Money Penalty is available at www.FinCEN.gov.