

Redefining Business in the Post-September 11 New Economy

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At 9:30 a.m. on September 17, a bell was rung on the floor of the New York Stock Exchange. And trading resumed as it has for 209 years.

That bell meant more to us than business as usual.

It sounded out our deepest thanks for the bravery and sacrifice of so many who unhesitatingly came forward to give so much in this difficult time. It rang out our heartfelt prayers for those we have lost, their families and loved ones. It steeled our collective determination to never let cowardice, intolerance and evil sway this great and free society from its strong and sure course towards a better tomorrow.

We move forward, stronger in spirit and purpose, knowing that history has proven the ability of our financial system to survive the darkest challenges time and again. We vow to do our utmost to preserve the bedrock foundations of worldwide prosperity and well-being. And we will sound that bell again and again.

And let freedom ring.

New York Stock Exchange
Statement/Advertisement
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The tragic events of September 11, 2001, sparked the longest period of halted trading in the American stock markets since the start of World War I. The stock markets experienced considerable

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depreciation when trading resumed on September 17, 2001, compounding an already recessionary economy.

The United States Securities and Exchange Commission (SEC), the American Stock Exchange (Amex), the New York Stock Exchange (NYSE), the Nasdaq Stock Market (Nasdaq), the Federal Reserve Bank of New York (the Fed), the Internal Revenue Service (IRS), and the United States Congress all responded to the terrorist attacks in an unprecedented manner, forever changing the financial services markets. Their responses strengthened the United States' ability to respond to abrupt and substantial instability and altered the way Americans conduct business. September 11 sparked the dawn of a new economy that will alter the conduct of investors, entrepreneurs, and established businesses alike.

Securities and Exchange Commission

The SEC, whose Northeast Regional Office was destroyed when the World Trade Center tower collapsed, reacted to September 11 by exercising its statutory emergency powers for the first time in history.¹ The SEC invoked its powers to ease regulatory restrictions governing publicly traded companies, by adopting numerous temporary rules effective from September 14 through September 17, 2001:²

- Authorizing public companies to repurchase their own securities without regard to the volume and timing restrictions of Exchange Act Rule 10b-18;
- Allowing broker-dealers to disregard September 11 through September 14 as business or calendar days when calculating charges associated with Rule 15c-3 net capital and reserve requirements;
- Exempting purchases by affiliates of publicly traded companies from the short-swing profit rules of Section 16(b);
- Relaxing the requirement of in-person mutual fund board meetings and permitting funds to borrow money from affiliated persons and from entities other than a bank;

¹ Emergency Order, Taking Temporary Action to Respond to Market Developments, Exchange Act Release No. 44791 (Sept. 14, 2001), <<http://www.sec.gov/rules/other/34-44791.htm>>.

² *SEC Takes Action To Facilitate Reopening of Fair and Orderly Equities Markets*, Press Release No. 2001-91, Securities and Exchange Commission, (Sept. 14, 2001), <<http://www.sec.gov/news/press/2001-91.txt>>

- Allowing independent auditors to assist clients with bookkeeping services and records recovery without threatening the independence of such auditors; and
- Permitting Amex specialists to act as floor brokers while Amex shared space at the NYSE.

The SEC ultimately extended the temporary rules relating to net capital and reserve calculations, short-swing profit limitations, mutual fund requirements, and Amex trading through September 28, 2001.³ It extended the rules relating to issuer repurchases through October 12, 2001.⁴ During this time, the SEC continuously stressed that the antifraud provisions of federal securities laws remained in effect during temporary relief periods.

Rule 10b5-1 of the Securities Exchange Act of 1934 provides an affirmative defense against allegations of insider trading available when insiders adopt written plans for trading securities in accordance with the specific requirements of Rule 10b5-1.⁵ Insiders also must adopt such plans in good faith and not as part of a plan or a scheme to evade insider trading rules.

In response to numerous inquiries by law firms and registered companies, the SEC issued an interpretation stating that the termination of a Rule 10b5-1 trading plan between September 11 and September 28, 2001, does not suggest that the plan was not entered into in good faith.⁶ The interpretation also allowed insiders to disregard the week of September 10, 2001, when calculating average weekly trading volumes that limit insiders' ability to sell securities under Rule 144 of the Securities Act of 1933. These interpretations encouraged trading in publicly held securities by facilitating purchases and sales of stock by insiders.

