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April 11, 2022

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

Re: *Shortening the Securities Transaction Settlement Cycle*; File No. S7-05-22

Dear Ms. Countryman,

Fidelity Investments[1] ("Fidelity") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC" or "Commission") proposal[2] to shorten the standard settlement cycle from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"). Among other items, the SEC has: (1) proposed amendments to Rule 15c6-1(a) under the Securities Exchange Act of 1934 ("Exchange Act") to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1; (2) proposed new Rule 15c6-2 under the Exchange Act that would prohibit broker-dealers from entering into contracts with their institutional customers unless those contracts require that the parties complete allocations, confirmations, and affirmations by the end of the trade date; and (3) proposed amendments to Rule 204-2 under the Investment Advisers Act of 1940 (the "Advisers Act") to require investment advisers that are parties to contracts under Rule 15c6-2 to make and keep records of their allocations, confirmations, and affirmations described in Rule 15c6-2.

The Commission has also solicited comments on other Commission rules and regulations that may be impacted by a move to a shorter settlement cycle, such as (1) Regulation SHO; (2) the financial responsibility rules for broker-dealers; and (3) requirements related to confirmation statement and prospectus delivery. The Commission proposes to require compliance with a T+1

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[1] Fidelity and its affiliates are one of the world's leading providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and other financial products and services to more than 30 million individuals and institutions, as well as through 13,500 financial intermediaries. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association and Investment Company Institute in their comment letters and Fidelity submits this letter to supplement their views on specific issues.

[2] Securities and Exchange Commission *Shortening the Securities Transaction Settlement Cycle*, Release Nos. 34-94196, IA-5957; 87 FR 10436 (Feb. 24, 2022) *available at*: https://www.federalregister.gov/documents/2022/02/24/2022-03143/shortening-the-securities-transaction-settlement-cycle ("Proposed Amendments" or the "Proposal"). Capitalized terms have the meaning ascribed to them in the Proposal.

standard settlement cycle by March 31, 2024. The Commission also solicits comment on how best to further advance the settlement cycle beyond T+1.

Market events in March 2020 and January 2021 prompted a renewed interest in shortening the amount of time it takes to settle a securities transaction. Fidelity supported the SEC's 2016 proposal to shorten the standard settlement cycle to T+2[3] and we fully support a move to T+1. Fidelity is a member of the industry working group organized by DTCC, ICI and SIFMA and continues to actively contribute to industry discussions examining the necessary changes in processes, procedures, and behaviors to accommodate a move to T+1.[4]

A move to T+1 will yield important benefits to retail investors, market participants, and the U.S. financial system, particularly during periods of high trade volume and volatility. As risk is a function of time, shortening the time to settle a securities transaction will reduce liquidity, counterparty, and systemic risk in the overall financial system. A move to T+1 will benefit retail investors through (1) increased certainty, safety, and security in the financial system; (2) access to the proceeds, or purchases, of their securities transactions a day earlier; and (3) aligning the settlement cycles of equity and ETF transactions (which now settle on T+2) with the settlement cycle of mutual funds (which typically settle on T+1). A move to T+1 will also reduce central counterparties' ("CCP") and market participants' exposure to credit, market, and liquidity risk. We expect that a decrease in CCP risk will also result in a reduction of CCP member firm clearing fund contributions, allowing CCP members, such as Fidelity, the ability to deploy such capital for other uses, such as new technologies and new products for investors.

With a U.S. transition to T+1, the SEC should consider the cross-border implications of a shorter settlement cycle. When the U.S. moved to T+2 in 2017, most world economies were already operating on T+2 basis. Thus far, Canada is the only other economy to announce a move to T+1. To help ensure that U.S. actions are not out of step with the rest of the world, we encourage the SEC, and other U.S. financial services regulators, to socialize the U.S. move to T+1 settlement with their global counterparts.

While Fidelity supports an industry move to T+1, we do not support all aspects of the SEC's Proposal. Our specific comments on the Proposal are outlined below.

EXECUTIVE SUMMARY

- The SEC should not adopt either proposed Rule 15c6-2 requiring broker-dealers to have contractual provisions with customers for same day allocation, confirmation, and

[3] Securities and Exchange Commission *Amendment to Securities Transaction Settlement Cycle* (SEC), Release No. 34-78962; 81 FR 69240 (October 5, 2016) *available at*: https://www.gpo.gov/fdsys/pkg/FR-2016-10-05/pdf/2016-23890.pdf. Fidelity comments *available at*: s72216-14.pdf (sec.gov) ("T+2 Proposing Release").

