



Invested in America

December 14, 2010

BY EMAIL TO: regcomments@fincen.treas.gov

Regulatory Policy and Programs Division
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183
Attn: PRA Comments—BSA-SAR Database

Re: Bank Secrecy Act Suspicious Activity Report Database Proposed Data Fields

Dear Director Freis:

The Securities Industry and Financial Markets Association (SIFMA)¹ appreciates the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN) proposed data fields within the Bank Secrecy Act (BSA) Suspicious Activity Report (SAR) Database (the Proposal).² We understand that the Proposal is intended to elicit responses on technical and other matters as FinCEN transitions to a modernized IT environment for electronic reporting to create a more robust and dynamic interface with reporting financial institutions and increase the value of information obtained by FinCEN to benefit law enforcement.

SIFMA and our member firms strongly support the efforts of FinCEN to modernize electronic BSA reporting. SIFMA and our member firms are firmly committed to doing everything that we can do to be effective in detecting and reporting suspicious activity.

While SIFMA remains supportive of FinCEN's overall goals, we believe that additional clarification of the Proposal is necessary in order to provide helpful comments to the proposal and precise responses to FinCEN's request for IT assessments. We also believe there needs to be a more in-depth understanding by FinCEN of the capabilities, limitations and challenges associated with the various case management systems and the e-filing processes employed by

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

² Notice of Filing and Request for Comments, Bank Secrecy Act Suspicious Activity Report Database Proposed Data Fields (Oct. 15, 2010), available at <http://edocket.access.gpo.gov/2010/pdf/2010-26038.pdf>.

firms. Often times, these systems are substantially configured and customized to support the particular data elements and source systems specific to the firms that utilize them. As a result, there are likely to be significant and diverse technology-related requirements necessary to comply with multiple aspects of the Proposal.

SIFMA believes that FinCEN should spend more time developing a high level understanding of the configuration of the various firm systems before continuing with this project. As you will see from our discussion below, it is difficult for firms to respond to the request for comments without additional input and clarification from FinCEN with respect to the systems changes and usage of the proposed fields and attachments, and challenging for firms to accurately estimate capital or costs associated with the start-up, operation, maintenance of a new IT environment, including training costs, without more input from FinCEN. Accordingly, we recommend that FinCEN temporarily suspend the Proposal while it engages in additional dialogue with the industries affected.

SIFMA has been invited to specifically comment on certain questions, which we address below. In addition, we have attached an appendix of initial comments specifically directed to the lines for completion in the database:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility

SIFMA understands that FinCEN believes many of the new proposed fields and options will enhance FinCEN's ability to analyze reported information for meaningful trends across different industries and should provide the ability to provide more accurate and actionable information. However, while SIFMA is supportive of FinCEN's goals and of the potential added utility to SAR reviewers resulting from further describing suspicious activity, in our view, the newly requested fields will create a significant burden and engender unrealistic expectations around data collection.

SIFMA questions whether, given the resources and information FinCEN already has available, the incremental benefit to FinCEN and law enforcement outweighs the heavy additional burden placed on firms in the process and technology space. SIFMA is concerned that the addition of numerous fields will cause substantial costs to financial institutions that will be required to integrate existing software with the new BSA-SAR Database. Further, SIFMA believes that the lack of clarity around certain of the proposed sub-categories of suspicious activity, as well as the other proposed fields, will delay the processing of SARs, likely create inconsistencies in the usage of the fields among the reporting financial institution population, and is not necessary for the proper performance of the functions of FinCEN. As a result, we believe that this new process will have an adverse impact on the utility of the information being collected, while at the same time creating an undue burden on the financial institutions.

For example, SIFMA questions whether the proposed additional information required, such as breaking down “structuring” and other suspicious activity into multiple subcategories, is essential for the proper performance by FinCEN of its mandate or is essential for financial institutions to comply with their BSA obligation to report suspicious activity. If firms are uncertain as to the type of suspicious activity involved, but they have reason to suspect it is a certain type of suspicious activity, it is not clear whether firms would have to perform additional due diligence to ascertain the subcategory of suspicious activity. If that is the case, this new obligation could extend the time associated with the SAR reporting process, and place additional stresses on the SAR filing process. Further, we are concerned that reporting financial institutions might be exposed to unnecessary heightened regulatory risk during examination with respect to the subcategories of activities that are selected and, as a result, may opt to select the “Other” category instead, providing the detail in the narrative and thereby defeating the purpose of the newly proposed fields.