³ Order Extending Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments, Exchange Act Release No. 44827 (Sept. 21, 2001), <<http://www.sec.gov/rules/other/34-44827.htm>>.

⁴ Exemptive Order Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 Issuing Exemptive Relief to Respond to Market Development, Release No. 34-44874 (Sept. 28, 2001), <<http://www.sec.gov/rules/other/34-44874.htm>>.

⁵ 17 CFR 240.10b5-1.

⁶ Calculation of Average Weekly Trading Volume under Rule 144 and Termination of a Rule 10b5-1 Trading Plan, Interpretative Release No. 33-8005a (Sept. 21, 2001), <<http://www.sec.gov/rules/interp/33-8005a.htm>>.

Decreased air travel and increased insurance claims prompted the SEC to announce temporary measures, effective through the remainder of 2001, allowing the airline and insurance industries more expeditious access to the capital markets.⁷ These measures included easier limits on the use of short-form registrations on Form S-3. By facilitating investment in these large, established industries, the SEC also made available investment possibilities for venture capitalists and entrepreneurs willing to invest in potentially troubled companies for the opportunity to profit when stocks rebound. These actions demonstrated the SEC's commitment to stabilize the financial markets and ease businesses' access to capital in an effort to mitigate the impact of the September 11 terrorist attacks.

Despite disruptions to the financial markets and the need for emergency measures, the SEC maintained its composure. The SEC has gone so far as to publicly state that "[t]he United States securities markets are the world's strongest and most vibrant. The Commission has full confidence that the attacks of September 11, 2001, will have little lasting market impact."⁸ The SEC relocated its Northeast Regional Office to the historic Woolworth Building in downtown New York City⁹ and continues to strive to achieve business as usual. This return to normalcy should reassure struggling and burgeoning businesses alike that the American economy once again will prosper.

United States Stock Markets

Amex, the NYSE, and Nasdaq each instituted special measures to resume trading and address market instability precipitated by the events of September 11. These normally competitive venues worked together to ensure the world's leading financial markets would persevere. Though the markets remained closed to most visitors during the 2001 holiday season, they were very much open to trading. As of the end of the last trading day of 2001—December 31—the Nasdaq Composite Index, the Dow Jones Industrial Average, and the Standard & Poor's 500 Index each closed far above their levels immediately prior to September 11, nearly reaching their highest levels of the preceding six-month trading period. Though most reports caution investors that

⁷ *SEC Announces Assistance to the Airline and Insurance Industries in Reaching the Capital Markets*, Press Release No. 2001-107, SEC Dig 2001-189-3 (Oct. 1, 2001), <<http://www.sec.gov/news/press/2001-107.txt>>.

⁸ Emergency Order Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 Taking Temporary Action to Respond to Market Developments, Exchange Act Release No. 44791 (Sept. 14, 2001), <<http://www.sec.gov/rules/other/34-44791.htm>>.

⁹ *SEC Reopens in New Office in Downtown New York*, Wall St. J., Oct. 16, 2001, at C15.

the recession will continue well into 2002, this upward trend suggests the markets may stabilize soon. Reduced volatility undoubtedly increases the ability of investors to predict the outcomes and viability of their endeavors.

American Stock Exchange

The Amex, at 86 Trinity Place in lower Manhattan, was the financial market most significantly affected by the terrorist attacks. Amex could not operate in its own facility when trading resumed in the markets on September 17, 2001. Because its building was located literally within a few hundred feet of the disaster site, access to the building would disrupt ongoing search and rescue efforts.¹⁰ Significant utility and safety issues also prevented use of the facility.

Beginning September 17, Amex equities and Exchange Traded Funds (ETFs) were traded on the floor of the NYSE, and Amex-registered options traders and specialists were allowed to trade options on the floor of the Philadelphia Stock Exchange.¹¹ These measures set aside the competition and enmity that naturally existed between the exchanges. As operations continue to get back to normal, Amex undoubtedly will design contingency plans to address future disruptions and redefine its definition of "normal."

