



VOICE OF THE INDEPENDENT CONTRACTOR BROKER-DEALER

VIA ELECTRONIC MAIL

September 15, 2006

Barbara Z Sweeney  
Office of the Corporate Secretary  
NASD  
1735 K Street, NW  
Washington, DC 20006-1506

RE: Comments on Pandemic Regulatory Relief

Dear Ms. Sweeney:

The Financial Services Institute<sup>1</sup> ("FSI") appreciates this opportunity to comment on Notice to Members 06-31 ("NtM 06-31") concerning regulatory relief that should be granted in response to a possible pandemic or other major business disruption. Since a pandemic has the potential to severely damage the operation of the financial markets, FSI applauds the NASD's efforts to obtain industry feedback in advance of such a crisis.

Introduction

A pandemic<sup>2</sup> is a sustained public health emergency that may have profound consequences for the operation of the global economy, including the U.S. financial markets. While no one can predict when such an event will occur it is considered highly probable, if not inevitable, that a pandemic will in fact occur.<sup>3</sup> As a result, it is imperative for the financial markets, and their regulators, to develop contingency plans to deal with such an event.

Unlike other business interruptions, a pandemic's impact on business operations is likely to be long lasting. There may be little warning of the onset of a pandemic as most experts agree that only one to six months will pass between identification of a new virus and widespread outbreaks in the U.S. Outbreaks are expected to occur in multiple simultaneous waves throughout much of the nation. Such conditions may continue for weeks on end.<sup>4</sup> The effect of these outbreaks on individual communities is expected to be prolonged.

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<sup>1</sup> The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed in 2004. Our members are broker-dealers, often dually registered as federal investment advisors, and their independent contractor registered representatives. FSI's 96 member firms have more than 126,000 registered representatives who serve more than 14 million households. FSI also has more than 3,100 individual members.

<sup>2</sup> A pandemic is an epidemic (an outbreak of an infectious disease) that spreads worldwide, or at least across a large region.

<sup>3</sup> See <http://www.pandemicflu.gov/general/> for more information.

<sup>4</sup> See <http://www.pandemicflu.gov/general/#impact>.

A pandemic is likely to result in widespread employee absenteeism. Employees suffering from symptoms of the flu, or other pandemic, will be unable to work or will be urged to remain at home in order to inhibit the spread of the pandemic to other employees and their families. If the level of illness results in the closure of schools, childcare facilities, and other public facilities, absentee rates are likely to reach extremely high levels as families remain home to care for their children.

Quarantine conditions and travel restrictions may be imposed to combat the spread of the pandemic. In extreme circumstances, public health officials may consider the use of widespread or community-wide quarantines -- the most stringent and restrictive containment measure available. Travel restrictions are likely to be imposed on foreign travel, but could also be imposed within the country in order to limit the spread of the pandemic. These steps, while necessary, will severely hamper the operation of the U.S. economy.

Employee absenteeism, quarantine conditions, travel restrictions, and other measures are likely to significantly impact independent broker-dealer firms' (IBDs) ability to operate their business. IBDs' efforts will be further complicated by the pandemic's impact on valued service providers such as product sponsors, clearing firms, overnight carriers, and others are likely to be operating under the same conditions as the IBD firm. Indeed even the ability of the IBD's clients to travel to their registered representative's branch office may be limited by the onset of a pandemic.

A pandemic, therefore, creates unique challenges for IBDs, their financial advisors, and those charged with regulating their conduct. Traditional disaster recovery solutions (e.g., relocation of key staff and core functions to an offsite business location) may prove an ineffective response. As a result, IBDs are revising their business continuity plans to include extensive employee cross-training, the outsourcing of business functions, and the expanded use of telecommuting to insure smooth operation of their business and compliance with their regulatory obligations during a pandemic. Nevertheless, these efforts are likely to prove only a partial solution to the very complex problem of operating a compliant IBD during the course of pandemic related business disruption.

Clearly such a crisis will require broker-dealers, financial advisors, clients, and regulators to be flexible in their efforts to process business, provide service, obtain access to markets, and regulate activities. Recognizing this fact, on May 5, 2006 the NYSE Regulation, Inc. published an Information Memo<sup>5</sup> providing guidance to exchange members on the impact of a potential pandemic on their business continuity plans. The Information Memo includes the following text:

NYSE Regulation, Inc. anticipates that, in the event of a pandemic or other health emergency, a flexible approach to regulatory requirements will be appropriate. Some of the areas of potential regulatory relief currently under consideration by NYSE Regulation, Inc. include the following:

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<sup>5</sup> See NYSE Information Memo Number 06-30, May 5, 2006, at [http://apps.nyse.com/commdata/PubInfoMemos.nsf/0/85256FCB005E19E88525715C00628C4B/\\$FILE/Microsoft%20Word%20-%20Document%20in%2006-30.pdf](http://apps.nyse.com/commdata/PubInfoMemos.nsf/0/85256FCB005E19E88525715C00628C4B/$FILE/Microsoft%20Word%20-%20Document%20in%2006-30.pdf).

