Information Memo

Member Firm Regulation

New York Stock Exchange, Inc.
20 Broad Street
New York, NY 10005

NYSE

Number 02-21
May 6, 2002

ATTENTION: CHIEF EXECUTIVE OFFICER AND MANAGING PARTNER, CHIEF FINANCIAL OFFICER, CHIEF OPERATIONS OFFICER, AND CHIEF COMPLIANCE OFFICER

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: APPROVAL OF NEW RULE 445 - ANTI-MONEY LAUNDERING COMPLIANCE PROGRAM

The Securities and Exchange Commission has approved[1] new Exchange Rule 445 ("Anti-Money Laundering Compliance Program" - see attached "Exhibit A"). Rule 445 incorporates and references existing and pending federal anti-money laundering requirements.

In this connection, as indicated in Exchange Information Memo Number 02-16 and outlined below, Section 352 ("Anti-Money Laundering Programs") under Title III[2] of the USA PATRIOT Act[3] became effective April 24, 2002. MLAA Section 352 requires that financial institutions, including broker-dealers, establish anti-money laundering monitoring and supervisory systems. Specifically, it requires each financial institution to establish Anti-Money Laundering Programs that include, at minimum:

- the development of internal policies, procedures, and controls;
- the designation of a compliance officer;
- an ongoing employee training program; and
- an independent audit function to test programs.

New Exchange Rule 445 incorporates the MLAA Section 352 requirements listed above and, in addition, requires the following:

- That the Program be in writing and approved, in writing, by member organizations' senior management.

[1] Release No. 34-45798; File No. SR-NYSE-2002-10
[2] Separately known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("MLAA").
[3] The USA PATRIOT Act was signed into law on October 26, 2001. It amends, among other laws, the Bank Secrecy Act as set forth in Title 31 of the United States Code.

- That the designated compliance officer "contact person" or persons, primarily responsible for each member's or member organization's Program, be identified to the Exchange by name, title, mailing address, e-mail address, telephone number, and facsimile number.

- That the Program's policies, procedures, and internal controls be reasonably designed to achieve compliance with applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder, as they become effective.

Though compliance with Bank Secrecy Act requirements becomes mandatory only upon their respective effective dates, written policies and procedures should, at minimum, *address* all outstanding and applicable Bank Secrecy Act requirements.

Note that Rule 445 states that policies, procedures, and internal controls be "reasonably designed" to achieve compliance with applicable federal requirements. Accordingly, it is expected that the implementation of the required independent testing function be timely and effective.

Required "AML Contact Person" information must be entered into the Exchange's Electronic Filing Platform ("EFP") System no later than 5/15/02. The designated AML Contact Person will be provided updates to the Department of the Treasury's Office of Foreign Asset Control's ("OFAC") list of Specially Designated Nationals and Blocked Persons ("SDN List") via e-mail[4]. If the designated AML Contact Person is also the person designated to receive OFAC updates, their OFAC designation should be deleted to avoid duplicate e-mails.

Department of the Treasury Requirements: Filing of Suspicious Activity Reports

In addition, Rule 445 specifically references members' and member organizations' obligation to 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) ("Reporting of Suspicious Transactions") and the implementing regulations thereunder. This reflects the MLAA Section 356 directive that the Department of the Treasury ("Treasury") publish such implementing regulations, specifically applicable to registered broker-dealers, in the Federal Register by specified dates.

Accordingly, the Financial Crimes Enforcement Network ("FinCEN"), through authority granted by the Secretary of the Treasury, filed proposed amendments[5] to the Bank Secrecy Act regulations on December 28, 2001. MLAA Section 356 requires publication of these regulations

[4] Per NYSE Information Memo Number 01-39.

[5] "Financial Crimes Enforcement Network; Proposed Amendment to the Bank Secrecy Act Regulations - Requirement of Brokers or Dealers in Securities to Report Suspicious Transactions" - 66 FR 67670 (December 31, 2001).

in final form not later than July 2, 2002. **The regulations become effective 180 days after such publication.**

Generally, FinCEN's proposed regulations require the filing of Suspicious Activity Reports ("SARs") in a central location, to be determined by FinCEN, within a specified timeframe initiated by the detection of facts constituting a basis for the filing. Proposed reporting criteria stress the development of a sound risk-based program. **Reference should be made to FinCEN's proposed and final regulations for additional background information and specific guidance with respect to SARs reporting.**

Ongoing Compliance

As noted above, Rule 445 highlights members' and member organizations' existing and ongoing obligation to comply with applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder, as they become effective.

Accordingly, and particularly in light of the USA PATRIOT Act amendments, members and member organizations should be cognizant of all existing and pending Bank Secrecy Act requirements. These include, but are not limited to:

- **MLAA Section 313** ("Prohibition on United States Correspondent Accounts with Foreign Shell Banks") – Effective 12/25/01, financial institutions operating in the United States must sever correspondent banking relationships with foreign "shell banks", i.e., banks without a physical presence in any country, that are not affiliated with a bank that both has a physical presence in a country and is subject to supervision by a banking authority that regulates the affiliated bank.

- **MLAA Section 312** ("Special Due Diligence for Correspondent Accounts and Private Banking Accounts") – Effective 7/23/02, financial institutions must be prepared to apply "…appropriate, specific, and, where necessary, enhanced, due diligence" with respect to foreign private banking customers and international correspondent accounts.

- **MLAA Section 326** ("Verification of Customer Identity") – Effective 10/26/02, financial institutions must comply with a regulation issued by the Secretary of the Treasury requiring the implementation of "reasonable procedures" with respect to the verification of customer identification upon opening an account, maintaining records of information used for such verification, and the consultation of a government-provided list of known or suspected terrorists.

The Exchange will publish notifications to members and member organizations regarding the adoption and implementation of new regulations and address their responsibilities thereunder.

Practical Applications

Members' and member organizations' Anti-Money Laundering Compliance Programs will differ according to a number of factors such as the nature and size of one's business. When designing

the Program, a needs-analysis should be conducted to identify those areas that are particularly susceptible to money-laundering abuses. Rule 445's ongoing employee training program requirement may be incorporated into member organizations' Firm Element Continuing Education Program[6].

Exchange examination staff will be conducting reviews for compliance with Rule 445.

Questions regarding this Memo may be directed to Stephen A. Kasprzak at (212) 656-5226.

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Salvatore Pallante
Executive Vice President

Attachments

[6] See NYSE Rule 345A(b) ("Continuing Education For Registered Persons"). Note, however, that while 345A(b) applies only to registered persons, Rule 445 extends to all applicable employees.

EXHIBIT A

Anti-Money Laundering Compliance Program

Rule 445. Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor 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:

(1) 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;

(2) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(3) Provide for independent testing for compliance to be conducted by member or member organization personnel or by a qualified outside party;

(4) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number) a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and

(5) Provide ongoing training for appropriate persons.