



Securities Industry Association

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Joint Forum Secretariat
c/o Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 Basel
Switzerland
By email: baselcommittee@bis.org

Re: Basel Committee on Banking Supervision *High-Level Principles for Business Continuity* (December 2005)

Dear Sir or Madam:

The Securities Industry Association (“SIA”) ¹ appreciates the opportunity to comment on the Joint Forum of the Basel Committee on Banking Supervision *High-Level Principles for Business Continuity* (December 2005) (“Principles”). SIA applauds the Joint Forum’s efforts to develop the Principles and welcomes further dialogue with the Joint Forum on these issues.

SIA is integrally involved in the business continuity planning (“BCP”) efforts of its members and the U.S. securities industry generally. SIA directs and facilitates securities industry efforts to strengthen industry-wide BCP and improve securities market resilience. SIA staff address BCP issues in conjunction with the SIA BCP Committee ², which is comprised of representatives of 125 securities firms, securities exchanges/markets, industry utilities, regulatory agencies, emergency management organizations, and other organizations. SIA publishes BCP guidelines to assist its member firms in developing effective business continuity strategies. Perhaps most critically, SIA leads the securities industry BCP testing initiative in partnership

¹ SIA brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA’s primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (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. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated \$236.7 billion in domestic revenue and an estimated \$340 billion in global revenues. More information about SIA is available at: <http://www.sia.com>.

² Of note, the SIA BCP Committee has replaced the Securities Industry Business Continuity Management Group, referenced in footnote 3 of the Principles. We respectfully request that the footnote be edited accordingly.

with The Bond Market Association, Futures Industry Association, and other industry groups. The testing program is driven by the securities industry and includes extensive, annual BCP tests that exercise and verify backup capabilities across the industry. SIA operates the Securities Industry Emergency Command Center that coordinates industry responses to major emergency events among securities firms, exchanges/markets, regulators, and public sector emergency response organizations. SIA represents the interests of its members on BCP issues with regulators and legislators and frequently comments on pending rules, guidelines and legislation. To provide a forum to highlight critical BCP issues and trends, SIA presents a well-attended annual BCP Conference and Exhibit in New York.

Given SIA's BCP efforts, SIA applauds the Basel Committee in the production of the Principles and supports its efforts to unify best practices for regulatory authorities worldwide. Consistent regulations across multiple jurisdictions ease the regulatory burden for SIA members and make compliance with regulations and best practices more efficient. SIA also supports best practices and regulations which provide members with the flexibility to implement compliance programs which are tailored to the member's size and type of business.

SIA does, however, have a number of concerns with the draft Principles which are outlined below. In general, we note that while firms are able to implement comprehensive and effective compliance programs, including business continuity plans, firms cannot guarantee that the programs will be 100% effective in restoring business operations in a given timeframe due to the extensive number of variables and factors involved in such restoration. For example, firms must rely heavily on third-party telecommunications providers which are not currently held to the same high standards for disaster recovery planning as U.S. financial services providers. Our more specific comments on the Principles are outlined below.

Resumption of "New Business" (Principle 3)

SIA agrees that financial industry participants should adopt risk-proportionate measures for recovery and business continuity. SIA requests, however, that the Principles be clarified to define "new business" in paragraph 31. As currently drafted, there is no definition of what constitutes "new business" and therefore could be interpreted to include opening new accounts, submitting new trades, or reentering the marketplace in any way. SIA believes that firms of any size should be permitted to decide when to resume "new business" in the timeframe, which corresponds with their particular situation and needs. Further, the definition of "critical market participants" is inordinately broad because what constitutes a "major disruption" is an entirely subjective standard. In addition, the market should and would drive any firm's return to business thus a prescriptive requirement to do so is not necessary.

Third Party Service Providers as Financial Industry Participants (Principle 4)

As currently drafted, the Principles define "financial industry participants" broadly to include financial institutions as well as certain third-party service providers, but the definition neglects to include non-financial service providers such as telecommunications companies which

provide critical infrastructure for both internal and external communications on which financial industry participants rely. Such third-parties are not regulated by securities regulators and therefore are not held to, and do not have, the same standards for BCP as do securities industry participants. We contend that telecommunications regulators should be encouraged to require telecommunications industry participants to adopt principles and BCPs similar to those required by the financial services industry.

Moreover, in light of the lack of BCP regulation in the telecommunications industry, the Principles should take into account the lack of control that financial industry participants have over their non-financial service providers, particularly in a disaster situation.

Contact with Non-Domestic Regulators (Principle 5)

The Principles currently require communications protocols to “address circumstances under which [a firm] would contact the relevant non-domestic financial authorities.” We believe that if a firm has significant operations in another country, it would be expected that the branch office or affiliate in that country would contact their local regulator if circumstances so require such notification. SIA contends that such a requirement is overly prescriptive and would not likely need to occur under most circumstances.

Testing (Principle 6)

SIA believes that industry-wide testing is a critical component of business continuity planning and, except as otherwise noted herein, the Principles adequately cover such testing. To more accurately depict an internal or external audit review of a firm’s BCP, we recommend that the last sentence in paragraph 41, be edited to read, “An independent party, such as internal or external audit, should assess the effectiveness of the organisation’s testing programme, by reviewing test results and reporting their findings to senior management and the board.” (Proposed changes underlined.)

Further, SIA contends that it is unnecessary to include “all personnel who are likely to be involved in responding to major operational disruptions” as stated in paragraph 42, because this would likely encompass every firm employee in many cases. In order to perform adequate and effective testing, firms should be permitted to select those employees which the firm deems critical to the recovery effort to participate in testing. As such, we suggest that the last sentence of that paragraph be amended to state, “It is important, therefore, that testing programmes should involve all appropriate critical personnel selected by the financial industry participants who are likely to be involved in responding to major operational disruptions.” (Proposed changes underlined.)

SIA supports industry-wide testing and, as mentioned above, leads an annual industry-wide BCP live exercise which tests the industry’s coordinated recovery and continuity mechanisms. In addition we understand that the securities industry in the United Kingdom has also engaged in industry-wide testing but to a lesser extent than that facilitated by SIA. We

believe that references to such tests should be footnoted in paragraph 41 as examples of successful industry-wide testing.

Review of BCPs by Financial Authorities (Principle 7)

SIA agrees that financial authorities should review the BCPs of financial industry participants and, in particular, supports consistent review mechanisms for financial authorities with concurrent jurisdiction over the same financial industry participant. For example, SIA supports consistent regulation of its broker-dealer members by U.S. securities regulators, including the Securities and Exchange Commission, NASD, and NYSE. SIA does not believe that the standards applicable to banks (including banks affiliated with broker-dealers) should be applied to broker-dealers because of the significant differences in business functions.

Finally, SIA believes that financial authorities may not be in a position to assess whether a particular BCP “provides adequate assurance that business processes can be recovered as intended” as stated in paragraph 44. It seems that most regulators would not have the resources or tools necessary to make such assessments and therefore are limited to assessing whether the BCP meets the regulatory standards established in that jurisdiction, and not whether that BCP will be effective under any given circumstance. As a result, we request that paragraph 44 be amended or deleted in its entirety.

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If you have any questions or comments, please contact Howard Sprow, Assistant Vice President and Director, Business Continuity Planning, SIA, at (212) 618-0548.

Very truly yours,

Gregory J. Ferris
Chair
SIA Business Continuity Planning Committee

cc: Howard H. Sprow
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