

THE FUNCTION OF COMPLIANCE OFFICER

*Study on What the Regulations of the Member's Jurisdictions
Provide for the Function of Compliance Officer*



OICU-IOSCO

**SRO CONSULTATIVE COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

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INTRODUCTION

In June 2001, the IOSCO SRO Consultative Committee (SROCC) launched a project to study the role of compliance officers in the securities industry. The objective of the project was to gather basic information about the status of the compliance function, for markets and market intermediaries, in the jurisdictions of SROCC members. The SROCC members were asked to respond to a questionnaire on what the local regulations of their respective jurisdictions provide for the compliance officer with respect to function. The questionnaire responses from SROCC members affirmed the importance of the compliance officer function. With the limited exception of jurisdictions that are in the process of establishing compliance officer requirements, investment service providers are required to retain a compliance officer. Thus, there is general acceptance of the fact that firms should designate a person to be responsible for providing reasonable assurance that the firm is meeting the standards of the applicable SRO.

The role of the compliance officer varies by jurisdiction and also depends upon the business and structure of the particular firm. In all jurisdictions, regulators have permitted each firm to choose a compliance system that addresses its particular needs. In general, compliance officers are responsible for the oversight of the firm's compliance with applicable rules and regulations. To that end, they devise and maintain appropriate systems and controls for the firm as a whole and advise management and registered persons on compliance issues. Depending upon the particular jurisdiction and firm, compliance officers also may serve consultative functions, such as providing advice and support for business transactions and other firm activities. The responses also indicated that examination requirements and registration requirements vary among the jurisdictions.

Despite differences in job requirements and functions, the responses to the survey demonstrate the worldwide importance of compliance officers to the effective functioning of the securities industry. The Consultative Committee fully supports the role of the compliance officer.

SUMMARY

1. The Consultative Committee Secretary has sent the following questionnaire to the members of the Consultative Committee. The French Conseil des Marchés Financiers, in charge of the study, has received 12 answers from:

- the Markets of Korea, Luxembourg, Malaysia, Poland, Taiwan, Japan (Osaka), Switzerland, United Kingdom (London Metal Exchange), Nasdaq Europe;
- the NFA (USA), the Investment Dealers Association of Canada; and
- the Conseil des marchés financiers (France).

The French Conseil des Marchés Financiers has received further information from other sources about the American, U.K. and Dutch systems.

2. The questionnaire was as follows:

A. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

If yes:

B. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam? If so, who is in charge of setting up the exam and what does it cover? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

C. How is “compliance officer” defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

D. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

E. Does the compliance officer have only control functions, or does he also have the role of a consultant?

3. The answers received by the French Conseil des Marchés Financiers come mostly from markets which are Consultative Committee members. It follows that:

- Answers concern the compliance function in the brokers dealers who are members of a stock-exchange, and sometimes no information is available about the compliance function in the other investment service providers.
- For a number of systems, the French Conseil des Marchés Financiers has not received the precise rules concerning the compliance function and only a summary of these rules is available.
- In some cases (US, UK and Dutch systems), the French Conseil des Marchés Financiers has received additional information from non Consultative Committee members.

- Due to the important differences between the systems, we cannot be certain that the answers have always been correctly understood. It would be necessary, for each system, to review the study.
- At the end of the day, this study is only a first step. It would be useful to go deeper into the question. It would be interesting to cover more countries and, in each country, not only the brokers dealers who are members of markets, but also other investment service providers.

4. The study can be summarised as follows:

- A. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

The answer is always yes, at least for the brokers-dealers, except for the Polish system. But in Poland, according to an official draft of a new regulation, investment service providers will be obliged to set up a compliance department or at least employ a compliance officer in a near future.

If yes:

- B. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam? If so, who is in charge of setting up the exam and what does it cover? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

a-1. *As part of the registration process, compliance officers must pass certain examinations (USA, France, Japan, Malaysia).*

a-2. *The “compliance oversight function” in the UK is a “controlled function”. This function cannot be performed by a person under a specific arrangement between the firm and the person, until approval for this has been given by the FSA. The FSA must be satisfied that the candidate is fit and proper, as defined by its “Fit and Proper test for Approved persons”, to perform the function. No preliminary exam is required for compliance officers in the UK.*

a-3. *Compliance officers do not have to take a preliminary exam. There is no required training for compliance officers. There is no ongoing testing or certification for compliance officers (Canada, Nasdaq Europe, Switzerland, Holland, Korea, Luxembourg).*

b. *In the USA, NASD is in charge of the exams, but qualifying examinations are administered by PROCTOR, a computer-based training and testing system. There are a number of independent organisations that offer training. All chief compliance officers are required to take the appropriate “Regulatory Element” on the second anniversary of their initial securities registration and every three years thereafter.*

In France, Japan or Malaysia, the examinations are administered by the Securities Commission (The Conseil des marchés financiers in France). In some cases, the Commissions offer training, in other cases they do not. It seems that there is no ongoing testing or certification for compliance officers.

C. How is “compliance officer” defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

a. Due to the fact that the size and types of firms operated by Regulated Entities vary greatly, regulators have permitted each firm to choose a compliance system which addresses its particular needs (all the answers).

b. In three cases, there are at least two registered levels in the compliance function:

- First case : the US (the NYSE) : (1) At the first level the compliance supervisor who must be a general partner or a principal executive officer and (2) At the second level any person supervising 10 or more persons performing compliance functions.*
- Second case : the Investment Dealers Association of Canada : each Member of the IDA appoints a senior officer as Ultimate Designated Person (“UDP”) with ultimate responsibility for compliance matters. The UDP is responsible for ensuring that policies and procedures are developed and implemented which adequately reflect the regulatory requirements of the Member. Each Member appoints a Chief Compliance Officer (“CCO”). The CCO is responsible for ensuring that the management of the compliance function is effective and for providing reasonable assurance that standards of the applicable self-regulatory organization are met.*
- Third case : Japan : A securities company has to appoint a “General Manager for Internal Control” and “Internal Control Managers” and register them with JSDA. Concerning Internal Control Managers, a securities company has to appoint one for every office.*

c. In the other cases, only one registered level exists.

D. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

a. In the two-level system mentioned in the previous answer, the first level is a senior officer. The second level reports to the first level and to the Board of directors. The Investment Dealers Association of Canada example seems interesting in this regard. Hereunder is the By-law 38 of the Association:

Responsibilities of the chief compliance officer and ultimate designated person:

38.1. Every Member shall designate its Chief Executive Officer, its President, its Chief Operating Officer or its Chief Financial Officer (or such other

officer designated with the equivalent supervisory and decision-making responsibility) to act as the Ultimate Designated Person (the “UDP”) who shall be responsible to the applicable self-regulatory organization for the conduct of the firm and the supervision of its employees.

38.2 Where a Member is organized into two or more separate business units or divisions, a Member may designate a UDP for each separate business unit or division.

38.3 Every Member shall appoint an Alternate Designated Person (an “ADP”), who shall be so approved, to act as Chief Compliance Officer (the “CCO”).

38.4 Notwithstanding section 38.3, a Member may appoint the UDP to act as the CCO.

38.5 Where a Member is organized into two or more separate business units or divisions, a Member may designate a CCO for each separate business unit or division.

38.6 Every Member shall also appoint as many additional ADPs as are necessary, given the scope and complexity of its businesses, who shall be partners, directors or officers of the Member.

38.7 The ADPs referred to in By-law 38.6 shall report to the UDP as necessary to ensure that the businesses of the Member are carried out in compliance with applicable self-regulatory by-laws, regulations, policies and forms.

38.8 The CCO shall report to the board of directors (or equivalent) of the Member as necessary but at least annually on the status of compliance at the Member.

38.9 The board of directors (or equivalent) shall review the report of the CCO and determine what actions are necessary and ensure such actions are carried out in order to address any compliance deficiencies noted in the report.

38.10 The UDP shall ensure that policies and procedures are developed and implemented which adequately reflect the regulatory requirements of the Member.

38.11 The CCO shall monitor adherence to the Member’s policies and procedures as necessary to ensure that the management of the compliance function is effective and to provide reasonable assurance that standards of the applicable self-regulatory organization are met.

