



June 28, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Proposed Regulation Systems Compliance and Integrity (File No. S7-01-13)

Dear Ms. Murphy:

The Municipal Securities Rulemaking Board (“MSRB”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (“Commission”) on its proposed Regulation Systems Compliance and Integrity (“Regulation SCI”), Release No. 34-69077 (March 8, 2013), 78 FR 18084 (March 25, 2013) (the “Proposing Release”). Proposed Regulation SCI consists, in relevant part, of proposed new Rule 1000, Definitions and Requirements for SCI Entities, and new Form SCI under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).¹ Proposed Regulation SCI would require certain SCI entities to: (i) establish written policies and procedures relating to the capacity, integrity, resiliency, availability and security of certain of their systems; (ii) mandate participation by designated members or participants in business continuity and disaster recovery plan testing; (iii) provide notices and reports to the Commission on proposed Form SCI regarding certain systems disruptions, compliance issues, systems intrusions and material systems changes; (iv) take corrective action with regard to systems disruptions, compliance issues and systems intrusions; (v) disseminate information regarding certain systems disruptions, compliance issues and systems intrusions to members or participants; (vi) conduct annual systems reviews; and (vii) maintain certain books and records.

Proposed Regulation SCI would apply to certain systems of a limited group of approximately 44 “SCI entities,” which would consist of SCI self-regulatory organizations such

¹ In addition, proposed Regulation SCI would supersede existing paragraph (b)(6) of Exchange Act Rule 301, Requirements for Alternative Trading Systems, and establish certain related requirements with respect to alternative trading systems that would be subject to proposed Regulation SCI.

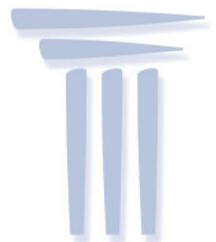


as national securities exchanges, registered securities associations, registered clearing agencies, and the MSRB (but excluding certain notice registered exchanges and a limited purpose national securities association), together with SCI alternative trading systems meeting specified transaction thresholds, plan processors and exempt clearing agencies. The systems to which the provisions of proposed Regulation SCI would apply fall into two broad categories: (i) “SCI systems” consisting of all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity, whether in production, development, or testing, that directly support trading, clearance and settlement, order routing, market data, regulation, or surveillance; and (ii) “SCI security systems” consisting of any systems that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to SCI systems.

The MSRB supports the establishment of requirements relating to key systems of SCI entities that are critical to the maintenance of fair and orderly securities markets. The MSRB agrees that SCI entities should establish and enforce written policies and procedures reasonably designed to ensure that such systems have levels of capacity, integrity, resiliency, availability and security adequate to maintain their operational capability in the manner in which they were intended to operate. The MSRB believes that it has adopted its own rigorous policies and procedures that effectively provide for appropriate levels of capacity, integrity, resiliency, availability and security, and has applied and enforced such policies and procedures and undertaken such additional practices and processes to operate its mission-critical systems in the manner in which they were intended and with the effect of maintaining a fair and orderly municipal securities market. Nonetheless, the MSRB supports the strengthening of such policies, procedures, practices and processes in a manner consistent with the other SCI entities that together play critical roles in the U.S. securities market.

The MSRB also agrees that these types of key systems of SCI entities should be tested as appropriate to assure their continued ability to maintain the necessary levels of capacity, integrity, resiliency, availability and security. Furthermore, the MSRB believes that the Commission and market participants should be provided with timely notice of material systems disruptions, compliance issues and systems intrusions; that the Commission should be appropriately apprised of material systems changes; that SCI entities should take appropriate corrective action with regard to systems disruptions, compliance issues and systems intrusions; and that SCI entities conduct appropriate systems reviews and maintain books and records with respect to such systems.

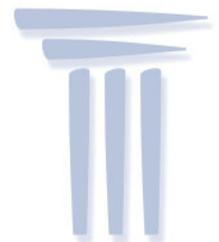
The MSRB believes, however, that there are a number of elements of proposed Regulation SCI that should be clarified or modified. In addition, the MSRB believes that the scope of SCI systems subject to proposed Regulation SCI should be more narrowly tailored or, in



the alternative, that implementation of proposed Regulation SCI should be staged in multiple phases depending on the type of SCI system and related SCI security system. Furthermore, the MSRB believes that the processes envisioned under proposed Regulation SCI should be streamlined and that a broader and more flexible set of standards for purposes of certain safe harbors under proposed Regulation SCI should be adopted. To the extent that Regulation SCI as adopted continues to apply to the breadth of SCI systems that appear to be covered by the definition in proposed Regulation SCI, the MSRB believes that SCI entities should be more affirmatively empowered to tailor appropriate policies and procedures to the specific types of SCI systems to which they will apply. In particular, the MSRB believes that proposed Regulation SCI would benefit from introducing a risk-based approach to many of its provisions, with the goal of ensuring that SCI entities remain focused on addressing the highest risks while maintaining appropriate baseline levels of oversight with regard to elements of their systems that have a lower risk profile.² These changes would help to ensure that the burdens of complying with proposed Regulation SCI are properly scaled to the benefits to be derived from adherence to the new standards and processes.

As the Commission notes in the Proposing Release, 15 entities that would be considered SCI entities under proposed Regulation SCI have not participated in the Commission's Automation Review Policy ("ARP"), which serves as the foundation for the core provisions of proposed Regulation SCI and is focused on trading, clearance and settlement and order routing systems. Since the MSRB does not operate a marketplace or any systems that directly support trading, clearance and settlement, or order routing, it is not a participant in the ARP. As the sole Congressionally created SCI entity, the MSRB is a not-for-profit organization with a core mission of protecting investors, municipal entities, obligated persons and the public interest through regulation of the municipal securities activities of brokers, dealers and municipal securities dealers (collectively, "municipal securities dealers") and the municipal advisory activities of municipal advisors. In furtherance of this statutory mandate, the MSRB operates a number of market transparency systems that together serve as the official repository for key data and documents for the municipal securities market. These systems include: (i) the Real-Time Transaction Reporting System ("RTRS") through which municipal securities dealers submit data

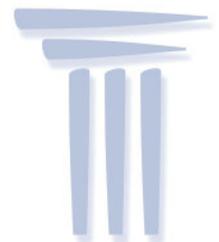
² Although the Proposing Release recognizes the importance of mitigating risks, it largely eschews basing the prescriptive requirements of proposed Regulation SCI on a risk-based approach. In contrast, the Federal Information Security Management Act of 2002 (FISMA) and guidance produced by the National Institute of Standards and Technology (NIST) in connection with implementation of FISMA embrace the use of risk-based assessments much more comprehensively than do the more mechanistic provisions of proposed Regulation SCI.



regarding transactions in municipal securities; (ii) the Electronic Municipal Market Access (EMMA) Primary Market Disclosure Service through which municipal securities dealers acting as underwriters submit official statements and related data for new issues of municipal securities and state and local governmental issuers of municipal securities may voluntarily submit preliminary official statements and related pre-sale documents; (iii) the EMMA Continuing Disclosure Service through which issuers and other obligated persons submit continuing disclosures in connection with their outstanding issues of municipal securities, either as required under continuing disclosure undertakings entered into pursuant to Exchange Act Rule 15c2-12 or on a voluntary basis; (iv) the Short-Term Obligation Rate Transparency (“SHORT”) system through which municipal securities dealers acting as remarketing agents for variable rate demand obligations (“VRDOs”) and as program dealers for auction rate securities (“ARS”) submit data and certain relevant documents with respect to outstanding VRDO and ARS issues; and (v) the EMMA website, through which data and documents submitted through RTRS, the EMMA Primary Market Disclosure Service, the EMMA Continuing Disclosure Service and the SHORT system are made available to the general public at no charge.³ As noted above, submitters to these various market transparency systems consist of municipal securities dealers over which the MSRB has regulatory authority as well as issuers and obligated persons over which the MSRB does not have regulatory authority.

Since publication of proposed Regulation SCI, the MSRB has carefully reviewed the Proposing Release, studied the publicly available information regarding the ARP, conducted two conference calls with Commission staff regarding the conduct of the ARP, and reviewed certain additional non-confidential materials previously produced under the ARP. Although this process has provided the MSRB with a basic grounding in the Commission’s experience with the ARP and its expectations with regard to the implementation of proposed Regulation SCI, the MSRB believes that the MSRB and other SCI entities that do not participate in the ARP should be provided a meaningful transition period, in addition to any transition period provided to those SCI entities that participate in the ARP, in order to come into full compliance with Regulation SCI in an orderly and effective manner. The MSRB and other non-ARP participants would be viewed as voluntary participants in the Regulation SCI schema during this transition period,

³ RTRS, the EMMA Primary Market Disclosure Service, the EMMA Continuing Disclosure Service and the SHORT system data and documents are also available through streaming paid subscriptions for market data vendors and market professionals. The EMMA website also makes available to the public Forms G-37 and related filings by municipal securities dealers under MSRB Rule G-37, on political contributions and prohibitions on municipal securities business.



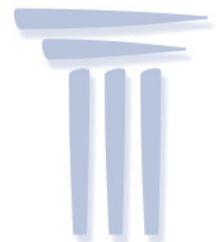
which should last for at least one full year to permit a measured transition to full compliance during the course of a complete annual cycle.

In addition, as the Commission notes in the Proposing Release, proposed Regulation SCI would extend the scope of the systems covered by its provisions beyond the scope of the ARP to also include systems relating to market data, regulation and surveillance, as well as to SCI security systems. Even past participants in the ARP that operate such types of systems are likely to need an additional transition period, beyond the period needed to bring the systems previously covered by the ARP into full compliance with proposed Regulation SCI, in order to assess, develop and implement the necessary policies, procedures, practices and processes that are properly tailored to the differing features of, and potentially differing personnel charged with operating and overseeing, market data, regulation and surveillance systems, as well as related SCI security systems.

Thus, as described in greater detail below, the MSRB believes that proposed Regulation SCI should be implemented in a phased manner so that its provisions would initially apply, after a six-month delayed effectiveness after final approval of Regulation SCI, only to SCI systems of current ARP participants that are trading, clearance and settlement, and order routing systems. This initial phase would then be followed by a second phase, in which the coverage of proposed Regulation SCI would be expanded to also include SCI security systems relating to such SCI systems. A final phase expanding the coverage of proposed Regulation SCI to also include SCI systems that are market data, regulation and surveillance systems, together with SCI security systems relating to such additional SCI systems, would follow thereafter.⁴

The MSRB provides below a number of comments that it believes would improve the provisions of proposed Regulation SCI consistent with its views expressed above. In general, these comments are presented in the same order as the matters discussed therein appear in proposed Rule 1000. The MSRB also offers below certain observations with regard to the Commission's Paperwork Reduction Act analysis and economic analysis.

⁴ Depending on whether market data systems include both data-driven and document-based systems, as described below, the differences between purely data driven systems and systems involving document submissions or submissions by unregulated market participants suggests that this final phase of implementation of proposed Regulation SCI should be staged to first bring in purely data-driven systems, followed by document-based systems, and then finally by systems that materially rely on submissions by unregulated market participants.



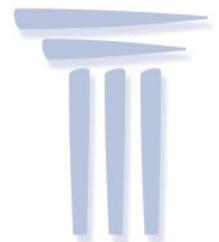
Rule 1000(a) – Definitions

Subject to the specific comments and suggestions below with regard to the definitions of “dissemination SCI event,” “responsible SCI personnel,” “SCI security system” and “SCI system” noted below, the MSRB supports the definitions set forth in section (a) of proposed Rule 1000. As a structural matter, the MSRB suggests that the Commission organize the definitions into separately numbered paragraphs under section (a) for ease of reference and administration of Regulation SCI.

