

ALERTS

Arrest of FinCEN Employee for Unlawful Disclosure of SARs and SAR Information

October 19, 2018

On Oct. 16, 2018, in an unprecedented action, the U.S. Attorney's Office for the Southern District of New York charged Natalie Mayflower Sours Edwards ("Edwards"), a senior advisor at the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"), in a criminal complaint with unlawfully disclosing suspicious activity reports ("SARs") and conspiracy to make unauthorized disclosure of SARs. The Bank Secrecy Act ("BSA"),^[1] as amended by the USA PATRIOT Act of 2001, and its implementing regulations require certain financial institutions, such as banks, to file a SAR with FinCEN when they detect a known or suspected violation of federal law or regulation or suspicious activity relating to money laundering, terrorist financing or other criminal activity.^[2] The information reported on the SAR is required to be provided pursuant to 31 U.S.C. § 5318(g), as implemented by FinCEN regulations found at 31 C.F.R. § 1010.320. Covered financial institutions submit SARs to FinCEN through an electronic portal and FinCEN maintains a centralized database of SARs that it makes available to law enforcement and certain state and federal regulatory agencies.^[3]

The BSA imposes strict confidentiality requirements on the disclosure of information relating to a SAR, including the existence of a SAR or information that would reveal the existence of a SAR. Specifically, by way of example, "a financial institution that files a SAR — including its current or former directors, officers, employees or agents — may not notify any person involved in the transaction that the transaction has been reported."^[4] In addition, the BSA provides that no current or former officer or employee of, or contractor for, both federal or state governments, as

well as local, tribal or territorial governments, may disclose to any person involved in a suspicious transaction that the transaction was reported “other than as necessary to fulfill the official duties of such officer or employee.”[5] In 2010, FinCEN implemented amended regulations to make clear that the SAR confidentiality provisions of the BSA extend not only to disclosure of a SAR to the subject of the report, but to any disclosures not otherwise authorized by FinCEN’s regulations.[6]

According to the complaint, in October 2017, Edwards downloaded thousands of FinCEN files containing highly sensitive information relating to Russia, Iran and terrorist groups such as ISIS, to a flash drive. Edwards does not appear to have been involved in any official projects or tasks relating to these files. Throughout the course of 2018, Edwards unlawfully disclosed numerous SARs — and emails and investigative memoranda related to the SARs — to a reporter by taking photos of the SARs and texting them to the reporter through an encrypted application. Edwards and the reporter also engaged in telephone conversations. According to the complaint, the substance of the SARs related to matters and persons being investigated by the U.S. Office of the Special Counsel (among other investigative authorities), such as Paul Manafort, Richard Gates and the Russian Embassy. That information was subsequently published, over the course of a dozen news articles, by the news organization that employed the reporter. The complaint also describes how Edwards performed specific searches of FinCEN records at the request of the reporter. The specific reporter and news organization were not named in the complaint.

Edwards was charged with violations of 31 U.S.C. § 5322 and 18 U.S.C. § 371 for unauthorized disclosure of suspicious activity reports and conspiracy to make unauthorized disclosures of suspicious activity reports, both of which carry a maximum sentence of five years in prison. When questioned by law enforcement officials, Edwards allegedly ultimately confessed to providing SARs to the reporter via the encrypted application, but denied knowing that the reporter intended to publish the information (although this statement is contradicted by allegations in the complaint). Edwards also declared that she is a “whistleblower” who provided the SARs to the reporter for “record keeping” purposes.

The complaint also alleges that the associate director of FinCEN to whom Edwards reported in her official duties extensively communicated with the reporter via text message. Edwards’ supervisor is identified as a co-

conspirator, but it does not appear that he or she has been charged at this time.

This action by the U.S. Attorney's Office highlights the importance of complying with the SAR confidentiality rules and the potentially severe consequences of failing to do so. While this case deals with a government employee, the rules apply equally to firms and their employees. Financial institutions may, therefore, want to consider using this opportunity to remind any employees who come into contact with SAR information to safeguard that information and strictly maintain its confidentiality.

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If you have any questions concerning this Alert, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. §§ 5311-5332.

[2] See The Annunzio-Wylie Anti-Money Laundering Act of 1992, Public Law 102-559, Title XV § 1517(b). 106 Stat. 4055, 4058-9 (1992); 31 U.S.C. § 5318(g)(1) (authorizing Secretary of the Treasury to require any financial institution, and any director, officer, employee or agent of any financial institution, to report suspicious transactions relevant to a possible violation of law or regulation).

[3] 73 Fed. Reg. 42405, 42407-9 (July 21, 2008).

[4] 31 U.S.C. § 5318(g)(2)(A)(i).

[5] 31 U.S.C. § 5318(g)(2)(A)(ii).

[6] 75 Fed. Reg. 75594, 75595 (Dec. 3, 2010).

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