38.12 Every Member shall file with the applicable self-regulatory organization (a) a copy of a governance document setting out the organizational structure and reporting relationships, which support the compliance arrangement set out above; and (b) notice of any material changes to the organizational structure and reporting relationships as set out in paragraph (a).

b. *In the one-level system, the compliance officer reports to the Firm’s executive Board. In the Dutch Regulations on Organization and Control, for example, the Compliance Officer should be an independent function with direct access to the Managing Board and in the case where the integrity of a Board Member is in doubt the Compliance Officer should have access to a delegate of*

the Supervisory Board. In the other one-level systems, the issue of a lack of integrity of a Board Member is, to our knowledge, not raised.

c. Few answers were received to the question: How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers? Let us mention two examples:

- There are varying structures regarding the relationship between the Compliance personnel and legal advisers, auditors and other controllers. Some firms employ an attorney to be the chief compliance person, with other compliance personnel and internal auditors reporting to the attorney. Others do not have lawyers involved in the process at all. NFA Rules do not address these relationships. (NFA example)*
- The Internal Audit Department and the Compliance Officer strive to complement each other and work towards achieving a high standard of compliance. It is recommended that the Compliance Officer reviews the work undertaken by the Internal Audit Department and that he sits on the Audit Committee in respect of issues pertaining to compliance matters. If the Member Company has a Risk Management Committee, the Compliance Officer shall also sit on the committee. If however, the Member Company does not have a Risk Management Committee, then the Compliance Officer can undertake the Risk Management functions. (Malaysian example)*

E. Does the compliance officer have only control functions, or does he also have the role of a consultant?

It seems that this question is not addressed, in general, by the regulations. In fact, this question seems to be more an issue of practice. In this regard, let's mention the answer of a UK investment service provider: The Compliance Officer is responsible for providing advice to all the Firm's business lines and various support departments regarding the rules, regulations and corporate policies which govern the collective business activities of the investment service providers. The Compliance Officer provides advice and support for business transactions and other Firm activities; coordinates with other control functions to communicate effectively with regulators and facilitates transactions, product structuring and business development and finds innovative and creative solutions to regulatory and franchise issues; assists the Firm in conducting its business and other activities in compliance with all applicable laws, rules and regulations and the Firm's ethical standards.

However, the French regulation addresses this question: the role of the compliance officer consists, inter alia, of providing assistance and guidance, in addition to the monitoring procedures, and to help the authorized provider's staff apply the rules of conduct.

THE COMPLIANCE FUNCTION IN EACH SYSTEM

The US System

I. The Compliance Function in the American Financial System

1. At the top of the US Securities System is the SEC overseeing the proper functioning of the investment community.

Under the SEC is the self-regulatory organizations (“SROs”), which survey the investment activities of their membership.

At the bottom, is the self-regulatory system of individual firms. Individual firms operate internal compliance programs designed for the prevention of misconduct and the early detection of securities violations, which programs are subject to review by the SEC through its inspection and enforcement programs.

The SEC relies on the effectiveness of regulated entities to police their own operations.

2. The Federal Sentencing Guidelines for Organizations became effective on November 1, 1991 (“Organizational Sentencing Guidelines” or “Guidelines”). The Organizational Sentencing Guidelines provide for offending corporations to pay appropriate restitution and fines for criminal behavior. The institution and maintenance of “effective” compliance programs, which prevent and deter violations of law, subject corporations to lesser penalties and are often used by courts as a term of probation.

3. US securities laws require the following regulated organizations to adopt measure to prevent internal violations (collectively, “Regulated Entities”):

- 1) broker-dealers (BD)
- 2) investment advisors
- 3) transfer agents
- 4) investment companies

4. Neither federal nor state nor SRO rules forth the specific compliance procedures to be adopted by Regulated Entities. Due to the fact that the size and types of firms operated by Regulated Entities vary greatly, regulators have permitted each firm to choose a compliance system which addresses its particular needs. As a result, compliance officer responsibilities vary depending on the type and size of the firm and the specifics of the individual firm's compliance system's design and function.

II. The Compliance Function in the NYSE Rules

5. NYSE Rule 342 - requires member firms to designate a general partner or principal executive officer to assume responsibility for internal control and

compliance. This person, the compliance supervisor (whether they have the title of Compliance Officer, Partner or Director), must take the Series 14 exam. In addition, any person supervising 10 or more persons performing compliance functions, must take Series 14 exam. The exam qualification can be waived by the NYSE, in its discretion, depending on the scope of the firm's activities; the background/experience of the person; if such person has already passed a similar qualifying exam from an acceptable organization. Once you take an exam, you are “registered” with the NYSE.

NYSE Rule 342(a) - Each office, department and business activity of a member organization (including foreign incorporated branch offices) must be supervised and a designated person responsible for its supervision. The person in charge of a group of employees must supervise and control their activities and their compliance with securities laws and regulations.

NYSE Rule 342(b) - Each firm must designate a general partner or principal executive officer to assume overall authority and responsibility for internal supervision and control and compliance with securities laws. This person must (i) delegate to qualified persons the responsibility and authority for control of each office, department and business activity and provide appropriate procedures for supervision and control; and (ii) establish a separate system of follow-up and review to determine that delegated responsibilities are being exercised.

Firm supervisory personnel must be acceptable to the NYSE and may be subject to certain examination requirements.

III. The Compliance Function in the NASD Rules.

6. The NASD has two levels of qualification and registration: (i) registered representative (salespersons) and (ii) principals (officers of the firm and other management personnel involved in the day-to-day operation of the firm's investment banking or securities business). As part of the registration process, securities professionals must pass certain examinations to demonstrate competence in the areas in which they work. Qualifying examinations are administered by PROCTOR, a computer-based training and testing system. Compliance officers should ensure that branch managers and other supervisory personnel should have the certifications necessary to perform their prescribed duties.

Each NASD member has a duty to ascertain by investigation that registered persons have good character, business repute, qualifications, and experience prior to their certification in the application for registration.

7. NASD Rule 3010 states that each NASD member must establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations. Because of the differing needs of firms, the NASD does not provide compliance procedures.

Generally, this system must provide at a minimum: (1) the establishment and maintenance of written supervisory procedures and the designation of specific supervisory personnel responsible for carrying out supervisory responsibilities for each type of business for which the firm is required to be registered as a BD; (2) the designation of a registered principal to carry out supervisory responsibilities for each type of business for which the firm is required to be registered as a BD; (3) designation of certain firm offices as “offices of supervisory jurisdiction” taking into consideration their functions and responsibilities; (4) the assignment of each registered person to an appropriately designated supervisor; (5) making reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience of training to carry out their assigned responsibilities; (6) the participation of each registered representative at least annually in an interview at which compliance matters relating to the registered representative are discussed; (7) conducting periodic internal inspections and reviews of all aspects of firm business including reviews of branch offices and customer accounts; (8) review and endorsement in writing by a registered principal of all transactions and all correspondence of the firm's registered representatives pertaining to the solicitation or execution of any securities transactions; and (9) the investigation of the character, reputation, qualifications and experience of any person certified by the firm for registration in the NASD.

8. NASD Rule 1022(a) - On June 19, 2001, the SEC approved a NASD rule requiring registration of Chief Compliance officers. The rule takes effect January 1, 2002. Under the rules, the chief compliance officer designated on Schedule A of the firm's Form BD filed with the SEC must register as a “general securities principal”. In the event the firm's activities are limited to particular areas of investment banking and securities, such officer may register as a “limited principal”. Such compliance officers will be required to pass the appropriate Qualification Examination (Series 24, Series 26 or Series 39). The rule permits any person who has been continuously designated as chief compliance officer from January 1, 2000 through January 1, 2002, to qualify under the grandfathering provisions.

Examinations - Within 90 days of registration, candidates must take the appropriate prerequisite examinations (Series 7) and principal exams (General Principals Series 24; NYSE Series 14; Limited Principals Series 26 or Series 39).

