FIA
Principal Traders Group

July 11, 2013

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: SEC Proposed Regulation Systems Compliance and Integrity

Dear Ms. Murphy:

The Futures Industry Association Principal Traders Group ("FIA PTG") appreciates the opportunity to comment on the above referenced proposed rule filing (the "Proposal" or "Proposed Reg SCI"). FIA PTG is comprised of firms that trade their own capital as participants on the U.S. and global exchange-traded markets. Our members engage in manual, automated, and hybrid methods of trading and are active in a variety of asset classes, such as foreign exchange, commodities, fixed income, and equities. We are a critical source of liquidity in the exchange-traded markets, allowing those who use these markets to manage their business risks to enter and exit the markets efficiently.

FIA PTG supports the principles and goals underlying the Proposal. Nevertheless, for the reasons set forth below, we believe that the impact upon broker-dealers may very well be significant while better alternatives could easily achieve the same goals. As a result, FIA PTG respectfully urges the Commission to (i) fully analyze and clarify what the proposal will directly and indirectly require of exchange members and ATS participants, (ii) analyze the costs and benefits of such requirements, and (iii) consider and compare the costs and benefits of other measures that may achieve the Commission's goals in a more efficient way.

DISCUSSION

Proposed Reg SCI is designed to supersede and replace the Commission's current Automation Review Policy ("ARP"). Pursuant to the Proposal, SCI Entities—defined to encompass both exchanges and significant volume ATSs—would be required to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in the manner intended. In addition, SCI Entities would be required to disseminate information to their members or participants regarding SCI events—defined to include systems disruptions, systems compliance issues, and systems intrusions. Further, the Proposal mandates designated members or participants of SCI Entities to participate in scheduled testing of the operation of their business continuity and disaster recovery plans, including back-up systems, so that such participants stand ready to contribute to a fully redundant back-up market. Taken together, these proposed requirements are intended to ensure the capacity, integrity, resiliency, availability, and security of the national market system.

1. FIA PTG Supports Enhanced Venue Stability and Timely Communication

FIA PTG supports the Commission's effort to improve existing standards for exchange and trading platform stability and infrastructure integrity. There are fundamental benefits to all market participants in requiring trading venues to establish testing facilities and to use common standards for system integrity, including the use of standardized test symbols, test protocols and participant testing requirements.

We also strongly support the provisions regarding testing of exchange systems. Testing is not a universal panacea for all issues. However, methodical testing enhances system integrity and helps eliminate a basic variety of malfunctions in technical systems. Currently, there is significant difference among trading venues regarding what is tested and which members or subscribers are required to participate in the test. We agree with the Commission that standards designed to foster stable and orderly markets are appropriate. Based on our experience identifying and sharing best practices,[1] we recommend that the Commission avoid an overly prescriptive approach and instead allow the venues to identify the practices that best suit their systems, membership and structure.

2. FIA PTG Supports Requirement for SCI Entities to Disseminate Information Regarding SCI Events

FIA PTG supports the Commission's proposed provisions that are designed to enhance and standardize incident notifications. As participants, much like users of personal computer systems, we value notification of exchange system intrusions, flaws, glitches, or interruptions that could impact the safety or control of our own systems. We share an interest in avoiding

[1] Please see FIA PTG, "Recommendations for Risk Controls for Trading Firms" (November 2010) at http://www.futuresindustry.org/downloads/Trading_Best_Pratices.pdf and also "Software Development and Change Management Recommendations" (with FIA EPTA in March 2012) at http://www.futuresindustry.org/downloads/Software_Change_Management.pdf

operational malfunctions; learning of exchange or ATS system issues promptly not only allows participants to better manage their own immediate risks, but it also facilitates efforts to learn, adapt and enhance the integrity of our systems going forward.

Nevertheless, a reporting requirement that is over-inclusive may ultimately be counterproductive by de-sensitizing participants to the importance of incident notices and increasing the likelihood that such notices will be ignored. As a result, we urge the Commission to reserve dissemination of incidents to only the most critical and time sensitive.

3. The Commission's Proposal Requires Further Review Including Assessing the Need for Full Redundancy and the Impact On Participants

According to the Proposal, in addition to maintaining separate and redundant facilities, SCI Entities are required to identify members or participants that would be required to "be ready, able, and willing to use such systems" during a disaster or disruption. Of course, the underlying goal of this requirement is laudable: establishing and maintaining marketplace availability and resiliency. However, FIA PTG believes that the Proposal will not meet the Commission's stated goals and ignores more robust and effective solutions. In addition, the Proposal would impose significant costs that will limit the number and diversity of participants in the markets.

a. Costs for market participants to support back-up facilities is significant

An informal survey of responding FIA PTG members suggests the average cost for a broker-dealer to maintain fully redundant systems at all relevant exchange back-up facilities would be approximately $3,000,000 annually. Further, this cost estimate includes only annual operating costs for systems at all relevant exchange back-up facilities and does not include initial capital costs related to the infrastructure or labor/employment costs necessary for the maintenance and monitoring of back-up connections and facilities. These infrastructure costs vary widely among members and exchanges but are not insubstantial.

b. Even fully redundant back-up facilities will not allow the market to operate as if it were the primary site

The Commission must recognize that markets will not operate as normal on any back-up facility. Our view is based on experience with both current redundancy and with numerous market issues in both the exchange and the ECN environments. Specifically, we note that:

- Certain types of systems problems will make failing over to a back-up facility impossible. For example, if the system problem means that orders or trades are missing or out of sequence, these issues must be resolved before returning to an orderly market on either the primary or back-up facility. The CBOE's April 2013 outage and the IPO of Facebook are examples of this type of problem, where corrections were required before re-commencing trading.