[4] On December 1, 2021, DTCC, ICI, SIFMA and Deloitte & Touche LLP published a report that presented industry recommendations to implement a T+1 standard settlement cycle in the U.S. ("T+1 Report"). Deloitte, DTCC, ICI, & SIFMA, *Accelerating the U.S. Securities Settlement Cycle to T+1* (Dec. 1, 2021) https://www.dtcc.com/-/media/Files/PDFs/T2/Accelerating-the-US-Securities-Settlement-Cycle-to-T1-December-1-2021.pdf

affirmation or the proposed amendments to Rule 204-2 under the Advisers Act requiring additional recordkeeping requirement for investment advisers. The purpose of the proposed obligations is neither clear nor necessary for a move to T+1;
- The SEC should maintain existing exemptions to the standard settlement cycle for foreign securities and insurance contracts;
- The SEC should clarify the impact of the Proposed Amendments on certain Commission rules and guidance and SRO rules, including those related to Regulation SHO and broker-dealer financial responsibility rules. The SEC should pursue digital delivery as the default option for investor communications;
- The Compliance Date for the Proposed Amendments should be later in 2024;
- The SEC should increase retail investor awareness of the industry transition to T+1; and
- The SEC should conduct a retrospective review of the industry transition to T+1 and lead efforts to eliminate physical stock certificates.

Each of these points are discussed in further detail below.

I. The SEC should not adopt the proposed broker-dealer contract requirement for same day allocation, confirmation, and affirmation.

The SEC proposes new Rule 15c6-2 which would generally prohibit broker-dealers from effecting or entering a contract for the purchase or sale of a security on behalf of a customer, unless the broker or dealer has entered into a written agreement with the customer that requires the allocation, confirmation, affirmation to be completed as soon as technologically practicable and no later than the end of the day on trade date. Proposed Rule 15c6-2 applies these requirements to a broker-dealers' arrangements with its institutional customers because the SEC preliminarily believes that broker-dealers are best positioned to ensure (through their contractual arrangements) that their customers, or agents of their customers, will perform the required allocation, confirmation, and affirmation functions on the appropriate timeframe and as soon as technologically practicable.[5]

During the trade verification process, parties to the transaction agree to essential trade details. It is in an institutional customer's best interest to timely allocate, confirm and affirm their trades, because it is the first step, and a pre-condition, to settling their trade. Financial dis-incentives already exist for institutional customers that do not meet a same day affirmation timeline. These dis-incentives include trade fails and funding and liquidity inefficiencies for activity not processed through a central clearing facility. The institutional trade allocation and affirmation process is also subject to existing market practices and DTCC cut off times that provide incentives for market participants to timely verify their trades. For example, allocations are only accepted by DTCC until 9:00 PM EST. Because market incentives already exist to timely allocate, confirm, and affirm trades, proposed Rule 15c6-2 is not necessary, and should not be adopted.

[5] Proposal at 10453.

We are also concerned with the impact of proposed Rule 15c6-2 on the relationship between a broker-dealer and its customer. In any settlement cycle, system processing issues may create challenges for firms to affirm timely. For example, there may be connectivity issues, file delivery delays or interruptions in systems. With respect to the proposed contractual requirement, in addition to the fact that it is not necessary because incentives for timely trade allocation, confirmation and affirmation processes already exist, the SEC has not clearly articulated its expectations regarding how a broker-dealer should treat customers who do not timely allocate, confirm, or affirm their trades. For example, if a customer does not timely affirm its trade, does the SEC expect the broker-dealer to buy-in the customer's trade? Will a broker-dealer be subject to SEC enforcement if the broker-dealer fails to enforce its private contractual provisions regarding a counter-party's obligation to timely allocate, confirm, and affirm their trades? Multiple parties are involved in the process to allocate, confirm, and affirm trades and the SEC should not lay all responsibility on broker-dealers to ensure an efficient settlement process.

Moreover, proposed Rule 15c6-2 introduces new burdens on broker-dealers to obtain and amend written contracts that are not currently required. For example, for some buy-side/sell-side relationships, there is no existing contract governing delivery versus payment ("DVP") activity. In these cases, new agreements would need to be drafted solely for the purpose of compliance with proposed Rule 15c6-2. As broker-dealers and investment advisers successfully transitioned from a T+3 settlement cycle to a T+2 settlement cycle without this contractual requirement, it is not clear why this contractual requirement is needed for a move from T+2 to T+1. For these reasons, we recommend the SEC not adopt proposed new Rule 15c6-2.

