# SUSPICIOUS ACTIVITY IS SUSPICIOUS

YES, SARS ARE IMPORTANT TO FINCEN. By MITCHELL LEVY

How many times do I have to say it? Suspicious activity is suspicious. File a Suspicious Activity Report for any suspicious activity that meets the threshold of $2,000. It is the law!

If the transaction is suspicious and slightly below the threshold, file a SAR anyway. I have never seen FinCEN, a state examiner, a federal regulator, or your bank scold or penalize anyone for filing a SAR below the $2,000 threshold.

If it is really suspicious activity, FinCEN wants to know about it.

As I discuss with owners the importance of being vigilant in detecting and filing SARs, they always ask, "Does FinCEN really look at the SARs that we file? Do the SARs lead to anything?"

I will tell you that from my experience the answer is yes — SARs are very important to FinCEN. As stated in the BSA Advisory Group's SAR Activity Review, Issue 10, "BSA data filed everyday by depository institutions, casinos, insurance companies and MSBs accounts for a tremendous amount of financial information that is essential to tracing and identifying potential avenues of terrorist financing and money laundering. The data extracted from BSA filings is extremely useful in identifying and linking investigative information and intelligence with ongoing investigations, as well as in identifying leads for new investigations. Although data from a single report often has minimal investigative value, when examined and compared with other BSA data and other intelligence, the significance of a report, or a single element of that

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report, is often greatly increased."

SARs are important and looked at!

During many site visits or phone calls, when asking owners and employees how many SARs they have filed this year, the answer many times is, "Zero. We did not see any suspicious activity to file a SAR." Once I take a look at their many transactions, that is never the case.

All MSB transactions are high risk. There is suspicious activity taking place in every MSB across the country. After I am done reviewing their transactions, I show the owners the transactions that I found to be suspicious on paper, by the mere fact of the dollar amounts, frequency, transaction pattern, or date and time.

I always find transactions above and below the $2,000 threshold that are suspicious and that do require a SAR to be filed. Most of the time it is structuring and ID avoidance.

## NEVER TOO LATE

I recommend to management that they file a SAR immediately, as it is never too late to file. The rule states that the SAR is to be filed 30 days after detection of the suspicious transaction. That being said, a SAR is not always filed within 30 days, as it may not be detected as suspicious until a later date.

After management acknowledges the transactions that trigger a SAR to be filed, the common response is, "Business is hard enough. My staff is overwhelmed and so busy that it is hard for them to detect if a transaction is suspicious or not. My staff and I know about CTRs for transactions over 10K; we file them. We just never know if certain transactions are suspicious or not, so we don't really focus on it, it is extra work."

Those are all just excuses. I tell them that I would not repeat that to a state or federal regulator, and definitely not to your bank.

If management and staff cannot detect suspicious activity, then enhanced SAR training is needed immediately, as well as training to detect the red flags relating to suspicious activity. If you know what you are looking for, and how to look for it, it is easy to detect.

I personally have worked the teller line many times over the last 20 years. If you know what suspicious activity is, it will hit you in the face; you do not have to look hard for it.

I am going to say this again: Suspicious activity is taking place in your MSB location through transactions that your staff is processing for the customers. If you do not start filing SARs for suspicious activity, you are leaving yourself open to fines, penalties and potentially even imprisonment.

There have been many cases where MSB operators did not monitor or file SARs, they were alerted to this deficiency, and continued to neglect it. This resulted in fines and imprisonment.

In one case, the head manager was sentenced to five years in prison, and the AML compliance officer was sentenced to eight months in prison. FinCEN concluded that even after learning that the customer was under criminal investigation, merchants failed to report the customer and its activity on a Suspicious Activity Report.

Now that we are clear on how important it is for you to detect and file SARs, what should you do about it?

## NO-SAR LOG

I highly recommend all MSB locations keep a No-SAR Log. This is very well received by all examiners and banks. The No-SAR Log is used to document all suspicious activity that was considered and not filed. It shows you are watching for suspicious activity and documenting what you find.