New York Stock Exchange

The NYSE was instrumental in reopening the United States equities markets on September 17, 2001, and has capitalized on that success as its current theme. The October 2001 issue of the NYSE's publication, *The Exchange*, contained this sub-title in bold type: "Rebuilding, Reshaping, Restoring Confidence."¹² NYSE Chairman Richard Grasso was quoted as saying, "We served notice to the criminals that they failed. America's economic system is intact." The *New York Post* called Mr. Grasso one of the "biggest winners" of 2001 for getting the NYSE back into operation just one week after September 11.¹³ Not only did the NYSE aid in market reopening efforts by allowing Amex equities and ETFs to trade on its floors, it also assisted with the relocation of approximately 35 member firms that were either displaced or could not access their offices as a result of September 11. In its annual *Year in Review* press release, the NYSE

¹⁰ *The American Stock Exchange Resumes Trading On Monday, September 17, 2001*, The American Stock Exchange Press Release (Sept. 15, 2001), <http://www.amex.com/reference/press_resumetrading.stm>.

¹¹ Gaston F. Ceron, *Amex's Trading Floor Is Set to Reopen After Hiatus Forced by Terrorist Attack*, Wall St. J., Oct. 1, 2001, at C19.

¹² *The Exchange*, New York Stock Exchange, Vol. 8, No. 10 (Oct. 2001).

¹³ *2001's Biggest Winners & Losers*, N.Y. Post, Dec. 23, 2001, at 36.

viewed its September 17, 2001, reopening as a success, with a record daily share volume of 2.37 billion shares.¹⁴

Though the NYSE responded successfully to the terrorist attacks and was able to reopen in a remarkably short time, fears of the effect of potential future catastrophes still exist. The NYSE has broached the idea of dividing operations between two locations as part of an elaborate contingency plan, as well as a continuation of pre-September 11 discussions about creating a new trading facility on the east side of Broad Street between Wall Street and Exchange Place.¹⁵ The NYSE and Nasdaq also have discussed adapting their systems to accommodate trading of each other's securities in the event either market is affected by any future events. These discussions would have been inconceivable prior to September 11.¹⁶ Even though the NYSE was not in close proximity to the World Trade Center, the terrorist attacks appreciably affected the market's operations and outlook.

The Nasdaq Stock Market

Among the criteria necessary to allow a security to remain listed on the Nasdaq National Market and the Nasdaq SmallCap Market is the requirement that listed companies maintain certain minimum bid prices for listed securities. It also requires minimum market values of publicly held securities.¹⁷ Failure to meet the continued inclusion requirements for 10 consecutive trading days normally places an issuer in default of Nasdaq's continued listing requirements. An issuer in default generally is afforded a 30-day grace period during which its securities must trade at the applicable minimum bid price for at least 10 consecutive trading days. In response to the September 11 terrorist attacks, Nasdaq issued a moratorium suspending the minimum bid price and public float requirements until January 2, 2002, allowing listed companies to ignore such requirements without being delisted from the Nasdaq National Market and the Nasdaq SmallCap Market.¹⁸

¹⁴ *NYSE 2001: Year In Review*, New York Stock Exchange Press Release, Dec. 31, 2001.

¹⁵ Kate Kelly, *Deals & Deal Makers: NYSE May Split Into Two Sites*; Kinney, Britz *to Share Top Posts*, Wall St. J., Oct. 5, 2001, p. C12.

¹⁶ Kate Kelly, *Rebuilding Wall Street, Exchanges Reach Out to Avoid Future Disasters*, Wall St. J., Sept. 27, 2001, p. C1.

¹⁷ National Association of Securities Dealers Marketplace Rule 4310(c), 4450(a)-(b).

¹⁸ *Nasdaq Takes Actions to Help Companies Remain Listed: Temporarily Suspends Minimum Bid Price and Public Float Requirements for Continued Listing on Market*, Nasdaq Press Release, Sept. 27, 2001.

