



Securities Industry Association

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February 10, 2006

Via Email

Mr. Sam L. Abram
Secretary of the Banking Board
New York State Banking Department
One State Street
New York, NY 10004-1417

Re: Proposed New Part 302 of the Superintendent's Regulations (Reporting of Suspicious Transactions)

Dear Mr. Abram:

The Securities Industry Association ("SIA")¹ appreciates this opportunity to comment on the Superintendent of Banks' proposed new part 302 of the Superintendent's Regulations, which would make every organization licensed or registered under the Banking Law of New York, or any agent thereof, that is also subject to existing or future federal Suspicious Activity Reporting ("SAR") requirements subject to identical state-reporting requirements.² We are commenting because many of our member firms are affiliated with banks, and because of the important policy issues raised by the proposal.

At the outset, we would like to commend the Superintendent's efforts to combat money laundering and terrorist financing. SIA recognizes that state regulators play an important role in the fight against money laundering and the financing of terrorist

¹ The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated \$236.7 billion in domestic revenue and an estimated \$340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

² These comments respond to the proposed rule at NYS Reg. 3 (Dec. 28, 2005), available at <http://www.dos.state.ny.us/info/register/2005/dec28/pdfs/Rules.pdf>.

activities. SIA supports increased coordination between federal and state regulators in those efforts.

SIA and its member firms are strongly committed to the detection and prevention of money laundering and the financing of terrorist activity. Even prior to the passage of the Patriot Act³, many SIA members that were not covered by the existing regulations voluntarily filed SARs. Many members also developed sophisticated anti-money laundering procedures and internal controls to detect and deter such illicit activity. SIA has also worked diligently with its member firms to facilitate implementation of the Patriot Act regulations and develop industry-wide anti-money laundering education. Since the enactment of the Patriot Act, SIA has continued to work closely with federal regulators to develop sound and effective rules to protect our members from being used to facilitate money laundering or terrorist financing.

We understand that gathering sufficient information in order to effectively identify suspicious activity that is conducted through a financial institution, but where the financial institution is not the victim, continues to be a challenge for many state regulators. We do not agree, however, with the assertion that there is a compelling need for enactment of new state law that requires financial institutions to submit to the Superintendent duplicate copies of SARs filed with the Financial Crimes Enforcement Network ("FinCEN"). As discussed in further detail below, we believe that the proposed new rule is contrary to Congressional intent, as evidenced by periodic amendments to the Bank Secrecy Act (BSA) to reduce regulatory reporting burdens on financial institutions. Further, the Superintendent should already have direct, on-line access to the SAR reports that are the subject of the proposed new rule.

I. Requiring Financial Institutions to Submit Identical Information to Multiple Regulators is Inconsistent with the Intent of the Bank Secrecy Act

The Bank Secrecy Act authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters to protect against international terrorism, such as SARs.⁴ The BSA was amended by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994⁵, to require designation of a *single* government recipient for reports of suspicious transactions in

³ *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* ("Patriot Act") Pub. L. No. 107-56 (2001).

⁴ 31 U.S.C. 5311 *et seq.*

⁵ Pub. L. No. 103-325, 108 Stat. 2160, 2245 (1994)(codified as amended at 31 U.S.C. 5318(g)).

order to, among other things, alleviate duplicative regulatory burdens on financial institutions.⁶

The Secretary of the Treasury designated FinCEN as the government recipient for SARs. In turn, FinCEN is responsible for referring SARs to “any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”⁷ In this manner, Congress evidenced its intent that financial institutions be allowed to focus on such activities as providing credit to consumers and working to deter and detect money laundering rather than overwhelming financial institutions with the costs of regulatory obligations that were duplicative or inefficient.⁸

In short, this proposal is burdensome, and the administrative time spent by financial institutions in filing the duplicative SARs would detract from time spent on other ways to combat money laundering.

II. FinCEN Already Provides Access to SARs filed by Financial Institutions to all State Regulators, including New York, as part of FinCEN’s mandate to Facilitate Regulatory Coordination

FinCEN recognizes that state regulators are an important part of the fight against money laundering and financing of terrorist activities. In order to facilitate national coordination and information sharing with state regulators, FinCEN established Project Gateway in September of 1993.⁹ By the end of 1994, all 50 states and the District of Columbia were participating in the Gateway program and, in 1997, Puerto Rico was included in the program.¹⁰

⁶ See generally, Riegle Community Dev. & Reg. Improvement Act of 1994 Legis. History 53 (A&P)(Westlaw).

