

approve the plan and he or she shall be responsible for conducting the required annual review. The member of senior management must also be a registered principal.

[d](e) For purposes of this rule, the following terms shall have the meanings specified below:

(1) "Mission critical system" means any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(2) "Financial and operational assessment" means a set of written procedures that allows a member to identify changes in its operational, financial, and credit risk exposures.

3520. Emergency Contact Information

(a) Each member shall report to NASD, via such electronic or other means as NASD may require, prescribed emergency contact information for the member. *Among other things*, [t]he emergency contact information for the member includes designation of two emergency contact persons. Each emergency contact person shall be a member of senior management and a registered principal of the member.

(b) Each member must *promptly* update its emergency contact information, via such electronic or other means as NASD may require, in the event of any material change[, but at a minimum must review the information contained therein twice a year to ensure its accuracy].

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of Amendment No. 3 is to clarify that the language of proposed NASD Rule 3510 is intended to require not only that members conduct a planning process to create a written business continuity plan, but also that the plan resulting from this process be *reasonably designed* to enable members to continue their business in the event of a future significant business disruption.

As described in detail in the Original Notice, following the tragic events of September 11, 2001, and after an extensive survey of the business continuity practices of members, the NASD proposed two new rules, Rules 3510 and 3520. Proposed NASD Rule 3510 would require members to create and maintain business continuity plans. In developing this rule, the NASD recognized the diversity in size, structure, operations, and business of its members. Each member's plan would be required, at a minimum, to address eight areas specified in the proposed rule change, which the NASD believes are essential to a broker-dealer's business continuity plan.

Proposed NASD Rule 3510 also would require members to update their business continuity plans based on any material change to the member's operations, structure, business, or location. In addition, members would be required to conduct an annual review of their plans to determine whether any modifications are needed in light of any changes to the member's operations, structure, business, or location. Finally, members would be required to designate a member of senior management to approve the plan and conduct the annual review.

The NASD's experience in the aftermath of September 11th also confirmed that the NASD needs a fully reliable means of contacting firms in the event of an emergency. Proposed NASD Rule 3520 would require members to file and keep current with the NASD certain key information that would be of particular importance during significant business disruptions, including:

- Emergency contact information for key staff;
- Identification of two designated contact persons;
- Location of books and records (including back-up locations);
- Clearance and settlement information;

- Identification of key banking relationships; and
- Alternative communication plans for investors.

The purpose of Amendment No. 3 is to address concerns that a literal reading of proposed NASD Rule 3510, as set forth in the Original Notice, could suggest that the rule would require members only to create, maintain, and periodically review a business continuity plan, but would not require that members' plans be effective in enabling members to continue their business in the event of a future significant business disruption. The NASD did not intend to propose a rule of such limited scope. In this regard, in its description of the purpose of the proposed rule change, the NASD stated that "[t]he purpose of the proposed rule change is to help to ensure that NASD members will be able to continue their business in the event of future significant business disruptions." The NASD believes that members should be obligated to develop a business continuity plan that is reasonably designed, in light of particular characteristics of the firm, to allow the firm to recover as early as practicable in the event of a future significant business disruption.

Therefore, the NASD is proposing to amend proposed NASD Rules 3510(a) and 3510(c) to clarify that the rule is intended to require not only that members conduct a planning process to create a written business plan, but also that the plan resulting from this process be reasonably designed to enable the member to continue its business in the event of future significant business disruptions. The NASD notes that the amended rule language is consistent with NASD rules in other areas where reasonableness standards have been adopted because the diversity of the NASD's membership made specific standards impracticable.⁷ The NASD believes that, in light of the concerns regarding the clarity of the original proposed rule text, this amendment to the proposed rule change should be published for comment to ensure that interested persons are given notice of the clarification and an opportunity to comment thereon.

2. Statutory Basis

The NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,⁸ which requires, among other

⁷ See, e.g., NASD Rules 3010 (Supervision) and 3011 (Anti-Money Laundering Compliance Program).

⁸ 15 U.S.C. 78o-3(b)(6).