



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

DIVISION OF BANKING
SUPERVISION AND REGULATION

SR 03-20

November 19, 2003

TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK

SUBJECT: Suspicious Activity Reports and Enforcement Actions against Individuals

All domestic and foreign banking organizations supervised by the Federal Reserve are required to file Suspicious Activity Reports (SARs) regarding known or suspected criminal activities by current and former officers, directors, employees and other institution-affiliated parties (IAPs), and others.¹ Board staff reviews SARs on a regular basis to identify significant cases in order to ensure that appropriate enforcement actions are brought against IAPs, subject to the jurisdiction of the Federal Reserve, whose misconduct is reported in SARs. Staff also reviews SARs to facilitate coordination with law enforcement authorities investigating the matters reported on the forms. The SARs identified by Board staff during these reviews are referred to the Reserve Banks for follow-up action. Reserve Banks also independently review SARs filed by supervised institutions within their districts on a regular basis to identify IAPs whose misconduct warrants enforcement actions, and they review SARs prior to an examination or inspection of a state member bank, bank holding company and other supervised institution in order to evaluate a banking organization's compliance with the Board's SAR reporting rules and the Bank Secrecy Act.²

The Special Investigations Section of the Division of Banking Supervision and Regulation has recently had its responsibilities expanded and is now responsible for enforcement actions against IAPs handled by the Division.³ This SR letter provides guidance to Reserve Banks regarding the coordination of enforcement matters with the Special Investigations Section once a SAR against an IAP has been identified for follow-up action.

Generally, Reserve Bank follow-up is required on SAR filings involving IAPs when any of the following criteria is met: (1) the amount of the loss is \$25,000 or greater; (2) multiple SARs have been filed on an individual, regardless of the amount of loss; (3) the conduct resulted in

unjust enrichment; or (4) the conduct would have resulted in a significant loss had it gone undetected or had restitution not been paid. Once either Board staff or a Reserve Bank identifies a SAR fitting one of these criteria, then the Reserve Bank should contact the financial institution to discuss the details of the SAR and ascertain law enforcement's involvement. Of course, Reserve Banks should continue to contact banking organizations and law enforcement authorities regarding a particular SAR filing when other events raise supervisory concerns.

If law enforcement intends to prosecute the IAP, the Reserve Bank should monitor law enforcement's efforts and notify Board staff of law enforcement's interest. If informed that a guilty plea is likely, the Reserve Bank should provide law enforcement with the following paragraph to be included in the plea agreement:

"Defendant further agrees not to become or continue serving as an officer, director, employee, or institution-affiliated party, as defined in 12 U.S.C. Section 1813(u), (the Federal Deposit Insurance Act, as amended), or participate in any manner in the conduct of the affairs of any institution or agency specified in 12 U.S.C. Section 1818(e)(7)(A), without the prior approval of the appropriate federal financial institution regulatory agency as defined in 12 U.S.C. Section 1818(e)(7)(D)."

The use of this language in a plea agreement obviates the need for the Board or any other banking agency to take a separate enforcement action barring the individual from the banking industry. The aforementioned paragraph was drafted in consultation with the other federal financial institutions supervisory agencies and the U.S. Department of Justice.⁴ Reserve Banks should also notify Board staff if a conviction is obtained.

If law enforcement declines to prosecute an IAP identified in a SAR filing meeting one or more of the above-mentioned criteria, the Reserve Bank should do the following:

- Gather all appropriate documents from the filing financial institution and the law enforcement agency related to the SAR filing, including a copy of the signed confession, if applicable, records relating to any admission made to banking officials, and any other pertinent supporting materials, such as affidavits, investigative reports, bank records, and the names of banking officials with knowledge of the misconduct or internal investigation;
- Follow-up with the financial institution to ascertain whether any civil action has been taken by the organization against the individual, and whether the financial institution has obtained any restitution, either through the voluntary cooperation of the individual or by means of a court judgment;
- Determine the current home address of the individual;
- Determine if the individual is being represented by legal counsel and identify the legal counsel contact information (i.e., address and telephone number); and
- To the extent possible, ascertain the individual's current employment status and his or her ability to pay restitution or a civil money penalty.⁵

After obtaining the documentation available from the financial institution, and considering whatever additional information that the Reserve Bank has about the IAP, the Reserve Bank should evaluate the quality of the documentation, weigh any other relevant circumstances and determine whether to recommend that the Board take an enforcement action against the IAP. Possible actions include a permanent ban from the banking industry through a prohibition order or a cease and desist order requiring restitution and corrective actions addressing the IAP's misconduct and future employment. If the Reserve Bank decides to recommend an enforcement action, then the Reserve Bank should continue to follow current procedures relating to the submission of enforcement action recommendations to Board staff, which include a memorandum summarizing the facts, along with a copy of the supporting documentation. The Reserve Bank should also notify Board staff when it recommends that no action be taken.

Reserve Banks are asked to distribute this letter to appropriate supervisory and examination staff. For SARs and related enforcement action recommendations meeting the criteria described in this SR letter, Reserve Bank staff should contact Carmina Hughes, Special Counsel and Manager of the Special Investigations Section, at (202) 452-5235, or John Davidson, Senior Attorney, at (202) 452-2808. Questions can also be directed to Herbert A. Biern, Senior Associate Director, at (202) 452-2620 or to Ms. Hughes or Mr. Davidson.

Richard Spillenkothen
Director

Cross Reference:
SR letter 01-18

Notes:

1. Sections 1813(u) and 1818(b)(3) and (4) of Title 12 of the United States Code generally define an IAP subject to the enforcement jurisdiction of the Federal Reserve as any officer, director, employee, controlling shareholder, independent contractor such as an attorney or accountant under certain limited circumstances, or any other person who participates in the conduct of the affairs of an insured depository institution, bank holding company, nonbank subsidiary of a bank holding company, or a U.S. branch or agency of a foreign bank supervised by the Federal Reserve.
2. See SR letter 01-18.
<http://www.federalreserve.gov/boarddocs/SRLETTERS/2001/sr0118.htm>.
3. The Enforcement Section of the Division will continue to be responsible for enforcement actions against the domestic and foreign banking organizations supervised by the Federal Reserve. Both sections continue to report to Herbert A. Biern, Senior Associate Director.
4. It is important to note that Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) currently generally bars a convicted felon from being an officer or director or otherwise participating in the conduct of the affairs of an insured depository institution without the approval of the Federal Deposit Insurance Corporation. Section 19 does not cover employment by bank holding companies, nonbank subsidiaries of bank holding companies, and the U.S. branches and agencies of foreign banks. The use of the

suggested language described above is meant to address the limitations of Section 19 by mandating that an IAP who is convicted of a criminal offense pursuant to a plea agreement containing this provision cannot work for any domestic or foreign banking organization supervised by the Federal Reserve or any other federal financial institution regulator without the approval of the bank supervisor overseeing the institution where the convicted IAP seeks employment.

5. In the event that staff finds that the individual whose misconduct is reported in a SAR is **currently** employed at a banking organization supervised by the Federal Reserve or any of the other federal financial institutions supervisory agencies, the Reserve Bank must immediately contact the Special Investigations Section. Working together, Board and Reserve Bank staff will coordinate an appropriate response to the situation, which could include the initiation of an immediate suspension action by the Board if the IAP is employed by a Federal Reserve-regulated financial institution. If the IAP is employed at a non-Federal Reserve supervised entity, the matter will be brought to the attention of the bank or functional regulatory authority overseeing the institution currently employing the IAP.