

# United States Senate

WASHINGTON, DC 20510

April 25, 2024

The Honorable Gary Gensler  
Chair  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Dear Chair Gensler,

We write to express our concerns regarding the Securities and Exchange Commission's ("Commission") proposal to expand Regulation Systems Compliance and Integrity ("Reg SCI") to include a small group of broker-dealers (the "Proposal"). The rule appears to be a regulatory solution in search of a problem and could result in significant costs and competitive distortions for a select group of market participants.

Since its initial implementation nearly a decade ago, Reg SCI has been applied to critical components of our market infrastructure to enhance the operational resilience of crucial securities market infrastructure. The Commission now proposes to extend Reg SCI to an entirely different set of market participants – broker-dealers – without adequately demonstrating the necessity or appropriateness of doing so, as required by the Administrative Procedure Act. We are concerned that the Proposal has the potential to negatively affect market liquidity, efficiency, and competition.

First, the Proposal fails to cite any instance where a broker-dealer's technological systems issue has led to systemic disruption in the marketplace. Without demonstrating that broker-dealers pose market-wide resiliency concerns, the Proposal would impose billions of dollars in compliance costs, including thousands of hours of dedicated employee time. Furthermore, the Proposal does not clarify why existing Commission and FINRA rules addressing resiliency and systems integrity are insufficient. The Commission also overlooks that broker-dealers, unlike current Reg SCI entities (which tend to be exchanges, infrastructures, and services without alternatives or with significant differences in offerings or liquidity), compete for trade flow from clients who maintain relationships with multiple broker-dealers. The potential for loss of trade flow and harm to client relationships due to disruptions from cyber threats or resilience issues provides a significant incentive for broker-dealers to invest in and enhance the reliability of their systems without the need for prescriptive SEC regulation.

Second, the Proposal does not adequately consider the implications of applying this regulatory framework to broker-dealers, including those that trade as principal for their own accounts. Reg SCI was tailored for and adopted with a limited scope of entities. Proposing to expand existing Reg SCI to broker-dealers without customization would implicate an immense volume of systems. The vague and expansive definition of "SCI system" could subject thousands of systems to Reg SCI requirements, leading to substantial compliance costs and the disclosure of sensitive intellectual property. The Proposal's failure to consider the extensive range of broker-dealer systems that would fall under Reg SCI or to acknowledge the differences between broker-dealer systems and those of entities currently subject to Reg SCI shows a fundamental misunderstanding of the broker-dealer activities and the scope of systems that would be affected by the Proposal.

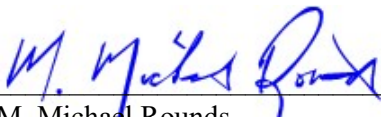
Third, the Proposal offers no rational basis for extending Reg SCI based on certain arbitrary trading or asset thresholds. These arbitrarily set thresholds do not accurately reflect whether a broker-dealer plays a critically important role within the market or if a systems outage at a broker-dealer would pose a substantial risk to the maintenance of fair and orderly markets. The Proposal's narrow focus on aggregate

trading volume, without considering specific trading activities, lacks justification and subjects similarly situated competitors to vastly different regulatory requirements. The Commission's reliance solely on arbitrary quantitative tests suggests an avoidance of the difficult, yet necessary, analysis of identifying specific activities or potential risks that may warrant further scrutiny.

Based on these concerns, we request that the Division of Trading and Markets provide a briefing on the following questions regarding the Proposal no later than April 30, 2024.


1. Describe in detail the market failure the Commission is seeking to address through the Proposal;
2. Describe in detail, both qualitatively *and* quantitatively, the Commission's analysis of broker-dealer substitutability. Please explain why the Proposal is necessary and appropriate in light of this market dynamic;
3. Describe in detail, both qualitatively *and* quantitatively, the basis for the Proposed trading asset and thresholds;
4. Describe the specific broker-dealer trading activities that are of concern to the Commission (e.g., retail investor access, clearing and settlement, market making, etc.);
5. Describe in detail, how the types of broker-dealer systems that would be subject to the Proposal are different than the types of systems for existing SCI entities and how many broker-dealer systems would be in-scope relative to existing entities;
6. Describe in detail, both qualitatively *and* quantitatively, the estimated cost burden associated with the Proposal, and whether the Commission believes the estimates in the Proposal are accurate;
7. Describe in detail, the Proposal's effect on competition; and
8. Describe in detail the process used to assess and integrate the targeted firms' current operational resiliency and cybersecurity programs within the framework of the proposal.

Sincerely,

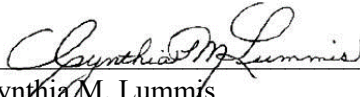
  
M. Michael Rounds  
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Thom Tillis  
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John Kennedy  
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United States Senator

*Katie Boyd Britt*

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Katie Boyd Britt  
United States Senator

*Steve Daines*

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Steve Daines  
United States Senator

*Kevin Cramer*

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Kevin Cramer  
United States Senator