

Notice to Members

DECEMBER 2002

SUGGESTED ROUTING

Legal & Compliance
Operations
Senior Management

KEY TOPICS

Money Laundering
Compliance Programs

INFORMATIONAL

USA PATRIOT Act

Development Regarding Treasury Information Requests Under Section 314 of the PATRIOT Act

Executive Summary

On November 19, 2002, the Department of the Treasury and its bureau the Financial Crimes Enforcement Network (FinCEN) advised associations representing major financial institutions of a brief moratorium on both new information requests and compliance with current information requests that have been recently issued under Section 314 of the USA PATRIOT Act of 2001. On November 26, 2002, the federal bank regulatory agencies issued a Joint Agency Notice (Notice) that addresses Section 314.¹

Questions/Further Information

Questions regarding this *Notice to Members* may be directed to Emily Gordy, Department of Member Regulation, NASD Regulatory Policy and Oversight, at (202) 728-8070, or Nancy Libin, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8835.

Discussion

Background

The USA PATRIOT Act of 2001, which was signed into law on October 26, 2001, recognizes that law enforcement must be able to communicate quickly with financial institutions when requesting information regarding those suspected of engaging in money laundering or terrorist financing activities.

Section 314 of the PATRIOT Act authorizes law enforcement to establish a mechanism to communicate with financial institutions to request information about suspected money laundering and terrorist financing. Section 314 also allows financial institutions to share information among themselves regarding these activities. On September 26, 2002, the final rule implementing Section 314 became effective and is now part of the Treasury Department's Bank Secrecy Act regulations.² Among other things, the final rule established a process through which law enforcement can communicate with financial institutions, including broker/dealers, in order to request information regarding those suspected of engaging in money laundering or terrorist activities so that any accounts and transactions involving these individuals or entities can be promptly located. On November 4, 2002, FinCEN began issuing information requests pursuant to this new authority.

Temporary Moratorium on Information Requests³

Since FinCEN began issuing these information requests (as described more fully in the bank regulators' Notice), some financial institutions have advised their regulators and FinCEN of a number of logistical issues and questions regarding compliance with the requests. In an effort to respond to and resolve these issues and concerns and to ensure that the most effective communication systems are in place between the government and the financial institutions, FinCEN has issued a brief moratorium on new information requests and on responding to prior

requests. NASD understands that during the moratorium, FinCEN, in consultation with the federal financial regulators, will develop new guidance concerning future requests. Firms will be advised of both the lifting of the brief moratorium and the new guidance regarding the Section 314 information request process. Firms should monitor the Treasury and FinCEN Web Sites for this guidance.

FinCEN has advised the federal financial regulators that, in the event of a threat to national security or other emergency, it reserves the right to take necessary steps, including immediate reinstatement of the Section 314 information request process.

Anti-Money Laundering Compliance Officer Contact Information

Up-to-date contact information is important to ensure that the information requests made on behalf of law enforcement agencies by FinCEN reach relevant financial institutions.

In *Notice to Members 02-78*, NASD notified its members that, in order to facilitate Treasury's efforts to collect the anti-money laundering (AML) contact information that Section 314 requires, NASD had adopted an amendment to Rule 3011, requiring each member firm to provide to NASD contact information for the individual or individuals responsible for implementing the day-to-day operations and internal controls of the member's anti-money laundering program.⁴ The rule was effective immediately upon filing with the Securities and Exchange Commission on

October 26, 2002, and will become operative on December 31, 2002. Accordingly, by December 31, 2002, firms are required to provide NASD with the following information: name, title, mailing address, e-mail address, telephone number, and facsimile number of the contact person.⁵ Members are also required to notify NASD promptly of any changes to the contact information.

It is important that members firms meet their obligations under Rule 3011, as amended, and provide accurate and complete contact information for their AML compliance officer. It is also important that when that information changes and becomes inaccurate or incomplete, the firm provides updated information to NASD. Compliance with Rule 3011, as amended, will ensure that FinCEN has accurate and complete contact information to effectively communicate with broker/dealers in the future.

Endnotes

- 1 Joint Agency Notice: Treasury Issues Moratorium on Section 314(a) Information Requests (November 26, 2002).
- 2 31 C.F.R. Part 103.
- 3 After the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation (FBI) and other law enforcement agencies established a list of individuals and entities about whom information was sought from financial institutions regarding transactions or relationships with the named entities or individuals. The list was designated as the "Control List." SEC Release 2001-115. Information requests thus far have been disseminated to financial institutions that have been designated to receive the "Control List." FinCEN has also advised the federal financial regulators that the FBI will discontinue use of the "Control List" as a means of communicating information requests and will instead rely on the Section 314(a) process in the future.
- 4 *Notice to Members 02-78* (November 2002).
- 5 While the AML compliance officer is not required to be a registered person as a result of serving that function, NASD anticipates that most AML compliance officers will be registered persons. Whether or not an AML compliance officer is registered with, or an employee of, the firm, an AML compliance officer is an associated person of the firm.

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