The threat of delisting had affected many Nasdaq-traded companies prior to September 11, with the Nasdaq composite down more than 60 percent at the beginning of September 2001 from its high in March 2000. This moratorium not only helped many small companies continue trading on the Nasdaq market, it also prevented delisting of some prominent companies included in the Nasdaq 100.¹⁹ Nasdaq National Market companies that failed to maintain required minimum bid prices after January 2, 2002, were allowed to transfer to the Nasdaq SmallCap Market, with its \$1.00 minimum bid price requirement, without first meeting the \$4.00 bid price required for initial inclusion on the SmallCap Market.²⁰

In addition to providing relief to help companies maintain their Nasdaq listings, the National Association of Securities Dealers (NASD), Nasdaq's parent company, issued an alert on November 15, 2001, cautioning investors about potentially inaccurate recommendations relating to companies that make defense, anti-terrorism or biological detection products.²¹ Unsolicited faxes and junk e-mail—spam—had been sent to investors and to NASD, claiming certain companies possessed products or services that would aid anti-terrorism efforts or protect consumers from biological threats. These communications were part of an attempt to boost the prices of the companies' stock.

By assisting both companies and investors, Nasdaq demonstrated its concern for the market as a whole. Its relief measures benefited listed companies, investors, and entrepreneurs by helping the companies avoid delisting and ensuring continued liquidity for publicly traded securities.

The Fed's Analysis of the Effects of September 11

The Fed succinctly summarized the effects of September 11 on the United States economy in its third quarter *Report on Treasury and Federal Reserve Foreign Exchange Operations*, issued November 1, 2001. The report states, "The attacks heightened pre-existing concerns about the weakness of the U.S. economy and lent further momentum to the general trends that prevailed earlier in the quarter."²² Following

¹⁹ Kate Kelly, *Small-Stock Focus: Nasdaq, with More of Its Stocks Below \$1, Will Ease Some Listing Rules Until 2002*, Wall St. J., Sept. 28, 2001, p. C1.

²⁰ Nicholas Johnston, *Local Firms Risk Nasdaq Delisting; Stock Market's Rule Shift Could Hurt 12 Ailing Companies*, Wash. Post, Dec. 25, 2001, p. E01.

²¹ *NASD Alerts Investors on Terrorism and Anthrax Investment Scams*, National Association of Securities Dealers Release, Nov. 15, 2001, <http://www.nasdr.com/news/pr2001/ne_section01_050.html>.

²² Treasury and Federal Reserve Foreign Exchange Operations, Federal Reserve Bank of New York Report, Nov. 1, 2001.

the terrorist attacks, the Fed established reciprocal swap arrangements with the European Central Bank and the Bank of England to help stabilize the United States dollar, which had depreciated 7.3 percent against the euro and 4.1 percent against the Japanese yen during the third quarter of 2001. Despite these efforts, the Federal Reserve districts that prepare the monthly "Beige Book," a summary of current economic conditions, reported continued "weak" and "soft" economic activity following September 11.²³

Not everyone blames the terrorist attacks for such conditions. The Chicago Federal Reserve District noted that "the weakness is the result of fundamental economic causes prevailing before the attack, higher unemployment, and falling stock prices, rather than the attack itself." The Federal Reserve Bank of New York echoed this assessment by stating that "[t]he attacks heightened pre-existing concerns about the weakness of the U.S. economy and lent further momentum to the general trends that prevailed earlier in the quarter."

The fact that the economy was generally in decline prior to September 11 complicates economists' ability to pinpoint the exact cause of longer-term trends. Anomalies such as the terrorist attacks obscure decision-making by investors and entrepreneurs by reducing the economy's predictability. The threat of future unforeseen events may foster more conservative business management, which could protract the current recession and further complicate economists' ability to predict long-term trends.

Tax Relief and Federal Financial Aid In Response to September 11

Even more important than the terrorist attacks' effects on the American economy are the effects on its victims. The IRS and Congress attempted to ease victims' tax burdens. The IRS recognized that taxpayers may have difficulty meeting federal tax obligations due to lost tax records and disruptions in the delivery of documents. It extended the September 17 deadline to file income tax estimates and extended the due date of federal income tax returns due any time after September 10, 2001.²⁴

To facilitate provision of assistance to victims of the terrorist attacks, the IRS issued special guidelines under which "charities that make contributions to victims or families in which a breadwinner died

²³ Summary of Commentary on Current Economic Conditions by Federal Reserve District, The Federal Reserve Board Beige Book, Federal Reserve Bank of Richmond (Nov. 28, 2001), Federal Reserve Bank Cleveland (Oct. 24, 2001).

