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Invested in America

June 13, 2023

By Electronic Submission

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File No. S7–07-23
Regulation Systems Compliance and Integrity

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the proposal of the Securities and Exchange Commission (the "Commission") to amend Regulation Systems Compliance and Integrity ("Reg SCI") to, among other things, expand the scope of "SCI entities" to include registered broker-dealers that exceed either a total assets threshold or a transaction activity threshold in certain securities ("proposed SCI broker-dealers") and update multiple provisions of Reg SCI (the "Proposal").[2]

SIFMA supports the broad policy objectives of enhancing the resilience of the U.S. securities markets and strengthening the technological infrastructure underlying those markets. To that end, we have supported the application of Reg SCI to the critical functions carried out by exchanges, registered clearing agencies, the Financial Industry Regulatory Authority ("FINRA"), and securities information processors upon which our members must rely or with whom they must work to fulfill regulatory obligations. Importantly, our members—including those who expect to become SCI broker-dealers under the Proposal—have already developed robust technological resiliency as a result of various existing regulatory obligations and market forces to which they are already subject. These developments have come about without the imposition of additional requirements established by the Commission under Reg SCI. We have contrasted the overlap of existing regulations that apply to proposed SCI broker-dealers in the Appendix. Any regulations from the SEC should harmonize with existing regulation.

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. 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 https://www.sifma.org.

[2] *See* Regulation Systems Compliance and Integrity, 88 Fed. Reg. 23,146 (proposed Apr. 14, 2023) (hereinafter "Proposing Release").

Since its adoption, Reg SCI has applied to certain entities that play critical roles in the functioning of the securities markets; however, the perceived benefits of expanding Reg SCI to apply to entities for which the rule was neither designed nor originally intended must be assessed and balanced against the enormous costs and unanticipated or unintended consequences of expansion, particularly where the proposed expansion has not addressed the critical distinctions that the Commission recognized when originally setting the scope for and adopting Reg SCI. Put simply, the entities currently subject to Reg SCI's requirements ("SCI entities") play fundamentally different roles in our markets than broker-dealers and operate under different regulatory expectations regarding their availability and accessibility. These SCI entities elected to operate in the capacities they serve and thus enjoy unique advantages and protections (for example quote protection and data revenue) accordingly. SCI entities represent the essential infrastructure through which market participants receive and/or provide market information or trade – and these were framing concepts when Reg SCI was designed. In contrast, Reg SCI was not designed or implemented to include the systems used by trading firms—those systems are not critical systems as contemplated by Reg SCI. The Proposal lacks sufficient attention or focus these critical differences, which were previously recognized by the Commission, and seeks to impose a regulatory regime that is not fit for purpose on broker-dealers, which leads to arbitrary and problematic outcomes that will have downstream effects.

I. Executive Summary

The following is a summary of the key issues further detailed in this response:

- **The proposed thresholds used to define SCI broker-dealers are arbitrary, anticompetitive, and burdensome**. The proposed asset and trading thresholds to capture proposed SCI broker-dealers are not the appropriate means by which to impose Reg SCI's requirements in the context of the securities market. The Commission has not explained how the proposed thresholds are an appropriate proxy for operational risk. The actual experience of how the market operates undercuts any potential Commission justification for imposing Reg SCI on broker-dealers, including that broker-dealers are generally easily substitutable for one another in the market and that buyside firms routinely diversify using multiple broker-dealers and sources of liquidity. Further, the Commission has not addressed the fact that the proposed thresholds arbitrarily impose burdens on certain broker-dealers and not others, or grappled with how the proposed thresholds themselves would impose significant compliance burdens.

- **The Proposal would create a new trading requirement for proposed SCI broker-dealers.** By expanding Reg SCI from systems facilitating trading to include systems that do the trading itself, the Proposal creates, for the first time, a requirement that proposed SCI broker-dealers engage in trading by committing capital and taking on principal risk. The Proposal offers no rationale for this fundamental change and fails to analyze its consequences.

- **Reg SCI was not meant for and cannot simply be imposed on broker-dealers as is**. Reg SCI was originally designed and intended to cover vital systems of entities that represent the critical trading infrastructure, including certain trading venues themselves

(such as exchanges and certain higher-volume alternative trading systems ("ATSs")), entities essential to providing real-time market data (such as FINRA and the securities information processors ("SIPs")), and entities that clear and settle securities transactions (such as registered clearing agencies).[3] It was systems failures of these entities that prompted Reg SCI. The Proposal seeks to expand beyond systems that facilitate trading by others to also cover the activity of trading itself by other parties, such as broker-dealers without modifying the regulation's requirements to meet the characteristics of these entities. Reg SCI was tailored to and adopted with a limited scope of entities in mind, and significant tailoring of Reg SCI's requirements would be necessary before any new categories of market participants should be brought in scope. In particular, given that (i) the scope of "SCI systems" covered by Reg SCI is unworkably vague when applied to the systems of a broker-dealer; (ii) due to its excessively broad scope, the required reporting of material changes to SCI systems, if applied to broker-dealers, would generate massive reporting obligations at significant cost with no additional or defined benefit to the market and would require reporting of proprietary and sensitive information; (iii) Reg SCI's business continuity and disaster recovery requirements (particularly those related to recovery and geographic diversity), as applied to broker-dealers, impose enormous costs and create no additional resiliency; (iv) broker-dealer systems cannot be "critical" SCI systems, as contemplated under Reg SCI; and (v) broker-dealers, unlike other SCI entities, cannot easily distinguish "indirect" systems from SCI systems as Reg SCI posits, leading to an unreasonably broad scope of systems and activity captured by Reg SCI, and as a result, a far more burdensome compliance obligation than exists for existing SCI Entities.

- **The enormous cost of Reg SCI is not justified by any tangible benefits identified by the Commission**. The Proposal fails to address the enormous compliance costs that would be borne by new SCI entities such as proposed SCI broker-dealers and how those costs are justified given that the substitutability of broker-dealers creates resiliency. The Proposal fails to justify those costs and cites no evidence that Reg SCI is needed to solve an existing regulatory gap or that Reg SCI would produce any net improvement in systems integrity for broker-dealers. As further depicted in Appendix A below, we note numerous additional details regarding existing requirements and guidance already applicable to proposed SCI broker-dealers; the Proposal fails to explain how Reg SCI improves upon the existing regulatory regime for proposed SCI broker-dealers and does not justify the costs of layering additional, often duplicative or inconsistent, requirements on top of the existing regime. Nor does the Proposal suggest how those different and sometimes competing requirements should be harmonized and rationalized.

- **The proposed requirements regarding third-party providers require a more principles- and risk-based approach**. SIFMA members already maintain robust third-party management programs and require the contracted service provider to adhere

[3] *See Regulation Systems Compliance and Integrity*, 79 Fed. Reg. 72,252, 72,264 (Dec. 5, 2014) (hereinafter, "SCI Adopting Release") (noting that "the Commission has determined to include ATSs meeting the adopted volume thresholds within the scope of Regulation SCI because of their unique role as markets rather than because of their role as traditional broker-dealers").

to applicable legal and regulatory obligations. A principles- and risk-based approach is crucial to ensure such programs are efficient and sustainable, yet the Proposal takes a prescriptive approach that may disincentivize the use of third-party providers or limit the provision of certain valuable services. An outcome which potentially drives increased reliance on less sophisticated and resilient in-house systems rather than enhancements offered by innovative third-party service providers may ultimately work against the objective of improving systems integrity for broker-dealers. Regarding third-party relationships, we encourage the Commission to adopt a similar approach to the federal prudential regulators' interagency guidance,[4] which acknowledges potential limitations and challenges in negotiating certain rights or gaining access to certain information, and grounds its expectations in the adoption of a risk-based approach throughout the entire third-party relationships lifecycle.

- **The Commission has not considered or incorporated the experience of Reg SCI thus far**. The Commission should examine the experience and costs of SCI entities since the adoption of Reg SCI and apply that knowledge before expanding the scope of Reg SCI or adding additional requirements. For example, the Proposal lacks any concrete examples where current SCI requirements—and, in particular, the reporting or dissemination requirements—have provided the Commission or the public with beneficial information that it has received and found actionable in any real-time or near real-time way. In practice, these requirements have required Reg SCI entities to divert critical resources from addressing potential issues merely to meet the arbitrary timeframe for certain reporting requirements. Not only has this created unnecessary burdens and costs, but adhering to such standards could lead to harmful consequences in the future if firms must choose between addressing critical matters at hand and timely filing of regulatory reporting and must divert resources away from innovation and competition. Nevertheless, the Proposal seeks to prioritize reporting speed over system resiliency and recovery.

For these reasons, we do not support the Commission's efforts in the Proposal to expand the Reg SCI regime to a wider array of broker-dealer activity. We respectfully recommend that the Commission carefully revisit this Proposal before proceeding. To do otherwise would be to ignore the ill-fitting substance of the regime, the lack of a clearly defined regulatory purpose and benefit to the market that would not be achieved by competition, the unnecessary and often duplicative requirements imposed on broker-dealers, and the considerable costs associated with implementation and ongoing maintenance. To the extent the Commission wants to consider applying Reg SCI to anyone else, we recommend that the Commission carefully consider whether particular, more narrow, aspects of Reg SCI may be candidates for expansion, as outlined below.

II. Reg SCI Should Not Be Imposed On A New Range Of Entities Without An Identified Market Failure

A. The proposed asset and trading thresholds for broker-dealers are not appropriate in the context of the securities market

[4] *See* Interagency Guidance on Third-Party Relationships: Risk Management, 88 Fed. Reg. 37,920 (June 9, 2023).

