

of an emergency or significant business disruption." In Amendment No. 3, the Exchange changed "to be followed in the event of an emergency or significant business disruption" to "relating to an emergency or significant business disruption." The commenters believed that this new language was less clear than the language originally proposed.¹⁹ This amendment, however, intends only to reflect that a BCP might include information other than a list of procedures to be followed by the member or member organization in the event of a significant business disruption. For example, a BCP might reference an existing arrangement with another entity that permits the entity to perform services for the member or member organization in the event of a future business disruption. While this arrangement is not necessarily a procedure to be followed by the member or member organization in the event of a significant business disruption, it does reflect the member's or member organization's plan relating to a business disruption and should be included in the member's or member organization's BCP.

- **Disclosure Provision**

Following discussions with Commission staff and NASD staff, the Exchange is amending the proposed rule text to require each member or member organization to disclose to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member or member organization plans to respond to events of varying scope. Furthermore, such disclosure must, at a minimum, be made in writing to customers at account opening, posted on the member's or member organization's Internet website (if the member or member organization maintains a website), and mailed to customers upon request.²⁰

The Exchange believes that this requirement would allow investors to evaluate a member's or member organization's BCP when determining whether to place their funds and securities at the specific entity. This requirement also would deter members or member organizations from creating plans that do not adequately address contingency planning. The Exchange, however, notes that members and member organizations would not be required to disclose their entire plans; rather, each member or member organization would be required to create a summary of how its plan addresses the

possibility of significant business disruptions and disclose the member's or member organization's general planned responses to significant business disruptions. Members and member organizations would not need to disclose such factors as: the specific location of any back-up facilities; any proprietary information contained in plan; and the parties with whom the member has back-up arrangements. Members and member organizations, however, would need to disclose the existence of back-up facilities and arrangements.

- **Implementation Schedule**

A commenter requested that the proposal indicate the time required for implementation and suggested that this time be 360 days from publication of the final Rule in the **Federal Register**.²¹ The NYSE believes that the rule should take effect 120 days after approval by the Commission.

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.²² 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 Exchange received written comments in response to the Original Notice that it responded to Amendment No. 3.²³ The Exchange received comments in response to the

publication of Amendment No. 3 that it has responded to above.²⁴

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 October 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,

Deputy Secretary.

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¹⁹ See SIA/BMA Letter 2; see also A.G. Edwards Letter.

²⁰ See proposed NYSE Rule 446(d).

²¹ See SIA/BMA Letter 2.

²² 15 U.S.C. 78f(b)(5).

²³ See *supra* note 12.

²⁴ See *supra* note 14-15.

²⁵ 17 CFR 200.30-3(a)(12).