April 13, 2022

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

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

Dear Ms. Countryman,

On February 9, 2022, the Securities and Exchange Commission ("SEC" or "Commission") proposed to adopt rules and rule amendments to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date ("T+2") to one business day after the trade date ("T+1") (the "Proposal").[1] The Commission also requested comments on a number of aspects of its proposed rules and rule amendments, as well as on considerations relating to shortening the settlement standard settlement cycle to the trade date ("T+0").

The Securities Industry and Financial Markets Association ("SIFMA") and the SIFMA Asset Management Group ("AMG") (together referred to in this letter as "SIFMA") appreciates the opportunity to provide comments on the Proposal.[2] Like many other industry participants and regulators alike, SIFMA, along with ICI and DTCC, played a leading role in transitioning the industry from T+3 to T+2 in 2017 and are again playing a leading role in the transition to T+1. SIFMA recognizes the benefits of shortening the

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[1] *See* Shortening the Securities Transaction Settlement Cycle, Exchange Act Release No. 94196 (Feb. 9, 2022).
[2] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). SIFMA AMG brings the asset management community together to provide views on policy matters and to create industry best practices. SIFMA AMG's members represent U.S. and multinational asset management firms whose combined global assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

settlement cycle to T+1, including overall risk reduction in the settlement cycle and improvements in post-trade processing efficiency. The Proposal reflects many of the recommendations included in the report, "Accelerating the U.S. Securities Settlement Cycle to T+1" (the "T+1 Report"), that SIFMA drafted in conjunction with the Depository Trust and Clearing Corporation ("DTCC"), the Investment Company Institute ("ICI"), and Deloitte & Touche LLP ("Deloitte"). [3]

Given the short comment period for this consultation, SIFMA members are still discussing several components of this proposal and will endeavor to send a supplemental letter to the Commission as soon as possible. As discussed in further detail below, SIFMA makes the following recommendations and comments with respect to the Proposal that it believes would foster the policy goals of the Proposal while reducing potential adverse consequences:

- **Transition Target Date:** To increase the likelihood of a smooth transition to T+1, SIFMA recommends that the compliance date be the first trading day after a three-day weekend involving a Federal Holiday. In order to allow for an orderly transition to T+1, it will also be important that this transition occur consistently with Canada given the significant number of dual listed securities. SIFMA therefore recommends a compliance date of Tuesday, September 3, 2024 (after Labor Day weekend 2024).
- **Two Year Transition Period:** SIFMA specifically recommends that the Commission provide at least two years from final rule publication to operationalize a T+1 settlement date. This would allow additional time for market practices and timing procedures that are still under discussion with the industry to become more fully developed. For example, there are ongoing discussions concerning securities lending recalls under a T+1 settlement date that would benefit from an additional two years to make necessary decisions and prepare for a smooth transition. In addition, two years between the publication of the rule and the compliance date would allow for harmonization on a common three-day weekend with other jurisdictions, i.e., Canada, that plan to transition to a T+1 settlement date along with the United States.
- **Policies and Procedures:** To avoid the burdensome, time consuming and costly contract negotiations and related record keeping obligations that would inevitably result from requiring broker-dealers to enter into a written agreement with each of their institutional customers, the SEC should replace the requirement of a written agreement included in proposed Rule 15c6-2 with a requirement that broker-dealers 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 the trade date.

[3] The T+1 Report is available at https://www.sifma.org/wp-content/uploads/2021/12/Accelerating-the-U.S.-Securities-Settlement-Cycle-to-T1-December-1-2021.pdf.

- **Exemption for Foreign Securities and Insurance Products:** To provide clarity to the market that the extraterritorial scope of 15c6-1 has not changed by virtue of the move to T+1, and to minimize risk of unintentional conflict with the settlement cycles in other regions, and that insurance products are out of scope, the Commission should retain the exemption from Rule 15c6-1 for foreign securities and insurance products.
- **Retention of Paragraph (c):** Given the unique documentation and logistical challenges (e.g., de-legending physical certificates) that can (occasionally) result in delays in the settlement of firm commitment underwritings that were not anticipated at the time of the transaction, the Commission should retain paragraph (c) of Rule 15c6-1 in limited form, subject to a T+2 settlement requirement.
- **T+0 Settlement Date:** SIFMA believes that a transition to a T+0 settlement cycle is not achievable in the near term for the entire marketplace and all transactions due to the need for a fundamental redesign of long established and widely adopted trading practices, pre-and post-trade securities processes and securities law liability regimes that would need to be adopted.
- **Other Rules:** SIFMA would also like to highlight to the Commission that a series of SRO and other rules are also expected to change in order to implement the transition to T+1. These rule changes should be consistently applied in a harmonized manner to ensure a smooth transition for the industry.

