

The 314(b) Program A Decade of Information Sharing: Stronger Than Ever

By FinCEN's Office of Special Programs Development

In the wake of the September 11 terrorist attacks, the USA PATRIOT Act was passed by Congress and signed into law on October 26, 2001. Among the many tools provided to law enforcement and the business community to combat money laundering and terrorist financing under the USA PATRIOT Act, Section 314(b) is unique. Under Section 314(b), a financial institution or an association of a financial institution may voluntarily share information with other financial institutions “for purposes of identifying and, where appropriate, reporting activities that the financial institution or association suspects may involve possible terrorist activity or money laundering.” Having appropriately registered with FinCEN, institutions and associations may share information under the protection of “safe harbor” from liability to the “full extent provided in subsection 314(b) of Public Law 107-56 [the USA PATRIOT Act].”⁴³

The following study examines the use of the 314(b) mechanism by financial institutions through the prism of SARs filed by those institutions since the inception of the program. Trends in suspicious activities gleaned from recent SAR filings are revealed. The benefits of the 314(b) program, both to participants and to law enforcement, are also highlighted.

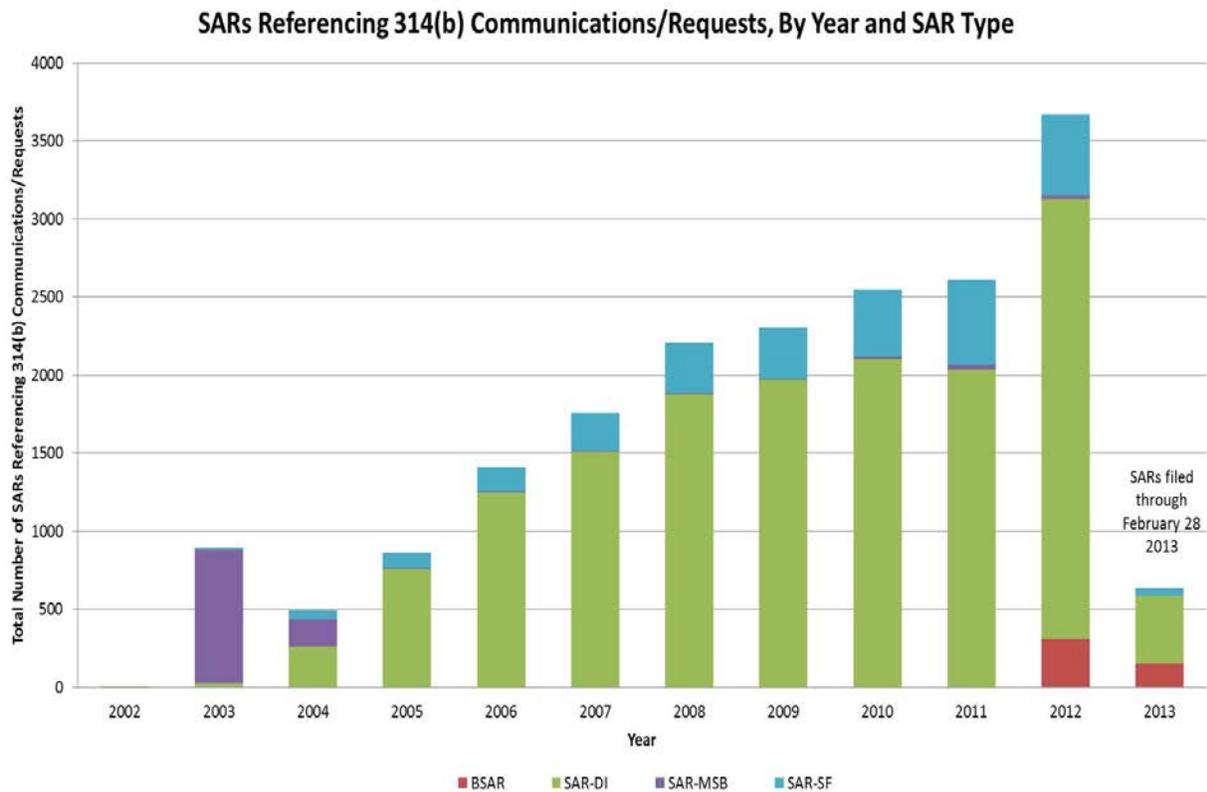
More SAR filings, Greater Variety of Participants