The Proposal would expand the definition of SCI entities in part by including registered broker-dealers that exceed either a total assets threshold or a transaction activity threshold. Based on recent data, a registered broker-dealer with total assets of approximately $250 billion in two of the preceding four calendar quarters would meet the proposed total assets threshold. The transaction activity threshold would be based on the size of a broker-dealer's transaction activity in NMS stocks, exchange-listed options contracts, U.S. Treasury Securities, and Agency securities. Neither of these proposed metrics is adequately related to the goals the Commission asserts it is seeking to achieve through the Proposal.

i. The Commission has not explained how total assets are a proxy for operational risk

With regard to the proposed total assets threshold, the Commission has not adequately explained how total assets are sufficiently linked to activities that should cause a broker-dealer to fall under the purview of Reg SCI. Mere asset size does not offer a sufficient proxy for significance, particularly in circumstances where other market participants typically have access to multiple venues to execute their trades. For example, a broker-dealer with a significant amount of total assets may not be engaging in activities that the Commission has identified as critical to the soundness of the U.S. securities markets. Moreover, none of the examples cited by the Commission where regulators have used total assets to assess the need for enhanced oversight is remotely comparable to the Commission's approach in the Proposal, which would use of total assets as a single, determinative factor to impose an unrelated regulatory regime.[5] To the extent a large broker-dealer does engage in those activities, its total asset size does not necessarily mean it is engaged in a critically important function within the market; highlighted even more by the fact that the SEC would apply Reg SCI to the broker-dealer's systems regardless of their size or significance. Today, competition is so fierce that multiple trading firms would step up to absorb the capacity of a firm experiencing an outage. Indeed, many investors already utilize multiple broker-dealers and switching is a virtually frictionless process done by the click of a mouse. This is in contrast to existing SCI entities like exchanges, which are required to stay online per applicable regulations. The Commission does not describe why Reg SCI's requirements are necessary in a market where fierce competitive dynamics already lead to the provision of seamless service in the event of an outage.

ii. The Commission has not adequately explained how the transaction-based thresholds were determined or how they are relevant to operational risk

The transaction-based threshold is also ill conceived and an inappropriate and arbitrary basis on which to apply Reg SCI. Indeed, the Commission has selected the same 10% threshold across four wholly different asset classes without any adequate explanation as to why such a threshold is appropriate for each of the asset classes it has decided to include. Instead, the Commission merely states that the 10% threshold is designed to capture the "large broker-dealer" that would "pose a substantial risk to the maintenance of fair and orderly markets in the event of a

[5] *See, e.g.*, Proposing Release at 23,161 (noting that "Congress and multiple regulators have used total assets *as a factor* in assessing whether an entity warrants heightened oversight") (emphasis added). The Commission's citation to the FDIC using assets as a metric to help determine financial assessments is materially different from the Commission's use of assets as an independent and sufficient threshold to impose systems requirements.

systems issue."[6] The Commission provides no support for this assertion and does not analyze the market-specific factors, such as competition to fill demand, for each, or indeed any, asset class. As a result, it has not been shown how the proposed asset-based thresholds are relevant to operational risk nor why 10% is the appropriate numerical threshold, especially given that multiple trading firms are often serving the same investors and are able to seamlessly absorb the capacity of any single firm that might experience an outage. Without any such explanation, it is not clear what principle would inform or limit the Commission from subsequently determining again to arbitrarily lower these thresholds in the future to capture yet more broker-dealers.

Further, the Commission should specify with precision what activities are and are not intended to be captured by any proposed thresholds. With regards to the proposed transaction-based threshold for U.S. Treasury Securities and Agency Securities, the Proposal states that "the Commission is proposing to include under the SCI broker-dealer threshold all trades for U.S. Treasury Securities and Agency Securities in which a broker-dealer may participate."[7] While determining the numerator for the transaction-based threshold activity in NMS stocks and exchange-listed options contracts is based solely on execution, the Commission should explain what *"*may participate*"* means in this context and how the Commission intends for this proposal to interact with or replace Reg SCI treatment in its January 2022 proposal.[8] This open-ended language may unintentionally capture a broader range of activity beyond that which would be relevant to the intended threshold.

The calculation of the threshold for NMS stocks is similarly vague, particularly as it relates to trading activity on ATSs. Although the Commission (in a footnote) offered some examples of how ATS trades would be included or excluded in certain scenarios, the calculations are of extreme importance in determining whether the burdens and costs to comply with Reg SCI are triggered—such an important calculation cannot be left to vague footnotes in a release.[9] For example, it appears ATS volume may often be counted multiple times as trading of the ATS itself and potentially of the broker-dealers transacting on the ATS. If the Commission proceeds with the Proposal and includes a trading activity threshold, it is essential the Commission be clear and unambiguous in how volume is calculated to ensure firms are able to correctly calculate (and adjust if necessary) their trading activity that is in-scope for purposes of applying the Reg SCI trading activity thresholds.

iii. Broker-dealers are easily substitutable in the market

The Commission has not addressed the bedrock fact that proposed SCI broker-dealers are easily substitutable within the market. This market dynamic strongly undercuts the rationale for any trading threshold trigger for the requirements of Reg SCI. Further, this dynamic is in sharp contrast to the dynamics of SROs. In light of the unique and critical role of SROs, and in response

6 *See* Proposing Release at 23,166.

7 *See* Proposing Release at 23,164.

8 *See* Amendments Regarding the Definition of "Exchange" and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities, 87 Fed. Reg. 15,496 (proposed Mar. 18, 2022).

9 *See* Proposing Release at 23,165 n.208.

to various systems failures observed by the Commission, the Commission created the Automation Review Policy Inspection Program (the "ARP Inspection Program") in order for SROs "to take certain steps to ensure that their automated systems have the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions."[10] Reg SCI was then proposed to "update, formalize, and expand the Commission's ARP Inspection Program and, with respect to SCI entities, to supersede and replace the Commission's ARP Policy Statements and rules regarding systems capacity, integrity and security in Rule 301(b)(6) of Regulation ATS."[11] The Proposal seeks to take this approach to trading venues and entities providing market data ("market data entities") and essentially apply it with no tailoring to certain broker-dealers notwithstanding that proposed SCI broker-dealers play a relatively fungible role within the national market system and not one of the broker-dealer firms targeted by the Proposal operates as the sole source of any critical market function. In fact, broker-dealers have always retained the flexibility to exit the market at any time they choose. If a particular broker-dealer acting as a trading center becomes unavailable (or simply decides to stop trading), order flow can immediately and seamlessly be routed to another broker-dealer performing the same function without issue.

This dynamic of redundancy in the broker-dealer marketplace is well documented and is not simply a happy accident, but rather is the result of clear regulatory expectations.[12] According to one recent survey, 91% of buy side firms use more than two interfaces of what the Proposal refers to as a "Communication Protocol System."[13] In short, the Proposal represents a solution in search of a problem; the Commission has not identified how the proposed Reg SCI changes solve an unarticulated and unidentified problem among broker-dealers given the existing and intentional levels of operational redundancy already built into the space.

iv. The proposal to apply Reg SCI to broker-dealers is anti-competitive and arbitrarily imposes significant compliance costs and burdens on certain broker-dealers and not others similarly situated, and would impose significant compliance burdens

The proposed thresholds would impose significant compliance burdens on those broker-dealers with certain trading volumes or assets, but not others. This arbitrary application would significantly alter competition in the markets, and could inadvertently incentivize firms to structure their business activity in inefficient or irrational ways to avoid the burdens of Reg SCI (or even to avoid approaching the thresholds). The end result of the Proposal is to unfairly discriminate against broker-dealers with diversified businesses. The proposed thresholds invite these consequences without any adequate explanation as to why the specific limits are an appropriate measure of operational risk (as having multiple business lines in a specific asset class, each supported by different systems, does not increase the likelihood or impact of a specific system experiencing a disruption).

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[10] *See* Automated Systems of Self-Regulatory Organizations, 54 Fed. Reg. 48,703, 48,705-06 (Nov. 24, 1989) ("ARP Policy Statement I").

[11] SCI Adopting Release at 72,253.

[12] *See, e.g.*, FINRA Rule 4370(c); FINRA Regulatory Notice 13-25 (Aug. 16, 2013).

[13] *See The Trading Intentions Survey 2022, New platforms and late bloomers are all seeing greater interest*, The Desk (April 7, 2022), https://www.fi-desk.com/research-trading-intentions-survey-2022/.

Both the proposed asset and trading activity thresholds will impose significant compliance burdens on all firms, who will be required to monitor total assets and transaction activity to determine whether they may be subject to Reg SCI. Regardless of how the thresholds are structured (e.g., the transaction activity threshold would be measured using the time period of "at least four of the preceding six calendar months"), firms would need to monitor and, importantly, address the possibility of falling into these categories. Those efforts could require significant resources that will be diverted away from other compliance and business continuity efforts carried out successfully by broker-dealers in the market today.

B. Proposed Expansion Of The Definition Of "SCI Entities"

As originally conceptualized and executed, Reg SCI was intended to facilitate the oversight of the systems of national securities exchanges and other critical entities that market participants rely upon for the orderly functioning of the U.S. securities markets. In general, these are entities that serve unique roles in the U.S. securities markets—without nearly the degree of substitutability as exists in the broker-dealer space—and that, if not operational, would have significant adverse consequences on the functioning of those markets.

