

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:17-cv-60907-MORENO/STRAUSS

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.

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**PNC BANK, N.A.’S CORRECTED<sup>1</sup> SUPPLEMENTAL BRIEFING  
REGARDING CONTINUING ACTIVITY REPORTS**

PNC Bank, N.A. (“PNC”) submits this supplemental briefing at the direction of the Court’s Order Granting Amended Receiver’s Motion for *In Camera* Review of Documents Withheld Based on the SAR Privilege (DE 468), which directed the parties to file supplemental briefing on the question of whether PNC’s Continuing Activity Reports, or CARs, are subject to the legal prohibition against disclosure of the existence of Suspicious Activity Reports, or SARs.

1. The Court held a hearing on March 5, 2020 regarding the Receiver’s Amended Motion for *In Camera* Review of Documents Withheld Based on the SAR Privilege (DE 447). During the hearing, the Court accepted certain documents from PNC for the purposes of an *in camera* review. At the end of the hearing, counsel for PNC noted for the Court and parties that any possible reference to a “CAR” in the documents received by the Court refers to a “Continuing Activity Report,” which is how PNC identifies reports on continuing suspicious activity that are filed after an initial related “Suspicious Activity Report,” or SAR, already has been filed. Counsel


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<sup>1</sup> This brief is corrected to include the full attachment.

for PNC further noted that such a form represents standard practice in the industry and in fact is required by bank regulators.

2. Counsel for the Receiver immediately objected, stating that counsel had never heard of a CAR, and questioned whether such a document was contemplated by the Bank Secrecy Act (“BSA”) or covered by the BSA’s settled prohibition against disclosing the filing or non-filing of SARs.

3. The Receiver’s objection is meritless. Continuing Activity Reports are an established and vital component of the SAR-reporting regime under the BSA for all covered financial institutions. The very first page of the SAR form, which is filed electronically (via the link on the left-hand column entitled “E-Filing System Login,” available at <https://bsaefiling.fincen.treas.gov/main.html>), has a set of four boxes to check to designate the type of SAR being filed. Consistent with PNC’s nomenclature, one of the four boxes is for a “Continuing activity report.” Attached hereto is a blank sample SAR form from the website of the Financial Crimes Enforcement Network, or FinCEN, where SARs are filed. The relevant portion of the SAR face sheet is set forth here:

 **Suspicious Activity Report** Version Number: 1.2

OMB No. 1506-0065 (Report)  
OMB No. 1506-0001, 1506-0006, 1506-0015, 1506-0019, 1506-0029, and 1506-0061 (Regulations)

**Filing instructions:**

1. Complete the report in its entirety with all requested or required data known to the filer.
2. Click "Validate" to ensure proper formatting and that all required fields are completed.
3. Click "Sign with PIN" and enter your 8-digit PIN to electronically sign the report.
4. Click "Save" to save a local copy of the report.
5. Click "Print" (optional) to print a paper copy of the report for record keeping purposes.
6. Click "Submit" and go to your "Track Status" to confirm acceptance.

**Filing name**

**\*1 Type of filing**  
(Check all that apply)

<input type="checkbox"/> Initial report	<input type="checkbox"/> Correct/Amend prior report
<input type="checkbox"/> Continuing activity report	<input type="checkbox"/> Joint report

Thus, SARs and CARs are filed with FinCEN on the exact same electronic form.

4. FinCEN provides instructions on the e-filing of SARs (via the link on the right-hand column entitled “FinCEN Suspicious Activity Report (SAR) XML Filing Requirements,” available at <https://bsaefiling.fincen.treas.gov/main.html>). On page 142 of these instructions, FinCEN observes the following regarding the duty of a financial institution to file a continuing activity report, when appropriate, after the filing of the initial SAR. The instructions reflect that the additional report will have to be filled out entirely, and that the filing financial institution will have to provide cumulative dollar figures for the funds at issue and a new narrative section:

