

Information Memo

Member Firm Regulation

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



Number 02-64
December 24, 2002

ATTENTION: FLOOR MEMBERS, CHIEF EXECUTIVE OFFICER/MANAGING PARTNER, COMPLIANCE AND LEGAL DEPARTMENTS

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: USA PATRIOT ACT UPDATES: SECTION 356 REQUIREMENT TO REPORT SUSPICIOUS TRANSACTIONS; DEADLINE EXTENSION FOR SECTIONS 313 AND 319

Section 356¹ - Reporting of Suspicious Transactions

Consistent with NYSE Rule 445 (“Anti-Money Laundering Compliance Program”)² members and member organizations are reminded that the final rule implementing Section 356 of the USA PATRIOT Act becomes effective January 1, 2003.

The rule requires brokers and dealers to report to FinCEN³ suspicious transactions that are conducted or attempted by, at, or through a broker-dealer and involve or aggregate at least \$5,000 in funds or other assets. Specifically, such reports are required in connection with transactions where the broker-dealer knows, suspects, or has reason to suspect that it falls within any one of four categories:

- 1) Transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds derived from illegal activity.
- 2) Transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act.

¹ “Reporting of Suspicious Activities by Securities Brokers and Dealers; Investment Company Study.”

² Rule 445 requires, in relevant part, ongoing compliance with applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder, as they become effective. See also NYSE Information Memo Number 02-21 dated May 6, 2002.

³ “Financial Crimes Enforcement Network” – See www.fincen.gov for additional guidance.

- 3) Transactions that appear to serve no business or apparent lawful purpose or are not the sort of transactions in which the particular customer would be expected to engage, and for which the broker-dealer knows of no reasonable explanation after examining the available facts.
- 4) Transactions intended to further a criminal purpose, but apparently involving legally-derived funds. (This category involves the use of the broker-dealer to facilitate criminal activity, including terrorism.)

A more complete discussion of the rule, and the rule text itself, can be found in the Federal Register at 67 FR 44048 (July 1, 2002). Exchange examination staff will continue to conduct reviews for compliance with Rule 445.

Deadline Extension for Sections 313⁴ and 319⁵

On December 18, 2002, FinCEN issued a final rule extending by 90 days the deadline for U.S. depository institutions and securities broker-dealers to confirm that correspondent accounts maintained for foreign banks are not being used to provide services, directly or indirectly, to foreign shell banks. The rule similarly extends the deadline for the requirement that these two types of financial institutions obtain certain information from foreign banks for which they maintain correspondent accounts. The new deadline is March 31, 2003.

Discussion and detail relating to these requirements can be found in FinCEN's publication of the rule implementing Sections 313(a) and 319(b) at 67 FR 60562 (September 26, 2002).

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

Salvatore Pallante
Executive Vice President

⁴ "Prohibition on United States Correspondent Accounts with Foreign Shell Banks."

⁵ "Forfeiture of Funds in United States Interbank Accounts."