



**IIR's 16th Annual Anti-Money Laundering
Audit & Compliance Forum**

**Best Practices for Knowing When to File
Suspicious Activity Reports**

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Mandatory Suspicious Activity Reporting ("SAR") Parameters

A SAR is required to be filed for any account activity conducted or attempted through the financial institution involving \$5,000 or more where the institution knows, suspects, or has reason to suspect:

(1) the transaction involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade federal law or regulation;

(2) the transaction is designed to evade any requirements of the Bank Secrecy Act ("BSA") or its implementing regulations;

SAR Reporting Parameters (*cont'd.*)

(3) the transaction has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage and, after examining the background, possible purpose of the transaction and other facts, the financial institution knows of no reasonable explanation for the transaction/activity; or

(4) the transaction involves the use of the financial institution to facilitate criminal activity (including transactions that the institution suspects are designed to fund terrorist activity).

No actual loss is required.

Key Aspects of the Rule ...

- ***Includes*** reporting of suspected violations of state and foreign laws (as such violations can be predicates for federal offenses)
- Violations of BSA regulations applicable to the financial institution and/or its employees may be reportable to *both your regulator and on a SAR.*
- **Timing:** SARs must be filed within 30 days of the financial institution making a determination that something is suspicious. *Immediate notification required in situations involving terrorist financing and ongoing money laundering schemes*

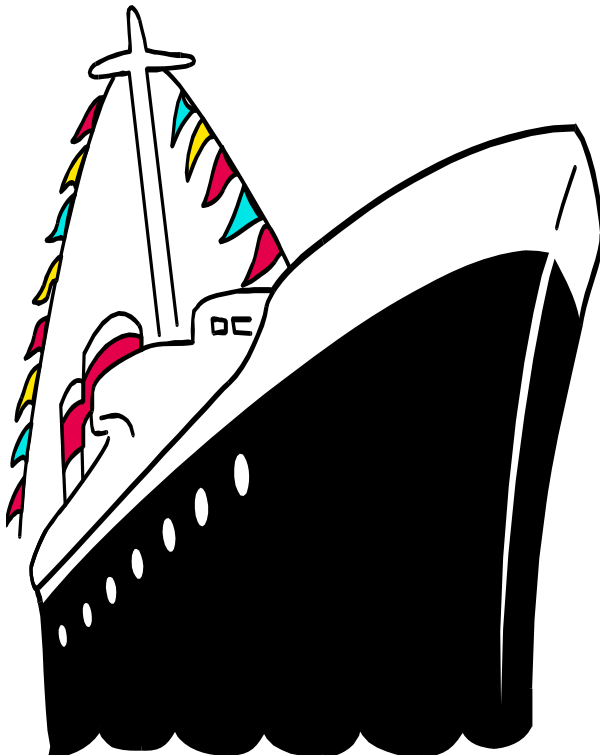


Confidentiality is Critical . . .



- **SARs are confidential and *may not be disclosed to the subject or to any third party*. Any request to disclose a SAR (or the information contained in a SAR) -- including a subpoena or a request by a regulatory agency -- must be declined, unless such a request is made within the scope of that regulator's examining authority.**
- **Sharing the SAR form: A financial institution cannot share the SAR form with non-parent entities (such as subsidiaries or affiliates). The underlying information that gives rise to the filing can be shared. (See *FinCEN Guidance*).**

“Safe Harbor” Protection



- **The SAR rule affords a civil “safe harbor” from liability for reporting activity and for failing to disclose such reporting to the client.**
- **Statement on “confidentiality and public disclosures”.**
- **“Defensive” filings are strongly discouraged.**

Recent Developments . . .

