

develop a compliant anti-money laundering program, the program should be reasonably designed to detect and report not only transactions required to be reported on Form 8300, but also to detect activity designed to evade such requirements. Such activity, commonly known as "structuring," may involve making deposits into a trading or investment account of \$10,000 or more with multiple money orders, travelers' checks, or cashier's checks or other bank checks, each with a face amount of less than \$10,000. Such methods of payment may be indicative of money laundering, particularly when the payment instruments were obtained from different sources or the payments were made at different times on the same day or on consecutive days or close in time.

FinCEN is currently considering whether CTAs should be subject to additional BSA requirements, including filing suspicious activity reports pursuant to section 5318(g) of the BSA and complying with accountholder identification and verification procedures pursuant to section 326 of the Act. If CTAs become subject to additional requirements, they will need to update their compliance programs to include appropriate procedures, training, and testing functions.

*(2) Provide for Independent Testing for Compliance To Be Conducted by Company Personnel or by a Qualified Outside Party.*

It is necessary that a CTA provide for periodic testing of its anti-money laundering program in order to assure that the program is functioning as designed. The testing should be conducted by personnel knowledgeable regarding applicable BSA requirements. The testing may be accomplished by employees of the CTA, its affiliates, or unaffiliated service providers, so long as those same employees are not designated to implement and monitor the program under requirement (3) below. The frequency of such a review would depend upon factors such as the size and complexity of the CTA's business and the extent to which its business model may be subject to a higher risk of money laundering than other business models. A written assessment or report should be a part of the review, and any recommendations resulting from such review should be promptly addressed.

commission merchant, from receiving any funds, securities, or property from clients in the CTA's name. The Form 8300 requirement thus applies where the CTA transmits non-cash instruments such as cashier's checks made payable to the Futures Commission merchant for deposit into a client's account.

*(3) Designate a Person or Persons Responsible for Implementing and Monitoring the Operations and Internal Controls of the Program.*

The CTA must charge a person (or group of persons) with the responsibility for overseeing the anti-money laundering program. The person or group of persons should be competent and knowledgeable regarding applicable BSA requirements and money laundering risks, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures. Whether the person or group of persons is dedicated full time to BSA compliance would depend upon the size and complexity of the CTA's business. In addition, a person responsible for the overall supervision of the program should be an officer of the CTA.

*(4) Provide Ongoing Training for Appropriate Persons.*

Employee training is an integral part of any anti-money laundering program. Employees of the CTA must be trained in BSA requirements relevant to their functions and in recognizing possible signs of money laundering that could arise in the course of their duties, so that they can carry out their responsibilities effectively. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The level, frequency, and focus of the training would be determined by the responsibilities of the employees and the extent to which their functions bring them in contact with BSA requirements or possible money laundering activity. Consequently, the training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employees' roles and functions in the anti-money laundering program.<sup>26</sup> For those employees whose duties bring them in contact with BSA requirements or possible money laundering activity, the requisite training should occur when the employee assumes those duties. Moreover, these employees should receive periodic updates and refreshers

<sup>26</sup> Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and the Office of Foreign Assets Control and other government lists of suspected terrorists and terrorist organizations.

regarding the anti-money laundering program.

*C. Examination*

The proposed rule includes a provision under which FinCEN would delegate examination authority to the CFTC, to enable the CFTC to examine CTAs' compliance with the anti-money laundering program requirement.

*D. Voluntary Filing of Suspicious Activity Reports*

In addition to complying with the requirements of this proposed rule, CTAs are encouraged to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1-866-566-3974). The BSA provides immunity from civil liability for any financial institution, its directors, officers, employees, or agents that make such a disclosure of any possible violation of law or regulation.<sup>27</sup> The Act clarifies that this safe harbor immunity also applies in the case of any voluntary reporting of a suspicious transaction or under any contract or other legally enforceable agreement, such as an arbitration agreement.

**IV. Request for Comments**

FinCEN requests comment on all aspects of this proposed rule. FinCEN specifically requests comment on the definition of "commodity trading advisor" in proposed rule 103.133(a) and whether this definition should include other categories of CTAs, such as any of those that are exempt from registration under CFTC rules, or that are required to register with the CFTC but do not direct client accounts. FinCEN also requests comment regarding the proposed provisions designed to avoid imposing overlapping or duplicative anti-money laundering program regulations of CTAs and other financial institutions that are (or are proposed to be) subject to anti-money laundering program requirements.

**V. Regulatory Flexibility Act**

It is hereby certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. The CFTC has stated that it would evaluate within the context of a

<sup>27</sup> See *Lee v. Bankers Trust Co.*, 166 F.3d 540, 544 (2nd Cir. 1999) (stating that in enacting 31 U.S.C. 5318(g), Congress "broadly and unambiguously provide[d] \* \* \* immunity from any law (except the federal Constitution) for any statement made in a [suspicious activity report] by anyone connected to a financial institution").