



Securities Industry Association

1401 Eye Street, NW • Washington, DC 20005-2225 • (202) 296-9410, Fax (202) 296-9775

By Hand

March 18, 2002

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Re: Notice of Filing of Proposed Rule Changes Relating
to Anti-Money Laundering Compliance Programs by the
NASD, File No. SR –NASD 2002-24 and by the New
York Stock Exchange, File No. SR-NASD-2002-10

Dear Mr. Katz:

The Securities Industry Association (“SIA”)¹ appreciates this opportunity to comment on the proposals, pursuant to section 352 of the USA PATRIOT Act², issued by the National Association of Securities Dealers and the New York Stock Exchange requiring broker-dealers to establish and maintain anti-money laundering compliance programs. We commend the NASD and NYSE for acting quickly to address the anti-money laundering program requirement, which is a central part of the Patriot Act’s efforts to strengthen existing counter money laundering measures.

¹ The SIA brings together the shared interests of nearly 700 securities firms to accomplish common goals. SIA member firms (including investment banks, brokers-dealers and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift and pension plans. The industry generates \$358 billion of revenue and employs approximately 760,000 individuals. (More information about the SIA is available on its home page: <http://www.sia.com>.)

² “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” (“Patriot Act”) Pub. L. No. 107-56 (2001), signed into law by President Bush on October 26, 2001.

Section 352(a) of the Patriot Act amends 31 U.S.C. §5318(h) to require financial institutions, including registered broker-dealers, to establish anti-money laundering programs containing four mandatory components. Although the Secretary of the Treasury may issue regulations prescribing minimum standards for such programs, the amendment is self-implementing, that is, it becomes effective 180 days after enactment of the Patriot Act whether or not regulations are issued. Thus, all registered broker-dealers must establish such programs on or before April 24, 2002.

The proposed NYSE and NASD rules are designed to set forth minimum standards for the anti-money laundering programs established by their member firms under Section 352. Rule 3011 and Rule 445 require each member firm, by April 24, 2002, 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. The 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; provide independent testing for compliance; designate an individual responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and establish ongoing training for appropriate personnel.

The SIA supports the proposed rule and believes that sound compliance programs are the starting point in the industry's effort in the prevention of money-laundering and the financing of terrorism. SIA's Preliminary Guidance For Deterring Money Laundering Activity, issued on February 13, 2002, recommends that firms adopt anti-money laundering programs that have each of the components required by the proposed rules. We request that the requirements imposed by the proposed rules be clarified, as described below.

First, while Section 352 of the Patriot Act only requires firms to "establish" written anti-money laundering programs by April 24, 2002, the proposed rules require that firms "establish *and implement*" their programs by that date. Thus, we request that the rules make clear that the requirement imposed on firms by the rules is to have a written anti-money laundering program in place by April 24, 2002, and not the requirement to have

implemented the program. In other words, firms that have written policies and procedures addressing each of the components required by the rules will be in compliance. But firms will not be required, by April 24, for instance, to have actually implemented its employee training or conducted an audit of its program. While we think the language of Section 352 of the Patriot Act is clear that the requirement is to “establish” anti-money laundering programs, and that this is what was intended by the NASD and NYSE, we request that the rules more clearly specify this as well.

Second, we suggest the rules clarify that the anti-money laundering programs required by April 24, 2002 are only required to account for the Bank Secrecy Act requirements that are in effect by that date. This clarification is necessary because some of the provisions of the Patriot Act have already become effective, while others will become effective on a rolling basis throughout 2002. Moreover, some of the provisions are self-implementing, while others must be implemented through regulations issued by Treasury. Thus, while it is clear that firms must establish written anti-money laundering programs by April 24, 2002, it is simply not possible for them to “implement” all aspects of such programs by that date. Accordingly, as discussed in the NYSE proposal, firms will have to ensure – on a going forward basis – that their programs keep up to date with the Patriot Act requirements that become effective throughout the year.

While we strongly support the Patriot Act’s requirement that broker-dealers report suspicious activity, we are concerned that the rules may require a firm to implement policies for the reporting of suspicious transactions prior to the time required by the statute. (Those securities firms already subject to the banking agency suspicious activity reporting requirements will also likely have to adjust their policies and systems to comply with the new broker-dealer SAR rule.) Section 356 of Patriot Act requires that broker-dealers be subject to suspicious activity reporting requirements and that such provision take effect 180 days after a final rule is issued by Treasury. The comment period for Treasury’s SAR rule just closed and pursuant to the proposed rule, firms will have 180 days after a final rule is issued to develop and implement suspicious activity reporting requirements. However, the proposed SRO rules require firms to establish and “implement” policies for the reporting of suspicious transactions by April 24, 2002. This time frame is not contemplated by the Patriot Act.

We agree that a firm’s anti-money laundering policies and procedures, which are required to be in place by April 24, 2002, should address the

reporting of suspicious activity and training modules should include educating employees with respect to suspicious activity and the responsibilities imposed upon firms by the Patriot Act. However, it will be difficult to draft final policies and procedures for suspicious activity reporting until a final rule is issued setting down the precise requirements for suspicious activity reporting. Moreover, firms should be allowed, if necessary, the time provided by Congress – 180 days after a final SAR rule is issued – to implement their policies and procedures for the reporting of suspicious activity. We therefore request that the suspicious activity reporting requirement of the proposed rules be made consistent with Patriot Act and Treasury’s proposed SAR rule.

Third, while we support the Patriot Act’s deadline of April 24, 2002 for anti-money laundering programs, and believe that SIA firms already have or will have the required programs by that date, the proposed rule should allow for possible extensions of the compliance date, where appropriate. Because of the severe operational disruptions experienced by many firms as a result of September 11, many of which lost offices, computer systems and records, there may be situations in which a firm is unable to finalize all of the required compliance procedures by April 24 – which is only several weeks away. Some of the industry’s very small broker-dealers, which have only a few employees and very limited resources, may also have some difficulty meeting the deadline. The SIA recommends that the NASD and NYSE establish a procedure that would allow a firm to seek a reasonable extension of the compliance deadline when full compliance cannot be timely achieved. We recommend that in order to obtain an extension, a firm would be required to show that a good faith effort was made to comply, and that there are other extenuating circumstances that justify an extension.

*

*

*

The SIA commits to work with the NASD and NYSE to help educate the industry on the anti-money laundering program requirements and the other provisions of the Patriot Act. We believe that through the combined efforts of industry and government, we can achieve widespread compliance and help prevent our financial system from being used for illicit purposes.

Please contact us if you would like to discuss our recommendations further.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel
Securities Industry Association
(202) 296-9410

cc: Via Electronic Mail

Lori Richards
U.S. Securities and Exchange Commission

Catherine McGuire
U.S. Securities and Exchange Commission

Robert Love
U.S. Securities and Exchange Commission

Nancy Libin
National Association of Securities Dealers

Salvatore Pallante
New York Stock Exchange