

Mary Yeager
Assistant Secretary

New York Stock Exchange, Inc.
11 Wall Street
New York, NY 10005

tel: 212.656.2062
fax: 212.656.3939
myeager@nyse.com



Via email to www.rule-comments@sec.gov

January 17, 2006

Ms. Catherine McGuire
Division of Market Regulation
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File No. SR-NYSE-2005-36 Relating to Proposed Amendments to NYSE Rule 445
("Anti-Money Laundering Compliance Program")

Dear Ms. McGuire:

On May 23, 2005, the New York Stock Exchange (the "Exchange"), pursuant to Rule 19b-4¹ under the Securities Exchange Act of 1934, submitted to the Securities and Exchange Commission (the "SEC") File No. SR-NYSE-2005-36, which proposed several amendments to NYSE Rule 445 ("Anti-Money Laundering Compliance Program" or the "Rule") intended to clarify the Rule's application.

The filing was published in the Federal Register for comment.² The comment period, which ended July 27, 2005, resulted in a letter from the Securities Industry Association ("SIA"). The SIA letter also addresses proposed changes filed by the National Association of Securities Dealers ("NASD") with respect to NASD Rule 3011 which corresponds to, and is currently substantively the same as Rule 445. This letter responds to the SIA comment letter.

By way of background, Rule 445 requires Exchange members and member organizations to develop an Anti-Money Laundering Compliance Program designed to comply with the

¹ See CFR 240.19b-4.

² See Release No. 34-51934 (June 29, 2005); 70 FR 38994 (July 6, 2005)(SR-NYSE-2005-36).

requirements of the Bank Secrecy Act and the implementing regulations thereunder. Pursuant to this end, the rules specifically require the designation of a person or persons responsible for implementing the Program, and for monitoring its day-to-day operations and internal controls. Such persons are commonly known as “AML Officers.”

The SIA letter comments on two aspects of this requirement that would be affected by the proposed amendments. First, the proposed amendments to Rule 445 would permit AML Officers to be either employees of the member or member organization for which they are designated, or to be employees of a parent, affiliate, or subsidiary of such member or member organization. SIA concurs with the Exchange’s approach that would allow AML Officers to be optimally situated within corporate structures that have a global AML Program integrated throughout several entities within the corporate family. Further, SIA raises no objection to the proposed amendments’ requirement that any AML Officer who is employed by an entity other than the member or member organization for which they are designated sign a consent to Exchange jurisdiction. Nor does SIA object to the corresponding requirement that the member or member organization must attest, in writing, as to the member’s or member organization’s responsibility to supervise the AML Officer as an employee for all regulatory purposes.

However, SIA does take issue with the proposed requirement that members and member organizations receive the Exchange’s prior approval before implementing any arrangement in which AML Officers are employed by other than the member or member organization. Specifically, “ [i]n practical terms, such a requirement would result in firms needing to obtain prior approval each and every time a personnel change occurs. SIA believes that such a requirement would not be practical and would not provide substantial benefit to the self-regulatory organizations or to their member firms. We think providing timely notification of any such changes, as now required, is sufficient.”

In response, the Exchange believes that, while the flexibility offered by the proposed amendment will be beneficial in many contexts, the Exchange has a strong regulatory interest in retaining the right to review “outside” AML Officer arrangements to make certain practical determinations (e.g., whether the proposed arrangement is structured such that the AML Officer will be positioned to effectively implement the member organization’s 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 Exchange also notes that this proposed requirement is consistent with the rationale of NYSE Rule 346(e) which requires that persons who are delegated supervisory authority³ by a member or member organization pursuant to NYSE Rule 342 obtain the Exchange’s prior approval if they devote less than their entire time during business hours to the business of such member or member organization.

However, in response to SIA’s concern regarding regulatory burdens associated with changes in AML designation, amendments to the Rule are proposed that clarify that the Exchange’s interest in retaining the right to review and approve outside AML Officer

³ Though, in many instances, an AML Officer will be performing supervisory functions, the AML Officer designation, in and of itself, does not necessarily connote the delegation of supervisory authority.

arrangements is primarily focused on the structure of the arrangement, and not on the qualifications of the designated person or persons holding the AML Officer designation (as such qualification determinations are the responsibility of the member organization). Accordingly, if a person holding the AML Officer designation is to be replaced by another person, and the structure of the arrangement has been previously approved by the Exchange, then notice to the Exchange of the designation change would be sufficient if the previously approved arrangement remained substantively unchanged.

Accordingly, the Exchange is submitting proposed amendments to File No. SR-NYSE-2005-36, that clarify the Exchange's position on this matter.

Please feel free to contact William Jannace at 212-656-2744 or Stephen Kasprzak at 212-656-5226 should you have any questions concerning the above.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mary Yeager", with a long horizontal flourish extending to the right.

Mary Yeager
Acting Corporate Secretary