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Via Electronic Mail: rule-comments@sec.gov

June 13, 2023

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

Re: Amendments to Regulation Systems Compliance and Integrity Under the Securities Exchange Act of 1934, RIN 3235-AN25, File No. S7-07-23, 88 Fed. Reg. 23146 (Apr. 14, 2023)

Dear Ms. Countryman:

Tradeweb Markets Inc. (“**Tradeweb**”) appreciates this opportunity to provide the Securities and Exchange Commission (the “**Commission**”) with comments in response to the above-captioned release (the “**Proposal**”). The Proposal would update the requirements of Regulation Systems Compliance and Integrity (“**Regulation SCI**”) and expand the number and types of entities that must comply with Regulation SCI (such entities, “**SCI entities**”).

Tradeweb is a leading global operator of electronic marketplaces for rates, credit, equities and money markets. Founded in 1996, Tradeweb provides access to markets, data and analytics, electronic trading, straight-through-processing and reporting for more than 40 products to clients in the institutional, wholesale and retail markets. Advanced technologies developed by Tradeweb enhance price discovery, order execution and trade workflows while allowing for greater scale and helping to reduce risks in client trading operations.

Tradeweb operates two registered alternative trading systems (“**ATSs**”) through its broker-dealer subsidiaries: Tradeweb Direct LLC and Dealerweb Inc. (“**Dealerweb**”). In addition, Tradeweb LLC, another registered broker-dealer, offers a request-for-quote (“**RFQ**”) electronic platform which was, but is no longer, registered as an ATS. All three broker-dealer subsidiaries offer the ability for institutional buyers and sellers of government securities and other fixed income, equity, and derivative instruments to transact on their electronic trading platforms.

Tradeweb has a strong interest in ensuring that the application and scope of Regulation SCI is appropriately tailored because Dealerweb is already subject to Regulation SCI

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and because this Proposal, as well as the Commission's proposal regarding Commission Rule 3b-16 and Regulation ATS ("**ATS Proposal**")¹ would, if adopted as proposed, expand the number of SCI entities to potentially include certain of our other broker-dealer subsidiaries.²

We agree with the Commission that strong and resilient technology and cybersecurity infrastructure for the U.S. securities markets is vitally important.³ We believe that all market participants, regardless of whether they are SCI entities subject to Regulation SCI, should take reasonable steps to ensure that their technology systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain those systems' capabilities and promote the maintenance of fair and orderly markets.⁴ In this regard, we note that Tradeweb has extensive policies, procedures and processes in place to promote technological integrity, resiliency and strength.⁵

For this reason, we believe that a number of aspects of the Proposal work as proposed. For example, we agree with the Commission that an SCI entity's policies and procedures should include a requirement for the SCI entity to (i) maintain a written inventory and classification of all of its "SCI systems," "critical SCI systems," and "indirect SCI systems" (as such terms are defined in Regulation SCI)⁶ and (ii) include an identification of the current SCI industry standards with which such policies and procedures are consistent.⁷ As another example, we think the Commission's proposed changes to further specify the required contents of an SCI entity's "SCI review" (as defined in Regulation SCI) and the report of the SCI review

¹ 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, RIN 3235-AM45, File No. S7-02-22, 87 Fed. Reg. 15496 (Mar. 18, 2022).

² In this regard, Tradeweb submitted a comment letter to the Commission regarding the ATS Proposal, which, in part, provided comments with respect to how Regulation SCI should be applied to ATSS that facilitate trading in government securities. We respectfully request that the Commission consider those comments in connection with this Proposal as well. *See* Tradeweb Comment Letter to the Commission's ATS Proposal (Apr. 18, 2022), available at <https://www.sec.gov/comments/s7-02-22/s70222-20123933-280073.pdf>.

³ Regulation Systems Compliance and Integrity, RIN 3235-AN25, File No. S7-07-23, 88 Fed. Reg. 23147 (Apr. 14, 2023).