Over the last decade, information sharing via “314(b) communications” or “314(b) requests” has wrought substantial benefits for law enforcement and industry alike. FinCEN has received over 19,500 SARs explicitly referencing the sharing or attempted sharing of information through the 314(b) process since 2002.⁴⁴ It should be noted here that an undetermined number of SARs may also have been filed as a result of the filing institution’s involvement in a 314(b) communication, even though there is no specific mention of 314(b) in the SAR narratives. As shown in the following chart, from a total of two SARs referencing 314(b) filed by financial institutions in 2002, the number of 314(b) SARs has rapidly *and* steadily grown, to 3,671 314(b) SARs filed in 2012:

42. See 31 C.F.R. § 1010.540.

43. 31 C.F.R. § 1010.540(b)(5)(i).

44. Over 19,500 SARs received from 2002 through February 2013.



Through the first two months of 2013, 643 SARs have been filed referencing the 314(b) program, matching 2012’s pace. The steadily increasing use of the new BSAR form (also referred to as the “FinCEN SAR”) should also be noted.

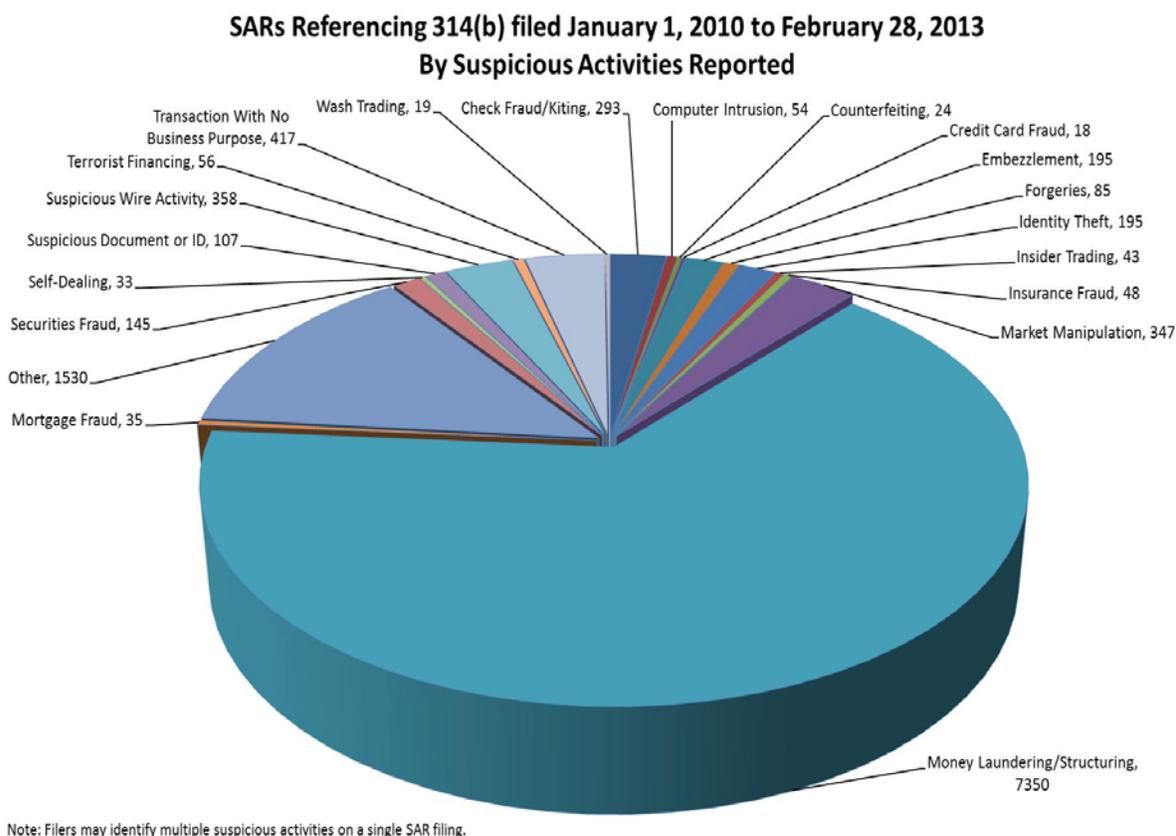
Although the majority of 314(b) SARs have been and continue to be filed by banks, we also see the increasing presence of other sectors of the financial industry among recent SAR filers who participate in the 314(b) process—including money services businesses, insurance companies, and securities firms. We can see from the data that SAR-SFs filed by securities firms and broker-dealers have increased steadily in absolute numbers, and similarly have increased overall as a proportion of the number of SARs referencing 314(b) communications.