⁷ 31 U.S.C. 5318(g)(4)(C).

⁸ See generally, Riegle Community Dev. & Reg. Improvement Act of 1994 Legis. History 53 (A&P)(Westlaw).

⁹ See Financial Crimes Enforcement Network, *Project Gateway, Identifying and Tracing Criminal Proceeds at the State and Local Levels, 1998 Annual Report* (1998), available at <http://www.fincen.gov/gwyrpt98.pdf>; see also Financial Crimes Enforcement Network, *Law Enforcement/Gateway*, http://www.fincen.gov/le_gateway.html (last visited Feb. 3, 2006).

¹⁰ See Financial Crimes Enforcement Network, *Project Gateway, Identifying and Tracing Criminal Proceeds at the State and Local Levels, 1998 Annual Report* (1998), available at <http://www.fincen.gov/gwyrpt98.pdf>.

Through the Gateway program, designated state and local law enforcement agencies have direct electronic access to the information required to be submitted to FinCEN by financial institutions under the Bank Secrecy Act.¹¹ Included among the types of information available are SARs, Currency Transaction Reports (“CTRs”), Reports of International Transportation of Currency or Monetary Instruments (“CMIRs”), Reports of Foreign Bank and Financial Accounts (“FBARs”) and the status of federal, state and local investigations relating to reports filed.¹²

The Gateway program eliminates the regulatory burden on financial institutions that forwarding copies of SARs to multiple regulators would impose. Gateway saves state regulatory investigative time and effort by enabling investigators to conduct their own research and analysis of SAR data through a secure channel, without having to request such reports from FinCEN.¹³ Gateway also automatically signals FinCEN when two or more agencies have an interest in the same subject, facilitating FinCEN’s ability to assist participating agencies in coordinating their investigations and reducing duplicative regulatory efforts.¹⁴

Furthermore, the proposal’s additional filing requirement increases the chances of an inadvertent disclosure of a SAR, and thereby of sensitive information getting into the wrong hands.

III. Increased Coordination Among FinCEN and the State Regulators Relating to SARs would be a Preferable Alternative to the Proposed Rule

As mentioned above, SIA is committed to assisting regulators implement anti-money laundering rules through a risk-based approach that facilitates coordination between and among regulators, whether at the international, federal or state and local level. SIA and its member firms believe that requiring financial institutions to submit to the Superintendent copies of reports filed with a federal regulator, instead of using the Gateway program established by FinCEN to facilitate coordination between regulators, creates a bad precedent for future state regulatory rulemaking. If other states were to enact similar requirements, financial institutions would be forced to waste resources sorting through various state requirements and filing a host of duplicate SARs each time they identified reportable suspicious activity.

Coordination is particularly necessary with respect to the broader financial services industry because many of the financial institutions that would be subject to the

¹¹ *Id.*

¹² *Id.*

¹³ See Financial Crimes Enforcement Network, *Law Enforcement/Gateway*, http://www.fincen.gov/le_gateway.html (last visited Feb. 3, 2006).

¹⁴ *Id.*

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Superintendent's proposed new rule are also subject to the jurisdiction of multiple other regulatory agencies, at the federal, state and local level. To the extent that other regulatory agencies -- in addition to state banking regulators -- initiate similar rulemaking, these financial institutions would be subject to further duplicative and unnecessary regulatory reporting requirements.

In sum, duplicative filing requirements create much administrative burden for financial institutions and increase the chances of inadvertent disclosure, while providing no real added benefit for regulators.

Coordination between regulatory agencies will help assure that financial institutions are not subject to duplicative rules, overlapping regulatory inquiries, varying interpretations and multiple enforcement actions. Such a coordinated approach will allow regulators to avoid duplicative efforts and allocate investigative resources efficiently to combat illicit activity.

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If you wish to receive additional information related to our comments, please feel free to contact the undersigned or Beth Kiesewetter of Morgan Lewis & Bockius LLP (202-739-5127).

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel
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