



**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

May 13, 2002

Ms. Barbara Z. Sweeney  
Senior Vice President  
Office of the Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500

Re: Notice to Members 02-23: Business Continuity Plans and Emergency Contact Information

Dear Ms. Sweeney:

The Securities Industry Association (“SIA”)<sup>1</sup> and the Bond Market Association (“TBMA”)<sup>2</sup> (collectively, the “Associations”) are pleased to comment on the proposal (“Proposal”) by the National Association of Securities Dealers, Inc. (“NASD”) to adopt Rule 3510 (concerning Business Continuity Plans) and Rule 3520 (concerning Emergency Contact Information).

We commend the NASD in their efforts to consider steps that member firms can take to ensure that they are prepared for possible future business disruptions. We too generally support industry-wide implementation of business continuity plans. Indeed, in December 2001, SIA formed a Business Continuity Planning (“BCP”) Committee by incorporating the previously 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.

---

<sup>1</sup> The SIA brings together the shared interests of nearly 700 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.

<sup>2</sup> TBMA represents securities firms and banks that underwrite, trade and sell debt securities, both domestically and internationally. TBMA’s member firms collectively represent in excess of 95% of the initial distribution and secondary market trading of municipal bonds, corporate bonds, mortgage and other asset-backed securities, and other fixed-income securities.

- 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 11<sup>th</sup> 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.

#### Rule 3510: Business Continuity Plans

##### *General Comments*

Just as the Associations are working to coordinate the response of the securities industry, it is important that regulatory efforts be similarly coordinated. The Associations are aware that other federal regulatory authorities have been reviewing the business continuity plans that are maintained by financial service firms and may consider additional regulatory requirements. We suggest that the NASD consider deferring action on the Proposal until such time as other federal regulatory authorities determine whether to promulgate rules in this area and the scope of any such rules. With this provision, we offer the following comments on the Proposal. Certain comments respond to specific questions asked by the NASD in its Notice to Members.

##### *Updating Plans*

Proposed Rule 3510(b) would require members to conduct a yearly review of their business continuity plans to determine whether modifications are necessary in light of changes to the member’s operations, structure, business, or location. The Associations do not believe that a separate, prophylactic requirement for a periodic review is necessary or appropriate in order to achieve the purpose of the Proposal.

First, updating business continuity plans is more appropriately triggered by changes in the nature of the firm’s business, introduction of new systems, geographic locations, and similar factors, rather than a change in the calendar. Imposing an artificial, yearly review standard does little to advance the need for timely changes to such plans, and could provide false comfort that a yearly review will meet regulatory requirements.

Second, the existence of an annual requirement implies a corresponding obligation to supervise, document, and keep records of the review, without providing guidance as to the nature and scope of such supervision, documentation, and record-keeping. Firms that alter their business plans in a

Ms. Barbara Z. Sweeney  
May 13, 2002  
Page 3

responsible way in response to firm or external, market-wide developments should not be subject to sanction based on a determination that it has failed to sufficiently evidence a periodic review.

### *Plan Elements*

The Associations believe that any rules concerning business continuity planning that are of general application to all member firms of the NASD necessarily must be oriented around general minimum standards, recognizing that the nature and complexity of the plans that will be appropriate for a given firm will vary drastically depending on the nature of its business. Given this limitation, the Associations believe that it is appropriate to require securities firms to create and maintain business continuity plans.

Greater clarity is needed in the Proposal as to the intent and requirements of the following elements:

- Financial and Operational Assessments; and
- Business Constituent, Bank and Counterparty Impact.

### Rule 3520: Emergency Contact Information

The Associations believe it appropriate to require members to provide updated contact information through the NASD Regulation web site. We support a semi-annual review process, but that process should be proactive on the part of the NASD querying the membership rather than reliant on the members to initiate a review.

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

In addition, it is important that member firms be able to quickly identify emergency contact points within the NASD in various operational areas in the event of an emergency. For example, following September 11<sup>th</sup>, there was temporary disruption to the Fixed Income Pricing Service (FIPS), which resulted in some confusion as to how and when transactions subject to FIPS requirements were to be reported. It would be helpful if the NASD were to identify the persons responsible for responding to similar questions and the means of contacting them in advance of any possible future emergency that could affect NASD systems.

Both member and NASD operations contacts should be available in an on-line web-based directory, which has its own contingency backup. It is also important that this information be highly secured with access restricted to authorized individuals.

### Request for Comment Checklist

### *Filing*

In response to the particular request for comment, the Associations do not believe that firms should be required to file their business continuity plans with the NASD. Current NASD rules do not require NASD members to file copies of internal business documents outside of the member application process, and it is not clear that such a requirement would serve any apparent regulatory purpose.

Ms. Barbara Z. Sweeney  
May 13, 2002  
Page 5

Further, documents that are filed likely would become quickly outdated in many cases. The NASD clearly has the authority to obtain such documents upon request, and we believe that any mandated production of such documents should continue to occur on an as-needed basis.

We do not believe the NASD should provide a repository for the voluntary filing of plans. Plans are supported in a wide variety of tools and formats which would be extremely difficult to collect and manage on a central basis. Additionally, we would be very concerned about the security of those plans being in any repository beyond the control of the individual member firms.

We hope that these comments are helpful. Please feel free to contact the undersigned with any additional questions you may have concerning these matters.

Regards,

/s

Jerry W. Klawitter

SIA Business Continuity  
Planning Committee

TBMA Business Continuity  
Management Council

cc: Robert R. Glauber, Chairman and CEO, NASD  
Mary L. Schapiro, President, NASDR  
Eilsse B. Walter, COO and Executive Vice President, NASDR  
Mary Alice Brophy, Executive Vice President, Member Regulation, NASDR