SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51934; File No. SR-NYSE-2005-36)

June 29, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 445.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b-4[2] thereunder, notice is hereby given that on May 23, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to amend Rule 445 ("Anti-Money Laundering Compliance Program") to establish: (1) timeframes within which the required independent testing function must be performed; (2) qualification and independence standards for those who conduct such testing function; and (3) jurisdictional requirements pertaining to AML Officers (as defined below). The text of the proposed rule change is available on the NYSE's Web site (www.NYSE.com), at the NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Summary

The proposed rule change consists of amendments to Rule 445 ("Anti-Money Laundering Compliance Program") to establish that the "independent testing" requirement of the Rule must be conducted, at minimum, on an annual calendar-year basis by members and member organizations that conduct a public business, or every two years if no public business is conducted. The amendments also establish a standard to determine who is adequately qualified and sufficiently independent to conduct the required testing. Further, they clarify that each person designated to implement and monitor an Anti-Money Laundering Program must either be an employee of the member or member organization for which they are designated or, with the prior approval of the Exchange, an employee of a parent, affiliate, or subsidiary of the member or member organization. Employees of a parent, affiliate, or subsidiary of a member or member organization who are designated to implement and monitor Anti-Money Laundering Programs must consent to the jurisdiction of the Exchange and the member or member organization must acknowledge their responsibility to supervise them as employees.

Background and Detail

Rule 445, which became effective on April 24, 2002,[3] requires each member organization and each member not associated with a member organization to develop and implement an anti-money laundering ("AML") program consistent with ongoing obligations pursuant to Treasury regulation 31 C.F.R. 103.120 under the Bank Secrecy Act,[4] as amended by the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.[5]

The prescribed AML program obligations include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an "AML Officer"); ongoing training for appropriate persons; and an independent testing function for overall compliance.

Neither the Bank Secrecy Act nor Rule 445 currently specifies: (1) timeframes within which the independent testing function must be performed, (2) qualification and independence standards for those who conduct such testing function, or (3) jurisdictional requirements pertaining to AML Officers. In order to provide interpretive clarity to the text, the following amendments to Rule 445 are proposed.

Timeframes for Independent Testing

The proposed amendments would require that independent testing of AML programs be conducted, at a minimum, on an annual (calendar-year) basis by members or

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3 See Securities Exchange Act Release No. 45798 (April 22, 2002); 67 FR 20854 (April 26, 2002) (SR-NYSE-2002-10).

4 Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act), 12 U.S.C. §1829b, 12 U.S.C. §1951-1959, and 31 U.S.C. §5311-5330.

5 Pub. L. No. 107-56, 115 Stat. 272 (2001).

member organizations that conduct a public business, or every two years if no public business is conducted (i.e., if the member or member organization engages solely in proprietary trading, and/or conducts business only with other broker-dealers). The Exchange believes these timeframes are reasonable in that they require more frequent testing of AML programs designed to monitor a public business, which is likely more susceptible to money laundering schemes than strictly proprietary business. Further, the one-year time frame for testing is consistent with standard industry practice in that it is similar to generally accepted guidelines for conducting tests in the context of, for instance, general audits and branch office visits. However, the proposed amendments make clear that more frequent testing should be conducted if circumstances warrant (e.g., should the business mix of the member or member organization materially change; in the event of a merger or acquisition; in light of systemic weaknesses uncovered via testing of the AML program; or in response to any other "red flags").

Qualification and Independence Standards for Testing

With regard to who is adequately qualified and sufficiently independent to conduct the independent testing function, the proposed amendments would require that testing be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. Such person need not be an employee of the member or member organization since the responsibility being delegated is essentially an auditing function and, as such, it would not be unusual or ineffective for it to be performed by an independent outside party. As noted below, the proposed amendments require that the day-to-day responsibilities for monitoring operations and internal controls of AML programs be performed by a person fully subject

to the supervision of the member or member organization for which they are designated, and to the jurisdiction of the Exchange.