9. Continuing Education Requirements (NASD Rule 1120) - All chief compliance officers, including those who may be “grandfathered”, are required to take the appropriate “Regulatory Element” on the second anniversary of their initial securities registration and every three years thereafter. The “Regulatory Element Supervisor Program” is a computerized training program which addresses issues such as suitability, hiring and interviewing, sales practices, ethical issues, insider trading, market manipulation, money laundering, and other general supervisory topics.

10. Compliance officers are responsible for ensuring that the firm's compliance system contains certain essential components.

The SEC and the SROs require firms to have written policies and procedures designed to prevent violations of the securities laws.

Firms must have procedures to ensure that written compliance policies and procedures are being followed and are operating effectively. Monitoring must include branch operations. Monitoring should begin with branch manager, the “first line of compliance” then move to regional managers, the compliance department, legal and compliance officers and end with the CEO.

Regulatory audits of all branch officers should be periodically conducted by the firm's internal or external auditors. Reports of audits should be distributed to the branch manager, the regional manager and the compliance department.

The branch manager should be responsible for ensuring that the necessary corrections are made.

The compliance department should be responsible for ensuring that it is properly done. If more than routine problems are found, follow-up audits should be conducted. There should be a policy of sanctions for managers in the event problems discovered are not corrected within a reasonable time. Both regulatory audit and compliance department should closely monitor any area wherein previous problems were discovered.

11. Adequate Compliance Resources, Staffing and Authority - Firms must insure that adequate levels of resources and personnel exist to meet compliance needs commensurate with the nature and size of the firm's operations. Compliance department staff must be clearly differentiated from the production staff and should not receive any form of commission-based compensation. Compliance personnel should be accorded the power and authority to initiate and implement steps required to achieve compliance. For example, firms could implement a policy wherein all compliance department decisions take precedence and remain in full force and effect until reversed by the firm's General Counsel in consultation with its Chief Executive Officer.

Questions have been raised whether compliance personnel should have the authority to break violative trades and discipline or fire personnel. Generally, in major firms, compliance staff does not have the authority to break trades or discipline personnel, but play an advisory role and counsel line managers who have the primary supervisory authority. However, firm must have procedures wherein recommendations of the compliance department are carefully considered by senior management and not ignored.

Responsibilities of compliance personnel should be focused on internal surveillance and oversight activities and not handling general legal-administrative matters. Clear departmental lines of authority should be established so there is no confusion as to responsibilities.

IV. The Compliance Function in the NFA Rules

12. NFA Regulation

12-1. NFA Member firms and CFTC registrants are not specifically required to employ a Compliance Officer. NFA Compliance Rule 2-9 and CFTC Regulation 166.3 do, however, place a continuing responsibility on a Member firm to diligently supervise its employees and agents in every aspect of their futures activities. NFA does not dictate the exact manner in which a Member firm must meet this responsibility. Many Member firms do, however, have an individual called a Compliance Officer/Director who is responsible for supervising the sales practice aspects of the Member's business.

NFA also has other Rules and Interpretations that require specific supervisory procedures. For example, Rule 2-8 requires that discretionary trading be reviewed regularly by a partner, officer, director, branch officer manager or supervisory employee of the Member. Rule 2-29 contains a similar requirement regarding the prior review and approval of promotional material used by employees of a Member. Many firms have Compliance personnel that carry out these functions.

Individuals acting in the capacity of a Compliance Officer at a firm are not required to pass a specific exam to be a Compliance Officer. Any individual acting in a supervisory position, however, is required to pass the National Commodity Futures Examination (Series 3)(as is any individual dealing with the public in a registered capacity). NFA writes the questions and the National Association of Securities Dealers (NASD) administers this exam on behalf of NFA. This exam covers both regulatory requirements and the mechanics of the markets. In addition, an individual acting as a manager of a Member's branch office is required to take an additional exam known as the Branch Manager's Exam – Futures (Series 30). Again, NFA writes the questions and the NASD administers this exam on behalf of NFA. This exam covers general requirements and more in depth coverage of supervisory requirements in the areas of disclosure, account handling, discretionary accounts and promotional material.

There are a number of independent organizations that offer training for both the Series 3 and Series 30. NFA does not offer training, but does provide an outline of the subject area covered on these tests.

There are no ongoing or continuing testing requirements for individuals who have passed these exams. If an individual's registration lapses for a period of two years or more, the individual would be required to retake and pass the Series 3 to act in a supervisory capacity and to retake the Series 3 and Series 30 to act as a Branch Office Manager.

There is no specific definition of Compliance Officer in the futures industry. The role of Compliance Officer varies from firm to firm. Some firms may have different individuals overseeing specific areas, whereas others may have one individual in

charge of the entire supervisory structure. NFA Rules do not in any way dictate the manner in which a firm structures its compliance function.

The reporting line of Compliance personnel varies from firm to firm. Some firms may have the Compliance Officer report directly to the Chief Executive Officer. Other firms may have one or more layers between the Compliance Officer and the CEO. There are also varying structures regarding the relationship between the Compliance personnel and legal advisers, auditors and other controllers. Some firms employ an attorney to be the chief compliance person, with other compliance personnel and internal auditors reporting to the attorney. Others do not have lawyers involved in the process at all. NFA Rules do not address these relationships.

NFA Rule 2-9 and CFTC Regulation 166.3 require firms to supervise their commodity futures business. These rules would require that someone in the firm be ultimately responsible for dictating compliance procedures. NFA and CFTC rules do not, however, require that this individual be the Compliance Officer. In some firms, the Compliance Officer may make recommendations to a person of higher authority and that person makes the final decisions. In other firms, the Compliance Officer may have the ultimate authority over compliance procedures.

The U.K. System

I. The Compliance Function in the UK Financial System

In the UK the rules relating to the appointment and control of compliance officers are the province of the FSA rather than the exchanges and the response below refers to FSA rules.

1. Compliance is defined by the FSA handbook section 'Senior Management Arrangements, Systems and Controls' chapter 3 rule 3.2.6

SYSC 3: Systems and Controls Section 3.1: Systems and Controls
FSA Handbook _ Release 001 _ 01 December 2001 3.1.5

3.1 Systems and Controls

3.1.1 Rule A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

3.1.2 (1) The nature and extent of the systems and controls which a firm will need to maintain under SYSC 3.1.1 R will depend upon a variety of factors including:

- (a) the nature, scale and complexity of its business;
- (b) the diversity of its operations, including geographical diversity;
- (c) the volume and size of its transactions; and
- (d) the degree of risk associated with each area of its operation.

(2) To enable it to comply with its obligation to maintain appropriate systems and controls, a firm should carry out a regular review of them.

(3) The areas typically covered by the systems and controls referred to in SYSC 3.1.1 R are those identified in SYSC 3.2. Detailed requirements regarding systems and controls relevant to particular business areas or particular types of firm are covered elsewhere in the Handbook.

3.2.6 A firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime.

3.2.7 (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. The organisation and responsibilities of a compliance function should be documented. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the firm's relevant records as well as ultimate recourse to its governing body.

II. The Oversight of the Firm's Compliance

3.2.8 (1) A firm which carries on designated investment business must allocate to a director or senior manager the function of:

- (a) having responsibility for oversight of the firm's compliance; and
- (b) reporting to the governing body in respect of that responsibility.

(2) In SYSC 3.2.8 R (1) "compliance" means compliance with the rules in:

- (a) COB (Conduct of Business); and
- (b) CIS (Collective Investment Schemes).

3.2.9 (1) SUP 10.7.8 R uses SYSC 3.2.8 R to describe the controlled function, known as the compliance oversight function, of acting in the capacity of a director or senior manager to whom this function is allocated.

(2) The rules referred to in SYSC 3.2.8 R (2) are the minimum area of focus for the firm's compliance oversight function. A firm is free to give additional responsibilities to a person performing this function if it wishes.

2. Compliance officers need to be "fit and proper" persons as defined by the FSA's "Fit and Proper test for Approved Persons". The compliance officer is also caught by the FSA "Approved Persons" regime.

3. The "Approved Persons" regime rule 10.7.8 and guidance notes 10.7.9 - 10.7.12 set out the role of the compliance function.

