



April 11, 2022

VIA ELECTRONIC DELIVERY

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**RE: Proposed Rule: Shortening the Securities Transaction Settlement Cycle;
Release Nos. 34-94196, IA-5957; File No. S7-05-22 (Feb. 9, 2022)**

Dear Ms. Countryman:

Virtu Financial, Inc.¹ (“Virtu”) respectfully submits this letter in response to the above-referenced rule proposal issued by the Securities and Exchange Commission (the “SEC” or “Commission”) on February 9, 2022 (the “Proposal”).² In the Proposal, the Commission seeks public comment on whether the standard settlement cycle for most broker-dealer transactions in securities should be shortened from two business days after the trade date (T+2) to one business day after the trade date (T+1). The Proposal also includes potential rule amendments to shorten the process of confirming and affirming trade information so these activities can be completed by the end of trade date, as well as a new requirement to facilitate straight-through processing. Finally, the Proposal invites public comment on the benefits and risks of further shortening the settlement cycle to same-day settlement, or T+0.

Virtu is broadly supportive of the underlying policy goals of the Proposal articulated by the Commission to “reduce the credit, market, and liquidity risks in securities transactions faced by market participants and U.S. investors.” As technology and innovation have evolved, so too have our markets, and it is incumbent on the SEC to ensure that the regulatory framework governing market infrastructure continually is modernized and adapted to meet the needs of investors and other market participants in the modern era. The Proposal falls squarely within the SEC’s tripartite statutory remit to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

¹ Virtu is a leading financial firm that leverages cutting edge technology to deliver liquidity to the global markets and innovative, transparent trading solutions to its clients. Virtu operates as a market maker across numerous exchanges in the U.S. and is a member of all U.S. registered stock exchanges. Virtu’s market structure expertise, broad diversification, and execution technology enables it to provide competitive bids and offers in over 25,000 securities, at over 235 venues, in 36 countries worldwide. Virtu broadly supports innovation and enhancements to transparency and fairness that increase liquidity and promote competition to the benefit of all marketplace participants.

² U.S. Securities & Exchange Commission, *Proposed Rule: Shortening the Securities Transaction Settlement Cycle*; Release Nos. 34-94196, IA-5957; File No. S7-05-22 (Feb. 9, 2022), available at <https://www.sec.gov/rules/proposed/2022/34-94196.pdf>.

We caution, however, that there are several potential risks and challenges presented by certain aspects of the Proposal that need to first be ironed out to ensure that the final rule does not inadvertently impact the operation of the markets or the crucial settlement cycle, or harm investors.

We appreciate the opportunity to respond to the Proposal by identifying some of the key items the Commission should consider addressing in connection with a final rule:

- the misalignment of U.S. and foreign settlement cycles;
- the difficulties associated with the requirement for a broker-dealer and customer to enter into a written contract as part of the allocation, confirmation, and affirmation process; and
- challenges associated with Regulation SHO.

Considerations Concerning Misalignment of U.S. and Foreign Settlement Cycles

Pursuant to existing Rule 15c6–1(b), there is an exemption for foreign securities. We agree that these exemptions should continue to apply but believe that it needs to be enhanced to account for misalignment between settlement dates of U.S. and foreign securities. In many foreign jurisdictions, trades settle on T+2 basis, and therefore the settlement cycle will be out of alignment with a T+1 regime in the U.S. Accordingly, it is critical for the Commission to make it clear that foreign securities should settle in accordance with the rules of the foreign jurisdictions. This would avoid a scenario where U.S. market participants are settling foreign securities under the U.S. rules. This is needed clarity that would put all parties on the same page with the same expectations.

However, even with this clarification, the Proposal introduces complications with respect to certain ETFs that have an underlying foreign security or basket of foreign securities as a component. Specifically, as part of the basket creation process, an authorized participant³ (“AP”) will need to purchase foreign securities in the local market, where the settlement cycle could be T+2 or later, resulting in a misalignment of the settlement schedule. This could require APs to post collateral for an additional day to allow the release of ETF shares with a creation basket composed of foreign securities on T+1, which could result in capital charges and otherwise introduce cash management challenges for APs. These additional costs may ultimately result in additional transaction costs borne by investors. To address this, APs and ETF issuers will need to be able to agree to an extended settlement at the time that the AP submits the creation unit order. The most practical outcome would be (i) for primary creations and redemptions to have alternative settlement date options available so the foreign security basket and the U.S. ETF settlement can be in sync; and (ii) for all OTC trades to continue to be T+2 unless both counterparties agree to an alternative settlement date.