Reg SCI, as originally implemented, applies to those entities the Commission considered to "have the potential to pose significant risks to the securities market should an SCI event occur."[14] These include self-regulatory organizations (excluding securities futures exchanges) ("SCI SROs"), ATSs meeting certain volume thresholds in NMS stocks and non-NMS stocks ("SCI ATSs"), exclusive disseminators of consolidated market data ("plan processors"), certain competing disseminators of consolidated market data ("SCI competing consolidators"), and certain exempt clearing agencies. Reg SCI imposes obligations upon SCI entities with respect to their "SCI systems," "critical SCI systems," and "indirect SCI systems."[15] As originally conceived and adopted by the Commission, "SCI systems" include technology systems of, or operated by or on behalf of, an SCI entity that directly support at least one of six market functions with respect to securities, including (i) trading; (ii) clearance and settlement; (iii) order routing; (iv) market data; (v) market regulation; or (vi) market surveillance.[16] The definition of "critical SCI systems" was "intended to capture those systems that are core to the functioning of the securities markets or that represent 'single points of failure' and thus, pose the greatest risk to the markets."[17] Critically, these definitions were adopted to apply to systems operated by or on behalf of the entities to which the Commission was applying Reg SCI at the time, with no consideration given to how those definitions may apply to other types of market participants. The Commission has not adequately considered the application of these existing definitions in the context of additional types of market participants to which Reg SCI does not currently apply. It would be unworkable for the Commission to proceed without first doing so.

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14 SCI Adopting Release, at 72,259.

15 Reg SCI, 17 C.F.R. § 242.1000.

16 SCI Adopting Release, at 72,277-79.

17 SCI Adopting Release, at 72,263.

Importantly, all of the systems originally included under Reg SCI were those that market participants rely upon to trade and cannot easily substitute, ranging from platforms that match trading interest from broker-dealers (e.g., exchanges and ATSs) to those that provide critical SRO data to market participants for the purpose of that trading. None of the systems originally covered by Reg SCI actually trade or take any positions in the market; rather, they are more accurately characterized as comprising the critical infrastructure upon which all others that do trade and take positions rely. Consequently, all of the requirements of Reg SCI were adopted only with consideration given to their application to these types of markets and components of market infrastructure.[18]

In the Proposal, the Commission seeks to fundamentally alter the purpose and scope of Reg SCI by expanding from systems that facilitate trading by others, including retail and institutional customers, to cover the activity of trading itself, by broker-dealers (including suggesting that liquidity providers should be subject to a regulatory obligation to provide principal liquidity). Moreover, the Commission proposes to make this expansion while doing very little to alter or refine the existing requirements under Reg SCI that were not intended to apply to entities like proposed SCI broker-dealers. Unlike exchanges, market data entities or clearing agencies that must be "up and running" for markets to function, we are unaware of any Commission rules or regulations mandating that specific parties must commit capital, take positions in the market, and trade. Yet by expanding Reg SCI to cover proposed SCI broker-dealers based on thresholds of executed volume (implying the commitment of capital, principal trading, etc.) the Commission would for the first time, via the regulation of the systems integrity of those entities, require certain broker-dealers to trade by committing capital and taking on principal risk. The Proposal fails to recognize this fundamental change in the focus and purpose of Reg SCI from systems facilitating trading to trading itself, nor does it make any attempt to offer a rationale for or analyze the consequences of such implications. Indeed, an analysis of which systems "directly support" trading or order handling is vastly different when applied to trading venues like exchanges or ATSs than when applied to broker-dealers whose principal business may include retail customer facing and order handling and/or trading.

Before Reg SCI is expanded to cover any additional categories of market participants or functions within the markets in which they operate, the Commission should carefully consider the purposes underlying Reg SCI and the scope of the systems Reg SCI was designed to cover. As the initial adopting release makes clear, Reg SCI was intended to apply to those systems essential to the functioning of the market, and those market participants responsible for their maintenance and continuity, and not to the assorted other fungible market participants who make use of them. Significant tailoring of Reg SCI's purposes and associated requirements would be necessary before any additional market participants should be brought into scope for a regulation that was never written to apply to them.

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[18] SCI Adopting Release, at 72,259 ("Although some commenters suggested that Regulation SCI should cover a greater range of market participants, the Commission believes that it is important to move forward now on rules that will meaningfully enhance the technology standards and oversight *of key markets and market infrastructure*.") (emphasis added).

i. Reg SCI was not designed or intended to apply to broker-dealers

The original rationale behind Reg SCI was to establish a framework for ensuring the resiliency of critical components of U.S. market infrastructure, including registered clearing agencies, exchanges and exchange-like systems, and not the market participants that rely upon or operate through them. This is clear from the failures identified by the Commission as the basis for adopting Reg SCI and the context of and participants in the now legacy ARP Inspection Program that preceded Reg SCI's adoption.

1. *The systems failures prompting Reg SCI were exchange systems failures with market-wide impacts*

When the Commission proposed Reg SCI, it was in response to demonstrable and concrete problems that affected the U.S. market structure—such as disruptions to national securities exchanges in the wake of Superstorm Sandy, a natural disaster that caused the New York Stock Exchange to close for two days. Other "recent events" that supported the promulgation of Reg SCI included a number of disruptions of exchanges, such as hackers compromising Nasdaq computers, systems controls challenges at EDGX and EDGA, and a "software bug" at BATS Global Markets, Inc., that affected its IPO. The Proposal cites no such failures on the part of broker-dealers or other market participants that would necessitate adding them into Reg SCI.

Rather than identify failures that may be addressed through the expansion of Reg SCI, the Proposal cites "market observers" who credited Reg SCI with "helping to ensure that the markets and market participants were prepared for the unprecedented trading volumes and volatility experienced in March 2020 at the onset of the COVID-19 pandemic."[19] Many market observers, however, have noted that broker-dealers "not only had to react quickly to the COVID-19 outbreak, but they did so while experiencing unprecedented volumes and surges in volatility."[20] The Proposal fails to note that the broker-dealers that performed these functions and adapted to those changes did so without being subject to Reg SCI. A key reason for this success was "capital markets firms have invested an enormous amount of money and human resources into [business continuity plans] over the past 15 years."[21] Recent history shows that broker-dealers and other market participants have been able to react nimbly and successfully to an unprecedented disruptive event without major systems failures. The Commission has not made a threshold finding identifying failures analogous to those necessitating Reg SCI's initial adoption in the context of broker-dealers or other proposed new SCI entities to warrant the expansion of the rules to a wider class of non-critical, fungible entities.

In fact, while the Commission worries about hypotheticals, it ignores the real-world experiences that were discussed at the October 5, 2020 meeting of the Commission's Fixed Income Market Structure Advisory Committee ("FIMSAC"). At that meeting, Commissioners and staff

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19 Proposing Release, at 23,147.

20 Shane Remolina, *Is Remote Trading Leading to a Paradigm Shift on the Trading Desk?* Traders Magazine (May 20, 2020) http://www.tradersmagazine.com/departments/buyside/is-remote-trading-leading-to-a-paradigm-shift-on-the-trading-desk/.

21 Id.

heard committee members describe the real-world resiliency[22] of markets during the extreme COVID work from home conditions (March through June 2020), where the market infrastructure "held up incredibly well, allowing for price discovery, allowing for execution under [those] incredibly extreme conditions"[23] These observations were echoed by the Division of Trading and Markets and other FIMSAC members.[24] This success has many factors, including that, as the Commission recognizes, broker-dealers are *already* subject to regulatory obligations that include requirements to maintain and test business continuity plans, supervise their businesses (including any functions they outsource), and self-report certain compliance failures to regulators. Resiliency and performance are further enhanced because investors generally utilize multiple broker-dealers and are able to switch seamlessly between them. Reg SCI is simply not needed as an additional regulatory layer on top of these existing requirements. Importantly, the Commission has not accounted for these existing safeguards or their efficacy in evaluating the relative costs and benefits associated with extending this additional regime to broker-dealers. This is a glaring and, we believe, crucial lapse in the analysis surrounding the Proposal.

2. *Reg SCI replaced the ARP Inspection Program*

Reg SCI was adopted to codify and replace the Commission's voluntary ARP Inspection Program. Critically, the ARP Inspection Program focused on SROs, providing feedback to help these entities ensure they could operate without suffering from intrusions, failures, or service interruptions. Similarly to Reg SCI, the ARP Inspection Review Policy provided steps SROs should take with regard to automated systems, independent reviews, and notification of significant systems problems and material changes to an SRO's systems.[25] When it adopted Reg SCI, the Commission explained that systems failures of national exchanges and certain SROs, such as those during Superstorm Sandy, had "led the Commission to consider the effectiveness of the 1980s and 90s-era ARP Program."[26]

The ARP Inspection Program was never designed or intended to cover broker-dealers and other market participants. Rather, the ARP Inspection Program was applied voluntarily to automated systems of SROs in response to various market disruptions in the 1980s. When the ARP Inspection Program was adopted, the Commission stated that the policy statement "does not directly discuss the obligations of broker-dealers, proprietary trading systems, service bureaus, and

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22 *See* Transcript of FIMSAC Meeting 54, 71, 103, 175 (Oct. 5, 2020), https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-100520-transcript.pdf.

23 Id. at 59 (comments of Lee Olesky, Member, FIMSAC).

24 "[F]rom my perspective as a director of the Division of Trading and Markets and the FIMSAC designated federal officer, the COVID-19 pandemic tested our fixed-income market structure in terms of price discovery, liquidity, trading volumes, clearing and settlement. So far, it seemed to have largely risen to the challenge." (comments of Brett Redfearn, Director of the Division of Trading and Markets, Commission). *Id.* at 13. "[T]here was no noteworthy outages or issues for the electronic bond markets despite record updates, record transactions, settlements, that was an excellent outcome for the overall market ecosystem, good news in that department." (comments of Sonali Theisen, Member, FIMSAC). *Id.* at 48.