⁴ *See* 17 C.F.R. § 242.1001(a)(1).

⁵ As but one example, Tradeweb maintains a comprehensive business continuity and disaster recovery program. *See* Tradeweb Business Continuity & Disaster Recovery Fact Sheet, available at <https://www.tradeweb.com/49f44b/globalassets/disclosures/disaster-recovery/tradeweb-business-continuity-and-disaster-recovery-fact-sheet-2022.pdf>; *see also* 17 C.F.R. § 242.1001(a)(2)(v).

⁶ Proposed Rule 1001(a)(2)(viii). For Tradeweb and, we expect, other SCI entities, these types of systems are subject to regulation by other U.S. and non-U.S. regulators, such as the Commodity Futures Trading Commission and the U.K.'s Financial Conduct Authority. We believe it would be helpful if the Commission also took into consideration the relevant rules administered by these regulators when finalizing this Proposal—coordination will help to ensure parity of requirements across jurisdictions and will result in savings and efficiencies for market participants.

⁷ Proposed Rule 100(a)(2)(xi).

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that is submitted to the SCI entity's board and to the Commission would be helpful in ensuring the market understands the Commission's expectations with respect to these obligations.⁸

However, as described in the remainder of this letter, there are other aspects of the Proposal that we respectfully believe the Commission should reconsider to ensure that Regulation SCI (i) is properly scoped and (ii) its requirements are not unduly burdensome on SCI entities and do not result in unintended consequences, which could ultimately hinder the Commission's goal of ensuring technological resiliency and fair and orderly markets.

1. The Commission should further tailor the scope of entities subject to Regulation SCI.

The Proposal would expand Regulation SCI to cover certain "SCI broker-dealers," which would be based on a total assets threshold or one or more transaction activity thresholds for NMS stocks, exchange-listed options contracts, U.S. Treasury securities, or Agency securities.⁹ Given the significant costs and burdens associated with Regulation SCI compliance, that any benefits may vary significantly depending on the market, and the potential for unintended consequences, the Commission should carefully consider to which entities Regulation SCI should apply.

In particular, the Commission should consider three guiding principles in making this determination. First, different approaches to the application of Regulation SCI may be valid for different asset classes (or particular segments of asset classes), based on the prevalence of electronic trading in those markets. We worry that the premature application of Regulation SCI and its associated burdens on electronic trading in a market before there is a critical mass of transaction volume and traders participating in such electronic markets would be harmful, as it might discourage the further development of electronic trading in the market. Both the Commission and market participants would lose out on the many benefits of increased electronic trading, including in terms of increased transparency and auditability that accompany market electronification. Furthermore, application of Regulation SCI to these markets would impose large costs, but result in proportionately fewer benefits in terms of market resiliency and

⁸ Proposed Rule 1003(b).

⁹ See Proposal, 88 Fed. Reg. at 23161-23166. An SCI broker-dealer would meet the total assets threshold if, in at least two of the four preceding calendar quarters, it reported to the Commission total assets in an amount that equals five percent of the total assets of all security brokers and dealers. An SCI broker-dealer would meet the transaction activity thresholds as follows, based on activity during at least four of the preceding six calendar months: (1) NMS stocks: transacted average daily dollar volume in an amount that equals ten percent or more of the average daily dollar volume reported by or pursuant to applicable effective transaction reporting plans (excluding transactions on national securities exchanges and ATSS for which the broker-dealer was not the executing party); (2) exchange-listed options: transacted average daily dollar volume in an amount that equals ten percent or more of the average daily dollar volume reported by an applicable effective national market system plan; (3) U.S. Treasury securities: transacted average daily dollar volume in an amount that equals ten percent or more of the total average daily dollar volume made available by the self-regulatory organizations to which such transactions are reported (i.e., FINRA); and (4) Agency securities: transacted average daily dollar volume in an amount that equals ten percent or more of the total average daily dollar volume made available by the self-regulatory organizations to which such transactions are reported (i.e., FINRA).