- **Various SAR issues raised to the Bank Secrecy Act Advisory Group (BSAAG) by the BSAAG SAR Subcommittee, including timing of SAR filings, internal sharing of SARs within an organization and documenting the institution's decision not to file a SAR.**
- **SAR Activity Review: Trends, Tips & Issues (May 2006): addresses timing, continued SAR filings, documenting decision not to file and grand jury subpoenas.**
- **NYS SAR filing requirement proposed.**
- **SAR Activity Review – By the Numbers Issue 5 (2/06).**



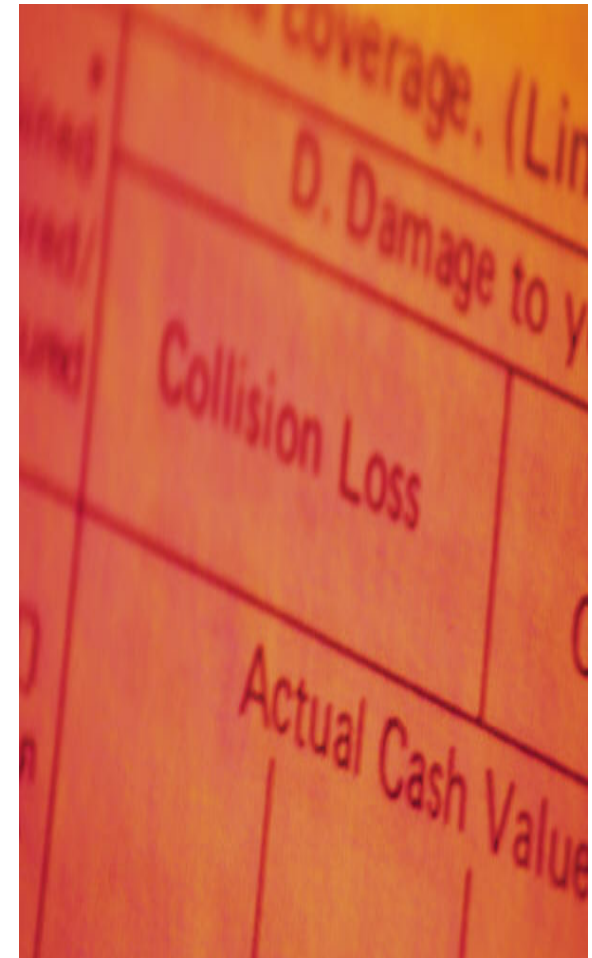
Nuances to the Mutual Fund SAR Rule . . .

- Same reporting requirement as is applicable to banks, BDs, casinos and MSBs
- Funds determine whether to file based on information from account opening and processing
- Omnibus account holder may be customer
- Permits joint filing to satisfy obligations of all required to file
- Fund can delegate performance to service provider – *BUT* Fund remains responsible
- Applies to transactions occurring after October 31, 2006



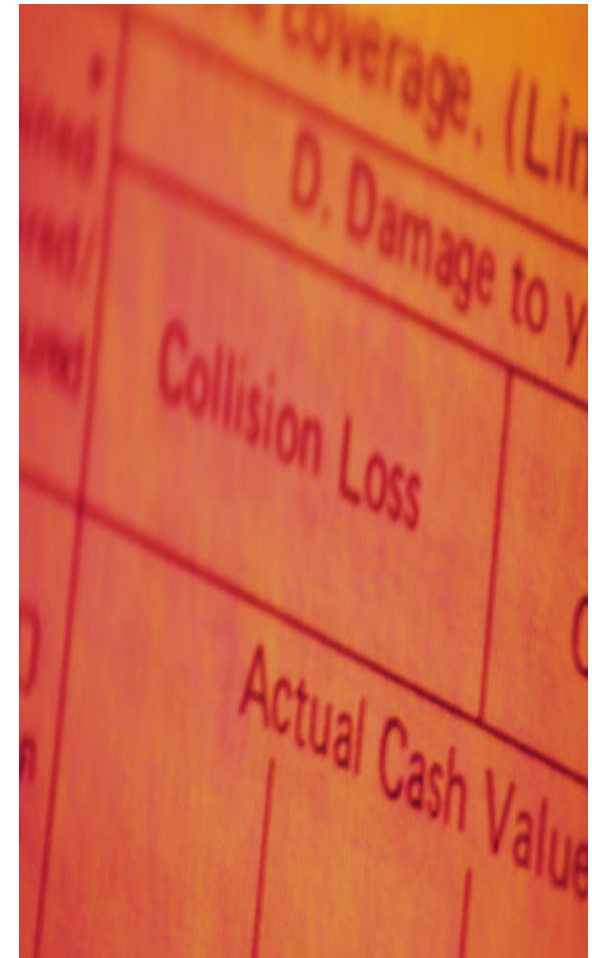
Nuances to the Insurance SAR Rule . . .