The advantage is that if two years from now, there is an examination and the examiner asks why there was no SAR filed, the MSB has the answer. The regulators love it. During a recent conversation with a retired IRS examiner concerning suspicious activity and site visit examinations, he said, "as a regulator, when I saw a No-SAR Log I immediately had great feelings about the subject."

This isn't your father's monitoring program. The days of just saying, "We did not see any activity that we thought was suspicious, so we did not file any SARs this year" are in the past. Maybe you are that one in a million location that does not have any suspicious activity coming to your store. Prove it.

## REGS CHANGE

Ask any MSB operator in New York about the Department of Financial Services Regulation 504: Transaction Monitoring and Filtering Program Requirements and Certifications. They will tell you how life has changed regarding proof that you are monitoring your transactions for suspicious activity and BSA/AML adherence. I would not be surprised if similar regulation is headed to every state soon.

What do I mean by this? You need to show that you are monitoring all of the transactions being processed through your MSB location, that you have looked at these transactions in detail, that you have a spreadsheet where you have sorted by name, date, amount, frequency and patterns. You will be able to see if any structuring, ID avoidance or other types of suspicious activity is taking place.

Every time I do this, I find transactions that are suspicious. As an example, the same sender sent two transactions to the same receiver within three minutes of each other for a total of $999 per transaction. Or a customer came in twice in the same day and purchased $2,000 in money orders each time for a total of $4,000 in one day.

I know that if you properly monitor the transactions in your store, you will find suspicious activity that requires a SAR filing.

If you feel that a transaction could be suspicious, although it is below the reporting requirements, at a minimum, document the transaction on your No-SAR Log that I mentioned earlier. It could be useful in the future for law enforcement.

In today's world of compliance, you must have a monitoring program set-up and it must be followed. If you as an owner do not want to take the time, energy and resources to monitor the company's transactions yourself, then outsource it.

Either way you do it, you must have transaction monitoring taking place and prove that you are doing your job as an MSB and looking for and reporting suspicious activity as well as other BSA/AML reporting requirements.

### FACE TO FACE DETECTION

You cannot catch all of the suspicious activity going on via a transaction monitoring program. You still need good, old-fashioned face to face interaction. Thus, good employee training is a must.

Have you ever been in a situation when a customer approaches the teller window and says, "Hi, I would like to buy $4,000 in money orders, please?" "Sure Mr. Customer, may I have your ID please?" "Why do you need my ID?" "It is the law that I need to record your information to sell you over $3,000 in money orders in one day." "Well then, I would like to just purchase $2,000 today so you do not need my ID."

The next day the customer comes back in to purchase another $2,000 in money orders and your teller does not say anything or file a SAR. We all know this happens frequently.

You can make all the rules and regulations that you want, but unless you train, train, train your employees and test them to make sure they truly understand the content, your compliance will never be where it should be.

It starts with the teller being trained on what is a SAR, what triggers a SAR and what are some scenarios that would require a SAR filing. What are the red flags? That coupled with your monitoring policy and procedures and someone actually doing the monitoring, you will catch and detect SARs. I guarantee it.

So the next time a state examiner, federal regulator, your bank or independent reviewer asks how many SARs you filed this year, your answer won't be zero.

Mitchell Levy is a Certified Anti-Money Laundering Specialist and the founder of The Compliance Organization. Levy has been active in the MSB industry for more than 20 years as an owner/operator/ compliance officer of a chain of Community Financial Service Centers. He now focuses on helping MSB owners achieve the highest standards of BSA/AML Compliance, including compliance programs, independent reviews, and bank on-boarding. If you would like free access to any of the resources mentioned above, or help with your culture of compliance, contact Levy at (301) 793-8188 or mitchell@thecomplianceorganization.com. www.thecomplianceorganization.com