To mitigate the burden on firms of gathering data, which is not currently gathered and to avoid the possible over usage of the “Other” category as a default selection, we recommend that FinCEN reduce the number of mandatory fields involved, and provide firms with more flexibility in completing the SAR data information. In addition, we request that FinCEN issue specific guidance with respect to this particular issue.

In any event, it appears to SIFMA members that, in order for the description of the activity to be complete, some of the data in the narrative would also be included in the proposed new fields, thereby creating duplicative information which would not enhance FinCEN’s ability to perform its function. Since FinCEN and multiple law enforcement and regulatory agencies have the ability to data mine the narrative, SIFMA questions whether the benefit of having the information in the new proposed fields, instead of, or in addition to, the narrative, outweighs the burden on firms from a process and technology standpoint. As stated above, requiring additional due diligence to identify further detail as to the subcategory of suspicious activity will add time to the investigations process and may not have the intended positive result.

Finally, SIFMA has serious concerns that the addition of new fields will lead to new obligations on the firm’s monitoring systems and does in fact propose new regulatory requirements and changes to the requirements related to suspicious activity reporting. Although the Proposal does not purport to change the BSA reporting requirements, as stated above, SIFMA has serious concerns that the addition of new fields will create additional obligations on financial institutions, as well as enhanced scrutiny of these multiple activity types by regulators, auditors, and compliance staff leading to new obligations on the firm’s monitoring systems designed to identify such activity, as well as additional procedures for documentation of the methods by which such types of activities were selected. We submit that the proposed fields are not necessary for FinCEN to satisfy its mission to the extent that financial institutions are

currently able to add a narrative that, consistent with previous FinCEN guidance, contains a full descriptions of the activities being reported. We believe that law enforcement is in a better position to determine the subcategory of suspicious activity, as they presently do from the existing narrative.

(b) The accuracy of the agency's estimate of the burden of the collection of information

FinCEN estimates the reporting burden at 60 minutes per report and 60 minutes recordkeeping per filing (2 hours total).³ FinCEN also estimates a reduction of the number of reports filed by 50% for joint filing. SIFMA believes that FinCEN has drastically underestimated the reporting burden and that the estimate is inconsistent with the amount of time necessary to complete SAR filings. Moreover, it is our view, that while the ability to file joint SARs is a helpful provision, we do not believe that, in the securities industry, this will reduce the number of SARs filed, since the firms already use the joint SAR in those cases where it is appropriate.

Assuming that there is an expectation that reporting financial institutions must monitor for suspicious activities at the subcategory level, the Proposal fails to address the time and resources that would need to be spent enhancing the customer and transactional systems of record so that they are effectively formatted to provide the information needed to perform transaction monitoring, customer surveillance, and investigations, consistent with the proposed fields. Also, the Proposal fails to consider the time and resources spent before the stages of reporting and recordkeeping in the SAR process, including the alerting and investigation processes, and manual and technology-driven systems supporting those processes. Compliance with the Proposal would require firms to review or consider millions of customers and customer transactions on a daily basis, to alert on or refer for investigations only those that meet internal requirements, and then to investigate some of those in order to determine if the activity is suspicious, and thus reportable.

For example, proposed field 36 lists six subcategories of Structuring and an additional subcategory of "Other". As the current BSA regulations only require broker dealers to report known or suspected transactions that may be a violation of law, and do not require a final conclusion as to the type of illegality involved, FinCEN has not adequately considered the time and resources necessary to investigate activity to the degree necessary to properly identify the correct subcategory of Structuring nor the time and resources need to re-configure reporting financial institutions' monitoring systems to detect the seven subcategories of Structuring. While this example illustrates some of the concerns, the other subcategories of suspicious

³ *Id.*

activity would also affect the monitoring and investigatory time to identify proper subcategories of suspicious transactions.

