

CBOE Regulatory Circular RG16-061
C2 Regulatory Circular RG16-015

Date: March 28, 2016

To: CBOE and C2 Trading Permit Holders
From: Regulatory Division
RE: Anti-Money Laundering Compliance Program
Filing Requirements for Certain Trading Permit Holders

As a reminder, in accordance with Rule 4.20, *Anti-Money Laundering Compliance Program*,¹ each TPH organization and each Trading Permit Holder not associated with a TPH organization shall develop and implement a written anti-money laundering (“AML”) program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury. Please refer to Rule 4.20 for additional information on AML program requirements.

To facilitate CBOE/C2’s routine AML examination program, CBOE and C2 (the “Exchanges”) require that certain Trading Permit Holders file certain AML documentation as prescribed below.

The filing requirements contained in this Regulatory Circular apply to Trading Permit Holders for which ALL of the following conditions are true:

- you are not a FINRA member,²
- your Designated Examining Authority (“DEA”) is the CBOE, and
- you are not required to file monthly FOCUS reports.³

Please note that the filing requirements of this circular also apply to individuals and entities who may not necessarily be actively trading but are still registered broker-dealers.

Trading Permit Holders to whom the filing requirements of this circular apply are required to submit to CBOE/C2 the following:

- A copy of the broker-dealer’s written procedures for its AML compliance program, signed by a member of senior management.
- An attestation identifying the broker-dealer’s designated AML compliance person(s).
- Evidence of annual (or more frequent) AML training for all appropriate persons.
- If required, a copy of an independent review letter identifying the results of the independent testing conducted.⁴

¹ CBOE Rule 4.20 is incorporated into Chapter 4 of the C2 Rules.

² CBOE, C2 and the Financial Industry Regulatory Authority, Inc. (“FINRA”) have entered into a plan for the allocation of certain regulatory responsibilities pursuant to Rule 17d-2 under the Securities Exchange Act of 1934 (see, e.g., Securities Exchange Act Release Nos. 71964 and 72137). Under the plan, among other things, FINRA has assumed AML examination responsibilities for common members. As a result, CBOE/C2 Trading Permit Holders that are FINRA members are generally subject to examination by FINRA.

³ If the Trading Permit Holder is not a FINRA member and is a monthly FOCUS filer, and CBOE is its DEA, its monthly FOCUS filer’s AML documentation will be reviewed in conjunction with the routine DEA examination program.

⁴ Rule 4.20 requires an annual (on a calendar-year basis) independent testing for compliance. However, Rule 4.20 permits certain TPH organizations and Trading Permit Holders to have the independent audit performed every two years (on a calendar year basis), if the broker-dealer does not execute transactions for customers or otherwise hold

If you have previously filed AML documents with CBOE/C2, your most recent AML filing was complete, **and** your AML program and designated AML compliance person(s) have not changed since that prior submission,⁵ then your filing may indicate those facts and your submission would only need to include the evidence of AML training and independent review letter (bullets 3 and 4 above).

Filing to be Emailed No Later than April 1:

The AML information must be submitted to the Regulatory Division no later than **April 1, 2016**. Trading Permit Holders should submit the required information via email to DMFRNotification@cboe.com.⁶

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 is subject to regulatory review **at any time**.⁷

The following information may be helpful in fulfilling the above requirements.

Procedures:

To accommodate TPHs that are non-clearing, do not conduct a non-member customer business, and do not receive customer funds or securities, the Regulatory 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 designated AML compliance person(s) 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 Bank Secrecy Act.

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). However, all Trading Permit Holders and TPH organizations must conduct independent testing during the first calendar year of registration with the Exchange. See Rule 4.20(3) and .01 for more information on who may conduct the independent testing.

⁵ Under Rule 4.20(4), prompt notification must be provided to CBOE/C2 regarding any change in the designation(s).

⁶ As previously announced via Regulatory Circular, CBOE and C2 have an agreement with FINRA under which FINRA performs certain regulatory services on behalf of the Exchanges. In connection with the regulatory services program, and as also previously announced, the submission of various regulatory filings by CBOE and C2 TPHs will transition to the electronic filing platform available via FINRA's Firm Gateway. FINRA's Firm Gateway (<https://firms.finra.org>) is a portal that provides consolidated access to various FINRA regulatory systems. (See CBOE Regulatory Circular RG15-084 / C2 Regulatory Circular RG15-023.) Certain filings associated with Rule 4.20 are in the process of being transitioned to FINRA's Firm Gateway. However, that process is not yet complete. CBOE and C2 will issue a circular advising TPHs when FINRA's Firm Gateway will be required for any Rule 4.20-related filings. In the interim, please continue to use the DMFRNotification@cboe.com email address or contact your Regulatory Coordinator at FINRA if you wish to receive instructions to file via FINRA's Firm Gateway.

⁷ Please note that CBOE Rule 4.6 states, in part, "[n]o Trading Permit Holder, person associated with a Trading Permit Holder or applicant to be a Trading Permit Holder 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" CBOE Rule 4.6 is incorporated into Chapter 4 of the C2 Rules.

The FINRA website (<http://www.finra.org>) has on-line training and guidance available which would be considered appropriate training for Market-Makers that are non-clearing and do not conduct business with the public.

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 Trading Permit Holders, the Regulatory Division has included an example of an independent review letter that may be used as a guideline. **This letter should be tailored to accommodate the individual broker-dealer's business situation.**

Additional Information:

Please contact the Regulatory Interpretations and Guidance team at RegInterps@cboe.com or (312) 786-8141 for additional information.

Small Firm Template for Trading Permit Holders That Do Not Conduct a Public Customer Business and Do Not Receive Customer Funds or Customer Securities:

[Broker-Dealer Name]

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

1. Trading Permit Holder 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 / 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 TPH's clearing firm account or its outside bank account].

2. AML Compliance Person(s) Designation and Duties

_____ [Name(s)] is (are) designated as the person(s) responsible for the Anti-Money Laundering Program, 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 designated AML compliance person(s) will include monitoring AML compliance, overseeing communication and training for employees, and will also ensure that proper AML records are kept. When warranted, the designated AML compliance person(s) _____ [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 designated AML compliance person(s) 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 (BSA) 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 designated AML compliance person(s).

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 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: _____

Attestation for Trading Permit Holders That Are Not FINRA Members for Whom CBOE is the DEA and Are Not Required to File Monthly FOCUS Reports:

Reminder: Trading Permit Holders that are not FINRA members for whom CBOE is the DEA and that are not required to file monthly FOCUS reports 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 Regulatory Division no later than **April 1, 2016** in order to demonstrate the broker-dealer's compliance with Rule 4.20, *Anti-Money Laundering Compliance Program*.

Broker Dealer Number: 8 - _____

Broker Dealer Name: _____

Address: _____

Daytime Phone: _____

Designated Anti-Money Laundering Compliance Person(s):

Name: _____

Title: _____

Email: _____

Address: _____

Phone: _____

Fax (If applicable): _____

Broker-Dealer Annual Training:

Attendees:

The broker-dealer training was conducted on _____, 20__ 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

_____, 20__, 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.

TPH Signature: _____ **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.

Example of 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/D Name]* is a _____ *[Sole-Prop/LLC/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