**4. Continuing Reports:** A continuing report should be filed on suspicious activity that continues after an initial FinCEN SAR is filed. Financial institutions with SAR requirements may file SARs for continuing activity after a 90 day review with the filing deadline being 120 days after the date of the previously related SAR filing. Financial institutions may also file SARs on continuing activity earlier than the 120 day deadline if the institution believes the activity warrants earlier review by law enforcement. Continuing reports must be completed in their entirety, including the information about all subjects involved in the suspicious activity and all financial institutions where the activity occurred. The continuing report Part V narrative should include all details of the suspicious activity for the 90-day period encompassed by the report, and only such data from prior reports as is necessary to understand the activity. Do not reproduce the narratives from prior reports in the continuing report. Provide both the dollar amount involved in the suspicious activity for the 90-day period in Item 26 and the cumulative dollar amount for the current and all prior related reports in Item 28. If continuing losses are involved for any financial institution recorded in Part III, record the 90-day loss in Item 63 and the cumulative loss in Part V.

5. Likewise, the Bank Secrecy Act/Anti-Money Laundering Examination Manual of the Federal Financial Institutions Examination Council (available at <https://bsaaml.ffiec.gov/manual>), which is the governing handbook for federal regulators conducting BSA/AML exams of banks and other financial institutions, also describes the duty to file SARs on continuing activity. *Id.* at 67-68. *See also* Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (available at <https://www.fincen.gov/frequently-asked->

questions-regarding-fincen-suspicious-activity-report-sar), at Question #16 (FinCEN observes that “[f]inancial institutions with SAR requirements may file SARs for continuing activity after a 90-day review with the filing deadline being 120 days after the date of the previously related SAR filing. Financial institutions may also file SARs on continuing activity earlier than the 120-day deadline if the institution believes the activity warrants earlier review by law enforcement.”).

6. Accordingly, the same prohibition against disclosure of a SAR, and the reasons driving that prohibition,<sup>2</sup> apply equally to a “CAR.” They are functionally the same document, even though the acronyms used to refer to the documents have a one-letter difference, depending upon the point in time in the investigation and reporting process.

7. Moreover, and as a matter of logic, the very existence of a CAR necessarily reflects that a SAR previously was filed: that is, there never can be a CAR unless there already was a SAR. For this reason alone, any reference to the filing or non-filing of a CAR cannot be disclosed. The prohibition against disclosure under federal law does not just apply to a SAR itself, but also to “any information that would reveal the existence of a SAR.” 31 C.F.R. § 1020.320(e).

8. Accordingly, any references to CARs or related information in the materials currently at issue cannot be disclosed, because such disclosure would violate federal law. 31 U.S.C. § 5318(g)(2)(A); 12 C.F.R. § 21.11(k); 31 C.F.R. § 1020.320(e).

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<sup>2</sup> Courts have noted several important concerns that support strong protections against disclosure of SAR filing information, including: (1) the disclosure of a SAR could compromise an ongoing law enforcement investigation, provide information to a criminal wishing to evade detection, or reveal the methods by which banks are able to detect suspicious activity; *see, e.g., Cotton v. PrivateBank & Trust Co.*, 235 F.Supp.2d 809, 815 (N.D.Ill. 2002); *Youngblood v. Comm’r*, 2000 WL 852449, \*11–12 (C.D. Cal. 2000); (2) banks may be reluctant to prepare a SAR if it believed that its cooperation may cause customers to retaliate; *see, e.g., Cotton*, 235 F. Supp. 2d at 815; and (3) the disclosure of a SAR could harm the privacy interests of innocent people whose names may be mentioned. *Weil v. Long Island Sav. Bank*, 195 F. Supp. 2d 383, 388 (E.D.N.Y. 2001).

Dated: March 11, 2020

Respectfully submitted,

*s/Peter D. Hardy*

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Dated: March 11, 2020

Respectfully submitted,

*s/Peter W. Homer*

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**CERTIFICATION OF SERVICE**

I hereby certify that, on March 11, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will also send notice of this electronic filing to all counsel of record.

Respectfully submitted,

*s/Peter W. Homer*

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Peter W. Homer, Esq.

WARNING: PRINTED VERSIONS OF THE BSA E-FILING FORMS ARE NOT FOR SUBMISSION AND WILL NOT BE PROCESSED by FinCEN.