Moreover, given the limited time to comment on the proposed rule and to research the technology changes required to implement the rule, firms are facing significant challenges in providing accurate and fulsome estimates of the costs of updating and managing new systems, training personnel, and developing and implementing these changes. Therefore, once FinCEN provides additional clarification of its proposal, SIFMA requests an extended time to comment on the proposal. In addition, SIFMA recommends that FinCEN allocate a minimum of 18 months following the adoption of a final rule to implement any changes related to this proposal in order to allow for reporting financial institutions to adequately enhance and test their customized case management systems

Additionally, although the Proposal indicates batch and computer-to-computer filing processes will remain unchanged, it also indicates that batch and computer-to-computer will file reports based on an electronic file specification that will be finalized after reviewing public comments received in response to the notice of proposed rule making. SIFMA member firms have indicated that it is difficult to estimate the costs relative to this proposal without knowing the electronic file specification.

However, some SIFMA member firms' technology systems groups have provided a cost estimate of what it would take to upgrade existing technology to house all of the existing data fields and the electronic magnetic file for batch filing. These firms have indicated that because the Proposal would require a complete migration of all existing data into a new database and a redesign from their vendors (or new vendors) of the database software, as well as testing and roll-out of such upgrades, it would likely cost a minimum of \$1.5 million to comply. Many vendors have stated explicitly that they will not commit to upgrading their software in compliance with the Proposal and cannot place a ballpark estimate on what it would cost. If other vendors take the same approach, it will mean hundreds if not thousands of financial institutions (this includes both securities industries and banking institutions) potentially needing to obtain new vendors.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected

In order to enhance the quality and utility of the information to be collected, SIFMA believes that FinCEN will need to provide detailed guidance associated with when the proposed fields should be used and when it is appropriate to include an attachment and for what purpose. Further, as noted above, SIFMA believes that the proposed fields will contain information that is potentially duplicative of information that is included in the narrative and recommends that guidance be issued to describe what should be included in the narrative, and when the narrative information may be used in lieu of completing certain boxes.

Also, as previously noted, SIFMA is concerned that any lack of clarity related to the new proposed fields will have an adverse impact on the quality and utility of the information being collected due to inconsistent usage of the fields among the reporting financial institution population and will inhibit FinCEN's goal of identifying meaningful trends across different industries.

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology

SIFMA is not aware of any ways to minimize the burden of collection of information on respondents, but we are open to discuss any possible methods with FinCEN. SIFMA believes for this project to be successful there must be improved communication to impacted financial institutions regarding proposed technology changes and new collection requirements. The revised e-filing data transmission requirements mandated in the Winter of 2009 were not well communicated to impacted institutions prior to their implementation and created hardships on multiple financial institutions to comply with the new requirements in a timely manner. It is important to avoid similar issues in the current situation.

(e) Estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

As stated above, SIFMA member firms have indicated that it is difficult to estimate the costs relative to this proposal at this time, without knowing the electronic file specification.

* * *

Director Freis
Financial Crimes Enforcement Network
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Thank you for giving SIFMA the opportunity to comment on the Proposal. We look forward to the continued partnership between government and industry to strengthen the regulatory structure surrounding securities firms and other U.S. financial institutions. We are available to meet with FinCEN staff, if they would like, to discuss these complicated issues. If you have any questions regarding this comment or any related issues, please contact the SIFMA staff advisor to the Anti-Money Laundering & Financial Crimes Committee, Ryan Foster, at 202.962.7388 or rfoster@sifma.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Foster', with a stylized flourish at the end.

