

## MEMORANDUM

**To:** All Members, Member Organizations, Participants and Participant Organizations

**From:** James F. Barben, Manager Examinations

**Re:** Phlx Rule 757 – Anti-Money Laundering Compliance Program

**Date:** March 23, 2007

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### I. Introduction

Pursuant to Exchange Rule 757, all members, member organizations, participants and participant organizations for which the Exchange is the designated examining authority (collectively, “Member Firms”) must develop and implement a written anti-money laundering compliance program (“AML Compliance Program”) that is reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the related implementing regulations promulgated thereunder by the United States Department of the Treasury. Among other things, Exchange Rule 757 requires that the AML Compliance Program (i) provide for independent testing by a Member’s employee(s) or a qualified outside party, and (ii) designate a person (“AML Compliance Officer”) to implement and monitor the day-to-day operation of, and compliance with, the Member Firm’s AML Compliance Program.<sup>1</sup> The purpose of this memorandum is to provide guidance on the independent testing and AML Compliance Person requirements of Exchange Rule 757, and thereby equip Member Firms to better assess the adequacy of their compliance with their own AML Compliance Program.

### II. Guidelines

#### A. Independent Testing Requirement

##### 1. Qualification of Tester

In general, Member Firms may elect to have their AML Compliance Program tested by a person selected from their own employees, or they may retain the services of an outside party. Either way, the person designated to conduct the required testing must possess a working knowledge of the applicable requirements of the Bank Secrecy Act and the implementing regulations promulgated by the Department of the Treasury.

##### 2. Independence of Tester

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<sup>1</sup> For a list of the other requirements of the rule, please see the text of Exchange Rule 757.

The person responsible for testing a Member Firm's AML Compliance Program must be "independent." In general, in order to be considered independent and, therefore, eligible to perform the required independent testing, the tester must not belong to any of the following categories of ineligible persons:

- the person(s) who performs the AML function that is being tested, or a subordinate of such person(s); or
- the AML Compliance Officer, or a person who reports to him or her.

However, in certain exceptional cases, it may be permissible for independent testing of a Member Firm's AML Compliance Program to be conducted by a person who would otherwise fall within one of the ineligible categories. The Exchange will permit independent testing to be conducted by a person who reports to the AML Compliance Officer, by a person who performs the AML function being tested, or by a person who reports to any of these persons, provided the following applies:

- the Member Firm does not have another qualified internal employee to conduct the test;
- the Member Firm establishes written policies and procedures that address conflicts of interest that may arise from permitting the testing to be conducted by a subordinate;
- the tester reports the results of the test to a person at the Member Firm who is more senior than the person to whom the tester reports; and
- the Member Firm documents and retains, in accordance with its recordkeeping obligations, a reasonable basis for choosing to comply with its independent testing obligations in this manner.

### 3. Frequency of Testing

Generally, Member Firms must conduct independent testing of their AML Compliance Program on an annual calendar year basis. However, Member Firms that do not execute customer transactions, do not hold customer accounts, or do not otherwise act as an introducing broker for customer accounts, must conduct independent testing once every two years. Member Firms are expected to conduct independent testing more frequently if circumstances warrant (e.g., red flags, regulatory deficiencies, changes in business, etc.) without regard to whether they otherwise would have been required to administer a test annually or every two years.

## **B. AML Compliance Officer Requirement**

In recognition of the regulatory significance of the AML compliance function, Exchange Rule 757 requires Members Firms to designate an AML Compliance Officer to implement and monitor the daily operation of, and compliance with, their AML Compliance Program. The decision to appoint an AML Compliance Officer should be guided by the following considerations:

### 1. General Considerations

The AML Compliance Officer:

- May be an employee of the Member Firm, an affiliate or an outside party
- Must be considered an associated person of the Member Firm, pursuant to Sections 3(a)(18) and 21 of the Securities Exchange Act of 1934, as amended, in connection with their compliance-related activities on behalf of the firm regardless of whether he or she is an employee of the firm or of an affiliate, or an outside party.

- Must be under the control and supervision of the Member Firm. Member Firm's written supervisory procedures must reflect and acknowledge responsibility for supervision of the AML Compliance Officer
- Must be subject to the disciplinary jurisdiction of the Exchange
- Must have a working knowledge of the applicable requirements of the Bank Secrecy Act and its implementing regulations promulgated by the Department of the Treasury.

2. Registration Status

The AML Compliance Officer, whether an internal employee of the Member Firm or an outside party, does not have to be registered.

3. Data to be Retained

- Member Firms must retain the name, company name, contact information, etc. of AML Compliance Officer
- Member Firms are required to review, and update the PHLX if necessary, with the information regarding their AML Compliance Officer, within seventeen days of the end of each quarter
- Member Firms must promptly notify the Exchange of any change of the designated AML Compliance Officer

### III. Additional Information

#### NASD Resources

Please see the following web pages for additional guidelines:

- A. NASD's Anti-Money Laundering issue center  
<http://www.nasd.com/RulesRegulation/IssueCenter/Anti-MoneyLaundering/index.htm>
- B. NASD's Small Firm Template for an AML Program  
[http://www.nasd.com/RulesRegulation/IssueCenter/Anti-MoneyLaundering/NASDW\\_006340](http://www.nasd.com/RulesRegulation/IssueCenter/Anti-MoneyLaundering/NASDW_006340)

For questions regarding this memorandum, or other applicable matters, please contact the Department's general number at (215) 496-5188, or William Bunting, Director Examinations, at (215) 496-5401.

Attachment

**PHLX Rule 757. Anti-Money Laundering Compliance Program**

Each member, member organization, participant and participant organization, for which the Exchange is the Designated Examining Authority, shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et. seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member's anti-money laundering program must be approved, in writing, by a representative of its senior management staff. The anti-money laundering programs required by this Rule shall include, at a minimum a requirement to:

- (1) Establish and implement policies, procedures and controls that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;
- (2) Establish and implement policies, procedures and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;
- (3) Provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party;
- (4) Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and controls of the program; and
- (5) Provide ongoing training for appropriate personnel.

**Adopted.**

June 10, 2002 (02-29).

January 16, 2004 (03-73).