## Suspicious Activity Report

Version Number: 1.2

OMB No. 1506-0065 (Report)

OMB No. 1506-0001, 1506-0006, 1506-0015, 1506-0019, 1506-0029, and 1506-0061 (Regulations)

### Filing Instructions:

1. Complete the report in its entirety with all requested or required data known to the filer.
2. Click "Validate" to ensure proper formatting and that all required fields are completed.
3. Click "Sign with PIN" and enter your 8-digit PIN to electronically sign the report.
4. Click "Save" to save a local copy of the report.
5. Click "Print" (*optional*) to print a paper copy of the report for record keeping purposes.
6. Click "Submit" and go to your "Track Status" to confirm acceptance.

Filing name

\*1 Type of filing

(Check all that apply)

- Initial report
  Correct/Amend prior report  
 Continuing activity report
  Joint report

Prior report BSA Identification Number (BSA ID)

2 Filing Institution Note to FinCEN

Attachment

By providing my PIN, I acknowledge that I am electronically signing the BSA report submitted.

Sign with PIN

**This PDF is intended for testing purpose only. Please do not use it in a production environment.**

Release Date: 06/22/2018

WARNING: PRINTED VERSIONS OF THE BSA E-FILING FORMS ARE NOT FOR SUBMISSION AND WILL NOT BE PROCESSED by FinCEN.

Part IV Filing Institution Contact Information

\*79 Type of financial institution [Yellow box] [Grey box]

\*75 Primary federal regulator [Yellow box]

\*76 Filer name (Holding company, lead financial institution, or agency, if applicable) [Yellow box]

\*77 TIN [Yellow box]

\*78 TIN type [Yellow box]

- 80 Type of Securities and Futures institution or individual filing this report - check box(es) for functions that apply to this report
- Clearing broker-securities
  - CPO/CTA
  - Execution-only broker securities
  - Futures Commission Merchant
  - Holding company
  - Introducing broker-commodities
  - Introducing broker-securities
  - Investment Adviser
  - Investment company
  - Retail foreign exchange dealer
  - Self-clearing broker securities
  - SRO Futures
  - SRO Securities
  - Subsidiary of financial/bank holding company
  - Other [Grey box]

81 Financial institution identification Type [Text box]  
Number [Text box]

\*82 Address [Yellow box]

\*83 City [Yellow box]

\*84 State [Yellow box] \*85 ZIP/Postal Code [Yellow box] \*86 Country [Yellow box]

87 Alternate name, e.g., AKA - individual or trade name, DBA - entity [Text box]

88 Internal control/file number [Text box]

89 LE contact agency [Text box]

90 LE contact name [Text box]

91 LE contact phone number (Include Area Code) [Text box] Ext. [Text box]

92 LE contact date [Text box]

\*93 Filing institution contact office [Yellow box]

\*94 Filing institution contact phone number (Include Area Code) [Yellow box] Ext. [Text box]

95 Date filed [Grey box] (Date filed will be auto-populated when the form is signed.)



**WARNING: PRINTED VERSIONS OF THE BSA E-FILING FORMS ARE NOT FOR SUBMISSION AND WILL NOT BE PROCESSED by FinCEN.**

**Part III Information about Financial Institution Where Activity Occurred 1 of 1**

\*51 Type of financial institution

\*52 Primary federal regulator

53 Type of gaming institution  
 State licensed casino  Tribal authorized casino  Card club  Other (specify)

54 Type of Securities and Futures institution or individual where activity occurred - check box(es) that apply to this report  
 Clearing broker-securities  Introducing broker-securities  Subsidiary of financial/bank holding company  
 Execution-only broker securities  Investment Adviser  Other   
 Futures Commission Merchant  Investment company  
 Holding company  Retail foreign exchange dealer  
 Introducing broker-commodities  Self-clearing broker securities

