

Review of the Impact of FinCEN's Final Rule on the Confidentiality of Suspicious Activity Reports

June 29, 2012

As part of its continuing efforts to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies, the Financial Crimes Enforcement Network (FinCEN) has committed to reviewing and evaluating the continued appropriateness and impact of its rulemakings. On January 3, 2011, FinCEN's final rule [Confidentiality of Suspicious Activity Reports](#) became effective. In addition to the rule, FinCEN concurrently published the following related advisories and guidance: [Maintaining the Confidentiality of Suspicious Activity Reports](#) (SARs); guidance for depository institutions ([Sharing Suspicious Activity Reports by Depository Institutions with Certain U.S. Affiliates](#)) and for the securities and futures industries ([Sharing Suspicious Activity Reports by Securities Broker-Dealers, Mutual Funds, Futures Commission Merchants, and Introducing Brokers in Commodities with Certain U.S. Affiliates](#)) and; [Notice of Availability of Final Interpretative Guidance – Sharing Suspicious Activity Reports by Depository Institutions and Securities Broker-Dealers, Mutual Funds, Futures Commission Merchants, or Introducing Brokers in Commodities With Certain U.S. Affiliates](#).

These documents emphasize the importance of confidentiality for maintaining a vigorous suspicious activity reporting regime, and were intended to remind FinCEN's stakeholders of the need to be vigilant in managing information sharing. The new guidance allowed for the sharing of a SAR with a domestic affiliate, provided that affiliate is itself subject to a SAR rule. The guidance clarified that sharing with foreign affiliates is not permitted at this time.

On February 4, 2011, FinCEN released a [statement](#) noting the release of the Egmont Group's White Paper: [Enterprise-wide STR Sharing: Issues and Approaches](#) which was designed to elicit further multilateral discussion of the issues surrounding the international sharing and protection of Suspicious Transaction Reports (STRs), known in the United States as SARs.

In furtherance of its domestic efforts, on March 2, 2012, FinCEN issued an advisory, [SAR Confidentiality Reminder for Internal and External Counsel of Financial Institutions](#), to remind financial institutions, and in particular, the lawyers that advise them, of the requirement to maintain the confidentiality of SARs. In addition, FinCEN's Director regularly issues a [statement](#) to remind all stakeholders of the need to take appropriate steps to safeguard FinCEN data and to comply with the confidentiality requirements associated with SARs.

FinCEN's Regulatory Helpline received 507 SAR confidentiality-related inquiries in the 12 months prior to and the 16 months following the issuance of the November 2010 SAR Confidentiality Final Rule. In the 12 months prior to the issuance of the Final Rule, the Helpline received 169 SAR confidentiality-related inquiries, an average of 13 per month. In comparison, in the 16 months following the issuance of the Final Rule, the Helpline received 338 SAR confidentiality-related inquiries, an average of 18 per month. The increase in the number of inquiries indicates a greater interest in understanding and applying the new rule, ensuring SAR confidentiality. FinCEN reviewed the SAR confidentiality-related inquiries received from

depository institutions, money services businesses, the securities and futures industries, regulators, individuals, and other financial institutions to identify the quantity and nature of the common SAR confidentiality-related inquiries. In both the preceding 12-month period as well as the following 16-month period of the review, depository institutions accounted for 73 percent, or 369 of the 507 SAR confidentiality-related inquiries.

Prior to the issuance of the Final Rule, there were common themes identified in the inquiries received on the Helpline. About 53 percent (90 inquiries) of callers were seeking assistance in appropriately responding to subpoenas received from lawyers. Another 22 percent (38) were seeking assistance in responding to law enforcement requests for SARs, while 15 percent (26) were seeking assistance in determining their ability to share SARs with auditors and regulators. There were similarities also in the themes for inquiries received after the issuance of the Final Rule. About 41 percent (140) of callers were seeking assistance in appropriately responding to subpoenas received from lawyers. Callers seeking assistance in responding to law enforcement requests for SARs increased to 32 percent (108), while callers seeking assistance in determining their ability to share SARs with auditors and regulators decreased to 8 percent (28). Another 8 percent of callers were seeking assistance with sharing SARs with their institutions' legal counsel.

In coordination with our law enforcement and regulatory partners and other components of Treasury, FinCEN continues to discuss SAR sharing issues with industry and international standard setting bodies, such as the Egmont Group of Financial Intelligence Units, the Financial Action Task Force, and the Basel Committee on Banking Supervision.