- Due to operational and risk procedures, firms may choose to not access an exchange's back-up facility if the underlying cause for the failover would introduce undue risk into the firm's trading operation. Additionally, firms may not be able to access an exchange's back-up facility seamlessly because of changes that must be made to firms' systems and software. For these reasons, market participants may not use a back-up facility even when the primary facility is unavailable.
- Due to limited use, firms' ability to operate in the same manner on a back-up facility will be hindered by such factors as differences in liquidity that will not be addressed by simply having a redundant connection.

In many respects, the goal of resilient and redundant markets is already in place. The benefit of having multiple competing venues, operating as a collective system under Regulation NMS, provides informal, yet meaningful redundancy. When one market or venue experiences a disruption, participants continue to trade and hedge their risk on the other competing markets. We note that in total there are over 20 different substantial trading venues for equities markets. Requiring that each of these venues establish and maintain its own separate redundant infrastructure and that participants in these venues also build matching redundancies is not necessary due to our current highly redundant market structure.

Rather than require separate and fully redundant contingent venues, we believe it is more efficient to allow market participants to utilize the redundancies inherent within the current market structure. For those situations where specific redundancy may be appropriate (such as where an instrument is traded only on one exchange or in the case of a primary market, during the open and closing periods of the market) we believe there are less costly and more efficient alternatives that should be considered. For example:

- Cross redundant co-location between markets (e.g., allowing NYSE to locate its back-up co-location at another exchange such as BATS, or NASDAQ and vice versa).
- Advance preparation for temporary screen-based back-ups in place of floor-trading (e.g., NYSE utilizing NYSE Arca's electronic platform as its back-up facility).

4. Proposed Action Item

We respectfully suggest the Commission further study these and other alternative solutions. Most importantly, we urge the Commission to conduct a meaningful cost-benefit analysis that assesses the costs and benefits of the current Proposal as compared to alternative forms of the Proposal as well as the status quo.

For purposes of a meaningful cost benefit analysis, we suggest that the Commission seek information from proposed SCI Entities, as well as their market participants who will be impacted by the Proposal. While the results of any analysis should be publicly disseminated, the Commission should find a way to keep the information gathered from the participants confidential and not subject to the Freedom of Information Act on the basis that the information provided will concern business trade secrets and other confidential commercial and financial information.

5. The Reg SCI Entity Definition Should Not Be Expanded to Include Broker Dealers—Which Are Already Subject to Substantial Continuity, Testing, Control and Integrity Requirements

Many FIA PTG members, as noted above, are members of US equity exchanges. As the Commission knows, to be a member of an exchange, a firm must be a registered broker-dealer and comply with exchange requirements. These exchange requirements include registration of principals and compliance with rules identical to, or very similar to FINRA broker-dealer requirements.

As registered broker-dealers, firms must comply with, for example, Commission Rule 15c3-5 ("the Market Access Rule") and Rules 17a-3 and 17a-4 (books and records requirements for broker-dealers), as well as exchange rules, such as NYSE/FINRA Rule 4370 (Business Continuity Plans). This Business Continuity Plan rule also applies to NASDAQ members; equivalent rules apply at each of the other exchanges. In addition, NYSE/FINRA Rule 3130 requires broker-dealers to annually review and certify that they maintain compliance programs appropriate for their business.

These requirements provide a sound basis for testing, continuity and system integrity, and address the same issues as the Proposal would address, but in a manner appropriately tailored to broker-dealers' varied businesses. Under these current rules, exchange member firms already maintain plans for continuity and controls to ensure the viability and integrity of their business, and are already required to certify that their controls are sufficient (pursuant to the Market Access Rule).

For these reasons, the direct application of Proposed Reg SCI to exchange member broker-dealers is unnecessary and would duplicate current requirements, which are already tailored to serve the Commission's overall objectives. Accordingly, the application of the Proposal to exchange member broker-dealers would be duplicative and potentially stifling, and it would add undue cost and burden on exchange members, all without producing measurable enhancements to exchange stability when compared with currently applicable rules and regulations.

CONCLUSION

Thank you again for the opportunity to provide you with our thoughts on the Proposed Rule. We look forward to playing a constructive role in helping the Commission achieve its regulatory goals in the most effective manner. Please contact Mary Ann Burns ([redacted]) if you have any questions regarding this request.

Respectfully,

Futures Industry Association Principal Traders Group

Mary Ann Burns
Chief Operating Officer
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