Dissemination SCI Event. The MSRB believes that the Commission should clarify that the language “that results, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants” in the definition of dissemination SCI event applies to all three categories of systems compliance issue, systems intrusion and systems disruption, rather than merely to systems disruption as implied by the placement of such language within clause (3) of the definition. Thus, for example, a systems compliance issue that materially affects the ability of required submitters of data to a market data system to meet their regulatory obligations would be viewed as a dissemination SCI event, as would a systems intrusion that could have similar effects on required submitters or could create systems vulnerabilities to such submitters or other users of a market data system. Systems compliance issues and systems intrusions not having a significant impact on such submitters or users should not be considered dissemination SCI events. This clarification would appropriately focus the dissemination of information on events that matter to market participants and eliminate the potential distraction, confusion and expenditure of resources resulting from dissemination of information that has no appreciable impact on market participants.

Responsible SCI Personnel. The MSRB believes that the Commission should clarify that responsible SCI personnel shall consist of any personnel, whether an employee or agent, having “primary” or “supervisory” responsibility for the applicable system.⁵ Without this or similar clarification, SCI entities may feel that compliance with Regulation SCI requires the commencement of significant actions or the undertaking of significant commitments based on decisions of personnel whose primary functions, or workplace responsibilities, relate to a particular system but who do not have the appropriate level of understanding, experience or authority for such purpose. The MSRB believes that proposed Regulation SCI will most

⁵ In conjunction with this change and as described below, the MSRB suggests that such primary or supervisory personnel be designated pursuant to the SCI entity’s policies and procedures and that such policies and procedures provide for prompt escalation of potential issues internally within an SCI entity to responsible SCI personnel, as redefined.

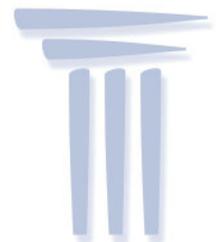


effectively achieve its goals if SCI entities take actions based on the appropriate level of internal review and subject to appropriate supervision.

SCI Security System. The MSRB believes that SCI security systems should be limited, as is the case for SCI systems, to systems “of, or operated by or on behalf of, an SCI entity,” that share network resources with SCI systems that, if breached, would be reasonably likely to pose a security threat to SCI systems. Without such parallel construction, SCI entities would be tasked inappropriately with controlling for systems outside of their effective control.

SCI System. As defined in proposed Rule 1000(a), SCI system would cover a broad and not clearly defined set of systems operated by the various SCI entities. First, the MSRB believes that the definition is overbroad in that it includes systems in development. The MSRB agrees that the Commission should be appropriately apprised of an SCI entity’s development of new systems or material new features of existing systems, and recommends below that there be a textual description of such planned development through the semi-annual reports that would be required under proposed Rule 1000(b)(8). Furthermore, the MSRB agrees that such systems development should be undertaken consistent with an SCI entity’s systems development methodology. Otherwise, the application of most provisions of proposed Regulation SCI to systems in development would provide very little benefit while potentially interfering with the systems development process in a manner that could result in slower and more costly introduction of critical features to the marketplace. Similarly, the application of most provisions of proposed Regulation SCI to systems in internal testing would not provide sufficient benefits to justify the burden of compliance.

In many cases, incidents that might otherwise be viewed as an SCI event under proposed Regulation SCI may in fact be failures that an appropriate systems development methodology would expect to occur from time to time in a development or test environment, and would be viewed as a beneficial aspect of the systems development process. Significant unnecessary effort would need to be undertaken to report such incidents or to differentiate between non-reportable anticipated development or test failures and reportable unanticipated development or test environment failures without providing appreciable benefits that would justify such efforts or materially further the purposes of proposed Regulation SCI. This could be counterproductive to a healthy development process. Rather, under a healthy development process, failures in the development and internal testing environment indicative of a system in development that is not ready for deployment to production would result in further development work to remedy such failures, as would be required under an appropriate systems development and testing methodology as envisioned in proposed Rule 1000(b)(1)(i), and would not rely on reporting to a third party not involved in the development process as contemplated by proposed Regulation SCI’s inclusion of systems in development and internal testing as SCI systems. Thus, the MSRB



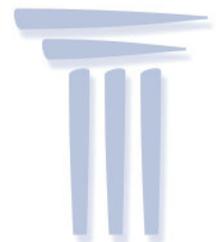
believes that SCI systems should be limited to systems in production and systems in external testing with market participants who would be expected to interact with such systems when released into production.

The MSRB also believes that describing SCI systems as systems that “support” specified functions is extremely ambiguous and provides little meaningful guidance to SCI entities with regard to the scope of systems covered by Regulation SCI. Combined with the breadth of functions listed in the definition – that is, trading, clearance and settlement, order routing, market data, regulation, or surveillance – virtually all MSRB systems, external-facing or internal (other than some but not all administrative systems), might be viewed as providing at least some direct support for one or more of these functions. Instead, the Commission should more clearly define the systems to which proposed Regulation SCI would apply to include those systems necessary for the effective operation of the specified functions.

Furthermore, the MSRB believes that the Commission should provide clarification regarding the intended reach of the terms “market data,” “regulation” and “surveillance” in the context of the definition of SCI system. For example, is the fact that an SCI entity’s system that hosts the word processing program used to draft rule proposals sufficient to establish such system as an SCI system that directly supports regulation? Does the requirement of Exchange Act Rule 19b-4(m)(1) that a self-regulatory organization post and maintain a current and complete version of its rules on its website, as well as other requirements in such rule with respect to postings on such website, result in the organization’s general public website being viewed as an SCI system that directly supports regulation, even if no other types of information or activities described in the definition of SCI system are undertaken on such website?

Further, is market data limited to data relating to the actual or potential purchase or sale of securities, or does it also include disclosure documents submitted to an SCI entity’s systems for public dissemination? While the Commission acknowledges the breadth of information provided by the MSRB through its market transparency systems to include, in addition to trade data supplied through RTRS, document-based disclosures such as those provided through the EMMA Primary Market Disclosure Service, the EMMA Continuing Disclosure Service and the SHORT System, the limited discussion of market data systems in the Proposing Release suggests that the Commission contemplated data-driven systems devoted to price transparency, rather than document-based systems devoted to disclosure, in formulating proposed Regulation SCI as it relates to market data systems.⁶ Would market data systems extend to systems primarily used by

⁶ For example, did the Commission consider the policies, procedures, practices and processes used by the Commission and its outside contractor in connection with its operation of the EDGAR system in establishing its expectations with regard to market



non-regulated entities to submit documents rather than data? To the extent that the Commission intends market data systems to include such document-based systems or systems involving submissions by non-regulated entities, the MSRB believes that further thought will be necessary on the part of the Commission to ensure that the provisions of Regulation SCI would drive towards appropriate standards for such systems that take into account the specific limitations on the ability to control content or the behavior of submitters.

Finally, as described in more detail below with regard to a staged implementation of Regulation SCI, the Commission should initially limit the scope of SCI systems to those systems currently covered by the voluntary ARP relating to trading, clearance and settlement and order routing, with other systems introduced in later stages.

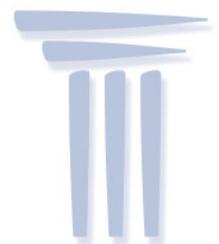
Rule 1000(b)(1)(i) – Policies and Procedures Relating to Capacity, Integrity, Resiliency, Availability and Security

Subject to the specific comments and suggestions below with regard to particular elements of required policies and procedures, the MSRB supports the requirement set forth in subparagraph (b)(1)(i) of proposed Rule 1000 that an SCI entity establish, maintain and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems have levels of capacity, integrity, resiliency, availability and security adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets.

Capacity Planning. The MSRB supports the requirement to establish reasonable current and future capacity planning estimates with respect to its SCI systems, as contemplated in clause (b)(1)(i)(A) of proposed Rule 1000.

Capacity Stress Tests. The MSRB supports capacity stress tests as part of the technology delivery methodology in connection with its SCI systems but does not believe that relying on periodic stress testing, as contemplated in clause (b)(1)(i)(B) of proposed Rule 1000, would provide the most effective or efficient manner of ensuring ongoing capacity. Rather, the MSRB believes that stress testing should occur prior to the release of new or materially modified capabilities into production, with the comprehensiveness of such testing based on the relative

data systems under proposed Regulation SCI? If so, the MSRB believes that SCI entities would benefit from being provided further information regarding such policies, procedures, practices and processes as they seek to comply with the requirements of proposed Regulation SCI.



risk of the change being introduced into production. Subsequent to introduction of any new or materially modified capabilities, performance should be monitored as part of ongoing technology operations and any subsequent stress testing should be scheduled based on information derived from such monitoring or on appropriate risk assessments. If the Commission determines to maintain a requirement for periodic testing, then the MSRB would suggest that the Commission acknowledge that an SCI entity that engages in testing based on appropriate risk assessments may undertake periodic testing less frequently than an SCI entity that does not also engage in testing based on risk assessments.

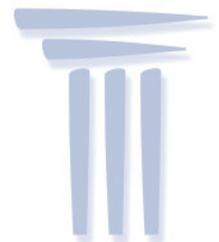
Systems Development and Testing Methodology. The MSRB supports the requirement to establish a program to review and keep current systems development and testing methodology, as contemplated in clause (b)(1)(i)(C) of proposed Rule 1000.

Vulnerability Testing. The MSRB supports the requirement to regularly review and test its SCI systems and SCI security systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters, as contemplated in clause (b)(1)(i)(D) of proposed Rule 1000.

Business Continuity and Disaster Recovery Plans. The MSRB supports the requirement for business continuity and disaster recovery plans that include maintaining backup and recovery capabilities that are resilient and geographically diverse, as contemplated in clause (b)(1)(i)(E) of proposed Rule 1000. In addition, the MSRB believes that it is appropriate to seek next business day resumption of trading and two-hour resumption of clearance and settlement services following a wide-scale disruption. The MSRB seeks clarification that, by not establishing standards for resumption of other types of SCI systems (such as relating to market data, regulation or surveillance), this provision would permit each SCI entity operating such other types of SCI systems to establish timeframes for resumption of such SCI systems as the respective SCI entity may reasonably determine, taking into consideration the specific characteristics of each such SCI system.

Standards for Market Data Systems. The MSRB supports the requirement for standards that result in market data systems being designed, developed, tested, maintained, operated and surveilled in a manner that facilitates the successful collection, processing and dissemination of market data, as contemplated in clause (b)(1)(i)(C) of proposed Rule 1000, subject to greater clarification from the Commission as to what constitutes market data for purposes of proposed Regulation SCI.

Escalation of Potential SCI Events. As described above, the MSRB suggests that the Commission require that such policies and procedures designate one or more responsible SCI



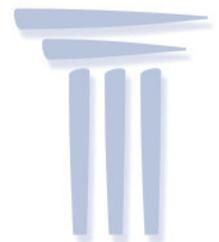
personnel with respect to its SCI systems and that they provide for prompt escalation of potential SCI events internally within an SCI entity to responsible SCI personnel, as redefined pursuant to the MSRB's comment above.

Rule 1000(b)(1)(ii) – Safe Harbor for Reasonably Designed Policies and Procedures

The MSRB supports the establishment of a safe harbor set forth in subparagraph (b)(1)(ii) of proposed Rule 1000 with respect to whether the required policies and procedures under subparagraph (b)(1)(i) have been reasonably designed. The MSRB appreciates the effort of the Commission to list, in Table A of the Proposing Release, publications containing examples of SCI industry standards that, if policies and procedures were made consistent with such standards, would result in such policies and procedures being deemed to be reasonably designed for purposes of proposed Rule 1000(b)(1).⁷ However, the MSRB is concerned that the listing is too restrictive and the process that the Commission indicates it would follow to update such listing over time is not sufficiently nimble to assure that SCI entities adhere to the best possible then-current standards. While acknowledging, as stated in the Proposing Release, that such listed standards would not be the exclusive means for complying with the requirements of proposed Rule 1000(b)(1), the MSRB believes that such listing would create a significant inducement for SCI entities to adhere to such standards over other effective standards not listed in order to avoid potential liability. The MSRB is concerned that some standards, such as COBIT,⁸ have not been included without explanation for such omission. Furthermore, the MSRB is concerned that the Commission would not defer to the expertise of the organizations that have established the listed standards in connection with future updates to such standards, but instead SCI entities would

⁷ In reviewing the publications listed in Table A, it appears that the Commission intends to use the term “standard” in a broad sense to include, in addition to prescriptive requirements, guidelines and lists of considerations in undertaking the activities to which such standards apply. As such, reference in this letter to the term “standard” should be understood in light of this broader sense and could also include best practices and analytic or compliance frameworks.

