

Required fields are shown with yellow backgrounds and asterisks.

Filing by Financial Industry Regulatory Authority  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change Relating to Mandatory Participation in Business Continuity and Disaster Recovery Testing under Regulation SCI

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*   
Title \*   
E-mail \*   
Telephone \*  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date    
By    
(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“SEA” or “Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt FINRA Rule 4380 related to mandatory participation in business continuity and disaster recovery (“BC/DR”) testing under Regulation Systems Compliance and Integrity (“Regulation SCI”).

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The Chief Legal Officer of FINRA authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. Further information on implementation of the proposed rule change shall be announced in a Regulatory Notice by November 3, 2015.

**3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

Regulation SCI was adopted by the Commission on November 19, 2014, with the objective of strengthening the technology infrastructure of the U.S. securities markets.<sup>2</sup> The regulation applies to “SCI entities,” which includes FINRA, the national securities exchanges and equity alternative trading systems (“ATs”) that meet specified volume thresholds.<sup>3</sup> One topic of several Regulation SCI rule requirements is BC/DR testing.

Rule 1004 of SEC Regulation SCI requires FINRA, as an SCI entity, to do the following with respect to its BC/DR plan: (1) establish standards to designate the members that FINRA reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its BC/DR plan; (2) designate members pursuant to its established standards and require them to participate in scheduled functional and performance testing of the operation of FINRA’s BC/DR plan, in the manner and frequency specified by FINRA, provided the frequency is no less than once every 12 months; and (3) coordinate the testing of FINRA’s BC/DR plan on an industry- or sector-wide basis with other SCI entities.

Consistent with Regulation SCI, FINRA proposes to adopt Rule 4380 to establish authority to designate members for mandatory participation in its BC/DR testing. As noted in proposed Rule 4380(a), FINRA will designate members according to established criteria that are designed to ensure participation by those members that FINRA reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its BC/DR plan. As further noted in proposed Rule 4380(a), FINRA’s criteria will consider volume of activity on a

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<sup>2</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252, 72254 (December 5, 2014) (“SCI Adopting Release”).

<sup>3</sup> Rule 1000 of SEC Regulation SCI.

FINRA market system over a specified period of time.<sup>4</sup> FINRA will communicate to members its criteria for designation under this Rule, and any changes to such criteria, on a prospective basis<sup>5</sup> by Regulatory Notice.

Proposed Rule 4380(b) would reiterate several important points from Regulation SCI with respect to BC/DR plan testing. Specifically, the rule would note that Regulation SCI requires BC/DR testing to include functional and performance testing, rather than simple connectivity testing, and that such testing must occur at least once per 12 months.<sup>6</sup> Proposed Rule 4380(b) would further state that FINRA will notify members that are designated to participate in the BC/DR test at least 90 days prior to the scheduled testing date.<sup>7</sup>

Finally, proposed Rule 4380(c) would state the obligations of member firms that are designated for mandatory participation in BC/DR testing. As noted in the rule, designated members would be required to fulfill, within the time frames established by FINRA, certain testing requirements that FINRA determines are necessary and

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<sup>4</sup> Volume-based criteria may contemplate quoting, trading, or reportable order events, depending on the type of activity conducted on a FINRA system.

<sup>5</sup> For example, should FINRA change its volume-based criteria, or the specified period of time over which such volume is measured (i.e., the look-back period), it would not apply any of those changes retroactively. Instead, it would only apply such changes, after notice, to the next testing cycle with a full look-back period.

<sup>6</sup> See SCI Adopting Release, 79 FR at 72351-52.

<sup>7</sup> FINRA believes, based on preliminary discussions among SCI entities that the yearly testing contemplated by this proposal would likely take the place of the current industry test facilitated by the Securities Industry and Financial Markets Association (“SIFMA”) each October. This would be consistent with Commission guidance – Regulation SCI recognized that the existing SIFMA test could provide a foundation for the regulation’s mandatory testing requirements. See SCI Adopting Release, 79 FR at 72349.

appropriate. These requirements could include, for example, bringing up their systems on the designated testing day and processing test scripts to simulate trading activity. Designated members may also be required to satisfy related reporting requirements, for example, reporting the member's testing results, so that FINRA may evaluate the efficacy of the test and, correspondingly, its BC/DR plan.<sup>8</sup>