- **Addresses only products covered by the AML final rule for insurance companies**
- **Insurance companies are responsible for reporting suspicious transactions conducted through its agents and brokers**
- **Insurance companies must obtain customer-related information necessary to detect suspicious activity**
- **Some agents and brokers may have a separate obligation to report suspicious activity (e.g., life insurance sold by agents affiliated with banks)**
 - **Only one filing is required – must indicate that the filing is joint**



Nuances to the Insurance SAR Rule (cont'd.)

- **Red Flags provided by FinCEN...**
 - **Purchase that is inconsistent with a customer's needs**
 - **Unusual method of payment (cash, cash equivalents, monetary instruments, etc.)**
 - **Early termination of an insurance product at a cost to the customer, where cash was tendered, and/or the refund check was directed to a third party**
 - **The transfer of the benefit to an unrelated party**
 - **Little or no concern for the investment performance but much concern about early termination provisions**
 - **Reluctance to provide identifying information or the provision of minimal or fictitious information**
 - **Borrowing of the maximum amount available soon after purchasing the product**



Quality SARs

- **SAR Data Quality Studies**
- **BSA Data Profiles for Presentations**
- **MOUs**
 - **Federal regulators**
 - **State regulators**
- **Other Uses of SARs**
- **Updated FFIEC BSA/AML Exam Manual - issued 7/28/2006**
 - **Appendix L: “SAR Quality Guidance”**
 - ***The 5 W’s* - Important Elements of the narrative:**
 - **Who? What? When? Where? And Why?**
 - **Summarize the flow of funds**

Quality SARs (*con't*)

- **Source of funds and use, destination or beneficiary of the funds**
- **Individual dates and amounts of transactions – not just the aggregated amount**
- **Multiple offices or locations – provide all addresses**
- **Draw applicable contrasts, where appropriate, to normal and expected activities of similar customers**
- **How did the activity occur? Detail “method of operation” (including dates, destinations, amounts, accounts, frequency and beneficiaries of the transfers)**
- **Do not use “see attached” in the narrative: tables, spreadsheets or other attachments are not entered into the BSA-reporting database**

Effective Monitoring for Suspicious Activity

- **Consider the following focus areas:**
 - **Are the thresholds reasonable for your business?**
 - **New accounts and new bankers/brokers**
 - **High-risk countries/businesses**
 - **Significant increases or decreases in balances**
 - **Wires and Journal movements**
 - **Large currency deposits (including numerous small deposits that, when aggregated, exceed thresholds)**
 - **Cash equivalents**
 - **Bearer Bonds**
 - **Third-party activity**

Lightening Round: “Hot Button” SAR Issues

- **Disclosures in response to regulatory and law enforcement requests:**
 - **Who:** to whom can you produce?
 - List of permitted agencies
 - **Scope:** what can you produce?
 - What do you do if requested documents should not be produced?
 - What about sharing information internally?
- **Disclosures in the context of civil litigation/arbitration:**
 - Request should be reported to FinCEN/Supervisory Agency
- **SAR escalation:**
 - Who do you call in the government? FinCEN Hotline?
 - 314(b) call?
- **Report Confidentiality Breaches:**
 - Who do you notify internally? Externally?
- **Post-SAR filing issues**
 - What do you do with the account?

Recent Enforcement Actions

Oppenheimer & Co.

- **Nov. 2005: Consent order with NYSE and FinCEN**
 - **\$2.8 MM fine and civil money penalty**

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- **Dec. 2005: Penalties assessed by FRB, FinCEN, OFAC, NYSBD, Illinois Dep't of Financial and Professional Regulation and Illinois Bank Examiners' Education Foundation**
 - **\$80 MM civil penalties**

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- **Feb. 2006: NYSE**
 - **\$1.5 MM fine for violations including failure to supervise and detect suspicious activities**

Oppenheimer & Co.