The SEC should not adopt proposed recordkeeping requirements for investment advisers.

The SEC also proposes an amendment to the investment adviser recordkeeping rule designed to ensure that registered investment advisers that are parties to contracts under proposed Rule 15c6-2 retain records of confirmations received and keep records of the allocations and affirmations sent to a broker or dealer. Specifically, the Commission proposes to amend Rule 204-2 under the Advisers Act by adding a requirement in paragraph (a)(7)(iii) that advisers maintain records of each confirmation received, and any allocation and each affirmation sent, with a date and time stamp for each allocation (if applicable) and affirmation that indicates when the allocation or affirmation was sent to the broker or dealer if the adviser is a party to a contract under proposed Rule 15c6-2. As with other records required under Rule 204-2(a)(7), the proposed rule requires advisers to keep originals of confirmations, and copies of allocations and affirmations, but may maintain records electronically if they satisfy certain conditions.

The SEC believes that requiring these records and requiring a time and date stamp of all affirmations and any applicable allocations (but not confirmations) would help advisers establish that they have timely met contractual obligations under proposed Rule 15c6-2 and ultimately help ensure that trades involving such advisers would timely settle on T+1. In addition, the SEC

believes the proposed requirement would aid SEC staff in preparing for examinations of investment advisers and assessing adviser compliance.[6]

The SEC should not adopt the proposed recordkeeping requirement for investment advisers. The Commission's proposed Rule 15c6-2 for broker-dealers is not necessary and should not be adopted, thus investment adviser recordkeeping to demonstrate an investment adviser's compliance with proposed Rule 15c6-2 is not necessary as well. Moreover, even if the recordkeeping obligation were adopted, it is not clear what SEC staff would be assessing adviser compliance with – compliance with recordkeeping obligations or compliance with the adviser's private contractual obligations to broker-dealers to allocate, confirm and affirm trades. Investment advisers successfully transitioned from T+3 to T+2 without this recordkeeping provision; it is not clear why this recordkeeping provision is necessary for investment advisers to transition from T+2 to T+1.

II. <u>The SEC should maintain existing exemptions to the standard settlement cycle for foreign securities and insurance contracts.</u>

Exemption for Securities Traded Outside of the U.S.

We recommend that the SEC maintain an exemption to the standard securities settlement cycle for transactions in foreign securities in non-U.S. markets. Under Rule 15c6-1(b), the SEC has granted an exemption from Rule 15c6-1 for securities that do not have facilities for transfer or delivery in the U.S. We recommend that the SEC keep this exemption and explicitly state in adopting release for the Proposed Amendments that the permissible settlement period for securities traded outside of the U.S. should be defined by the local market. Settling trades with different time zones is already a difficult process and accelerating the settlement cycle for these securities would make cross-border transactions even more challenging.

Exemption for Insurance Contracts

Under a 1995 SEC order, certain insurance contracts are exempted from the scope of Rule 15c6-1.[7] In issuing the Insurance Exemptive Order, the SEC recognized that, among other items, "the various administrative processes and the requirements under state and federal law which pertain to insurance securities products add complexity and time the purchase and sale of such securities, which support an exemption from the standard settlement cycle."[8]

In our comment letter on the T+2 Proposal, we highlighted the Insurance Exemptive Order and suggested that if insurance products warranted an exemption from a standard

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[6] Proposal at 10456.

[7] Securities and Exchange Commission *Securities Transactions Settlement Grant of Exemption* 60 FR 30906 (June 12, 1995) *available at*: https://www.gpo.gov/fdsys/pkg/FR-1995-06-12/pdf/95-14323.pdf ("the Insurance Exemptive Order")

[8] Id.

settlement cycle of T+3 based on administrative processes and requirements under state and federal law, these same reasons were even more applicable in a T+2 environment. While the SEC exemption is not dependent on whether Rule 15c6-1 requires a two day or a three-day settlement time, we believed that it would be helpful and useful for the Commission to include language in the adopting release for the Proposed Amendments noting that the Insurance Exemptive Order remains intact and is not affected by the Proposed Amendments. In the T+2 Adopting Release[9] the SEC noted that "The Commission has carefully considered the comments and is not rescinding or modifying the exemptive order for registered insurance products."

The Insurance Exemptive Order remains even more relevant today as insurance contracts have only grown more complex since the industry transitioned to T+2 in 2017. We again recommend the SEC include language in the adopting release to the Proposal noting that the Insurance Exemptive Order remains intact and is not affected by the Proposal.