Ryan D. Foster
Manager, SIFMA
Office of General Counsel

APPENDIX – Specific Comments on Data Fields

***FinCEN must provide detailed guidance on how to complete the fields, including relevant meaning of terms.**

- Field 1 – Type of Filing: Further explanation is needed on the application of option c and joint reporting. Ensure consistent terminology (Is “Continuing Activity Report” the same as prior “Supplemental Report”?).
- Field 1 – Further clarification is necessary regarding SARs filed before the proposed modernization of the IT environment vs. supplemental SARs filed after the proposed database enhancements. Clarification is required to further explain if reporting institutions are required to correct previous SARs to provide the additional fields that were not available when the original SAR was filed before the IT modernization. Further, we believe that the new fields would have limited practical utility and questionable data quality if the original SAR doesn't have the same level of information as the supplemental SARs filed after the IT modernization.
- Are institutions required to correct previous SARs to provide the additional fields? What practical utility will the new fields have on supplemental SARs if the original SAR doesn't have the same level of information? Will there be questionable data quality if analyzing activity types from pre-modernized SARs with post-modernized SARs?
- Field 1(f) references an “internal control/file number” and further explanation will be needed as to what this means and whether it an internal number assigned by the broker-dealer or something furnished from FinCEN and how it should be used by reporting financial institutions.

Part I: Subject Information

- Field 2b – Check if all critical * subject information is unavailable – needs additional guidance on how this should be used by reporting financial institutions including when the box should be checked, and whether it should be checked if only some “critical” information is not available, or if unknown is chosen for particular critical fields.
- Field 5 – Requires a middle name for electronic filers, but otherwise indicates a middle initial should be used. If the broker-dealer is an electronic filer but only has an individual’s middle initial, does the broker-dealer then leave this data field blank? FinCEN is requested to provide information regarding character lengths for planning purposes.
- Field 5a – Gender: This data element is not a data element collected at the time of account opening and, therefore, not part of the customer’s record. In this case, the

‘Unknown’ option may very often be checked, which calls into question the practical utility of this field. Equally significant, since many accounts are opened in non-face-to-face environments (e.g. brokerage accounts opened by phone or online), the gender is unknown (note that under the Equal Credit Opportunity Act and Federal Reserve Regulation B, financial institutions are prohibited from collecting this information for non-mortgage customers).

- Field 7 – NAICS. Guidance is needed as to what this means in the securities context.
- Field 8 – Address should be clarified to determine if FinCEN is requesting legal or mailing address.
- Field 11 – Zip/Postal Code: Confirmation is needed on whether the +4 is required. If the financial institution has the zip code but not the ZIP +4, should it default to “unknown” or should the ZIP +4 remain blank? We believe that FinCEN would be more appropriately positioned to complete this information.
 - NOTE: On the address information, we recommend that FinCEN take steps that would complete city/state information/verification based on the data provided, including furnishing the Zip +4, possibly through coordination with the USPS and their databases.
- Following Field 11 is a series of optional “New Data Element” codes. Will those elements be derived by FinCEN as part of the file processing, or is FinCEN requesting those to be provided on the e-file?
- Field 16 – Additional guidance is needed to complete the Date of Birth field. For an individual, if that information is unknown (which may be frequent, especially if the suspect is not a broker-dealer customer), what should be entered? What if the filer has partial information (i.e., year or month and year but not date)? If the subject of the report is an entity, how should this field be completed?
- Field 17 – the broker-dealer may have a telephone number but may not have information related to whether it is a home phone number, a work phone number, or a mobile phone number. Should the filer take a best guess? Also, if a phone number is unknown, is the expectation that this field will remain blank or will “Unknown” be an option to select?
- Field 20 is a check-box on the “corroborative” statement to filer – what this means needs to be explained – is it meant to replace the existing box that asks if there was a confession? This field requires guidance surrounding its use. This field is not currently available to securities firms. Lack of clarity may lead to inconsistencies between filers.
- Field 21 identifies the relationship to the filer but in a loan transaction, there are multiple parties. It would be helpful to have a drop-down box for this field that includes “transaction participants” such as Real Estate Broker, Settlement Agent/Closing Attorney, Appraiser, Mortgage Loan Broker, Third Party Loan Officer, Notary, Seller/Developer, Title Insurer, Other.
- Field 21(k) is for “Owner/Shareholder” but a filer would not likely know if the subject is a shareholder of a publicly traded company, nor would it be relevant.