- **On notice based on 2001 Joint Sweep Exam; no known money laundering involved**
- **Inadequate Internal Controls**
 - **Inadequate internal systems and controls to detect potential suspicious activity**
 - **Inability to aggregate data by customer, account, branch office, or destination, (e.g., large number of shared addressed and P.O. Boxes)**
- **Inadequate Independent Testing**
 - **Scope of 2003 audit did not include higher-risk activities between foreign and domestic branches**
- **Designation of AML Compliance Officers**
 - **AML Department was inadequately staffed to ensure compliance with Bank Secrecy Act**

Oppenheimer & Co. (*cont'd*)

- **Failed to review wire transfers and journal transactions unrelated to securities transactions**
- **Violated Suspicious Activity Reporting Requirements**
 - **No adequate response to inquiries from Compliance and open questions went unanswered for months**
 - **Foreign branch ignored orders and requests**
 - **No follow-up on unexplained journal transactions between allegedly unrelated accounts**
 - **Failed to timely report suspicious transactions involving several million dollars that occurred in 2003**
 - **Filed incomplete suspicious activity reports, which included only general information and generic descriptions (specific date ranges, number of accounts, suspect names, details were missing)**

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- **Violated Suspicious Activity Reporting Requirements**
 - **Failed to adequately monitor funds transfers for potential suspicious activity**
 - **Failed to incorporate information concerning “shell companies” into automated monitoring systems**
 - **Failed to automate systems to detect suspicious activity**
 - **Failure to file SARs: from 1996-2001, only 12 SARs filed; delinquent filing of a large number of SARs; incomplete or inaccurate SARs (e.g., SARs characterized transactions as “terrorist financing” however, lacked sufficient cause or contained inadequate description of the transactions)**

ABN AMRO (*cont'd*)

- **Inadequate Training**
 - **BSA Compliance staff in critical positions displayed a lack of knowledge on the detection and reporting of suspicious transactions**
- **Participated in transactions violating OFAC sanctions**
 - **“Special procedures” developed and implemented by an overseas branch for certain funds transfers designed to circumvent OFAC monitoring**

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- **Failure to supervise accounts with suspicious activity**
 - **Deficiency involved 10 accounts opened by a foreign customer, who was the head of a Russian bank**
 - **Customer was subject of non-U.S. news reports alleging fraud and financial improprieties at the Russian Bank where he served as Chairman**
 - **20 wires into the account of over \$20MM**
 - **On 95 occasions, funds of over \$18MM wired from the account**
 - **On 145 occasions, over \$15MM journaled between the client's various accounts**

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- **Failure to supervise accounts with suspicious activity**
 - **Several of the wires into and out of the accounts were not tied to any securities activities in the customer's account; several of the wires and journals coincided with suspicious investment activity in U.S. Treasury bills**
 - **Although the Firm had policies and procedures designed to detect and prevent suspicious transactions, the Firm permitted the suspicious transfers without making any reasonable inquiry into the transactions**
 - **Firm filed SAR in August 2002, but failed to report with specificity to the NYSE until Oct. 13, 2002.**

Hypothetical

You are the AMLO of Big Global Brokerage. One day you see on a report an account in the name of “Get the Goods.” The account was opened about 2 months ago. You see numerous wire transfers and journal entries between Get the Goods and another account in the name of “International Shopping”, and also between those two accounts and an account in the name of Louis Rodriguez.

You further analyze the wire transfers and identify wires from International Shopping going to a South American rug dealer and from Get the Goods going to a fabric company in Canada.

