

**Office of Thrift Supervision**Department of the Treasury *Managing Director, Examinations, Supervision, and Consumer Protection*

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January 20, 2006

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS**FROM:**

Scott M. Albinson

SUBJECT:

Interagency Guidance on Sharing Suspicious Activity Reports

The Office of Thrift Supervision (OTS), along with the Financial Crimes Enforcement Network (FinCEN) and the other federal banking agencies, issued guidance today on sharing Suspicious Activity Reports (SAR) with head offices or holding companies (copy attached).

The guidance confirms that a U.S. branch or agency of a foreign bank may share a SAR with its head office outside the United States. Likewise, a bank or savings association may disclose a SAR to its holding company, no matter where the entity is located. The guidance further addresses the need for depository institutions to have written confidentiality agreements or arrangements in place specifying that the head office or holding company must protect the confidentiality of the SAR through appropriate internal controls.

If you have any questions about this guidance or any other BSA/USA PATRIOT Act related issue, please contact your OTS regional office. You may also call our USA PATRIOT Act phone line at (202) 906-6012, or consult our BSA/Patriot Act web resource page found at <http://www.ots.treas.gov>.

Attachment

**Financial Crimes Enforcement Network
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision**

January 20, 2006

Interagency Guidance on Sharing Suspicious Activity Reports with Head Offices and Controlling Companies

The Financial Crimes Enforcement Network, along with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the “Federal Banking Agencies”) is issuing this guidance to confirm that under the Bank Secrecy Act and its implementing regulations (and parallel provisions issued by the Federal Banking Agencies): (1) a U.S. branch or agency of a foreign bank may disclose a Suspicious Activity Report to its head office outside the United States; and (2) a U.S. bank or savings association (“depository institution”) may disclose a Suspicious Activity Report to controlling companies¹ whether domestic or foreign. This guidance does not address the applicability of any other Federal or state laws.

The Bank Secrecy Act prohibits the filer of a Suspicious Activity Report from notifying any person involved in the suspicious transaction that the transaction has been reported.² Implementing regulations issued by the Financial Crimes Enforcement Network have construed this confidentiality provision as generally prohibiting a banking organization from disclosing the existence of a Suspicious Activity Report except where such disclosure is requested by appropriate law enforcement agencies, bank supervisory agencies, or the Financial Crimes Enforcement Network.³ In addition, the Federal Banking Agencies’ regulations, issued pursuant to Title 12 of the United States Code, state that “Suspicious activity reports are confidential.”⁴

¹ A controlling company is defined as:

- a) a bank holding company, as defined in Section 2 of the Bank Holding Company Act;
- b) a savings and loan holding company, as defined in Section 10(a) of the Home Owners’ Loan Act.

For purposes of this guidance, a controlling company also includes a company having the power directly or indirectly, to direct the management or policies of an industrial loan company or a parent company or to vote 25% or more of any class of voting shares of an industrial loan company or a parent company.

² See 31 U.S.C. 5318(g)(2) and 31 C.F.R. § 103.18(e).

³ See 31 C.F.R. § 103.18(e).

⁴ See 12 C.F.R. § 353.3(g) [Federal Deposit Insurance Corporation]; 12 C.F.R. § 208.62(j) [Board of Governors of the Federal Reserve System]; 12 C.F.R. § 21.11(k) [Office of the Comptroller of the Currency]; 12. C.F.R. § 563.180(b)(12) [Office of Thrift Supervision].

A depository institution that files a Suspicious Activity Report may disclose to entities within its organization information underlying the filing (that is, information about the customer/suspect and transaction(s) reported). However, neither the Financial Crimes Enforcement Network nor the Federal Banking Agencies have taken a definitive position concerning whether a depository institution is permitted under the Bank Secrecy Act and Federal Banking Agency regulations to share or disclose to entities within its corporate structure, the Suspicious Activity Report itself or the fact that a Suspicious Activity Report was filed.⁵ The answer to this question has become a critical issue, particularly in a global context.

We have carefully considered this issue, taking into account the need for a head office, controlling entity or party to discharge its oversight responsibilities with respect to enterprise-wide risk management and compliance with applicable laws and regulations. To fulfill those responsibilities, head offices and controlling entities or parties may have a valid need to review a branch's, office's, or depository institution's compliance with legal requirements to identify and report suspicious activity. Accordingly, we have determined that a U.S. branch or agency of a foreign bank may share a Suspicious Activity Report with its head office outside the United States for these purposes. Similarly, a U.S. bank or savings association may disclose a Suspicious Activity Report to its controlling company, no matter where the entity or party is located. In the event that a depository institution's corporate structure includes multiple controlling companies, the filing institution's Suspicious Activity Report may be shared with each controlling entity.⁶

There may be circumstances under which a depository institution would be liable for direct or indirect disclosure by its controlling company or head office of a Suspicious Activity Report or the fact that a Suspicious Activity Report was filed. Therefore, the depository institution, as part of its anti-money laundering program, must have written confidentiality agreements or arrangements in place specifying that the head office or controlling company must protect the confidentiality of the Suspicious Activity Reports through appropriate internal controls.

The sharing of a Suspicious Activity Report with a non-U.S. entity raises additional concerns about the ability of the foreign entity to protect the Suspicious Activity Report in light of possible requests for disclosure abroad that may be subject to foreign law. These concerns will need to be addressed in the confidentiality agreements or arrangements. The recipient head office, controlling entities or parties may not disclose further any Suspicious Activity Report, or the fact that such report has been filed; however, the institution may disclose without permission underlying information (that is,

⁵ However, the Federal Banking Agencies' regulations require notification of the filing of Suspicious Activity Reports to boards of directors, whether domestic or global. *See* 12 C.F.R. § 353.3(f) [Federal Deposit Insurance Corporation]; 12 C.F.R. § 208.62(h) [Board of Governors of the Federal Reserve System]; 12 C.F.R. § 21.11(h) [Office of the Comptroller of the Currency]; 12 C.F.R. § 563.180(b)(9) [Office of Thrift Supervision].

⁶ It should be noted that the requirement that knowledge of a Suspicious Activity Report's filing may not be disclosed to the controlling entity or party remains, even under this guidance, if there is a reason to believe it may be disclosed to any person involved in the suspicious activity that is the subject of the Suspicious Activity Report.

information about the customer and transaction(s) reported) that does not explicitly reveal that a Suspicious Activity Report was filed and that is not otherwise subject to disclosure restrictions.

The Financial Crimes Enforcement Network and the Federal Banking Agencies are considering whether a depository institution may share a Suspicious Activity Report with an affiliate other than a controlling company or head office, both in instances where the affiliate is located inside the United States and where the affiliate is located abroad. We expect to issue guidance on this issue shortly; but, until such time, depository institutions should not share Suspicious Activity Reports with such affiliates.