



**IMPORTANT MEMORANDUM**

**TO:** Members

**FROM:** Department of Member Firm Regulation

**RE:** **Anti-Money Laundering (“AML”) Compliance Program (CBOE Rule 4.20) - Annual requirements for:**

- First time filers, or
- Previous filers whose AML procedures or designated AML compliance individual have changed since their last filing

**DATE:** January 2, 2009

All registered broker-dealers, including sole proprietors, are required to demonstrate compliance with the requirements of the USA PATRIOT Act.

This Regulatory Circular applies to member broker-dealers for which ALL of the following conditions are true<sup>1</sup>:

- Designated Examining Authority is the CBOE.
- You have not filed AML documents with the CBOE **OR** any part of the AML program has changed.
- You are not required to file monthly FOCUS reports<sup>2</sup>.

**Please note that this circular also applies to lessors and other individuals who may not necessarily be actively trading but are still registered broker-dealers.**

**All filers to whom this circular applies are required to submit the following:**

- A copy of the broker-dealer’s written supervisory procedures for its AML compliance program.
- AML attestation identifying the broker-dealer’s AML Compliance Officer (or other AML compliance designated person), signed by a member of senior management.
- Evidence of annual (or more frequent) AML training for all appropriate persons of the broker-dealer.

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<sup>1</sup> If you previously filed AML documents with the Exchange, have made no changes to your AML procedures, and your designated AML compliance individual remains the same, please see Regulatory Circular RG09-003 for a description of your CBOE filing requirements.

<sup>2</sup> Monthly filers are required to maintain complete AML documentation that will be reviewed as part of the annual routine examination program.

- A copy of an independent review letter identifying the results of the independent review conducted by an individual not involved with the broker-dealer's AML function.

This information must be submitted to the Department of Member Firm Regulation no later than **March 2, 2009**. Please do not submit your original documents. Broker-dealers have a books and records requirement to maintain copies of this information. Additionally, please be advised that all AML documentation and ongoing procedures are subject to regulatory review at any time.

The following pages contain additional information that may be helpful in fulfilling the above requirements.

### **Procedures**

To accommodate CBOE members that are non-clearing, do not conduct a non-member customer business, and do not receive customer funds or securities, the Regulatory Services Division created a small-firm AML compliance program template which is attached to this Circular. This template may suffice in complying with the written procedures requirement. However, every broker-dealer must decide, based on the type of business it is conducting, whether it must adopt more detailed procedures or whether the template will suffice.

### **Training**

Training should be conducted at least annually and developed under the leadership of the AML Compliance Officer or senior management. Broker-dealers should document the content of the training and maintain a list of the participants. The broker-dealer may wish to have participants sign an attestation acknowledging that they have participated in the training and understand the firm's AML program. The attestation could contain language directing any questions to the firm's AML Compliance Officer. In addition, training should be updated as necessary to reflect new developments in the PATRIOT Act.

The Financial Industry Regulatory Authority website ("FINRA") (<http://www.finra.org>) has on-line training and guidance available which would be considered appropriate training for CBOE market makers that are non-clearing and do not conduct a non-member customer business.

### **Independent Review Letter**

Broker-dealers must have an independent testing function to review and assess the adequacy of compliance with the firm's AML compliance program. In an effort to accommodate CBOE members, the Division has included an example of an independent review letter for members to use as a guideline. This letter should be tailored to accommodate the individual broker-dealer's business situation.

On December 27, 2007, the SEC approved an amendment to CBOE Rule 4.20 allowing certain member broker-dealers to have the independent audit performed every two years on a calendar year basis, if the member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with

respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers).

Please direct any questions to the Department of Member Firm Regulation, Tyson Wilson at (312) 786-7011 or [wilsont@cboe.com](mailto:wilsont@cboe.com), Daniel Sieracki at 312-786-7167 or [sieracki@cboe.com](mailto:sieracki@cboe.com), or Mike LaGioia at (312) 786-7728 or [lagioia@cboe.com](mailto:lagioia@cboe.com).