The significance of this trend should not be overlooked. As more industries are subject to the requirements of the Bank Secrecy Act and become aware of the 314(b) process, the number of participants has increased. Concurrently, SAR filings referencing use of 314(b) communications has grown, due in part to an increasing number of participants, as well as to the comprehensive information set available to 314(b) participants, which can be used to more effectively identify and potentially report suspicious activities and entities. Moreover, the synergy developed between

314(b) participants from different sectors of the financial system—for example, between an online broker-dealer and a bank—creates opportunities for cross industry sector information sharing that may translate into determinations by one or both 314(b) participants that SARs should be filed. No SARs may have been filed in the absence of the 314(b) communication.

Recent Trends in Suspicious Activity as Conveyed by 314(b) related SARs

This study also took a look at a more recent batch of 314(b) SARs filed (since 2010) to discern overall patterns and trends on the types of filers who have been using the process and the types of suspicious activities they have been identifying. An overview of the types of activities being identified is summarized in the chart below:



Newer Sectors of the Financial System Are Increasing Their Participation

As mentioned above, the SARs reveal the use of the 314(b) mechanism to facilitate sharing of information across financial institutions from different slices of the financial sector. Banks continue to contact other banks using the 314(b) process, but they have been joined by broker-dealers, securities clearing firms, money services businesses, and insurance companies.

It is evident that the population of 314(b) participants who file SARs referencing the 314(b) mechanism has become more diverse. Relatively new sectors, such as online broker-dealers and insurance companies, have been filing a significant number of SARs referencing 314(b). Although entities from these sectors have been filing some SARs for years, the overall increasing number of SARs filed, as well the greater variety of filers from these sectors, also implies that the use of the 314(b) process is becoming more common.

Information available to the financial institutions via 314(b) allows the financial institutions the opportunity to more effectively investigate potential suspects and their activities. Financial institutions that participate in the process, as well as law enforcement that see SARs filed by one or both institutions, can obtain a more comprehensive picture of the subject's accounts, funding mechanisms, and activities. With the enhanced information available to institutions that participate in the 314(b) process, institutions can make better informed decisions and strengthen their compliance efforts.

For example, in one recent SAR, an online broker-dealer observed suspicious behavior by one of its clients. Having no face-to-face interaction with this client and unaware of its personal business, the online broker-dealer utilized a 314(b) request to communicate with the client's banks to try to further determine the relationship between the client and the recipients of related wire transfers conducted by the client. Through the 314(b) information sharing process with the banks, the broker-dealer determined that there was no relationship between the client and the recipients of the large sums of wire transfers. Without the 314(b) communication, the online broker-dealer would not have had further reason to suspect fraudulent activity.

