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Compliance

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US Patriot Act

Séminar December 2024

- **Presentation of the speaker**

- Jerome.codomier@boetieconseil.com

- ➢ **The course of the seminar**
- ➢ **Documentation and texts**

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PLAN

1. US Patriot Act origin

2. And the banks in all this

3. The processes to be put in place

4. The particular way of controlling customers, the CIP

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PLAN

5. Register on the suspicious customer reporting site

6. The different types of declarations

7. Conclusion

- 1 Origin of the US Patriot Act

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▪ Origin of US Patriot Act

- It is the acronym for

"Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001."

It all started with the attacks of November 11, 2001.

For the first time the USA suffered an act major terrorist at home

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This long text (132 pages) erases the distinction between investigations carried out by foreign intelligence services and federal agencies responsible for criminal investigations (FBI) when they involve foreign terrorists.

It creates the statuses of enemy combatant and illegal combatant. This allows the United States government to detain without limit and without charge any person suspected of terrorist planning.

- **2-** And banks in all this ?

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Money is the sinews of war. The USPA therefore seeks to track the money.

The role of financial institutions will be to help them in the search for doubtful financial flows.

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This Congressional Act authorizes US security services to access computer data held by individuals and businesses, *without prior authorization and without informing users*.

This of course goes against our laws on banking secrecy and makes us condemnable except voucher.

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- Who is subject to the Patriot Act?
  - Thus, the Patriot Act allows American government agencies (the FBI, the CIA, the NSA, the army, the tax authorities, IRS, etc.) to access the personal data and information of people targeted as part of an investigation. Therefore, all your data is free for US authorities to access.

- Various legal cases have highlighted the excessive nature of certain provisions of the Patriot Act and the courts
- Americans had the opportunity to recall that it should not apply to common law cases

- The USPA is published by the US Department of the Treasury and applicable to any foreign bank holding a correspondent banking account with a US financial institution.

- **Here are the points concerning banks, insurance companies and brokers:**

Sections of the USA PATRIOT Act that may affect financial institutions:

1. Section 311: Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern
2. Section 312: Special Due Diligence for Correspondent Accounts and Private Banking Accounts
4. Section 313: Prohibition on U.S. Correspondent Accounts with Foreign Shell Banks
5. Section 314: Cooperative Efforts to Deter Money Laundering
6. Section 319(b): Bank Records Related to Anti-Money Laundering Programs

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7 Section 326: Verification of Identification

8 Section 351: Amendments Relating to Reporting of Suspicious Activities

9 Section 352: Anti-Money Laundering Programs

10 Section 356: Reporting of Suspicious Activities by Securities Brokers and Dealers; Investment Company Study

11 Section 359: Reporting of Suspicious Activities by Underground Banking Systems

12 Section 362: Establishment of Highly Secure Network

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3 The processes you have to create

3-1 First of all, take responsibility for your bank by a written document

3-2 Set up the CIP

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3-1 First of all, take responsibility for your bank by a written document

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- A bank in the USA to become your correspondent, your custodian and open an account for you will require that you complete this form
- Criminal liability for people
- Contamination

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- The FR Y7 form indicated in this form only concerns non-US banks which have a subsidiary in the USA

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- The documentation is downloadable along with many other documents on:
- www.Boetieconseil.com/private
- Password: bouchon

3-2 The processes to create   Set up the CIP

- **Concretely, a bank, an insurance broker must:**

- 1 Carry out much more comprehensive control than KYC of customers and their operations
- 2 Adhere to a process of transparency and online denunciation of financial transactions and doubtful customers

There are three levels of due diligence

1 Simplified due diligence (“SDD”) corresponds to situations where the risk of money laundering or terrorist financing is low and a full CDD is not necessary for the KYC procedure. This concerns, for example, small value accounts.

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2 Basic CDD refers to information obtained for all customers to verify identity and assess associated risks.

3 Enhanced Diligence ("EDD") is additional information collected for high-risk customers. A detailed response is required.