55 Financial institution identification Type   
 Number

56 Financial institution's role in transaction  Selling location  Paying location  Both

\*57 Legal name of financial institution  Unknown

58 Alternate Name, e.g., AKA - individual or trade name, DBA - entity

\*59 TIN  Unknown  60 TIN type

\*61 Address  Unknown

\*62 City  Unknown

63 State

\*64 ZIP/Postal Code  Unknown

\*65 Country  Unknown

66 Internal control/file number

67 Loss to financial institution \$ \_\_\_\_\_ .00

**Branch where activity occurred information**

If no branch activity involved, check this box

**Branch Information**

68 Branch's role in transaction  Selling location  Paying location  Both

69 Address of branch or office where activity occurred

71 City  70 RSSD Number

72 State  73 ZIP/Postal Code  \*74 Country

**WARNING: PRINTED VERSIONS OF THE BSA E-FILING FORMS ARE NOT FOR SUBMISSION AND WILL NOT BE PROCESSED by FinCEN.**

**Part I Subject Information 1 of 1**

3 Check:  if entity,  if all critical\* subject information is unavailable (Does not include item 24)

\*4 Individual's last name or entity's legal name  Unknown [Redacted]

\*5 First name  Unknown [Redacted]

6 Middle name/initial [Redacted]

7 Suffix [Redacted] 8 Gender [Redacted]

\*19 Date of birth  Unknown [Redacted]

9 Alternate name, e.g., AKA - individual or trade name, DBA - entity [Redacted]

10 Occupation or type of business [Redacted]

10a NAICS Code [Redacted]

\*16 TIN  Unknown [Redacted] 17 TIN type [Redacted]

21 Phone number [Redacted] Ext. [Redacted] 20 Type [Redacted]

22 E-mail address [Redacted]

22a Website (URL) address [Redacted]

23 Corroborative statement to filer? [Redacted] 28 Subject's role in suspicious activity [Redacted]

**Subject Address Information**

\*11 Address  Unknown [Redacted]

\*12 City  Unknown [Redacted]

\*13 State  Unknown [Redacted] \*14 ZIP/Postal Code  Unknown [Redacted]

\*15 Country  Unknown [Redacted]

**\*18 Form of identification for subject**

Unknown

Type [Redacted] [Redacted]

Number [Redacted] Country [Redacted] Issuing State [Redacted]

**24 Relationship of the subject to an institution listed in Part III or IV (check all that apply)**

a Institution TIN [Redacted]

b  Accountant e  Attorney h  Director k  Officer

c  Agent f  Borrower i  Employee l  Owner or Controlling Shareholder

d  Appraiser g  Customer j  No relationship to institution z  Other [Redacted]

25 Status of relationship [Redacted] 26 Action date [Redacted]

**\*27 Financial institution TIN and account number(s) affected that are related to subject**

No known accounts involved

Institution TIN [Redacted]  Non-US Financial Institution

account number [Redacted] Closed? Yes

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**Part II Suspicious Activity Information**

\*29 Amount involved in this report  Amount Unknown  No amount involved \$  .00

\*30 Date or date range of suspicious activity for this report From  To

31 Cumulative amount (only applicable when "Continuing activity report" is checked in Item 1) \$  .00

**When completing item 32 through 42, check all that apply**

**32 Structuring**

- a  Alters or cancels transaction to avoid BSA recordkeeping requirement
- b  Alters or cancels transaction to avoid CTR requirement
- c  Suspicious inquiry by customer regarding BSA reporting or recordkeeping requirements
- d  Transaction(s) below BSA recordkeeping threshold
- e  Transaction(s) below CTR threshold
- z  Other

**33 Terrorist Financing**

- a  Known or suspected terrorist/terrorist organization
- z  Other

**34 Fraud**

- a  ACH
- b  Advance fee
- c  Business loan
- d  Check
- e  Consumer loan
- f  Credit/Debit card
- g  Healthcare/Public or private health insurance
- h  Mail
- i  Mass-marketing
- j  Ponzi scheme
- k  Pyramid scheme
- l  Securities fraud
- m  Wire
- z  Other

**35 Gaming activities**

- a  Chip walking
- b  Minimal gaming with large transactions
- c  Suspicious use of counter checks or markers
- d  Unknown source of chips
- z  Other