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protection for market participants, given that significant activity in these types of markets continues not to be electronic. Relatedly, if electronic trading is less prevalent, then market participants are necessarily less dependent on any particular trading venue and more capable of shifting their trading activity to voice and other non-electronic channels.

Second, the Commission should account for the fact that not all electronic trading mechanisms present the same levels of risk. For example, central limit order books (“CLOB”) are, in this context, riskier than RFQs—given the speed and nature of transaction execution on CLOBs, a technology malfunction is more likely to result in inadvertent trade executions or other disruptions to trading. Likewise, participants in an RFQ transaction would be better able to switch to other trading venues or transact bilaterally (e.g., via voice) in the event of any disruption.

Third, the Commission should be careful not to distinguish between functionally similar technologies in a way that could unfairly advantage (or disadvantage) certain service providers. While it is reasonable to distinguish among technologies that provide different functionality (i.e., a CLOB versus a competitive RFQ, such as an RFQ-to-3), it would be arbitrary to treat technologies that ultimately provide the same function (i.e., RFQ-to-1 and bilateral chat) differently.

With these principles in mind, we respectfully request that the Commission take into consideration the following recommendations.

- a. The Commission should distinguish between different types of U.S. Treasury securities and bring in scope corporate debt securities.

As noted, the Proposal would expand Regulation SCI to cover SCI broker-dealers if any such entity met the relevant transaction activity threshold for NMS stocks, exchange-listed options contracts, U.S. Treasury securities, or Agency securities.¹⁰ The proposed U.S. Treasury securities threshold would aggregate all U.S. Treasury securities transaction activity together. The Commission also asks market participants to comment on whether significant volume ATSS and broker-dealers with significant transaction activity in corporate debt securities (such entities, “**Corporate Debt Entities**”) should be subject, in whole or in part, to Regulation SCI.¹¹

In our view, this approach is not sufficiently granular. With respect to the Treasury market, regulators and market participants have long acknowledged the significant

¹⁰ See *Id.* at 23161-23166.

¹¹ *Id.* at 23174. The Commission also requested comment on whether municipal debt securities should be in scope. Given the lack of electronification in those markets, we believe that it would be premature to apply Regulation SCI to the municipal bond securities markets. In this regard, one recent study found that only 11% of municipal bond volume was executed electronically, which is significantly lower than the volumes in, for example, the government securities and corporate debt securities markets. Coalition Greenwich, *Automation is Coming to the Municipal Bond Market* (June 2022), available at <https://www.greenwich.com/fixed-income/automation-coming-municipal-bond-market> (citing data from May 2022).

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differences between the on-the-run and off-the-run Treasury markets (with respect to trading mechanisms and other market characteristics).¹² In light of these differences, it would be appropriate for the Commission to do so here as well, such that an ATS or broker-dealer would apply a different transaction activity threshold for the two different types of Treasuries.

We also do not believe that it would be appropriate to scope in Treasury securities, particularly off-the-run Treasuries, without treating corporate debt securities in an equivalent fashion. The Commission recognized that trading in the corporate debt securities markets has become increasingly electronic.¹³ We, therefore, do not believe that Corporate Debt Entities should be excluded categorically from Regulation SCI. Instead, the Commission should, as it has proposed to do with respect to U.S. Treasury securities, Agency securities and other asset classes (and subject to consideration of the recommendations set forth in this letter), set appropriate thresholds for determining when it would be proper for a Corporate Debt Entity to be subject to Regulation SCI.

