

procedures relating to a business disruption and should be included in the member's business continuity plan.

#### **Proposed NASD Rule 3520**

##### • *Emergency Contact Information*

Proposed NASD Rule 3520 would require members to provide the NASD with emergency contact information and to update any information upon the occurrence of a material change. The proposed rule would require members, among other things, to designate two emergency contact persons that the NASD could contact in the event of a significant business disruption. Each emergency contact person would have to be a registered principal and a member of senior management.

One commenter asserted that the proposed rule should not require emergency contact persons to be members of senior management and registered principals. The commenter characterized this requirement as invasive and believed that the NASD should allow others to serve as emergency contact persons.<sup>21</sup> The NASD disagrees with this assessment. The NASD proposed this requirement to address situations in which the NASD wishes to contact a member in the event of a significant business disruption and believes that the emergency contact persons must be registered principals and members of senior management. Under such critical circumstances, the NASD wants to ensure that it will be able to contact persons in senior management directly regarding the condition and operations of the firm. Moreover, the NASD believes that it is essential that the emergency contact persons be members of senior management with the authority, experience, and knowledge to make potentially critical and time-sensitive decisions regarding the firm.<sup>22</sup>

##### • *Review and Update of Emergency Contact Information*

The NASD also is amending its proposed rule to include a requirement that each member review and update, if necessary, its emergency contact information on a quarterly basis. Proposed NASD Rule 3520(b), as amended by Amendment No. 1, would require members to promptly update their emergency contact information in the event of any material change. Because of the essential nature of this information, the NASD believes that members also should review and update

this information on a quarterly basis to ensure its accuracy. Consistent with the quarterly FOCUS reporting schedule, members must review or update, if necessary, its emergency contact information within 17 business days after the end of each calendar quarter. Under this provision, the member's Executive Representative must perform the review and update. Finally, members must have adequate controls and procedures to ensure that only the Executive Representative may perform the review and update of the member's emergency contact information.

##### • *Effective Date of Rules*

One commenter requested that, upon Commission approval of the proposed rule change, the NASD announce in the **Federal Register** an effective date for the rule of 360 days after notice of Commission approval.<sup>23</sup> In Amendment No. 5, the NASD proposes to establish separate effective dates for introducing firms and clearing firms (including self-clearing firms) to create or modify their business continuity plans, as required by proposed NASD Rule 3510. The NASD believes that this is necessary because many introducing firms may need access to information regarding the business continuity planning of their clearing firms. To ensure that introducing firms would have sufficient time to create or modify sections of their plans that might be affected by the plans of their clearing firms, the NASD is extending by 30 days the proposed effective date for introducing firms to comply with proposed NASD Rule 3510.

In addition, to further consistency with the business continuity plan rule proposed by the NYSE, the NASD is proposing in Amendment No. 5 to calculate the effective dates of both proposed NASD Rules 3510 and 3520 from the date of publication of the Commission approval order. Accordingly, clearing firms would have to establish business continuity plans, as required by proposed NASD Rule 3510, within 120 days of the publication of the Commission order announcing the approval of the NASD's rule filing; introducing firms would be required to establish business continuity plans, as required by proposed NASD Rule 3510, within 150 days of the publication of the Commission order announcing the approval of the NASD's rule filing. All members (both introducing and clearing firms) would be required to designate emergency contact persons and provide the NASD with their contact information, as required by proposed NASD Rule 3520, within 60 days of

publication of the Commission's approval order.

#### **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,<sup>24</sup> which requires, among other things, that the NASD's rules be 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. The NASD believes that the proposed rule change, as amended, which would help to ensure that members are prepared for significant business disruptions, is consistent with those purposes.

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

The NASD 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-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

Written comments were received in response to Notice to Members 02-23 (April 2002) and the Original Notice. The NASD received 32 comment letters following publication of the Notice to Members. The NASD received three comment letters in response to the Original Notice.<sup>25</sup> The NASD addressed these comments in Amendment Nos. 1, 2, and 3, which were published for comment in the **Federal Register** on March 10, 2003.<sup>26</sup> The NASD incorporates the interpretations in the Original Notice and Amendment Nos. 1, 2, and 3 to the extent that they are consistent with the interpretations contained in this release. In response to the **Federal Register** notice of March 10, 2003, the Commission received three comment letters.<sup>27</sup> The NASD's response to these comment letters is contained in section II(A)(1) above.

#### **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 within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

<sup>21</sup> See A.G. Edwards Letter.

<sup>22</sup> The NASD notes that the requirement that a contact person be a member of senior management and a registered principal is consistent with other NASD rules, including designation of a member's Executive Representative.

<sup>23</sup> See SIA/BMA Letter.

<sup>24</sup> 15 U.S.C. 78o-3(b)(6).

<sup>25</sup> See *supra* note 11.

<sup>26</sup> See *supra* note 7.

<sup>27</sup> See *supra* note 13.