- Field 24 – appears to be limited to four accounts and this should be confirmed – and if such a limit is intended, instructions for how to reference other accounts, such as through the narrative, will be needed (especially since the narrative section is being curtailed).
- Field 25 – there are far more potential roles for a subject than the two that are listed and this appears to be an unnecessary and possibly misleading restriction.

Part II: Suspicious Activity Information

- Field 26 – for unknown dollar amounts, does this mean \$0.00 is not an appropriate entry? What about an attempted suspicious transaction, should this be unknown or \$0.00 or the amount of the attempted transaction?
- Field 27 – for reports of continuing activity, this data field needs clarification as to whether it is only for the date range for the current report or the entirety of the suspicious transactions over time.
- Field 28 – to report the Cumulative Amount for continuing activity filings, clarification is needed on whether the amount includes all prior reports plus Field 26 (Amount Involved in this report). Is there an expectation that firms use this field? Guidance at past conferences indicated aggregation is optional.
- Field 29(l) refers to a Hedge fund. However, if FinCEN includes it, the category should be expanded to include private equity funds and other pooled investments.
- Field 29(s) refers to a personal/business check and needs more precision.
- Field 29 is missing key items, e.g., commercial loan note, consumer loan note, mortgage note, equity trading and other securities transactions.
- Field 29 – definitions are needed for various items, e.g., commercial paper, gaming instruments.
- Field 29 – funds transfers should be further delineated into categories such as wire transfers and phone transfers, online transfers, ACH, etc.
- Field 29 – Should the SAR narrative contain specific references to the instruments/product types checked in field 29 – and if it does not, will that be deemed a defective filing? This seems to be duplicative of 38. Does the information in 29 and 38 have to be the same?
- Field 30 – This field requires clarification. We would like to see a break down of commodity types to be selected from.
- Field 31 – Guidance is needed on what information is being sought or how this data field should be completed.
- Field 33 – the IP address is more appropriately included with subject information (Part I) instead of the Suspicious Activity information. Guidance is requested for what, if any, specific transactions are IP Addresses being requested for or is the IP address being requested for all suspicious online transactions (EFT) or online activity that is unauthorized? (Trades placed/ SM). Certain situations may cause an additional reporting burden depending on what is being requested.

- Field 34- 35 What do CUSIP numbers refer to, in this context? Is it FinCEN's expectation that reporting financial institutions only include those if the security's CUSIP is the subject of the suspicious activity?
- Field 36 – Needs additional clarity on which types of recordkeeping requirements could be subject to structuring.
- Field 38 (h) – Mail fraud is very broad category, and could be involved in many situations even if it is not identified as such.
- Field 39 – regarding identification – clarification is requested on what information is sought through this data field.
- Fields 36 through 44 – if an item is not checked or mis-defined due to lack of clarity, would that be a flaw in the filing? In addition, information may also be necessary in narrative for flow, etc. so this field may be duplicative and inefficient.
- Fields 36 through 44 should incorporate the many items that FinCEN has requested be added to SAR narratives, e.g., foreclosure rescue scam, SIGTARP.
- Other items missing from the listings:
 - Counterfeit cards
 - False statements
- Field 40 “free look” should be mentioned here.
- Field 41 – Securities/Futures/Options – unauthorized pooling (option d) needs to be defined; wash sales should be separate choice from manipulative trading because there could be tax evasion and no market manipulation. Should there be more categories here? Please clarify the type of misappropriation you are referring to here. Are securities firms only to use this box and no others?
- Field 41 (d) A description of unauthorized pooling is requested.
- Identity theft is listed under Filed 44 as a suspicious activity when it would be more properly categorized as fraud.
- Field 43 – Money Laundering – Items (a) and (c) seem to be synonymous.
- Field 43(f) – “suspicious receipt of government payments/benefits” needs to be defined.
- Field 43(g) – multiple accounts needs to be defined – if it implies multiple persons, then would that automatically implicate a check for 43(k) as well?
- Field 43(h) – “noncash monetary instrument” needs to be defined.
- Field 43(j) – TBML/BMPE – these two should be segregated into separate items and fully defined (not everyone will recognize the acronyms).
- Field 44(e) – identity theft needs to be distinguished from the identification items in field 39.
- Field 44(j) - “suspicious use of multiple locations” – an example of this scenario would be helpful.
- Field 44 (k) – What does two or more individuals working together mean? Does it mean collusion?

