

#### IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the requirements of Section 15A(b)(6).<sup>14</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest.<sup>15</sup>

The Commission believes that the proposed rule change will enhance NASD's regulatory efforts and investor protection mission. The proposal should improve NASD's ability to detect and prevent fraudulent and manipulative conduct and enable it to develop regulatory responses to problem areas at the earliest possible time. The Commission further believes the regulatory benefits of the proposed rule change outweigh the additional burden on members to file with NASD copies of the specified documents, and that the proposal minimizes that burden in that the rule requires only the filing of those complaints and claims most likely to reveal information that should assist NASD's regulatory mission.

#### V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2002-112), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47441; File No. SR-NASD-2002-108]

#### Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1, 2, and 3 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Business Continuity Plans and Emergency Contact Information

March 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the National Association of Securities Dealers, Inc. ("NASD"), on August 7, 2002, filed with the Securities and Exchange Commission ("Commission"), a proposed rule change to require its members to establish and maintain business continuity plans. The Commission published the proposed rule change in the **Federal Register** on September 9, 2002.<sup>3</sup> The Commission received three comments in response to the Original Notice. The NASD submitted amendments to the proposed rule change on December 12, 2002;<sup>4</sup> January 8, 2003;<sup>5</sup> and February 19, 2003.<sup>6</sup> The Commission is publishing this notice of Amendment Nos. 1, 2, and 3 to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to clarify that the proposed rule change, which would require member firms to create and maintain business continuity plans and to provide the NASD with certain information to be used in the event of future significant business disruptions, also would require members' business continuity plans to be reasonably designed to enable members to continue their business in the event of a significant business disruption. Below is the text of the proposed rule change, as

amended. The base rule text is that proposed in the Original Notice. Language added by Amendments Nos. 1, 2 and 3 is italicized; language deleted by the amendments is in brackets.

\* \* \* \* \*

#### 3500. Emergency Preparedness

##### 3510. Business Continuity Plans

(a) Each member must create and maintain a written business continuity plan identifying procedures [to be followed in the event of] *relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the member to continue its business in the event of future significant business disruptions.* The business continuity plan must be made available promptly upon request to NASD staff.

(b) *Each member must update its plan in the event of any material change to the member's operations, structure, business, or location.* Each member must also conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business, or location.

(c) The [requirements of] *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) Business constituent, bank, and counter-party impact;
  - (7) Regulatory reporting; and
  - (8) Communications with regulators.
- Each member must address the above-listed categories to the extent applicable and necessary to enable the member to continue its business in the event of a future significant business disruption. 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.*
- (d) *Members must designate a member of senior management to*

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 46444 (August 30, 2002), 67 FR 57257 ("Original Notice").

<sup>4</sup> See letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation, Commission, dated December 11, 2002 ("Amendment No. 1").

<sup>5</sup> See letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation, Commission, dated January 8, 2003 ("Amendment No. 2").

<sup>6</sup> See letter from Brian J. Woldow, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation, Commission, dated February 19, 2002 ("Amendment No. 3").