

Securities Alert

January 13, 2015

SECURITIES

SEC Adopts Regulation Systems Compliance and Integrity

A. Executive Summary

On November 19, 2014, the Securities and Exchange Commission ("Commission" or "SEC") voted unanimously to adopt proposed Regulation Systems Compliance and Integrity ("Reg SCI") under the Securities Exchange Act of 1934 ("Exchange Act"), as well as certain conforming amendments to Regulation ATS ("Reg ATS").¹ Reg SCI is intended "to strengthen the technology infrastructure of the U.S. securities markets, to improve its resilience, and to enhance the Commission's ability to oversee it."² The adoption of Reg SCI represents the Commission's latest action in its broader, ongoing efforts to strengthen and reform U.S. equity market structure.³ As explained by SEC Chair Mary Jo White, Reg SCI "provide[s] greater accountability for those responsible for our critical market systems, helping ensure that such systems operate effectively and that any issues are promptly corrected and communicated to market participants and the Commission."⁴

As it explained when proposing Reg SCI in 2013, the Commission believes that high-speed, automated trading that occurs on national securities exchanges and alternative trading systems ("ATSs") has increased the potential for technological problems to broadly impact the equity markets.⁵ The ramifications of such problems have been manifested in recent market events, the occurrence of which further encouraged the Commission to revisit U.S. equity market structure.⁶ The Proposing Release outlined a framework that would replace the voluntary requirements of the SEC's existing Automation Review Policy ("ARP Program"),⁷ and the system capacity, integrity, and security requirements of Rule

¹ Securities Exchange Act Release No. 73639 (Nov. 19, 2014), 79 Fed. Reg. 72252 (Dec. 5, 2014) (the "Adopting Release"). See also Securities Exchange Act Release No. 69077 (Mar. 8, 2013), 78 Fed. Reg. 18084 (Mar. 25, 2013) (proposing Reg SCI) (the "Proposing Release").

² Statement at Open Meeting on Regulation SCI, Mary Jo White, SEC Chair (Nov. 19, 2014).

³ See Enhancing Our Equity Market Structure, Mary Jo White, SEC Chair (June 5, 2014) (outlining the SEC's efforts to enhance U.S. equity market structure by addressing market stability, high frequency trading, market transparency, broker conflicts, and market issues faced by small companies).

⁴ SEC Adopts Rules to Improve Systems Compliance and Integrity, SEC Press Release 2014-260 (Nov. 19, 2014).

⁵ Opening Statement at the SEC Open Meeting, Elise Walter, SEC Chairman (Mar. 7, 2013) (discussing the proposal of Reg SCI).

⁶ Such events included, among others: the Flash Crash of May 6, 2010; systems issues that affected the initial public offerings of BATS Global Markets, Inc. and Facebook, Inc.; the hacking of systems of NASDAQ OMX Group; and the two-day market closure due to superstorm Sandy.

⁷ The ARP Program, established by the Commission's two policy statements, each entitled "Automated Systems of Self-Regulatory Organizations," issued in 1989 and 1991, is a voluntary technology review program ("ARP I" and "ARP II," respectively). ARP I stated that SROs should establish comprehensive planning and assessment programs to test systems capacity and vulnerability, including annual reviews by an independent reviewer. In ARP II, the SEC further articulated its views on how SROs should conduct independent reviews. ARP II also addressed how SROs should notify the SEC of material systems changes and significant systems problems, and suggested the development of standards for meeting the ARP policy statements. The ARP Inspection Program was developed by the SEC to implement the ARP policy statements. All active registered clearing agencies, national securities exchanges, FINRA, one exempt clearing agency and one ATS participate in the program. See Securities Exchange Act Release Nos. 27445 (Nov. 16, 1989), 54 Fed. Reg. 48703 (Nov. 24, 1989) ("ARP I") and 29185 (May 1, 1991), 56 Fed. Reg. 22490 (May 15, 1991) ("ARP II").

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