Department of the Treasury
Financial Crimes Enforcement Network

January 20, 2006

Guidance on Sharing of Suspicious Activity Reports by Securities Broker-Dealers, Futures Commission Merchants, and Introducing Brokers in Commodities

The Financial Crimes Enforcement Network, after consulting with staff of the U.S. Securities and Exchange Commission and the Commodity Futures Trading Commission, is issuing this guidance to confirm that, under the Bank Secrecy Act and its implementing regulations, securities broker-dealers, futures commission merchants, and introducing brokers in commodities may share Suspicious Activity Reports with parent entities, both domestic and 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.[1] Implementing regulations issued by the Financial Crimes Enforcement Network have construed this confidentiality provision as generally prohibiting a securities broker-dealer, futures commission merchant, or introducing broker in commodities from disclosing the existence of a Suspicious Activity Report, except where such disclosure is requested by appropriate law enforcement agencies, securities and futures industry regulatory agencies or self-regulatory organizations, or the Financial Crimes Enforcement Network.

A securities broker-dealer, futures commission merchant, or introducing broker in commodities 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 the transaction(s) reported). However, the Financial Crimes Enforcement Network has not taken a definitive position concerning whether a securities broker-dealer, futures commission merchant, or introducing broker in commodities is permitted under the Bank Secrecy Act to share or disclose to entities within its larger corporate structure, the Suspicious Activity Report itself or the fact that a Suspicious Activity Report was filed. The answer to this question has become a critical issue, particularly in a global context.

We have considered this issue carefully, taking into account the need for a parent entity to discharge its oversight responsibilities with respect to enterprise-wide risk management and compliance with applicable laws and regulations. To fulfill those responsibilities, parent entities may have a valid need to review compliance by a

[1] *See* 31 U.S.C. § 5318(g)(2) and 31 C.F.R. §§ 103.17(e) and 103.19(e).

securities broker-dealer, futures commission merchant, or introducing broker in commodities which has legal requirements to identify and report suspicious activity. Accordingly, we have determined that a securities broker-dealer, futures commission merchant, or introducing broker in commodities may share a Suspicious Activity Report with parent entities, both domestic and foreign, for these purposes. In the event that the corporate structure of a securities broker-dealer, futures commission merchant, or introducing broker in commodities includes multiple parent entities, the filing institution's Suspicious Activity Report may be shared with each entity in the chain of control.

There may be circumstances under which a securities broker-dealer, futures commission merchant, or introducing broker in commodities would be liable for direct or indirect disclosure of a Suspicious Activity Report by a recipient parent entity, or the fact that a Suspicious Activity Report had been filed. Therefore, the securities broker-dealer, futures commission merchant, or introducing broker in commodities, as part of its anti-money laundering program, must have written confidentiality agreements or arrangements in place specifying that the parent entity (or entities) 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 foreign parent entity (or entities) may not disclose further any Suspicious Activity Report, or the fact that such report has been filed; however, the foreign parent entity (or entities) may disclose without permission underlying information (that is, 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, in consultation with staff from the Securities and Exchange Commission and the Commodity Futures Trading Commission, is considering whether a securities broker-dealer, futures commission merchant, or introducing broker in commodities may share a Suspicious Activity Report with an affiliate other than its parent entities, 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, securities broker-dealers, futures commission merchants, and introducing brokers in commodities should not share Suspicious Activity Reports with non-parent entities.