Conversely, a 314(b) request may also explain the wire transfer activity conducted by a customer, assuaging fears of potential wrongdoing. Essentially, through the 314(b) mechanism, participant financial institutions, often from different industry sectors, can inform one another about the typical activities in which they observe mutual subjects of concern engaging, thereby assisting in verifying whether or not the subjects' activities are actually suspicious. Through the 314(b) process,

important elements of a financial institution's anti-money laundering program, including its due diligence and suspicious activity monitoring and reporting efforts, can be augmented with the infusion of additional information, often stemming from financial institutions involved in other diverse sectors.

314(b) is Being Used to Validate Subject Information and Activities

Our study has also revealed that financial institutions appear to be using the 314(b) mechanism to verify information, such as a suspect's identity, trading patterns, and the validity of checks or other documents issued by other financial institutions.

For example, in a recent SAR, a financial services company described receiving a suspicious check from a client issued by another financial institution. The company placed a 314(b) request with the issuing financial institution. Through the response, the financial services company was informed that the routing number on the check was old and did not belong to the suspect trying to deposit the funds into their account.

In another instance, a SAR filed by a U.S. broker-dealer reported their being approached by subjects from an Asian country who attempted to open an account with one of the broker-dealer's agents, claiming that they represented a foreign national who possessed an account worth \$50 billion with the Hong Kong branch of a large bank. The subjects wanted to invest \$100 million through the broker-dealer. The broker-dealer filed a 314(b) request with the bank to verify the legitimacy of the documentation provided by the subjects. Through the 314(b) communications process, the bank informed the broker-dealer that the documents were, in fact, fraudulent. Moreover, the bank informed the broker-dealer that one of the subjects had apparently approached the bank's New York branch, claiming to be a customer of the Hong Kong branch. The broker-dealer continued to monitor the activity of the subjects, never actually opened an account with the subjects, and filed a SAR including all of the aforementioned details.

Similarly, two SARs highlighted the use of the 314(b) process between two broker-dealers who together were able to determine that a suspect, who had been a financial advisor with one of the broker-dealers before being terminated, was impersonating his clients and engaging in forgery and market manipulation. The allegedly impersonated individuals were originally clients, via the subject, of one of the broker-dealers and had recently switched their accounts to the other firm. The new clients all bought stock with a "micro-cap" firm which was partially owned by the suspect. Since the new broker-dealer was not familiar with these clients, and was suspicious of the activities, the broker-dealer initiated a 314(b) request with the former broker-dealer,

which initiated its own investigation. As a result, the new broker-dealer confirmed its suspicions of forgery, impersonation, and market manipulation, terminating its relationship with the suspect and filing a SAR that included details provided by the former broker-dealer through the 314(b) process. Meanwhile, the former broker-dealer investigated further, initiated a 314(b) request with a *third* broker-dealer, determined to monitor all accounts with holdings in the suspect's micro-cap firm, restricted any remaining accounts related to the suspect, and filed a SAR.

Money Laundering and Structuring: The Prevalent Suspicious Activity Type

The vast majority of SARs filed referencing 314(b) inquiries involve potential money laundering and/or structuring as the primary suspicious activity type. Although a growing number of 314(b) SARs are being filed involving other activities, the bulk of 314(b) SAR filings involve potential money laundering and/or structuring. The 314(b) process is particularly well-suited to enable financial institutions to obtain information regarding potential money laundering and/or structuring. For example, a large national bank may notice an individual customer making cash deposits several days in a row, each just under the reporting threshold for CTRs. Through the 314(b) mechanism, the bank can contact the customer's other bank(s) to determine the source of funds, and to discover if the suspect is engaging in similar behavior with other financial institutions. In another reflective example, a broker-dealer may receive deposits from investors in the form of three separate cashier's checks, each purchased at a bank with \$9,000 in cash—again, just under the CTR reporting threshold. Through a 314(b) request, the broker-dealer can communicate with the bank that issued the cashier's checks to see how the checks were obtained.