FINRA recognizes that there may be additional market participants that wish to participate on a voluntary basis in FINRA's annual BC/DR test, beyond those that are designated under Rule 4380. For example, certain system participants may wish to test their backup capabilities even if they do not exceed the system's threshold cutoff. Additionally, third party service providers, like service bureaus that transmit information to FINRA systems on behalf of FINRA members, may also wish to ensure their ability to function in FINRA's backup environment, even though the service providers are not themselves FINRA members subject to Rule 4380. FINRA will encourage any such market participant to consider voluntary participation in FINRA's BC/DR test, consistent with Commission guidance.<sup>9</sup>

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce its criteria for designated members for mandatory test participation in a Regulatory Notice by November 3, 2015, the general

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<sup>8</sup> FINRA anticipates that compliance with this proposal would be enforced consistent with existing FINRA rules and practice, and that a designated firm's failure to participate in mandatory testing could result in possible sanctions, including fines, under FINRA Rule 8310.

<sup>9</sup> See SCI Adopting Release, 79 FR at 72351 n.1170 (encouraging SCI entities to permit voluntary participation).

compliance date for Regulation SCI. FINRA anticipates that the first BC/DR test that will include designated members' mandatory participation will occur in October, 2016.

(a) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires that FINRA rules must be designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

FINRA believes that the proposal, which would authorize FINRA to compel participation by certain designated members in FINRA's BC/DR testing, is consistent with these provisions of the Act for the reasons articulated by the Commission when it adopted Regulation SCI. As the Commission stated, "unless there is effective participation by certain of its members or participants in the testing of [BC/DR] plans, the objective of ensuring resilient and available markets in general, and the maintenance of fair and orderly markets in particular, would not be achieved."<sup>11</sup>

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is intended to carry out the requirements imposed by Regulation SCI

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<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> SCI Adopting Release, 79 FR at 72351 (internal citations omitted).

with respect to FINRA's BC/DR testing. When the Commission adopted the mandatory backup testing requirements of Regulation SCI, the Commission recognized that the requirements could have some cost impact on designated firms. It concluded, however, that such costs were justified by the need for SCI entities to prepare for the possibility of wide-scale disruptions in the securities markets.<sup>12</sup>

FINRA recognizes that the criteria it announces in its Regulatory Notice may impose costs, particularly on those members designated pursuant to the established criteria. However, the Commission noted its belief that the costs of this requirement could be mitigated by the fact that designated members are likely to be larger firms with greater resources.<sup>13</sup> Consistent with the Commission's guidance, FINRA expects that its criteria will mitigate costs by designating larger firms that have greater resources, and likely have experience with the current SIFMA-facilitated industry test, and therefore are more likely to have existing connections to FINRA's backup systems. Moreover, other firms who may anticipate some competitive advantage to participating in the SCI testing are not precluded from doing so by this rule, further mitigating any competitive effects of the rule.

**5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

Written comments were neither solicited nor received.

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<sup>12</sup> See SCI Adopting Release, 79 FR at 72348-49. The Commission explained that the designation of larger firms may result in minimal or relatively modest administrative costs because such firms are likely to already have established connectivity to backup sites and to monitor and maintain such connectivity. See id., 79 FR at 72341.

<sup>13</sup> See SCI Adopting Release, 79 FR at 72351.



**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

FINRA has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup> FINRA asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest; (2) will not impose any significant burden on competition; and (3) will not become operative for 30 days after filing or such shorter time as the Commission may designate. In addition, FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the proposal, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.<sup>16</sup>

FINRA believes that the filing is appropriately designated as non-controversial because the proposal implements requirements imposed upon FINRA by Regulation SCI. The potential costs and impacts of this proposal have already been subject to comment and evaluated by the Commission when it adopted Regulation SCI. Moreover, as stated above, FINRA expects that the criteria it establishes pursuant to this filing to designate firms for mandatory participation in BC/DR testing will attempt to mitigate costs, consistent with guidance the Commission provided in Regulation SCI. As a result, FINRA believes the filing satisfies the requirements of Rule 19b-4(f)(6).

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

FINRA requests that the Commission waive the 30-day operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>17</sup> FINRA requests this waiver so that the proposal may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>19</sup> prior to the Regulation SCI compliance date of November 3, 2015.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of proposed rule change.