4 CIP a program for customers identification

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1 UNDERSTANDING COMPLIANCE CONCERNS DEFINITION OF THE COMPANY’S DUE DILIGENCE OBJECTIVES

2 VALIDATION OF THE BANK COMPLIANCE AIM

3 ESSENCIAL INFORMATION ON CUSTOMERS COLLECTED

4 SELECTION OF THIRD-PARTY PROSPECTS BASED ON WATCH LISTS AND PEP LISTS

5 RISK ASSESSMENT

6 VALIDATION OF COLLECTED INFORMATION

7 AUDIT OF THE DUE DILIGENCE PROCESS

8 DEVELOPMENT OF A CONTINUOUS MONITORING PLAN
COLLECTION OF ESSENTIAL INFORMATION

9 REGULAR VERIFICATION OF THE DUE DILIGENCE PROCESS

- As part of the USPA measures, the US government implemented a Customer Identification Program (CIP). Customer Identification Program

- To comply with the law, banks and other financial institutions must adapt the CIP according to their size and type of business.

- The CIP is a very strong KYC and AML.
- If these institutions do not do it, heavy fines of up to $250,000 or five years of imprisonment can be imposed.

- **Before opening the account, you must know:**
- First name and last name of the client
- Date of birth
- Proof of address documents
- Identification number
- **And verify its authenticity**

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- **Then**

- **Check →** Data should always be verified to ensure that the information is true
- **Record →** An organization must keep
- records of the information received and retain them
- for at least 5 years after an account is closed
- **Verify →** Against government terrorist lists.
- **Monitor →** Continuous monitoring of customers, so that apparently dangerous transactions can be flagged and prevented.

Risk Assessment →
Risk analysis of each client that must be performed <u>before</u> opening an account according to .

- Amount and size of transactions
- Origin of transactions
- Credibility of identity information
- Account activities

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- **Extended due diligence →**

In case of high risk additional background checks are required

✓ <u>Continuous</u> KYC

✓ Checking names against sanctions lists

✓ Watchlist screening

✓ Real-time asset tracking

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This is where the difficulty lies. We are almost committed to an obligation of results, but in practice

- Which lists to consult
- How often for each level
- How to estimate this level of "danger", according to which standards
- What maximum time limit to respect when there is an anomaly
- Which accounts to reconcile with each other
- A concrete case

- The philosophy of the system is to note any abnormal transaction in itself or for a particular customer

(amount, currency, frequency, etc.)
This may duplicate security control criteria on Swifts

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•Review of the CIP policy →

• A KYC, AML and CIP compliance officer should regularly review whether processes can be improved and look for possible errors.

•The procedure should be written and
•customers informed of the possible communication of their banking data, but not when it is done…

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- **In Summary**

- ✓ Implement a written CIP
- ✓ Collect at least all of the minimum information
- ✓ required for customer identification
- ✓ Apply a risk-based approach when verifying the information collected
- ✓ Keep track of all customers
- ✓ Compare all information collected with government lists
- ✓ Inform customers that their information must be collected and verified

- **5 How to register for the BSA**

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- 1 BSA registration
- 2 Which allows you to send suspicious transaction files via RMSB
- Where to register: Mandatory e-filing requires the e-filing of the Registration of Money Services. Businesses (RMSB) using the BSA e-filing system. If you are already registered with the BSA e-filing system, proceed to step 2. If you have not registered with the BSA e-filing system, please follow the steps below

- **Step 1: Register for BSA E-Filing** by visiting http://bsaefiling.fincen.treas.gov/main.html.
- a. Click on “Become a BSA E-filer.”
- b. Register as an “institution.”
- c. Follow the four steps to complete the BSA E-Filing registration process.

- **Step 2: Log in to your BSA E-Filing System account and complete the form**.
- a. On the “Welcome to the BSA E-Filing System” home page, click on FinCEN RMSB File found under “New Reports” on the left side of the screen.
- b. Click “Open Existing Form” or “Open New Form” to access the RMSB.
- NOTE: “Open Existing Form” is for filers who have already filed a copy of the RMSB and wish to download the filed copy into the BSA E-Filing System.
- c. Complete the form.

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- d. Once the form is completed, click “Validate” to ensure all required fields are completed. completed.
- Next, click “Sign with PIN” and enter the PIN assigned to you.
- Next, click “Save” and save a copy of the completed RMSB. MSBs can also “print” a copy for their own record keeping purposes.
- Finally, click “Submit”.

- **Step 3: Once a filer clicks "Submit"** to file their RMSB, they should receive a Submission. Confirmation page containing a tracking ID. Institutions may save this page for their internal records.

- **Step 4: Filers can track report submissions** by clicking "Track Status" on the BSA eForm. Filing Home Page. Refer to the BSA eFiling System User Manual (Section 6) for information on tracking the status of filings.

