

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

---

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ELECTRONIC TRANSACTION  
CLEARING, INC.  
(CRD No. 146122),

Respondent.

---

Disciplinary Proceeding  
No. 2013037709301

Hearing Officer—DRS

**ORDER ESTABLISHING PROCEDURES REGARDING  
TREATMENT OF SAR INFORMATION**

At the initial pre-hearing conference held on June 1, 2017, the Department of Enforcement stated that this case will present significant Bank Secrecy Act issues and that to prove its case, there was a “distinct likelihood that some SAR related material will have to come into evidence.”<sup>1</sup> That prediction prompted me to inform the parties that I wanted them to notify me (via email to my Case Administrator) before filing such material so that I could establish appropriate filing procedures for SAR-related material.<sup>2</sup>

This order supersedes that instruction and establishes the following procedures regarding the treatment of Suspicious Activity Reports (“SARs”) and certain related information (collectively referred to as “SAR Information”) that is filed or offered into evidence in this proceeding.

1. A SAR is a report that broker-dealers and other financial institutions must file with the Financial Crimes Enforcement Network (FinCEN) pursuant to the Bank Secrecy Act (“BSA”) and its implementing regulations.<sup>3</sup>

---

<sup>1</sup> Initial Pre-hearing Conference (June 1, 2017), Tr. 22–23.

<sup>2</sup> Tr. 26–27.

<sup>3</sup> On July 1, 2002, Treasury published its final rules requiring broker-dealers in securities to file reports that identify and describe transactions that raise suspicions of illegal activity. 31 U.S.C. 5318(g) and 31 CFR 103.19. On March 1, 2011, 31 CFR 103.19 became 31 CFR 1023.320 when FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X.

2. The following information is considered "SAR Information":
  - a. SARs;
  - b. Draft SARs, or internal firm "SARs";
  - c. Information revealing the existence of a specific SAR or SARs;<sup>4</sup> and
  - d. Information revealing the non-existence of a specific SAR. If a firm considered filing a SAR on particular activity and ultimately decided not to file a SAR, this decision not to file, and the non-existence of the specific SAR, would be considered SAR Information. This should be distinguished from a case in which the firm did not consider a certain type of activity to be suspicious and hence never considered whether to file a SAR on that type of activity, which would not be considered confidential.<sup>5</sup>
3. The following information generally does not include SAR Information:
  - a. Written supervisory policies governing when and how a broker-dealer should file a SAR;
  - b. General information about a broker-dealer's SAR filings, such as statistics about how many SARs a broker-dealer has filed in a year; and
  - c. The underlying information on which a SAR is based (e.g., account statement or wire log), unless it reveals the existence of a SAR.<sup>6</sup>
4. To the extent practicable, the parties shall avoid, or, at a minimum, endeavor to limit, filing SAR Information or introducing it at the hearing. For example, if one or more parties intend to offer SAR Information, the parties should consider whether a stipulation may be filed in lieu of filing SAR Information.<sup>7</sup> Also, if a document contains SAR Information, the parties should consider whether it is practicable to redact that information.
5. If a party files a document or pleading constituting or containing SAR Information, the filing shall reflect that it is being made under seal because it constitutes or contains SAR Information, and the party shall identify the location of the SAR Information contained in the document or pleading.

---

<sup>4</sup> See Final Release of SAR Confidentiality Rule at <http://www.gpo.gov/fdsys/pkg/FR-2010-12-03/pdf/2010-29869.pdf> at 77595-77596: "with respect to information that reveals the existence of a SAR, institutions should distinguish between certain types of statistical or abstract information or general information that may indicate that an institution has filed SARs, and information that would reveal the existence of a SAR in a manner that could enable the person involved in the transaction potentially to be notified, whether indirectly or directly."

<sup>5</sup> See *Id.*

<sup>6</sup> See *Id.* at 75595: "Documents that may identify suspicious activity but that do not reveal whether a SAR exists . . . should not be afforded confidentiality."

<sup>7</sup> If the stipulation refers to a specific SAR (mentioning a customer or account), the stipulation would have to be filed under seal.

**This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 17-13 (2013037709301).**

6. At the hearing, if a party introduces, or seeks to introduce, SAR Information via testimony, exhibit, or stipulation, the party shall so state at the time the party introduces or seeks to introduce the SAR Information.
7. Where SAR Information is introduced at a hearing via testimony, exhibit or stipulation, I will order that it be placed under seal.
8. A SAR is not evidence of the underlying facts described in the SAR form. SARs contain allegations of potential wrongdoing, but a SAR cannot be used to prove that the activity described in a SAR actually happened. The party would have to introduce underlying documents or other evidence to prove the facts described in the SAR.

**SO ORDERED.**

---

David R. Sonnenberg  
Hearing Officer

Dated: June 16, 2017