The 314(b) SARs also reveal that potential money laundering and/or structuring frequently occurs in conjunction with other illegal activity such as forgery, check fraud, securities fraud, suspicious wire activity, or other transactions without apparent economic purpose. For instance, in one recently filed SAR, an online broker-dealer noted a suspicious pattern of ACH deposits followed immediately by ATM withdrawals conducted by two separate and apparently organized groups of clients. The transactions appeared to lack any economic purpose. Both groups involved an ATM operator. The 314(b) process was used by the broker-dealer to communicate with several of the clients' banks, and as a result, the broker-dealer was able to establish that some of the ACH deposits with which the clients funded their broker-dealer accounts were funded with cash, the ultimate source of which is unknown. The pattern of activity suggested that the clients in each group worked in concert to potentially defraud the online broker-dealer through excessive ATM fees

rebated back by the broker-dealer to the ATM operator. The broker-dealer was also able to further determine from the information sharing that the suspect clients were engaging in this activity across the country.

Terrorist Financing

The study has also observed that for nearly every year since the program's inception, the use or attempted use of the 314(b) mechanism to exchange information on subjects and activities has resulted in the filing of SARs involving potential terrorist financing activity. Overall, there are very few 314(b) SARs involving potential terrorist financing, less than 200 SARs since 2003. However, they are consistently filed every year by financial institutions, and are, by their very nature, particularly significant, garnering considerable attention from law enforcement. The 314(b) communication process in these situations can be vital to provide the most comprehensive picture of these particularly sensitive subjects and their activities to law enforcement. Recent 314(b) SAR filings in this area, for example, have involved individuals and entities that conducted activities which involved parties residing in countries that have been identified as state sponsors of terrorism, and/or have been linked with known terrorist organizations as well as organized crime.

Insurance Fraud and Scams

Insurance companies have been filing SARs referencing the use of the 314(b) process since 2007. The study has observed a marked increase, over the past few years, in the number of 314(b) SARs filed by the insurance industry. The 314(b) process allows insurance companies to contact banks, other insurance companies, and other financial institutions to help identify the true source of funds when a policy is purchased or financed in a peculiar fashion. For example, a recent SAR revealed an individual paying for a life insurance premium through a wire transfer. The insurance company contacted the sending bank to find out where the wire was sent from and attempted to isolate the source of funds. The information provided by the bank revealed that the wire transfer emanated from other individuals who had no documented relationship to the policy holder.

In another recent example, a SAR described the 314(b) communication made by one insurance company to another insurance company regarding the contacted insurance company's agent. The originating firm had obtained financial information from a bank using 314(b) that identified the suspicious activity of the contacted insurance company's agent, which included the sale of a Stranger-Owned Life Insurance, or "STOLI," policy to an elderly couple funded with suspicious funds transfers. The originating firm alerted the contacted firm to the agent's activities,

and provided the contacted firm with the information they had collected. The contacted firm initiated an investigation of their agent as a result, including, in turn, the use of the 314(b) process to obtain more information from the bank contacted by the originating firm. As a result, the contacted firm filed a SAR on its agent.

314(b) Participation Encourages “Heads up” Exchange and Cooperation among Financial Institutions

As we have illustrated in several examples, a central benefit of participating in the 314(b) process is that a financial institution that is aware of suspicious activity can employ 314(b) communications not only to gather information, but to alert other financial institutions to suspicious customers and their activities. For example, a recent SAR described a broker-dealer contacting a bank via the 314(b) process to inform the bank that an elderly mutual client may have been the victim of an advanced fee fraud, styled as an e-mail claiming that the client had won a lottery, resulting in the activity being brought to the attention of the bank’s investigative realm.

In another example, personnel at one bank noticed suspicious wire activity involving a customer consisting of a large incoming wire transfer in which the sender held a line of credit at another bank. Personnel at the first bank used the 314(b) process to contact the second bank, which was also in the process of investigating the outgoing wire transfer, the source of funds of which was apparently accessed without authorization. By expeditious cooperation on the part of the two banks’ 314(b) personnel, as well as contact with the customer, the banks were able to put the pieces of the puzzle together, and with the customer’s consent, the first bank was able to return the funds transferred to the second bank, and filed a SAR on the attendant suspicious activity.

