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Financial Crimes Enforcement Network

FinCENnews



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Suspicious Activity Reporting Rule for Broker-Dealers Finalized

In a continuing effort to expand the coverage of suspicious activity reporting to all potentially vulnerable sectors of the financial services industry, today the Financial Crimes Enforcement Network (FinCEN) announced a new rule requiring brokers and dealers in securities to report suspicious activity. These firms will be obligated to report suspicious transactions that are conducted or attempted by, at, or through a broker-dealer and involve or aggregate at least \$5,000 in funds or other assets. The rule will be published in the Federal Register on July 1, 2002.

Specifically, the final rule requires brokers and dealers in securities to report to FinCEN a transaction if the broker-dealer knows, suspects, or has reason to suspect that it falls within one of four classes:

- transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds derived from illegal activity;
- transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act;
- transactions that appear to serve no business or apparent lawful purpose or are not the sort of transactions in which the particular customer would be expected to engage, and for which the broker dealer knows of no reasonable explanation after examining the available facts; or
- transactions intended to further a criminal purpose, but apparently involving legally-derived funds. (This category involves the use of the broker-dealer to facilitate criminal activity, including terrorism).

The final rule, which was drafted in consultation with the SEC, becomes effective on January 1, 2003. Broker-dealers already are required to establish anti-money laundering programs that, among other things, are designed to detect suspicious transactions, under recently promulgated self-regulatory organization (SRO) rules. The SEC has the authority to examine broker-dealers for compliance with the rule, and it is expected that the SROs will also be reviewing compliance as part of the enforcement of their rules.

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“The SEC and the SROs have taken important steps to address money laundering concerns at broker-dealers,” said James F. Sloan, Director of FinCEN. “It was critical that we all work together to strike the appropriate balance and I believe in drafting the final rule we have benefited from their efforts in this area. We look forward to our continued dialogue as we move forward toward implementation of the rule.”

The USA Patriot Act addresses the issue of suspicious transaction reporting by broker-dealers in section 356 of Title III. Both the proposed rule, which was published on December 31, 2001 and the final rule, to be published July 1, 2002, have met the deadlines specified by the USA Patriot Act.

Depository institutions have been required to report suspicious activity since April 1, 1996. Broker-dealers that are affiliates of banks or bank holding companies have also been required to report suspicious activity since that time. Certain money services business fell under SAR requirements beginning January 1, 2002. In addition, FinCEN has proposed a SAR rule for casinos and card clubs.

A copy of the final rule may be found on FinCEN’s website under “What’s New” at www.fincen.gov

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