³ An authorized participant is an organization that has the right to create and redeem shares of an exchange traded fund (“ETF”). They provide a large portion of the liquidity in the ETF market by obtaining the underlying assets required to create the shares of an ETF.

Allocation, Confirmation and Affirmation Process

The Proposal recommends adoption of a new Rule 15c6-2 to help facilitate the completion of the allocation, confirmation, and affirmation process by the end of day on trade date, which the Commission views as an industry best practice. To achieve this, the Proposal would prohibit a broker-dealer from executing a transaction unless the broker-dealer and the customer have entered into a written contract requiring the parties to complete that process as quickly as possible and by the end of the trade date.

For a variety of reasons, requiring parties to enter into a contract in this scenario is an inappropriate and unworkable solution. For example, it would be impossible in some cases for investment advisers and their clients to enter into such contracts because they would need to rely on other parties to complete the trade by the end of the trade date. Other factors, such as local time zones and holiday schedules, could interfere with completion of the trade by the end of trade date. Requiring such contracts could also trigger regulatory issues in certain jurisdictions. And such a requirement could also incentivize certain parties to cancel trades more frequently out of concern that a trade may not be completed in time.

Rather than requiring a written contract, we would recommend that the final rule instead require broker-dealers to adopt policies and procedures to facilitate the allocation, confirmation, and affirmation process as soon as technologically practicable and no later than the end of the day on trade date. We also suggest that the final rule should offer broker-dealers some flexibility – and no or limited liability – in circumstances where trade allocation, confirmation, and affirmation processes cannot be completed by end of traded date because of circumstances that are beyond the control of the broker-dealer.

Regulation SHO Considerations

We also believe it is crucial that the impact and challenges associated with Regulation SHO be considered and addressed. Specifically, moving to T+1 would reduce the time available for a bona fide market maker to cover a short position that cannot be borrowed in a controlled fashion pursuant to Regulation SHO Rule 204. The Commission originally included the bona fide market maker exemption to the Rule 204 closeout requirement to allow market makers additional time to complete the closeout because of the vital role market makers play in providing liquidity to the markets. Without relief, shortening the closeout period for bona fide market making activity could adversely impact that liquidity role. To address this, we believe the Commission should reevaluate the deadlines under Rule 204 in the context of a T+1 settlement cycle.

Challenges with Shortening the Settlement Cycle to T+0

While we are broadly supportive of the policy objectives underlying, and the efficiencies that can be gained from, a move to T+1, we would not characterize it “a logical step on the path to T+0” because, for a variety of reasons, we firmly believe that a move to T+0 is not feasible or attainable at this time.

For starters, T+0 settlement would present logistical concerns around borrowing and lending. Delayed settlement from trading gives financing desks a complete picture of their borrow needs and longs to lend for the day. One borrow can cover an entire day's worth of selling. The industry as a whole would need massive efficiency improvements in the way firms transact. Increased automation and vendor improvements would be a necessity to accommodate reliable T+0 settlement especially given that the number of borrows/loans would likely increase substantially.

T+0 would also introduce a number of logistical end of day settlement issues. As a threshold matter, it is unclear whether T+0 would entail continuous settlement or settlement at a specified time. If the latter, the settlement window would need to be extended. Currently, DTC deliveries vs. payment close at 3:12 ET while the market is open until 4pm. This leaves an approximate 48-minute window, which would make settlement on T+0 impossible due to insufficient time to resolve trading errors, react to technology outages, or address other unforeseen problems. T+0 would also likely introduce challenges for batch processing. While it is possible that batch trades could be netted throughout the day, it is unlikely that batch processing could capture all trades by the market close, and the netting could lead to multiple intraday margin calls by clearing agencies.

Under a T+0 cycle, it would also be very difficult for investment advisers to process real-time trade allocations. Prime brokers would also have to significantly overhaul their processes and technology to capture allocations, calculate margin requirements, ensure margin accuracy, and facilitate trade reporting and disaffirmations. Finally, moving to T+0 would require complete dematerialization of securities.

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Virtu has long been a vocal proponent of smart, data-driven regulation that supports the goals of enhancing transparency, fostering robust competition among market participants, and ensuring the high quality of the retail investor experience. The Commission’s Proposal to shorten the settlement cycle is a prime example of a “good government” initiative aimed at introducing more efficiency to the marketplace while reducing risks for investors and other market participants. We applaud the Commission for taking the initiative to modernize the infrastructure of the markets to align with the technological innovations that have reshaped the marketplace since the settlement cycle rules were last updated nearly five years ago.

Respectfully submitted,



Thomas M. Merritt
Deputy General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison H. Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Dr. Haoxiang Zhu, Director, Division of Trading and Markets