I. SIFMA supports the proposed amendments to Rule 15c6-1 to shorten the settlement cycle to T+1 and offers suggestions and considerations for the transition.

SIFMA offers the suggestions set out below with respect to shortening the settlement cycle to T+1.

a. The compliance date for the T+1 settlement cycle should be changed to later in 2024.

The Commission recognizes that significant planning and testing is critical to the move from a T+2 to T+1 settlement cycle, just as it was for the move from a T+3 to T+2 settlement cycle. The proposed transition to a T+1 settlement cycle, "if adopted, 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."[4]

[4] Proposal at 10464. To emphasize, market participants in addition to those enumerated above will need to adopt new technologies and change processes and behaviors in order to facilitate T+1 settlement. For example, it will be imperative that customers and their agents move to universal adoption of platforms such as ALERT to communicate settlement instructions to Broker-Dealers at the time of allocation.

SIFMA agrees that the securities industry needs sufficient time to allow an orderly transition to the T+1 settlement cycle and further agrees that such transition can be completed in 2024. As a threshold matter, SIFMA does not believe that March 31, 2024, or earlier is a suitable compliance date for T+1 settlement. That day is the end of a quarter, which gives rise to an increased volume of trading and various processing requirements, and is preceded by an irregular trading holiday, Good Friday. In addition, SIFMA believes that it will be important to align the US timing for transition with other jurisdictions, in particular, those with significant dual listed securities (e.g., Canada). Given the contingency testing and other tasks that will needed to be undertaken to finalize the transition from a T+1 to a T+2 settlement cycle as well as the need to align with jurisdictions including significant dual-listed securities, SIFMA suggests completing the changes *no earlier than* the period running from Saturday, August 31, 2024, through Monday, September 2, 2024. That period is Labor Day Weekend 2024 and, therefore, markets will be closed on September 2, 2024, giving the industry an additional day to finalize the transition. The Labor Day Weekend in 2024 also coincides with a similar 3-day holiday weekend in Canada, allowing for a harmonized transition to T+1 across both markets. In SIFMA members' experience, implementation of significant operational and technological changes should occur over a long weekend to allow relevant parties to complete the implementation of the required, extensive system changes.[5]

b. The Commission should revise Rule 15c6-2 to provide greater flexibility to both broker-dealers and their customers with respect to the allocation, confirmation, and affirmation process.

The Commission believes that the allocation, confirmation, and affirmation process must be completed by the end of day on trade day so that errors and exceptions can be resolved by T+1. The Proposal notes that "currently only about 68% of trades achieve affirmation by 12:00 midnight at the end of trade date."[6] The Commission further believes that the allocation, confirmation, and affirmation process is an industry best practice.

The Commission proposed Rule 15c6-2 to help facilitate the completion of the allocation, confirmation, and affirmation process by the end of day on trade date. Under proposed Rule 15c6-2, if a broker-dealer and its customer have agreed to an allocation, confirmation and affirmation process, the broker-dealer would be prohibited from effecting or entering into a contract to buy or sell a security on behalf of a customer unless the broker-dealer and the customer had entered into a written contract

[5] A transition on the Labor Day weekend would be similar to the process used to transition to T+2. 2017 Adopting Release, 82 FR at 15581.
[6] Proposal at 10477.

requiring the parties to complete that process as soon as technologically practicable, but no later than the end of trade date.

The written agreement requirement in proposed Rule 15c6-2 is problematic for a number of reasons. For example:

- Investment advisers and their clients are unable to enter into a written agreement committing to same day allocation, confirmation, and affirmation because they rely on others to complete certain elements of the process:
  - Investment advisers and their clients rely on broker-dealers to generate confirmations, complete account mapping after allocations are delivered and (with respect to new customers) open accounts; and
  - Investment advisers and their clients also often rely on prime brokers and/or custodians to serve as the affirming party.
- In addition to relying on others for parts of the confirmation, allocation and affirmation process, investment advisers and their clients are also subject to the time zones and local holiday schedules in the countries in which these other parties operate, all of which could also prevent same-day completion of these responsibilities (and are beyond the control of investment advisers and their clients).
- Historically, the products subject to the Proposal have traded on a delivery-versus-payment (DVP) basis without written agreements governing such trades
- Certain clients of investment advisers may not authorize their investment advisers to enter into this type of written agreement. Other clients may insist on negotiating bespoke guideline requirements into the written agreements (e.g., sovereign immunity, arbitration, governing law, or consent to litigate only in certain jurisdictions). This kind of undertaking has been extremely time consuming, and its adoption could significantly increase the amount of time the industry requires to prepare for the Proposal to be implemented.
- Under the Proposal, it is also unclear whether investment advisers or their clients should be expected to enter into the written agreements. Investment advisers are not party to the trades and are not the “customer.” However, clients are often not involved with the allocation, confirmation or affirmation process (their investment advisers act on their behalf) and, as such, should not be asked to enter into written agreements covering these matters.

For the reasons listed above (among others), SIFMA does not believe that the written agreement requirement of proposed Rule 15c6-2 would be an effective approach for achieving the policy goal of increasing same-day confirmation, affirmation and allocation to facilitate T+1 settlement. In fact, the requirement would add undue time and costs to achieving these goals.

Proposed Rule 15c6-2 places the burden of complying with the rule on broker-dealers, even though much of the information necessary to complete the allocation, confirmation and affirmation process may rest with the customer. According to the Commission, "[b]ecause broker-dealers are the party to a transaction most likely to have access to a clearing agency, the broker-dealer is also the party best positioned to ensure timely settlement of institutional trades, and as such, should be able to ensure via its customer agreements that institutional customers or their agents also comport their operations to facilitate same-day affirmation."[7] The proposed rule suggests that if transactions involving an allocation, confirmation or affirmation process lead to settlement failures, the broker-dealer alone faces potential regulatory liability, even if through no fault of the broker-dealer the customer caused or contributed to the fail. In essence, as drafted the rule would expose the non-breaching broker-dealer for the contractual breaches of its customer. SIFMA does not believe that such an approach is equitable, and it is not clear how enforcing such a rule would achieve the desired outcome effectively. It is not clear how enforcing such a rule would have the desired effect.

To avoid the burdensome, time consuming and costly contract negotiations and related record keeping obligations that would inevitably result from requiring broker-dealers to enter into a written agreement with each of their institutional customers, the SEC should replace the requirement of a written agreement included in proposed Rule 15c6-2 with a requirement that broker-dealers adopt written 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 the trade date.

Proposed Rule 15c6-2 should be amended to give the broker-dealer greater flexibility in comply with the proposed rule. SIFMA's recommended approach would relieve the parties to an allocation, confirmation or affirmation process from negotiating a written agreement yet incentivize the broker-dealer to work with its customers to complete the process in a timely manner.

SIFMA notes that relevant operational cut-off times vary across clearance agencies and settlement processes and expects such cut-off times may change based on future technological improvements. Accordingly, SIFMA's suggested approach would provide broker-dealers with the flexibility to interpret "end of day" in their written policies and procedures uniquely for each settlement process to facilitate the policy objective of increasing timely settlement of trades on T+1. SIFMA would also like to highlight the need for flexibility to ensure timely settlement on T+1, with respect to instances where a broker-dealer and its customer are located in different time-zones.

SIFMA notes that prime brokerage transactions involve their own unique communication processes among multiple market participants. Accordingly, the industry and DTCC will plan to work on operational process changes to preserve the prime broker's right to disaffirm, which provides an incentive

[7] Proposal at 10453.

for speedy affirmation, while still permitting the prime broker to manage its risk to its customer. SIFMA plans to revert to the SEC if, as a result of these discussions it identifies any relief or interpretive guidance which may be required. The timing of affirmation and disaffirmation would need further discussion and industry consensus, which SIFMA will continue to work through in transitioning to a T+1 environment.

c. SIFMA recommends that that the exemption for transactions in foreign securities in non-U.S. markets be retained and modified to address certain product misalignment matters.