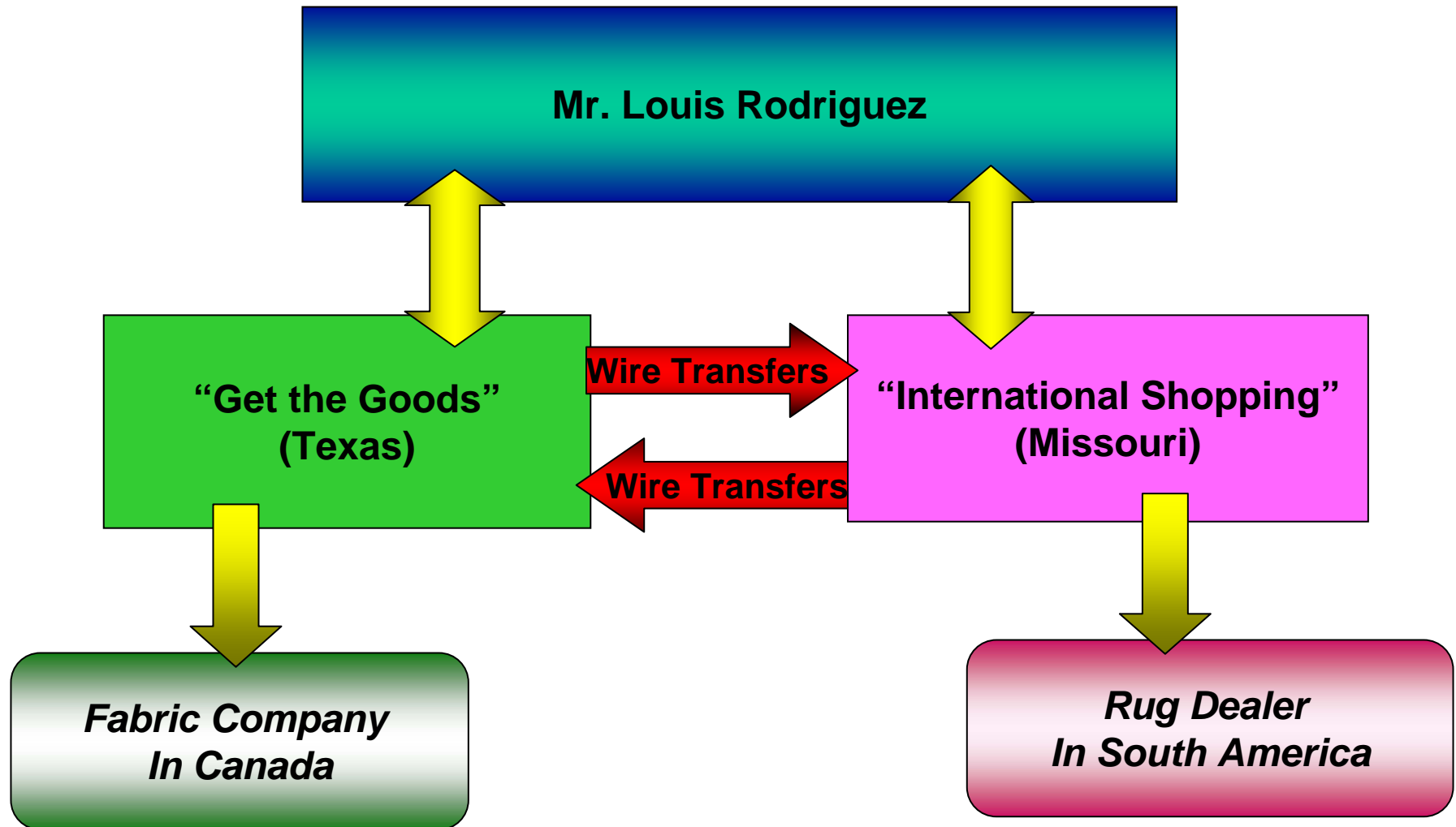
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What red flags, if any, do you see?

What else might you want to look at?

Would you file a SAR?

Funds Flow Diagram



Hypothetical

You contact the broker. He tells you that Louis Rodriguez is a client who recently came to Big Global. He was referred to the firm by another client, Edward McGuire, a long standing customer who has had an account with the firm for fifteen years.

Mr. McGuire is a well established businessman in the St. Louis area and has received numerous awards recognizing his civic achievements. He is in the textiles business and he has been doing business with Mr. Rodriguez for many years.

Hypothetical

Mr. Rodriguez is also in the textile business and has his own import/export companies. Mr. Rodriguez opened up at Big Global accounts in his own name and in the name of two of his corporations, International Shopping Company and Get the Goods, Inc. International Shopping is located in Missouri and services US and Canadian clients. Get the Goods is located in McCallen, Texas and services clients in Mexico and South America.

*** * ***

What red flags, if any, do you see?

What else might you want to look at?

Would you file a SAR?

Hypothetical

A week later, you receive a grand jury subpoena from the U.S. Attorney's Office in the Southern District of Texas requesting records relating to Get the Goods. The subpoena contains a non-disclosure request, but does not reference the nature of the investigation.

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Does this change your analysis?

Do you file a SAR?