⁸ COBIT (formerly known as Control Objectives for Information and related Technology), an enterprise information technology governance framework developed by ISACA (formerly known as the Information Systems Audit and Control Association), is listed in footnote 30 of the Proposing Release along with other relevant publications, but only one of the publications listed in that footnote is included in Table A and the Commission does not provide clarity as to why some but not others of the publications listed in footnote 30 merit inclusion in Table A.



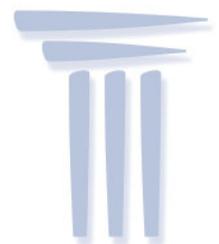
need to await Commission staff's publication of guidance updating the list of standards.⁹ SCI entities that believe that updated standards should be adopted on a more expedited basis than Commission staff would expose themselves to potential liability and therefore may be induced to refrain from adopting the most up-to-date standards. While not suggesting that any of the listed standards could not appropriately serve as a proper standard for the purposes of Regulation SCI, the MSRB notes that some of the listed publications are 10 years old, which is a significant period of time in the context of evolving practices and technologies relating to systems development,¹⁰ systems security and business continuity planning, and there is no assurance that the authors of such publications have committed to updating those standards as necessary. Thus, the MSRB suggests that the Commission broaden the scope of standards included in Table A by inserting, at a minimum, COBIT as an appropriate standard with respect to overall information technology governance and by permitting SCI entities to adhere to updates published by the applicable organizations without awaiting Commission staff approval.

Rule 1000(b)(2)(i) – Policies and Procedures Relating to Systems Compliance

The MSRB supports the requirement set forth in subparagraph (b)(2)(i) of proposed Rule 1000 that an SCI entity establish, maintain and enforce written policies and procedures

⁹ This approach also raises the question of whether the Commission has included the specific publications listed in Table A based on the expertise of the authors of such publications and an overall assessment of such publications' value, or whether the Commission believes that each individual element within a publication is subject to approval by the Commission given that incremental changes made to such publications must await Commission action for inclusion on Attachment A. The MSRB strongly believes that the Commission should base its assessments on the expertise of the author and the overall value of each publication and not seek to act as a gatekeeper on individual elements of each publication and thereby potentially substitute its judgment for the judgment of such expert organizations.

¹⁰ For example, older publications are much more likely to implicitly presume a waterfall model of systems development in establishing standards and may not be optimized to serve as standards in connection with the agile model of systems development that the MSRB has adopted to great effect in connection with its market transparency and other systems development activities. The MSRB would view it as highly problematic if proposed Regulation SCI were to effectively favor, even if only indirectly or implicitly, the waterfall method over the agile method, or any other appropriate software development methodology, for reasons other than the relative merits of such methodologies.



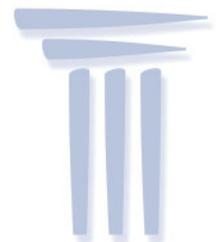
reasonably designed to ensure that its SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and the entity's rules and governing documents, as applicable.

Rule 1000(b)(2)(ii) – Safe Harbor for SCI Entities From Liability With Regard to Policies and Procedures Relating to Systems Compliance

Subject to the specific comments and suggestions below, the MSRB supports the establishment of a safe harbor from liability for SCI entities under subparagraph (b)(2)(ii) of proposed Rule 1000.¹¹

Contents of Policies and Procedures. The MSRB supports the content requirements of proposed Rule 1000(b)(2)(ii)(A) that must be fulfilled in order to qualify for the safe harbor, subject to the following clarifications and comments. First, the MSRB believes that the Commission should clarify that the testing described in clauses (b)(2)(ii)(A)(1) and (2) refers to testing to ensure that SCI systems operate in the manner intended. Assuming that this is the Commission's intent, how does that testing differ from the assessment described in clause (b)(2)(ii)(A)(5)? Or does clause (b)(2)(ii)(A)(5) merely describe the credentials of who should be conducting the testing described in clauses (b)(2)(ii)(A)(1) and (2) with respect to compliance but does not establish a separate assessment requirement? The MSRB supports the requirement that compliance assessments be performed by personnel familiar with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable, as contemplated under clause (b)(2)(ii)(A)(5), with the understanding that each SCI entity has the discretion to determine the level of familiarity necessary to qualify as personnel able to undertake such assessments. Further, the MSRB supports the requirement in clause (b)(2)(ii)(A)(6) for review by regulatory personnel of SCI systems design, changes, testing and controls to prevent, detect and address actions that do not comply with applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents, as applicable, with the understanding that each SCI entity has the

¹¹ To better understand the nature of potential liabilities that may be addressed by the safe harbor for SCI entities as applied to the MSRB, as well as to be able to more clearly assess whether the MSRB should seek to take advantage of the safe harbor or instead should seek to discharge its duties under proposed Regulation SCI in a different manner, the MSRB requests further clarification from the Commission on the statutory authority under which failure to comply with the provisions of proposed Rule 1000 would be viewed as a violation of the federal securities laws applicable to the MSRB under the Exchange Act.

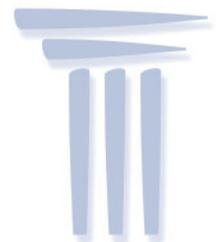


discretion to determine which of its personnel are viewed as regulatory personnel. The MSRB seeks confirmation from the Commission that personnel qualified to undertake the assessments under clause (b)(2)(ii)(A)(5) need not be regulatory personnel within the meaning of clause (b)(2)(ii)(A)(6) and need not have the same level of understanding of the applicable federal securities laws and rules and regulations thereunder and the SCI entity's rules and governing documents as would regulatory personnel. If this is not the case, then the MSRB believes that the Commission should provide more explicit guidance as to the nature of personnel it intends to fulfill the roles under clauses (b)(2)(ii)(A)(5) and (6).

The MSRB believes that the testing provided for under clause (b)(2)(ii)(A)(2) should not be required to be periodic but instead could be based on the relative risks of non-compliance arising from any changes being introduced into production or any changes to the applicable federal securities laws, rules and regulations thereunder, or the SCI entity's rules and governing documents. If the Commission determines to maintain a requirement for periodic testing, then the MSRB would suggest that the Commission acknowledge that an SCI entity that engages in testing based on appropriate risk assessments or upon changes in applicable laws, rules, regulations, or governing documents may undertake periodic testing less frequently than an SCI entity that does not also engage in testing based on such risk assessments or triggers.

System for Applying Policies and Procedures. The MSRB supports the requirement under clause (b)(2)(ii)(B) that an SCI entity establish and maintain a system for applying such policies and procedures which would reasonably be expected to prevent and detect, insofar as practicable, any violations of such policies and procedures by the SCI entity or any person employed by the SCI entity.

Compliance with Policies and Procedures. The MSRB agrees that an SCI entity should be required to take the necessary actions to in fact discharge its duties under the policies and procedures, as contemplated under clause (b)(2)(ii)(C). However, the MSRB views the distinction between clauses (1) and (2) as opaque and therefore inadvertent violations of one or the other would be more likely to occur. In effect, clause (1) requires the SCI entity to do what the policies and procedures require while clause (2) requires the SCI entity to not have a reason to believe that it was not doing what the policies and procedures require. Is the Commission suggesting that clause (1) consists of actions undertaken by the SCI entity, as a legal entity, while the failures to comply are being undertaken by individuals within the entity? If so, the MSRB is concerned that the distinction between actions taken by the legal entity and by its personnel will often be ambiguous since the legal entity can only effectively act through its personnel. The MSRB requests that the Commission clarify the distinction between these two requirements, including providing examples where one provision but not the other is violated. In any event, the



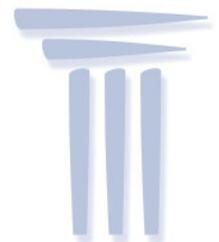
MSRB believes that the purposes of this provision would be met, and ambiguities would be eliminated, if the Commission were to delete clause (1) and retain clause (2).

Rule 1000(b)(2)(iii) – Safe Harbor for Individuals From Liability With Regard to Policies and Procedures Relating to Systems Compliance

While the MSRB strongly supports the protection of persons employed by an SCI entity from liability as contemplated by proposed Rule 1000(b)(2)(iii),¹² the MSRB seeks further clarification from the Commission on its view of the nature of the potential liabilities faced by individuals. In particular, staff of the MSRB, and presumably of the various other SCI entities, are trained to understand that they could violate federal securities laws – either statutory obligations or regulatory requirements arising from such statutory obligations – by taking certain inappropriate actions in the marketplace or with market participants based on information they possess through their roles at the SCI entity. However, it has not been the customary understanding that some types of merely poor but good faith performance by technology staff at an SCI entity, such as making an incorrect judgment that in a particular set of circumstances he or she should take an action that may not be fully in compliance with written policies and procedures, could give rise to federal securities law liability.

The MSRB is concerned that the formulation proposed by the Commission for the safe harbor for individuals would inadvertently prove to be extremely counterproductive. In particular, the requirement in clause (b)(2)(iii)(B) that an individual must be without reasonable cause to believe that the applicable policies and procedures were not being complied with in any material respect would have potentially far ranging distortive effects on the development, testing, implementation and operations of SCI systems and SCI security systems, as well as the overall work environment at SCI entities. This requirement, as written, encompasses a broad range of

¹² To better understand the nature of potential liabilities that may be addressed by the safe harbor for employees of SCI entities as applied to the MSRB's employees, as well as to be able to more clearly educate MSRB employees with regard to the choice between seeking to take advantage of the safe harbor or instead seeking to avoid potential federal securities law violations in connection with their duties under MSRB policies and procedures in a different manner, the MSRB requests further clarification from the Commission on the statutory authority under which failure to comply with the provisions of proposed Rule 1000 or the policies and procedures thereunder would be viewed as a violation of the federal securities laws applicable to employees of the MSRB under the Exchange Act.

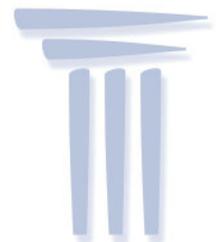


activities that each person would be effectively deputized to police,¹³ under penalty of losing his or her protection from potential federal securities law liabilities if he or she does not call out any and all potential cases of other personnel not being fully in compliance with the applicable policies and procedures. In many cases, employees would be placed in this situation without sufficient understanding of all the relevant facts and circumstances regarding another employee's actions to be able to properly understand whether he or she would be viewed as having made a reasonable determination as to whether a report of such potential non-compliance was appropriate. While the MSRB believes, and effectively requires as a matter of internal policies, that relevant staff work cooperatively with one another and support the overall mission of the MSRB by, among other things, reporting instances where the organization as a whole or individuals within the organization are not complying with their obligations,¹⁴ this clause would result in an environment of second guessing and distrust with staff being encouraged to act, first and foremost, in a self-protective manner in order to avoid potential securities law liability.