The proposed amendments do not preclude an employee of the member or member organization from conducting the required independent testing of the AML program; however the proposed "independence" standard would prohibit testing from being conducted by a person who performs the functions being tested, or by the designated AML compliance officer, or by a person who reports to either. This standard is designed to promote the independence, and thus the integrity, of the testing function by insulating it from the day-to-day administration of the activities being tested. It also serves to remove the testing function from the supervisory structure of the member or member organization, thus eliminating the possibility that a person might not candidly report shortcomings in a system designed by their supervisor for fear of reprisal.

Jurisdiction over AML Officers

The proposed amendments clarify that the person or persons designated to implement and monitor a member's or member organization's Anti-Money Laundering Program (commonly referred to as an AML Officer, as previously indicated) must either be an employee of the member or member organization for which they are designated or, with the prior approval of the Exchange, an employee of a parent, affiliate or subsidiary of the member or member organization.

The rationale behind the proposal to allow employees of parents, affiliates and subsidiaries to be designated AML Officers of members and member organizations is the recognition that AML programs may be integrated into, and extend throughout, the corporate family. Accordingly, a person acting as an AML Officer for both a member

organization and the member organization's parent bank would be better situated to see the "big picture" (i.e., to monitor the movements of funds and securities throughout the corporate structure and, thus, be better able to identify and understand AML issues across the range of such structure). The ability to situate AML Officers where they can be most effective gives members and member organizations the flexibility to integrate their AML program into the larger corporate structure to achieve a more global perspective, and thus a more comprehensive and effective AML program.

The prior written approval of the Exchange is required if the designated AML Officer is other than an employee of the member or member organization. Further, each such person must execute an attestation, acceptable to the Exchange, consenting to the supervision of each member or member organization for which they are designated and to the jurisdiction of the Exchange. A proposed example of such an attestation is included in Exhibit 3 of the proposed rule change, which is available on the NYSE's Web site (www.NYSE.com), at the NYSE's principal office, and at the Commission's Public Reference Room, under the heading "AML Officer Consent to Jurisdiction." In addition, the member or member organization must execute an agreement, acceptable to the Exchange, acknowledging their responsibility to supervise, as an employee for all regulatory purposes, each such person designated by them. A proposed example of such an agreement is included in Exhibit 3 of the proposed rule change under the heading "Acknowledgement of Supervisory Responsibility over AML Officer."

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and

in particular, with the requirements of Sections 6(b)(5)[6] of the Exchange Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. NYSE believes that the proposed rule change is designed to accomplish these ends by requiring members to conduct periodic tests of their AML compliance programs, preserve the independence of their testing personnel, and ensure the accuracy of their AML compliance program.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

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6 15 U.S.C. 78f(b)(5).

7 Statement regarding NYSE beliefs is based on statements by the NYSE during a conference call with the staff of the Divison of Market Regulation on June 27, 2005.

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. The Commission particularly urges commenters to consider the proposed rule change in light of a similar but not identical proposed rule change by the National Association of Securities Dealers, Inc. ("NASD").[8]

Specifically, the NYSE and NASD proposals differ in who would be permitted to serve as an AML Officer. As discussed above, the NYSE proposal would, subject to certain restrictions, permit the AML Officer to be an employee of a parent, affiliate, or subsidiary of a member. The NASD proposal, however, would require the AML Officer to be an "associated person of the member," as that term is defined in Article I(dd) of the NASD By-Laws. Serving as an AML Officer, by itself, would not make a person an associated person of an NASD member. What issues, if any, would arise from the application of both standards regarding who can serve as an AML Officer at firms that are dual members of the NYSE and NASD?

The NYSE and NASD proposals also differ in who would be permitted to perform the independent testing function for AML compliance. Primarily to accommodate smaller firms, the NASD proposal would permit an employee who reports to a person who performs the functions being tested and/or reports to the AML Officer to

[8] The text of the proposed rule change is available on the NASD's Web site (www.nasd.com), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

perform the independent testing, if, among other requirements, the member has no other qualified internal personnel to conduct the test and the member creates a written policy to address conflicts. The NYSE proposal, however, would not permit an employee who reports to a person who performs the functions being tested or reports to the AML Officer to perform the independent testing. How would these standards, if adopted, affect the AML program of dual members of the NYSE and NASD? Firms are invited to discuss how this would affect their specific operations.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2005-36 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro/shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NYSE-2005-36 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland
Deputy Secretary

[9] 17 CFR 200.30-3(a)(12).