Securities Industry Association
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Via Electronic Mail

July 27, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Notice of Filing of Proposed Rule Changes Relating to Amendments to NASD Rule 3011 and the Adoption of Related Interpretive Material and Amendments to New York Stock Exchange Rule 445

File Nos. SR–NASD 2005-066 and SR-NYSE-2005-36

Dear Mr. Katz:

The Securities Industry Association ("SIA")[1] appreciates this opportunity to comment on the proposal by the National Association of Securities Dealers, Inc. ("NASD") to amend NASD Rule 3011 and adopt new interpretive material and the proposal by the New York Stock Exchange ("NYSE") to amend NYSE Rule 445. The proposals make revisions to the rules requiring firms to implement anti-money laundering programs.

SIA's comments are focused on the two separate NASD and NYSE proposals that seek to implement standards with respect to who may be designated by a firm as its Anti-Money Laundering ("AML") Compliance Person/Officer. SIA believes that, in their current form, the two differing proposals will serve to disrupt many of the AML

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[1] The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated an estimated $227.5 billion in domestic revenue and an estimated $305 billion in global revenues. (More information about SIA is available on its home page: www.sia.com.)

compliance structures currently in place, and, most importantly, may lessen effectiveness in AML compliance.

By way of background, NASD Rule 3011 and NYSE Rule 445 implement section 352 of the PATRIOT Act, which requires each member firm to develop and implement a written anti-money laundering program reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and the regulations promulgated by Treasury. These rules require that a firm's anti-money laundering program, at a minimum: establish and implement policies that can be reasonably expected to detect and cause the reporting of suspicious transactions required under 31 U.S.C. § 5318(g), and policies, procedures and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act; designate an individual responsible for implementing and monitoring the day-to-day operations and internal controls of the program (the "AML Compliance Person/Officer"); establish ongoing training for appropriate personnel; and provide independent testing for compliance.

As noted above, the NASD and NYSE proposals set forth different standards as to who would be permitted to serve as the designated AML Compliance Person/Officer. The NASD's proposed rule change would require that the AML Compliance Person/Officer must be an "associated person of the member." In contrast, the NYSE's proposed rule change would require that the AML Compliance Person/Officer must be either an "employee of the member or member organization for which they are designated, or with the prior approval of the Exchange, an employee of a parent, affiliate or subsidiary of the member or member organization."

The differing standards of the proposals would be problematic for firms that are dual members of the NYSE and NASD. Many larger firms and firms that are part of diversified companies have already designated an individual to serve as the AML Compliance Person/Officer across the enterprise. That designation was made, in many cases, to ensure consistency in approach and application across the entire firm's AML program, and was designed to avoid having various individuals serve in that capacity for segments of the enterprise based solely on their employment with a particular broker-dealer or corporate entity. By requiring the AML Compliance Person/Officer to be an "associated person" of the specific member firm, the NASD proposal would not permit such a structure. Indeed, in many instances, a person currently designated as the firm's AML Compliance Person/Officer – and charged with global administration of the firm's AML program – may be an "associated member" or employee of a particular entity within the enterprise, but may not meet the proposed NASD standard because they might

not be viewed as an "associated person" for each component of the member organization.[2]

In contrast, the NYSE proposal permits the AML Compliance Person/Officer to be an employee of the member or member organization, as well as an employee of a parent, affiliate or subsidiary of the member organization. This proposal would allow for the structure that many firms now employ and have built their programs around. Moreover, this type of designation would appear to achieve the laudable goal set forth in the preamble to the proposed revision, namely: to permit the firm to "allow employees of parents, affiliates and subsidiaries to be designated AML Officers of members and member organizations . . . [in] recognition that AML programs may be integrated into, and extend throughout, the corporate family."[3] Equally important, the NYSE proposal recognizes that, by allowing for such a structure, the AML Officer could "be better situated to see the 'big picture'" and thus better able to identify and understand AML issues across the firm.[4]

SIA recommends that the NASD and NYSE adopt one consistent and flexible standard that would allow firms to centralize the functions of the AML Compliance Person/Officer within and across an organization. Because the PATRIOT Act fully embraces the concept of a risk-based approach to AML compliance, these rules should be similarly flexible to permit a firm to designate a person that makes the most sense for that particular organization and for its corporate structure. As the NYSE proposal so aptly notes: "The ability to situate AML Officers where they can be most effective gives members and member organizations the flexibility to integrate their AML program into the larger corporate structure to achieve a more global perspective, and thus a more comprehensive and effective AML program."[5] In sum, allowing firms to centralize the AML Compliance Person/Officer across an organization creates more efficiencies in overall AML compliance, allows for fact-gathering and detection across entities within an organization, and results in more effective suspicious-activity reporting.

SIA suggests that the NYSE standard be approved for both rules with one minor change. Although the NYSE proposal provides that the AML Compliance Person/Officer

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[2] Moreover, such a silo-ed approach could result in other aspects of a firm's AML program becoming similarly fragmented. For example, at present, firm contacts for the FinCEN 314(a) communication system are often based on the designations made by a firm to the self-regulatory organizations. Requiring an organization to designate multiple AML Compliance Persons/Officers for each member firm would result in firms also having multiple 314(a) points of contact, thereby defeating the ability of a firm to centralize its compliance efforts across the enterprise in response to requests under 314(a).

[3] 70 Fed. Reg. 38992, 38995.

[4] Id. at 38995-96.

[5] Id. at 38996.

may be an employee of a parent, affiliate or subsidiary of the member or member organization with the "prior approval of the Exchange," we recommend that "prior approval" not be required. In 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.

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SIA appreciates the opportunity to comment on these proposals. Please contact us if you would like to discuss our recommendations further.

Sincerely,

Alan E. Sorcher
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Associate General Counsel
Securities Industry Association
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