- **Step 5: Within approximately two business days**, registrants should receive an e-mail acknowledgement of receipt. send an e-mail to the “Secure Messaging Inbox” of their BSA E-Filing System account indicating that their registration has been accepted and processed. This e-mail acknowledgement will contain their MSB registration number (BSA ID) and a link to the MSB Registrant Search webpage. Instructions for Electronic Filing of a Money Services Business (MSB) Financial Crimes Enforcement Network

- **Step 6: Within approximately two weeks** of electronically filing the RMSB, certain registration information will be added to FinCEN’s MSB Registrant Search webpage. Users can then search for their MSB registration using the assigned MSB registration number (BSA ID) and print an “MSB Registration Status Information” letter.

- https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act

- **6 What to report?**

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6-1 The BSA Deposit System

https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act

You find here the FAQ on the USPA

RELATED FAQs

Mandatory E-Filing FAQs

FinCEN CTR FAQs

FinCEN SAR FAQs

BSA FAQs

FinCEN FAQs on Cyber-Events

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https://www.fincen.gov/mandatory-e-filing-faqs

Show the FAQ for the filling

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Mandatory E-Filing FAQs

- When does E-Filing become mandatory?
- Why is FinCEN mandating E-Filing?
- When did FinCEN decide to make E-Filing mandatory?
- What steps must be taken to register for E-Filing?
- Is there a cost to participating in BSA E-Filing?
- What FinCEN Reports must be E-Filed?
- When are the new FinCEN reports required to be filed?
- What happens if a paper report is submitted after the July 1, 2012, electronic deadline?
- Where can I find more information about BSA E-Filing?

- Electronic filing has been mandatory since 2012.
- CTR and SAR Reports
- Become a BSA E-Filer and follow the instructions to register as a monitoring user in the BSA e-filing system.
- If your organization has already registered for BSA E-Filing, contact your organization's monitoring user for instructions on registering as a general user.
- REGISTRATION

https://siss.fincen.gov/314a/Login

An official website of the United States Government

UNITED STATES DEPARTMENT OF THE TREASURY
FinCEN
FINANCIAL CRIMES ENFORCEMENT NETWORK

Secure Information Sharing System

Login Register

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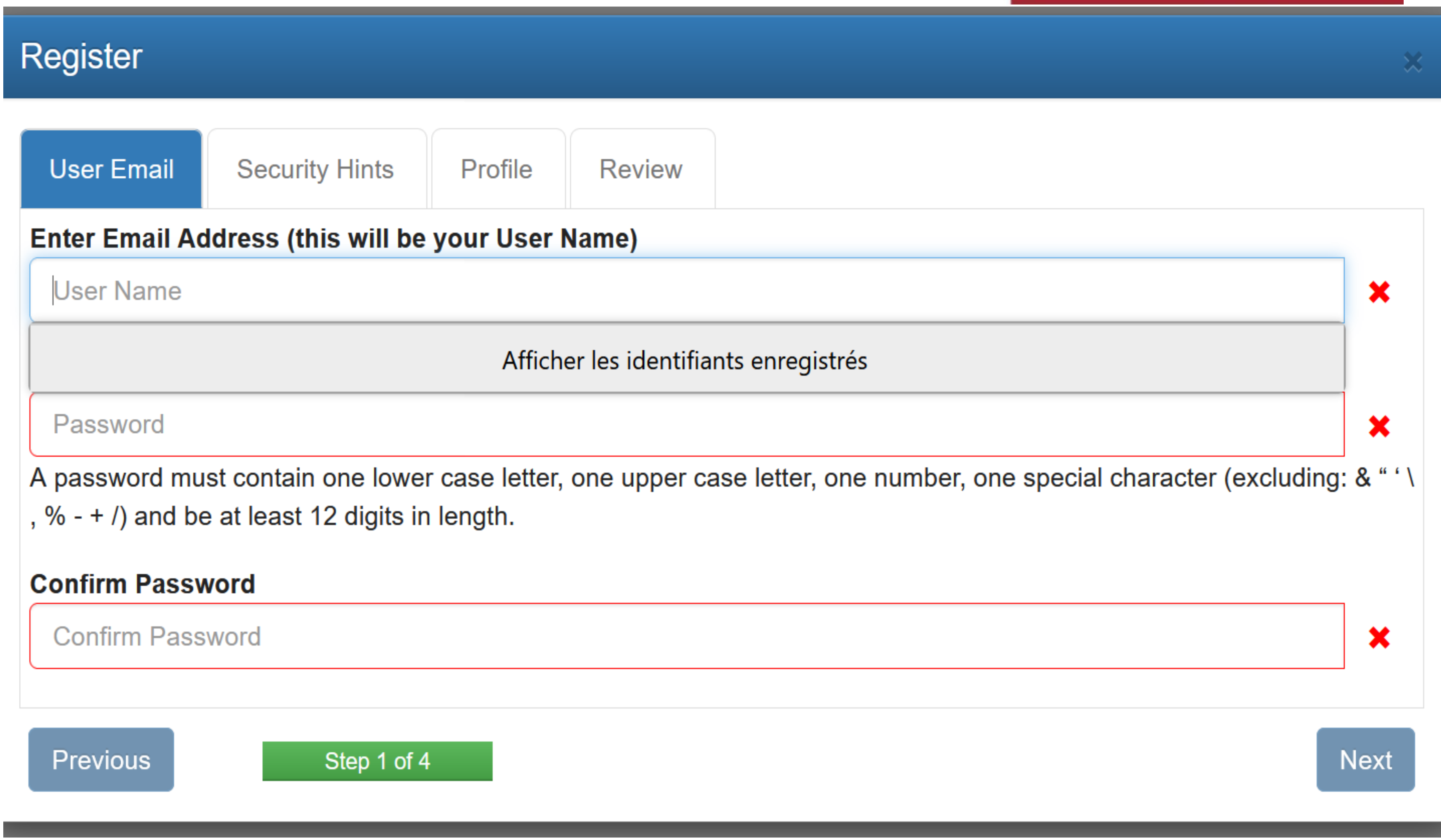
Register
User Email
Security Hints
Profile
Review
Enter Email Address (this will be your User Name)
User Name
Afficher les identifiants enregistrés
Password
A password must contain one lower case letter, one upper case letter, one number, one special character (excluding: & " ' \ , % - + /) and be at least 12 digits in length.
Confirm Password
Confirm Password
Previous
Step 1 of 4
Next