25 Reg SCI Adopting Release, at 72,254-56.

26 Proposing Release, at 23,148.

vendors," but that "the Commission believes all should engage in systems testing," and contemplated the possibility of a separate policy for those entities.[27]

It is clear the Commission did not think it appropriate that programs designed for SROs would be imposed upon broker-dealers and other market participants without significant adaptation and tailoring. As Commissioner Uyeda observes, subjecting broker-dealers to Reg SCI "without tailoring to the different business models and their existing regulatory frameworks . . . is almost certain to result in unnecessary costs."[28] Regrettably, that is exactly what is being promoted by the current Proposal and, as a result, the Commission has put forward a set of ideas that do not make sense as a set of new requirements for broker-dealers the Commission and FINRA already thoroughly oversee. Further, the Commission has proposed to do so without adequately weighing the costs attendant to such an expansion or demonstrating any benefits or harms to be cured.

ii. Broker-dealer systems cannot be "critical SCI systems"

The current differentiations in Reg SCI that include separate definitions and responsibilities for "critical SCI systems" and "indirect SCI systems" do not make sense when applied to broker-dealers, and neither concept is relevant to potential SCI broker-dealers. The definition of "critical SCI systems" includes six critical systems and was "intended to capture those systems that are core to the functioning of the securities markets or that represent 'single points of failure' and thus, pose the greatest risk to the markets."[29] SCI ATSs (the only type of broker-dealer currently subject to Reg SCI) were generally considered not to represent a "single point of failure" and their systems were considered outside the scope of the definition of a "critical SCI system." Similarly, proposed SCI broker-dealers do not represent "single points of failure," and therefore the systems they operate should be explicitly excluded from the definition of "critical SCI systems."

This disconnect illustrates how the Commission's effort here falls short: Reg SCI cannot be imposed wholesale on proposed SCI broker-dealers and must, if applied at all, be tailored more distinctly and precisely. The Commission has provided no explanation much less any cost benefit analysis as to the utility of needlessly including a broad scope of a broker-dealer's network under the purview of Reg SCI. Further, the Commission has made no attempt to estimate the effort or associated costs for a broker-dealer to identify what would be considered an "SCI system" or a "critical SCI system" and then physically or logically segment such systems to narrow the regulatory perimeter.

iii. Broker-dealers cannot easily distinguish "indirect" systems as contemplated in Reg SCI

Broker-dealers also cannot easily separate the Reg SCI concept of "indirect SCI systems" from direct systems. It is a flawed concept when applied to broker-dealers. As the Commission

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27 *See* ARP Policy Statement I, 54 Fed. Reg. 48,706 n.17.

28 Mark T. Uyeda, Commissioner, Commission, Statement on the Proposed Amendments to Regulation Systems Compliance and Integrity (Mar. 15, 2023), https://www.sec.gov/news/statement/uyeda-statement-regulation-sci-031523.

29 SCI Adopting Release, at 72,263.

has observed, "[t]he distinction between SCI systems and indirect SCI systems seeks to encourage SCI entities physically and/or logically to separate systems that perform or directly support securities market functions from those that perform other functions." This separation is logically possible at exchanges and other SROs, and the concept is consistent with the Commission's goal of allowing SCI entities to tailor their systems to manage their responsibilities under Reg SCI. However, the concept of "securities market functions" in the context of a broker-dealer is fundamentally different than in the context of an exchange. Because of how broker-dealers engage in order handling and trading, it is practically impossible to separate Reg SCI's concept of "indirect SCI systems" from direct systems. It also ignores the services broker-dealers provide to their clients and the expectations of their customers, and, given how only certain broker-dealers would be covered by Reg SCI, it creates substantial competitive disparities among a class of SCI entities, something which is not present today inasmuch as all registered national securities exchanges are subject to Reg SCI.

C. The Proposal Lacks Specific Cost/Benefit Analysis

The Proposal also fails to address the enormous compliance costs associated with Reg SCI that would be borne by new SCI entities. Rather, the Commission would impose unspecified yet massive compliance costs based upon its wholly inadequate finding that it would be "impracticable to quantify many of the benefits associated with amended Regulation SCI."[30] The Commission does so without any meaningful reflection upon the industry's experience with Reg SCI since its adoption. Specifically, the Commission has profoundly underestimated what is widely understood to be the cost of compliance for SROs, many of which have found themselves spending tremendously not just on initial mapping costs, but ongoing compliance—particularly on extraordinarily demanding existing reporting exercises, much less those being proposed now. Likewise, those SROs had to deal with examiners who have insisted on regulatory steps that are not set forth in rules. Each aspect of the Proposal would introduce monitoring, reporting, and other costs, even for registered firms and others not directly included in the Proposal's new scope. For example, as discussed below in Section III.A.i, the Commission has not accounted for the costs associated with reporting requirements, which would be substantial, both in terms of monetary expenditures and personnel resources. In its analysis, the Commission estimates costs for new SCI entities but does not distinguish between types of new SCI entities. This is despite the diversity among those entities that would become new SCI entities; for example, the physical or logical separation of systems in a Reg SCI ATS would be significantly easier than at a proposed SCI broker-dealer whose systems currently all reside on the same network.

D. Significant-Volume ATSs and/or Broker-Dealers With Significant Transaction Activity In Corporate Debt Or Municipal Securities Should Not Be Subject To Reg SCI

Under a separate proposal to amend the definition of an "exchange," the Commission is also exploring the application of Reg SCI to Communication Protocol Systems subject to

[30] Proposing Release, at 23,236, 23,259.

Regulation ATS.[31] Several commenters[32] on that proposal and on the SEC's concept release on the electronic corporate bond and municipal securities markets expressed similar views to SIFMA that Reg SCI should be applied to central limit order books rather than broker-dealer systems, more generally.[33]

SIFMA believes that the electronic trading in the corporate bond and municipal market is still developing. ATSs, as currently defined, represent roughly less than 10% of the corporate bond market.[34] SIFMA does not believe that, as an execution channel, 10% represents enough market share (liquidity) for ATSs to become subject to Reg SCI and that the current 20% threshold for ATSs becoming subject to Rule 301(b)(6) continues to be appropriate. We urge the Commission, if it decides to move forward, to adjust the threshold for broker-dealers generally to that level for corporate and municipal securities. SIFMA also notes that the real-world experience during the COVID remote work period, especially in the electronic trading of corporate bonds and municipal securities, demonstrates that the application of Reg SCI to those ATSs is not needed at this time.

III. Proposed Amendments To Reg SCI Should Be Tailored For New Entities

In addition to strongly opposing the premise of the Proposal as presented, we include below several observations as to how the Proposal would need to be significantly altered if against our strong urging the Commission determines to proceed.

A. Reporting Requirements

i. Reg SCI's immediate reporting requirements are not conducive to broker-dealers

Rule 1002 of Reg SCI requires SCI entities to notify the Commission "immediately" upon "any responsible SCI personnel having a reasonable basis to conclude that an SCI event has occurred."[35] Further, SCI entities are required to submit a written notification to the Commission with 24 hours, and to provide periodic updates to the Commission "[u]ntil such time as the SCI

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31 87 Fed. Reg. 15,496.

32 *See* Comments on Amendments to Exchange Act Rule 3b-16 Regarding the Definition of "Exchange"; Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSs That Trade U.S. Treasury Securities and Agency Securities, https://www.sec.gov/comments/s7-02-22/s70222.htm.

33 *See* Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stock, and Other Securities; Regulation SCI for ATSs That Trade U.S. Treasury Securities and Agency Securities; and Electronic Corporate Bond and Municipal Securities Markets, 85 Fed. Reg. 87,106 (proposed Dec. 31, 2020); Comments on Regulation ATS for ATSs that Trade U.S. Government Securities, NMS Stock, and Other Securities; Regulation SCI for ATSs that Trade U.S. Treasury Securities and Agency Securities; and Electronic Corporate Bond and Municipal Securities Market, https://www.sec.gov/comments/s7-12-20/s71220.htm.

34 *See* FINRA, TRACE Monthly Data Files, https://www.finra.org/finra-data/browse-catalog/trace-volume-reports/trace-monthly-volume-files.

35 Reg SCI, 17 C.F.R. § 242.1002(b)(1).

event is resolved and the SCI entity's investigation of the SCI event is closed."[36] SIFMA's members believe this existing requirement actively subverts an SCI entity's efforts to deal with systems issues and threats while providing little, if any, benefit to the Commission, in part because it is almost impossible for an SCI entity to fully understand the cause or scope of systems issues "immediately" upon occurrence. This existing requirement is already misplaced, and the Commission's efforts to expand it would be doubling down on what has not proven to beneficial to the industry.

Although expanding the number of SCI entities as proposed—particularly when coupled with the Commission's proposed expansion of the definition of SCI events—risks inundating Commission staff with premature and often insubstantial notifications (while, at the same time, diverting the attention of important internal resources at affected SCI entities and SEC staff resources), we offer this merely as an observation as to the enormous waste for all parties associated with the further imposition of this regime on proposed SCI broker-dealers. More particularly, we believe the immediate reporting requirements are unnecessarily onerous and punitive in their effects, and inconsistent with other well-functioning regulatory requirements that currently govern incident responses by broker-dealers (and other similar types of regimes put in place by other regulators). The Proposal ignores and puts at risk the already considerable and well-regulated and well-administered programs through which broker-dealers already go about monitoring their systems and operations and resuming activities in the event of disruptions or other potential systems issues.