SUP 10: Approved persons Section 10.7: Required functions

10.7.8 The compliance oversight function is the function of acting in the capacity of a director or senior manager who is allocated the function set out in SYSC 3.2.8R.

10.7.10 Compliance in SYSC 3.2.8R means compliance with the rules in COB and CIS. The FSA anticipates that some firms will include oversight of compliance with PRIN, MAR, and other requirements and standards, within its compliance function. These other responsibilities would not, however, be brought within the compliance oversight function (see also SUP 10.4.3G).

10.7.11 Some firms, particularly firms with complex structures or which are part of a group, may find it appropriate to seek approval for the group head of compliance and other persons to perform the compliance oversight function. Examples of other persons include the senior manager responsible for compliance in a firm which is a subsidiary within the group and a senior manager in a reporting line, where compliance is organised along product lines.

10.7.12 Although a firm may choose to use the services of an external compliance consultant, the responsibility for the compliance oversight function must, in accordance with SYSC 3.2.8R, rest with one or more directors or senior managers of the firm.

Money laundering reporting function (CF11)

10.7.13 The money laundering reporting function is the function of acting in the capacity of the money laundering reporting officer of a firm.

10.7.14 The rules in the Money Laundering sourcebook (ML) provide that a firm must have a money laundering reporting officer unless:

- (1) it is a sole trader with no employees; or
- (2) its regulated activities are certain insurance business only; or
- (3) it is an incoming firm providing only services into the United Kingdom.

AUTH 6: Approved persons Section 6.2: Introduction
FSA Handbook _ Release 004 _ February 2002 6.2.8 6.2 Introduction

Section 6.2: Introduction

6.2.1 A controlled function is a function specified by the FSA which cannot be performed by a person under an arrangement entered into by a firm, or one of its contractors, until approval for this has been given by the FSA. Approval from the FSA is required for each controlled function to be performed by a person.

6.2.2 An approved person is a person whose performance of one or more controlled functions has been approved by the FSA.

6.2.7 The purpose of the direct approval of persons who perform controlled functions is to complement the regulation of the firm for which the approved person performs the function.

6.2.8 The FSA may grant an application by a firm for a candidate to perform one or more controlled functions only if it is satisfied that he is fit and proper to perform the function to which the application relates (see _ AUTH 6.3.11Gand _ AUTH 6.3.13G).

AUTH 8 Determining applications

8.2.5 (1) Internal staff procedures for decisions within the scope of AUTH are intended to ensure that decisions will, so far as possible, be taken by FSA staff with a good knowledge and understanding of:

- (a) the application concerned; and
- (b) other relevant factors in the general context of the application.

(2) They are also designed to ensure that applicants with routine applications obtain a decision as quickly as the nature of their application allows.

8.2.6 (1) Internal staff procedures provide for relevant aspects of the application to be taken fully into account and require that decisions are taken by FSA staff with appropriate experience. Decisions to grant the majority of applications for approval of a candidate, which are more routine in nature, may be made by a single individual, subject to appropriate oversight.

8.2.7 The FSA keeps a record of each decision taken by internal staff procedures. This includes the names of the FSA staff taking the decision, the nature of the decision, the date it was taken and the information taken into account in arriving at the decision.

8.2.8 FSA staff are required by their contract of employment to comply with a code of conduct which imposes strict rules to cover the handling of conflicts of interest which may arise from personal interests or associations. FSA staff who are subject to a conflict of interest must declare that interest to the person to whom they are directly responsible for the decision. This individual to whom the conflict of interest is declared will decide whether that conflict precludes the involvement of the FSA staff member in making a decision.

III.. The Compliance Officer's Function in Practice

The Compliance Officer is responsible for providing advice to all the Firm's business lines and various support departments regarding the rules, regulations and corporate policies which govern the collective business activities of the investment service providers. The Compliance Officer provides advice and support for business transactions and other Firm activities; coordinates with other control functions to communicate effectively with regulators and facilitates transactions, product structuring and business development and finds innovative

and creative solutions to regulatory and franchise issues; assists the Firm in conducting its business and other activities in compliance with all applicable laws, rules and regulations and the Firm's ethical standards.

The Compliance Officer has a direct reporting line to the Firm's Executive Board

The Canadian System

Summary

1. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

By-law 38 of the Investment Dealers Association of Canada requires that each Member of the IDA appoint a senior officer as Ultimate Designated Person ("UDP") with ultimate responsibility for compliance matters. The UDP is responsible for ensuring that policies and procedures are developed and implemented which adequately reflect the regulatory requirements of the Member.

By-law 38 also requires that each Member appoint a Chief Compliance Officer ("CCO"). The CCO is responsible for ensuring that the management of the compliance function is effective and providing reasonable assurance that standards of the applicable self-regulatory organization are met.

Ontario Securities Commission Rule 31-505 requires each registered dealer or adviser to designate a registered partner or officer as the compliance officer who is responsible for discharging the obligations of the registered dealer or adviser under Ontario securities law. Some other provinces have similar requirements.

If yes:

2. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam? If so, who is in charge of setting up the exam and what does it cover? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

Compliance officers do not have to take a preliminary exam. There is no required training for compliance officers. There is no ongoing testing or certification for compliance officers.

3. How is "compliance officer" defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

See 1. above.

4. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

IDA rules contain no required reporting line for the CCO. However, the CCO is required to make an annual report to the Board of Directors of the Member. The Board of Directors in turn is responsible to ensure that any reported deficiencies in the Member's compliance systems are rectified.

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

This varies from firm to firm.

Rule References

Investment Dealers Association of Canada

By-law No. 38, Responsibilities of the chief compliance officer and ultimate designated person

38.1. Every Member shall designate its Chief Executive Officer, its President, its Chief Operating Officer or its Chief Financial Officer (or such other officer designated with the equivalent supervisory and decision-making responsibility) to act as the Ultimate Designated Person (the "UDP") who shall be responsible to the applicable self-regulatory organization for the conduct of the firm and the supervision of its employees.

38.2 Where a Member is organized into two or more separate business units or divisions, a Member may designate a UDP for each separate business unit or division.

38.3 Every Member shall appoint an Alternate Designated Person (an "ADP"), who shall be so approved, to act as Chief Compliance Officer (the "CCO").

38.4 Notwithstanding section 38.3, a Member may appoint the UDP to act as the CCO.

38.5 Where a Member is organized into two or more separate business units or divisions, a Member may designate a CCO for each separate business unit or division.

38.6 Every Member shall also appoint as many additional ADPs as are necessary, given the scope and complexity of its businesses, who shall be partners, directors or officers of the Member.

38.7 The ADPs referred to in By-law 38.6 shall report to the UDP as necessary to ensure that the businesses of the Member are carried out in compliance with applicable self-regulatory by-laws, regulations, policies and forms.

38.8 The CCO shall report to the board of directors (or equivalent) of the Member as necessary but at least annually on the status of compliance at the Member.

38.9 The board of directors (or equivalent) shall review the report of the CCO and determine what actions are necessary and ensure such actions are carried out in order to address any compliance deficiencies noted in the report.

38.10 The UDP shall ensure that policies and procedures are developed and implemented which adequately reflect the regulatory requirements of the Member.

38.11 The CCO shall monitor adherence to the Member's policies and procedures as necessary to ensure that the management of the compliance function is effective and to provide reasonable assurance that standards of the applicable self-regulatory organization are met.

38.12 Every Member shall file with the applicable self-regulatory organization

(a) a copy of a governance document setting out the organizational structure and reporting relationships, which support the compliance arrangement set out above;

and

(b) notice of any material changes to the organizational structure and reporting relationships as set out in paragraph (a).

Ontario Securities Commission Rule 31-505 -- Conditions of Registration

1.3 Designation of Compliance Officer --

(1) A registered dealer or adviser shall designate a registered partner or officer as the compliance officer who is responsible for discharging the obligations of the registered dealer or adviser under Ontario securities law.

(2) The person designated under subsection (1) by a registered dealer or adviser shall also be responsible for opening each new account, supervising trades made for or with each client and supervising advice provided to each client or, if a branch manager is designated under subsection 1.4(1), for supervising the branch manager's conduct of the activities specified in subsection 1.4(2).

