

Information Memo

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

Member Firm Regulation



Number 06-4
February 3, 2006

ATTENTION: COMPLIANCE, LEGAL, REGISTRATION AND TRAINING DEPARTMENTS

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: AMENDMENTS TO RULE 445 ("ANTI-MONEY LAUNDERING COMPLIANCE PROGRAM")

Summary

On January 25, 2006, the Securities and Exchange Commission (the "Commission") issued an order¹ approving amendments to New York Stock Exchange ("Exchange") Rule 445 ("Anti-Money Laundering Compliance Program" or the "Rule"). Rule 445 requires Exchange members and member organizations to develop an Anti-Money Laundering Compliance Program ("AML Program" or the "Program") designed to comply with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder.² Rule 445 further requires the designation of a person or persons, commonly known as "AML Officers," responsible for implementing and monitoring the Program's day-to-day operations and internal controls. In addition, the Rule requires the "independent testing" of the Program.

The amendments to Rule 445 (see Exhibit A) establish a time frame for the "independent testing" requirement; establish a standard to determine who is adequately qualified and sufficiently independent to conduct such testing; and establish affiliation guidelines for AML Officers (see also Exhibits B and C). **The amendments are effective immediately.**

Independent Testing

Rule 445(3) requires members and member organizations to provide for "independent testing" of AML programs to be conducted by member or member organization personnel, or by a qualified outside party.

¹ See Release No. 34-34-53176 (January 25, 2006); 71 FR 5392 (February, 1 2006); (File No. SR-NYSE-2005-36). The SEC also recently approved similar amendments to NASD Rule 3011. See Release No. 34-53030 (December 28, 2005); 71 FR 632 (January 5, 2006); (File No. SR-NASD-2005-66).

² 31 U.S.C. 5311 et seq.; 31 CFR 103.

Time Frames for Testing

In October 2003, the Exchange issued Information Memo 03-48 which stated that, until the establishment of codified time frames within which such independent audit functions must be performed, each member and member organization must, at a minimum, develop a definitive plan for independent testing to include a detailed description of testing procedures and a timetable for their completion.

The amendments to Rule 445(3) now establish that members and member organizations that conduct a public business³ must independently test their AML Program, at a minimum, on an annual calendar year basis. Members and member organizations that do not conduct a public business must independently test their AML Program, at a minimum, every two calendar years. Section .10 of the Rule's Supplemental Material obliges members and member organizations to undertake more frequent testing if circumstances warrant (e.g., a material change to the business mix of the member or member organization; in the event of a merger or acquisition; if testing of the AML Program reveals systematic weaknesses; or in response to any other regulatory "red flags").

Qualification Standards

In addition, the amendments clarify the qualification standards of persons who conduct the independent testing function. Specifically, section .20 of the Rule's Supplementary Material requires that any such testing functions must be conducted by a designated person with a working knowledge of the applicable requirements of the Bank Secrecy Act and its implementing regulations. Further, in order 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 may not be conducted by a person who performs the functions being tested, by the designated AML Officer, or by a person who reports to either.

AML Officers

Rule 445(4) requires that member organizations designate, and identify to the Exchange, an AML Officer who is responsible for overseeing the firm's AML Program. This provision also requires members and member organizations to promptly notify the Exchange if there are any changes to this designation.

AML Officer Affiliation Guidelines

The amendments to Rule 445(4) establish affiliation guidelines for AML Officers. Specifically, the amendments clarify that a designated AML Officer may either be an employee of the member or member organization or, with the prior approval of the Exchange, an employee of a parent, affiliate, or subsidiary of the member or member organization. Allowing an employee of a parent, affiliate, or subsidiary to act as AML Officer recognizes that many member organizations are part of a corporate family. Such corporate structures may have an extensive AML Program that encompasses and integrates several corporate entities. Accordingly, Rule 445 affords member

³ Members and member organizations that conduct no public business include those that engage solely in proprietary trading or that conduct business only with other broker-dealers.

organizations the flexibility to utilize an AML Officer who is optimally situated within its corporate family, thus allowing for the monitoring of inter-entity transactions. Such an approach can provide a more global perspective and thus a more comprehensive and effective AML Program.

Additional Requirements for “Outside” AML Officers

If the person to be designated AML Officer is an employee of a parent, affiliate, or subsidiary, such person (i.e., the “outside” AML Officer) 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 (see Exhibit B). Also, the member or member organization must execute an agreement, acceptable to the Exchange, acknowledging their responsibility to supervise the designated person as an employee for all regulatory purposes⁴ (see Exhibit C).

Changes in “Outside” AML Officer Designations

As noted above, Exchange approval of “outside” AML Officer arrangements is required. The Exchange will review proposed arrangements to make practical determinations regarding their efficacy (e.g., whether the proposed arrangement is structured such that the AML Officer will be positioned to effectively implement the AML Program, and whether he or she will have sufficient time and resources to monitor the Program’s day-to-day operations and internal controls). The review and approval process will not necessarily focus on the qualifications of the designated AML Officer (as such qualification determinations are the responsibility of the member organization).

Therefore, according to section .30 of the Rule’s Supplementary Material, if an “outside” AML Officer arrangement has previously been approved by the Exchange, and such designated AML Officer is to be replaced, Exchange approval is not required for this designation change if the previously approved arrangement is otherwise substantially unchanged. The member or member organization still has a duty to promptly notify the Exchange of the change, and to ensure execution of the required attestation documents pursuant to Rule 445(4)(C).

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

Donald van Weezel
Vice President
Member Firm Regulation

Attachments

⁴ See Rule 445(4).