III. Impact on certain Commission rules and guidance and SRO rules.

Given that the Proposal may affect compliance with other existing Commission rules and guidance that reference the settlement cycle or settlement processes in establishing requirements for market participants, the SEC solicited comments on the potential impact of shortening the settlement cycle to T+1 on each of the below rules. Our comments on each of these rules, as well as others, is listed below.

Regulation SHO

Certain rules use settlement date for measurement purposes and a move to shorten the settlement date by one day will shorten these time frames because they are measured from settlement date. For example, Rule 204 of Regulation SHO generally requires broker-dealers that are participants of a registered clearing agency to take action to close out failure to deliver positions by purchasing or borrowing securities of like kind and quantity. The participant must close out a failure to deliver for a short sale transaction by no later than the beginning of regular trading hours on the settlement day following the settlement date.[10] The text of Rule 204 does not explicitly reference T+2 as the standard "settlement date" and remains unaffected by the Proposed Amendments; however the Commission may wish to modify their FAQs on Regulation SHO[11] and the Regulation SHO Adopting Release to account for a T+1 settlement cycle.

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[9] Securities and Exchange Commission. *Securities Transaction Settlement Cycle*, Exchange Act Release No. 80295 (Mar. 22, 2017), 82 FR 15564 (Mar. 29, 2017) *available at*: https://www.govinfo.gov/content/pkg/FR-2017-03-29/pdf/2017-06037.pdf ("T+2 Adopting Release").

[10] Securities and Exchange Commission *Amendments to Regulation SHO* 74 FR 38266 (July 31, 2009) *available at*: https://www.gpo.gov/fdhttp://www.gpo.gov/fdsys/pkg/FR-2009-07-31/pdf/E9-18185.pdf ("Regulation SHO Adopting Release").

[11] Securities and Exchange Commission Division of Market Regulation: *Responses to Frequently Asked Questions Concerning Regulation SHO*
available at: https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm

Similarly, securities lending transactions are executed, among other reasons, to avoid delivery failures or to cover or create a short position in a security. Participants in securities lending transactions, including security lenders, security borrowers, and service providers, are currently addressing the impact of a shortened settlement cycle on their business models and trading strategies, notably that the move to T+1 will shorten the recall period by one day. To this end, we recommend that the SEC modify its interpretation in the Regulation SHO Adopting Release regarding the recall period, so that it reflects the consequences of the move to T+1. While we anticipate that in the early days of the transition to T+1, there may be an increase in fails to deliver, we believe that the Commission's already robust regulatory framework minimizes instances in which a market participant may fail to deliver a security.

Lastly, a prime broker provides clients with centralized trade clearing and settlement services for those transactions that an executing broker is instructed by the client to direct to the prime broker and which the prime broker "affirms". The prime broker may provide additional services to clients, including custody of securities, loaning of securities for short sales, margin financing, and back-office technology and reporting.

Prime brokers are currently reviewing their internal processes, and interactions with other market participants, regarding the move to T+1. We recommend that the SEC revisit its 1994 Prime Brokerage No-Action Letter ("PB NAL")[12] in light of the move to T+1 and current market practices. We further recommend that the SEC change the required deadline specified in the PB NAL for executing brokers to inform the prime broker of trade details. This deadline should move from the morning of the next business day after trade date (which would be too late to effect settlement in CNS on T+1) to a time on the evening of trade date that would meet NSCC evening cutoff time for matched and affirmed trades to move into T+1 settlement in CNS. Moreover, because new intraday CNS obligations could occur on T+1 that were not present at the start of the day due to a disaffirmation taking place on settlement date (T+1), the SEC will need to provide broker-dealers guidance on appropriate treatment of these CNS obligations.

Broker-Dealer Financial Responsibility Rules

The Customer Protection Rule (Rule 15c3-3 under the Exchange Act) requires broker-dealers to take steps to protect the securities that customers leave in their custody. These steps include the requirement that broker-dealers promptly obtain (within ten business days after the settlement date) and thereafter maintain possession or control of all "fully paid" and "excess-margin" securities carried for the accounts of customers.

Shortening the standard settlement cycle to T+1 will reduce the number of days available to a broker-dealer to obtain possession or control of customer securities before being required to close out a customer transaction under Rule 15c3-3(m). In connection with the T+1 effort, the industry is reviewing certain operational practices to help reduce instances (such as fail to

[12] Securities and Exchange Commission No-Action Letter to SIA Prime Broker Committee (January 25, 1994) *available at*: https://www.sec.gov/divisions/marketreg/mr-noaction/pbroker012594-out.pdf

delivers) that might prevent a broker-dealer from obtaining possession or control of customer securities before being required to close out a customer transaction under Rule 15c3-3(m). We do not believe that a move to T+1 will materially burden broker-dealers or our customers in this regard and we do not recommend any changes to 15c3-3(m) at this time.