As with U.S. Treasury securities, we believe that the Commission should distinguish between different segments of the corporate debt market—specifically between the investment-grade (“IG”) debt market and the high-yield (“HY”) debt market. Here, too, regulators and market participants recognize substantial differences in these markets.¹⁴ While both IG and HY debt markets have experienced increased electronic trading, there remain significant differences in the overall level of electronic trading and the mechanisms used to execute transactions.¹⁵

¹² See, e.g., Department of the Treasury, Notice Seeking Public Comment on Additional Transparency for Secondary Market Transactions of Treasury Securities (June 23, 2022), *available at* <https://home.treasury.gov/system/files/136/RFI-on-Treasury-Transparency-6.23.2022.pdf> (“For example, on-the-run fixed-rate nominal Treasury securities are actively traded, accounting for an average of about 60% of the weekly volume for all Treasury securities, with a significant portion occurring on electronic interdealer platforms. In contrast, other Treasury securities, including off-the-run fixed rate nominal securities, are more often traded between dealers and customers, in larger individual trade sizes, and are more likely to use voice-based methods or electronic request-for-quote.” (footnote omitted); SEC, *Staff Report on Algorithmic Trading in U.S. Capital Markets* (Aug. 5, 2020), *available at* https://www.sec.gov/files/algo_trading_report_2020.pdf (“**SEC Algorithmic Trading Report**”). See also Coalition Greenwich, *Understanding Fixed-Income Markets in 2023* (May 9, 2023), *available at* <https://www.sifma.org/wp-content/uploads/2023/05/Understanding-Fixed-Income-Markets-2023-23-2007.pdf> (“While the U.S. Treasury market is generally considered the most liquid in the world, it is important to note that the most recently issued bonds (called on-the-runs) accounted for 70–75% of market volume, whereas older bonds (called off-the-runs) accounted for only a quarter. As such, the liquidity profile of off-the-run bonds is quite different, leaving buyers and sellers of those bonds to transact more often via non-electronic methods in an effort to find a buyer or seller, since liquidity on the screen can be limited.”) (“**2023 Greenwich Report**”).

¹³ Proposal, 88 Fed. Reg. at 23173.

¹⁴ See, e.g., 2023 Greenwich Report at 8 (noting that IG and HY bond markets have different trading dynamics and pricing conventions).

¹⁵ See *Id.* at 12-13 (“U.S. corporate bonds have experienced strong growth in electronic trading that was initially triggered by the global financial crisis of 2008–2009 and then further catalyzed by the work-from-home trend brought about by the COVID pandemic. Roughly 40% of investment-grade and one-third of high-yield corporate bonds now trade electronically, both metrics having doubled in only the past three

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- b. The Commission should not impose Regulation SCI obligations until a substantial portion of trading in a particular securities market is electronic

As proposed, the Commission would apply Regulation SCI when an SCI broker-dealer met the total assets threshold or one or more transaction activity thresholds. Although the Proposal discusses whether particular securities markets have become more electronic, the Commission, seemingly, would not take into account whether trading in a particular market is sufficiently electronic such that the benefits of Regulation SCI would be recognized without imposing undue costs on the relevant market and market participants.¹⁶ As noted above, we are worried that the premature application of Regulation SCI would stymie the continued development of electronic trading in certain markets and impose substantial costs, which would not outweigh any potential benefits.

We therefore request that the Commission not impose Regulation SCI obligations through the application of the transaction activity thresholds until it has determined that electronic trading in the securities market has reached at least 70% of total trading volume for the relevant type of security.¹⁷ We believe that this threshold would ensure that the benefits of Regulation SCI would be realized without hindering the further electrification of markets.

- c. The Commission should reconsider the proposed transaction activity thresholds to ensure they are clear and appropriately calibrated

As noted, the Proposal would expand Regulation SCI to cover SCI broker-dealers if any such entity met the relevant transaction activity threshold for, among other asset classes, U.S. Treasury securities and Agency securities. The Commission should further tailor the transaction activity thresholds in the following three ways.

First, the Commission should clarify that only TRACE-reportable transactions would be captured by the activity threshold calculations for U.S. Treasury securities and Agency securities. The Proposal describes the denominator of those calculations as the total average

years. Market turnover has grown overall as well, averaging \$36 billion per day in 2022 About 60% of corporate bond e-trading is executed via the RFQ protocol, most between institutional broker-dealers and large investment managers. The majority of trading for retail investors happens via a CLOB, which accounts for 7% of market volume. The electronic market's growth overall has come less from these traditional methods of e-trading and more from trading mechanisms new to the corporate bond market, such as auction/session-based trading and portfolio trading.”).