(3) Despite subsections (1) and (2), the designated compliance officer may delegate supervisory functions to an individual who reports to the compliance officer and who meets the proficiency requirements under Rule 31-502 Proficiency Requirements for Registrants for a salesperson in the same category of registration as the dealer or an officer in the same category of registration as the adviser, that has in each case designated the compliance officer.

(4) An applicant for registration or reinstatement of registration as a dealer or adviser shall deliver to the Commission, with the application, written notice of the name of the person proposed to be designated under subsection (1).

1.4 Branch Manager –

(1) If a registered dealer or adviser operates a branch office, the registered dealer or adviser shall designate a registered salesperson, officer or partner as the branch manager for the branch.

(2) A branch manager is responsible for the branch for opening new accounts, supervising trades made for or with each client and supervising advice provided to each client and shall report directly to the compliance officer designated under section 1.3.(...)

Nasdaq Europe

Introduction

This memorandum intends to provide an answer to the questions put to us by the IOSCO Consultative Committee on the local regulations with respect to the Compliance Officer function.

Scope of Reply

As Nasdaq Europe has members located in several countries, legislation of each individual jurisdiction of those member firms may apply. This reply does not intend to cover each of the local legislations, which is a matter for the prudential authorities, but covers the rules in the Nasdaq Europe Rule Book that apply to all our members on the basis of their membership agreement and that mention the function of “Compliance Officer”. The overview of our rules related to this topic gives an indication of what Nasdaq Europe understands to be covered by the function of Compliance Officer.

Response to IOSCO Questions

Q: Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

A: Although we cannot speak for any individual jurisdiction, members who wish to act as Brokers and/or Market Makers on Nasdaq Europe are required to appoint and maintain at least one compliance officer for the duration of their membership of Nasdaq Europe. Nasdaq Europe verifies the retention of compliance officers by monitoring the Nasdaq Europe Membership Register to ensure that there is at least one Compliance Officer appointed to each Broker and Market Maker.

Q: What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam? If so, who is in charge of setting up the exam and what does it cover? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

A: Although we do not answer for any particular jurisdiction, Nasdaq Europe does not currently have any restrictions in place regarding the appointment of compliance

officers, except to specify that Compliance Officers may not simultaneously hold the position of Registered Trader (see *Instruction to Rule 85.3.2*, hereunder). Nasdaq Europe does not have any examination in place for compliance officers, although this is under consideration for introduction for the near future. However, the Nasdaq Europe rules do specify that Compliance Officers have to be able to demonstrate adequate knowledge of the applicable regulations, trading and settlement systems.

Q: How is “compliance officer” defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

A: Again, although we do not answer for any particular jurisdiction, Nasdaq Europe’s definition of Compliance Officer (which pertains only to the Nasdaq Europe market) is contained within the Nasdaq Europe Rule Book: “Compliance Officer”: an individual within a Member’s organisation who is registered with the Market Authority as being responsible for the supervision of the Member’s compliance with the Nasdaq Europe Legal Framework.”

Q: What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

A: As an exchange, this is not something on which we have specific rules. National regulators may require firms to report to them on the reporting line of compliance officers, and to submit documentary evidence of internal procedures reflecting these reporting lines, however this will vary from country to country.

Q: Does the compliance officer have only control functions, or does he also have the role of a consultant?

A: Again, from this point of view of an exchange, this is not something on which we have specific rules. However, a number of Compliance Officers at Nasdaq Europe member firms also have the following functions in their job titles, which may indicate other activities in which they are involved:

- Chief Financial Officer
- Finance Officer
- Reporting
- Company Secretary
- Capital Markets Support
- Directeur Central
- Directeur Général Adjoint/ Directeur Administratif et Financier
- Director
- Director - Sales and Trading Compliance
- Regulatory Affairs
- Equities Compliance Officer
- Law and Compliance
- General Counsel
- Global Compliance
- Internal Auditor
- International Department

Managing Director
Managing Partner
Member of Management
Risk Management
Secretary General, Responsible Legal Dept.
Head of Administration

Rule references:

Rule 82.0.4

“In order to qualify as a Broker and/or Market Maker, the individuals within the Applicant for Membership’s organization who are in charge of supervising compliance of the Registered Traders shall be registered with the Market Authority as Compliance Officers. In order to qualify as Compliance Officers, these individuals shall comply with the qualification requirements as set forth in this Chapter 8 and shall not be subject to any disqualification event as set forth in this Chapter 8.”

Rule 85.3.2.

“Members registered as Broker and/or Market Maker shall maintain throughout the duration of their membership in Nasdaq Europe one or more Compliance Officers who are in charge of supervising compliance by such Member, and especially their Registered Traders, with the Code of Conduct and Chapter 10 of this Rule Book. They shall immediately inform the Market Authority of all breaches of the Code of Conduct and/or of Chapter 10 of this Rule Book, and of all resulting actions and, when applicable, sanctions. Such information shall include the identity of the person or persons involved and, when applicable, the grounds for the sanction. These Compliance Officers shall comply at all times with the qualification requirements and shall not be subject to any disqualification event as set forth in this Chapter 8.

Instruction to Rule 85.3.2.

“An individual may not be simultaneously registered as Compliance Officer and Registered Trader. Compliance Officers may, however, in the event of an emergency, act as back-up or temporary replacement for a Registered Trader, provided that the Compliance Officer fulfils all necessary qualification requirements in accordance with Rule 83.1. of this Rule Book.”

Rule 81.0.7.

“Once an Applicant for Membership has been admitted by the Market Authority as a Member, the Market Authority shall record the details relating to such Member including the name, address and contact details of that Member and the name, address and contact details of each Executive Representative, Compliance Officer and Registered Trader in the membership register.”

Rule 85.2.1.

“The Market Authority shall keep an accurate and complete membership register, containing the names, addresses and contact details of each Member, each Executive Representative, Compliance Officer and Registered Trader within the Member firm and the Member’s registration as Member only or as a Market Maker and/or Broker.”

Rule 83.1.3(d)

“The Member’s Compliance Officer(s) and Registered Trader(s) must have or acquire adequate demonstrated knowledge of the Nasdaq Europe Legal Framework, the Nasdaq Europe Trading System and the specific rules and conditions of the Nasdaq Europe Settlement System. The Market Authority may, in its sole discretion, determine the assessment of such demonstrated knowledge.”

Rule 10.12

“Compliance Officer: an individual within a Member’s organization who is registered with the Market Authority as being responsible for the supervision of the Member’s compliance with the Nasdaq Europe Legal Framework.”

The SWX Swiss Stock-Exchange

1. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

The supervision of the legal requirement can be done by the compliance department or by the legal department. A stock Exchange gets an authorization of the Federal Swiss Banking Commission if its regulations and organizational structure ensures compliance with the provisions of the “Federal Act on Stock Exchanges and Securities Trading” (art. 3 par. 2 lit. a). Even if the law does not expressly ask for a compliance department for Exchanges, this is an implicit requirement by its nature.

2. If yes: What are the rules regarding the appointment of compliance officers?

There are no specific rules in Switzerland concerning the appointment of compliance. In general, compliance officers have a degree in law or economics. To our knowledge, only one private organization (“Institut für Finanzdienstleistung Zug”) is offering in Switzerland a post-graduate education, which is recognized by the canton of Zug. This recognition will be granted if the legally required standards are fulfilled.

In particular, do compliance officers have to take a preliminary exam?

Compliance is in Switzerland a quite new profession known since the early nineties. For that reason there are no existing specific examinations. Up to now there is only a volunteer post-graduate course in compliance management, at the institute mentioned above.

3. How is “compliance officer” defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

Instead of a definition we prefer to describe the main tasks of a compliance officer in our understanding:

A compliance officer establishes and maintains an internal legal framework, which secures the respect of legal requirements and ethical standards;

He supports all other in-house-departments in interpretations of rules of the legal framework (the law as well as the internal regulations) and their effects in specific business-cases;

He maintains a control system (audit) to detect concrete and imminent breaches of rules;

He establishes contacts to third parties (e.g. supervisory authority, criminal authorities, . . .).

4. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

The compliance officer at the SWX Swiss Exchange is integrated in the structure of the surveillance office. This department supervises, regulates and controls the market. The Surveillance office has to be personally and organizationally independent of the SWX Swiss Exchange management. It reports directly to the Committee of the Board of Directors of the Exchange and to the Federal Banking Commission.

The compliance officer is entitled to instruct auditing firms as well as the internal legal department for specific tasks.

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

He has the role of a consultant, because the compliance officer is member of the surveillance office management board. Regarding the enforcement the compliance officer has also a control function.

The Dutch System

1. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

ARTICLE 7 OF THE DUTCH SECURITIES ACT (WTE) states the obligation by Investment. Service Providers to maintain Compliance Officer(s). Institutions regulated by the Central Bank (such as banks) are obliged (by the Wet toezicht Kredietwezen WTK) to have compliance officers in the organisation.

If yes:

2. What are the rules regarding the appointment of compliance officers?

So far no rules, but lots of discussion to imply rules as well as an educational program.

In particular, do compliance officers have to take a preliminary exam?

No, not yet.

If so, who is in charge of setting up the exam and what does it cover ? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

Staff working in front office functions is required to participate in a course on Ethics as well they have to take an examination on Integrity. For Compliance Officers it is not mandatory yet but strongly recommended.

3. How is “compliance officer” defined?

Independent function, supervision on adherence of internal values and business principles, guidelines and rules regarding the behavior of staff, as well as the supervision on the realization of a framework of regulations and adjustment to these regulations if necessary.

How wide ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

Yes, it goes across the bank, risk management, IT, Financial Markets and Equities, Corporate Finance etc. however consider Accounting matters and Monetary Reporting issues are not in the scope of Compliance. In addition Labor law and other related matters are also beyond the scope of Compliance.

4. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

As mentioned in the Regulations on Organization and Control the Compliance Officer should be independent function with direct access to the Managing Board and in case the integrity of a Board Member is in doubt the Compliance Officer should have access to a delegate of the Supervisory Board.

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

The compliance officer does both, controlling/monitoring the banks and it's employees activities and consulting on the implementation and interpretation of Rules and Regulations and advising management on compliance issues.

The Luxembourg System

The provision of investment services is not falling under the scope of competence of the Luxembourg Stock Exchange, but is under the scope of competence of the prime regulator, being the Commission de Surveillance du Secteur Financier. Nevertheless, the function of compliance is due to produce effects with regard to the activities that supervised member firms of the Exchange run through the facilities of the Exchange.

1. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

Yes.

2. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam?

No. But possible on a voluntary basis.

3. How is “compliance officer” define? How wide ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

This point is currently under constant evolution. Very recently a new Industry association focusing on the compliance officer’s function has been called into life and is currently dedicating some of its current work on the topics as mentioned under 2.

4. What is the reporting line of the compliance officer?

Executive Management.

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

Only control functions.

The Malaysian System (Kuala Lumpur Stock Exchange)

1. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

Every Member Company of the Kuala Lumpur Stock exchange (stock broking company) is required to appoint and register with the Exchange at least one (1) Compliance Officer for its principal office. In respect of branch offices of the company, unless otherwise prescribed by the Exchange in consultation with the Securities Commission (the statutory regulator), a Member Company shall appoint at least one (1) Compliance Officer at every branch office. The Compliance Officer must be approved by the Securities Commission and registered with the Exchange.

Note:

We assume here that investment service providers are companies that provide securities brokerage related services and are regulated. In the Malaysian market context, member companies (stock broking companies) of Kuala Lumpur Stock Exchange would fall within this definition.

Extract of Part 6 of the Rules of the Kuala Lumpur Stock Exchange on Compliance Officer is attached as Appendix 1.

If yes:

2. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam?

Rule 3.6.1 of the Rules of Kuala Lumpur Stock Exchange. *(Refer to extract of rule in Appendix 1).*

The Rule requires such Compliance Officer to sit and pass the examination as prescribed by the Exchange and the Securities Commission.

If so, who is in charge of setting up the exam and what does it cover?

The current prescribed examination for Compliance Officer is Module 6 and Module 7 of the examination conducted by the Securities Industry Development Centre (SIDC). SIDC is the training arm of the Securities Commission and the examination centre for parties seeking to be licensed and registered in the securities industry.

For information, there are currently nine (9) modules covering various areas of the capital market.

Module 6 covers Malaysian Stock Market and Malaysian Securities Law while Module 7 covers Accounting and Financial Statement Analysis and Asset Valuation.

Is there any training for this exam?

The Exchange provides no formal training specifically tailored for the examinations. However every candidate registering for the above mentioned examination is provided by the SIDC with Study Guides. At the same time, the Exchange, through its affiliate, Research Institute of Investment Analysts Malaysia (RIIAM), provides short courses on topics related / relevant to the examinations.

Is there ongoing testing or certification for compliance officers?

The Exchange does not subject registered Compliance Officers to continuous testing or certification. However, every candidate for appointment as Compliance Officer is required to attend and pass an interview conducted by the Exchange before the Exchange can make a recommendation to the Securities Commission on his appointment. The Securities Commission must approve such candidates before they are able to register themselves with the Exchange as Compliance Officers.

3. How is “compliance officer” defined?

In relation to a Member Company, means the Compliance Officer appointed by the Member Company pursuant to and in accordance with Rule 3.6.1 of the Rules of Kuala Lumpur Stock Exchange. (*Refer to extract of the rule in Appendix 1*).

How wide-ranging is the role of the compliance officer?

With regard to the role of the Compliance Officer in relation to existing departments within the Member Company, the Compliance Officer plays a supervisory role over every management level within the Member Company to ensure that the Member Company complies with all the relevant Securities Laws, rules and regulations. In this respect, the Compliance Officer keeps in constant communication and works closely with all supervisory heads within the Member Company’s structure, with a view to supplementing existing reviews of the supervisors and ensuring that the necessary policies and procedures are in place to effect proper supervision of the respective departments.

The Internal Audit Department and the Compliance Officer strive to complement each other and work towards achieving a high standard of compliance. It is recommended that the Compliance Officer reviews the work undertaken by the Internal Audit Department and that he sits on the Audit Committee in respect of issues pertaining to compliance matters. If the Member Company has a Risk Management Committee, the Compliance Officer shall also sit on the committee. If however, the Member Company does not have a Risk Management Committee, then the Compliance Officer can undertake the Risk Management functions.

In respect of the role of the Compliance Officer in relation to the Board of Directors, he reports directly to the Board of Directors of the Member Company. He may be requested (when necessary) to attend at the meetings of the Board of Directors to report, update, inform and make recommendations to the Board on all matters pertaining to compliance and breach thereto. The Board of Directors remains however, ultimately responsible and accountable for the non-compliance of the regulatory framework that a Member Company is subjected to. Therefore when the Board fails to act upon a notification from

the Compliance Officer, the Exchange shall deem it a failure to act, on the part of the Board of Directors. Hence a copy of any reports and recommendations pertaining to compliance and any breach thereto is to be submitted by the Compliance Officer to the Exchange.

Does it go beyond that of just the financial markets?

As mentioned above the role of the Compliance Officer is to ensure that the Member Company complies with all the relevant securities laws, rules and regulations.

4. What is the reporting line of the compliance officer?

The Compliance Officer reports directly to the Board of Director of the Member Company.

How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

As mentioned under 3) above.

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

The Compliance Officer is to assist in situations of non-compliance by the Member Company by recommending remedial action and seeing to its effective implementation.

Rule References: Rules of Kuala Lumpur Stock Exchange (Part 6 Compliance Officer)

Rule 3.6.1 Appointment

Subject to Rule 3.6.1(2), each Member Company shall appoint and register with the Exchange one (1) or more Compliance Officer who shall carry out the duties stipulated in Rule 3.6.2(1). The Compliance Officer appointed and registered pursuant to this Rule shall be approved by the Commission. A copy of the registration with the Exchange shall also be lodged with the Commission.