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<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2015-046)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Mandatory Participation in Business Continuity and Disaster Recovery Testing under Regulation SCI

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 4380 related to mandatory participation in business continuity and disaster recovery (“BC/DR”) testing under Regulation Systems Compliance and Integrity (“Regulation SCI”).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Regulation SCI was adopted by the Commission on November 19, 2014, with the objective of strengthening the technology infrastructure of the U.S. securities markets.<sup>4</sup> The regulation applies to "SCI entities," which includes FINRA, the national securities exchanges and equity alternative trading systems ("ATs") that meet specified volume thresholds.<sup>5</sup> One topic of several Regulation SCI rule requirements is BC/DR testing.

Rule 1004 of SEC Regulation SCI requires FINRA, as an SCI entity, to do the following with respect to its BC/DR plan: (1) establish standards to designate the members that FINRA reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of

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<sup>4</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252, 72254 (December 5, 2014) ("SCI Adopting Release").

<sup>5</sup> Rule 1000 of SEC Regulation SCI.

its BC/DR plan; (2) designate members pursuant to its established standards and require them to participate in scheduled functional and performance testing of the operation of FINRA's BC/DR plan, in the manner and frequency specified by FINRA, provided the frequency is no less than once every 12 months; and (3) coordinate the testing of FINRA's BC/DR plan on an industry- or sector-wide basis with other SCI entities.

Consistent with Regulation SCI, FINRA proposes to adopt Rule 4380 to establish authority to designate members for mandatory participation in its BC/DR testing. As noted in proposed Rule 4380(a), FINRA will designate members according to established criteria that are designed to ensure participation by those members that FINRA reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its BC/DR plan. As further noted in proposed Rule 4380(a), FINRA's criteria will consider volume of activity on a FINRA market system over a specified period of time.<sup>6</sup> FINRA will communicate to members its criteria for designation under this Rule, and any changes to such criteria, on a prospective basis<sup>7</sup> by Regulatory Notice.

Proposed Rule 4380(b) would reiterate several important points from Regulation SCI with respect to BC/DR plan testing. Specifically, the rule would note that Regulation SCI requires BC/DR testing to include functional and performance testing, rather than

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<sup>6</sup> Volume-based criteria may contemplate quoting, trading, or reportable order events, depending on the type of activity conducted on a FINRA system.

<sup>7</sup> For example, should FINRA change its volume-based criteria, or the specified period of time over which such volume is measured (i.e., the look-back period), it would not apply any of those changes retroactively. Instead, it would only apply such changes, after notice, to the next testing cycle with a full look-back period.

simple connectivity testing, and that such testing must occur at least once per 12 months.<sup>8</sup> Proposed Rule 4380(b) would further state that FINRA will notify members that are designated to participate in the BC/DR test at least 90 days prior to the scheduled testing date.<sup>9</sup>

Finally, proposed Rule 4380(c) would state the obligations of member firms that are designated for mandatory participation in BC/DR testing. As noted in the rule, designated members would be required to fulfill, within the time frames established by FINRA, certain testing requirements that FINRA determines are necessary and appropriate. These requirements could include, for example, bringing up their systems on the designated testing day and processing test scripts to simulate trading activity. Designated members may also be required to satisfy related reporting requirements, for example, reporting the member's testing results, so that FINRA may evaluate the efficacy of the test and, correspondingly, its BC/DR plan.<sup>10</sup>

FINRA recognizes that there may be additional market participants that wish to participate on a voluntary basis in FINRA's annual BC/DR test, beyond those that are designated under Rule 4380. For example, certain system participants may wish to test

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<sup>8</sup> See SCI Adopting Release, 79 FR at 72351-52.

<sup>9</sup> FINRA believes, based on preliminary discussions among SCI entities that the yearly testing contemplated by this proposal would likely take the place of the current industry test facilitated by the Securities Industry and Financial Markets Association ("SIFMA") each October. This would be consistent with Commission guidance – Regulation SCI recognized that the existing SIFMA test could provide a foundation for the regulation's mandatory testing requirements. See SCI Adopting Release, 79 FR at 72349.