However, the SEC should seek to revisit existing Rule 15c3-3(d)(1) under the Exchange Act that requires broker-dealers to reduce securities held in their possession or control. Under Rule 15c3-3(d)(1), not later than the next business day, a broker or dealer, as of the close of the preceding business day, must determine from its books or records the quantity of fully paid securities and excess margin securities in its possession or control and the quantity of fully paid securities and excess margin securities not in its possession or control. Existing interpretative guidance allows a firm to release securities a day prior to settlement, under certain conditions. It is not clear what this guidance means in a T+1 environment. For example, if segregation of customer assets is based on an end of day market value and end of day cash settled, it is not clear how the segregation of asset should be calculated and enforced in a T+1 environment. The Commission should work with broker-dealers to better understand the timeframes involved in the segregation process and how they can operate in a T+1 environment.

Trade Documentation: Digital Delivery as the Default for Investor Communications

Broker-dealers must provide their customers confirmation statements under Rule 10b-10 of the Exchange Act. Confirmation statements serve a significant investor protection function as they are a means for customers to verify the terms of their transactions, understand potential conflicts of interest with their broker-dealer, act as a safeguard against fraud, and provide investors a means to evaluate the costs of their transactions and the quality of their broker-dealer's trade execution.

Although Rule 10b-10 does not directly refer to the settlement cycle, it requires that a broker-dealer send a customer a written confirmation disclosing specified information "at or before completion" of the transaction. Broker-dealers and issuers must also comply with certain prospectus delivery obligations. The SEC requests comment on whether any specific legal or operational concerns would arise with respect to confirmation statement and prospectus delivery obligations if the settlement cycle is shortened to T+1.

Fidelity has consistently advocated that digital delivery should be the default delivery option for investor communications as it provides a more immediate, efficient, environmentally friendly, and potentially safer alternative than paper communications sent through the postal mail.[13] The pandemic further accelerated the preference for investors to

[13] See *Letter from Fidelity Investments, Charles Schwab, and BlackRock, to The Honorable Jay Clayton, Chairman U. S. Securities and Exchange Commission* (Sept. 8, 2020), *available at* https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/about-fidelity/digital-delivery-letter.pdf; Letter from Cynthia Lo Bessette, Chief Legal Officer, Fidelity Management & Research Company LLC, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, *SEC Proposal Tailored Shareholder Reports* (Jan. 4, 2021), *available at* https://www.sec.gov/comments/s7-09-20/s70920-8204333-227469.pdf; Letter from Jonathan Chiel, Executive Vice President and General Counsel, Fidelity Investments to Brent J. Fields, Secretary, U.S. Securities

communicate digitally with their financial providers, especially as print vendors and paper mail delivery services were hindered.

Now that the financial services industry is moving to T+1, in large part due to advances in technology, the SEC should similarly take advantage of advances in technology and investor preference by changing its current regulatory framework that focuses on paper delivery as the primary method of transmission, with an approach that establishes the first means of communication as digital, with paper as an alternative, rather than the other way around.

With regard to digital delivery of shareholder information, current data regarding investor behavior shows that investors increasingly prefer to engage with their financial services firm through the Internet and digitally enabled devices.[14] Further, recent studies show an overwhelming trend by Americans to use digital communications.[15] Investors today conduct millions of online interactions daily on financial services web and mobile sites.[16] These activities include transactions, communications, and regularly accessing important shareholder information such as account and confirmation statements, tax forms, and other regulatory documents. Most investors are now using digital communications and delivery as a safe and secure way of handling their financial business.

The SEC was an innovator in supporting electronic delivery of regulatory documents by registrants when it issued its regulatory guidance on the use of electronic media over twenty (20) years ago.[17] More recently, the Commission has advanced the shift to digital delivery on several more limited occasions by permitting a "notice and access" regime for certain regulatory

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Exchange Commission, *SEC Request for Comment on Fund Retail Investor Experience and Disclosure*, (Oct. 31, 2018), *available at* https://www.sec.gov/comments/s7-12-18/s71218-4593694-176325.pdf.

[14] See *Investors in the United States–A Report of the National Financial Capability Study, FINRA Investor Education Foundation* (2019), *available at*: https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf.

