



DIVISION OF SWAP DEALER AND INTERMEDIARY OVERSIGHT

CFTC Staff Advisory No. 16-60
Other Written Communication
July 6, 2016
Division of Swap Dealer and Intermediary Oversight

Audience: Futures Commission Merchants, Introducing Brokers and all other Persons Registered or Required to be Registered with the Commodity Futures Trading Commission

Topic: Compliance with Suspicious Activity Reporting Requirements and Office of Foreign Assets Control Economic Sanctions Programs

The Division of Swap Dealer and Intermediary Oversight (DSIO) of the Commodity Futures Trading Commission (Commission) is issuing this advisory to remind futures commission merchants (FCMs) and introducing brokers (IBs) of their obligations to report suspicious activities required by the regulations¹ issued by the Financial Crimes Enforcement Network (FinCEN) under the Bank Secrecy Act (BSA),² as described below. DSIO is issuing this advisory also to remind FCMs, IBs and all other persons registered or required to be registered with the Commission to comply with the economic sanctions programs imposed against

¹ 31 CFR Chapter X.

² The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 1957, and 1960 and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto.

countries and groups of individuals administered by the Office of Foreign Assets Control (OFAC),³ as also described below.

Suspicious Activity Reporting Requirements

The suspicious activity reporting (SAR) regulation⁴ requires every FCM and IB that is registered or required to be registered with the Commission to file a SAR with FinCEN relevant to any possible violation of law or regulation.⁵ A transaction requires reporting where it is conducted or attempted by, at, or through a FCM or IB, it involves or aggregates funds or other assets of at least \$5,000, and the FCM or IB knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part): (1) involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity; (2) is designed to evade the BSA or its implementing regulations; (3) 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 knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (4) involves use of the FCM or IB to facilitate criminal activity.⁶

SARs are required to be filed no later than 30 calendar days after the date the suspicious activity is initially detected unless no suspect is identified. In this latter event, the SAR filing can be delayed for an additional 30 calendar days to identify a suspect. However, in no event can the SAR filing be delayed more than 60 calendar days after the initial detection of suspicious activity.

SARs are vital to law enforcement, intelligence agencies, regulatory authorities, and FinCEN. They may be used to identify illegal activities, such as money laundering or terrorist financing, to identify and trace funds and accounts used to finance illicit activity, and to identify patterns and trends in a particular industry. Accordingly, FCMs and IBs are reminded of their obligations to comply with these requirements

³ OFAC sanctions regulations appear at 31 C.F.R. Chapter V.

⁴ 31 CFR § 1026.320.

⁵ A FCM or IB 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 even if reporting is not required by the regulation. DSIO encourages FCMs and IBs to file SARs voluntarily even where it doubts that reporting is required.

⁶ 31 CFR § 1026.320(a)(2).

Office of Foreign Assets Control Requirements

FCMs, IBs and all other persons who are or are required to be registered with the Commission have obligations to comply with the economic sanctions programs outlined in OFAC's regulations.⁷ OFAC is an office within the U.S. Department of the Treasury that administers and enforces the sanctions programs. The programs are primarily against countries and groups of individuals, such as terrorists and money launderers.

Although each sanctions program is unique, they all generally prohibit U.S. persons from engaging in transactions with individuals or entities located in countries that are subject to a sanction program administered by OFAC. The sanctions also may require U.S. persons to block (*i.e.*, freeze) the property of: (1) any person that is on OFAC's list of Specially Designated Nationals and Blocked Persons (SDN list); and (2) any entity that is 50 percent or more owned, directly or indirectly, by such person.

Accordingly, FCMs, IBs and all other Commission registrants are reminded of their obligations to regularly review the economic sanctions programs and SDN list each time these are updated and screen all new customers, and current customers periodically, to determine if the customer is located in one of the sanctioned countries or is on the SDN list.

⁷ See *supra* note 3. General information regarding OFAC sanctions, including advice on how to receive email updates to sanctions programs, and a summary description of each particular sanctions program, can be found at <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> and related pages.