

Information Memo

NYSE Regulation, Inc



NYSE Regulation, Inc. | 20 Broad Street
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TO: NYSE AMEX MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: Reminder: Annual Filing of Audited Financial Statements Pursuant to Securities Exchange Act Rule 17a-5

NYSE Amex, LLC ("NYSE Amex") is issuing this notice to remind members designated to NYSE Amex for financial responsibility purposes¹ of the annual audited financial statements requirement ("Filing Requirement") of Securities Exchange Act Rule 17a-5(d).² This Filing Requirement does not apply to:

- A broker or dealer which is a member of a national securities exchange and has transacted a business in securities solely with or for other members of a national securities exchange; and
- has not carried any margin account, credit balance or security for any person who is defined as a "customer" in paragraph (c)(4) of Rule 17a-5.

Members who satisfy both these conditions may, nevertheless, be subject to the Filing Requirement if they engage in off-floor transactions that are not directly related to their primary on-floor business.³

¹ Those NYSE Amex members designated to FINRA or another SRO for financial responsibility purposes may wish to consult such SRO on the applicable rules and requirements for submitting annual audited financial statements to that organization.

² This SEC rule can be found on the web at <http://www.law.uc.edu/CCL/34ActRIs/rule17a-5.html>.

³ Floor members that engage in more than an occasional off-floor transaction that are not directly related to their primary on-floor business (*i.e.*, more than ten such transactions in any calendar year) must comply with the annual Filing Requirement, unless such members limit their off-floor transactions that are not directly related to their primary on-floor business to 25% of their total transactions.

Please Note: If you are subject to the Filing Requirement on or before December 1, 2009, you will need to engage an independent public accountant to conduct your annual audit for the following year, and file a statement with the Securities and Exchange Commission (“SEC”) by December 10, 2009 indicating the existence of the agreement with such accountant.

An overview of the Filing Requirement is described below.

Subpart (d)(i) of Rule 17a-5(d) sets forth the general requirement that every broker or dealer file annually, on a calendar or fiscal year basis, a report which shall be audited by an independent public accountant registered with the Public Company Accounting Oversight Board (PCAOB).

Designation of Accountant – Rule 17a-5(f)(2) Notice

Every broker or dealer required to file an annual audit report is also required to file, no later than December 10 of each year, a statement that indicates the existence of an agreement dated no later than December 1, with an independent public accountant covering a contractual commitment to conduct the broker's or dealer's annual audit during the following calendar year. The statement should be filed with the Securities and Exchange Commission (“SEC”) in Washington, DC, the regional or district office of the SEC for the region or district where the broker or dealer has its principal place of business and the principal office of the designated examining authority for such broker or dealer.

The agreement may be of a continuing nature, providing for successive yearly audits, in which case no further filing is required. If the agreement is for a single audit, or if the continuing agreement previously filed has been terminated or amended, a new statement must be filed each year by the required date.

The statement shall be headed *Notice pursuant to Rule 17a-5(f)(2)* and shall contain the following information:

- Name, address, telephone number and registration number of the broker or dealer;
- Name, address and telephone number of the accounting firm; and
- The audit date of the broker or dealer for the year covered by the agreement.

Filing Due Date for Annual Audit Report

The annual audit report must be filed not more than 60 calendar days after the date of the financial statements. For members reporting on a calendar year basis the next filing due date will be March 1, 2010.

The annual audit report must be filed at the regional or district office of the SEC for the region or district in which the broker or dealer has its principal place of business, the SEC's principal office in Washington, D.C. and the principal office of the designated examining authority for the broker or dealer. Copies thereof are also to be provided to all self-regulatory organizations of which the broker or dealer is a member.

Audit Extension Requests

Member firms that need to request an extension of time for filing of the annual audit report should make a written request to the Financial Regulation Department. The request should be signed by the Chief Financial Officer, Chief Executive Officer or Managing Partner of the member firm. The extension request should be made at least 10 business days prior to the audit due date and provide the following information:

- the amount of time requested on the extension;
- the specific reason(s) the extension is being requested; and
- a letter from the member firm's outside independent auditor in which the auditor states whether or not the member is in compliance with SEC Rule 15c3-1, whether an unqualified opinion is expected to be issued and whether or not there are material inadequacies and/or books and records deficiencies.

This information will be taken into consideration in determining whether it is appropriate to grant an extension.

Any questions concerning this Notice may be directed to Robert J. Devine at 646-315-8765 or Carl Bayer at 646-315-8764 of FINRA's Risk Oversight & Operational Regulation, Financial Regulation Department.

Claudia Crowley
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