

(2) The address, e-mail address (if applicable), and telephone number of the unregistered adviser are as follows:
ADDRESS: _____

E-MAIL ADDRESS (if applicable): _____

TELEPHONE NUMBER: _____

(3) The name, e-mail address (if applicable), and telephone number of the designated anti-money laundering program compliance officer of the unregistered adviser are as follows:

NAME: _____

E-MAIL ADDRESS: _____

TELEPHONE NUMBER: _____

(4) The total number of clients of the unregistered adviser: _____

(5) The total amount of assets under management of the unregistered adviser, as determined under the instructions to SEC Form ADV, Part 1A, as of the end of the adviser's most recent fiscal year: _____

Part II

The unregistered adviser is terminating its advisory business or is otherwise no longer an unregistered adviser described in 31 CFR 103.150(a)(2) as of the following date:

SUBMITTED BY: _____

Name: _____

Title: _____

Date: _____

Dated: April 28, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506-AA44

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations; Definition of Futures Commission Merchants and Introducing Brokers in Commodities as Financial Institutions; Requirement That Futures Commission Merchants and Introducing Brokers in Commodities Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations implementing the statute generally referred to as the Bank Secrecy

Act. The proposed amendments would add futures commission merchants and introducing brokers in commodities to the regulatory definition of "financial institution" and would require that they report suspicious transactions to FinCEN. This is the most recent proposal to be issued by FinCEN concerning the reporting of suspicious transactions by the major categories of financial institutions operating in the United States as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Comments on the proposed rules must be received by July 7, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to regcomments@fincen.treas.gov, with a caption, in the body of the text, "Attention: NPRM—Suspicious Transaction Reporting—Futures Commission Merchants and Introducing Brokers in Commodities." Comments also may be submitted by paper mail to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: NPRM: Suspicious Transaction Reporting—Futures Commission Merchants and Introducing Brokers in Commodities. Comments should be sent by one method only. For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading "Submission of Comments."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400.

FOR FURTHER INFORMATION CONTACT:

Alma M. Angotti, Senior Enforcement Counsel, and Judith R. Starr, Chief Counsel, FinCEN, at (703) 905-3590; David Vogt, Associate Director, and Donald Carbaugh, Chief, Depository Institutions, Office of Regulatory Programs, FinCEN, (202) 354-6400.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Statutory Provisions

The Bank Secrecy Act, Pub. L. 91-508, codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314; 5316-5332 ("BSA"), authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in

criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.¹ Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The BSA defines the term "financial institution" to include, among other broad categories of institutions, any "broker or dealer in securities or commodities."² Section 321(b) of the USA Patriot Act amended the BSA to expressly include in the definition of "financial institution" futures commission merchants ("FCMs") that are registered, or required to register, with the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act ("CEA").³

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),⁴ to require financial institutions to report suspicious transactions. Subsection (g)(1) states generally:

The Secretary may require any financial institution, and any director, officer,

¹ Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 ("USA Patriot Act"), Pub. L. 107-56.

² 31 U.S.C. 5312(a)(2)(H). The Secretary has clarified that the term "broker or dealer in commodities" in the BSA includes introducing brokers in commodities ("IB-Cs"). See 67 FR 21110, 21111 n.5 (April 29, 2002) (anti-money laundering programs for certain financial institutions); 67 FR 48328, 48329 n.2 (July 23, 2002) (customer identification procedures for FCMs and IB-Cs).

³ 7 U.S.C. 1 *et seq.* Section 321(b) also provided that the term "financial institution" includes any commodity pool operator ("CPO") and any commodity trading advisor ("CTA") registered, or required to register, under the CEA. See 31 U.S.C. 5312(c). FinCEN has proposed rules that require unregistered investment companies, including commodity pools, to have anti-money laundering programs ("AMLs"). FinCEN also intends to propose rules requiring CTAs to have AMLs. A requisite element of these AMLs is the requirement to have policies, procedures, and controls that are reasonably designed to ensure compliance with the BSA and its implementing regulations.

⁴ 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102-550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, to require designation of a single government recipient for reports of suspicious transactions.