[15] See Pew Research Center, *Internet Broadband Fact Sheet* (2019), at https://www.pewresearch.org/internet/fact-sheet/internet-broadband/. In addition, a survey by the Investment Company Institute in 2015 found that 91 percent of U.S. households who own mutual funds had Internet access (up from 68 percent in 2000), and that there was widespread use among various age groups, education levels and income levels. See Burham, K., Bogdan, M. & Schrass, D., *Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet*, 2015, ICI Research Perspective 21, no. 5 (Nov. 2015), at www.ici.org/pdf/per21-05.pdf.

[16] See, e.g., CNBC Trader Talk, *Trading volume for electronic brokers doubled last quarter and shows no signs of letting up* (May 2020), at https://www.cnbc.com/2020/05/13/trading-volume-for-electronic-brokers-doubled-last-quarter-and-shows-no-signs-of-letting-up html.

[17] See Securities and Exchange Commission *Use of Electronic Media for Delivery Purposes*, Securities Act Release No. 7233 (Oct. 6, 1995) 60 FR 53458 (Oct. 13, 1995); *Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information* Exchange Act Release No. 37182 (May 9, 1996) 61 FR 24644 (May 15, 1996); *Use of Electronic Media*, Exchange Act Release No. 42728 (Apr. 28, 2000) 65 FR 25843 (May 4, 2000).

documents.[18] While these modernizations were significant, the SEC should take further action to promote investors' preferences for digitally accessing their regulatory documents in a safe, secure and flexible manner.

We strongly urge the SEC to allow digital delivery as the default method for delivering trade documentation (trade confirmation statements, account statements, and prospectuses) in connection with a move to T+1. The goals for moving to T+1 – protecting investors and reducing risk – are enhanced by adopting digital delivery, which allows investors to: (1) review their trade confirmations within the settlement cycle and report any errors to their brokers promptly; (2) more easily find the information most relevant to them by allowing document-search capabilities; and (3) engage with assistive technologies, if needed, which greatly aids viewing, reading, or listening to documents.

This change can be specifically accomplished if the SEC revises its past interpretive guidance to explain that the affirmative receipt of digital contact information from an investor – *i.e*., an e-mail address - coupled with a notice by the firm to the investor explaining the digital delivery process, is sufficient to establish that regulatory documents will be delivered digitally to the investor, unless the investor changes his or her election. This process, which includes notice and access, should be sufficient to satisfy the evidence to show delivery requirement of the past interpretive guidance. While this approach would substitute for the specific informed consent requirement promulgated over twenty years ago, investors would always have the option of changing their election at any time. Accordingly, this regulatory approach would permit the firm and investor to use a digital address, with safeguards in place, as an address of record for communication purposes.

Along with this digital delivery approach, we recommend that the SEC examine its rules to eliminate any "in writing" requirements in the regulatory text. This should be a relatively straightforward exercise, as it involves revising wording in the text of rules from "in writing" to such words as "furnishing" or "providing." The reason for this recommendation is to eliminate any confusion that the SEC's rules and interpretations apply to the delivery of regulatory documents instead of being regulated under the E-Sign Act.[19]

Dividend Reinvestment Programs

We also note that there are certain SEC No-Action Letters and exemptive relief that allow a broker-dealer providing a dividend reinvestment program ("DRIP") to confirm automatic dividend reinvestments on monthly account statements in lieu of the trade by-trade

[18] See *Optional Internet Availability of Investment Company Shareholder Reports*, SEC Release No. 33-10506, at https://www.sec.gov/rules/final/2018/33-10506.pdf

[19] The E-Sign Act states that "if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing," then specific requirements, which are different from the SEC's, must be met to deliver it digitally. *See* 15 USC S.7001, *available at* https://www.law.cornell.edu/uscode/text/15/chapter-96

confirmations generally required by Rule 10b-10.[20] While moving to a T+1 standard settlement cycle does not directly conflict with guidance, we seek Commission assurances, such as those provided in the T+2 Adopting release, that a firm should not be deemed to have departed from the procedures described in the applicable no-action letter or exemptive relief regarding the application of Rule 10b-10 to DRIP transactions solely by reason of the firm's transitioning to a shorter settlement cycle and operating the program on a T+1 settlement cycle.

Corporate Actions

SROs rules set forth the procedures that a party must follow when it is owed securities that have become the subject of a voluntary corporate action, such as a tender or exchange offer. These rules will need to be updated as part of the move to T+1. We encourage the SEC to support the SROs in this work.

