



Securities Industry Association

120 Broadway, New York, NY 10271-0080, (212) 608-1500, Fax (212) 608-1604
1401 Eye Street, NW, Washington, DC 20005-2225, (202) 296-9410, Fax (202) 296-9775
info@sia.com, <http://www.sia.com>

September 30, 2002

Margaret H. McFarland
Deputy Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File No. SR-NYSE-2002-35: Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Business Continuity and Contingency Planning

The Securities Industry Association (“SIA”)¹ and the Bond Market Association (“TBMA”)² (collectively, the “Associations”) are pleased to comment on the proposal (“Proposal”) by the New York Stock Exchange, Inc. (“NYSE”) to adopt Rule 446 (concerning Business Continuity and Contingency Planning).

We commend the NYSE in their efforts to consider steps that member firms can take to ensure that they are prepared for possible future business disruptions. We support industry-wide implementation of business continuity plans. Indeed, in December 2001, SIA formed a Business Continuity Planning (“BCP”) Committee by incorporating a preexisting informal industry forum known as the Securities Industry Business Continuity Management Group. The Committee’s mission is to:

- Provide a forum for securities firms, industry organizations, and service providers to share specific plans and business continuity information.

¹ The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In the year 2001, the industry generated \$198 billion in U.S. revenue and \$358 billion in global revenues. Securities firms employ approximately 750,000 individuals in the United States. (More information about SIA is available on its home page: <http://www.sia.com> .)

² The Bond Market Association represents securities firms and banks that underwrite, trade and sell debt securities, both domestically and internationally. More information about the Association is available on its Internet home page at <http://www.bondmarkets.com>.

- Identify and develop business continuity plans and projects that have an industry-wide, rather than firm-specific, focus.
- Provide liaison between the securities industry and government legislators, regulators, and service providers, as well as to related industries such as telecommunications and power utilities.

Similarly, TBMA also formed a Business Continuity Management Council (“BCMC”), which serves as a standing advisory committee of TBMA’s Board to advise on, and coordinate, TBMA’s activities relating to fixed income business or industry utility disruptions and policy responses to the September 11th tragedy. The BCMC is composed of members of preexisting committees of TBMA, in addition to others with expertise in business continuity planning. TBMA is mindful of the need to ensure careful coordination with other industry groups that are working in this area, and will in particular provide input on an ongoing basis to SIA’s BCP Committee, as its work relates to fixed income issues.

In May 2002, the Associations responded to a similar proposed rules from the National Association of Securities Dealers, Inc. (“NASD”) concerning Business Continuity Plans and Emergency Contact Information.

Rule 446: Business Continuity and Contingency

General Comments

The Associations are pleased to see the coordination of rule changes between regulators as evidenced by the NYSE and NASD. Just as the Associations are working to coordinate the response of the securities industry, it is important that regulatory efforts be similarly coordinated. With this provision, we offer the following comments on the Proposal

Applicability to Subsidiaries

The NYSE filing does not address the issue of subsidiaries. The comparable NASD filing states that the NASD believes that a subsidiary member firm may satisfy its obligations under the proposed rule change by participation in a corporate-wide business continuity plan of a parent corporation that addresses its subsidiary member firms. As a result, a subsidiary member firm may rely on the corporate-wide business continuity plan of its parent corporation regardless of whether the parent corporation is a member or non-member. The Associations believe the NYSE filing ought to include language substantially similar or identical to the NASD language in its filing.

Plan Elements

The Associations agree that the requirements of a business continuity plan must be tailored to the size and needs of an individual firm, but that each plan must at a minimum address the aspects of continuity that are addressed in the release.

We offer the following specific comments on the Plan Elements:

- **Rule 446(c)(1)** – Books and records back-up and recovery (hard copy and electronic). As a drafting point, we merely seek confirmation of our understanding that “hard copy and electronic” describe the types of books and records a firm maintains. Read another way, the parenthetical could be misinterpreted as suggesting that each book or record will be backed up and recoverable on both hard copy and electronic formats.

- **Rule 446(c)(7)** - Business Constituent, Bank and Counterparty Impact - We believe this element requires some additional information so that firms have a clearer idea of what their plans ought to address.

Senior Officer Responsibility

Proposed Rule 446(f) would require a senior officer to approve the Plan and to be responsible for the required annual review. While we acknowledge that the involvement and leadership of senior officers in contingency planning is crucial, we don't think it is necessarily wise from a policy standpoint to single out any individual from a firm for additional regulatory risk for taking on such an important responsibility. We believe a more flexible approach is to be found in the NASD proposal, which avoids potential disincentives for participating in planning by simply requiring that the firm's emergency contact person be a member of senior management.

Emergency Contacts

The Associations believe it appropriate to require members to provide updated contact information. The NYSE should specify the means by which firms are to comply. We note that the NASD proposal on this point anticipates that the NASD will be notifying firms how they should provide such updates to the NASD. SIA suggests that the NYSE develop an electronic mechanism, such as a web site, to manage this process. Firms could then use the service to update the information as changes warrant rather than on some less frequent basis.

Each firm should also provide a minimum of two members' contact information to reduce a dependency on a single point of contact.

Although not the subject matter of this proposal, we encourage the NYSE to provide firms with information regarding emergency contact points for critical operational areas within the NYSE. It would also be helpful if the NYSE were to identify the persons responsible for responding to questions and the means of contacting them in advance of any possible future emergency that could involve NYSE-member firm links..

We recommend compiling both member firm and NYSE operations contacts in an on-line web-based directory, which has its own contingency backup, and securing this information so that it is restricted to authorized individuals.

We hope that these comments are helpful. Please feel free to contact Art Trager, Vice-President & Managing Director, Technology & Operations (212-618-0546; atrager@sia.com) with any additional questions you may have concerning these matters.

Very truly yours,

Jerry W. Klawitter
SIA Business Continuity Planning Committee
TBMA Business Continuity Management Council

cc: Richard A. Grasso, Chairman and CEO, NYSE
William R. Johnston, President, NYSE
Robert G. Britz, COO and Executive Vice President, NYSE
Salvatore Pallante, Executive Vice President, Member Regulation, NYSE

Robert L.D. Colby, Deputy Director, Division of Market Regulations, SEC
David Shillman, Counsel to the Director, Division of Market Regulation, SEC
Peter Chepucavage, Attorney Fellow, SEC