FINANCIAL CRIMES ENFORCEMENT NETWORK

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QUICK LINKS

- 314(a) Information Sharing List
- 314(a) Facts and Figures
- 314(b) Fact Sheet
- 314(b) Registration Forms
- Change Your Point of Contact 314(a)
- BSA Guidance
- BSA Data
- BSA Regulatory Efficiency and Effectiveness Initiative
- Chapter X Main Page

RELATED FAQs

- Mandatory E-Filing FAQs

Section 314(b)

USA PATRIOT Act Section 314(b) permits financial institutions, upon providing notice to the United States Department of the Treasury, to share information with one another in order to identify and report to the federal government activities that may involve money laundering or terrorist activity. Financial institutions wanting to do so may notify the Treasury Department by clicking on the Section 314(b) Certification link below and supplying the required information.

314(b) Fact Sheet (December 2020)

314(b) Infographic: Participation and Reporting (July, 2022)

Guidance on the Scope of Permissible Information Sharing Covered by Section 314(b) Safe Harbor of the USA PATRIOT Act (Rescinded December 2020)

Administrative Ruling Regarding the Participation of Associations of Financial Institutions in the 314(b) Program (Rescinded by FIN-2020-R002)

Rescission of Administrative Ruling Regarding the Participation of Associations of Financial Institutions in the 314(b) Program (December 2020)

Financial Institution Notification Form

On-line 314b Registration

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The BSA Electronic Filing System is Free
What FinCEN Reports Must Be Filed

- Currency Transaction Reports,
- Suspicious Activity Reports,
- Money Services Business Registrations
  and
- Exempt Person Designations must be filed electronically.

- FinCEN has also made available the electronic filing option for Form 8300, which is a report of cash payments over $10,000 received in the course of a trade or business.

6-2 What to report by BSA

What BSA Reports Can You File Using BSA E-Filing

- CTR (Currency Transaction Report)
- CTR-C (Casino Currency Transaction Report)
- DEP (Designation of Exempt Person)
- SAR (Depository Institution Suspicious Activity Report)
- SAR-C (Casino and Club Card Suspicious Activity Report)
- SAR-MSB (Money Services Enterprises Suspicious Activity Report)
- SAR-SF (Securities and Futures Industries Suspicious Activity Report)

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Financial Crimes Enforcement Network (FinCEN)

FinCEN Currency Transaction Report (CTR) Electronic Filing Requirements

XML Schema 2.0

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Financial institutions should complete those Items for which they have relevant information, regardless of whether or not the individual Items are deemed critical for technical filing purposes.