²⁴ Disaster Relief for Taxpayers Affected by the September 11, 2001 Terrorist Attack, 2001-40 I.R.B. 305 (Released Sept. 15, 2001, Published Oct. 1, 2001).

or was injured need not ask for personal financial information from the victims for any funds distributed through December 31, 2002, as long as the money is distributed in good faith using an objective standard for determining how much each victim receives."²⁵ Even without these measures, taxpayers are allowed deductions for casualty losses and like-kind exchanges for relocated businesses. In addition, life insurance proceeds are tax-free.

Congress responded quickly to the terrorist attacks by extending to 52 weeks the term of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Congress adopted the law prior to September 11, 2001, to provide unemployment assistance for victims and the families of victims of major disasters and terrorist attacks.²⁶ Since September 11, Congress has considered additional relief measures, such as income-tax exemptions for money received from charitable organizations and elimination of income and estate taxes for 2000 and 2001.²⁷

The Air Transportation Stabilization Board, consisting of representatives from the Treasury and Transportation departments, the Federal Reserve, and the United States Comptroller, was established on September 22, 2001, to provide assistance to airlines struggling in the post-September 11 economic environment.²⁸ The board was allocated \$5 billion for direct airline aid and an additional \$10 billion for loan guarantees. Congress undoubtedly will continue to adopt new laws and establish new groups to address post-September 11 concerns. These new measures will continue to allow businesses, investors, and entrepreneurs to pursue new opportunities in the wake of September 11.

The Effect of September 11 on the Way America Conducts Business

Businesses Must Evolve along with the New Economy

Many companies already have adapted the way they conduct business following September 11. The hijackings of four airplanes understandably caused many people to fear traveling, and a soft economy caused many businesses to cut costs and curtail unnecessary expenses. Consequently, teleconferencing and web-conferencing

²⁵ Margaret Graham Tebo, *Another Form of Relief: Changes in Tax Rules Accommodate Those Affected By Terrorist Attacks*, A.B.A. J., Jan. 2002, at 63.

²⁶ 2001 Cong. US S 1622 (Dec. 20, 2001).

²⁷ Tom Herman, *A Special Summary and Forecast of Federal and State Tax Developments*, Wall St. J., Nov. 14, 2001, at A1.

²⁸ *Fed Governor Gramlich Is Named to Top Position On Board to Aid Airlines*, Wall St. J., Nov. 12, 2001, at B8.

continue to grow in popularity and use.²⁹ While the airline and tourist industries experienced the negative affects of September 11, many web-conferencing stocks, such as WebEx Communications, Raindance Communications, Polycom and ACT Teleconferencing, rallied as corporate America increasingly utilizes more efficient methods of communication. Businesses now realize the importance of utilizing alternative methods of conferencing that effectively avoid both unnecessary travel and decrease meeting costs.

Publicly traded companies have responded to September 11 by adding "terrorism" to the list of potential risks cited in SEC filings. A terrorism risk factor might be warranted. As reported by the Wall Street Journal, Federal Reserve Chairman Alan Greenspan told Congress that the September 11 terrorist attacks introduced "a whole new set of uncertainties, which information technology is not going to improve our insight into."³⁰ Transportation and other disruptions caused by September 11 forced some businesses such as Toyota Motor Corp. to address their vulnerabilities. They modified their "just-in-time" method of supplying and receiving goods with advanced technology, advanced inventory systems, and dependable and predictable shipping.

Other companies, such as Morgan Stanley, have considered dispersing employees more widely and creating more elaborate systems to back up information. The same Wall Street Journal article quoted Theodore Aronson, managing partner of Philadelphia money management firm Aronson+Partners: "[T]he Sept. 11 attacks proved 'that the impossible, never-could-occur event, can occur. '"

Increased security measures, contingency plan enhancements and inventory and production adjustments will continue to create extra costs for conducting business in the post-September 11 environment. Businesses not directly affected by the September 11 terrorist attacks should use this opportunity to observe how less fortunate companies have coped with the unforeseen calamity.