## Broker-Dealer Attestation for Non-Capital Computing Members That Do Not Conduct a Non-Member Customer Business and Do Not Receive Customer Funds or Customer Securities

**Reminder:** Broker-dealers that are not capital computing and therefore, not subject to an annual examination by the Department of Member Firm Regulation (the "Department"), are required to submit (i) a copy of the broker-dealer's written supervisory procedures for its AML Compliance Program, approved by a member of senior management, (ii) the completed broker-dealer AML attestation provided below, (iii) evidence of the AML training described in the attestation and (iv) a copy of the independent review letter issued to the broker-dealer, to the Department no later than **March 2, 2009** in order to demonstrate the broker-dealer's compliance with CBOE Rule 4.20 - Anti-Money Laundering Compliance Program.

**Broker Dealer Number:** 8 - \_\_\_\_\_

**Broker Dealer Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Day-Time Phone:** \_\_\_\_\_

### **Designated Anti-Money Laundering Compliance Officer:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Phone:** \_\_\_\_\_

**Fax (If applicable):** \_\_\_\_\_

### **Broker-Dealer Annual Training:**

**Attendees:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The broker-dealer training was conducted on \_\_\_\_\_, 200\_\_ and  
date

was done \_\_\_\_\_. Some of the topics covered were \_\_\_\_\_  
(internally/externally/via an internet website)

\_\_\_\_\_  
\_\_\_\_\_.

- \* **The above identification of specific training and participants in such training is intended to be evidence of the training conducted on behalf of \_\_\_\_\_ .**

**Independent Review:**

The independent review of the broker-dealer AML program was conducted on

\_\_\_\_\_, 200\_\_\_\_, by \_\_\_\_\_,  
date name

of \_\_\_\_\_.  
company name (internal or external)

- \* **Broker-Dealers are required to maintain written documentation of the Independent Review conducted.**

I \_\_\_\_\_, as \_\_\_\_\_, of  
name title

\_\_\_\_\_, certify that the information listed  
broker-dealer name

above is accurate.

**MemberSignature:** \_\_\_\_\_ **Date** \_\_\_\_\_

**This document and the attached copy of the letter prepared by the independent reviewer of the AML program are to be maintained as evidence of the independent review.**

Please note: CBOE Rule 4.6 states in part, "no member, person associated with a member or applicant for membership shall make any willful or material misrepresentation, including a misstatement or false statement, or omission in any application, report or other communication to the Exchange, or to the Clearing Corporation..."

If you make a false statement you may be subject to disciplinary action by the Exchange.

## Small Firm Template for Members That Do Not Conduct a Non-Member Customer Business and Do Not Receive Customer Funds or Customer Securities

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[Broker-Dealer Name]

### Anti-Money Laundering (AML) Compliance Program Written Supervisory Procedures

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#### 1. Member Policy

It is the policy of \_\_\_\_\_ [Broker-Dealer Name] to prohibit and actively prevent money laundering and any activity that facilitates money laundering or the funding of terrorist or criminal activities. Money laundering is generally defined as engaging in acts designed to conceal or disguise the true origins of criminally derived proceeds so that the unlawful proceeds appear to have derived from legitimate origins or constitute legitimate assets.

The Broker-Dealer is currently engaged in the business of market-making in options / engaged in the business of market-making in options and commodities trading / a Lessor and not actively trading but maintaining its Broker-Dealer registration with the Securities and Exchange Commission ("SEC"). It is not the policy of the broker-dealer to accept cash. The Broker-Dealer does not accept funds from individuals that do not have a disclosed ownership interest in the Broker-Dealer. Any fund transfers made are related to its Broker-Dealer activity in the normal course of business. The Broker-Dealer has \_\_\_\_ (no/1/2/3) outside bank accounts related to the broker-dealer business activity. (either) All funds transfers are effected through the Broker-Dealer's \_\_\_\_\_ (clearing firm account or either the member's clearing firm account or its outside bank account.)

