

VIA ELECTRONIC MAIL

September 6, 2016

Brent J. Fields, Secretary,
Securities and Exchange Commission,
100 F Street, NE,
Washington, DC 20549-1090

Re: File Number S7-13-16: Adviser Business Continuity and Transition Plans

Dear Mr. Fields:

On July 5, 2016, the Securities and Exchange Commission (SEC) published its request for public comment on a proposed rule requiring SEC-registered investment advisers (RIAs) to adopt and implement written business continuity and transition plans (BCP Rule).¹ The BCP Rule would require business continuity and transition plans to be reasonably designed to address operational and other risks related to a significant disruption in an RIA's operations and to address certain specified components. The BCP Rule is intended to enhance investor protection by requiring RIAs to establish sufficiently robust contingency plans to ensure that they can carry out normal business functions without access to key facilities, systems, or service providers.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI commends the SEC for recognizing the importance of business continuity and transition planning and supports the standardization of those policies. However, imposing specific requirements may have unintended consequences for and a disparate impact on the independent-broker dealer community. FSI offers comments and recommendations to resolve those challenges to create a workable rule.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives. These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

¹ Adviser Business Continuity and Transition Plans Rule Proposal, Release No. IA-4439, available at <https://www.sec.gov/rules/proposed/2016/ia-4439.pdf>.

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisers and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

FSI member firms provide business support to financial advisers in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisers are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations and retirement plans with financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Comments

FSI and its members understand that an RIA's fiduciary duty includes the obligation to protect clients from risks resulting from the investment adviser's inability to provide advisory services, whether because of a systems failure, a natural disaster, or other significant business disruption. FSI members wholeheartedly support giving RIAs the tools necessary to manage operational risk, including fulsome business continuity and transition planning. However, because of the unique nature of the independent financial advisor's business model, our members seek clarification as to how these proposed requirements can be implemented to best serve their clients.

We provide specific input and suggestions in the comments below.

I. Background

The BCP Rule would require RIAs to adopt policies and procedures concerning (1) business continuity after a significant disruption, and (2) business transition in the event the investment adviser is unable to continue providing investment advisory services to clients. The proposal defines business continuity events as natural disasters, acts of terrorism, cyber-attacks, equipment or system failures, or unexpected loss of a service provider, facilities, or key personnel; and business transitions as "situations where the adviser exits the market and thus is no longer able to serve its clients...."³ As all FSI member firms are members of FINRA, they have implemented business continuity plans (BCPs) pursuant to FINRA Rule 4370, which requires members to maintain comprehensive BCP and disaster recovery plans that include many of the same elements as the BCP Rule.⁴ FINRA imposes this requirement at the firm level, but does not require registered representatives affiliated with broker-dealers to have their own separate BCPs. In addition, many states have adopted the North American Securities Administrators Association (NASAA) model rule requiring RIAs registered in a state to have business continuity and succession plans in place in order to minimize service disruptions and client harm due to a significant business disruption.⁵ The majority of FSI member firms are dually registered as broker-dealers and RIAs, so they already have BCPs that comply with the FINRA rule and, if applicable, state's requirements.

³ 81 FR 43537

⁴ FINRA Rule 4370 requires broker-dealers to have BCPs reasonably designed to meet existing customer obligations and address relationships with other broker-dealers and counterparties; see also NASD, [Notice to Members 04-37: Business Continuity Plans \(May 2004\)](#).

⁵ NASAA Model Rule 203(a)-1A.

While the SEC's current Compliance Program Rule requires policies and procedures to address business continuity to the extent it is relevant to an RIA, it does not impose specific requirements. Both the FINRA and NASAA rules are principles-based, allowing financial advisors to base their plans on the facts and circumstances of their business model. FSI supports the SEC taking a consistent approach in its proposed BCP Rule. The BCP Rule expresses concern that in light of recent natural disasters and increasing operational complexity, there is a greater need for robust BCPs. FSI applauds the SEC for recognizing that, while many investment advisers have BCPs in place, they are not always consistent or sufficient to address critical areas of operation. FSI encourages and supports the development of uniform regulatory requirements between the SEC, FINRA and the states in order to promote more effective compliance by regulated entities, including FSI members.

II. FSI commends the SEC for taking a principles-based approach to business continuity planning by allowing investment advisers to tailor plans to the unique needs of their business.

The BCP Rule acknowledges the variation in business models and operations among RIAs and requires only that they take into account the risks associated with their particular operations. FSI applauds the SEC for giving RIAs the flexibility to create business continuity and transition plans that accommodate different business models. However, we seek clarification as to how the requirement to address certain specific components applies to independent RIAs and financial advisors who act as independent contractors rather than employees, and who are contractually responsible for their own equipment and service providers. FSI supports the BCP Rule's purpose of minimizing service disruptions and potential client harm, but because our members' business models and operations vary, we ask that the BCP Rule only apply to RIAs at the firm level and will not require independent advisers to have duplicative or separate business continuity plans. Second, where RIAs are affiliated with broker-dealers (or where such entities are under common control) and these entities utilize the same or similar business platforms to support brokerage and investment advisory business operations, the BCP Rule should provide such affiliated firms with the flexibility to create and maintain one business continuity and transition plan for such entities.

A. Maintenance of Critical Operations and Systems and Data Protection

FSI suggests that, to the extent that certain RIA dual registrants are affiliated with broker-dealers and utilize common business and operational platforms for their brokerage and advisory business, those RIAs and affiliated broker-dealers should be permitted to maintain one BCP and transition plan. This proposal aligns with the SEC's willingness to provide investment advisers with the flexibility to create and implement comprehensive BCP and transition plans and it would promote efficiency for firms with multiple business lines (e.g., brokerage and advisory business).

Similar to the independent broker-dealer model, independent RIAs typically maintain a full service investing platform through one or more of its home/corporate office(s). These comprehensive investing platforms enable affiliated investment advisory representatives (IARs) to conduct business remotely. Importantly, even if an individual adviser experiences a business continuity event in his or her branch office, his or her clients could still make transactions through the RIA's home office, regardless of whether this was facilitated by the advisor or directly with the client. Furthermore, independent RIAs typically maintain the majority of the investment advisory "books and records" at the home or corporate office, maintaining only a limited number of

records at the branch office. Put simply, RIAs with such models should not have to manage hundreds or thousands of business continuity and transition plans, if business can be processed remotely and there would be little to no impact on the customer.

B. Pre-Arranged Alternate Physical Location

FSI financial advisor members who are IARs are small business owners, often living in the communities they serve, and many operate offices in their homes. The BCP Rule would require RIAs to arrange for alternate physical location of their offices and/or employees.⁶ Requiring RIAs who work out of their own home to maintain an alternate physical office would be unnecessary if they can conduct business remotely. Further, for RIAs who live and work in the same area, a natural disaster or other emergency causing a material service disruption would likely affect an alternate physical location as well. FSI suggests that the rule clarify that the ability to work remotely would satisfy this requirement for an independent financial advisor's BCP, so long as the advisor may rely on its RIA's BCP to minimize material service disruptions to critical systems and data.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with SEC on this and other important regulatory efforts

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" and a distinct "Bellaire" at the end.

David T. Bellaire, Esq.
Executive Vice President & General Counsel

⁶ *Id.*