

# Notice to Members

JUNE 2006

## SUGGESTED ROUTING

Executive Representatives  
Legal and Compliance  
Operations  
Registration  
Senior Management  
Systems  
Trading

## KEY TOPICS

Business Continuity  
Capital and Financial Reporting Requirements  
Extensions or Credit and Securities Delivery  
Filing and Reporting Requirements  
Licensing  
Operations  
Supervision  
Trade Reporting  
Temporary Account Transfers

## REQUEST FOR COMMENT

### Pandemic Regulatory Relief

NASD Requests Comment on Regulatory Relief that Should Be Granted in Response to a Possible Pandemic or Other Major Business Disruption; **Comment Period Expires July 31, 2006**

#### Executive Summary

NASD recognizes that, in the event of a global pandemic or similar disaster, some level of regulatory flexibility may be necessary to allow firms to best serve investors and maintain market stability. NASD also understands that investor protection is perhaps most critical during times of financial and social stress. To help NASD strike the appropriate balance, we are soliciting comment from members and other interested persons regarding what specific, short-term regulatory relief may be appropriate and consistent with NASD's mission, and what specific conditions may warrant such relief.

#### Action Requested

NASD encourages all interested parties to comment on this proposal. Comments must be received by July 31, 2006. Members and interested persons can submit their comments using the following methods:

- ▶ Mail comments in hard copy to the address below; or
- ▶ Email written comments to [pubcom@nasd.com](mailto:pubcom@nasd.com).

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method. Comments sent by hard copy should be mailed to:

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

06-31

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**Important Notes:** The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web site. Generally, comments will be posted on the NASD Web site one week after the end of the comment period.<sup>1</sup>

Before becoming effective, a proposed rule change (or certain policies) must be authorized for filing with the Securities and Exchange Commission (SEC) by the NASD Board, and then must be approved by the SEC, following publication for public comment in the Federal Register.<sup>2</sup>

### Questions/Further Information

As noted above, hard copy comments should be mailed to Barbara Z. Sweeney. Questions concerning this *Notice* may be directed to Eric Moss, Vice President and Director of Emerging Regulatory Issues, at (202) 728-8982.

### Background and Discussion

The precise impact of a flu pandemic or similar business disruption on the global markets is impossible to predict, but some experts believe that the impact could be severe. For example, some analysts project that areas affected by an outbreak of pandemic flu could experience absentee rates as high as 30 percent to 50 percent of the workforce for an extended period of time, possibly as long as several months. Affected regions may also experience quarantines and travel restrictions.

Over the past few months, NASD has consulted with a number of firms in an effort to gauge how they are preparing for such a possibility. Firms are considering a range of approaches to maintain their ability to serve their customers, including moving certain functions to one of several overseas locations where the business disruption may have had a less severe impact and permitting employees to perform certain functions from their homes. Some firms, particularly smaller firms with no overseas affiliates, are considering the benefits of developing emergency "hand-off" plans that would allow them to pass client orders and other functions to clearing or other firms in a remote location, or even overseas.

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While some firms already are making preparations, they currently are constrained because they do not know what kind of regulatory relief they can expect, particularly in terms of licensing, supervision, and reporting and filing requirements. Firms may find it useful to consider the regulatory relief that was available in the aftermath of Hurricane Katrina and the September 11th attacks on the World Trade Center. The relief offered in those circumstances related to emergency office relocations and requirements regarding continuing education, registered personnel engaged in active military duty, books and records, handling of customers' funds and securities, customer communications, information barriers, the three-quote rule, and regulatory filings.<sup>3</sup>

NASD is publishing this request for comment to solicit 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. NASD will work with the U. S. Securities and Exchange Commission and other self-regulatory organizations (SROs) to determine what regulatory relief is appropriate.<sup>4</sup>

Comments that identify specific rule relief that may be appropriate and under what specific circumstances will be particularly useful. To facilitate the comment process, we have identified some topics that have been discussed during our initial consultation with industry representatives; however, commenters are encouraged to submit comments or recommendations relating to other areas.

- ◆ Licensing requirements: Who can do what, from where, and whose rules will apply.
- ◆ Capital and financial reporting requirements if operating abroad: Which jurisdiction's rules will apply.
- ◆ Supervision: Both in remote U.S. and non-U.S. locations.
- ◆ Trade reporting: Particularly where a market(s) may not be functioning.
- ◆ Temporary account transfers.
- ◆ Extensions or credit and securities delivery.
- ◆ Filing and reporting requirements.

## Conclusion

NASD is committed to working with the industry and other regulators to minimize the impact of a global pandemic or other major business disruption on our financial markets. We are confident that the financial services industry will respond to such an event with the same commitment to market integrity and investor protection that was displayed in the aftermath of Hurricane Katrina and the attacks of September 11.

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## Endnotes

- 1 See *Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
- 2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and the rules thereunder.
- 3 See *Notice to Members 05-57* (Guidance to Members Affected by Hurricane Katrina) and Testimony of Robert R. Glauber, President and Chief Executive Officer, National Association of Securities Dealers, Inc., Before the Senate Banking, Housing and Urban Affairs Hearing on the Condition of the U.S. Financial Markets (September 20, 2001).
- 4 Our efforts to date in this area have not been limited to the United States. Given the international implications, NASD has reached out to SROs in other jurisdictions with the goal of identifying a set of principles that SROs could follow in addressing the legal, jurisdictional and logistical challenges such a pandemic would present.

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