



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

February 26, 2019

Ellen Greene  
Managing Director  
SIFMA  
120 Broadway, 35<sup>th</sup> Floor  
New York, NY 10271

Re: Request Regarding Rule 1004 of Regulation SCI

Dear Ms. Greene:

In your letter dated February 25, 2019, you request assurance, acting on behalf of SIFMA members and other similarly situated broker-dealers, as well as the SCI entities<sup>1</sup> listed on Exhibit 1 to your letter, that the staff of the Division of Trading and Markets (“Staff”) would not recommend enforcement action to the Commission under Rule 1004 of Regulation Systems Compliance and Integrity (“Regulation SCI”)<sup>2</sup> if SCI entities conduct the annual testing of business continuity and disaster recovery plans (“BC/DR plans”) required by Rule 1004 in the same calendar month as the prior year, but more than 365 days after the testing date of the prior year.

Rule 1004 requires, among other things, that an SCI entity perform functional and performance testing of the operation of its BC/DR plans<sup>3</sup> with members or participants “not less than once every 12 months” and that the testing of such plans be coordinated on an industry- or sector-wide basis with other SCI entities.

In your letter, you describe the factors that SIFMA and SCI entities consider “to determine the most effective date to conduct the annual testing.” In particular, you note that coordinated selection of the test date each year takes into account a range of considerations, such as option expiry weekends, internal firm or exchange-specific operations, technology processes

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<sup>1</sup> Under Rule 1000 of Regulation SCI, the term SCI entity includes self-regulatory organizations (“SROs”) (including stock and options exchanges, registered clearing agencies, FINRA and the MSRB), alternative trading systems (“ATSS”) that trade NMS and non-NMS stocks exceeding specified volume thresholds, disseminators of consolidated market data (“plan processors”), and certain exempt clearing agencies.

<sup>2</sup> 17 CFR 242.1004.

<sup>3</sup> Rule 1001(a)(2)(v) of Regulation SCI requires members to have BC/DR plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption. See 17 CFR 242.1001(a)(2)(v).

(e.g., major planned systems changes), holidays, and other major industry testing programs.<sup>4</sup> Because of these factors, SIFMA seeks flexibility to conduct the testing required by Rule 1004 in the same calendar month as a prior year's test, but more than 365 days after the most recent test, if necessary to establish the most effective testing date. For example, the 2018 coordinated BC/DR plan testing occurred on October 10<sup>th</sup>, and SIFMA, after consideration of the factors noted above, tentatively proposes that the next coordinated testing be conducted on October 26<sup>th</sup>, 2019, and that testing for the two following years be conducted on October 24<sup>th</sup>, 2020 and October 23<sup>rd</sup>, 2021.

As discussed in the SCI Adopting Release and noted in your letter, the key with respect to the frequency of coordinated BC/DR testing is that it should “occur regularly enough to offer practical utility in the event of a wide-scale disruption without imposing undue cost.”<sup>5</sup> Further, the Commission recognized that coordinating industry-wide testing among SCI entities and their members or participants may “present logistical challenges.”<sup>6</sup> The Staff recognizes that the selection of a single date for industry-wide coordinated testing is not a simple matter, and necessarily requires coordination with many entities and consideration of many factors as you noted in your letter. The Staff is also cognizant that certain periods may not be optimal for this testing because of market-related events (e.g., option expiry weekends), holidays, or other operational reasons.

Therefore, based on the facts and representations set forth in your letter, the Staff would not recommend enforcement action to the Commission if the testing required by Rule 1004 occurred in the same calendar month as a prior year, but more than 365 days after the most recent test; however, given the importance of the BC/DR testing requirement in ensuring that SCI entities' BC/DR plans operate as intended in the event of a wide scale disruption, the Staff believes that it is appropriate that SCI entities give due consideration to all of these factors and choose a testing date that will allow for the most effective testing.

This Staff position is based strictly on the facts and representations set forth in your letter and any different facts or representations may require a different response. This response, furthermore, expresses the Staff's position with respect to enforcement action only and does not purport to express any legal conclusions. The Staff expresses no view with respect to any other

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<sup>4</sup> In particular, your letter references the SIFMA Business Continuity Planning tests, the Futures Industry Association (“FIA”) annual test, as well as the Investment Industry Regulatory Organization of Canada (“IIROC”) test. According to your letter, “[a]ligning the dates of these tests creates substantial efficiencies for the test entities and participating firms and thus reduces operational and technology risks.”

<sup>5</sup> See SCI Adopting Release, 79 FR at 72354.

<sup>6</sup> See *id.*

Ms. Ellen Greene  
February 26, 2019  
Page 3 of 3

questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. This position is subject to modification or revocation at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "David S. Shillman". The signature is fluid and cursive, with a long horizontal flourish at the end.

David S. Shillman  
Associate Director  
Division of Trading and Markets



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SEC Mail Processing  
FEB 26 2019  
Washington, DC

February 25, 2019

David Shillman  
Associate Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: ***Request for No Action Relief from Rule 1004 of Regulation SCI***

Dear Mr. Shillman:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup>, acting on behalf of its members and other similarly situated registered broker-dealers, as well as the “SCI entities”<sup>2</sup> listed on Exhibit 1 to this letter, respectfully request that the staff of the Division of Trading and Markets (“Division”) of the Securities and Exchange Commission (“Commission”) provide assurances that it will not recommend enforcement actions for failing to comply with Rule 1004 of Regulation SCI under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>3</sup> if SCI entities conduct the annual testing of business continuity and disaster recovery (“BC/DR”) plans required by Rule 1001 in the same calendar month as the prior year, but the testing date in one year occurs more than 365 days after the testing date in the prior year.

