

September 16, 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. 5**

Dear Ms. England:

To address concerns that some introducing firms may not have sufficient time to create or modify their business continuity plans, NASD hereby is submitting Amendment No. 5 to the above-referenced rule filing in order to extend by 30 days the effective date for introducing firms to comply with proposed Rule 3510. NASD also is amending certain language in the above referenced rule filing to be consistent with the business continuity plan rule proposed by the New York Stock Exchange (“NYSE”).

In Amendment No. 4, NASD established the proposed effective dates for proposed Rules 3510 and 3520. Specifically, NASD stated that business continuity plans, as required by proposed Rule 3510, must be implemented within 120 days of the publication of a Notice to Members announcing the approval of the rule filing. NASD also stated that members must designate emergency contact persons and provide NASD with their emergency contact information, as required by proposed Rule 3520, within 60 days of publication of the Notice to Members.

NASD intends to establish separate effective dates for introducing firms and clearing firms (including self-clearing firms) to create or modify their business continuity plans, as required by proposed Rule 3510. NASD believes this is necessary because many introducing firms may need access to information regarding the business continuity planning of their clearing firms. To ensure that introducing firms will have sufficient time to create or modify sections of their plans that may be affected by the plans of their clearing firms, NASD is extending by 30 days the proposed effective date for introducing firms to comply with proposed Rule 3510.

In addition, to further consistency with the business continuity plan rule proposed by the NYSE, NASD proposes to calculate the effective dates of both proposed Rules 3510 and 3520

from the date of publication of the SEC approval order rather than the issuance of a Notice to Members. Accordingly, clearing firms must establish business continuity plans, as required by proposed Rule 3510, within 120 days of the publication of the SEC order announcing the approval of the rule filing; introducing firms must establish business continuity plans, as required by proposed Rule 3510, within 150 days of the publication of the SEC order announcing the approval of the rule filing. All members (both introducing and clearing firms) must designate emergency contact persons and provide NASD with their contact information, as required by proposed Rule 3520, within 60 days of publication of the SEC approval order.

Finally, in Amendment No. 4, in response to SEC staff's comments, NASD amended proposed Rule 3510(c) to state that "[i]f a member has customers, the member must detail the procedures it will employ to ensure customer access to funds and securities." The NYSE's proposed rule change does not include this new text. Accordingly, to maintain consistency between the NASD and NYSE proposed rules, NASD is deleting the statement from proposed Rule 3510(c). NASD, however, expects its members that have customers to detail the procedures that they will employ to ensure customer access to funds and securities, in complying with Rule 3510.

### **Text of Amendment**

Below is the text of the current amendment to the proposed rule language. The base language is the proposed rule text following Amendment No. 4. Proposed new language is underlined; proposed deletions are in brackets.

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## **3500. EMERGENCY PREPAREDNESS**

### **3510. Business Continuity Plans**

(a) – (b) No Change

(c) The elements that comprise 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) Critical business constituents, banks, and counter-parties;
- (7) Regulatory reporting;
- (8) Communications with regulators; and
- (9) How the member will assure customers' prompt access to their funds and securities in the event that the member determines that it is unable to continue its business.

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. [If a member has customers, the member must detail the procedures it will employ to ensure customer access to funds and securities.]

(d) – (f) No Change

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If you have any questions concerning this submission, please contact me at (202) 728-6927; e-mail [brian.woldow@nasd.com](mailto:brian.woldow@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Brian J. Woldow