We agree that in a T+1 environment, with respect to corporate actions, in most cases, regular way ex-dates will be the same as the record date. Typically, in a T+2 environment, large cash dividends and stock allocations have an ex-date declared as the day after payment date so that the value of a security is consistent. The SROs should consider having the ex-date established as the payment date in a T+1 settlement cycle. Timeliness of payments is important for the proper allocation to shareholders on payment date and broker-dealer regulatory obligations such as those under SEC Rule 204 and the Federal Reserve Board's Regulation T. Given the reduced settlement period, timely allocations from issuers and paying agents will be even more critical in a T+1 environment. In connection with the Proposed Amendments, the SEC should remind issuers of their obligations for timely payment allocations for corporate actions.

The SEC should also urge issuers to consider more automation/transparency in issuer declaration of dividends and corporate action events to ensure timely notifications to the markets and shareholders in advance of record date. Today, service providers must interpret and re-transmit to the marketplace prospectuses and general press releases on corporate actions. If issuers declared dividends and corporate actions in a more standardized manner, the marketplace could disseminate this information more quickly, as needed in a T+1 environment.

IV. The Compliance Date for the Proposed Amendments should be later in 2024.

The Compliance Date for the transition to T+1 must allow sufficient time for broker-dealers, investment advisers, clearing agencies, and other market participants to plan for, implement, and test changes to their systems, operations, policies, and procedures in a manner that allows for an orderly transition. Production validation is a critical component of this overall process. The marketplace also needs sufficient time for regulators, broker-dealers, and other market participants to engage in outreach and education regarding the transition to ensure that

[20] See *e.g.*, *Fidelity Distributors Corp.,* SEC No-Action Letter (August 25, 1988); *TD Ameritrade, Inc.* SEC No-Action Letter (Nov. 30, 2006); *Instinet Clearing Services* SEC No-Action Letter (June 7, 2001).

their customers, including retail investors, are aware of, and have time to prepare for, operational or other changes related to a T+1 settlement cycle.

In the T+2 Adopting Release, the SEC established a compliance date of Tuesday, September 5, 2017. This compliance date followed a bank and stock market holiday (Labor Day) which provided two weekend days and one non-weekend day for production validation prior to market open on Tuesday, September 5, 2017.

The SEC proposes March 31, 2024 for the T+1 Compliance date. We note that this date falls during a quarter-end and during the tax and proxy season, all of which are operationally intensive times for both broker-dealers and investment advisers. Moreover, this date is not a complete three-day bank and stock market holiday as Friday, March 29, 2024 is a trading holiday (Good Friday) but not a bank holiday. The mismatch between open banks and closed stock markets on this day does not facilitate a good production validation environment. Additionally, Friday, March 29, 2024 is not a holiday in Canada, the only other country to date to indicate a move to T+1 and an important country with which to align US securities settlement moves.

We recommend the SEC establish a T+1 Compliance Date of Tuesday September 3, 2024. This proposed Compliance Date would follow a bank and stock market holiday (Labor Day on September 2, 2024) with two weekend days and one non-weekend day for production validation prior to market open. Moreover, as Monday September 2, 2024 is also a Labour Day holiday in Canada, such that US and Canadian firms would be aligned in a production validation environment for this three day period. As we do not support the SEC's proposed Rule 15c6-2 that would impose contractual obligations on broker-dealers regarding their customers' actions to allocate, affirm and confirm trades, nor the proposed recordkeeping obligations on investment advisers to demonstrate their compliance with proposed Rule 15c6-2, the proposed Compliance Date should apply only to the proposed move to T+1.

T+1 Investor Education Campaign

Like the move to T+2, the securities industry will publicize the move to a shortened settlement cycle through industry white papers, press releases, conferences, and other notifications.[21] Individual firms will also alert their customers of changes involved in the move to T+1. For retail investors, these communications will include, among other items, a description of the benefits of moving to T+1, such as the fact that investors will be able to reinvest or receive settled funds a day earlier. These communications will also discuss that customer funding for purchase orders will be requested one day earlier than current practices, so that retail investors may wish to evaluate their account funding vehicles and consider automated payment methods.

In addition to industry and individual firm communications to retail investors on T+1, we urge the SEC to launch an investor awareness campaign regarding the move to a shorter settlement cycle. In the past, the SEC has posted helpful educational information on

[21] For example, s*ee* content available at https://www.dtcc.com/ust1

market structure events that will impact retail customers on www.sec.gov and publicized this content through email and social media.[22] This information is helpful to investors and also provides an efficient means for an industry participant, if they choose to do so, to link to this content from their own website.