As with all businesses relying heavily on technology, and market-facing entities in particular, broker-dealers may experience minor technical events that do not amount to serious disruptions. Moreover, the expansiveness of a broker-dealer's business and systems, which are in many cases designed to allow customers all over the world to access their systems on a 24/7 basis (unlike exchanges, ATSs, and market data entities that typically provide their market infrastructure services only during trading hours on business days), makes the identification of an SCI event particularly problematic vis-à-vis an exchange, whose SCI systems are principally housed in a data center and accessible through very limited means. In those rare instances where disruptions carry forward for longer than a few moments, it is often unclear whether or not technical events are related to more serious considerations until much later than the "immediate" reporting requirements under Reg SCI would make allowances for. Indeed, the same individuals who are involved in diagnosing and addressing issues would often, as a practical matter, be the same staff called upon to make initial decisions whether an issue should be reported and to explain what is going on to those to whom the issue is reported. This calls for an interruption and distraction on the part of critical personnel at exactly the wrong time—a challenge with which SROs already subject to Reg SCI reporting have experienced considerable frustrations to date and, as we understand, for which they have been afforded little or no accommodation by the SEC staff. Moreover, in the Proposal, the Commission has not cited a single example in the years it has been receiving SCI reports where an immediate notification has yielded a more meaningful positive result than would reporting or recordkeeping that allows for a more measured and informed approach to alerting regulators to incidents at a regulated entity. The SEC does not have a response

[36] Reg SCI, 17 C.F.R. § 242.1002(b)(3).

team that could provide technical or other assistance.[37] There is simply no reason to impose strict time deadlines on reporting events "immediately" to the SEC that is not in service of a regulatory end other than the ability to cite firms for failing to meet the strict reporting time deadlines.

To avoid non-compliance with the reporting requirements of Rule 1002, proposed SCI broker-dealers would be incentivized to over-report potentially minor technical events or technical events that later are determined to be unrelated to market systems. As a result, broker-dealer personnel may easily be chasing false positives, taking away from their ability to focus on more significant issues or threats in real time. Even the act of later clarifying that an issue was not of any consequence will become an enormous drain for affected entities—a fact about which the Proposal's cost benefit analysis gives no account. Additionally, broker-dealer compliance, legal and IT resources are finite, and elevating minor technological events to the level that every technological blip and hiccup requires a formal major response detracts from a broker-dealer's ability to perform its role effectively, and could affect firms' willingness to find additional ways to innovate and compete.

Further, as proposed, the reporting requirements would almost certainly result in Commission staff being distracted by insignificant technical reports, which would ultimately detract from Commission staff's ability to identify and react to actual significant disruptive events, which it is already well-positioned to do given the manifold obligations under which broker-dealers already operate.

The Commission has also failed to undertake economic analysis of the costs associated with the expansion of the reporting under Rule 1002. Based on what we understand about the experience of many SROs, those costs are simply staggering and have not brought any attendant regulatory benefit to which the SEC points in the Proposal. This is a point we urge the Commission to engage with thoughtfully before imposing such a requirement.[38]

The Proposal would also be inconsistent with other regulatory regimes governing broker-dealers. For example, the Commission's 2022 cybersecurity proposal would require public companies to, among other things, amend Form 8-K to require disclosure of material cybersecurity

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[37] Commissioner Uyeda made a similar point that "prescriptive deadlines can potentially do more harm than good as these Commission regulatory filings would demand immediate attention from management all in the midst of responding to a breach and alerting other authorities, including law enforcement. And for what purpose? The SEC does not have a cyber response team that could immediately respond to seal the breach and provide technical assistance." *See* Mark T. Uyeda, Commissioner, Commission, Statement on the Proposed Cybersecurity Risk Management Rule for Market Entities (Mar. 15, 2023), https://www.sec.gov/news/statement/uyeda-statement-enhanced-cybersecurity-031523.

[38] SIFMA has expressed concerns in other proposals whether the SEC is adequately staffed to implement proposals and applying Regulation SCI to broker-dealers is no exception. The Paperwork Reduction Act and the economic analysis do not include any indication of potential bottlenecks from staffing levels. One of the lessons learned from SRO implementation of Regulation SCI is that the documentation process is painstakingly detailed. With respect to staffing, the Commission's Inspector General noted that "the SEC seems to be facing challenges to its retention efforts." Nicholas Padilla, Jr., Acting Inspector General, Commission, The Inspector General's Statement on the SEC's Management and Performance Challenges 21 (Oct. 13, 2022), https://www.sec.gov/files/inspector-generals-statement-sec-mgmt-and-perf-challenges-october-2022.pdf (hereinafter, the "Inspector General's Statement").

incidents within four business days after they become aware of such incidents.[39] Under the Proposal, proposed SCI broker-dealers who are also public companies would not have four business days as proposed, but instead be required to provide immediate notice about "significant cybersecurity incidents" to the Commission and its customers without any analysis of how such notice might be have unintended systemic or legal consequences.[40] This is one of several proposals that, as Commissioner Uyeda observes, would "establish minimum cybersecurity rules for all broker-dealers," and "appear to overlap with portions of the [Proposal]."[41] For compliance events, FINRA Rule 4530 also already requires self-reporting of certain compliance violations within 30 days, a reasonable time period for firms to understand the facts and provide meaningful disclosure to regulators.[42] To the extent broker-dealers or other entities are considered to be entities in a "critical infrastructure sector," they are required to report cybersecurity incidents pursuant to the Cyber Incident Reporting for Critical Infrastructure Act of 2022 ("CIRCIA"). The current and well-functioning set of regulatory obligations already in existence—and the others in contemplation—suggest that the Commission should more closely evaluate these overlapping, competing and sometimes contradictory reporting regimes before further multiplying them. Appendix A of this letter provides additional details regarding existing authority and guidance and potential regimes already applicable to proposed SCI broker-dealers.[43] Importantly, this list does not imply that the incremental burdens of compliance with Reg SCI are minor. Indeed, the layering of new requirements (duplicative and often inconsistent) on top of existing ones is generally more burdensome that complying with a single set of standards. The Commission already acknowledges this by way of its efforts to ensure SRO rules align for compliance and efficiency purposes.[44]

ii. The Commission is not the appropriate cybersecurity agency

Commission is not the appropriate body to serve as broker-dealers' primary Sector Risk Management Agency ("SRMA") for cybersecurity. Rather than imposing an additional and inconsistent regime and attempting to substitute the Commission and its staff to serve as a first responder and SRMA for cybersecurity, the Commission should rely on the expertise of the Cybersecurity and Infrastructure Agency ("CISA") to lead regulation of cyber incident reporting. While the Commission may have a role to play in "Team Cyber,"[45] the Department of the Treasury

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[39] *See* Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, 87 Fed. Reg. 13,524 (proposed Mar. 9, 2022) (hereinafter, "Cybersecurity Proposal").

[40] Cybersecurity Proposal, at 13,537.

[41] Mark T. Uyeda, Commissioner, Commission, Statement on the Proposed Amendments to Regulation Systems Compliance and Integrity (Mar. 15, 2023), https://www.sec.gov/news/statement/uyeda-statement-regulation-sci-031523.

[42] FINRA Rule 4530.

[43] *See* Appendix A.

[44] As one example, Form 19b-4 filings with respect to proposed rule changes by SROs asks the SRO to identify and explain inconsistencies with other SEC or SRO rules on which the proposed rule change is based.

[45] *See* Gary Gensler, Chair, Commission, "Working On 'Team Cyber'" - Remarks Before the Joint Meeting of the Financial and Banking Information Infrastructure Committee (FBIIC) and the Financial Services Sector

is and should remain the SRMA for the financial services sector. As Commissioner Uyeda observed in his remarks on the Proposed Cybersecurity Risk Management Rule for Market Entities, "[t]he SEC does not have a cyber response team that could immediately respond to seal the breach and provide technical assistance."[46] This letter incorporates by reference those observations made in SIFMA's June 5, 2023 letter regarding the Proposed Cybersecurity Risk Management Rule for Market Entities with regard to the potential inconsistencies and duplication among the various cybersecurity regimes applicable to broker-dealers, as well as the lack of of sound cost-benefit analysis associated with that proposal as it relates to the application of Reg SCI to proposed SCI broker-dealers.

iii. Reg SCI's requirements regarding geographic diversity of backup systems are not conducive to broker-dealers

Rule 1001(a) of Reg SCI requires that SCI entities maintain "geographically diverse" backup and recovery capabilities.[47] This requirement, if applied to broker-dealers, would be entirely counterproductive and extremely costly. In order to provide principal liquidity in the equities and options markets, broker-dealers must co-locate their systems with those of competitors. Broker-dealers already maintain rational backup and recovery capabilities that are designed with this market dynamic in mind. Applying Reg SCI's geographic diversity requirement would not make sense for these market participants as the use of those displaced systems would interfere with the ability to provide principal liquidity and therefore detract from market resilience.

iv. Reg SCI's customer notification requirements are also not conducive to broker-dealers

Rule 1002(c) of Reg SCI generally requires SCI entities to notify members or participants regarding SCI events.[48] Reg SCI currently requires SCI entities to decide to whom this notification should be sent based upon the nature and severity of the SCI event. In particular, SCI entities are required to determine which members or participants are reasonably estimated to have been affected by an SCI event. Further, SCI entities are required to notify all members or participants in the case of any "major SCI event." Reg SCI defines "major SCI events" to include any SCI event reasonably estimated to have either (1) any impact on a critical SCI system; or (2) a significant impact on the SCI entity's operations or on market participants. The Proposal would impose these notification requirements on proposed SCI broker-dealers without regard for the fact that, unlike legacy SCI entities, proposed SCI broker-dealers would have potentially millions or tens of millions of customer notifications on issues that might ultimately have no bearing on them at all, and would be required to determine which customers, out of millions, were affected. The imposition of this requirement only on those broker-dealers meeting the Commission's arbitrary

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Coordinating Council (FSSCC) (Apr. 14, 2022), https://www.sec.gov/news/speech/gensler-speech-joint-meeting-041422.

[46] Mark T. Uyeda, Commissioner, Commission, Statement on the Proposed Cybersecurity Risk Management Rule for Market Entities (Mar. 15, 2023), https://www.sec.gov/news/statement/uyeda-statement-enhanced-cybersecurity-031523.

