

maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(e) The term “financial and operational risk assessments,” for purposes of this Rule, means a set of written procedures that allow members and member organizations to identify changes in their operational, financial, and credit risk exposure.

(f) Members and member organizations must designate a senior officer, as defined in Rule 351(e), to approve the Plan, who shall also be responsible for the required annual review, as well as an Emergency Contact Person(s). Such individuals must be identified to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number). Prompt notification must be given to the Exchange of any change in such designations.

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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 NYSE 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 NYSE 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 this amendment is to clarify that the language of proposed NYSE Rule 446 is intended to require not only that members and member organizations conduct a planning process to create a written business continuity and contingency plan, but also that the plan resulting from such process be reasonably designed to enable members and member organizations to continue their businesses in the event of a future significant business disruption.

As described in detail in the Original Notice, the tragic events of September 11, 2001, and their disruptive impact on the manner in which the securities industry operates have re-emphasized the need for greater contingency planning for business continuity. Accordingly, the Exchange has proposed new NYSE Rule 446 which

would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption. Members and member organizations would be required to make such plans available to the Exchange upon request. The proposed rule also would require that members and member organizations designate and notify the Exchange of a senior officer designated to approve and annually review the plans and to designate an emergency contact person(s).

The purpose of Amendment No. 3 is to address concerns that a literal reading of proposed NYSE Rule 446, as set forth in the Original Notice, could suggest that the rule would require members and member organizations only to create, maintain and periodically review a business continuity and contingency plan, but would not obligate members and member organizations to develop a plan that is effective in enabling the member or member organization to continue its business in the event of a future significant business disruption. The Exchange did not intend to propose a rule which limits the scope of its members' and member organizations' responsibilities in establishing such plans. In this regard, in its description of the purpose of the proposed rule change, the Exchange stated that the “disruptive impact” of September 11, 2001 “re-emphasized the need for greater contingency planning for business continuity.” Implicit in planning for “business continuity” is the requirement that members' and member organizations' business plans make it possible for them to continue operating in the event of a significant business disruption. Accordingly, the NYSE believes that members and member organizations should be obligated to develop a business continuity and contingency 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 interruption.

Accordingly, the Exchange is amending the language of proposed NYSE Rule 446 to clarify that the proposed rule change is intended to require the creation of not only a written business continuity and contingency plan, but also a reasonably effective plan. In light of the concerns regarding the clarity of the original proposed rule text, the Exchange believes that 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 NYSE believes that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b)(5) of the Act.⁷ Under that section, the rules of the Exchange must be designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NYSE received three written comment letters in response to the Original Notice. In response to the comment letters, the Exchange identified the following issues that warranted amendment and/or further clarification:⁸

Annual Review of Business Continuity and Contingency Plans (“BCPs”)

Proposed NYSE Rule 446(b) would require members and member organizations to conduct a yearly review of their business continuity and contingency plans to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location. Some commenters believed that the yearly review requirement was inadequate. Although commenters cited different events that should trigger an update of a BCP, most commenters who dissented believed that the plans should be updated more frequently.

The Exchange believes that BCPs must be updated whenever there is a

⁷ 15 U.S.C. 78f(b)(5).

⁸ This discussion was originally provided in Amendment No. 1.