For critical Items, financial institutions must either provide the requested information or affirmatively check the "Unknown" (Unk.) box that is provided on the FinCEN CTR and FinCEN Suspicious Activity Report (SAR) (or any other FinCEN Report).

For non-critical Items, FinCEN expects financial institutions will provide the most complete filing information available within each report consistent with existing regulatory expectations

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FinCEN Designation of Exempt Person (FinCEN Form 110) Electronic Filing Requirements

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- Financial Crimes Enforcement Network
- Version 1.3 – May 2012 1 BSA E-Filing System Batch File **Testing Procedures**
- Testing your batch file is
- a two step process:

- **Step 1: Upload your file until it passes the validation tests performed by the BSA**
- E-Filing system. Validation rules include verifying record lengths, sequencing of the
- records in the file, and summary totals in the file.

- **Step 2: The BSA E-Filing system will transfer and load the validated file into the test database**. A test acknowledgment file will be generated for each submission. **A test**
- **Transmitter Control Code (TCC) is required to submit your test file.** A TCC of
- TBSATEST must be used and inserted into the test batch file. Please work with your
- software vendor or service provider to ensure the test TCC is placed in the proper
- location within the file. The file specifications for each form type provide the exact
- location where the TCC should be entered. *Once the file has passed validation, a*
- *production TCC for the BSA E-Filing system will be provided to the submitter via e-*
- *mail.*

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Banks can now benefit from the pricing advantages and flexibility of cloud-based database services while knowing that they are not subject to the jurisdiction of the Patriot Act. Under the Patriot Act, any European user data based on US cloud computing services can legally be shared with US agencies without the need to inform the user

Where are your datas?

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Financial Crimes Enforcement Network (FinCEN)

Report of Cash Payments Over $10,000 Received in a Trade or Business (FinCEN Form 8300) Electronic Filing Requirements

XML Schema 2.0

Financial Crimes Enforcement Network (FinCEN)

FinCEN Designation of Exempt Person
(FinCEN DOEP | Form 110)
Electronic Filing Requirements

XML Schema 2.0

Financial Crimes Enforcement Network (FinCEN)

FinCEN Suspicious Activity Report (FinCEN SAR) Electronic Filing Requirements

XML Schema 2.0

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FinCEN Report of Foreign Bank and Financial Accounts (FBAR) Electronic Filing Requirements

XML Schema 2.0

- **How the system adapts to events:**
- Oct 16 2023

- FinCEN Provides FBAR Relief to Filers Affected by the Terroristic Action in the State of Israel
- FinCEN announced today that certain individuals and businesses affected by the terroristic action in the State of Israel that are required to file FBARs have until October 7, 2024.
- So mind to the evolutions of USPA

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- The BSA E-Filing system supports electronic filing of Bank Secrecy Act (BSA) forms (either individually or in batches) by a filing organization to the BSA database through a FinCEN secure network.
- Also allows members of filing organizations to send and receive secure messages to and from FinCEN.
- Additionally, FinCEN uses the system to issue advisories and system updates to the user community.

- **Login for declarations**
- **https://siss.fincen.gov/314a/Login**

Bank Secrecy Act

- **Currency Transactions for more than $10,000 (CTR)**
- **Multiple currency transactions more than $10,000**
- **Purchase/Sale of Monetary Instruments $3,000 - $10,000**
- **Report of International Transportation of Currency and Monetary Instrument Report (CMIR).**
- **Suspicious Activity Reports (SAR)**

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- [Statistical documentation and perverse effects of denunciation]()

7 Conclusion AMLA goes even further

- The “Anti Money Laundering Act of 2020” (known as AMLA), adopted on January 1, 2021 by the United States Congress, strengthens sanctions and embargoes in the area of AML/CFT and the fight against corruption.
- The AMLA constitutes the most significant reform in this area since the US Patriot Act of 2001.
- *In addition to toughening sanctions, the AMLA gives the US administration extensive powers of investigation over foreign banks with a US correspondent bank. The DOJ and the US Treasury thus have the possibility of requesting any information concerning a US correspondent bank of a foreign bank, but also any document, even if held outside the United States, concerning a foreign banking institution.*

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Questions ?