[47] Reg SCI, 17 C.F.R. § 242.1001(a)(2)(v).

[48] Reg SCI, 17 C.F.R. § 242.1002(c).

asset or trading thresholds further imposes significant competitive disadvantages on those broker-dealers that would find themselves within the scope of Reg SCI. That disadvantage would be felt even more acutely by public company broker-dealers, who are already in competition with other financial services providers, such as banks, investment advisors, insurance companies, and others. The Proposal would do so without any additional explanation as to the utility of these notifications for introducing broker-dealers, who are capable of routing order flow to other broker-dealers without delay (and who may be undergoing similar systems issues but not required to disclose them under Reg SCI's requirements).

v. The proposed expansion of the definition of a "systems intrusion" is overly broad and would not foster additional systems resilience

The proposed expansion of the definition of a "systems intrusion" to include information about significant *attempted* unauthorized entries would be of little to no value to the Commission's stated goals while tremendously expanding the compliance and reporting obligations of SCI entities, potentially exposing them to additional harm. Under Reg SCI, SCI entities must monitor for systems intrusions and, once they occur, take corrective action, immediately notify the Commission (and provide updates thereafter), maintain certain records regarding the systems intrusion, and generally promptly disseminate information about the systems intrusions to members or participants of the SCI entity.

The Proposal would expand the definition of a "systems intrusion" to include, among others, a "significant attempted unauthorized entry."[49] While a "significant attempted unauthorized entry" would not be defined, SCI entities would be required to maintain written criteria for identifying this type of attempted unauthorized entry. Setting aside the security concerns that such a reporting obligation would present (i.e., identifying defenses that worked), these criteria themselves would generate enormous compliance burdens and would likely require the assessment of virtually every attempted entry to determine whether it was "significant." The Commission explains that "certain characteristics of attempted unauthorized entries" would weigh in favor of the attempted entry being reported as an SCI event. This includes, among others, "an attempted attack from a known sophisticated advanced threat actor," and "a cybersecurity event that, *if successful*, had *meaningful* potential to result in *widespread* damage and/or loss of confidential data or information."[50] Among many things left unclear in the Commission's adjective-laden description is to what extent a firm would be required to investigate the source of an unsuccessful attack to determine whether it originated from "a known sophisticated advanced threat actor" or how a firm should quantify or assess the effect an event *would have had* if it were successful. Because any successful attack may have "meaningful" potential to result in "widespread" loss of confidential data or information, this criterion alone would potentially capture virtually any attempted entry. In other words, the compliance obligations this single proposed change would entail are profound and widespread (and grossly underestimated in the Commission's economic analysis) given the frequency with which many firms are subject to unsuccessful cyber-attacks. SCI entities would be required to maintain broad and sophisticated

[49] Proposing Release, at 23,185.

[50] *Id*. (emphasis added).

compliance teams simply to assess whether an attempted—but unsuccessful—entry is reportable or to determine the source of an attempt and evaluate the sophistication of that actor.

In addition to these significant additional burdens, it is not clear what, if any, benefit the Commission would gain from receiving numerous notices of attempted entries, particularly in light of the fact that those attempted entries were successfully thwarted. Instead of adding value, a voluminous number of notices could detract from efforts to maintain successful systems security. In his dissent to the Proposed Cybersecurity Risk Management Rule for Market Entities, Commissioner Uyeda noted that prescriptive deadlines for notification to the Commission "can potentially do more harm than good as these Commission regulatory filings would demand immediate attention from management all in the midst of responding to a breach and alerting other authorities, including law enforcement." [51] Moreover, public disclosures of de minimis cybersecurity events, regardless of whether descriptions are summary or delayed, could paint a target on the back of this or other entities for copycat attempts by the same or similar actors, and could provide intelligence to those actors on the nature of unsuccessful attempts. In particular, public disclosures may give malicious actors insight and intelligence into potential vulnerabilities. These disclosure are also of little value in the hands of customers. As Commissioner Uyeda also warned, "[o]ne possible outcome is that customers will ignore it as yet another piece of legalese in a stack of dense legal disclosures."[52] The proposed expansion of SCI events is not supported by any rationale and should not be pursued for either existing SCI entities, much less imposed on other potential new SCI entities. The Commission does little analysis of the relationship between this proposal and the Cyber Risk Management Proposal.[53] SIFMA, with the Bank Policy Institute (BPI), Institute of International Bankers (IIB), and American Bankers Association (ABA), chronicles in detail its concerns that there are several areas where the proposals need to be harmonized, and the need for greater deference to law enforcement in its Comment on Cyber Risk Management Proposal.[54]

vi. Quarterly reports of material systems changes are not necessary for proposed SCI broker-dealers

Applying Reg SCI's quarterly reporting requirement of "material changes" to the systems of proposed SCI broker-dealers is not conducive to the broker-dealer business and is not consistent with any existing obligations. The Commission's micromanagement of certain broker-dealers' systems would constitute a potentially gargantuan and costly undertaking that serves no useful regulatory purpose. Rule 1003 of Reg SCI requires an SCI entity to submit quarterly reports

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51 Mark T. Uyeda, Commissioner, Commission, Statement on the Proposed Cybersecurity Risk Management Rule for Market Entities (Mar. 15, 2023), https://www.sec.gov/news/statement/uyeda-statement-enhanced-cybersecurity-031523.

52 *Id*.

53 Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies, Major Security-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents, 88 Fed. Reg. 20,212 (proposed Apr. 5, 2023).

54 See Letter from SIFMA, Bank Policy Institute (BPI), Institute of International Bankers (IIB), and American Bankers Association (ABA) (June 5, 2023), https://www.sec.gov/comments/s7-04-22/s70422-20123336-279624.pdf.

describing completed, ongoing, and planned "material changes" to its SCI systems and security of indirect SCI systems. As previously explained, applying the current definition of SCI systems in the context of a broker-dealer would appear to scope in most of a broker-dealer's systems. As a result, the ongoing list of material changes to these systems would be enormous, would not be relevant to the purposes of Reg SCI, and would contain sensitive, proprietary information.[55] The costs of this unspecific requirement far outweigh any benefit identified by the Commission. As explained by Commissioner Behnam when the Commodity Futures Trading Commission (the "CFTC") proposed and withdrew Regulation Automated Trading, which raised similar concerns, costs become too high where regulators attempt to promulgate rules "too broad in their terms and too vague in application."[56]

To the extent broker-dealers operate an ATS, they are already required to report material changes to the ATS via amendments to Form ATS or Form ATS-N at least twenty days prior to implementation.[57] Such inconsistencies suggest the Commission should take more time in thinking through potentially inconsistent requirements and, if the positions cannot be reconciled, at least explaining the rationale for the differences. Additionally, broker-dealers are already required by FINRA rules to update business continuity plans in the event of any material changes to operations, structure, business or location.[58]

It is also not clear what supervisory goal the Commission would achieve by way of these quarterly reports from proposed SCI broker-dealers. When it adopted Reg SCI, the Commission noted that these quarterly reports would include "technical details or specifications of SCI systems and indirect SCI systems" that would not be included in SRO rule filings.[59] While technical details and specifications of systems related to a national securities exchange would allow the Commission to assess the resiliency of those systems, it is not clear what utility, if any, that information would provide with regards to a proposed SCI broker-dealer's systems.

vi. The cybersecurity reporting requirements in the Proposal are duplicative of other existing and proposed obligations

Broker-dealers are already subject to clear guidelines and requirements regarding intrusions, disruptions or other cybersecurity events. The goals of the proposed cybersecurity reporting requirements are already achieved by existing regimes (both in the U.S. and abroad) and

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55 Due to the sensitive and proprietary nature of the information in broker-dealer quarterly reporting, SIFMA is also concerned with the finding in the Inspector General's Statement that "identity and access management" is only defined – not consistently implemented and that "agency's information security program did not meet annual Inspector General FISMA reporting metrics' definition of 'effective'". Inspector General's Statement at 13. While the report noted, "Although the SEC's program, as a whole, did not reach the level of an effective information security program, the agency showed significant improvement at the domain level", SIFMA is reasonably sure that the SEC would not view this finding acceptable in a broker-dealer examination.

56 Rostin Behnam, Commissioner, CFTC, Dissenting Statement Regarding Electronic Trading Risk Principles (June 25, 2020), https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement062520b.

57 Rule 301(b)(2)(ii) of Regulation ATS, 17 C.F.R. § 242.301(b)(2)(ii).

58 *See* FINRA Rule 4370(b).

59 Reg SCI Adopting Release, 72340.

industry best practices developed over years of operational experience. SIFMA members have already created a set of principles for the protection of sensitive data that aligns to the Cyber Risk Institute's Financial Services Cybersecurity Profile and the cybersecurity framework of the Department of Commerce's National Institute of Standards and Technology ("NIST Cybersecurity Framework").[60] Among other requirements, many broker-dealer firms are subject to business continuity and disaster recovery requirements in CFTC Rule 23.603, which includes essential components, testing and audits, recordkeeping, and prompt notification to the CFTC regarding emergencies or other disruptions.[61] The Federal Financial Institutions Examination Council ("FFIEC") maintains the FFIEC Information Technology Examination Handbook, which includes guidelines regarding business continuity management, information security, strategies and plan development, training and awareness, testing, maintenance and improvement, and audits and reports.[62] Firms also are able to rely on the NIST Cybersecurity Framework and standards published by the Information Organization for Standardization ("ISO"), such as ISO 27001, both of which form the basis for common systems and organizations controls reporting ("SOC Reporting"). SOC Reporting covers internal controls over financial reporting and controls relevant to operations and compliance. Broker-dealers are also subject to a number of requirements on the back-end designed to ensure ongoing systems integrity. As one example, many broker-dealers are subject to Section 404 of the Sarbanes-Oxley Act, which mandates that publicly traded companies establish, document, test, and maintain controls and procedures for financial reporting.[63]

Appendix A of this letter provides additional details regarding existing authority and guidance and potential regulatory redundancies for proposed SCI broker-dealers.[64]

B. Third-Party Providers Are Essential To A Nimble Market Structure, But The Proposal Would Result In Less Resiliency

SCI entities, like virtually all financial service companies, engage competitive third-party providers with the necessary expertise to manage various functions. As highlighted in the Proposal, third-party providers are able to offer technological solutions with sophistication, cost efficiencies, and scale on levels that individual firms are often unable to achieve.

