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Securities Industry Association
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Via Electronic Mail and U.S. Mail

October 4, 2002

Office of Chief Counsel
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Attention: PRA Comments – SAR Securities and Futures Industry Form

Re: Proposed Suspicious Activity Report by the Securities and Futures Industry (SAR-SF)

Ladies and Gentlemen:

The Securities Industry Association ("SIA")[1] appreciates this opportunity to comment on the proposed form "SAR-SF" for the securities industry to report suspicious activity issued by the Financial Crimes Enforcement Network ("FinCEN") of the Department of the Treasury. We have outlined below suggested modifications to the form that will enhance the effectiveness of suspicious activity reporting for broker-dealers.

We commend Treasury for its efforts to implement suspicious activity reporting for broker-dealers through the issuance of the proposed SAR-SF form and the earlier issuance of a final rule requiring broker-dealers to file suspicious activity reports ("SARs") as required by section 356 of the USA PATRIOT Act[2]. As Treasury is aware,

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[1] The SIA brings together the shared interests of nearly 700 securities firms to accomplish common goals. SIA member firms (including investment banks, brokers-dealers and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift and pension plans. The industry generates $358 billion of revenue and employs approximately 760,000 individuals. (More information about the SIA is available on its home page: http://www.sia.com.)

[2] "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," ("Patriot Act") Pub. L. No. 107-56 (2001), signed into law by President Bush on October 26, 2001.

the SIA and the securities industry have long supported suspicious activity reporting and our firms have substantial experience in filing SARs. We firmly believe that by alerting regulators of possible criminal conduct suspicious activity reporting plays an essential role in the efforts of industry and law enforcement to thwart money laundering and the financing of terrorism.

Our recommendations are aimed at enhancing the effectiveness of suspicious activity reporting and making the SAR form simpler to use. Given the increasing need for the government to act swiftly in response to money laundering and terrorist financing activity, the SAR form should allow firms to record the relevant information regarding the suspicious activity and timely report it to the government. We do not believe law enforcement purposes are advanced if, in filling out the SAR form, firms have to labor over which boxes to check. We also recommend that SAR form for the securities industry be as consistent as possible with the SAR forms for banks and the other sectors of the financial services industry that report suspicious activity. We think the goals of suspicious activity reporting will be advanced, and much confusion avoided, if the various SAR forms effectively create a uniform reporting structure. Consistency in the forms would be particularly helpful to firms that have affiliates engaged in the different sectors of the financial services industry that will be reporting suspicious activity on several of the forms.

We have addressed our specific comments below to the information required by each section of the form. At the outset, we note that the different sections of the SAR form are organized in a different order than the SAR form used by the banking industry. We suggest that the all of the SAR forms used by the different sectors of the financial services industry be organized in the same order so as to avoid confusion.

- **Comments on Part I, "Subject Information"**

We suggest adding a check box that could be completed where the subject information is "unknown" or "unavailable," as does the SAR form used by the banking industry. This is important because broker-dealers will be required to report suspected criminal violations involving amounts of at least $5,000 even where a suspect cannot be identified. It is not uncommon for crimes to occur involving some form of identity theft such as stolen credit cards or checks used by unknown persons. In such cases, while these attempted frauds may be quickly identified, the true identity of the subject may not be known because of the nature of the fraud, but a SAR is still required to be filed.

Box 15, Account Number - The form should list space for more than one account number because the activity at issue may involve more than one account. By contrast, the bank SAR form lists space for four separate accounts.

Box 20, Association/Affiliation with reporting institution – We suggest adding additional information regarding the subject's relationship to the reporting institution, such as whether the subject is a customer, employee, officer or shareholder. The bank SAR lists these and other useful categories. Like the bank form, there should also be a box to indicate whether the subject is still employed at the financial institution, or has

been suspended, terminated or resigned. We believe this additional information would be helpful to law enforcement.

- **Comments on Part II, Suspicious Activity Information**

Box 23, Instrument Type - This box requests identification of "instrument types" involved. We do not believe this information is useful or helpful to law enforcement because most suspicious activity reporting has no relationship to the type of security or instrument that may be involved. The information required by Box 30, type of suspicious activity -- for example, whether the activity involves check fraud, securities fraud, or terrorist financing -- provides sufficient identification of the underlying transaction. Therefore, we recommend that information regarding the type of instrument not be required. We also do not believe any law enforcement purpose is furthered by identifying the market where these instruments are traded.