¹⁶ In this regard, we note that NMS stock markets—the first markets to which Regulation SCI applied—are substantially electronic. *See* SEC Algorithmic Trading Report at 9-19 (indicating that, as of 2019, approximately 78% of all trades were executed on registered exchanges and that “[n]early all of these trading centers [i.e., registered exchanges, ATs and internalizing broker-dealers] depend on automated systems and algorithms to perform their important role in the market structure for U.S. equities”).

¹⁷ Consistent with the discussion above, we think there would be six relevant types of fixed income securities: on-the-run Treasuries, off-the-run Treasuries, Agencies, investment grade corporate debt securities, high-yield corporate debt securities, and municipal debt securities.

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daily dollar volume reported to TRACE during the relevant period, but the numerator could be read to include *all* U.S. Treasury securities or Agency securities transactions (as applicable) during the relevant period, including such transactions that are not subject to TRACE reporting.¹⁸ In order to ensure that these calculations fairly, consistently and accurately measure each firm's percentage of total transaction activity, we respectfully request that the Commission, at a minimum, confirm that firms need only include TRACE-reportable securities in their calculations.

Second, the Commission should exclude from the U.S. Treasury securities threshold calculation any package transactions for which the Treasury security is bought or sold to hedge a security (e.g. corporate bonds, mortgages, agencies) that constitutes the other leg of the package. Those transactions that include a U.S. Treasury leg are not traded in the institutional markets by Treasury desks or Treasury traders, and the Commission should provide clarity that Treasury volumes related to these transactions should be excluded from the volume calculations. Without further guidance, we are worried that firms will take different approaches to these calculations (i.e., including the package transaction in multiple activity threshold calculations, or just the U.S. Treasury securities activity threshold), which could result in the uneven application of Regulation SCI to similar entities.

Third, the Commission should count toward the thresholds only those transactions that are executed using a protocol for which the protections of Regulation SCI are relevant. In this regard, we believe that focusing on transactions executed via a CLOB makes the most sense, given the speed and other characteristics of CLOB execution. If the Commission believes that transactions executed via RFQ should be included, then we respectfully submit that only competitive RFQs be considered—transactions that are executed away from a platform and merely processed by a platform on a post-execution basis should not count towards the platform provider's thresholds (which includes RFQ-to-1). In these situations, transacting parties (rather than the platform) are often better positioned to fulfill certain regulatory requirements, there is lower risk of a technology malfunction by the platform resulting in inadvertent trade executions, and participants are better able to switch to other trading venues or transact bilaterally in the event of any disruption. If RFQ-to-1 transactions are included, then, in order to ensure parity between similar technologies, we request that transactions executed using chat functions also be included.

- d. The Commission should ensure that the transaction activity thresholds would only subject the most significant market participants to Regulation SCI

Each of the proposed transaction activity thresholds would subject a firm to Regulation SCI if transacted average daily dollar volume in an amount that equals 10% or more of the total average daily dollar volume as reported to the relevant source. We believe that this proposed 10% threshold is too low and would subject to Regulation SCI firms that, ultimately,

¹⁸ See, e.g., FINRA Rule 6732 (exempting certain ATS transactions from TRACE reporting); see also FINRA Rule 6710(a) (defining "TRACE-Eligible Security").

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are not the most significant market participants in a particular market. Regulation SCI would be burdensome for these firms and could lead them to exit certain markets altogether. The result would be less choice for market participants with respect to brokers and trading platforms and greater concentration, which could exacerbate the concerns that Regulation SCI is intended to address. Instead, we believe that a 25% threshold is more appropriate. That higher threshold, combined with the minimum total electronic trading requirement noted above, would ensure that the most important broker-dealers and ATs in the most suitable markets are subject to the Regulation SCI requirements.

