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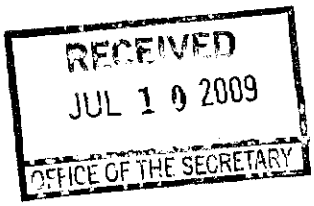
Nestlerode & Loy, inc
investment advisors

July 8, 2009



Ms. Florence Harmon
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number SR-FINRA-2009-039

Dear Ms. Harmon:

Thank you for the opportunity to comment on the proposed rule change recently filed by FINRA regarding adoption of FINRA Rule 3310 (Anti-Money Laundering Compliance Program), intended to become part of the Consolidated FINRA Rulebook.

I have worked at a small broker-dealer for more than 15 years and am now the owner of that firm. Nestlerode & Loy, Inc. has been subject to the Anti-Money Laundering ("AML") rules since the inception of the Patriot Act. The requirements to comply with the various aspects of AML are costly, rigorous and require a significant amount of staff time and ongoing training, particularly for a small firm. I take exception to the recent FINRA filing. This proposed rule change has been filed with the Commission with the opening paragraph indicating it is filed "without substantive change". Since the merger of the NASD and NYSE and the on-going process of consolidating the two rulebooks, FINRA has taken the position that those rules that have "insignificant" or "no change" should be filed directly with the SEC to expedite the process – rather than going first to their membership for comments.

In most instances, where there truly are either "no changes" or "insignificant changes", I would agree with such an approach. However, this proposed rule change does not contain an "insignificant change". In fact, the provision that is being deleted from the new rule could potentially impact more than 4,000 of the approximately 4,900 member broker-dealers that are considered small firms and who may potentially rely on the current independent testing exception. The current rule requires annual independent testing for compliance to be conducted by member personnel or qualified outside parties. The person conducting the testing must have a working knowledge of applicable requirements under the Bank Secrecy Act ("BSA"). Additionally, the testing cannot be conducted by the AML Compliance person(s) or any person performing functions being tested – or by any person that reports to any of these persons.

My concern is this proposed rule removes the current exception that allows small firms the ability to continue to use someone internal in their organization that can otherwise meet the requirements, but due to their limited size would not have an employee that could conduct the testing who was senior to the AML officer (99% of the time the AML officer at a small firm would be a senior officer).

The current exception allows many small firms to utilize properly qualified, internal employees to perform the testing independently – even though they may report to the AML officer – as long as there is someone senior to the AML officer where they can report the results of the AML audit.

Based on the FINRA proposed rule filing, it appears that The Financial Crimes Enforcement Network has concluded that this exception does not comply with the independent testing provision of the BSA, which precludes AML program testing by personnel with an interest in the outcome of the testing. I would disagree with this assertion, for two reasons. One, even an outside testing firm or auditor would have "an interest" in the outcome – as a deficient audit could lead to additional consulting services and fees (potential conflict of interest). Second, I know of no employees that are going to willingly turn a blind eye to money laundering red flags if they felt their own employment may be at stake were the firm to be at risk. So, in essence, they would certainly have a vested interest in the outcome – but in a way that would encourage them to bring to light problems – not try to hide them.

I do not believe that a small, introducing firm that is not bank holding company, does not handle cash and already has procedures in place to perform daily supervision regarding AML, annual training requirements, 3012 testing (including whether AML procedures, are sufficient), should be required to outsource the testing requirement and incur significant additional costs with no apparent additional benefit. The only reason most introducing firms are even required to comply with the BSA provisions is due to the creation of the Patriot Act. I find it astonishing that there are thousands of Investment Advisors that, to this day, are not required to comply with any part of the AML rules; yet small broker-dealers are now potentially going to be forced to incur yet another outside auditor expense (the expiration of the exemption used by non-public broker-dealers for the last 5 or 6 years that were, until the Madoff scandal, previously allowed to utilize non-PCAOB auditors). The final issue I would like to raise is – have there been any problems in this area? In my conversations with our regulators, none had heard of any problems or issues related to the use of the independent testing exception in the current rules. This appears to be fixing a problem that doesn't exist, at an expense to the membership with no resulting benefit. (If the audit costs were estimated at $1,000, which is probably an understatement, and even half the small firms (2,000) were affected, this would result in an additional expense to small firms of $2 million.)

Please reconsider the removal of this important exception available to small firms. At the very least, I would ask that the Securities and Exchange Commission request that FINRA send this "insignificant change" to its membership for comment, to give fair opportunity for all firms to clearly recognize this change is being made and comment if they feel it appropriate to do so.

Thanks again for allowing me the opportunity to express my concerns. If you have questions or wish to discuss this matter further, do not hesitate to call me at (800) 922-7492.

Sincerely,

Judy L Loy
CEO