Also, while the rest of proposed Regulation SCI governs the actions of SCI entities at the organizational level, this safe harbor inures to the benefit of individual employees of SCI entities and therefore has the potential to alter the relationship between SCI entities and their employees. For example, SCI entities will need to assess whether they legally can, or should, exercise any degree of control over, or should provide advice or education with regard to, their employees' decisions to take advantage of, or to forego, the safe harbor provision for individuals. Conversely, it is unclear whether leaving such discretion to the individual as currently formulated in proposed Regulation SCI will too broadly encourage such employees to exercise their own judgment, based on personalized assessments of what actions are needed to meet the requirements of policies and procedures, independent from direction by supervisory or other responsible staff as a matter of self-protection. This problem is compounded by the fact that policies and procedures, in many cases, are inherently incapable of anticipating all eventualities,

¹³ The language of this clause refers to compliance with the policies and procedures required under proposed Regulation SCI, or perhaps only a subset of such policies and procedures, but in no way is written to suggest that this provision only relates to the obligations of such individual under the policies and procedures. If the latter reading is what is intended, the language would need to be revised to make this clear; however, in this case, the same concern expressed above regarding the opacity of the distinction between clauses (1) and (2) of proposed Rule 1000(b)(2)(ii)(C) would exist with respect to subparagraphs (A) and (B) of proposed Rule 1000(b)(2)(iii).

¹⁴ For example, the MSRB's whistleblower policy requires employees to report concerns and allegations that, among other things, employees have engaged in any misconduct in connection with MSRB activities.



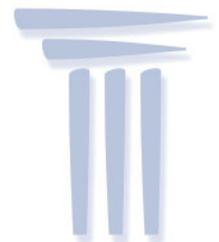
with the inevitable result that sometimes they will fail to provide guidance under particular circumstances or may provide guidance that, in such circumstances, would best not be followed in whole or in part, typically through an exception process. It is unclear whether supervisory or other responsible personnel empowered to undertake such exception process or to give direction where written policies and procedures fail to fully guide required activities would be willing to take the necessary actions in light of the potential for heightened exposure to potential securities law liability.

Furthermore, the nature of the required elements of the safe harbor for individuals could potentially have a significant adverse effect on the ability of SCI entities to continue to attract high quality staff to work with their SCI systems and SCI security systems if they are viewed as being exposed to potential federal securities law liabilities for not only their routine activities that would normally not carry such potential liabilities with virtually all other potential employers but also for their failure to act in their deputized function to look over the shoulders of their fellow employees in order to have sufficient confidence in overall adherence to the SCI entity's policies and procedures.

Thus, the MSRB strongly recommends that the Commission revise the language of subparagraph (b)(2)(iii) to instead provide that a person employed by an SCI entity shall be deemed not to have aided, abetted, counseled, commanded, caused, induced, or procured the violation by any other person of paragraph (b)(2)(i) of this section unless such violation directly or indirectly relates to the duties and obligations of such person under the policies and procedures described in paragraph (b)(2)(i) and such person (A) has not reasonably discharged the applicable duty or obligation under such policies and procedures, (B) was not directed by his or her supervisor, SCI entity legal counsel, SCI senior management, or the governing body of the SCI entity to act in a manner that would constitute such a failure to discharge such duty or obligation and (C) acted recklessly or intentionally with respect to such failure to discharge such duty or obligation. In addition, the Commission should consider extending this safe harbor to consultants or other non-employees used by SCI entities in connection with their SCI systems, or clarifying that such consultants or other non-employees would not face the same potential as SCI entity employees of potentially being viewed as aiding, abetting, counseling, commanding, causing, inducing, or procuring a violation by any other person of proposed Rule 1000(b)(2)(i), in order to eliminate creating an unnecessary impediment to the ability of SCI entities to engage outside consultants to assist them in developing or operating their SCI systems.

Rule 1000(b)(3) – Corrective Action

The MSRB supports the requirement set forth in paragraph (b)(3) of proposed Rule 1000 that, upon any responsible SCI personnel becoming aware of an SCI event, the SCI entity shall



begin to take appropriate corrective action, including at a minimum mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable. As described above, the MSRB believes that the Commission should clarify the definition of responsible SCI personnel.

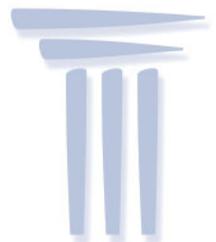
Rule 1000(b)(4) – Commission Notification

Subject to the specific comments and suggestions below, the MSRB supports the requirement set forth in paragraph (b)(4) of proposed Rule 1000 relating to the SCI entity providing notification to the Commission of such SCI event.

Immediate Notification of SCI Events with Material Impacts. The MSRB supports the requirement set forth in subparagraph (b)(4)(i) of proposed Rule 1000 for notification to the Commission upon any responsible SCI personnel becoming aware of certain SCI events. The proposal refers to such notification as an “immediate notification SCI event”¹⁵ and states that such notification may be done orally or in writing. The MSRB agrees that such immediate notification SCI events should include any systems disruption that the SCI entity reasonably estimates would have a material impact on its operations or on market participants. However, the MSRB believes that, with respect to systems compliance issues or systems intrusions, immediate notification SCI events should be similarly limited to any such systems compliance issues or systems intrusions that the SCI entity reasonably estimates would have a material impact on its operations or on market participants. Further, as described above, the MSRB believes that the Commission should clarify the definition of responsible SCI personnel.

Written Notification of SCI Events Within 24 Hours. The MSRB supports the requirement set forth in subparagraph (b)(4)(ii) of proposed Rule 1000 requiring written notification to the Commission within 24 hours of any responsible SCI personnel becoming aware of an SCI event, but the MSRB believes that such 24 hour written notification should be limited to immediate notification SCI events described in subparagraph (b)(4)(i) of proposed Rule 1000, as the MSRB suggests that it be modified. The MSRB believes that other SCI events, which would not have material impacts on the SCI entity’s operations or on market participants, should be reported to the SEC as part of a more comprehensive semi-annual report that would also include the information proposed under subparagraph (b)(8)(ii) of proposed Rule 1000, subject to the MSRB’s comments below. While the MSRB believes that meeting a 24 hour deadline may be challenging under certain circumstances, it believes that SCI entities should be

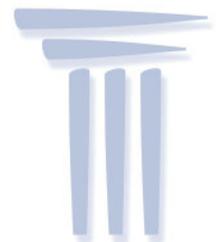
¹⁵ For clarity, the Commission may wish to incorporate this term into the text of proposed Rule 1000.



able to provide the required notification, with the understanding that not all information may be fully known within that timeframe, so long as the Commission adopts the MSRB's suggestion below that the Commission establish a service level agreement for its electronic system through which Form SCI is to be submitted such that SCI entities have continuous access to such system during weekends and non-business hours. If the Commission does not establish such a service level agreement for its electronic submission system, then the MSRB suggests that the Commission extend the timeframe for notification to 72 hours or, in the alternative, provide that an SCI entity may provide such notification by the end of the next business day if the 24 hour period ends on a non-business day or during a period that the Commission's electronic submission system is not in operation.

Regular and Final Updates on SCI Events. The MSRB believes that the requirement set forth in subparagraph (b)(4)(iii) of proposed Rule 1000 with respect to regular updates to the Commission on SCI events should be revised to be made consistent with the MSRB's comments above and to balance the important need to keep the Commission apprised of progress on corrective action with the need to avoid unnecessary paperwork that could interfere with efficient and expeditious resolution of SCI events. This is a particularly important consideration as applied to smaller SCI entities such as the MSRB, where the public interest would be best served by allowing such entities to deploy their more limited resources to resolving systems issues rather than undertaking reporting activities in a manner that could interfere with such resolution. Thus, an SCI entity should be obligated to provide to the Commission updates pertaining to an immediate notification SCI event described in subparagraph (b)(4)(i) of proposed Rule 1000, as the MSRB suggests that it be modified, on a regular basis, or at such frequency as reasonably requested by a representative of the Commission and as does not interfere with the SCI entity's efficient and expeditious resolution of such immediate notification SCI event, which updates may be in writing or oral based on the judgment of the SCI entity. The MSRB believes that, to the extent that an immediate notification SCI event has not been resolved by the time that written notification under subparagraph (b)(4)(ii) has been provided, an SCI entity should be required to provide written notification of final resolution of the immediate notification SCI event by the end of the business day following such resolution.

Contents of Written Notifications. The MSRB supports the provision in subparagraph (b)(4)(iv) of proposed Rule 1000 relating to the information to be provided in written notifications to the Commission, subject to the MSRB's suggestions above regarding appropriate modifications to the requirements with regard to written notifications. The MSRB seeks guidance from the Commission with regard to the required estimation of the number of market participants potentially affected by an SCI event and the aggregate amount of monetary or other loss due to an SCI event in the context of a market data system that provides unrestricted data to the general public at no charge, without the requirement for establishing accounts or otherwise



providing identifying information of a user, and for which such members of the general public may have various and divergent uses that cannot be traced back to particular securities transactions.

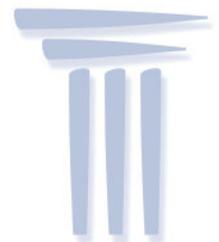
Rule 1000(b)(5) – Dissemination of Information to Members or Participants

Subject to the specific comments and suggestions below, the MSRB supports the requirement set forth in paragraph (b)(5) of proposed Rule 1000 relating to the SCI entity disseminating information regarding dissemination SCI events, as such term would be clarified as suggested by the MSRB above.

Prompt Dissemination of Non-Systems Intrusion Dissemination SCI Events. The MSRB supports the requirement set forth in subparagraph (b)(5)(i) of proposed Rule 1000 for dissemination to members and participants of specified information promptly after any responsible SCI personnel becomes aware of a dissemination SCI event other than a systems intrusion. As described above, the MSRB believes that the Commission should clarify the definitions of dissemination SCI event and responsible SCI personnel. In addition, the MSRB's suggestions above with regard to the contents and timing of notifications to the Commission should also be applied to the dissemination of information to members and participants, to the extent applicable.

With regard to the audience to which such information should be disseminated, the MSRB seeks clarification concerning the meaning of "member." Unlike certain other SCI self-regulatory organizations, the MSRB is not a membership organization and therefore does not have members. The MSRB seeks clarification from the Commission as to whether it should view those market participants that are subject to the regulatory jurisdiction of the MSRB, consisting of municipal securities dealers and municipal advisors, as "members" for purposes of the application of proposed Rule 1000 to any MSRB SCI systems.

Furthermore, the MSRB seeks clarification from the Commission as to whether the term "participant" is intended to be limited to circumstances where certain types of SCI entities (not including the MSRB) require that a market participant be a formal "participant" in its systems and programs in order to interact with their SCI systems, or otherwise intended to be viewed more broadly as applying to any market participant or member of the general public that interacts with an SCI system. If the latter meaning of "participant" is intended, in the context of a market data system, should participant be limited to regulated entities that are required to submit data to or otherwise interact with such system; should it include paid subscribers to market data feeds; should it also include other active market participants such as investors and issuers that may use the data provided through such system; or should it be viewed even more broadly to include the

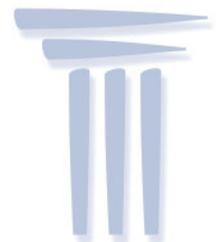


general public to the extent that such data may be made available, such as through the MSRB's EMMA website, at no charge and without the requirement for establishing accounts or otherwise providing identifying information of a user? If the Commission believes that public users of market data systems should be apprised of dissemination SCI events, the MSRB suggests that the Commission clarify that the posting of required information regarding dissemination SCI events on the website or other venue through which such users access market data would satisfy the requirement to disseminate such information.

In addition, an SCI entity may operate various SCI systems to which different groups of members or participants are required to make submissions or with which such members or participants otherwise interact. The MSRB believes that an SCI entity should have the option to disseminate information regarding a dissemination SCI event relating to a particular SCI system only to members or participants that interact with, or are otherwise materially affected by, such SCI system.