- extensions of time for standard filing requirements;
- flexibility with respect to office space arrangements;
- delays in real-time supervision where technology monitoring is feasible;
- additional time for reconciliations;
- extensions of time relating to licensing requirements; and
- flexibility with respect to compliance with certain provisions of clearing agreements.

FSI would urge the NASD to adopt a similar flexible approach to the regulatory requirements in each of these important areas. FSI also encourages the NASD to adopt a flexible approach to the regulatory requirements for capital and financial reporting requirements, trade reporting, temporary account transfers, extensions of credit, securities delivery, and other unforeseen areas during a pandemic or other business disruption. In summary, FSI believes that the NASD can best ensure the integrity of the financial markets during a pandemic by endeavoring to provide member firm's with the maximum flexibility, consistent with investor protection, in complying with their regulatory obligations.

#### Specific Recommendations

In NtM 06-31 the NASD seeks "industry input as to what regulatory relief would be appropriate, and under what circumstances, in the event of a global pandemic or other major business disruption." The NASD requests that commenters "identify specific relief that may be appropriate and under what specific circumstances." While FSI appreciates the NASD's desire to obtain such information, we are concerned that such an approach is likely to result in the adoption of an inflexible decision making matrix that is designed to govern the NASD's consideration of requests for regulatory relief. Since we believe that such a system is unlikely to prove helpful in light of the unique challenges caused by a pandemic, we encourage the NASD to take a different approach. FSI recommends the adoption of a system for the submission and prompt consideration for member firm generated requests for regulatory relief.

FSI believes the unpredictable nature of a pandemic, or similar business disruption, necessitates a system flexible enough to respond in a timely fashion to any contingency that may develop. We believe this can best be achieved through the development of a procedure by which member firms can request specific regulatory relief from the NASD at the onset of a crisis regardless of the necessitating circumstances. We believe this approach will provide the flexibility necessary to deal with the unpredictable nature of a pandemic or other major business disruption while allowing the NASD to insure the integrity of the markets and protection of investors.

Specifically, FSI would recommend that the NASD consider the adoption of the following process for the submission and consideration of requests for regulatory relief:

- The NASD designates a contact person (and an appropriate alternate) for each member firms' business continuity concerns. The member firm's core examiner or liaison may prove to be the appropriate individual to serve in this capacity.
- Member firms seeking regulatory relief are required to submit in writing any such request to their NASD designated contact person. The relief request will contain specific references to the NASD Conduct Rule(s) from which the firm seeks

regulatory relief. The written request will provide a summary of the circumstances which lead the member firm to submit the request for relief and a good faith estimate as to length of time such relief may be required. The request for regulatory relief must be sufficiently detailed to provide the NASD with the information necessary to determine whether or not to grant the member's request.

- The NASD's designated contact person will review the request for completeness and compliance with to be established standards. If the request is deficient, the designated person will contact the member firm to obtain any missing or additional information required. Once a fully documented request for regulatory relief has been received, the designated contact person will review the request and any and all other relevant information about the firm in the NASD's possession. The designated contact person will then forward these materials, along with a recommendation as to whether the request should be granted, to the appropriate District Director.
- The NASD District Director, or their designees, is empowered with the authority necessary to review, consider, and either approve or disapprove of all requests for regulatory relief from member firms located within their district. Assigning this duty to the District Director will allow a senior manager in close proximity to the affected member to make the determination as to whether regulatory relief is appropriate.
- The NASD District Director is be required to respond promptly to the member firm's request for relief. The approval or disapproval of regulatory relief should be reduced to writing and forwarded to the member firm's Executive Representative or other designated person. Such regulatory relief would be limited in scope and time by the NASD District Director.
- Member firms may submit requests for additional regulatory relief and/or extensions of time to previously approved relief requests by utilizing the system described above.

Should the NASD decide to adopt such a system for the receipt and consideration of regulatory relief requests, FSI would encourage it to publish the details of the system in a Notice to Members and invite member comment before final adoption. This will allow the NASD to benefit from the collective experience and wisdom of its member firms. In this way, the NASD will have created a flexible system designed to promptly respond to member firm's unique requests for regulatory relief while insuring the integrity of the markets and investor protection are maintained.

Once again, FSI would like to thank the NASD for proactively seeking feedback from member firms on this especially important issue. We thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,



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Executive Director & CEO

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