- Field 44(z) – “other” – instructions are needed for where to enter data on the location of collateral/security – it is also significant that the proposed format lacks any fields that indicate “where” a fraud occurred – for example, the location of the suspect and the location of the broker-dealer is not always the location of the fraud, e.g., broker-dealer branch is located in NJ, borrower is located in California, while subject property for a possible mortgage fraud is located in Florida.

Part III: Information Concerning Financial Institution Where Activity Occurred

- Fields 45 and 49. What is the reason for referencing a holding company? 49, which only is required if you answer 45e, asks to indicate type of securities and futures institution where activity occurred. It is unclear what holding company means. If it is a financial holding company it doesn't have a SAR obligation. The broker-dealer is a separate legal entity and has the SAR obligation. Additionally, other financial institution types like banks have holding companies in their structures, so why aren't they being asked the same question?
- Fields 45 and 46 – where there is a joint filing, the ability to check more than one option will be needed for these fields (otherwise, it defeats the purpose of the joint filing).
- Field 45 – under which item would a trust company or thrift fall?
- Field 46 – A method to enhance quality and ease burden on respondents would be to make this a derived field based on the selection of proposed field 47 or 49.
- Field 47 – since there can be more than one filing institution identification number, the ability to enter more than one number will be needed or instructions on which option to choose will be needed.
- Field 49– Add self clearing broker-dealer. This is a request the securities industry has been asking for many years. Otherwise, a fully disclosed securities firm that clears for itself has no clear box to check.
- Field 51 – when an alternate name is entered, will the final format distinguish between a/k/a and d/b/a?
- Field 53 – Guidance is requested on why are we being required to identify whether a number is an SSN-ITIN, if a financial institution may indicate “Unknown” if we don't know which type of TIN is being used and what kinds of foreign numbers is FinCEN asking for?
- Fields 54 and 55 – since these apply to the filer, the unknown option is not logical.
- Field 60 – loss to financial institution – Guidance is requested to further describe the usage of this field, specifically, are institutions being asked to enter the amount initially suspected, the total amount possible, the net amount after any recovery, and is it only at the time of filing or, if the amount later changes, does this mandate a new filing?
- Field 61 – Financial institution's role in transaction” needs clarification – there are more roles an institution may be than just a paying or selling institution.

- Field 68 – “Branch’s Role in Transaction” also requires clarification – particularly how this differs from Field 61.

Part IV: Filing Institution Contact Information

- Fields 77 through 79 (Filer Information) – additional clarification is needed – for example, is the name of the filer the name of the individual completing the report (and if yes, this contradicts prior efforts to protect the individual, especially following recently well-publicized leaks of actual SAR forms to the media)? Is it FinCEN’s intent to have reporting financial institutions to provide an appropriate contact at the institution who could answer questions?
- Field 80 – only allows one type of filing institution to be checked, but what happens where there is a joint filing?
- Fields 80 and 81. What is the reason for referencing a holding company? 81, which only is required if you answer 80e, asks to indicate type of securities and futures institution filing this report. It is unclear what holding company means. If it is a financial holding company it doesn’t have a SAR obligation. The broker-dealer is a separate legal entity and has the SAR obligation. Additionally, other financial institution types like banks have holding companies in their structures, so why aren’t they being asked the same question?
- Field 81 – What does “SRO Futures” and “SRO Securities” mean?
- Field 89 – “Internal Control/File Number” needs to be defined.
- Field 94 – “Designated Contact” Office” – can multiple designated contact offices be input?
- Field 96 – “Designated office e-mail address” – although it is indicated that this field is required, some LE agencies do not provide it.
- Finally, there are so many categories of other. It is not clear that we need so many “Other” categories in each section.