To the extent that market data systems are considered to include systems for the submission and dissemination of disclosure documents, the MSRB notes that certain elements of its market data systems serve as a venue through which market participants, consisting of state and local governmental issuers, other obligated persons and their agents, may make submissions of documents to the MSRB under continuing disclosure agreements as contemplated under Exchange Act Rule 15c2-12, with such documents thereupon being made available to the general public at no charge through the MSRB's EMMA website as well as to paid subscribers to disclosure feeds. Such submitters are not subject to the regulatory jurisdiction of the MSRB and the MSRB's ability to contact specific submitters is limited to the contact information they provide in order to use the EMMA submission process and is further limited in those circumstances where an issuer's submissions are made solely through an agent. In addition, it is likely that less than the entire universe of state and local governmental issuers or other obligated persons that would be expected to make submissions to the EMMA website have in fact done so and therefore any information regarding potential submitters to the EMMA website will necessarily have gaps. The MSRB seeks clarification from the Commission that, to the extent that such activities are viewed as being within the scope of proposed Rule 1000, dissemination to such submitters would be viewed as being satisfied through the posting of required information regarding dissemination SCI events on the website or other venue through which such users submit documents. If further dissemination would be required, then the MSRB observes that any further dissemination would, of necessity, be limited to known submitters of such documents to the EMMA website.

Prompt Dissemination of Dissemination SCI Events that Are Systems Intrusions. The MSRB supports the requirement set forth in subparagraph (b)(5)(ii) of proposed Rule 1000 for

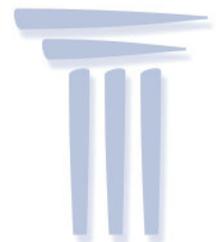


dissemination to members and participants of a summary description of dissemination SCI events that are systems intrusions that result, or the SCI entity reasonably estimates would result, in significant harm or loss to market participants. Thus, as described above, the MSRB believes that the Commission should clarify the definitions of dissemination SCI event and responsible SCI personnel. In addition, the MSRB's suggestions above in connection with subparagraph (b)(5)(i) with regard to the audience to which such information should be disseminated and the manner in which it should be disseminated should apply to this subparagraph (b)(5)(ii) as well.

Rule 1000(b)(6) – Material Systems Changes

Although the MSRB supports providing the types of information that would be required to be provided to the Commission in connection with material systems changes under paragraph (b)(6) of proposed Rule 1000, the MSRB believes that the Commission should adopt a more efficient manner for providing such information that would fully serve the enunciated purposes of this provision while reducing the burden on SCI entities in complying with the information requirement and also reducing potential uncertainties in the implementation process for such material systems changes. Thus, the MSRB believes that the requirement under subparagraph (b)(6)(i) of proposed Rule 1000 to provide written notification to the Commission at least 30 calendar days before implementation of any planned material systems changes should be limited to those material systems changes that would be filed with the Commission for immediate effectiveness under Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f) thereunder, other than in the case of such a filed material systems change that would not become operative for 30 days after the date of filing under Rule 19b-4(f)(6) and therefore would already provide the Commission with 30 days' advance notice. For those material systems changes that would be filed with the Commission for approval under Exchange Act Section 19(b)(1), the approval process under Exchange Act Section 19(b)(2) provides the Commission with considerably more time than 30 days' advance notice. For those material systems changes that are not required to be filed with the Commission under Exchange Act Section 19, the report of the information sought under subparagraph (b)(6)(i) in the semi-annual report regarding material systems changes that would be required under subparagraph (b)(8)(ii) of proposed Rule 1000 would be sufficient to fully apprise the Commission of such changes consistent with the objectives of proposed Regulation SCI.¹⁶ Although the MSRB did not provide comment above regarding the proposed

¹⁶ The MSRB requests that the Commission provide additional guidance on determining when the implementation of an SCI system, or a change in an existing SCI system, requires a filing with the Commission under Exchange Act Section 19, particularly in connection with those SCI self-regulatory organizations such as the MSRB for which there is no reference in the applicable statutory authorization for such self-regulatory



definition of material systems changes and is comfortable with such definition if reporting to the Commission is structured as suggested by the MSRB above, the MSRB otherwise would urge the Commission to provide greater clarity on such definition and provide reasonable *de minimis* exceptions should it continue to require item-by-item reporting as contemplated in proposed Rule 1000(b)(6) rather than primarily on a semi-annual basis as proposed by the MSRB.

Rule 1000(b)(7) – SCI Review

The MSRB supports the requirement set forth in paragraph (b)(7) of proposed Rule 1000 to conduct an SCI review of the SCI entity’s compliance with proposed Regulation SCI not less than once each calendar year, and to submit a report of the SCI review to senior management of the SCI entity for review no more than 30 calendar days after completion of such SCI review.

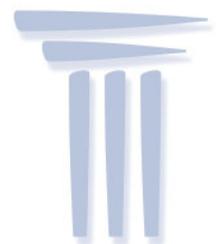
Rule 1000(b)(8) – Reports to the Commission

The MSRB supports the requirement set forth in paragraph (b)(8) of proposed Rule 1000 to provide the identified reports to the Commission but suggests that the semi-annual reports required under subparagraph (b)(8)(ii) be expanded to include additional periodic information in lieu of certain notices that the Commission proposed be provided from time to time, as described above. Thus, the semi-annual reports should include a description of all material systems changes implemented during the applicable six-month period, with the items of information that would be required under paragraph (b)(6) of proposed Rule 1000, together with a brief narrative description of material systems changes anticipated as of the date of such report to be implemented during the next six-month period, rather than a summary description of progress of material systems changes during the past six-month period. In addition, the semi-annual report should include a report of all SCI events, other than immediate notification SCI events previously reported to the Commission pursuant to subparagraph (b)(4)(ii), including the information contemplated under subparagraph (b)(4)(iv), occurring during such six-month period, as suggested above.

Rule 1000(b)(9) – SCI Entity Business Continuity and Disaster Recovery Plans Testing Requirements for Members and Participants

The MSRB supports a requirement that it conduct business continuity and disaster recovery exercises that would include participation by certain market participants and, to the

organization (in the case of the MSRB, Exchange Act 15B) to a “facility” of the self-regulatory organization.



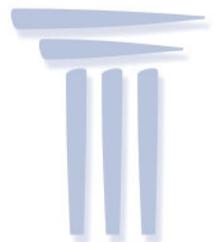
extent reasonably feasible, would be coordinated with other SCI entities, subject to the following comments.

Frequency of Testing. The MSRB believes that the requirement in proposed Rule 1000(b)(9)(i) that such testing occur, at a minimum, once every 12 months establishes an arbitrary timeframe, and that instead the timing of such testing should be based on appropriate risk assessments taking into account technological developments within SCI entities and among market participants, the identification of new or changing external threats, and other relevant factors. In conjunction with such risk-based testing, the MSRB agrees that all systems covered by an SCI entity's business continuity and disaster recovery plans ultimately should be tested over a broader period of time, and therefore the MSRB would support a provision providing that the business continuing and disaster recovery plan testing requirement could be met through risk-based testing of SCI systems and SCI security systems so long as all material components of such systems are tested at least once every three years.

If the Commission determines to require that such testing be conducted on an annual basis, then the MSRB suggests that each SCI entity be permitted to determine the scope of such testing, including which system elements and which market participants should participate in such testing, based on appropriate risk assessments taking into account technological developments within SCI entities and among market participants, the identification of new or changing external threats, and other relevant factors.

Coordination of Testing. While the MSRB supports the efficiency of coordinated testing with other SCI entities, the MSRB suggests that the Commission insert at the end of proposed Rule 1000(b)(9)(ii) the language "to the extent reasonably feasible in light of the nature, size and resources of the particular SCI entity as well as the characteristics of the systems to be tested." The MSRB faces certain challenges not faced by most other SCI self-regulatory organizations, including its smaller size and more limited resources and the fact that it has a different relationship with the entities it regulates than do the other SCI self-regulatory organizations, as described below.

Designated Members or Participants. The MSRB believes that it is appropriate that market participants take part in SCI entity business continuity and disaster recovery plan testing. However, the MSRB faces certain challenges in effectively implementing such testing. For example, if the Commission expects that such testing include market participants over which the MSRB has no regulatory authority, the MSRB seeks clarification from the Commission as to how SCI entities are expected to persuade or compel participation in such testing by such market participants. To the extent that market data is viewed as encompassing disclosure documents, as discussed above, the Commission should note that continuing disclosure submissions are made



by issuers and other parties that the MSRB does not regulate, and thus any participation in testing of the EMMA continuing disclosure service (to the extent that such submitters are viewed as participants for purposes of proposed Regulation SCI) would necessarily be limited to voluntary external participants. Further, with respect to data vendors that either supply data to the MSRB to be used in the MSRB's market transparency systems or that subscribe to the MSRB's market transparency feeds, does the Commission anticipate that the MSRB's contractual arrangements with such vendors include a provision requiring them to agree to such testing?

Rule 1000(c) – Recordkeeping

The MSRB supports the recordkeeping requirements set forth in section (c) of proposed Rule 1000.

Rule 1000(d) – Electronic Submission

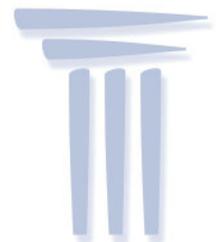
The MSRB supports the electronic submission to the Commission of all required written notices and reports through Form SCI under proposed Regulation SCI. The MSRB urges Commission staff to work with the SCI entities in the development, testing and implementation of the electronic submission system through which Form SCI submissions will be made, including provision of any systems requirements (*e.g.*, supported browsers, required certificates or authentication protocols, etc.) in sufficient time to ensure that SCI entities are able to effectively make submissions upon Regulation SCI becoming effective. In addition, the MSRB requests that the Commission establish a service level agreement for the system through which Form SCI is to be submitted such that SCI entities have continuous access to such system during weekends and non-business hours, with appropriately scheduled and limited “down-time” windows during non-peak times for necessary maintenance by the Commission.

Rule 1000(e) – Requirements for Service Bureaus

The MSRB has no comments on proposed Rule 1000(e).

Rule 1000(f) – Access

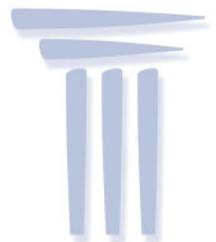
Section (f) of proposed Rule 1000 requires that each SCI entity provide Commission representatives reasonable access to its SCI systems and SCI security systems to allow Commission representatives to assess the SCI entity's compliance with this rule. While the MSRB understands the need for the Commission to be able to assess compliance with Regulation SCI and the MSRB remains committed to working cooperatively with Commission staff with



respect to all aspects of our relationship with the Commission, including the Commission's oversight of the MSRB's activities, the MSRB requests greater clarification as to nature of the "reasonable access" that the Commission intends in this provision. Among other things, the MSRB would like to better understand what level of access is necessary (in particular, whether Commission staff is to be provided access to production code or systems hardware), the number of Commission representatives to whom access would be given (including the degree to which the Commission would assign a fixed team of personnel as compared to potential changes in personnel), their level of training on technical and other matters relevant with respect to a particular system, and their willingness to engage in MSRB internal training to ensure ongoing system integrity. The MSRB would be extremely concerned if the Commission intends that Commission staff have access to MSRB SCI systems and SCI security systems without (i) specific and clearly enunciated reasons for each time the Commission seeks such access that fully justify the risks of providing direct access to sensitive hardware or software components of MSRB systems (including in particular production code or systems hardware), (ii) limiting access to Commission staff who have been fully trained by MSRB staff, to the satisfaction of the MSRB, on each particular component to which such Commission staff is to have access, and (iii) proper direct supervision by MSRB staff at all times during which Commission staff has access. Without strict adherence to such safeguards, providing access to MSRB systems could give rise to significant risks with regard to systems integrity and security that likely would greatly outweigh the benefits of such direct access.