Financial institutions and companies accepting investments by foreign individuals and entities must be vigilant to ensure customers and investors are not connected to terrorist organizations. These connections could lead to the freezing of assets and unwanted probes by the FBI, the CIA, and the Justice Department. United States President George W. Bush signed an executive order effective September 24, 2001, adding certain terrorist and related organizations

²⁹ Aaron Elstein, *Guess Who's Coming to Web Conferencing*, Wall St. J., Dec. 27, 2001, at C1.

³⁰ Risky Business: As Security Worries Intensify, Companies See Efficiencies Erode, *Wall St. J.*, Oct. 24, 2001, at A1.

and individuals to the Treasury Department's Office of Foreign Asset Control list of Specially Designated Nationals.³¹ The order prohibits any transaction or dealing in property or interests belonging to a list of 27 individuals and entities with known ties to Osama bin Laden, his Al-Qaeda network and other known terrorist organizations.

On October 1, 2001, to assist in identifying appropriate accounts, the Office of Foreign Assets Control issued a bulletin containing descriptive information relating to the individuals and organizations mentioned in the executive order.³² This bulletin contained all known aliases, dates of birth, and places of business for each terrorist targeted by the executive order.

The SEC report requested that "all securities-related entities (whether or not registered with the SEC) voluntarily check their records for any relationships or transactions with the individuals or entities listed in [President Bush's] executive order or named by the FBI as being under investigation in connection with the September 11 terrorist attacks."³³ Companies can report any relationship or transaction with any of the prohibited individuals mentioned in President Bush's executive order via e-mail to a special address. The President's mandate thrust many businesses, especially those in the financial services industry, into the role of enforcement officer by requiring Americans to review records to determine whether continued relations with existing investors, customers, and clients would violate the executive order.

As a further measure to freeze terrorists' assets, the SEC cooperated with the FBI, the Fed, and the Commodity Futures Trading Commission in developing a "Control List," a "mechanism that will assure the expeditious distribution of a unified list of individuals and entities to a broad range of financial institutions."³⁴ The Control List, disseminated by the SEC to certain brokers, dealers, investment advisers, investment companies, transfer agents, exchanges, and other self-regulatory organizations, contains confidential information

³¹ Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, *Bulletin of the Office of Foreign Assets Control*, Sept. 24, 2001.

³² Bulletin of the Office of Foreign Assets Control to the United States Public (Oct. 1, 2001) (on file with the author).

³³ Request for Records Search by Securities-Related Entities, Including Brokers, Dealers, Investment Advisers, Investment Companies, Municipal Securities Dealers and Transfer Agents, Sept. 27, 2001, <<http://www.sec.gov/news/headlines/recordsearch.htm>>.

³⁴ SEC Asks Industry Cooperation In Investigations of Terrorists, *Securities Reg. & Law Rpt.* (BNA), Vol. 33, No. 41, at 1503 (Oct. 22, 2001).

gathered by law enforcement to assist in freezing terrorist assets. The SEC suggested that businesses first designate one senior-level officer or employee "who appreciates the sensitive nature of the investigation and will exercise appropriate discretion to be the point person for all communications relating to the Control List."

On October 26, 2001, President Bush signed into law the 2001 Financial Anti-Terrorism Act³⁵ containing "the most significant U.S. attempts to curb money laundering since it became a crime in 1986."³⁶ Some bankers have criticized these new laws because the Treasury Department can require banks to identify parties to transactions and pierce through them to determine the identities of foreign customers behind the parties, adding to banks' due diligence when dealing with foreign individuals and foreign banks. The law also forces banks to closely monitor private accounts of \$1 million or more belonging to foreign political officials, their families, or their associates, and prohibits domestic banks from dealing with foreign banks with no physical offices.