**Regulation SCI Requires Annual Operational Testing of BC/DR Plans**

Rule 1001(a)(2)(v) of Regulation SCI requires SCI entities to establish BC/DR plans. Rule 1004 of Regulation SCI requires SCI entities to conduct testing of the operation of these BC/DR plans

<sup>1</sup> 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 nearly 1 million employees, we advocate for 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 <http://www.sifma.org>.

<sup>2</sup> Under Rule 1000 of Regulation SCI, the term “SCI entity” includes, among others, national securities exchanges, registered securities associations, registered clearing agencies, certain exempt clearing agencies, as well as alternative trading systems that exceed certain trading volume thresholds. k

<sup>3</sup> See Securities Exchange Act Release No. 34-73639 (November 19, 2014), 79 FR 72252 (December 5, 2014)(“SCI Adopting Release”).

at least once every 12 months. In adopting Regulation SCI, the Commission stated that the key for operational testing of BC/DR plans “is for testing to occur regularly enough to offer practical utility in the event of a wide-scale disruption without imposing undue cost, and that a minimum frequency of one year achieves this balance.”<sup>4</sup>

Regulation SCI took effect on February 3, 2015 with the first required operational testing of BC/DR plans having to occur by a deadline of November 3, 2016.<sup>5</sup> For the 2017 testing of BC/DR plans, the requirement under Rule 1004(c) for industry- or sector-wide coordination was in effect.<sup>6</sup> Since October 2016, the SCI entities have conducted the required operational testing of BC/DR plans in coordination with the annual SIFMA Business Continuity Planning tests, which currently are held in October of every calendar year. The 2018 test was held on October 13<sup>th</sup>.

SIFMA and SCI entities coordinate to determine the most effective date to conduct the annual testing of BC/DR plans under Regulation SCI after considering several factors. SCI entities and SIFMA member firms seek to avoid weekends where industry testing would be difficult, including options expiry weekends, internal firm operations and technology processes associated with calendar cycles, and holidays. In addition, there are major exchange system conversions planned in October 2019 that require their own weekend testing programs and limit the number of available weekends in October 2019 to conduct the Regulation SCI tests. If the test were moved to September for 2019, then SCI entities would face the same timing issue for 2020 in order to move the test back to October.

#### **SIFMA Request to Allow Testing to Occur During a Single Calendar Month**

Beginning with the 2019 BC/DR test, SIFMA requests that the Division Staff provide assurances that it will not recommend to the Commission enforcement action based on the annual testing required under Rule 1004 occurring in the same calendar month as the prior year’s test but more than 365 days after the prior year’s test. SIFMA proposes the 2019 testing of BC/DR plans to be held on Saturday October 26<sup>th</sup>, which would be more than 365 days after the 2018 test date of October 13<sup>th</sup>. SIFMA tentatively proposes that the testing dates for the two following years would be Saturday October 24, 2020 and Saturday, October 23, 2021.

Permitting the annual BC/DR testing to be held in the same calendar month as the prior year’s test, as opposed to strictly within 365 days of the previous testing date, allows for alignment of the Regulation SCI test (and the SIFMA industry connectivity test) with other major industry testing programs such as the Futures Industry Association (“FIA”) annual test, as well as the Investment Industry Regulatory Organization of Canada (“IIROC”) test, which occurs every other year. SIFMA coordinates with the FIA and IIROC to identify potential test weekends and

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<sup>4</sup> *Id.* at 72354.

<sup>5</sup> *Id.* at 72367.

<sup>6</sup> *Id.*

have collectively agreed to these proposed testing dates. Aligning the dates of these tests creates substantial efficiencies for the test entities and participating firms and thus reduces operational and technology risks.

**Conclusion**

For the reasons stated above, SIFMA requests the Division provide assurances that it will not recommend enforcement actions to the Commission for entities failing to comply with Rule 1004 of Regulation SCI if the required annual testing of BC/DR plans occur during October of every calendar year, even if the testing date in one year is more than 365 days after the testing date in the prior year.

\* \* \*

SIFMA greatly appreciates the Commission's consideration of the issues raised above and would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions or need any additional information, please contact me at 212-313-1287 or [egreene@SIFMA.org](mailto:egreene@SIFMA.org).

Sincerely,



Ellen Greene  
Managing Director  
SIFMA

Exhibit 1:

The following SCI entities have consented to SIFMA's submission of this letter on their behalf:

BOX Exchange LLC;

The national securities exchanges operated by Cboe Global Markets: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe Exchange, Inc.;

The registered clearing agencies and exempt clearing agencies operated by the Depository Trust & Clearing Corporation: The Depository Trust Company, The Fixed Income Clearing Corporation, The National Securities Clearing Corporation, and Omgeo;

The Financial Industry Regulatory Authority;

Investors Exchange LLC;

The national securities exchanges operated by Miami International Holdings, Inc.: MIAX International Securities Exchange LLC and MIAX PEARL, LLC;

The Municipal Securities Rulemaking Board;

The national securities exchanges and alternative trading system operated by Intercontinental Exchange, Inc.: the Chicago Stock Exchange, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and Global OTC;

The national securities exchanges operated by Nasdaq, Inc.: The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq PHLX LLC;

The Options Clearing Corporation; and  
OTC Link ATS