Form SCI

The MSRB supports the establishment and use of new electronic Form SCI for purposes of SCI entity submissions of written notices, reports and other matters required to be submitted by SCI entities to the Commission under proposed Regulation SCI. The MSRB notes that Form SCI should be modified to conform to any changes the Commission makes to Rule 1000 based on comments made by the MSRB and other commenters on the proposal. In addition, the MSRB urges Commission staff to work with the SCI entities in the development, testing and implementation of the electronic submission system through which Form SCI submissions will be made, and to remain open to modifications to Form SCI as SCI entities and the Commission gain experience with the use of Form SCI that would inform the Commission on ways to make the Form SCI data elements or the submission process itself more efficient and effective for SCI entities and the Commission. Also, in the context of implementation of Form SCI, the Commission should provide sample forms of the various exhibits to Form SCI to assist SCI entities in meeting the Commission's expectations for information to be reported on the form and to promote more consistent reporting across all SCI entities.



Furthermore, since the Commission will have in its possession extensive documentation produced by SCI entities and delivered to the Commission in a secure and organized manner, the MSRB would expect that any such documents provided through Form SCI will satisfy an SCI entity's production obligations for such documents in connection with future Commission oversight and related activities with respect to proposed Regulation SCI.

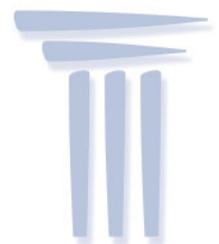
Potential Extension of Regulation SCI to Other Market Participants

The Commission seeks comment in the Proposing Release on whether the provisions of proposed Regulation SCI should be extended to other market participants beyond those entities that would qualify as SCI entities under the definition set forth in section (a) of proposed Rule 1000. Although the MSRB believes that many of the concerns expressed by the Commission in the Proposing Release also would apply with respect to systems of certain non-SCI entities that interact with the marketplace, the MSRB believes that, on balance, it would be best not to expand the scope of the definition of SCI entity at this time.¹⁷ As the Commission proceeds with the staged implementation of proposed Regulation SCI in phases as suggested by the MSRB in this letter, the Commission can use the experience of SCI entities in coming into compliance with the requirements of proposed Regulation SCI to better understand if and how such requirements might be most effectively and efficiently applied to other market participants to whom such application would prove beneficial to investor protection and the effective operation of the marketplace. Any such expansion of the scope of proposed Regulation SCI would be undertaken through a separate rulemaking process, during which the MSRB would urge the Commission also to make appropriate modifications to any existing requirements of Regulation SCI with respect to SCI entities already subject to its provisions based on its assessment of initial implementation of Regulation SCI to further enhance its effectiveness and efficiency.

Potential MSRB Costs and Other Burdens of Implementing Regulation SCI

The Commission includes in the Proposing Release extensive Paperwork Reduction Act and economic analysis discussions in connection with proposed Regulation SCI. As the Commission notes in the Proposing Release, the Paperwork Reduction Act focuses on requirements relating to "collections of information" which give rise to many, but not all, of the costs of complying with proposed Regulation SCI. In general, with regard to the estimations provided in the Commission's discussion of the Paperwork Reduction Act, the MSRB believes

¹⁷ The MSRB expresses no opinion as to whether any entities currently covered by the proposed definition of SCI entity in proposed Rule 1000(a) should be exempted from such coverage.



that such estimations, while potentially providing a colorable estimate of the amount of effort required to undertake the various ministerial activities under proposed Regulation SCI, do not fully take into account the level of supervision, coordination, consultation, analysis, education and review that would be needed to implement, and to operate on an ongoing basis under, the requirements of proposed Regulation SCI in a responsible and effective manner.

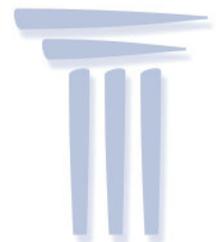
In the economic analysis discussion of the Proposing Release, the Commission attempts to quantify certain additional costs beyond those described in its discussion of the Paperwork Reduction Act and identifies certain other categories of potential costs that it states cannot be quantified at this time.

Below, the MSRB offers certain observations with regard to these discussions.

Rules 1000(b)(1) and (2) – Policies and Procedures Relating to Capacity, Integrity, Resiliency, Availability and Security and Systems Compliance. The Commission estimates that an SCI entity, such as the MSRB, that has not previously participated in the ARP¹⁸ would require an average of 340 burden hours to develop and draft policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, SCI security systems, have levels of capacity, integrity, resiliency, availability and security adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets, as would be required by proposed Rule 1000(b)(1). The Commission also estimates that an SCI entity would require an average of 180 burden hours to ensure that its SCI systems operate in the manner intended, including in a manner that complies with the federal securities laws and rules and regulations thereunder and, as applicable, the entity's rules and governing documents, as would be required by proposed Rule 1000(b)(2). The Commission states that these estimates are based in part on its experience with the ARP and constitute the number of hours an SCI entity would require over and above the usual and customary amount of time it would devote to developing such policies and procedures and would include the time expended to draft relevant policies and procedures. The Commission also states that these estimates would include the time expended for review of the draft policies and procedures by the SCI entity's management.

The MSRB seeks clarification as to this last statement, since the Commission's calculation of burden hours under proposed Rule 1000(b)(1) allocates all of the hours to a compliance manager, an attorney, a senior systems analyst and an operations specialist – none of

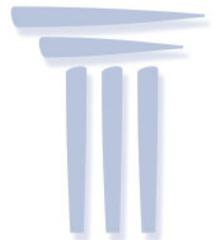
¹⁸ Since the MSRB does not participate in the ARP, it is limiting its comments to burdens that would apply to it as a non-ARP participant and expresses no opinion regarding relative burdens to ARP participants.



which would serve as a substitute for the appropriate level of MSRB management review in connection with the development of policies and procedures of this level of import. Similarly, the Commission's calculation of burden hours under proposed Rule 1000(b)(2) allocates all of the hours to a compliance attorney and a senior systems analyst – again, neither of which would serve as a substitute for the appropriate level of MSRB management review in connection with the development of policies and procedures of this level of import. The MSRB notes that the Commission may place too much reliance on its experience with the ARP, which was a voluntary program that did not create potential legal liabilities for non-compliance, and may not take into account the heightened need for high-level supervision that a rule-based requirement would entail. In fact, the Proposing Release suggests that such heightened attention to policies and procedures and other matters that would be subject to the regulatory rigor of proposed Regulation SCI is the desired result of the Commission's rulemaking, and therefore the Commission's estimate of burdens should reflect this heightened attention.

Furthermore, the MSRB systems that are likely to be considered SCI systems for purposes of proposed Regulation SCI are not standalone systems operated in a separate operational unit of the MSRB without significant import to the other units of the MSRB, but instead are tied inextricably with most of the MSRB's other activities. In fact, the Commission's focus on systems compliance under proposed Rule 1000(b)(2) reflects the fundamental interdependence between SCI entities' (and particularly SCI SROs') systems and the regulatory requirements in which such entities are necessarily intimately involved. Therefore, policies and procedures developed to achieve compliance with Regulation SCI potentially impact numerous other areas of the MSRB and other SCI entities. This would require broader review of these policies and procedures to ensure that they do not conflict with other policies, procedures, practices and processes at the MSRB or such other SCI entities and to allow any changes to such other policies, procedures, practices and processes as are necessary to avoid interfering with the effective implementation of the policies and procedures required under proposed Rules 1000(b)(1) and (2) so as to ensure full compliance with proposed Regulation SCI. The MSRB believes that the Commission does not adequately account for management review of the required policies and procedures, fails to adequately consider collateral effects to other areas of SCI entities' activities that would be impacted by the required policies and procedures, and as a result also understates the baseline drafting burden with respect to the policies and procedures since such reviews are likely to result in several iterations of drafting and require additional meetings among staff from different areas in the organization before the final version is completed.

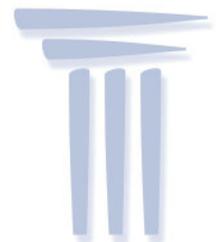
As noted above, the MSRB believes that the estimate under the Paperwork Reduction Act is effectively limited to ministerial tasks of producing such policies and procedures in isolation from other organizational activities and needs, and takes into account only minimal supervisory



or decision-making activities, therefore significantly underestimating the total burden of compliance with this provision.¹⁹ Thus, the Commission does not include adequate estimates for the substantial amount of time required by senior management and others in the organization, as well as the persons identified in the Proposing Release, in understanding the breadth and depth of the requirements established by proposed Regulation SCI; determining which systems of the SCI entity fall into the various categories of systems described in proposed Regulation SCI; assessing, growing and potentially reorganizing large portions of the SCI entity's workforce to align with the requirements of proposed Regulation SCI; establishing and conducting extensive training curriculum to ensure appropriate personnel fully understand their new or changed duties, particularly in light of potential federal securities law liabilities introduced by proposed Regulation SCI; and any number of other collateral effects of the new requirements. Although the MSRB has not had adequate time to develop a more precise estimate of the likely burden resulting from the activities covered by the Commission's estimation of the Paperwork Reduction Act burden arising from proposed Rule 1000(b)(1), the MSRB believes that a more accurate estimation of such burden would be three to four times the estimate provided by the Commission, and the allocation of such hours among the various functions within the organization likely would be weighted more heavily toward more senior staff of the organization than included in the Commission's estimates in the Proposing Release.

In the economic analysis portion of the Proposing Release, the Commission estimates that compliance with the substantive requirements that are the subject of the policies and procedures required by proposed Rules 1000(b)(1) and (2), above and beyond the burden discussed above with respect to the Paperwork Reduction Act, would result in an initial cost of between approximately \$400,000 and \$3 million for each SCI entity. The MSRB understands the significant difficulty in developing a precise estimate of costs in excess of the ministerial burdens covered by the Paperwork Reduction Act analysis described above; however, the Commission does not provide sufficient discussion of the basis of this estimate for the MSRB to determine whether it is based on appropriate assumptions and for the MSRB to consider where in this range it is likely to fall.

¹⁹ The MSRB does not contend that the Commission has not adequately complied with the requirements of the Paperwork Reduction Act, as to which the MSRB expresses no opinion. Rather, the MSRB asserts that the Paperwork Reduction Act analysis in the Proposing Release and the economic analysis section of the Proposing Release do not, together, fully express all of the burdens arising from the provisions of proposed Regulation SCI. As is appropriate, the Commission is seeking comment on such analyses in order to be better informed in making its final assessment in connection with the potential final adoption of Regulation SCI.

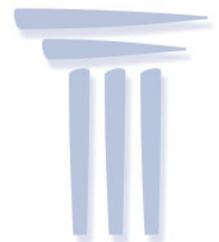


While the MSRB is cautiously confident that its initial costs for full implementation of proposed Rules 1000(b)(1) and (2) would not exceed \$3 million plus four times the estimated burden under the Paperwork Reduction Act analysis, the MSRB does not have a sound basis to establish a precise estimate of such cost, although the MSRB believes that such cost would not be less than half of such \$3 million figures, plus at least three times the Paperwork Reduction Act estimate. If as a result of the restrictive listing of industry standards in Table A of the Proposing Release the MSRB determines that it should adhere to one of the listed standards rather than the standards to which it currently adheres, the MSRB's cost of compliance with proposed Rule 1000(b)(1) would be considerably increased and the MSRB's total cost for compliance with proposed Rules 1000(b)(1) and (2) would in such case likely be at or near the Commission's \$3 million cost estimate plus four times the Paperwork Reduction Act estimate. Furthermore, the MSRB would expect that the approach taken by the Commission in proposed Regulation SCI with regard to federal securities law liabilities and the safe harbors for SCI entities and their employees likely will result in increased insurance costs for SCI entities and the need to offer higher salaries to attract employees willing to face potential securities law liability for their technical work. The MSRB notes that its suggestions for changes to proposed Rules 1000(b)(1) and (2) described above likely would result in a significant reduction in overall implementation costs, although the MSRB does not have estimates of costs savings for individual suggestions.