**36 Money Laundering**

- a  Exchange small bills for large bills or vice versa
- b  Funnel account
- c  Suspicion concerning the physical condition of funds
- d  Suspicion concerning the source of funds
- e  Suspicious designation of beneficiaries, assignees or joint owners
- f  Suspicious EFT/wire transfers
- g  Suspicious exchange of currencies
- h  Suspicious receipt of government payments/benefits
- i  Suspicious use of multiple accounts
- j  Suspicious use of noncash monetary instruments
- k  Suspicious use of third-party transactors (straw-man)
- l  Trade Based Money Laundering/Black Market Peso Exchange
- m  Transaction out of pattern for customer(s)
- z  Other

**37 Identification/Documentation**

- a  Changes spelling or arrangement of name
- b  Multiple individuals with same or similar identities
- c  Provided questionable or false documentation
- d  Provided questionable or false identification
- e  Refused or avoided request for documentation
- f  Single individual with multiple identities
- z  Other

**38 Other Suspicious Activities**

- a  Account takeover
- b  Bribery or gratuity
- c  Counterfeit instruments
- d  Elder financial exploitation
- e  Embezzlement/theft/disappearance of funds
- f  Forgeries
- g  Human smuggling
- h  Human trafficking
- i  Identity theft
- j  Little or no concern for product performance penalties, fees, or tax consequences
- k  Misuse of position or self-dealing
- l  Suspected public/private corruption (domestic)
- m  Suspected public/private corruption (foreign)
- n  Suspicious use of informal value transfer system
- o  Suspicious use of multiple transaction locations
- p  Transaction with no apparent economic, business, or lawful purpose
- q  Transaction(s) involving foreign high risk jurisdiction
- r  Two or more individuals working together
- s  Unlicensed or unregistered MSB
- z  Other

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39 Insurance

- a  Excessive insurance
- b  Excessive or unusual cash borrowing against policy/annuity
- c  Proceeds sent to or received from unrelated third party
- d  Suspicious life settlement sales insurance (e.g., STOLI's, Viaticals)
- e  Suspicious termination of policy or contract
- f  Unclear or no insurable interest
- z  Other

40 Securities / Futures / Options

- a  Insider trading
- b  Market manipulation
- c  Misappropriation
- d  Unauthorized pooling
- e  Wash trading
- z  Other

41 Mortgage Fraud

- a  Application fraud
- b  Appraisal fraud
- c  Foreclosure/Short sale fraud
- d  Loan Modification fraud
- e  Origination fraud
- z  Other

42 Cyber event

- a  Against Financial Institution(s)
- b  Against Financial Institution Customer(s)
- z  Other

45 Were any of the following product type(s) involved in the suspicious activity? (Check all that apply)

- a  Bonds/Notes
- b  Commercial mortgage
- c  Commercial paper
- d  Credit card
- e  Debit card
- f  Deposit account
- g  Forex transactions
- h  Futures/Options on futures
- i  Hedge fund
- j  Home equity line of credit
- k  Home equity loan
- l  Insurance/Annuity products
- m  Microcap securities
- n  Mutual fund
- o  Options on securities
- p  Prepaid access
- q  Residential mortgage
- r  Security futures products
- s  Stocks
- t  Swap, hybrid, or other derivatives
- z  Other (List below)

46 Were any of the following instrument type(s)/payment mechanism(s) involved in the suspicious activity? (Check all that apply)

- a  Bank/Cashier's check
- b  Foreign currency
- c  Funds transfer
- d  Gaming instruments
- e  Government payment
- f  Money orders
- g  Personal/Business check
- h  Travelers checks
- i  U.S. Currency
- z  Other (List below)

43 IP Address (enter the IP address/date/timestamp of the subject's electronic internet based contact with the financial institution, if known)

Date  Timestamp (UTC)

44 Cyber Event Indicators (select the appropriate indicator(s) from the drop-down list and provide the associated supporting information)

Event type

Event value  Date  Timestamp (UTC)

47 Commodity type (if applicable)

48 Product/Instrument description (if needed)

49 Market where traded

50 CUSIP® number

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**Part V Suspicious Activity Information - Narrative\***

A large, empty yellow rectangular area that occupies most of the page below the section header. It is bounded by a thin black line. This area is typically used for entering a narrative description of suspicious activity.