#### 2. AML Compliance Officer Designation and Duties

\_\_\_\_\_ [Name] is designated as the Anti-Money Laundering Program Compliance Officer, with full responsibility for the firm's AML program and is an Associated Person of the firm, and is qualified by experience, knowledge and training. The duties of the AML Compliance Officer will include monitoring AML compliance, overseeing communication and training for employees, and will also ensure that proper AML records are kept. When warranted, the AML Compliance Officer \_\_\_\_\_ [Add if appropriate: "in consultation with {Name or title}" OR "with the approval of {Name or title}"] will ensure Suspicious Activity Reports (SARs) are filed with the Financial Crimes Enforcement Network (FinCEN).

#### 3. Training Programs

We will develop ongoing employee training under the leadership of the AML Compliance Officer and senior management. Our training will occur at least annually. The training will be based on our firm's size, its customer base, and its resources.

We will maintain records to show the persons trained, the dates, and the subject matter of their training. We will review our operations to see if certain employees require specialized additional training. These AML procedures will be updated to reflect any such specialized training.

#### 4. Independent Testing of the AML Program

Independent testing must be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations.

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 either of these two individuals.

**If conducted by an outside party:**

The testing of our AML program will be performed by \_\_\_\_\_  
\_\_\_\_\_[Name and Title], an independent third party.

OR

**If conducted by an employee internally:**

The testing of our AML program will be performed by \_\_\_\_\_  
\_\_\_\_\_[Names]. To ensure that they remain independent, we will separate their functions from other AML activities by requiring that the independent reviewer report to someone other than the AML Officer.

**Evaluation and Reporting:**

AML testing will be completed at least bi-annually on a calendar year basis, as the Firm does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts. The testing will include at a minimum, a review of the Firm's procedures in correlation with its business activity, a review of any bank account deposit activity for a specific period of time, a review of the Broker-Dealer's fund transfer activity, both incoming and outgoing made through any clearing firm account or bank account for a specific period of time, a review of any Bank Secrecy Act ("BSA") forms required to be filed and a review of any Suspicious Activity Reports filed. After the testing is completed, the reviewer will report its findings to \_\_\_\_\_ [Senior Management]. We will address each of the resulting recommendations.

**5. Approval**

I hereby attest that I do not conduct a non-member customer business and do not receive customer funds or customer securities. I have approved this AML program as reasonably designed to achieve and monitor ongoing compliance with the requirements of the USA PATRIOT Act and the implementing regulations under the BSA.

I understand and agree that should the nature and type of business conducted by the broker-dealer change, the broker-dealer will, make appropriate changes to its AML program.

**AML Program Approval (Approved by Senior Management):**

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Broker-Dealer Number: \_\_\_\_\_

Date: \_\_\_\_\_

## Example of an Independent Review Letter

Date

Managing Member

Firm Name

Address

City, State, Zip

Attn: Managing Member of the Firm

Dear \_\_\_\_\_ (Managing Member of the B/D)

Please be advised that I conducted an Independent Review of the Anti-Money Laundering ("AML") Program for \_\_\_\_\_ (B/D Name) as of \_\_\_\_\_ (date). I am of the opinion that the Broker-Dealer's AML program appears adequate given the nature and size of its business. Please be advised that my review noted no areas of concern.

\_\_\_\_\_ (B/DName) is a \_\_\_\_\_ (Sole-Prop/L.L.C./Corp.), with \_\_\_\_\_ (# of or no) employees. The firm does not conduct a non-member customer business. It is not the Broker-Dealer's policy to accept cash. The Broker-Dealer has no outside bank accounts related to its Broker-Dealer business and has no foreign bank or securities accounts. Any fund transfers related to the Broker-Dealer are processed through its clearing account.

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Reviewer's Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number