With regard to ongoing burden after initial implementation, the MSRB agrees with the Commission that such burden generally should be reduced from the burdens and costs incurred in connection with implementation. However, for most of the reasons described above, the MSRB believes that such ongoing burden is dramatically understated, although likely to a lesser extent than with respect to implementation burden. The MSRB does not have a sound basis to establish a precise estimate of such ongoing burden.

Finally, the MSRB believes that the establishment of policies and procedures under Rules 1000(b)(1) and (2) would not be conducive to outsourcing, although the MSRB might incur some costs for outside counsel for consultation purposes.

Rule 1000(b)(3) – Corrective Action. The Commission believes that SCI entities would already take corrective action in response to systems issues but that they would incur some burden to revise their policies and procedures to ensure that they are fully compliant under proposed Rule 1000(b)(3). The Commission establishes an estimate of burden under the Paperwork Reduction Act based on a percentage of the burden estimated under proposed Rule 1000(b)(1). While the MSRB does not have a sound basis to establish a precise estimate of such ongoing burden, it believes that basing an estimate under proposed Rule 1000(b)(3) on the



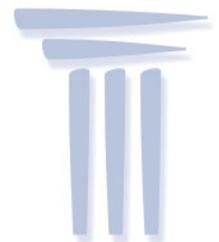
percentage of the burden estimate under proposed Rule 1000(b)(1) suggested by the Commission is appropriate, provided that the Commission uses the higher burden estimate for proposed Rule 1000(b)(1) resulting from the discussion above regarding factors that the Commission did not take into account in the Proposing Release. With regard to other costs, the MSRB generally agrees that, under most circumstances, any increased cost due to proposed Rule 1000(b)(3) would be modest since corrective action normally would already be taken.

While the taking of corrective action might itself be wholly or partially outsourced with regard to systems development activities, the MSRB believes that the establishment of policies and procedures to ensure compliance with Rule 1000(b)(3) would not be conducive to outsourcing.

Rule 1000(b)(4) – Commission Notification. The Commission notes in the Proposing Release that, when an SCI event occurs, an SCI entity would need to determine whether the event is an immediate notification SCI event under proposed Rule 1000(b)(4)(i) or a dissemination SCI event under proposed Rule 1000(b)(5), because the proposed rules would impose different obligations on SCI entities for these types of SCI events. As such, immediate notification SCI events and dissemination SCI events may impose an initial one-time implementation burden on SCI entities in developing a process to ensure that they are able to quickly and correctly make a determination regarding whether the SCI event is subject to proposed Rule 1000(b)(4)(i) or (b)(5). The Commission estimates that, for SCI entities that do not participate in the ARP, such as the MSRB, the initial Paperwork Reduction Act burden would be 42 hours per SCI entity to establish policies and procedures to identify an SCI event as an immediate notification SCI event or dissemination SCI event.

For many of the same reasons described above with regard to the establishment of policies and procedures under Rules 1000(b)(1) and (2), the MSRB believes that the Commission's estimate under the Paperwork Reduction Act with regard to policies and procedures under Rule 1000(b)(4)(i) is effectively limited to ministerial tasks of producing such policies and procedures in isolation from other organizational activities and needs, and takes into account only minimal supervisory or decision-making activities, therefore significantly underestimating the total burden of compliance with this provision. Thus, the Commission should adjust its estimate in a manner similar to the MSRB's suggestion with regard to Rules 1000(b)(1) and (2).

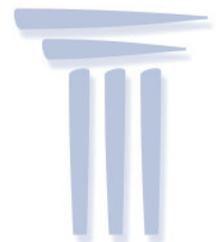
The Commission further estimates that each SCI entity would experience an average of 40 immediate notification SCI events per year under proposed Rule 1000(b)(4)(i), with one-fourth of the notifications in writing and the remaining being oral notifications. The Commission estimates that each written notification would require an in-house attorney half an



hour to prepare and submit to the Commission, resulting in an initial and ongoing burden to comply with the notification requirement of proposed Rule 1000(b)(4)(i) to be five hours annually per SCI entity. Again, while it may take only half an hour for an attorney to write a first draft of a brief notification to the Commission, considerable amounts of activities may be necessary prior to such attorney being able to have the information needed, to have appropriate confirmations from persons with knowledge and authority with respect to the applicable SCI system, to provide for senior management review where appropriate, and to otherwise be in a position to engage in such drafting. Thus, the Commission should adjust its estimate in a manner similar to the MSRB's suggestion with regard to Rules 1000(b)(1) and (2). Furthermore, if the Commission were to approve its proposed definition of SCI system without modification or clarification as suggested by the MSRB above, the MSRB believes that the breadth and ambiguity of such definition likely would result in a broader universe of SCI entity systems being considered SCI systems than the Commission may have anticipated and therefore a larger number of immediate notification SCI events than the Commission estimates, thereby further increasing the potential burden in connection with the preparation of written notifications.

Proposed Rule 1000(b)(4)(ii) would require an SCI entity, within 24 hours of any responsible SCI personnel becoming aware of any SCI event, to submit a written notification to the Commission on Form SCI pertaining to such SCI event. The Commission estimates that each SCI entity would experience an average of 65 SCI events per year, and that notification of each SCI event would require an average of 20 burden hours between a compliance manager and an in-house attorney. While the MSRB believes that it may be reasonable to estimate that the attorney and compliance manager would expend 20 hours to complete such notification, this estimate does not take into account the considerable amounts of activities to be undertaken by other personnel, including persons with knowledge and authority with respect to the applicable SCI system and the SCI event as well as senior management where appropriate, in order to collect and assess the appropriate information and to properly inform such attorney and compliance manager of such information in order to allow them to produce an accurate notification in compliance with proposed Rule 1000(b)(4)(ii). Thus, the Commission should adjust its estimate in a manner similar to the MSRB's suggestion with regard to Rules 1000(b)(1) and (2), taking into consideration the MSRB's comment above regarding the potentially higher level of notifications due to the breadth and ambiguity of the definition of SCI system.

Proposed Rule 1000(b)(4)(iii) would require an SCI entity to submit written updates to the Commission on Form SCI pertaining to SCI events on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, until such time as the SCI event is resolved, with the Commission estimating that each SCI entity would submit five updates per year and each update would require an average of three burden hours. For the reasons described above, the Commission should adjust its estimate in a manner similar to the MSRB's suggestion



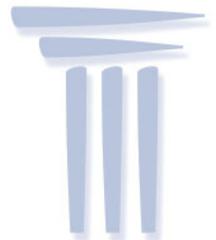
with regard to Rules 1000(b)(1) and (2), taking into consideration the MSRB's comment above regarding the potentially higher level of notifications due to the breadth and ambiguity of the definition of SCI system.

The MSRB notes that its suggestions for changes to proposed Rule 1000(b)(4) described above likely would result in a significant reduction in implementation costs, although the MSRB does not have estimates of costs savings for individual suggestions. In addition, the Commission may wish to consider, as an alternative to requiring SCI entities to prepare and submit notifications to the Commission on Form SCI, the potential cost savings to SCI entities of instead relying on an examination by the Commission of each SCI entity's books and records in which pertinent information regarding SCI events would be memorialized for Commission review.

The MSRB believes that none of the activities arising under Rule 1000(b)(4) would be conducive to outsourcing.

Rule 1000(b)(5) – Dissemination of Information to Members or Participants. Proposed Rule 1000(b)(5)(i)(A) would require an SCI entity, promptly after any responsible SCI personnel becomes aware of a dissemination SCI event other than a systems intrusion, to disseminate to its members or participants certain information about such SCI event. The Commission estimates that each SCI entity would experience an average of 14 dissemination SCI events each year that are not systems intrusions, with each notification requiring an average of three hours by an in-house attorney and webmaster to prepare and make available to members or participants. Proposed Rule 1000(b)(5)(i)(B) would require the SCI entity to further disseminate additional details regarding the dissemination SCI event, when known, with the Commission estimating that each update under proposed Rule 1000(b)(5)(i)(B) would require an average of five hours to prepare and make available to members or participants. Proposed Rule 1000(b)(5)(i)(C) would require an SCI entity to provide regular updates to members or participants of any information required to be disseminated under proposed Rule 1000(b)(5), with the Commission estimating that, on average, each SCI entity would provide one regular update per year per dissemination SCI event. The Commission estimates that each update would require an average of one hour to prepare and make available to members or participants.

Further, under proposed Rule 1000(b)(5)(ii), promptly after any responsible SCI personnel becomes aware of a systems intrusion, the SCI entity would be required to disseminate to its members or participants a summary description of the systems intrusion, unless the SCI entity determines that dissemination of such information would likely compromise the security of the SCI entity's SCI systems or SCI security systems, or an investigation of the systems intrusion, and documents the reasons for such determination. The Commission estimates that each SCI entity would experience an average of one dissemination SCI event that is a systems

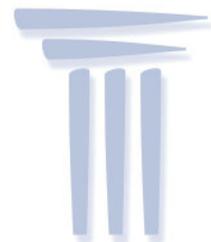


intrusion each year, requiring an average of three hours to prepare and make available to members or participants the required notification.

Since most of the work entailed in producing a notification relating to a dissemination SCI event would occur in connection with the Commission notification requirements under proposed Rule 1000(b)(4), the MSRB believes that the Commission's estimate of the burden of proposed rule 1000(b)(5) is fairly accurate, although perhaps slightly too low taking into consideration the MSRB's comment above regarding the potentially higher level of notifications due to the breadth and ambiguity of the definition of SCI system. The MSRB notes that its suggestions for changes to proposed Rule 1000(b)(5) described above likely would result in a significant reduction in implementation costs, although the MSRB does not have estimates of costs savings for individual suggestions. The MSRB believes that none of the activities arising under Rule 1000(b)(5) would be conducive to outsourcing.

Rule 1000(b)(6) – Material Systems Changes. Proposed Rule 1000(b)(6) would require an SCI entity, absent exigent circumstances, to notify the Commission on Form SCI at least 30 calendar days before the implementation of any planned material systems change. The Commission estimates that there would be an average of 60 planned material systems changes per SCI entity per year, with each notification requiring an average of two hours to prepare and submit, with an attorney spending approximately 0.33 hours and a senior systems analyst spending approximately 1.67 hours in drafting and reviewing the notification.

For many of the same reasons described above with regard to the establishment of policies and procedures under Rules 1000(b)(1) and (2), the MSRB believes that the Commission's estimate under the Paperwork Reduction Act with regard to notifications of material systems changes under Rule 1000(b)(6) is effectively limited to ministerial tasks of producing such notification and does not take into account activities necessary prior to such attorney being able to have the information needed, to have appropriate confirmations from persons with knowledge of the material systems change, to provide for senior management review where appropriate, and to otherwise be in a position to engage in such drafting. Thus, the MSRB believes that the Commission significantly underestimates the total burden of compliance with this provision, and the Commission should adjust its estimate in a manner similar to the MSRB's suggestion with regard to Rules 1000(b)(1) and (2), taking into consideration the MSRB's comment above regarding the breadth and ambiguity of the definition of SCI system that would result in more systems changes being considered material systems changes. Furthermore, if the Commission were to require item-by-item reporting as contemplated in proposed Rule 1000(b)(6) (rather than primarily on a semi-annual basis as proposed by the MSRB above) without providing greater clarity on the definition of material systems change and without providing reasonable *de minimis* exceptions, the MSRB believes that the breadth and



ambiguity of such definition also would likely result in a broader universe of changes to SCI systems being considered material systems changes than the Commission may have anticipated and therefore a larger number of material systems change notifications than the Commission estimates, thereby further increasing the potential burden in connection with such notifications.