A Compliance Officer shall be a person who -

is a fit and proper person as determined in accordance with the schedule to the Securities Industry Act;

has passed an examination as prescribed by the Exchange and the Commission; either:

is the holder of a relevant degree from a recognized tertiary institution or the holder of a relevant recognized professional qualification and has a minimum

of three (3) years experience in the securities or financial industry, or in any other related industry;

or

is the holder of a relevant diploma from a recognized tertiary institution and has a minimum of five (5) years experience in the securities or financial industry, or in any other related industry.

The minimum qualification as prescribed above only pertain to the minimum exposure in the industry and do not reflect the seniority of the position of the Compliance Officer. The Compliance Officer must be a person with sufficient capability and experience to carry out his duty effectively.

The Compliance Officer must be equipped with the authority and ability to effect decision so as to be able to carry out his responsibilities effectively. Therefore, the Compliance Officer must be a person holding a senior position in the organization of the Member Company, who can act independently and is able to fully effect decisions.

Rule 3.6.2 Duties

A Compliance Officer shall carry out such duties as shall be stipulated in the KLSE-MESDAQ Joint Guidelines for Compliance Functions which shall include –

supervisory responsibilities to ensure compliance with the Securities Laws, the Article of Association, these Rules, directives, rulings and guidelines issued by the Committee;

supervisory responsibilities to ensure compliance with the Member Company's internal policies and guidelines;

reviewing the handling of complaints from clients and reporting his findings to the executive director of the Member Company responsible for such matters;

reviewing application forms and documents of accounts opened by clients;

regularly reviewing employee's securities transactions, dealings in securities in the Member Company's own account, records of clients' accounts and Salaried Dealer's Representative dealings in Member Company's proprietary trading;

monitoring sales and educational literature and advertisements issued by the Member Company; and

such other duties as specified by the Committee to Member Companies from time to time.

For the purposes of this Rule, "the KLSE-MESDAQ Joint Guidelines for Compliance Functions" means the guidelines jointly issued by the Exchange and MESDAQ, as may be amended from time to time.

A Compliance Officer shall not do the following:

solicit or execute orders on behalf of the Member Company or a client and shall not act in a manner which may compromise his function and position, and/or

effect any personal dealing in securities except where the Compliance Officer was holding securities prior to becoming a Compliance Officer and cases where the Compliance Officer is entitled and holds securities pursuant to Employee Share Option Scheme. Where the Compliance Office holds such securities, notification in writing must be given to the Board of Directors of the Member Company. Where the Compliance Officer intends to dispose of such securities previously held, the prior approval of the Board of Directors of the Member Company must be obtained.

Rule 3.6.3 Vacancy of Compliance Officer

Where, at any particular time, a total vacancy occurs in the office of Compliance Officers in a Member Company, the functions of the Compliance Officer shall be assumed by the Head of the Internal Audit Department or where there is no Internal Audit Department within the Member Company, the Executive Director Operations. Such temporary duties shall not be for a period not exceeding three (3) months. The Member Company shall, within such period, take all steps as may be necessary to employ one or more persons to be the Compliance Officer.

Rule 3.6.4 Breach or Irregularities

Where in the performance of his duties as a Compliance Officer, he becomes aware of –

any matter which in his opinion may –

constitute a breach of any provision of the Securities Laws, the Article of Association, these Rules, directives, rulings and guidelines issued by the Committee; and/or

involve the potential default of the Member Company against the Clearing House or other counterparty; and/or

any irregularity that may –

have a material effect upon the minimum financial requirements pursuant to Section 20A of the Securities Industry Act and accounts of the Member Company; and/or

jeopardize the funds or property of the clients held by the Member Company,

the Compliance Officer shall immediately report the matter to the board of directors of the Member Company.

In addition to the reporting requirements provided in Rule 3.6.4(1), the Compliance Officer shall:

immediately report to the Exchange upon him becoming aware of any matter, which in his opinion, may –

constitute a breach of any provision of the Securities Laws; and/or

involve the potential default of the Member Company against the Clearing House or other counterparty; and/or

significantly affect the risk position and financial integrity of the Member Company;

for all other matters reported to the Member Company's board of directors in the manner envisaged in Rule 3.6.4(1), keep the Exchange informed of the decision of the Member Company's board of directors and particulars of any corrective measures and decided course of actions taken or to be taken, as the case may be, in remedying such breach or irregularity within thirty (30) days of his reporting thereof to the board of directors.

Rule 3.6.5 Ultimate Responsibility on Compliance Matters

Notwithstanding the duties of the Compliance Officer as referred to in these Rules, the ultimate responsibility for proper supervision and compliance of a Member Company shall rest with the Member Company and its board of directors.

Rule 3.6.6 Reporting by Compliance Officer

The Compliance Officer shall report directly to the board of directors of the Member Company. In the course of his duties, the Compliance Officer may bring to the attention of the Executive Director Operations or other senior management of the Member Company matters pertaining to compliance of the Member Company so as to enable appropriate action to be taken.

The Compliance Officer must submit monthly written reports to the board of directors of the Member Company on all matters pertaining to compliance of the Member Company to the Securities Laws, the Articles of Association, these Rules, directives, rulings and guidelines issued by the Committee, including matters which had been brought to the attention of the Executive Director Operations or other senior management of the Member Company.

The Board of Directors of the Member Company must deliberate matters reported to it by the Compliance Officer at its proper meeting so that appropriate action or decision can be taken. Proper records of such deliberations must be maintained.

The Compliance Officer is required to report to the Exchange on a monthly basis in regard to all matters pertaining to compliance of the Member Company.

Rule 3.6.7 Performance of Compliance Officer

The performance of the Compliance Officer shall be appraised by the Board of Directors of the Member Company, and such function shall not be delegated to any person/persons.

The Japanese System (Osaka Securities Exchange Co., Ltd.)

1. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

In the following, we would like to provide the answers by considering “investment service providers” as “securities companies.”

For internal controls of securities companies, Japan Securities Dealers Association (JSDA), a self-regulatory organization of the securities industry in Japan established under the Securities and Exchange Law, set “Rules about Internal Control Managers etc. of Members” and the detailed regulation as follows:

A securities company has to appoint “General Manager for Internal Control” and “Internal Control Managers” and register them with JSDA. As for Internal Control Managers, a securities company has to appoint one for every office.

Also, “Inspection Manual for Securities Companies” by FSA provides the appointment of a person or department in charge of compliance as the checkpoints for the inspection, based on “General Manager for Internal Control” system set by JSDA, but it is not legally binding.

2. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam? If so, who is in charge of setting up the exam and what does it cover? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

It is defined by JSDA as follows:

There are no rules for appointment of General Manager for Internal Control. However, General Manager for Internal Control has to participate in Training Program for General Managers for Internal Control held by JSDA every year.

As for Internal Control Managers, they should be appointed from those who have passed Internal Control Manager Certification Exam held by JSDA.

3. How is “compliance officer” defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

It is defined by JSDA as follows:

General Manager for Internal Control should be a representative director of a company.

General Manager for Internal Control should strengthen an internal control system to make directors and employees of the company comply with the Securities and Exchange Law and other laws etc. In case of any violation of the Laws etc., he/she has to deal properly with it according to the Laws etc. Also, for compliance of their business operations with the Laws etc., he/she has to communicate and coordinate with regulatory authorities and self-regulatory organizations such as JSDA. In addition, in case any issue of importance occurs in sales activity such as promotion of investment and client management, he/she has to report it to the president immediately.

Internal Control Managers have to conduct proper internal controls such as running audit of whether their office operates their business properly in compliance with the Laws etc.

4. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

It is defined in JSDA's rules as follows:

A president of a securities company has to give consideration in order to allow General Manager for Internal Control to fulfill his/her duties, and also the president has to provide instructions to him/ her when General Manager for Internal Control make a report to him/her.

As for the relation of the position of General Manager for Internal Control with those of legal advisers etc., there is no provision in the rules of JSDA.

“**Inspection Manual for Securities Companies**” by FSA, on the other hand, provides independence of persons in charge of compliance as a checkpoint.