<sup>10</sup> FINRA anticipates that compliance with this proposal would be enforced consistent with existing FINRA rules and practice, and that a designated firm's failure to participate in mandatory testing could result in possible sanctions, including fines, under FINRA Rule 8310.

their backup capabilities even if they do not exceed the system's threshold cutoff. Additionally, third party service providers, like service bureaus that transmit information to FINRA systems on behalf of FINRA members, may also wish to ensure their ability to function in FINRA's backup environment, even though the service providers are not themselves FINRA members subject to Rule 4380. FINRA will encourage any such market participant to consider voluntary participation in FINRA's BC/DR test, consistent with Commission guidance.<sup>11</sup>

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce its criteria for designated members for mandatory test participation in a Regulatory Notice by November 3, 2015, the general compliance date for Regulation SCI. FINRA anticipates that the first BC/DR test that will include designated members' mandatory participation will occur in October, 2016.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>12</sup> which requires that FINRA rules must be designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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<sup>11</sup> See SCI Adopting Release, 79 FR at 72351 n.1170 (encouraging SCI entities to permit voluntary participation).

<sup>12</sup> 15 U.S.C. 78q-3(b)(6).

FINRA believes that the proposal, which would authorize FINRA to compel participation by certain designated members in FINRA's BC/DR testing, is consistent with these provisions of the Act for the reasons articulated by the Commission when it adopted Regulation SCI. As the Commission stated, "unless there is effective participation by certain of its members or participants in the testing of [BC/DR] plans, the objective of ensuring resilient and available markets in general, and the maintenance of fair and orderly markets in particular, would not be achieved."<sup>13</sup>

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is intended to carry out the requirements imposed by Regulation SCI with respect to FINRA's BC/DR testing. When the Commission adopted the mandatory backup testing requirements of Regulation SCI, the Commission recognized that the requirements could have some cost impact on designated firms. It concluded, however, that such costs were justified by the need for SCI entities to prepare for the possibility of wide-scale disruptions in the securities markets.<sup>14</sup>

FINRA recognizes that the criteria it announces in its Regulatory Notice may impose costs, particularly on those members designated pursuant to the established criteria. However, the Commission noted its belief that the costs of this requirement

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<sup>13</sup> SCI Adopting Release, 79 FR at 72351 (internal citations omitted).

<sup>14</sup> See SCI Adopting Release, 79 FR at 72348-49. The Commission explained that the designation of larger firms may result in minimal or relatively modest administrative costs because such firms are likely to already have established connectivity to backup sites and to monitor and maintain such connectivity. See id., 79 FR at 72341.



could be mitigated by the fact that designated members are likely to be larger firms with greater resources.<sup>15</sup> Consistent with the Commission's guidance, FINRA expects that its criteria will mitigate costs by designating larger firms that have greater resources, and likely have experience with the current SIFMA-facilitated industry test, and therefore are more likely to have existing connections to FINRA's backup systems. Moreover, other firms who may anticipate some competitive advantage to participating in the SCI testing are not precluded from doing so by this rule, further mitigating any competitive effects of the rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the

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<sup>15</sup> See SCI Adopting Release, 79 FR at 72351.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-046 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-046 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Robert W. Errett  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined.

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**4000. FINANCIAL AND OPERATIONAL RULES**

\* \* \* \* \*

**4300. OPERATIONS**

\* \* \* \* \*

**4380. Mandatory Participation in FINRA BC/DR Testing Under Regulation SCI**

(a) In accordance with Rule 1004 of SEC Regulation SCI, FINRA will designate members that will be required to participate in FINRA's periodic, scheduled testing of its business continuity and disaster recovery (BC/DR) plan. FINRA will do so according to established criteria that are designed to ensure participation by those members that FINRA reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its BC/DR plan. FINRA's criteria will consider volume of activity on a FINRA market system over a specified period of time. FINRA will communicate to members its criteria for designation under this Rule, and any changes to such criteria, on a prospective basis by Regulatory Notice.

(b) The testing of FINRA's BC/DR plan referred to in this Rule will occur at least once every twelve months. Such testing will include functional and performance testing of the operation of FINRA's BC/DR plan. FINRA will notify members that are designated to participate in BC/DR testing under this Rule at least 90 days prior to the scheduled test date.

(c) Members that are designated pursuant to this Rule shall be required to fulfill, within the time frames established by FINRA, certain testing requirements that FINRA determines are necessary and appropriate. Members may also be required to satisfy related reporting requirements, for example, reporting the results of the member's participation in testing under this Rule, as determined by FINRA.

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