Box 30, Type of suspicious activity – We have some suggestions regarding the many "types of suspicious activity that are listed." Although certain of the checkboxes mirror those contained in the bank SAR and seem appropriate to summarize or characterize the activity underlying the report (*e.g.*, Bank Secrecy Act violation (box a) and various types of fraud (check, credit/debit card, futures, mail, securities and wire) (boxes c, f, i, n, and r)), others would not be viewed as the type of activity to be reported on a SAR because they have little relevance to money laundering or potential criminal activity related to money laundering or fraud.

Box "j. Margin violation" presumably would be used in those instances where the customer violated the terms of the margin agreement entered into with the institution. Such agreements, however, are grounded in an assessment of credit risk based upon the particular customer and the types of products and/or markets involved. Violations of a margin agreement are not generally related to, or otherwise indicative of fraudulent activity or money laundering. Identifying basic margin violations would appear to have little benefit to law enforcement. Moreover, in the event that such violations reflected some other indicia of criminal or suspicious activity, they would more properly be characterized by using one or more of the remaining checkboxes. We suggest, therefore, that this checkbox be deleted from Box 30.

Box "k. Money laundering." We recommend that this box be combined with the box for "Bank Secrecy Act," as it is on the bank SAR form. Combining these related categories will make completion of the SAR form simpler.

Box "q. Wash or other fictitious trading" is often a form of market manipulation and more generally comes under a securities fraud. Therefore, this category is already covered by box l, "market manipulation" and box n, "securities fraud." Because it is often difficult to distinguish wash or fictitious trading from other types of market manipulation we believe this additional box will cause unnecessary confusion, and should be omitted.

Box "r. Wire fraud" – Because it is often difficult to distinguish wire fraud from mail fraud, we recommend combining these two types of activities in a single box ("mail/wire fraud").

Lastly, given that much suspicious activity involves forms of identity theft, we recommend that a box labeled " Identity theft" be added to the SAR-SF form.

- **Comments on Part IV, Reporting Financial Institution Information**

Box 36, "Name of financial institution or sole proprietorship" - We do not understand the basis for including the concept of a "sole proprietorship" in this item.

Box 51, "type of institution or individual" – We believe this section will cause confusion and add little value to law enforcement. First, it is not clear whether Treasury intended financial institutions to select every box that applies to their business operations, or instead to choose just one box. Nor is it clear which box a self-clearing broker-dealer should check. Second, we question the value for law enforcement purposes of requiring institutions to identify what kind of an institution it is or the functions that apply to it. For instance, in our view whether an institution is a clearing broker, introducing broker or market maker has little relevance to the investigation of suspicious activity. Most significantly, law enforcement will know the name of the institution and can obtain information regarding the type of institution through public records or by contacting the institution if deemed relevant. We also question the inclusion of boxes for self-regulatory organizations in that we are not aware of any guidance or requirements that SROs should file SARs.

- **Comments on Part VI, Suspicious Activity Information - Narrative**

Some of the information asked for in the narrative section of the SAR form is already asked for in prior sections of the form. As a result, firms will be recording the same information in different parts of the form. To make suspicious activity reporting more efficient, we recommend that the narrative section not require information that is already required by the earlier sections of the form. For instance, the information required by item "g" (where the possible violation of law(s) took place) is largely covered by Part IV of the form, which requires the name and address of the financial institution and additional branches involved. Item "d" requires identification of who benefited from the transaction. This information should only be required in the narrative section if there is additional relevant information that is not included in Part 1, which requires information regarding the subject. Lastly, we are not clear as to what is being sought by item "k", which requires financial institutions to "[i]ndicate whether any information has been excluded from this report," and if so the reasons. What is sought by item "k" is not clear because the report seems to require a complete description of the suspicious activity, and there is a separate requirement that a financial institution retain but not file the supporting documentation for the report.

We also do not believe firms should be required to report the status of a related litigation as required by item "i." Reporting the name of a related litigation and court where the action is pending should be sufficient. Requiring firms to report the "status" of pending litigation could require disclosure of confidential or privileged information and might trigger concerns or issues involving waiver of the attorney-client privilege. We also recommend that the narrative section not require the "market where traded" or the CUSIP number of the securities traded because, as discussed earlier, we do not believe this information is helpful to law enforcement.

We appreciate the opportunity to comment on the proposed form. If you wish to receive additional information related to our comments, please feel free to contact the undersigned.

Sincerely,

Alan E. Sorcher
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Associate General Counsel
Securities Industry Association
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