SIFMA members, including those potentially in scope under the Proposal, already maintain robust third-party risk management ("TPRM") programs to manage the risks associated with a specific third-party arrangement. TPRM programs follow a risk-based approach throughout the entire lifecycle of a third-party arrangement–onboarding, steady state and disengagement. This starts with an assessment of the inherent risks of each arrangement, and the subsequent criticality rating which drives the commensurate level of ongoing diligence required. The required controls, service level expectations and various rights, among others, are secured in written contracts, which

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60 *See* SIFMA, Data Protection Principles (Nov. 21, 2017), https://www.sifma.org/wp-content/uploads/2017/11/SIFMA-Data-Protection-Principles-March-2021.pdf.

61 17 C.F.R. § 23.603.

62 *See* FFIEC, FFIEC Information Technology Examination Handbook, https://ithandbook.ffiec.gov/.

63 Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 404, 116 Stat. 745, 789 (2002).

64 *See* Appendix A.

include the expectation that the contracted service provider–and any suppliers they employ to support the contracted service–must adhere to applicable legal and regulatory obligations. SIFMA members also acknowledge the continued expectation that they remain responsible for their regulatory and legal obligations, regardless of whether a service is performed in-house or by a third-party.[65]

To ensure efficient and sustainable TPRM programs, it is important that regulation applies a principles- and risk-based approach to these requirements. This is increasingly important for financial institutions that are regulated by multiple authorities and across multiple jurisdictions. These regulatory expectations flow through to third parties and require a consistent approach to ensure they remain able to provide services which enhance the efficiency and resilience of the SEC-regulated markets. The recently adopted interagency guidance from the federal prudential regulators emphasizes the importance of such a risk-based approach, and avoiding prescriptive requirements which may limit an institution's flexibility to design a TPRM programs which best addresses its business activities and organizational structure. We commend the Commission for its attention to this area, but would like to highlight areas in the Proposal which veer from such an approach.

Under the proposed Third-Party Contact Review section of the Proposal, the Commission suggests that an SCI entity negotiates an addendum to standard contracts to separate and highlight contractual understanding of SCI-related obligations and to align contract language with Reg SCI. Such an approach in our view is unworkable and would provide no real benefits to risk management and oversight efforts. In the unlikely scenario that third parties agree to the suggested addendum, it would only result in significant contract remediation for purely administrative purposes, rather than any improvement to the resilience of market participants as existing contracts require providers to adhere to applicable legal and regulatory requirements, as stated above.

The Proposal also suggests that an SCI entity negotiate provisions that provide temporary priority to their systems, such as failover and/or business continuity and disaster recovery scenarios. Such an approach is similarly unworkable and not representative of the operations of certain third-parties. For example, third-party technology providers, including cloud service providers ("CSPs"), are significant business entities with extremely large client bases – often providing solutions to financial companies and a host of other companies that are not registered broker-dealers. For example, CSPs compete for the business of companies in virtually all industries, including banking, aerospace, defense, healthcare, retail, manufacturing, and others. SCI entities, including those that would be included under the Proposal, represent only a small fraction of that market. It is highly unlikely that the third-party providers–including but not limited to the more advanced CSPs–would be amenable to the suggested Reg SCI prioritization requirement. In fact, they have already stated that they cannot prioritize any one company or sector when recovering from a disruption; they instead resume the affected service(s) holistically across their entire customer base. We encourage the Commission to adopt a similar approach to the federal prudential regulators' interagency guidance, which acknowledges potential limitations and

[65] *See, e.g.*, FINRA Regulatory Notice 21-29 (Aug. 13, 2021) ("outsourcing an activity or function to … [a Vendor] does not relieve members of their ultimate responsibility for compliance with all applicable federal securities laws and regulations and [FINRA] and MSRB rules regarding the outsourced activity or function"); NASD Notice to Members 05-48 (July 22, 2005).

challenges in negotiating certain rights or gaining access to certain information; here, institutions are expected to take reasonable steps to "mitigate the risks or, if the risks cannot be mitigated, to determine whether the residual risks are acceptable."

We encourage the Commission to reconsider inclusion of the above suggestions, as well as any requirements under the proposed Third-Party Provider Management Program which veers from a principles- and risk-based approach. Conversely, an overly prescriptive approach which breaks from regulatory and industry norms could potentially limit the range of third parties able and willing to meet granular requirements. This would likely result in increased market concentration and reduced market resilience levels, which work against the Commission's and Reg SCI's underlying objectives.

i. The Proposal's definition of a third-party provider is too vague

The Proposal's description of relevant third-party providers is too open-ended and could result in a significant amount of unnecessary compliance. As described in the Proposal, SCI entities would need to include compliance programs to oversee third-party providers "that provide functionality, support or service, directly or indirectly, for SCI systems and indirect SCI systems."[66] The inclusion of third-party providers that indirectly support SCI systems or indirect SCI systems could potentially capture most or all of a broker-dealer's third-party relationships.

ii. Backup cloud services do not function as described in the Proposal

The Proposal misunderstands the dynamic between CSPs and their customers. In particular, the Proposal suggests that SCI entities "could consider if use of a CSP for its critical SCI systems also warrants maintaining an 'on-premises' backup data center or other contingency plan."[67] Proposed SCI broker-dealers, like most customers of CSPs, cannot feasibly maintain backup data centers on premises. These entities do not have the expertise or resources to facilitate such an extreme backup plan. The Commission should reconsider this point with regards to its guidance on the relationship between financial service firms and CSPs.

C. Reg SCI Review Requirements Would Be Redundant With FINRA Rules And Would Provide No Additional Benefit

The Proposal's expansion of entities subject to Reg SCI's annual review requirements would be redundant for proposed SCI broker-dealers of already-applicable FINRA requirements and would impose additional compliance burdens with no additional benefit. Rule 1003(b) of Reg SCI currently requires SCI entities to conduct annual (or not less frequently than annual) reviews of the SCI entity's compliance with Reg SCI, and to submit the report of those reviews to the Commission ("SCI Reviews").[68] In adopting Reg SCI, the Commission stated that SCI Reviews would "assist the Commission in improving its oversight of the technology infrastructure of SCI

66 Proposing Release, at 23,178-79.

67 Proposing Release, at 23,180.

68 Reg SCI, 17 C.F.R. § 242.1003(b).

entities" and would also "assist . . . each SCI entity in assessing the effectiveness of its information technology practices . . . ."[69]

FINRA Rule 3130 requires all FINRA members to certify annually that they have established processes, carried out necessary reviews, and generated compliance reports designed to ensure the member's compliance with "applicable FINRA rules, MSRB rules and federal securities laws and regulations."[70] The requirement to certify that the member has policies designed to ensure compliance with federal securities laws and regulations includes, among others, Reg ATS, and would include any cybersecurity rules adopted by the Commission in the future. An additional review and reporting requirement would create additional burdens that would not necessarily be duplicative while delivering no additional benefit in terms of resiliency. Indeed, given that the Commission has oversight authority over FINRA, the Commission has the power to intervene and uphold these requirements to the extent it has concerns about ineffective enforcement. The Commission also has the ability to work with FINRA to amend the FINRA rules, and even has the power pursuant to Section 19(c) of the Exchange Act to directly amend FINRA rules to the extent it determines this is necessary.

D. Reg SCI's Coordinated Testing Requirements Would Become Unworkable

Rule 1004 of Reg SCI currently requires SCI entities to coordinate the testing of business continuity and disaster recovery plans, including backup systems, "on an industry- or sector-wide basis with other SCI entities."[71] SIFMA currently coordinates among exchanges and other SCI entities. In adopting Reg SCI, the Commission explained that the purpose of this coordination was to, in part, allow for "testing under more realistic market conditions." The Commission also expected the coordination to allow testing to be more "cost-effective" because "such coordination would likely reduce duplicative testing efforts."[72] Expanding the definition of SCI entities to include dozens of additional market participants could make such already difficult coordination wholly unworkable and would certainly not be cost-effective. Additionally, because many broker-dealers are moving their application production amongst multiple data centers on a very frequent basis–generally much more frequently than the prescribed 12-month period–every live trade is a test of a broker-dealer's resiliency posture in "realistic market conditions." This is due to the fact that the trade is being processed by a server that was considered a "back-up" server possibly days earlier and will rotate to "back-up" status in a matter of months or even weeks before again becoming a production server. While not all firms that would become SCI entities under the proposed regulations operate in this fashion, consideration should be given to those that do.

IV. The Commission Should Consider Industry Experience With Reg SCI Before Expanding The Regulatory Scope

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69 Reg SCI Adopting Release, 72344.