Interestingly, the study also observed that many SARs referencing 314(b) communications were filed by the *contacted* financial institution, and not just the requesting financial institution. Information shared through 314(b) communications often results in a “heads up” to the receiving financial institution to more closely examine certain customers and accounts that might not otherwise have risen to this level of enhanced scrutiny.

For example, one SAR described the use of the 314(b) mechanism by a financial company to communicate to a bank that one of their mutual clients was under investigation, and that a federal law enforcement agency had obtained a seizure warrant on one of the suspect’s accounts. The illicit funds were allegedly obtained from narcotics trafficking, and were commingled with legitimate funds from the suspect’s business. Through the 314(b) request, the bank became aware of its client’s

potentially illicit behavior and proceeded to monitor their accounts. With financial institutions facing the challenge of a proliferation of clients and accounts, this type of alert shared via the 314(b) process is vital.

As noted in another SAR, a financial institution used the 314(b) mechanism to warn another financial institution of a client's attempt to forge documents and withdraw funds that did not belong to the client. It was further discovered through the aforementioned 314(b) communication that the suspect had wired large amounts of money to various banks for relatives in high-risk countries and engaged in forging letterheads sent to other banks to approve the large transfer of illicit funds. This is an excellent example of how the 314(b) information sharing process can be proactively used to alert other financial institutions to potential illicit behavior and related pending investigations, and to uncover previously unknown suspicious activities.

Identity Theft/Computer Intrusion

As mentioned in previous examples, the study also reveals 314(b) SAR related trends in identify theft and computer intrusion reporting. With the burgeoning utilization of online technologies and the Internet for both communication and commerce in the 21st century, a rise in identity theft and computer intrusion as suspicious activity types is unsurprising. A typical example among recent 314(b) SAR filings found a securities broker describing the hacking of a client's e-mail. The hacker impersonated the client and attempted to wire all funds out of the client's account into a third-party account at a bank. The hacker did not succeed due to internal controls procedures at the broker. The broker used the 314(b) information sharing process to alert the bank about the hacker's activities.

Broker-Dealers and the Emergence of eCommerce

As addressed earlier, the study also reveals a steady rise, over recent years, in the number of SARs filed by members of the securities and futures sectors of the financial industry. Information sharing under 314(b) has become commonplace among a number of large and small broker-dealers, mutual funds, securities firms, and clearing firms, to name a few. In particular, for entities such as online broker-dealers that conduct business exclusively online, the ability to obtain additional information about their customers from other financial institutions can be invaluable for maintaining the integrity of their due diligence and transaction monitoring efforts. The number of SAR filings referencing the use of the 314(b) mechanism by online broker-dealers has increased in recent years. A number of the SARs have noted the use of online investors to transfer illicit funds. Communicating via the

314(b) mechanism enables banks to contact online broker-dealers, and vice versa, to further investigate and hash-out the overall patterns of a subject's potentially fraudulent behavior.

For example, in a recent SAR, an online broker-dealer observed the movement of suspicious funds into and out of a client's account and initiated a 314(b) communication with the bank that was the source of the suspicious deposits. In response to the 314(b) request, the bank revealed that the suspicious funds originated via ACH deposit from a corporate account maintained at the bank, and that the corporate account was funded with large cash deposits as well as large wire transfers from yet another corporate account. It is possible that the corporate accounts were controlled by the client. Funds deposited in the client's broker-dealer account were sent via wire transfer to a bank account in Indonesia, ostensibly to purchase merchandise. Essentially, this SAR illustrates how 314(b) inquiries allowed financial institutions across the industry spectrum to share information to piece together an overall complex cross-border money trail, providing evidence of activity consistent with structuring and money laundering.

