

**MEMO# 14700**

May 6, 2002

## **DRAFT COMMENT LETTER ON NASD PROPOSED BUSINESS CONTINUITY PLAN RULE**

[14700] May 6, 2002 TO: OPERATIONS COMMITTEE No. 8-02 SEC RULES COMMITTEE No. 37-02 SMALL FUNDS COMMITTEE No. 6-02 TECHNOLOGY ADVISORY COMMITTEE No. 5-02 RE: DRAFT COMMENT LETTER ON NASD PROPOSED BUSINESS CONTINUITY PLAN RULE As we previously informed you, the National Association of Securities Dealers recently issued a notice seeking comments on proposed rules that would require NASD members to establish business continuity plans and to provide additional information to the NASD that could assist the NASD in the event of future significant business disruptions.<sup>1</sup> Attached for your review is a draft of the Institute's comment letter on the proposal. Comments on the NASD's proposal must be filed by May 13, 2002. Please provide any comments on the attached draft letter to Peter Salmon (202/326-5869 or salmon@ici.org) or Frances Stadler (202/326-5822 or frances@ici.org) by Thursday, May 9th. The draft comment letter expresses general support for the NASD's proposal but recommends certain modifications to better accommodate the diverse circumstances of NASD member firms. The letter focuses on the application of the proposed rules to broker-dealers that underwrite securities issued by registered investment companies ("funds"). It notes that proposed Rule 3510 list eight items that "must, at a minimum" be addressed in each business continuity plan, and points out that some of the required items (e.g., alternate communications between customers and the firm) are not applicable to fund underwriters. The draft letter thus recommends that the proposed rule be revised to clarify that business continuity plans must cover the specified areas "to the extent applicable." It further recommends that the NASD clarify that a member firm will be deemed to comply with the rule if its operations are covered by a plan that addresses the relevant specified areas, even if it does not have its own, separate plan. This could be the case where, for example, a fund complex or larger financial services organization has a single business continuity plan that covers more than one corporate entity. 1 See Memorandum to Operations Committee No. 5-02, SEC Rules Committee No. 33-02, Small Funds Committee No. 3-02 and Technology Advisory Committee No. 4-02, dated April 22, 2002. 2 Finally, the letter points out that certain additional information that the NASD proposes to request on the Member Firm Contact Questionnaire (e.g., clearance and settlement information) would not be relevant to fund underwriters. It therefore recommends (similar to the earlier comments) that the NASD clarify that such information must be supplied "to the extent applicable." Peter Salmon Director - Operations/Technology Frances M. Stadler Deputy Senior Counsel Attachment (in .pdf format)

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