

**FROM:** Accredited Standards Committee X9, Inc. Financial Industry Standards (an American National Standards Institute accredited standards developer (ASD) reply to the SEC proposal:

**SUBJECT REPLY: Proposed Rule And Form; Proposed Rule Amendment.** The Securities and Exchange Commission (“Commission”) is proposing Regulation Systems Compliance and Integrity (“Regulation SCI”) under the Securities Exchange Act of 1934 (“Exchange Act”) and conforming amendments to Regulation ATS under the Exchange Act. Proposed Regulation SCI would apply to certain self-regulatory organizations (including registered clearing agencies), alternative trading systems (“ATs”), plan processors, and exempt clearing agencies subject to the Commission's Automation Review Policy (collectively, “SCI entities”), and would require these SCI entities to comply with requirements with respect to their automated systems that support the performance of their regulated activities.

Dear SEC,

Thank for the opportunity to comment on the proposed changes. While we are not able to comment on the Proposed Regulation SCI in its entirety, we offer comments specific to use of, adoption, and participation in voluntary, open, consensus-based U.S. national (and international as applicable) standards. As an ANSI (see [www.ansi.org](http://www.ansi.org)) accredited body, X9 has informed ANSI of our intention to reply to SEC and hope that ANSI will additionally and directly reply to SEC on these specific matters as well.

Proposed Rule 1000(b)(1)(ii) would require that any SCI industry standards be: (i) comprised of information technology practices that are widely available for free to information technology professionals in the financial sector; and (ii) issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or a widely recognized organization.

**ASC X9's comment on 1000(b)(1)(ii)(i)** – There is no federal mandate requiring federal agencies to propose, cite or rely upon **only those** “information technology practices that are widely available for free”. Do you mean to infer that there is no intellectual property rights (IPR) on the best practice or do you intend to mean any “IT - practice” so long as it or they are “free of charge”?

There are many well documented IT best practices and more documented in “financial industry standards,” whether X9's American National Standards or ISO's TC68 – Financial Services, for which X9 serves as US secretariat. As you later refer to NIST standards, be informed that NIST website expressly states: “Standards Issued or Adopted by Federal Agencies -In accordance with the NTTAA, regulatory agencies adopt private sector standards, wherever possible, instead of creating proprietary, non-consensus standards. [Standards.gov](http://Standards.gov) is NIST's federal standards portal, featuring background materials and useful links for locating information about the use of standards in government. NIST's [Standards Incorporated by Reference \(SIBR\)](#) database contains the voluntary consensus standards, government unique standards, private industry

standards, and international standards that are referenced in the U.S. Code of Federal Regulations (CFR), which codifies all Federal regulations in the United States. SIBR also includes standards that are used by U.S. Federal Government Agencies in procurement activities.”

Summary: The SEC needs to review and clarify if not change its language related to IT best practices to include “standards” and to clarify the question of *free of IPR* or *free of charge* with explanation and citation as to why this is the required reference.

Most X9 voluntary consensus standards have a fee associated with them; a few are free of charge. Either way, there are costs associated with maintaining these libraries of standards including: maintenance (full technical review every 5 years or sooner, some are in a state of continuous maintenance due to technology), maintaining various administrative fees and costs for staffing to manage the “consensus” process. Electronic balloting of participating parties, compilation of votes/ summary results, recordation of IPR and more require resources both human and computer and thus most standards bodies do charge a fee of the standards they produce in order to maintain exceptional levels of maintenance and review of well used industry standards. It should be noted that X9 does not seek to make a profit by charging fees for standards. X9 is a non-profit company and only attempts to recover a portion of the cost of providing a standard.

**ASC X9’s comment on 1000(b)(1)(ii)(iii):**

X9 is concerned that the requirement for using standards of an “authoritative body governmental entity or agency, etc.”, does not comply with the language used in **CIRCULAR NO. A-119. Revised OMB Circular A-119** which establishes policies on Federal use and development of voluntary consensus standards and on conformity assessment activities. The Circular establishes policies to improve the internal management of the Executive Branch, including its agencies and departments, such as the SEC.

Consistent with Section 12(d) of P.L. 104-113, the "National Technology Transfer and Advancement Act of 1995" (hereinafter "the Act"), **Circular A-119 directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. It also provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the Act.** The policies in this Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards. These policies do not create the bases for discrimination in agency procurement or regulatory activities among standards developed in the private sector, whether or not they are developed by voluntary consensus standards bodies. Consistent with Section 12(b) of the Act, this Circular directs the Secretary of Commerce to issue guidance to the agencies in order to coordinate conformity assessment activities.

Specifically OMB Circular No. A-119 states:

- For purposes of this policy, "voluntary consensus standards" are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. For purposes of this Circular, "technical standards that are developed or adopted by voluntary consensus standard bodies" is an equivalent term.
  - (1) "Voluntary consensus standards bodies" are domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. For purposes of this Circular, "voluntary, private sector, consensus standards bodies," as cited in Act, is an equivalent term. The Act and the Circular encourage the participation of federal representatives in these bodies to increase the likelihood that the standards they develop will meet both public and private sector needs. A voluntary consensus standards body is defined by the following attributes:
    - (i) Openness.
    - (ii) Balance of interest.
    - (iii) Due process.
    - (vi) An appeals process.
    - (v) Consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.
- b. Other types of standards, which are distinct from voluntary consensus standards, are the following:
  - (1) "Non-consensus standards," "Industry standards," "Company standards," or "de facto standards," which are developed in the private sector but not in the full consensus process.
  - (2) "Government-unique standards," which are developed by the government for its own uses.
  - (3) Standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

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Inasmuch as X9 is precisely the type of consensus, voluntary public standards body envisioned by OMB Circular A-119, we strongly urge the SEC to revise its proposed Rule to allow the use of X9 standards for use by the SEC. Specifically, we request removal of the requirement that industry standards be made available for free.

Respectfully submitted:

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Accredited by ANSI, Secretariat ISO TC68, USA TAG to ISO TC68 and its Subcommittees