2. *The Commission's proposed third prong of the "systems intrusion" definition would impose undue compliance burdens on SCI entities.*

SCI entities currently have certain obligations with respect to systems intrusions, including taking corrective action.¹⁹ The Proposal would expand these obligations by, among other things, requiring SCI entities to immediately report *any* systems intrusion to the Commission.²⁰ The Proposal would also expand Regulation SCI's "systems intrusion" definition to include three prongs: (1) any unauthorized entry into the SCI systems or indirect SCI systems of an SCI entity; (2) any cybersecurity event that disrupts, or significantly degrades, the normal operation of an SCI system; or (3) any significant attempted unauthorized entry into the SCI systems or indirect SCI systems of an SCI entity, as determined by the SCI entity pursuant to established reasonable written criteria.²¹

The first two prongs of the proposed definition are reasonable, as they would capture any *actual* unauthorized entries or *successful* cybersecurity disruptions to an SCI entity's SCI systems or indirect SCI systems (as applicable). The third prong, by contrast, would capture "unsuccessful, but significant" attempts to enter an SCI entity's SCI systems or indirect SCI systems.²² We are concerned that this third prong would create a vague, overbroad and, ultimately, unduly burdensome compliance and reporting obligation on SCI entities.

The Proposal does not define "significant attempted unauthorized entry," but instead requires SCI entities to establish reasonable written criteria to determine whether a significant attempted unauthorized entry has occurred.²³ The Commission states that it "believes that each SCI entity should be granted some degree of discretion and flexibility" in making that

¹⁹ 17 C.F.R. § 242.1002(a). Regulation SCI also currently requires dissemination of information regarding systems intrusions to the SCI entity's members or participants. 17 C.F.R. § 242.1002(c). The Proposal would, correctly in our view (and to the extent the third prong is retained in any final rule), exclude from the dissemination requirement information regarding significant attempted unauthorized entries. Proposal, 88 Fed. Reg. at 23186.

²⁰ Proposal, 88 Fed. Reg. at 23202. Regulation SCI currently includes an exemption for de minimis events. 17 C.F.R. § 242.1002(b)(5).

²¹ Proposed Rule 1000 (systems intrusion). Regulation SCI currently defines "systems intrusion" to include just the first prong. 17 C.F.R. § 242.1000 (systems intrusion).

²² Proposal, 88 Fed. Reg. at 23185.

²³ *Id.*

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determination and that “it would be inefficient, inappropriate, and undesirable (for both SCI entities as well as the Commission and its staff) to require that all attempted entries be considered systems intrusions.”²⁴ We agree that it would not be desirable or helpful for SCI entities to over-report to the Commission; such an approach would be expensive and time-consuming for SCI entities and result in the Commission receiving an overwhelming amount of unhelpful data.

The Proposal then goes on to provide “certain characteristics” that the Commission believes would “generally weigh in favor” of such attempted unauthorized entries being considered significant and, therefore, within the systems intrusion definition (and subject to the attendant Regulation SCI obligations).²⁵ Despite the Commission’s assertion that SCI entities will have flexibility in making this determination based on the differing “nature, size, technology, business model, and other aspects” of their businesses,²⁶ we are worried that, based on the statements provided in the Proposal, this further guidance would force SCI entities to assess (and, potentially, report) essentially each and every attempted unauthorized entry in order to ensure compliance with Regulation SCI.

Take, for example, the Commission’s statement that “a cybersecurity event that, *if successful*, had meaningful potential to result in widespread damage and/or loss of confidential data or information” is likely a reportable systems intrusion. The Proposal does not specify any criteria for determining whether an unsuccessful attack would have had a “meaningful potential” to result in widespread damage or loss of confidential information had it been successful. Firms, including Tradeweb, take a conservative approach and assume that *any* cybersecurity event, if successful, *could* result in widespread damage or loss of confidential information. Given the frequency with which SCI entities are subject to unsuccessful cyberattacks, we are concerned that this guidance would, in practice, place a significant cost and compliance burden on SCI entities, and would result in the Commission receiving an overwhelming number of reports on insignificant events.

