

Information Memo

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

Member Firm Regulation



Number 89-5
January 20, 1989

ATTENTION: CHIEF FINANCIAL OFFICER, CHIEF OPERATIONS OFFICER,
COMPLIANCE AND LEGAL DEPARTMENTS

TO: MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: REPORTING OF SUSPICIOUS TRANSACTIONS UNDER THE
MONEY LAUNDERING CONTROL ACT OF 1986

In a recent letter to the Securities and Exchange Commission, the Department of the Treasury requested that broker-dealers report suspicious wire transfers or other suspicious non-cash transactions to their local IRS/Criminal Investigation Division or U.S. Customs office (in cases transcending United States borders), or to call 1-800-BSA-CTRS (IRS) or 1-800-BE ALERT (Customs). Broker-dealers should retain detailed records of any such reports (See page 3 for additional information as to what information should be reported and retained).

Further, the Treasury letter requested that broker-dealers be informed about the Money Laundering Control Act of 1986 ("MLCA") (18 U.S.C. Sec. 1956) and its prohibitions against conducting wire and other non-cash transfers involving proceeds derived from specified unlawful activities. Broker-dealers must be aware of the potential liability that may be incurred by financial institutions who aid and abet the commission of criminal activity specified in the Federal statutes (see especially 31 U.S.C. Sec. 5324).

The Money Laundering Control Act

Under the MLCA, it is a federal offense to conduct or attempt to conduct a "financial transaction"¹²³⁴⁵¹ which involves the proceeds of a specified unlawful activity² with intent to (a) promote continuation of the unlawful activity, (b) conceal or disguise the nature, location, source, ownership or control of the proceeds, or (c) avoid a transaction reporting requirement under State or Federal law.

Similarly, the MLCA prohibits anyone from knowingly engaging or attempting to engage in a "monetary transaction"³ in a criminally derived property when the following exists: (a) value of the property exceeds \$10,000, (b) a financial institution⁴ is used, (c) the property is derived from a specified crime (see footnote 2), and (d) the transaction is conducted with the knowledge that the proceeds are criminally derived. (See 18 U.S.C. Sec. 1957.)

The Treasury letter states that it was the specific intent of Congress in enacting this legislation to address the "laundering" of illegal proceeds through wire transfers and other monetary instruments. The specified crimes set forth in the Act include those crimes most commonly associated with organized crime, drug trafficking and financial misconduct, e.g., embezzlement, bribery and illegal arms sales. (See Footnote 2)

Members and member organizations are cautioned to establish procedures to detect transactions by money launderers and others who seek to hide profits derived from illegal activity. In this regard, counsel for members and member organizations should review 31 U.S.C. Sec. 5324, a federal criminal statute relating to structuring transactions to evade reporting requirements and other illegal activity.

¹ The term "financial transaction" is defined in 18 U.S.C. Sec. 1956(c)(4) to include "...the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce..."

² "Specified unlawful activity" is defined in 18 U.S.C. Sec. 1956(c)(7).

³ A "monetary transaction" as defined in 18 U.S.C. Sec.1957 (f)(1) means the "deposit, withdrawal, transfer, or exchange... of funds or a monetary instrument ... by, through, or to a financial institution."

⁴ "Financial institution" has the meaning given such term in the Bank Secrecy Act - which includes broker-dealers.

The Treasury letter notes that as a result of this legislation, the amendments to the Right to Financial Privacy Act ("RFPA") and increased awareness of narcotics and money laundering problems within the financial community, reports by financial institutions of suspicious cash transactions⁵ have dramatically increased, with marked success. Treasury hopes to achieve this same response with suspicious non-cash transactions involving wire transfers and other transactions.

Information to be Reported and Retained

Members and member organizations should have counsel review any proposed telephone report formats for compliance with applicable provisions of the Right to Financial Privacy Act. (See 12 U.S.C. 3403(c)). The Treasury letter emphasizes that the information permitted to be disclosed under RFPA includes the name of any person(s) involved in the suspicious transaction; account numbers; home and business addresses; social security numbers; types of accounts; interest paid on the accounts; location of the branch or office where the suspicious transactions occurred; a specification of the offense that the financial institution believes has been violated, if known; and a description of the activities giving rise to the financial institution's suspicions. Detailed records of such reports should be made and retained by members and member organizations.

If you have any questions concerning this matter, please contact Mary Anne Furlong at (212) 656-4823.

Edward A. Kwalwasser
Senior Vice President

⁵ Under the Currency and Foreign Transactions Reporting Act of 1970.