

material change in a firm's operations, structure, business, or location that affects the information set forth in the BCP. In response to industry comments, the Exchange is amending the proposed rule to expand upon this requirement to include the following language:

Members and member organizations must conduct, at a minimum, a yearly review of their business continuity and contingency plan. In the event of a material change to a member's or member organization's operations, structure, business or location, the member or member organization must promptly update its business continuity and contingency plan.

This added language emphasizes that this requirement would be in addition to the yearly review.

Minimum Requirements of a BCP

Proposed Rule 446(c) would set forth the minimum requirements that a BCP must address. Plans would, at a minimum, be required to address: Books and records back-up and recovery (hard copy and electronic); identification of all mission critical systems and back-up for such systems; financial and operational risk assessments; alternate communications between customers and the firm; alternate communications between the firm and its employees; alternate physical location of employees; business constituent, bank, and counter-party impact; regulatory reporting; and communications with regulators.

One commenter stated that all of the items listed above may not be applicable to all members and member organizations. In response to industry comments, the Exchange is amending proposed NYSE Rule 446(c) to include the language "if applicable." In addition, the rule would require that, if an item is not applicable, a member's or member organization's BCP would have to specify the item(s) and state the rationale for not including such item(s) in its plan. Further, the rule would state that, if a member or member organization relies on another entity for any of the above-listed categories or any mission critical system, the member's or member organization's business continuity and contingency plan must address this relationship.

Business Constituent, Bank and Counterparty Impact

Proposed NYSE Rule 446(c)(7) would require that a member's or member organization's BCP address "business constituent, bank and counterparty impact." A commenter asked for clarification of this category. Under this proposed category, members and

member organizations would be required to establish procedures that assess the impact that a significant business disruption has on business constituents (businesses with which a member or member organization has an on-going commercial relationship pertaining to the support of the member's or member organization's operating activities), banks (lenders), and counter-parties (such as other broker-dealers or institutional customers). In addition, members and member organizations would be required to provide for alternative actions or arrangements with respect to their contractual relationships with business constituents, banks, and counter-parties upon the occurrence of a material business disruption to either party. An Exchange Information Memo announcing adoption of the rule will provide the guidance described above with regard to this requirement of the rule.

Emergency Contact Information

Proposed NYSE Rule 446(f) would require members and member organizations to designate and identify to the Exchange a senior officer to approve and review BCPs, as well as an emergency contact person(s). Prompt notification would have to be given to the Exchange in the event of a change in such designations. While commenters supported this requirement, one commenter suggested that the SROs take a "proactive role in the gathering of this contact information." The Exchange believes that it has taken a proactive approach in that regard. The Exchange previously required (effective August 30, 2002) that members and member organizations furnish BCP contact information to the Exchange in addition to contact information on other key personnel and that such information be reviewed and updated on a quarterly basis. Such changes in designation are made by members and member organizations through the Exchange's Electronic Filing Platform ("EFP"). The Exchange also established a new emergency notification telephone line (1-866-NYSEDIAL) and website (www.nyse.com/memberinfo) for members and member organizations to access and obtain up-to-date information concerning a disruption to normal NYSE business operations.

Participation in a Corporate-Wide BCP

One commenter raised an issue that, when a member or member organization participates in a corporate-wide BCP of its parent corporation (non-member or member organization) that satisfies the proposed rule requirements, this

requirement inappropriately imposes Exchange rules upon non-member organization parents. The Exchange believes that if a member or member organization chooses to participate in a parent company's corporate-wide business continuity plan, the record-keeping, supervision, creation, execution, or updating of that plan must comply with NYSE rules. Participating in a corporate-wide continuity plan is an alternative and is intended to give firms greater flexibility in complying with the proposed rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-NYSE-2002-35 and should be submitted by April 24, 2003.