While hopefully discouraging terrorist operations in America, this law also could deter foreign investment by forcing innocent parties to subject themselves to the risk of fighting erroneous allegations in American courts. Even after the initial publicity of freezing terrorists' assets subsides, entrepreneurs and businesses must be careful not to associate with any party who might be related to those individuals or entities identified by President Bush. This law, along with other mandates, will continue to complicate business in America, but they are necessary measures to curtail the financial backing of terrorists and ensure stability of the United States markets in the long term.

Entrepreneurs and Small Businesses in the New Economy

Entrepreneurs and small businesses faced difficult challenges during 2001. "Many entrepreneurs felt the downturn long before September 11, and have seen their revenues continue to slide ever since."³⁷ On September 11, small businesses averaged only three months' cash cushion to weather hard economic times.³⁸ Considering this reality, the federal government and concerned private parties are

³⁵ PL 107-56, 2001 HR 3162.

³⁶ John Gibeaut, *Show Them The Money: The Anti-Terrorism Laws Target Money Laundering, Forcing Banks to be More Vigilant and Compliance Officers to Take on More Tasks*, A.B.A. J., Jan. 2002, at 48.

³⁷ Karen E. Klein, *Home Is Where the Heart Is*, Bus. Wk. Online, Dec. 28, 2001, 2001 WL 25756149.

³⁸ Allentown Morning Call, Jan. 22, 2002, at D1, 2002 WL 426179.

supporting small businesses and entrepreneurs by establishing resources for troubled businesses.

Small businesses throughout the nation can apply for a Small Business Administration Economic Injury Disaster Loan (SBA Loan) to fund operations suffered as a result of September 11. Through January 2002, more than \$250 million in disaster loans had been approved for approximately 3,100 businesses in New York City through the federal SBA Loan fund.³⁹ Businesses that do not qualify for an SBA Loan could receive federal government funding through the Emergency Supplemental Appropriations Bill or assistance from local resources such as the New York City Partnership's Financial Recovery Fund and a similar fund established by the Alliance for Downtown New York.⁴⁰ These resources will continue to assist existing businesses economically and support the capitalist spirit that defines the American marketplace.

The effects of September 11, combined with significant depreciation in the equity markets, primarily due to devaluation of dotcoms and an economy-wide recession, caused many individuals to redirect career and business strategies.⁴¹ Choices of possible business ventures in the new economy differ appreciably from the choices of entrepreneurs and small businesses five years ago. While investors apply considerable scrutiny and skepticism to Internet and travel-related businesses,⁴² security and defense ventures are enjoying revived interest.⁴³ Survival in the new economy requires entrepreneurs and small business owners to realize the importance of understanding what rapid change means for consumers' needs and wants. Harvard Business School professor Nancy Koehn offers the following advice for business managers:

Learn from your customers. Periods of economic, political, and social change affect not only consumers' income and spending, but their identities, daily routines, and values. Savvy business leaders remain attuned to these shifts and use what they learn to enhance their

³⁹ Alan J. Wax, *CITY INC./Popular Restaurant to Re-Open*, Newsday, Jan. 30, 2002, at A43.

⁴⁰ *New Emergency Loans Will Give Mainline Cash Infusion to Struggling Small Firms, Hard-Hit General Aviation Airports*, U.S. Newswire, Jan. 24, 2002, 2002 WL 4573585.

⁴¹ Winifred DeSouza and Sonia Alleyne, *Getting a foothold on your career*, *Black Enterprise*, Volume 32, Issue 7, at 105.

⁴² Brian Grow, *Who Gets Disaster Aid? Who Doesn't?*, *Bus. Wk.*, Jan. 28, 2002, at 8.

⁴³ Michael Freedman, *Electronic War*, *Forbes*, Jan. 7, 2002, at 66.

offerings, distribution channels, and even operating strategies.⁴⁴

Many successful entrepreneurs have overcome hard economic times by learning from customers, maintaining direct contact with patrons, using consumer information to respond quickly to new priorities, exploring emotional connections, and realizing that values matter. Examples include Howard Schultz's operation of Starbucks, which he purchased two months prior to the October 1987 stock market crash; Scott Cook's redirection of Intuit; Henry Heinz's expansion of his food business resulting from a unique understanding of consumers' wants and needs; Estée Lauder's exploration of what helps women maintain self-confidence; and The Body Shop and Whole Foods' attention to consumer values. Undoubtedly, a new breed of entrepreneurs will revolutionize their industries by acknowledging and responding to the needs of consumers in the post-September 11 new economy.