We therefore respectfully suggest that the Commission eliminate the proposed third prong of the systems intrusion definition in any final rule. If the Commission nonetheless determines to keep this aspect of the definition, we respectfully request that the Commission not require such significant attempted unauthorized entries to be reported immediately, but instead allow firms to make, keep and preserve records relating to such events,²⁷ which the Commission

²⁴ *Id.*

²⁵ *Id.* These characteristics include: “when an SCI entity becomes aware of reconnaissance that may be leveraged by a threat actor; a targeted campaign that is customized to the SCI entity’s system; an attempted cybersecurity event that required the SCI entity’s personnel to triage, even if it was ultimately determined to have no impact; an attempted attack from a known sophisticated advanced threat actor; the depth of the breach in terms of proximity to SCI systems and critical SCI systems; and a cybersecurity event that, if successful, had meaningful potential to result in widespread damage and/or loss of confidential data or information.”

²⁶ *Id.*

²⁷ *See* 17 C.F.R. § 242.1002(b)(5)(i).

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may review as part of its examination process and receive upon request.²⁸ To the extent the Commission believes periodic reporting is necessary, we respectfully request that firms be able to produce such reports on a quarterly basis, consistent with the reporting schedule and format set out in current Rule 1002(b)(5).

3. *The Commission should ensure that the Proposal's third-party relationships management requirements do not result in unintended consequences for SCI entities and the securities markets.*

Like many participants in the securities markets, Tradeweb has relationships with a number of third-party service providers, including cloud service providers (“CSPs”), that provide expertise, safety, and efficiencies that may not be achievable in-house. In this regard, we agree with the Commission that the use of third-party providers “can be appropriate and even advantageous and preferable in certain instances” including in the context of Regulation SCI compliance.²⁹ We also agree that it is important for market participants to be thoughtful about their selection of third-party service providers—Tradeweb maintains a robust vendor onboarding, review and management process today.

For this reason, we do not object, in principle, to the Commission’s proposal to amend Regulation SCI to ensure that SCI entities have reasonable policies and procedures to manage third-party relationships.³⁰ However, we are concerned that the Commission’s proposed approach is unduly prescriptive and could result in SCI entities not being able to engage the services of the most capable service providers, to the detriment of those SCI entities and the resiliency of the securities markets overall.

For example, the Commission explains that an SCI entity should “consider whether or not it is appropriate to rely on a third-party provider’s standard contract or standard service level agreement” in determining whether to engage a particular provider and whether, when “negotiating with the dominant provider in the field,” it is sufficient for the SCI entity to merely use its best efforts to negotiate what it believes to be “the best terms.”³¹ As another example, the Proposal would require an SCI entity to consider “third-party provider concentration,” and the Commission cautions that “overreliance on a given third-party provider

²⁸ See generally 17 C.F.R. § 240.17a-4.

²⁹ Proposal, 88 Fed. Reg. at 23176.

³⁰ Proposed Rule 1001(a)(ix) would specifically require an SCI entity to have “[a] program to manage and oversee third-party providers that provide functionality, support or service, directly or indirectly, for any such systems, including: initial and periodic review of contracts with such third-party providers for consistency with the SCI entity’s obligations under Regulation SCI; and a risk-based assessment of each third-party provider’s criticality to the SCI entity, 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.”

³¹ Proposal, 88 Fed. Reg. at 23179.

