



July 7, 2003

**VIA ELECTRONIC MAIL (regcomments@fincen.treas.gov)**

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

Attn: NPRM

Re: Suspicious Transaction Reporting – Futures Commission Merchants and  
Introducing Brokers in Commodities, 68 *Fed. Reg.* 23,653 (May 5, 2003)

Dear Ms. Starr:

National Futures Association (“NFA”), a self-regulatory organization for the commodity futures industry, appreciates this opportunity to comment on FinCEN’s proposed suspicious transaction reporting rule for futures commission merchant (“FCMs”) and introducing brokers in commodities (“IB-Cs”). After the enactment of the USA PATRIOT ACT (“Patriot Act”) in 2001, NFA worked with the Commodity Futures Trading Commission and Department of the Treasury to adopt a rule and accompanying interpretive notice which require our FCM and IB-C Members to adopt an anti-money laundering program. NFA closely watches developments in the AML area and supports the proposed rules, which require FCMs and IB-Cs to report suspicious transactions that are conducted by, at or through an FCM or IB-C and involve funds or assets.

NFA believes that the proposed rules will properly encourage and likely provide for early detection and reporting of potential money laundering schemes. The proposed rules note a number of different types of transactions which may involve money laundering and they describe, with specificity, the mechanics of reporting such activity. Additionally, Treasury has provided close parity between the final SAR rule for broker-dealers and the proposed rules for FCMs and IB-Cs. This consistency is appropriate and will make enforcement of these requirements more effective and efficient. Our comments as detailed below are designed to seek clarification on certain aspects of the proposed rulemaking in order to further improve the SAR reporting requirement for FCMs and IB-Cs.

First, NFA notes that proposed Rule 103.17(c) sets forth two exceptions to the SAR requirement applicable to FCMs and IB-Cs. Specifically, these exceptions provide that FCMs and IB-Cs do not have to file a report in the case of a robbery or burglary that is reported to law enforcement, or for possible violations of the Commodity Exchange Act, CFTC rules or NFA rules, if such violations are reported to the CFTC or NFA. The proposed amendments also indicate that if an SAR is not filed, an FCM or IB-C may be required to demonstrate that it has relied upon one of these exceptions and must maintain records to demonstrate the alternative reporting. While the Rule describes circumstances for which there may be an exception and requires documentation, it does not address what specific documentation is sufficient to demonstrate reliance upon an exception. In reviewing the SAR Rule for broker-dealers, NFA notes that in discussing similar exceptions, the Rule provides that a Form RE-3, U-4 or U-5 is sufficient documentation to demonstrate reliance. Therefore, NFA suggests that FinCEN treat FCMs and IB-Cs similar to broker-dealers, and specifically state that a Form 8-T, U-5, RE-3 or any other form properly filed with a futures or securities regulator is sufficient documentation.

In the proposed rulemaking, Treasury also recognizes that more than one FCM or IB-C may be involved in transactions that require reporting. Specifically, proposed Rule 103.17(a)(3) requires that, while the obligation to identify and properly and timely report a suspicious transaction rests with each FCM and IB-C involved in a transaction, only one report need be filed. In the preamble proposing this Rule, FinCEN encourages FCMs and IB-Cs to communicate with one another about the transaction to ensure that only one complete SAR is filed. This requirement is practical and efficient for all parties and is closely analogous to situations where there is more than one broker-dealer involved in a transaction that requires reporting. In particular, NFA notes that the SAR reporting Rule for broker-dealers requires that each broker-dealer involved in the transaction, whether the introducing or clearing broker-dealer, identify and report suspicious transactions, but that only one SAR-BD need be filed in each situation. The broker-dealer Rule also provides that when a SAR is filed in such a situation, the broker-dealer that actually files the SAR may share a copy of the filed SAR with the non-filing broker-dealer.

In order to align proposed Rule 103.17(a)(3) with the SAR Rule for broker-dealers, NFA requests that two points be clarified. First, NFA suggests that FinCEN clearly state that this single filing provision applies where two FCMs are involved in reviewing a suspicious transaction for the same customer and that these FCMs are encouraged to communicate with one another about the transaction to ensure that only one complete SAR is filed. Second, NFA requests that FinCEN specifically clarify that

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when two FCMs or an FCM and IB-C are involved in a situation that requires similar communication and the filing of one SAR only results, then the filing entity may share the SAR itself with the non-filing parties.

A related matter arises in a situation where an FCM, in order to monitor and identify potential money laundering schemes, must communicate with other entities who are not currently eligible for protection from civil liability under Section 314(b) of the Patriot Act. For example, to assess a particular situation and determine if there is suspicious activity, an FCM may need to obtain information from a foreign introducing broker, commodity trading advisor, or unregistered investment company that are not currently eligible for protection under Section 314(b). Under these circumstances, the FCM may have potential civil liability for communicating with these entities about the potentially suspicious activity. NFA proposes that the SAR Rule provide some safeguards to FCMs faced with these situations so that they may obtain information in order to file a complete SAR without risk of civil liability.

NFA encourages FinCEN to adopt the proposed Rule as set forth in the *Federal Register* release, with some clarification on the points noted above. If FinCEN has any questions regarding our comments, please do not hesitate to contact either Anne-Marie Kaiser at (312) 781-1880 or [akaiser@nfa.futures.org](mailto:akaiser@nfa.futures.org) or the undersigned at (312) 781-1413 or [tsexton@nfa.futures.org](mailto:tsexton@nfa.futures.org).

Respectfully submitted,

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Vice-President and General Counsel

cc: Patrick J. McCarty  
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