V. Pathways to T+0.

In the T+2 Adopting Release, the SEC directed Commission staff to draft and submit a report ("T+2 Report") to the Commission by September 2020, that included an examination of:

(i) the impact of … amendment to Rule 15c6-1(a) to establish a T+2 standard settlement cycle on market participants, including investors;
(ii) the potential impacts associated with movement to a shorter settlement cycle beyond T+2;
(iii) the identification of technological and operational improvements that can be used to facilitate a movement to a shorter settlement cycle; and
(iv) cross-market impacts (including international developments) related to that shortening of the settlement cycle to T+2.[23]

The T+2 Report has not yet been released. In the Proposal, the SEC notes that while they are proposing rules to accommodate a T+1 environment, they are also actively assessing changes that might be necessary to accommodate a same-day standard settlement cycle.[24] After an industry move to T+1, an SEC staff retrospective review of the industry transition to T+1 would be a helpful foundation to a future move to an even shorter settlement cycle. We therefore suggest that the Commission include this same request for a staff report, on an examination of the move to T+1, in the adopting release of the Proposal.

We agree with the T+1 Report which opposed a move to T+0 at this time.[25] A move to T+0 is not practical in the short term. While T+1 can provide a good foundation for a future move to T+0, moving to T+0 at this time would require much more extensive changes throughout the marketplace, such as replacement of the current-day clearance and settlement

[22] For example, we commend the SEC on its Investor Alert regarding the T+2 Settlement Cycle *available at*: https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/updated-10 The SEC should also encourage the SROs, such as FINRA and the national securities exchanges, to issue broad based communications to retail investors regarding a T+1 settlement cycle.

[23] *See* T+2 Adopting Release at page 15582-15583. *See also* Written Testimony of Michael S. Piwowar Executive Director of the Milken Institute Center for Financial Markets Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs "*Who Wins on Wall Street? GameStop, Robinhood, and the State of Retail Investing*" March 9, 2021 *available at* https://www.banking.senate.gov/imo/media/doc/Piwowar%20Testimony%203-9-21.pdf

[24] For this purpose, we would define T+0 as trade date or end-of-day settlement. We do not believe that real time settlement technologies such as distributed leger technology or blockchain have the adoption necessary to consider these solutions in the current environment or near future.

[25] See footnote 4 *infra* at page 10.

infrastructure, changes to business models, revisions to industry-wide regulatory frameworks, and the implementation of real-time currency movements.

Moreover, for a shortened settlement cycle to work, all market participants must move to a shortened settlement cycle together and we are concerned that the burden of adoption for many of these settlement technologies necessary for a move to T+0 would be largely borne by small- to medium-sized firms, many of whom currently rely on manual processing or legacy systems and may not have the resources to modernize their operational infrastructure so rapidly.

In addition to the areas discussed in the T+1 Report as necessary pathways to T+0, such as, among other items, the need to re-engineer securities processing, changes to DTCC's securities netting process, funding requirements, securities lending, prime brokerage, global settlement, and ancillary securities processing activity related to secondary market trading, such as corporate actions, we urge the Commission to focus on dematerialization of physical securities certificates across the financial services industry.

During both Hurricane Sandy and part of the Covid-19 Pandemic, DTCC shut down its processing of physical securities certificates. This halt impacted the entire financial services industry, disrupting normal processing and frustrating investors. Physical securities certificates remain a significant impediment to orderly markets. Operational hurdles to full dematerialization include issues related to business models, record-keeping, inventory, resilience, and controls. Market participants who can eliminate physical certificates include issuers, transfer agents, broker-dealers, clearing agencies, and investment advisers. All these entities fall under the SEC's jurisdiction. To help facilitate orderly markets, we urge the SEC to take a leadership role in the dematerialization of physical securities certificates. As a first step, we urge the SEC to hold a public roundtable on dematerialization. We also suggest that the SEC's Investor Advisory Committee review and recommend a path forward for the elimination of physical securities certificates. We would be pleased to share our views on how dematerialization can be achieved with both the Commission and the SEC Investor Advisory Committee.

# # # # # #

Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,

Robert Adams

cc:

Chair Gary Gensler
Commissioner Hester M. Peirce
Commissioner Allison Herren Lee
Commissioner Caroline A. Crenshaw

Mr. Haoxiang Zhu, Director of the Division of Trading and Markets
Mr. Matthew Lee, Assistant Director, Division of Trading and Markets, Office of Clearance and Settlements
Mr. Rick Fleming, SEC Investor Advocate