

**ALERTS**

## US Government Continues to Penalize Unauthorized Disclosures of Suspicious Activity Reports

**February 24, 2020**

On Jan. 13, 2020, a former senior adviser at the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") pleaded guilty in federal court to one count of a criminal information charging, among other things, that the employee engaged in a conspiracy to make unauthorized disclosures of suspicious activity reports ("SARs").<sup>[1]</sup> The employee, Natalie Mayflower Sours Edwards, had been charged in an information filed on Jan. 30, 2019 with violations of 31 U.S.C. § 5322 (Unauthorized Disclosures of SARs) and 18 U.S.C. § 371 (Conspiracy to Make Unauthorized Disclosure of SARs) for allegedly providing SARs to a journalist.<sup>[2]</sup> The SARs were related to matters being investigated by the U.S. Office of the Special Counsel, the U.S. Attorney's Office for the Southern District of New York and/or the National Security Division of the U.S. Department of Justice, and included information regarding potentially suspicious transactions relating to Paul Manafort, Richard W. Gates, Russian diplomatic accounts and other matters.<sup>[3]</sup> The government originally charged Edwards in a complaint on Oct. 16, 2018, which alleged that Edwards' co-conspirator was an associate director at FinCEN, who supervised Edwards.<sup>[4]</sup> The associate director was not named as a defendant in the complaint and has not been charged.

Under the Bank Secrecy Act and its implementing regulations, certain U.S. financial institutions are required to file SARs when they detect a known or suspected violation of Federal law or regulation, or suspicious activity related to money laundering, terrorist financing or other criminal activity.<sup>[5]</sup> SARs are subject to strict confidentiality requirements. The

unauthorized disclosure of a SAR carries civil and criminal penalties, which include up to five years in prison and a \$250,000 fine.[6] FinCEN receives and analyzes reports, such as SARs, that have been determined to have a high degree of usefulness in criminal, tax and regulatory investigations and proceedings, and certain intelligence and counter-terrorism matters, in order to combat domestic and international money laundering and promote national security.[7] Government employees, such as the defendant and certain employees of financial institutions have access to SARs. Those with access to SARs through either government or private sector employment must keep SARs confidential or risk being penalized for unauthorized disclosure.

In connection with the plea, the United States Attorney for the Southern District of New York emphasized that, in the government's view, Edwards "abused her position of trust by agreeing to repeatedly disclose highly sensitive information contained in [SARs]."[8] According to the U.S. Attorney's Office, "[m]aintaining the confidentiality of SARs, which are filed by banks and other financial institutions to alert law enforcement to potentially illegal transactions, is essential to permit them to serve their statutory function, and the defendant's conduct violated the integrity of that critical system and the law." [9]

Edwards, who is scheduled to be sentenced in June 2020, and the prosecutors agreed to a stipulated advisory sentencing guideline of zero to six months in prison. This stipulation is not, however, binding on the judge.

Edwards' case is at least the third time the federal government has prosecuted an individual for the unauthorized disclosure of a SAR. In 2019, in *United States vs. Fry*, a former Internal Revenue Service analyst pleaded guilty to making the unauthorized disclosure of SARs related to Michael Cohen, President Trump's personal attorney, and Mr. Cohen's consulting company, to a California attorney.[10] Mr. Fry was sentenced to five years' probation and ordered to pay a fine of \$5,000.[11] In 2011, in *United States vs. Mendoza*, a jury found a bank employee guilty of one count of making an unauthorized disclosure of a SAR to a bank customer, and three counts of bank bribery; the judge sentenced the bank employee to six months in federal prison.[12]

With this instant prosecution, the Government continues to emphasize the confidentiality of SARs and the penalties associated with violations of

that confidentiality. Financial institutions should remind their employees of these penalties.

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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.

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[1] Change of Not Guilty Plea to Guilty Plea as to Natalie Mayflower Sours Edwards Count 1, *United States v. Edwards*, No. 1:19-cr-00064-GHW (S.D.N.Y. Jan. 13, 2020); Press Release, United States Attorney's Office for the Southern District of New York, *Former Senior FinCEN Employee Pleads Guilty To Conspiring To Unlawfully Disclose Suspicious Activity Reports* (Jan. 13, 2020), available here.

[2] Information, *United States v. Edwards*, No. 1:19-cr-00064-GHW (S.D.N.Y. Jan. 30, 2019), Dkt. No. 14, available here.

[3] Complaint, *United States v. Edwards*, No. 1:19-cr-00064-GHW (S.D.N.Y. Oct. 16, 2018), Dkt. No. 1, available here. A prior SRZ *Alert*, available here, provided background on this case and the relevant statutory and regulatory provisions.

[4] Complaint ¶ 19.

[5] 31 U.S.C. § 5318(g). *See e.g.*, 31 C.F.R. §§ 1020.320 (regulations applicable to banks) and 1023.320 (regulations applicable to broker-dealers).

[6] 31 U.S.C. §§ 5321 and 5322.

[7] *See generally* 31 U.S.C. § 5311 (declaration and purpose of the Bank Secrecy Act).

[8] Press Release, *supra* note 1.

[9] *Id.*

[10] Plea Agreement, *United States v. Fry*, No. 3:19-cr-00102-EMC (N.D. Cal. Aug. 14, 2019), Dkt. No. 31; Press Release, United States Attorney's Office for the Northern District of California, *Internal Revenue Service Analyst Pleads Guilty to Making Unauthorized Disclosure of Suspicious Activity Reports* (Aug. 15, 2019), available here.

[11] Judgment, *United States v. Fry*, No. 3:19-cr-00102-EMC (N.D. Cal. Jan. 16, 2020), Dkt. No. 43.

[12] Jury Verdict, *United States v. Mendoza*, No. 5:09-cr-00107-RHW (C.D. Cal. Jan. 10, 2011), Dkt. No. 96; Judgment and Commitment, *United States v. Mendoza*, No. 5:09-cr-00107-RHW (C.D. Cal. June 6, 2011), Dkt. No. 116; Press Release, United States Attorney's Office for the Central District of California, *Former Chase Bank Official Convicted of Taking Bribes and Disclosing Existence of a Suspicious Activity Report* (Jan. 11, 2011), available here.

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