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by the SCI entity *or by its industry*” could be a reason to reevaluate or exit a third-party service provider relationship.³²

We are worried that these types of overly prescriptive requirements will prevent SCI entities from engaging the most sophisticated and well-suited service providers. CSPs are an important example. The Commission acknowledges the significant benefits that such companies may bring to SCI entities and the securities markets,³³ but also flags the growing concentration amongst the largest CSPs.³⁴ A large CSP with a client base that extends well beyond the relatively small group of firms that are, or could be, subject to Regulation SCI—for example, including companies outside the financial services industry—may be unwilling to revise its standard agreements to ensure that contract terms match precisely the words used in Regulation SCI. And an SCI entity, which has virtually no power to manage third-party service provider concentration across the financial services industry and broader economy, might determine that it cannot employ the services of a large, top-tier service CSP while maintaining compliance with the Commission’s Regulation SCI guidance.

The result of these prescriptive requirements would be SCI entities engaging smaller, less sophisticated and less seasoned service providers or relying solely on internal systems and resources, all to the detriment of those SCI entities and the resiliency of the securities markets. Instead, we respectfully request that the Commission take a principles-based approach and require that SCI entities establish policies and procedures reasonably designed to manage and oversee third-party service providers. As has been the case since the initial promulgation of Regulation SCI—and as Commission staff have reiterated in the ensuing years³⁵—it is, and will remain, the obligation of the SCI entity to ensure compliance with Regulation SCI even when using the services of a third party.

4. *The Commission should ensure that Regulation SCI’s business continuity and disaster recovery plans testing requirement is workable and cost-effective.*

Regulation SCI Rule 1004 currently requires SCI entities to coordinate the testing of their business continuity and disaster recovery (“**BC/DR**”) plans on an industry- or sector-wide basis with other SCI entities.³⁶ The Proposal would broaden this requirement in two ways: first, by expanding the number of firms that are SCI entities and, second, by including certain

³² *Id.* at 23180 (emphasis added).

³³ *Id.* at 23176-23177.

³⁴ *Id.* at 23234 (noting that the three largest CSPs collectively have the market share of 65% global spending on cloud computing and the eight largest CSPs have roughly 80% of the market).

³⁵ *See* Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Regulation SCI (Aug. 21, 2019) (“[A]n SCI entity may determine to contract with third parties to operate SCI systems on its behalf. However, that SCI entity is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for SCI systems operated on its behalf by a third party.”).

³⁶ 17 C.F.R. § 242.1004(c).

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third-party service providers in the testing requirement.³⁷ The result could be the inclusion of dozens of additional firms in the required industrywide BC/DR testing.

Tradeweb believes that BC/DR planning and testing is essential. In this regard, we note that Tradeweb participates in the industry-wide business continuity testing (as well as the Regulation SCI-specific testing) hosted by the Securities Industry and Financial Markets Association (“SIFMA”).³⁸ We are worried that the inclusion of dozens of additional market participants and service providers could render the industrywide BC/DR testing ineffective, costly and ultimately unworkable given the complexities involved in running such testing even amongst the more limited set of current SCI entities.

We therefore respectfully request that the Commission take a more tailored approach to the industrywide BC/DR testing requirement. Specifically, the Commission should (1) clarify that SIFMA may, in consultation with the Commission, use its reasonable discretion to determine the nature of each firms’ participation in the industrywide BC/DR testing and (2) confirm that an SCI entity will be deemed to satisfy the attendant Regulation SCI Rule 1004 obligation if the SCI entity so participates.

* * *

Once again, we appreciate the opportunity to share our views on this important issue and would be pleased to discuss in further detail as and when appropriate. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

DocuSigned by:
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³⁷ Proposal, 88 Fed. Reg. at 23152 and 23180. In particular, an SCI entity would be required to designate such third-party providers (in addition to members or participants) pursuant to such standards and require their participation in the scheduled functional and performance testing of the operation of such BC/DR plans, which would occur not less than once every 12 months and which would be coordinated with other SCI entities on an industry- or sector-wide basis.

³⁸ See, e.g., SIFMA, Industry-Wide Business Continuity Test (Oct. 15, 2022), available at <https://www.sifma.org/resources/general/industry-wide-business-continuity-test/>.