The American Economy Will Bounce Back

The recessionary economy and the September 11 terrorist attacks combined to cause a tumultuous year for the United States financial markets. Some analysts claim the American economy remains anemic and will not recover vigorously until the Federal Reserve provides adequate credit to small and medium-sized businesses and Congress further reforms the income tax system.⁴⁵ The Fed's consistently grim Beige Book reports and The Wall Street Journal's November 19, 2001, report that industrial output fell for the thirteenth consecutive month—the longest string of declines since the Great Depression—may serve to fuel such cynical arguments. A record number of publicly traded telecommunications companies filed for bankruptcy protection during the year 2001 and it appears that the telecommunications industry will continue to suffer in the post-September 11 recessionary economy.⁴⁶

Standard & Poor's issued a special report following September 11, designed to assure concerned investors that the financial markets will continue to rebound.⁴⁷ The financial information and rating services giant cautioned investors not to make investment decisions

⁴⁴ Nancy Koehn, *Chasing Dreams During Troubled Times: Lessons From the Past*, Boston Globe, Jan. 22, 2002, at F5.

⁴⁵ Steve Forbes, *Fact and Comment*, Forbes, Jan. 7, 2002, at 23.

⁴⁶ Scott Lanman, *Year Brought a Meltdown * * Telecommunications and Chip Companies had a Miserable Time*, Allentown Morning Call, Dec. 23, 2001, at D1.

⁴⁷ *World Crisis and the Stock Market: Learn From History, Prepare for the Future*, Standard & Poor's release, Sept. 21, 2001.

based on short-term market fluctuations and to learn from historical returns following other major crises to gain a long-term market perspective. Standard & Poor's report suggests that investors who stayed in the market during turbulent times are rewarded with long-term gains. This was true following the Pearl Harbor attack, the invasion of South Korea, the Cuban missile crisis, the assassination of John F. Kennedy, the Arab Oil Embargo, the Iran hostage scandal, the Iraqi invasion of Kuwait, and the Gulf War.

Standard & Poor's claims that businesses, investors and entrepreneurs must "[l]ook at a market decline as a buying opportunity. Some stocks may be undervalued following a broad market decline, allowing you to invest more in high-quality companies." Domestic equity fund increases during the fourth quarter of 2001 suggest that American financial markets are poised to repeat trends following earlier turbulent times.⁴⁸ Considering the long-term positive return America's financial markets historically have provided, "time may just be an investor's greatest ally."⁴⁹

Time will reward those investors who remain resolved to weather the volatile remains of the post-September 11 markets. The recessionary economy of 2001 and the stock market declines following September 11 can be utilized to inform investors and entrepreneurs which prospects and industries will weather volatile markets and unforeseen calamity. Some entrepreneurs have already directed their interests and investments to resources that are uniquely in demand as America emerges from the rubble of the World Trade Center, both literally and figuratively. "[These] unavoidable commercial reactions of businessmen, entrepreneurs and investors to the tragedy of Sept. 11 are . . . symptomatic of a society characterized by freedom and private initiative."⁵⁰ History suggests that a new American economy will continue to emerge successfully in the days to come.

Additional References

Futrelle, David, *The Risks of Terror*, Money Mag., Jan. 1, 2002, at 24.

⁴⁸ *Light at the End of the Tunnel?*, Bus. Wk. Online, Jan. 9, 2002, 2002 WL 5144405.

⁴⁹ *World Crisis and the Stock Market: Learn From History, Prepare for the Future*, Standard & Poor's release, Sept. 21, 2001.

⁵⁰ Peter Foster, *Freedom and the Spirit of Capitalism*, Natl. Post, Jan. 2, 2002, at FP7.

Pinkston, Will, *Consumer Prices Fell 0.3% in October, But Industrial-Output Decline Continued*, Wall St. J., Nov. 19, 2001, at A2.

Shelby, Joyce, *Keeping Firms Alive After 9/11*, N.Y. Daily News, Feb. 1, 2002, at 4.