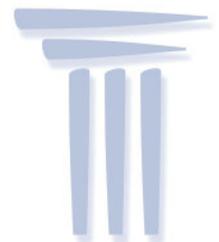
The MSRB notes that its suggestions for changes to proposed Rule 1000(b)(6) described above likely would result in a significant reduction in implementation costs, although the MSRB does not have estimates of costs savings for individual suggestions. In addition, the Commission may wish to consider, as an alternative to requiring SCI entities to prepare and submit notifications to the Commission on Form SCI, the potential cost savings to SCI entities of instead relying on an examination by the Commission of each SCI entity's books and records in which pertinent information regarding material systems changes would be memorialized for Commission review.

The MSRB believes that none of the activities arising under Rule 1000(b)(6) would be conducive to outsourcing.

Rule 1000(b)(7) – SCI Review. Proposed Rule 1000(b)(7) would require each SCI entity to conduct an SCI review of its compliance with Regulation SCI not less than once each calendar year, and submit a report of the SCI review to its senior management for review no more than 30 calendar days after completion of such SCI review. The Commission estimates that the initial and ongoing burden of conducting an SCI review and submitting the SCI review to senior management of the SCI entity for review would be approximately 625 hours for each SCI entity, consisting of 80 hours of attorney time, 170 hours of a manager internal auditor and 375 hours of a senior systems analyst.

The MSRB believes that the Commission's estimate of the burden of proposed rule 1000(b)(7) is fairly accurate. The MSRB also believes that significant portions of the SCI review could be outsourced and that the Commission's estimate for the overall cost of outsourcing is reasonable, although the MSRB notes that some of the assumed hourly rates used by the Commission in the Proposing Release to calculate its estimates appear to be too low in the context of the current market environment.

Rule 1000(b)(8) – Reports. Proposed Rule 1000(b)(8)(i) would require each SCI entity to submit to the Commission, as an attachment to Form SCI, a report of the SCI review required by proposed Rule 1000(b)(7), together with any response by senior management of the SCI entity, within 60 calendar days after its submission to senior management of the SCI entity. The Commission estimates that each SCI entity would require one hour to submit the SCI review using Form SCI. The Commission concedes in the Proposing Release that its estimate under the

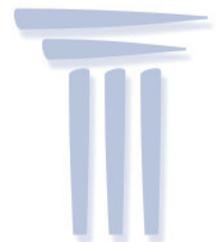


Paperwork Reduction Act with regard to reports under Rule 1000(b)(8) is limited to the ministerial task of submitting an existing report to the Commission on Form SCI and does not take into account the production of such report or of senior management's response. However, the burden of producing this report is covered by the Commission's estimate under proposed Rule 1000(b)(7) and, although such provision does not require the inclusion of senior management's response, the MSRB believes that the Commission's estimate is sufficient to cover the burden on senior management to produce such response. Thus, the MSRB believes that the Commission's estimate of the burden of submitting this report to the Commission under proposed rule 1000(b)(8)(i) is fairly accurate.

In addition, proposed Rule 1000(b)(8)(ii) would require each SCI entity to submit, using Form SCI, a report within 30 calendar days after the end of June and December of each year, containing a summary description of the progress of any material systems changes during the applicable six-month period ending on June 30 or December 31. The Commission estimates that the initial and ongoing burden to comply with proposed Rule 1000(b)(8)(ii) would be approximately 60 hours per SCI entity per report or 120 hours annually, undertaken by an attorney and a senior systems analyst. The MSRB believes that the Commission's estimate of the burden of submitting this report to the Commission under proposed rule 1000(b)(8)(ii) is fairly accurate.

The MSRB believes that none of the activities arising under Rule 1000(b)(8) would be conducive to outsourcing.

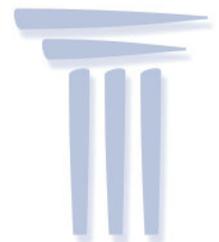
Rule 1000(b)(9) – SCI Entity Business Continuity and Disaster Recovery Plans Testing Requirements for Members and Participants. Proposed Rule 1000(b)(9) would require each SCI entity, with respect to its business continuity and disaster recovery plans, including its backup systems, to require participation by designated members or participants in scheduled functional and performance testing of the operation of such plans at specified intervals, and coordinate such testing on an industry- or sector-wide basis with other SCI entities. The Commission estimates that each SCI entity would spend approximately 130 hours initially to meet the requirements of proposed Rules 1000(b)(9)(i) and (ii), taking into consideration the requirement to mandate participation by designated members or participants in testing under proposed Rule 1000(b)(9)(i), as well as the requirement under proposed Rule 1000(b)(9)(ii) that an SCI entity coordinate required testing with other SCI entities. The Commission assumes that it would take an SCI entity 35 hours to write a proposed rule to establish the participation requirement for the SCI entity's designated members or participants and an additional 95 hours of follow-up work (*e.g.*, notice and schedule coordination) to ensure implementation. Such work would be accomplished by a compliance manager, an attorney, a compliance clerk and an operations specialist. In addition, the Commission estimates that each SCI entity would spend



approximately 35 hours initially to meet the requirements of proposed Rule 1000(b)(9)(iii). This estimate takes into consideration the burden for an SCI entity to establish standards for designating members or participants who must participate in its business continuity and disaster recovery plans testing and file such standards with the Commission on Form SCI, as well as the burden for an SCI entity to determine, compile and submit its list of designated members or participants on Form SCI. Finally, the Commission estimates that each SCI entity would spend approximately 95 hours annually to review the written rules or requirements to ensure that they remain up-to-date and to prepare any necessary amendments and undertake necessary coordination to ensure implementation and enforcement of the requirement, as well as approximately three hours annually to review the designation standards to ensure that they remain up-to-date and to prepare any necessary amendments, to review its list of designated members or participants, and to update prior Commission notifications with respect to the standards for designation and the list of designees.

The Commission notes that the mandatory testing of SCI entity business continuity and disaster recovery plans, including backup systems, would place an additional burden on SCI entities beyond those addressed by the Commission's Paperwork Reduction Act analysis. The Commission believes that additional costs of proposed Rule 1000(b)(9) to SCI entities would be minimal because some SCI entities already require some or all of their members or participants to connect to their backup systems and most, if not all, SCI entities already offer their members or participants the opportunity to test such plans.

For many of the same reasons described above with regard to the establishment of policies and procedures under Rules 1000(b)(1) and (2), the MSRB believes that the Commission's estimate under the Paperwork Reduction Act with regard to business continuity and disaster recovery plans testing under Rule 1000(b)(9) is effectively limited to ministerial tasks of producing a rule filing and of undertaking follow-up work in connection with implementation and does not take into account significant activities relating to the rulemaking process (*e.g.*, board or directors briefing and deliberation, potential notice for comment, responses to comment letters received on such notice, responses to comment letters received by the Commission on a rule filing, etc.) and understates the activities necessary to implement testing with industry participants. In addition, the Commission's discussion of economic analysis fails to take into consideration those SCI entities that may engage in systems-specific testing upon implementation or initial connection by a market participant but do not engage in business continuity and disaster recovery testing with the participation of market participants. Although the MSRB has not had adequate time to develop an estimate of total burden, it is clear that testing of the MSRB's business continuity and disaster recovery plans would be significantly more burdensome if such testing is to be conducted with the participation of market participants and in coordination with other SCI entities.



Thus, the MSRB believes that the Commission significantly underestimates the total burden of compliance with this provision, and the Commission should adjust its estimate in a manner similar to the MSRB's suggestion with regard to Rules 1000(b)(1) and (2). The MSRB notes that its suggestions for changes to proposed Rule 1000(b)(9) described above likely would result in a significant reduction in implementation costs, although the MSRB does not have estimates of costs savings for individual suggestions. The MSRB believes that none of the activities arising under Rule 1000(b)(9) would be conducive to outsourcing.

The Commission also estimates additional costs to SCI entity members or participants for participating in business continuity and disaster recovery plans testing. The MSRB has no comment on the cost estimates provided by the Commission for such members or participants.

Rule 1000(c) – Recordkeeping Requirements Related to Compliance with Regulation SCI. While proposed Rule 1000(c) does not create new recordkeeping requirements for SCI SROs, the number of records to be retained by the MSRB would increase due to proposed Regulation SCI. Although the MSRB does not currently have an estimate of the incremental cost of each additional record maintained by the MSRB, such additional recordkeeping is not costless and should be considered by the Commission.

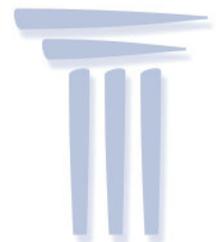
Rule 1000(d) – Electronic Submission. Any costs associated with electronic submissions have been discussed above in connection with the substantive provisions of proposed Regulation SCI.

Rule 1000(e) – Requirements for Service Bureaus. The MSRB has no comment on the potential costs associated with proposed Rule 1000(e).

Rule 1000(f) – Access. It is not possible for the MSRB to provide meaningful comment on the potential costs associated with proposed Rule 1000(f) since the Commission has not provided information regarding the nature of the access that would be required under this provision.

Implementation Timetable

As noted above, the MSRB believes that the MSRB and other SCI entities that do not participate in the ARP should be provided a meaningful transition period, in addition to any transition period provided to those SCI entities that participate in the ARP, in order to come into full compliance with Regulation SCI in an orderly and effective manner. The MSRB and other non-ARP participants would be viewed as voluntary participants in the Regulation SCI schema



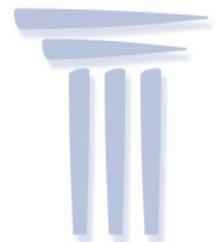
during this transition period, which should last for at least one full year to permit a measured transition to full compliance during the course of a complete annual cycle.

In addition, the MSRB believes that proposed Regulation SCI should be implemented in a phased manner so that its provisions would initially apply, after a six-month delayed effectiveness after final approval of Regulation SCI, only to SCI systems of current ARP participants that are trading, clearance and settlement, and order routing systems. At least one year after the effective date, non-ARP participants would be required to come into compliance with Regulation SCI with respect to their SCI systems that are trading, clearance and settlement, and order routing systems. This initial phase would then continue for at least one additional complete annual cycle.

Only after this initial phase has been completed as described above, and with the knowledge and experience gained from implementing Regulation SCI to the types of systems currently covered by the ARP, would a second implementation phase begin. This second phase would expand the coverage of proposed Regulation SCI to also include SCI security systems relating to such SCI systems. This second phase would continue for at least one complete annual cycle, although a longer period may be necessary if the Commission retains its current expansive definition of SCI security system.²⁰

After completion of the second phase of implementation, a final phase expanding the coverage of proposed Regulation SCI to also include SCI systems that are market data, regulation and surveillance systems, together with SCI security systems relating to such additional SCI systems, would follow. As discussed above, the MSRB seeks clarification on the intended breadth of these new categories of systems – depending on whether market data systems include both data-driven and document-based systems, as described above, the differences between purely data driven systems and systems involving document submissions or submissions by unregulated market participants suggests that this final phase of implementation of proposed Regulation SCI should be staged to first bring in purely data-driven systems involving submissions by regulated entities for the first complete annual cycle of this phase,

²⁰ A more expansive definition of SCI security system would increase the likelihood that difficulties in fully identifying systems that qualify as SCI security systems, and in crafting appropriate policies, procedures, processes and practices to address the unique issues arising from such systems, will continue throughout the initial process of applying Regulation SCI to such SCI security systems. Thus, a second complete annual cycle may be necessary to ensure effective implementation of Regulation SCI to such SCI security systems, as currently defined in proposed Regulation SCI.



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followed by document-based systems involving submissions by regulated entities for a second complete annual cycle, and then finally by systems that materially rely on submissions by unregulated market participants.

Again, we appreciate the opportunity to provide comments to the Commission on this important proposal. If you have any questions or if the MSRB may be of further assistance to the Commission, please do not hesitate to contact me or the MSRB staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay M. Goldstone". The signature is fluid and cursive, with a large initial "J" and "G".

Jay M. Goldstone
Chairman

