CORE COMPLIANCE & LEGAL SERVICES, INC.
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Risk Management Update
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ANTI-MONEY LAUNDERING UPDATES: ADOPTION OF FINRA RULE 3011 AND RELEASE OF THE SMALL FIRM TEMPLATE

There have been two important changes in the world of Anti-Money Laundering ("AML") compliance. First, on January 1, 2010, in connection with FINRA's rule consolidation, FINRA Rule 3310 went into effect, which replaces NASD Rule 3011. Second, FINRA released its long-awaited revised AML Small Firm Template, which will provide guidance to firms and help them to further enhance their existing AML policies and procedures. Both of these updates include a number of corresponding changes which firms should be aware of for their AML compliance programs.

Accordingly, Core Compliance & Legal Services, Inc. ("CCLS") is presenting a two-part risk management update to highlight these areas. This month's article will focus on changes to the AML rule. Next month, CCLS will highlight those amendments made to FINRA's Small Firm Template.

New FINRA Rule 3310: Anti-Money Laundering Compliance Program

The rule language and subparagraphs have not changed except for eliminating the reference to April 24, 2002. As in other new FINRA rules, the Interpretative Memos ("IM") have been renamed to Supplementary Materials.

New Supplementary Material 3310.01: "Independent Testing Requirements"

This material codifies the independent testing prohibitions in IM-3011-1 by specifically listing who can and cannot perform the testing. Specifically, the testing must be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations.

Notably, the new Rule eliminates the exception in IM-3011-1 (3), which permitted, under certain conditions, the independent testing to be conducted by persons who reported to either the AML Compliance person or persons performing the functions being tested. Instead, the supplemental material 3310.01 goes further to specify that independent testing may *not* be conducted by:

- A person who performs the functions being tested;
- The designated anti-money laundering compliance person; or
- A person who reports to a person described in either subparagraphs (1) or (2) above.

This change comes from the Financial Crimes Enforcement Network (FinCEN") who stated that the exception outlined in NASD IM-3011-1 was inconsistent with the Bank Secrecy Act's ("BSA") independent testing provision, and FinCEN's interpretation of the BSA provision.[1] Consequently, this change should serve as a red flag for all member firms that regardless of size FINRA intends to scrutinize more closely the "independence" of the AML program auditors. .

Supplementary Material 3310.02: "Review of Anti-Money Laundering Compliance Person Information"

The requirement to designate an AML contact person has long been a part of the FINRA Contact System ("FCS"). Procedurally, since 2002 member firms have been required to designate and identify to FINRA an individual or individuals responsible for the broker-dealer's AML program[2]. Now, Supplemental Material 3310.02 codifies the requirement that each member must update the information on the FCS as necessary. While the new requirement might at first glance be viewed as a nominal change, this mandate helps FINRA to satisfy its obligation to provide Point of Contact information to FinCEN and other regulatory agencies on a timely basis to ensure delivery of communications.

Notably, Supplementary Material 3310.02 uses the term "Person" instead of "Officer" to denote the supervisor of the firm's anti-money laundering efforts. This is in-line with the legislative history of the rules and interpretations. Initially, special NASD Notice to Members 02-21[3] discussed the AML Compliance Officer's role and specified that this person was not required to be the Chief Compliance Officer, but could be. Thereafter, NASD Notice to Members 06-07[4] further clarified that the AML Compliance Person must be an associated person for purposes of conducting activities for the AML program on behalf of the firm, but does not state that the AML Compliance Person be a registered principal. Therefore, even though "Person" has been used in other Notices, the term is now incorporated into the new rule.

Conclusion

While the changes to the AML Rule are not considerable, the elimination of the "independent" testing exception will require firms to revisit their testing plans going forward. Compliance officers should evaluate how the elimination of the exception impacts their AML testing plans for 2010 and beyond, and begin to think about alternative resources available which meet not only the "independent" requirement, but also have the required working knowledge of applicable requirements under the BSA and the USA PATRIOT Act to satisfy a regulatory examination.

Next month, CCLS will discuss the changes that have been made to the Small Firm Template to assist firms in updating their AML Program policies and procedures.

If you have questions about this article or your AML program, or would like to inquire about our independent AML audit services, please contact us at (619) 278-0020.

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[1] FINRA Regulatory Notice 09-60 at page 8.
[2] *See* NASD Notice to Members 02-78.
[3] Special NASD Notice to Members 02-21 at page 13.
[4] NASD Notice to Members 06-07 at page 3.