



December 18, 2015

Via Electronic Mail (rule-comments@sec.gov)

Mr. Stephen Luparello
Director
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: File No. S7-01-13: Regulation Systems Compliance and Integrity

Dear Mr. Luparello:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ submits this letter to the Securities and Exchange Commission (“Commission”) in connection with the requirements of Regulation SCI on the testing of business continuity and disaster recovery (“BC/DR”) plans by SCI entities, which include clearing agencies, securities exchanges, and certain alternative trading systems, among other entities.² SIFMA urges that all of the SCI entities coordinate their respective BC/DR testing to the greatest extent possible in 2016. In particular, it is essential that the exchanges and the Financial Industry Regulatory Authority (“FINRA”) coordinate their BC/DR testing, because together they comprise the front end of the market for trade submission and execution.

With the first testing deadline less than a year away, SIFMA is extremely concerned that the exchanges and FINRA have not provided any indications of coordination, scope of testing, or even any specific 2016 testing dates. The responsibility of the exchanges and FINRA is heightened in the context of Regulation SCI because of the unique authority they have as self-regulatory organizations (“SROs”) to enforce their own rules *and* the federal securities laws. This creates a situation in which the exchanges and FINRA could establish completely unworkable testing requirements for which compliance is impossible as a practical matter, and then take regulatory action to penalize member firms for their inability to comply with those unworkable requirements. If these tests are to be feasible, the exchanges and FINRA must coordinate to the greatest extent possible and provide member firms with sufficient notice – at least six months – of testing schedules, scope and the determination of which members will be required to participate in the testing.

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See Securities Exchange Act Release No. 34-73639 (November 19, 2014), 79 FR 72252 (December 5, 2014)(“SCI Adopting Release”).

Sufficient notification by the exchanges and FINRA is critical because the BC/DR testing requirements under Regulation SCI requires member firms to establish connectivity to exchanges' disaster recovery facilities, develop software and technology to support trading at those facilities.³ Without coordination, successful BC/DR testing is further complicated because some of the SROs exchange may require member firms to test from production facilities and others from the firms' DR facilities. It is not feasible for a member firm to run a BC/DR test from both facilities at the same time. If the BC/DR plan testing is carried out with no coordination and without providing member firms sufficient notice, then it likely will not be possible for member firms to comply with the testing requirements. In such a case, it will be unacceptable for member firms to be subject to regulatory action from the SROs because of actions arising directly from the SROs' lack of coordination and consideration.

BACKGROUND

Rule 1001(a)(2)(v) of Regulation SCI includes a requirement that SCI entities establish BC/DR plans. Rule 1004 of Regulation SCI requires SCI entities to mandate certain of their members and subscribers to engage in BC/DR plan testing with the SCI entities. In this regard, Rule 1004 of Regulation SCI requires SCI Entities to:

- Establish standards for the designation of the members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of business continuity and disaster recovery plans;
- Designate members or participants pursuant to those standards and require participation by such designated members or participants in scheduled functional and performance testing of the operation of business continuity and disaster recovery plans, in the manner and frequency specified by the SCI entity, which must be at least once every 12 months; and
- Coordinate the testing of the business continuity and disaster recovery plans on an industry- or sector-wide basis with other SCI entities.

Under Regulation SCI, the SCI entities must conduct the required BC/DR plan testing by November 3, 2016.⁴ The Commission expressly recognized in Rule 1004 the need for coordination among the SCI entities in BC/DR plan testing. However, the Commission gave the SCI entities until 2017 to comply with the specific regulatory requirement for coordination.⁵ The

³ *Id.* at 72351.

⁴ *Id.* at 72367.

⁵ *Id.* at 72368.

lack of a specific regulatory requirement apparently has led the exchanges and FINRA to the view that the 2016 required BC/DR plan testing can be conducted with absolutely no coordination. This is a completely unreasonable approach, and it is counter to the policy goals of Regulation SCI.

In adopting Reg SCI, Commission stated that the goal of the testing requirement is “maintaining fair and orderly markets in the wake of a wide-scale disruption, and assuring the smooth and effective implementation of an SCI entity’s BC/DR plans.”⁶ In addition, the Commission stated that:

On balance, the Commission believes that adopted rule will incentivize SCI entities to designate those members and participants that are in fact the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of their BC/DR plans, and that this should reduce the number of designations to which any particular member or participant would be subject.

Even though the specific requirement to coordinate is not yet in effect, there is no reason why the SCI entities should not engage in some coordination for 2016 testing. The most productive way to conduct an efficient test of BC/DR plans will be for the SCI entities to coordinate with each other to the greatest extent possible. We acknowledge that FINRA and several of the securities exchanges have filed rule changes setting forth the standards they will use to determine members subject to mandatory BC/DR testing, and, to some degree, stating the amount of time they will provide those members ahead of any testing dates. The SROs’ determination standards vary, with some SROs pushing until the future, the publication of the exact standards. But there is no uniform standard of time to provide notice and, as noted above, there are no testing dates, testing requirements, or success criteria established.

SIFMA Request

The exchanges and FINRA must provide coordinated clarity *now* on BC/DR plan testing. By no later than the end of January 2016, the exchanges must make public the coordinated BC/DR testing schedules and the scope of the tests. Member firms will need at least six months notice of testing dates and scope. And it will be essential for the exchanges and FINRA to coordinate the testing dates. Testing schedules at member firms are typically set 18-24 months in advance, so firms simply will not be able to accommodate an uncoordinated testing schedule with multiple SROs, especially if the SROs wait until the last minute to organize.

To be clear, and so that the Commission and the relevant SROs are on notice, it is not feasible for member firms to be subject to uncoordinated, bilateral BC/DR plan testing with each of the SCI entities over the course of 2016. If the SROs do not provide sufficient notice of testing plans and then carry out those tests in a coordinated fashion, then there will be no

⁶ *Id.* at 72348.

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practical way for member firms to comply with the testing requirements across all of those SROs. In such a case, it would be unacceptable and unreasonable for those SROs to use their regulatory authority to penalize members for failing to comply with the BC/DR testing requirements.

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SIFMA appreciates the Commission's consideration of the issues and concerns raised above. If you have any questions or require further information, please contact me at (202) 962-7383 (tlazo@sifma.org).

Sincerely,



Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: The Honorable Mary Jo White, Chair
The Honorable Luis A. Aguilar, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Gary Goldsholle, Deputy Director, Division of Trading and Markets
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