Insider Trading

Another recently observed trend reveals how 314(b) communication can allow financial institutions to investigate potential insider trading. Several recent SARs showed how financial institutions used the 314(b) process to investigate suspicions of insider trading.

One SAR revealed that a securities firm suspected a client of insider trading, due to highly unusual stock purchase and trading patterns being exhibited by the client within a broker-dealer company. Through a 314(b) information exchange, the broker-dealer informed the securities firm that the individual was unemployed and had bought substantial stock because he heard about the company "through a friend." However, the subject did not reveal the exact reasoning behind the large purchase of stock shares, and as a result, the requesting securities firm filed a SAR.

In another example, an online broker-dealer identified a client who was a partner at a securities law firm and whose trading activity exhibited signs of potential insider trading and market manipulation. The broker-dealer received an ACH deposit into the client's account from a third-party's bank. One week later, the client withdrew the exact same amount from his broker-dealer account and then deposited it into the same bank account from which he had received the initial ACH deposit. Through

the 314(b) information sharing process, the broker-dealer was able to obtain account and source of funds information from the bank, which was incorporated into the SAR filed by the online broker-dealer.

Using 314(b) Leads to Real Results for Law Enforcement

A clear example reiterating the value of the 314(b) program to law enforcement was highlighted in the October 2011 issue of *The SAR Activity Review – Trends, Tips & Issues*. A SAR review team proactively identified SARs totaling several million dollars. The SARs were filed by financial institutions that shared information on the subject under the auspices of the 314(b) program. Accounts were opened by the subject at the financial institutions with similar patterns of suspicious activities, leading the second institution to contact the first one through a 314(b) communication. The first institution had already filed a number of SARs on the subject. As a result of their communication, the requesting institution filed a SAR reporting activity on checks returned for insufficient funds, and included strong indications of fraud that pointed to a possible Ponzi scheme. After further investigation by law enforcement, the subject was charged with wire fraud and possession of counterfeit checks, ultimately pleading guilty to mail fraud and agreeing to pay more than \$3.5 million in restitution.

Conclusion

The steady rise in 314(b) SAR filings underscores the recognition by financial institutions that the 314(b) process can significantly augment their internal due diligence and transaction monitoring efforts, enhancing their “Know Your Customer” efforts. Realizing that in many situations it may have only a small “piece of the puzzle,” the financial institution utilizing 314(b) communications is able to reach out to other financial institutions to gather additional invaluable information on customers and/or transaction trails of mutual interest.

Instead of just the limited set of information that a financial institution may have on a customer or activity, the 314(b) participant can obtain information about new accounts, activities, associates, and/or segments of complex financial trails, of which it was previously unaware. The newly obtained information allows the requesting financial institution to build a more comprehensive and accurate picture of its customer’s activities, providing for more accurate decision-making in the due diligence and transaction monitoring segments of its compliance efforts.

Moreover, incoming 314(b) requests alert the contacted financial institution to customers about whose suspicious activities it may not have been previously aware, and prompt the contacted institution to investigate further. A number of SARs in the study referencing 314(b) were filed not by the requesting institution, but by the contacted institution. Thus, the sharing of information benefits the due diligence and transaction monitoring efforts not only of the requesting institution, but the contacted institution as well.

314(b) communications have resulted in the filing of more comprehensive and complete SARs than would otherwise have been filed if the requests had not been made. SARs that reference 314(b) requests with positive results may provide a plethora of account, transaction, cross border financial trails, and/or identifying information about which the requesting (or receiving) institution had no prior knowledge. In some cases, both the requesting and the contacted financial institutions file SARs on the same suspects and their activities, when no SAR would have been filed in the absence of the 314(b) request. The 314(b) program, then, has proven invaluable to 314(b) financial institution participants initiating sharing requests, 314(b) participants responding to the requests, and the law enforcement and regulatory community.

For more information regarding participation in the 314(b) program, please refer to the program subsection of FinCEN's Web site at: http://www.fincen.gov/statutes_regs/patriot/section314b.html