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

“Inspection Manual for Securities Companies” by FSA provides “interpretation and confirmation of ordinances and internal rules etc. by compliance department” within a securities company as a checkpoint.

The Korean System (The Kosdaq Stock Market, Inc.)

1. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

According to the Securities and Exchange Act 54-4, securities companies are required to retain at least 1 compliance officer. Necessary provisions with respect to the compliance officer are stipulated in the Presidential Decree.

If yes:

2. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam? If so, who is in charge of setting up the exam and what does it cover? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

There are no preliminary exams requirement for compliance officers. However, compliance officers must meet one of the following requirements to be eligible to become a compliance officer:

- 1) Must have 10 years or more work experience at the Bank of Korea or Financial institutions;
- 2) Must have a Master's Degree in finance related studies and have worked as a researcher or a full-time instructor at a research institution or university;
- 3) Must be a certified lawyer or a certified public accountant and have worked for more than 5 years in the field;
- 4) Must have worked at the Ministry of Finance and Economy, Financial Supervisory Commission, Securities Futures Commission, or Financial Supervisory Service for more than 5 years and 5 years have passed since retirement or quitting.

3. How is "compliance officer" defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

According to the Securities and Exchange Act 54-4, A securities company shall have one or more persons ("compliance officer") check the observance of the internal control standards, investigate the cases in violation of such standards, and report the results thereof to the statutory auditor or the audit committee.

4. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

The compliance officer must report to the statutory auditor or the audit Committee.

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

The compliance officer has only control functions.

The Polish System

1. Are investment service providers in your country obliged by securities regulation to retain a compliance officer?

Not yet, but as we know such requirement exists now and arises from permits granted by Polish Securities and Exchange Commission. The proper regulation regarding this matter is planned and is expected to come into force in the first half of 2002. According to the official draft of this regulation investment service providers carrying out their activities on the territory of Poland will be obliged to set up a compliance department within their organizational structure or at least employ a compliance officer.

2. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam? If so, who is in charge of setting up the exam and what does it cover? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

The draft of the regulation does not foresee any rules in this matter. It is left to the decision of the institution so-obliged.

3. How is compliance officer defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of the financial markets?

The compliance officer is defined in the draft of the regulation by listing its duties and responsibilities. The compliance officer is responsible for:

Supervising the transfer of confidential information and commercial secrets and restricting access to this information,

Carrying out activities preventing the employees of the institution from taking advantage of confidential information and commercial secrets,
Supervising the implementation of rules to prevent the introduction of financial trading of assets originating from illegal or undisclosed sources,

Supervising the correct activities of a brokerage house and actions of its employees with laws currently in force, internal regulations, stock exchange and OTC Rules, KDPW rules and rules of the brokerage house commercial chamber.

Carrying out systematic checks in the scope of the above,

Reviewing complaints from clients

The role of the compliance officer may extend to other duties and responsibilities, but this will depend on the decisions of each of the institutions so-obliged.

4. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

According to the draft of the regulation, the compliance officer reports directly to the President of the Management Board or the person managing the organizational unit, through which the bank carries out its brokerage activities. Moreover, the compliance officer shall pass quarterly reports to the Supervisory Board. The position of the compliance officer is entirely independent of other advisers, auditors and controllers.

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

The draft of the regulation does not prevent the compliance officer from having additional consultative functions.

The French System

1. Are investment service providers in your country obliged by securities regulations to retain a compliance officer?

Article 3-1-3 of the General Regulations of the Conseil des Marchés Financiers provides that authorized providers must implement procedures for supervising the services they have declared to the authorizing authority, (...).

The supervisor of investment services, (...), ensures compliance with these General Regulations and, in particular, with the rules of conduct and the rules applicable to professional licenses.

If yes:

2. What are the rules regarding the appointment of compliance officers? In particular, do compliance officers have to take a preliminary exam? If so, who is in charge of setting up the exam and what does it cover? Is there any training for this exam? Is there ongoing testing or certification for compliance officers?

Article 2-4-3 of the General Regulations of the Conseil des Marchés Financiers provides that the CMF issues professional licenses to the investment service supervisors (...).

The CMF verifies the integrity of the persons concerned as well as their knowledge of the rules of conduct and their professional competency.

For this verification, the CMF sets up a preliminary exam. The exam covers in particular two points: is the candidate able to be a compliance officer and is the requirement contained in article 2.4.17 of its General Regulations satisfied: article 2.4.17 provides that:

The supervisor must have the staff and technical resources needed to perform his function.

The technical resources must be suited to the nature and volume of the businesses conducted by the authorized provider and must include, in particular, a permanent system for ensuring compliance with internal procedures.

Training for this exam is set up by the Conseil des marchés financiers itself. But there is no ongoing testing or certification for compliance officers.

However, where the authorized provider is too small for responsibility for supervision to be entrusted to a person having no other professional responsibilities, the supervisor must be one of the persons with ultimate management responsibility for the authorized provider (article 2-4-16 of the general Regulations). In this latter case, the supervisor does not have to take a preliminary exam. Due to the fact that as a person with ultimate management responsibility, he has already been registered, there is no need for an exam.

3. How is “compliance officer” defined? How wide-ranging is the role of the compliance officer? Does it go beyond that of just the financial markets?

Article 3-1-3 of the General Regulations of the Conseil des Marchés Financiers provides that:

(...), the head of compliance (hereafter “compliance officer”) of an authorized provider is responsible for ensuring that it and its agents respect the rules of conduct applicable to investment services (...). In addition, the compliance officer verifies that these rules are also respected by individuals acting under the authority or on behalf of the authorized provider in providing the (investment services).

Such individuals are hereafter called “staff”.

The role of the compliance officer consists, inter alia, of the following:

- 1. identifying the measures needed to ensure compliance with the rules of conduct;*
- 2. preparing a handbook outlining the rules and procedures applicable to the authorized provider and its staff;*
- 3. informing the authorized provider's staff of some or all of the above provisions;*
- 4. monitoring compliance by the authorized provider and its staff with all rules of conduct and ensures that the appropriate measures are taken in the event of non-compliance;*

5. *providing assistance and guidance, in addition to the monitoring procedures, to help the authorized provider's staff apply the rules of conduct.*

The compliance officer may delegate some of his functions to one or more persons in operational positions.”

The field is only the investment services governed by the General Regulations of the CMF. In this regard, Article 2-1-1 provides:

I. (The) General Regulations govern:

1. The following investment services where they are provided, together or separately, by an investment service provider as its usual business:

- a) receiving and transmitting orders for third parties,*
- b) executing orders for third parties,*
- c) trading for own account,*
- d) placing and underwriting.*

2. Non-core services, referred to as “assimilated services” for the purposes of (the) General Regulations:

- a) account-keeping,*
- b) clearing.*
- c) safekeeping or administration of financial instruments, referred to as “custody account-keeping” for the purposes of these General Regulations.*

II. The General Regulations govern the following related services where provided in addition to investment services:

- a) asset management advice,*
- b) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and acquisitions of undertakings,*
- c) services related to underwriting, foreign-exchange services where these are related to the provision of investment services,*
- d) rental of safe-deposit boxes.”*

As far as the General Regulations of the Conseil des Marchés Financiers are concerned, this field is not more widespread than the financial markets.

4. What is the reporting line of the compliance officer? How does the position of the compliance officer relate to those of legal advisers, auditors and other controllers?

Article 3-1-4 of the General Regulations of the CMF provides that:

Each authorized provider appoints a compliance officer. Compliance officers operate independently of all the business units they monitor. They report on their compliance work to the authorized provider's executive body. The executive body informs the deliberative body of the compliance officer's appointment and of the contents of their report.

The compliance officer may be a legal adviser, an auditor or another controller. But article 3-1-4 provides that: when warranted by its size, organizational structure or type of business, the authorized provider entrusts the compliance function to a staff member having no other responsibilities

5. Does the compliance officer have only control functions, or does he also have the role of a consultant?

The role of the compliance officer consists, inter alia, of providing assistance and guidance, in addition to the monitoring procedures, to help the authorized provider's staff apply the rules of conduct.