70 FINRA Rule 3130.

71 Reg SCI, 17 C.F.R. §242.1004(c).

72 Reg SCI Adopting Release, 72354.

We have explained the reasons we do not support the Commission's efforts in the Proposal to expand to a wider array of broker-dealers the Reg SCI regime, either in its current form or with the additional measures included in the Proposal, and we have described how Reg SCI is ill-suited for application to broker-dealers. Before the Commission considers expanding Reg SCI to cover additional entities, it should also look to its nearly decade-long experience since Reg SCI's adoption and how the current regime should inform the application of Reg SCI going forward. In particular:

- The Commission has not demonstrated that reportable information under current Reg SCI facilitates any immediately or near real-time actionable response on its part or that the enormous costs of that immediate reporting have been justified. Today, Reg SCI's reporting requirements have proven to impose unnecessarily onerous time demands which require entities playing a critical role in our markets to juggle efforts to address emergent issues while trying to avoid second guessing or penalties for late reporting at the very moment they should be focused on responding to an issue at hand. SIFMA is not aware of a single instance where same-day alerts have led to an outcome that improved market performance. A significantly more rational approach to incident reporting would allow SCI entities to report on most issues once they have been addressed and resolved. Instead, SCI entities are also still contacted and called upon to communicate with the Commission in real time–outside the reporting requirements of Reg SCI–rather than solely focusing on issue resolution. Markets have been fortunate that this process has not led to bad outcomes. Multiplying the requirements of this regime across yet more entities (whose systems do not play critical roles in the markets) is an endeavor whose regulatory rationale has not been adequately explained.

- Incident reporting under current Reg SCI should be updated to provide more time for initial alerts and for updates related to reportable incidents. The Commission should recognize that broker-dealers–and SCI entities–already have the strongest incentives to deal with systems disruptions or attempted intrusions swiftly and effectively. Further, given the track record under the existing rule, it remains unclear what useful action notification facilitates that helps SCI entities resolve those disruptions as quickly as possible.

Reg SCI's requirement that SCI entities report SCI events upon reasonably becoming aware is not conducive to relationships with third-party providers. Even large entities, including exchanges, lack the necessary leverage to bargain with leading third-party service providers. As explained *supra* Section III.B, this requirement could foster an environment where fewer entities are willing to serve in roles and this could dampen innovation and efficiency.

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SIFMA greatly appreciates the Commission's consideration of these comments and would be pleased to discuss them in greater detail. If you have any questions or need any additional information, please contact the undersigned at (212) 313-1262 or any of the following colleagues: Rob Toomey (212) 313-1124, Ellen Greene at (212) 313-1287 or our counsel, James Burns and Brant Brown of Cleary Gottlieb Steen & Hamilton LLP at (202) 974-1938 and (202) 974-1694.

Sincerely,

Charles De Simone
Managing Director, Technology and Operations

Cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner

Appendix A

Existing Authority and Guidance and Potential Regulatory Redundancies for Broker-Dealers if Proposed Reg SCI Amendments Are Enacted

Proposed Reg SCI Amendments	Broker-Dealer Rules, Regulations, and Standards
Reg SCI Rule 1001(a): An SCI Entity is required to establish policies and procedures reasonably designed to ensure that its SCI systems "have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI Entity's operational capability and promote the maintenance of fair and orderly markets."	**Exchange Act Rule 15c3-5 (Market Access Rule):** Broker-dealers with market access or that provide market access to their customers are required to "appropriately control the risks associated with market access so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system." **FINRA Rule 4370(a):** A member's business continuity plan must include procedures "reasonably designed to enable the member to meet its existing obligations to customers." The plan must also address the member's existing relationships with other broker-dealers and counter-parties. **FINRA Rule 4370(c):** A member's business continuity plan must address all mission critical systems (defined to include any system necessary to ensure prompt and accurate processing of securities transactions) and how the member will assure customers' prompt access to their funds and securities.
Reg SCI Rule 1001(a): An SCI Entity's policies and procedures are deemed to be reasonably designed if they are "consistent with current SCI industry standards."	Broker-dealers are already subject to/comply with a number of cybersecurity industry standards and best practices, including: **FINRA Report on Cybersecurity Practices (February 2015):** Strongly encourages broker-dealers to consider industry frameworks and standards as reference points for cybersecurity practices, including NIST

	Frameworks and ISO 27001 and 27002 (described in more detail below). **FFIEC Information Technology Examination Handbook (Federal Financial Institutions Examination Council):** Includes guidelines regarding business continuity management, information security, strategies and plan development, training and awareness, testing, maintenance and improvement, and audits and reports. **NIST Cybersecurity Framework (Department of Commerce's National Institute of Standards and Technology):** Framework developed by the Department of Commerce based on existing standards, guidelines, and practices to manage and reduce cybersecurity risk. Executive Order 13800 ("Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure") made this framework mandatory for U.S. federal government agencies, and several federal, state, and foreign governments. **ISO 27001 and 27002 (Information Organization for Standardization):** Leading international standard for information security, published by the international Organization for Standardization in partnership with the International Electrotechnical Commission. **Section 404 of the Sarbanes-Oxley Act:** Requires publicly traded companies to establish, document, test, and maintain controls and procedures for financial reporting. **Financial Services Information Sharing and Analysis Center**: Many broker-dealers are active members of FS-ISAC, which is a global cyber intelligence sharing community focused specifically on financial services.

Reg SCI Rule 1001(a)(2)(v): An SCI Entity's policies and procedures must, among other things, include business continuity and disaster recovery plans reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.	**See Exchange Act Rule 15c3-5, FINRA Rule 4370(a), FINRA Rule 4370(c)** **CFTC Rule 23.603(a)**: Swap dealers and major swap participants must establish business continuity and disaster recovery plans designed to achieve next business day resumption "with minimal disturbance to [their] counterparties and the market."
Reg SCI Rule 1002(b): An SCI Entity must notify the Commission of SCI events immediately upon having a reasonable basis to conclude that an SCI event has occurred, must submit a written notification within 24 hours, and must remain in communication with the Commission.	**FINRA Rule 4530(b):** Each member must promptly report to FINRA (no later than 30 days) after it has concluded or reasonably should have concluded that the member or an associated person of the member has violated any applicable laws, regulations or standards of conduct. **CFTC Rule 23.603(d)**: Swap dealers and major swap participants must promptly notify the CFTC of any emergency or other disruption that might affect the ability of the swap dealer or major swap participant to fulfill regulatory obligations or would have a significant adverse effect on the swap dealer or major swap participant, counterparties, or the market.
Reg SCI Rule 1002(c): An SCI Entity is required to promptly disseminate information about SCI events, including information about the systems affected and a summary description of the SCI event. The proposed amendments to Reg SCI would include reporting to the Commission of systems intrusions (including unsuccessful attempted entries).	**Reg S-P (17 CFR 248.1 through 248.30):** Broker-dealers are required to implement and maintain policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. **Reg S-ID (17 CFR 248.201):** Broker-dealers must maintain a program designed to prevent identity theft related to customer information, and the program must be designed to identify, detect, and respond to red flags with regards to identity theft.
Reg SCI Rule 1003(b): An SCI Entity must conduct an annual SCI Review of the SCI Entity's compliance with Reg SCI, and must	**FINRA Rule 3120(a):** Each member must create an annual report detailing the member's system of supervisory controls, the summary of test results and significant

submit a report of that review to the Commission.	identified exceptions, and any additional or amended supervisory procedures created in response to the test results. **FINRA Rule 3130:** Each member must certify annually that it has in place processes to establish, maintain, review, test and modify policies and procedures reasonably designed to achieve compliance with FINRA rules, MSRB rules and federal securities laws and regulations. **Exchange Act Rule 15c3-5(e) (Market Access Rule):** Broker-dealers must conduct annual review of business activity in connection with market access to assure the overall effectiveness of risk management controls and supervisory procedures, and must certify that such risk management controls and supervisory procedures comply with the Market Access Rule.
Reg SCI Rule 1004(a): An SCI Entity's business continuity and disaster recovery plan must establish standards to designate members or participants determined to be the minimum necessary for maintenance of fair and orderly markets. **Reg SCI Rule 1004(b):** An SCI Entity must conduct functional and performance testing of business continuity and disaster recovery plans at least annually	**FINRA Rule 4370(b):** Each member must conduct an annual review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business, or location. **FINRA Rule 4370(c):** A member's business continuity plan must address financial and operational assessments (defined as a set of written procedures that allow a member to identify changes in its operational, financial, and credit risk exposures). **CFTC Rule 23.603(g)**: Swap dealers and major swap participants must test each business continuity and disaster recovery plan at least annually.
Reg SCI Rule 1005: An SCI Entity must keep books and records relating to its compliance with Reg SCI (for at least five years, including in a readily accessible location for the first two years).	**FINRA Rule 4511:** Members must make and preserve books and records required under FINRA rules and must preserve them for at least six years.

	Exchange Act Rule 17a-4(e)(7): Each broker-dealer must maintain and preserve compliance, supervisory, and procedures manuals (including updates, modifications, and revisions) related to compliance with applicable laws and rules until three years after the termination of the use of such manuals. **FINRA Rule 4521(a)**: Carrying or clearing members must submit to FINRA financial and operational information regarding the member as FINRA deems essential for the protection of investors and the public interest.
Proposed Reg SCI Third-Party Provider Management Requirements: The proposed amendments to Reg SCI would require "that every SCI Entity undertake a risk-based assessment of the criticality of each of its third-party providers, including analyses of third-party provider concentration, of key dependencies if the third-party provider's functionality, support, or service were to become unavailable or materially impaired, and of any potential security, including cybersecurity, risks posed."	**FINRA Notice to Members 05-48**: Provides guidance to FINRA members on requirements that pertain to the outsourcing of activities and functions that, if performed directly by members, would be required to be the subject of a supervisory systems and procedures pursuant to FINRA rules. **FINRA Notice to Members 21-29**: Notice to members reiterating obligations to establish and maintain supervisory systems and written supervisory procedures for any functions performed by third-party providers.