

January 8, 2003

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: **File No. SR-NASD-2002-108 – Business Continuity Plans and Emergency Contact Information; Amendment No. 2**

Dear Ms. England:

NASD hereby is submitting Amendment No. 2 to the above-referenced rule filing. The attached proposed rule language replaces the proposed rule language filed with the Securities and Exchange Commission (“SEC”) as part of Amendment No. 1 and incorporates the amendment described herein.

**A. Categories of a Member’s Business Continuity Plan**

Upon further consideration and after conversations with the New York Stock Exchange (“NYSE”) and SEC staff, NASD is revising an interpretation provided as part of Amendment No. 1. Specifically, in Amendment No. 1, NASD responded to a commenter that believed that proposed Rule 3510 should specifically state that a member need only address each of the eight listed categories “to the extent applicable.”<sup>1</sup> In Amendment No. 1, NASD had stated that “each member’s business continuity plan will only be required to address the eight listed categories . . . to the extent applicable and necessary.” NASD, however, did not amend the rule language to include the qualifying term “to the extent applicable” because, at that time, NASD determined that members may inaccurately conclude that, if they do not carry customer accounts or perform a specific function, they would not have to address the category or system at all in their business continuity plans.

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<sup>1</sup> See Comment Letter from the Investment Company Institute in response to Exchange Act Rel. No. 46444 (Aug. 30, 2002), 67 Fed. Reg. 57257 (Sept. 9, 2002).

After further consideration and conversations with the NYSE and SEC staff, NASD is amending subsection (c) of proposed Rule 3510, as set forth in Amendment No. 1, as follows (additions are underlined):

\* \* \* \* \*

(c) The requirements of a business continuity plan are flexible and may be tailored to the size and needs of a member. Each plan, however, must at a minimum, address:

(1) through (8) No Change

Each member must address the above-listed categories to the extent applicable and necessary. If any of the above-listed categories is not applicable, the member's business continuity plan need not address the category. The member's business continuity plan, however, must document the rationale for not including such category in its plan. If a member relies on another entity for any one of the above-listed categories or any mission critical system, the member's business continuity plan must address this relationship.

\* \* \* \* \*

NASD believes that the proposed language provided above will ensure that members understand that, if any of the categories are not applicable, the member would still be required to document the rationale for not including such category in its business continuity plan. For example, if a member's books and records are kept at its clearing firm, the member's plan must address this fact as well as the relationship with, including identify of, the clearing firm.

## **B. Emergency Contact Information**

As previously stated, NASD Rule 3520 will require members to provide NASD with certain emergency contact information. This emergency contact information includes:

- emergency contact information for key staff;
- identification of two designated contact persons;
- location of books and records (including back-up locations);
- clearance and settlement information;
- identification of key banking relationships; and
- alternative communication plans for investors.

Members will be required to provide this information via electronic process. At this time, NASD intends to use a form similar to the member firm contact questionnaire.

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If you have questions, please contact the undersigned at (202) 728-6927.

Very truly yours,

Brian J. Woldow

Attachment

ATTACHMENT

**3500. EMERGENCY PREPAREDNESS**

**3510. Business Continuity Plans**

(a) Each member must create and maintain a written business continuity plan identifying procedures to be followed in the event of an emergency or significant business disruption. The business continuity plan must be made available promptly upon request to NASD staff.

(b) Each member must update its plan in the event of any material change to the member's operations, structure, business or location. Each member must also conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business or location.

(c) The requirements of a business continuity plan are flexible and may be tailored to the size and needs of a member. Each plan, however, must at a minimum, address:

- (1) Data back-up and recovery (hard copy and electronic);
- (2) All mission critical systems;
- (3) Financial and operational assessments;
- (4) Alternate communications between customers and the member;
- (5) Alternate communications between the member and its employees;
- (6) Business constituent, bank and counter-party impact;
- (7) Regulatory reporting; and
- (8) Communications with regulators.

Each member must address the above-listed categories to the extent applicable and necessary. If any of the above-listed categories is not applicable, the member's business continuity plan need not address the category. The member's business continuity plan, however, must document the rationale for not including such category in its plan. If a member relies on another entity for any one of the above-listed categories or any mission critical system, the member's business continuity plan must address this relationship.

(d) Members must designate a member of senior management to approve the plan and he or she shall be responsible for conducting the required annual review. The member of senior management must also be a registered principal.

(e) For purposes of this rule, the following terms shall have the meanings specified below:

(1) "Mission critical system" means any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(2) "Financial and operational assessment" means a set of written procedures that allows a member to identify changes in its operational, financial, and credit risk exposures.

**3520. Emergency Contact Information**

(a) Each member shall report to NASD, via such electronic or other means as NASD may require, prescribed emergency contact information for the member. Among other things, the emergency contact information for the member includes designation of two emergency contact persons. Each emergency contact person shall be a member of senior management and a registered principal of the member.

(b) Each member must promptly update its emergency contact information, via such electronic or other means as NASD may require, in the event of any material change.