

Notice to Members

NOVEMBER 2002

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

Compliance Programs
Money Laundering

INFORMATIONAL

EFFECTIVE DATE: DECEMBER 31, 2002

Anti-Money Laundering Compliance Programs

NASD Adopts Amendments to Rule 3011 to Require Members to Provide to NASD Contact Information for an Anti-Money Laundering Compliance Person(s)

Executive Summary

NASD has adopted amendments to NASD Rule 3011 (Anti-Money Laundering Compliance Program) to require each member to provide to NASD contact information for the individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the member's anti-money laundering (AML) compliance program (AML Program) and to update the contact information as necessary. The rule change became effective immediately upon filing with the Securities and Exchange Commission on October 21, 2002 and will become operative on December 31, 2002. Attachment A contains the text of the amendments.

Questions/Further Information

Questions regarding this *Notice to Members* may be directed to Grace Yeh, Assistant General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-6939.

Discussion

The USA PATRIOT Act of 2001 (PATRIOT Act),¹ which was signed into law on October 26, 2001, recognizes that effective identification of money laundering and terrorist activities requires the expedited sharing and reporting of information among governmental and law enforcement authorities and financial institutions. In furtherance of this goal, Section 314(a) of the PATRIOT Act requires the Department of Treasury (Treasury) to adopt regulations to encourage cooperation and information sharing among financial institutions, their regulatory authorities, and law enforcement

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authorities. In particular, the regulations should be designed to facilitate law enforcement authorities' ability to share information with financial institutions and to request information from financial institutions about persons suspected of engaging in money laundering or terrorist activities. Section 314(a) further provides that the regulations adopted by Treasury may require that each financial institution designate one or more contact persons to receive information concerning, and to monitor accounts of, identified individuals or entities.

On September 18, 2002, Treasury issued a final rule implementing Section 314 of the PATRIOT Act. Consistent with Section 314(a), the rule creates a system for the efficient communication of potential money laundering and terrorist information. Upon receiving a request for information by the Financial Crimes Enforcement Network (FinCEN), a bureau of Treasury, the rule requires financial institutions to identify a contact person to handle the request and to receive future information requests. When requested by FinCEN, the financial institution is required to provide the name, title, mailing address, e-mail address, telephone number, and facsimile number of the designated contact person. The financial institution must also promptly notify FinCEN of any changes to the contact information.

NASD Rule 3011 requires each member to designate an individual or individuals responsible for implementing and monitoring the day-to-day operations of the firm's AML Program. To facilitate Treasury's efforts in collecting the AML contact information set forth in Treasury's final rule, NASD has amended Rule 3011 to require that members provide to NASD contact information concerning the members' designated AML compliance person(s). The information will be used by Treasury in connection with its regulatory obligations set forth in Section 314(a) of the PATRIOT Act and the implementing regulations promulgated thereunder. Consistent with Treasury's final rule, members will be required to provide to NASD the name, title, mailing address, e-mail address, telephone number, and facsimile number of the contact person. Members also will be required to promptly notify NASD of any changes to the information.² In addition, NASD anticipates requiring members periodically to review and confirm the accuracy of the contact information. Additional information will be provided in future.

NASD intends to initially collect the contact information through the Member Firm Contact Questionnaire on the NASD Web site. NASD anticipates that form and system changes necessary to collect the contact information will be completed by November 15, 2002. Members will have until December 31, 2002 to provide NASD with the necessary contact information.³

Endnotes

- 1 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).
- 2 The amendments to Rule 3011 are consistent with New York Stock Exchange (NYSE) Rule 445 (AML Compliance Program) requirements that NYSE member organizations provide to the NYSE contact information identifying the member organization's designated AML compliance person and promptly notify the NYSE of any changes to the information.
- 3 New member applicants will be required to provide the contact information during the application process.

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ATTACHMENT A

New language is underlined.

3011. Anti-Money Laundering Compliance Program

On or before April 24, 2002, each member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this Rule shall, at a minimum,

- (a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;
- (b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;
- (c) Provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party;
- (d) Designate, and identify to NASD (by name, title, mailing address, e-mail address, telephone number, and facsimile number) an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to NASD regarding any change in such designation(s); and
- (e) Provide ongoing training for appropriate personnel.