

DISASTER RECOVERY PLAN
aka BUSINESS CONTINUITY PLAN (“BCP”)
CHECKLIST

In the aftermath of 9/11, the SEC and NASD approved rules requiring RIAs and BDs to have a business continuity plan (“BCP”) in case of a major disaster. How will you get back up and running if your office becomes uninhabitable... your files disappear... your staff can’t get to work... your phone lines are down...? The BCP addresses events that could cause a significant business disruption and how the business will regain functionality within the shortest possible time span.

What the SEC looks for (RIAs)

The SEC “Compliance Programs Rule” requires RIAs to have BCPs, albeit just a small line item of a more comprehensive rule. The rule does not give insight or guidance as to contents of a BCP. Based on deficiencies found in audit letters, the SEC has outlined topic areas they are looking for in BCPs.

- Safety
- Network failure
- Telecommunications interruptions
- Utilities failure
- Communications with clients
- Communications with employees
- Training of employees
- Testing of BCP
- Adequacy of emergency procedures of service providers
- Succession planning

What the NASD looks for (BDs)

The NASD rule approved on 4/7/04 outlines the elements that a BCP must address. (See Federal Register 4/13/04 page 19586 and NASD NTM 04-37.)

- 1) Data back-up and recovery;
- 2) All mission critical systems;
- 3) Financial and operational assessments;
- 4) Alternate communications between customers and the BD;
- 5) Alternate communications between the BD and its employees;
- 6) Alternate physical location of employees;
- 7) Critical business constituents, banks, and counter-parties;
- 8) Regulatory reporting;
- 9) Communications with regulators; and
- 10) How the BD will assure customers’ prompt access to their funds and securities in the event that the BD determines that it is unable to continue its business

- Each BD must update its BCP in the event of any material change to its operations, structure, business, or location.
- BDs must conduct an annual review of its BCP to determine whether modifications are necessary.
- BDs must designate a member of senior management (a registered principal) to approve the plan, and be responsible for conducting the annual review.
- BDs must disclose to customers how its BCP addresses the possibility of a significant business disruption and how the BD plans to respond to events. Disclosure must be made in writing at account opening, posted on the website (if a site is maintained), and mailed to customers on request.

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