

### Subpart B—Reports Required To Be Made

#### § 103.15 Determination by the Secretary.

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

[37 FR 6912, Apr. 5, 1972. Redesignated at 61 FR 4331, Feb. 5, 1996 and further redesignated at 65 FR 13692, Mar. 14, 2000]

#### § 103.17 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

(a) *General*—(1) Every futures commission merchant (“FCM”) and introducing broker in commodities (“IB-C”) within the United States shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An FCM or IB-C may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve an FCM or IB-C from the responsibility of complying with any other reporting requirements imposed by the Commodity Futures Trading Commission (“CFTC”) or any registered futures association or registered entity as those terms are defined in the Commodity Exchange Act (“CEA”), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an FCM or IB-C, it involves or aggregates funds or other assets of at least \$5,000, and the FCM or IB-C knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan

to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act (“BSA”), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the FCM or IB-C knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the FCM or IB-C to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each FCM and IB-C involved in the transaction, provided that no more than one report is required to be filed by any of the FCMs or IB-Cs involved in a particular transaction, so long as the report filed contains all relevant facts.

(b) *Filing procedures*—(1) *What to file*. A suspicious transaction shall be reported by completing a Suspicious Activity Report—Securities and Futures Industry (“SAR-SF”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file*. The SAR-SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR-SF.

(3) *When to file*. A SAR-SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting FCM or IB-C of facts that may constitute a basis for filing a SAR-SF under this section. If no suspect is identified on the date of such initial detection, an FCM or IB-C may delay filing a SAR-SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In

situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the FCM or IB-C shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR-SF. FCMs and IB-Cs wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1-866-556-3974 in addition to filing timely a SAR-SF if required by this section. The FCM or IB-C may also, but is not required to, contact the CFTC to report in such situations.

(c) *Exceptions*—(1) An FCM or IB-C is not required to file a SAR-SF to report—

(i) A robbery or burglary committed or attempted of the FCM or IB-C that is reported to appropriate law enforcement authorities;

(ii) A violation otherwise required to be reported under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR chapter I), or the rules of any registered futures association or registered entity as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB-C or any of its officers, directors, employees, or associated persons, other than a violation of 17 CFR 42.2, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity.

(2) An FCM or IB-C may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form 8-R, 8-T, U-5, or any other similar form concerning the transaction is filed consistent with CFTC, registered futures association, or registered entity rules, a copy of that form will be a sufficient record for the purposes of this paragraph (c)(2).

(d) *Retention of records*. An FCM or IB-C shall maintain a copy of any SAR-SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-SF. Supporting documentation shall be

identified as such and maintained by the FCM or IB-C, and shall be deemed to have been filed with the SAR-SF. An FCM or IB-C shall make all supporting documentation available to FinCEN, the CFTC, or any other appropriate law enforcement agency or regulatory agency, and, for purposes of paragraph (g) of this section, to any registered futures association, registered entity, or self-regulatory organization ("SRO") (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)), upon request.

(e) *Confidentiality of reports*. No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR-SF or the information contained in a SAR-SF, except where such disclosure is requested by FinCEN, the CFTC, another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, a registered futures association, registered entity, or SRO shall decline to produce the SAR-SF or to provide any information that would disclose that a SAR-SF has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability*. An FCM or IB-C, and any director, officer, employee, or agent of such FCM or IB-C, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration or reparations proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement*. Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegates, under the terms of the BSA. Reports filed under this section or § 103.19

## § 103.18

## 31 CFR Ch. I (7-1-05 Edition)

(including any supporting documentation), and documentation demonstrating reliance on an exception under paragraph (c) of this section or § 103.19, shall be made available, upon request, to the CFTC, Securities and Exchange Commission, and any registered futures association, registered entity, or SRO, examining an FCM, IB-C, or broker or dealer in securities for compliance with the requirements of this section or § 103.19. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the BSA or of this part.

(h) *Effective date.* This section applies to transactions occurring after May 18, 2004.

[68 FR 65398, Nov. 20, 2003]

### § 103.18 Reports by banks of suspicious transactions.

(a) *General.* (1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the bank, it involves or aggregates at least \$5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) The transaction is designed to evade any requirements of this part or

of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) *Filing procedures—*(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report (“SAR”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) *When to file.* A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

(c) *Exceptions.* A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(d) *Retention of records.* A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation