



# Suspicious activity? Go straight to the source

**Y**ou have detected cash transactions at your depository institution on a personal or small business account, which have deviated from the previous normal account activity. Does it rise to the level of filing a SAR? This single question is asked hundreds of times a day by Bank Secrecy Act/Anti Money-Laundering (BSA/AML) professionals around the world.

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### Defensive filings

Life would certainly be less complicated if everything could be classified in black and white, but suspicious activity can often be the quintessential gray area. Taking the position of, "When in doubt, fill it out," is ultimately the bottom line, but unfortunately a purely defensive SAR filing can have three consequences, two of them counter-productive.

A defensive SAR filing, unbeknownst to the filer, may eventually be effective down the road. It can also serve to populate the base of your Financial Intelligence Unit (FIU) with useless information and wasted analytical time. A defensive filing will also populate your internal SAR base with the same concerns. Moreover, in the United States, Financial Crimes Enforcement Network (FinCEN) guidelines suggest that once you file a SAR you should continue reporting further suspicious activity at a minimum of 90 day intervals for that particular individual. The Bank Secrecy Act/Anti-Money Laundering Examination Manual specifically refers to this guideline. This of course not only creates additional work, but possibly additional needless work.

An easy way to eliminate the recurring filing problem would be for the depository institution to close the customers account. This of course presents the dilemma of closing accounts where a reasonable explanation for the activity in question may actually exist. All can agree that in today's competitive business environment the decision to terminate shouldn't be taken lightly. It should be made with as many available facts as possible.

### Due diligence

Know your customer is an ever-evolving process. As the years pass your customer's life and banking trends are also ever evolving. The information you presently have on record can become severely outdated. Nor may your institution have any related current information, such as loan documents or joint accounts, from which to draw fresh inferences. You have now reached the point where the next logical alternative is to go to the source. You can call your customer and document the conversation, but you may wish to send them a letter.

A well-crafted letter eliciting an explanation for the change in activity can provide a definitive road-map for the direction you need to pursue. The tone and precise wording of the letter is up to each individual financial institution. Engaging legal counsel may be prudent when composing the letter. One thing the tone should not be is accusatorial. Irritating innocent accountholders into

closing their account is not the point of the exercise, or desired result. Explaining that you are simply discharging your obligation as a depository institution will go a long way in calming any preconceived fears about your request. Provide a form, if you deem appropriate, for your customer to draft their response.

### Analyzing the response


Sending a letter, obtaining a response, and taking the appropriate action is due diligence at its best, sure to please most examiners. Expect the responses to run the gamut from the truth, with supporting documents, to obfuscation, anger and reasons that are ridiculous to the point of laughter. Some of the more common plausible explanations include a customer depositing the cashed paycheck of his/her spouse, a side-business, or rental income received in either cash or monetary instrument. Some of the more skeptical include selling the inventory of a failed business from your garage; finding cash in a deceased relative's home; to gambling prowess at the local casino. Each institution must then weigh the validity of the response. Hopefully, there will be additional factors to assist you in rendering your decision. If not, you may want to request further documentation or continue to monitor the activity.

Now you may be thinking that someone who is money laundering is too smart to respond in writing. The jails are full of people who were convicted because they thought they were smarter than you and me. Many criminals are brazen, eager to offer an explanation under the notion it will allow them to continue their activity.

What if your customer doesn't respond? Silence may be golden, but it can also be incriminating. It can also be the by-product of a society suspicious of the government, lazy, busy, sick, recalcitrant, or any one of a mul-

titude of other reasons. If you desire, follow up with a second request letter. Silence may also be tantamount to a settlement with no admission of guilt. The customer may not answer, but may cease the activity or close their account, obviously getting the message, so to speak, that their transaction pattern has drawn unwanted scrutiny.

Another situation which will present itself is those customers who not only fail to respond, but continue their activity. This is a direct challenge which leaves no option but to terminate the relationship. You may wish to make reference to this in your letter. In a credit union this presents a particularly unique situation. A credit union cannot just close a member's account and may have to call a special meeting to do so. An alternative for a credit union may be to tailor its policy permitting restrictions on activity.

One of the inherent problems with investigations of suspicious activity, which results in a closed account, cessation of activity, or restrictions, is that it may induce the individuals targeted to taking their business elsewhere. Like chasing the drug dealer from one corner to another, the problem is eliminated for you, but not for the public as a whole. None of us want to see criminal activity slip through the cracks. So when an account relationship is terminated, whether it be voluntarily or involuntarily, it's imperative to put the finishing touch on your investigation by filing that final SAR. Even if the customer ceases their activity or you have to restrict, file. Multiple SAR filings by multiple institutions are the classic red flag for an FIU. 

*Charles Falciglia, CAMS,  
New York, NY, U.S.A.,  
redstate05@yahoo.com*

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