

Broker-Dealers File Suspiciously Few Suspicious Activity Reports

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Speaking at an anti-money laundering (AML) conference in February, SEC Director of Enforcement John Ceresney warned attendees that broker-dealers were under-filing suspicious activity reports (SARs). He said that broker-dealers in the United States have been averaging only about five SARs each year per firm, despite a high volume of transactions that warrant more such filings, with many broker-dealers filing none. Promising that the SEC would pursue "stand-alone" violations (i.e., where the only alleged violation is failure to file a required SAR), Ceresney cited a recent SEC enforcement action against broker-dealer Oppenheimer, which aided a customer who engaged in large deposits and sales of penny stocks. While Oppenheimer AML compliance personnel detected a suspicious transfer, the firm filed no SAR. In another example, amidst potential wash-trading and other forms of suspicious manipulation, a Wedbush Securities executive failed to file an SAR. Noteworthy takeaways:

- Broker-dealers will be under increased SEC scrutiny for under-filing SARs for the foreseeable future.
- Emphasis will be made on how well broker-dealers are discharging their obligation to file meaningful and substantive SARs, rather than just "check the box" SARs that inadequately describe the suspicious activity.
- As a former federal prosecutor from the Southern District of New York, Ceresney and the SEC's point people who bring these enforcement actions will likely select readily provable cases where the evidence is strong and the defenses weak.
- The SEC will be pursuing "stand-alone" Bank Secrecy Act enforcement actions—such as those mentioned above—to send a message that the SEC considers SAR violations in and of themselves to be serious and that the under-filing must stop.
- An SEC broker-dealer task force will be looking at other options to increase compliance with a broker-dealers' obligation to file SARs.

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