Foreign Securities Generally

As the Proposal notes, pursuant to Rule 15c6–1(b), the Commission has granted an exemption from Rule 15c6–1 for securities that do not have facilities for transfer or delivery in the U.S.[8] As the Commission explained in 1995:

> Under the exemption, all transactions in securities that do not have transfer or delivery facilities in the U.S. will be exempt from the scope of Rule 15c6-1. Furthermore, if less than 10% of the annual trading volume in a security that has U.S. transfer or delivery facilities occurs in the U.S., transactions in such security will be exempted from Rule 15c6-1 unless the parties clearly intend T+3 settlement to apply. If a foreign security is not exempted from Rule 15c6-1 under either of these two exemptions, the parties may arrange to settle the transaction in more than three business days if the parties expressly agree to the alternate settlement time frame at the time of the transaction pursuant to paragraph (a) of Rule 15c6-1.
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> The Commission also is granting an exemption to make clear that Rule 15c6-1 does not apply to transactions that occur outside the United States. For example, if a U.S. broker-dealer were to execute a trade on a foreign exchange with a U.S. or foreign broker-dealer, the contract will not be subject to the rule.[9]

Although the Commission requested comment on this exemption in 2016, it did not receive any comments and decided to retain the exemption.[10]

In many non-U.S. markets today, trades settle on a T+2 basis. Therefore, unless those markets transition to a T+1 settlement timeframe when the U.S. moves to a T+1 cycle, U.S. broker-dealers will not be able to comply with Rule 15c6-1 for trades in foreign securities. Accordingly, SIFMA recommends that

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[8] Proposal at 10446.
[9] Securities Exchange Act Release No. 35750 (May 22, 1995), 60 FR 27994, 27995 (footnotes omitted). *See also* Proposal, 87 FR at 10446; Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564, 15580-15581 (2017 Adopting Release).
[10] *See* 2017 Adopting Release at 15880.

that the exemption for transactions in foreign securities in non-U.S. markets be retained, subject to a modification.

Misalignment Between Certain U.S. and Foreign Securities

Retaining the exemption for transactions in foreign securities in non-US markets does not address the misalignment of settlement cycles between U.S. securities and non-US securities that impacts U.S. securities are exchangeable for foreign security or basket of foreign securities. American Depositary Receipts ("ADR"s) and exchange-traded funds ("ETF"s) with an underlying basket of foreign securities illustrate this misalignment.

ADRs

As the Commission noted in the Proposal, "under the exemption, an ADR is considered a separate security from the underlying security. Thus, if there are no transfer facilities in the U.S. for a foreign security but there are transfer facilities for an ADR based on such foreign security, only the foreign security will be exempt from Rule 15c6–1."[11]

Today market makers and other market participants may purchase foreign shares and sell related ADRs in the U.S. on the same trading day, and thus timely settle the sale of the ADRs using the newly created ADRs. This type of trade will not be possible if the underlying foreign shares settle on T+2 and the related ADR is required to settle on T+1. The result is likely to be wider bid-ask spreads for the ADR because market makers must take into account the additional cost of borrowing securities and other financing costs to avoid settlement failures. Further, the incidence of fails would likely increase as a result of the misaligned settlement cycles, particularly where it is not possible to borrow securities to make delivery. A knock-on effect could be to increase the incidence of buy-ins in as well.

ETFs

Similarly, the ETF creation/redemption process is impacted by the misalignment of global securities transaction settlement cycles where the basket of securities underlying ETF includes foreign securities. ETF shares are created by an authorized participant ("AP") depositing the daily creation basket of shares (and/or cash) with the ETF. In exchange for the deposit of the basket, the ETF issues to the AP a specified number of ETF shares, referred to as a "creation unit."

If foreign securities comprise some or all of the ETF creation basket, the AP will typically need to purchase those securities in the local market.

[11] Proposal at 10446.

The discussion above demonstrates that retaining the foreign security exemption allows market participants to purchase and sell foreign securities in local markets and settle those transactions in accordance with the local settlement cycles without running afoul of the settlement cycle set out in Rule 15c6-1. The exemption, however, does not address the misalignment between the settlement cycle for a domestic security that has underlying foreign securities components and the settlement cycles for transactions in those securities. That misalignment is likely to become more acute with the transition to a T+1 settlement cycle and raise costs for broker-dealers who may need to address that mismatch through securities borrowing, posting collateral and other means.

d. SIFMA recommends that the exemption for transactions insurance products be retained.

The Proposal also notes that the Commission has also granted a separate exemption for contracts for the purchase or sale of any security issued by an insurance company (as defined in Section 2(a)(17) of the Investment Company Act of 1940) that is funded by or participates in a ''separate account'' (as defined in Section 2(a)(37) of the Investment Company Act), including a variable annuity contract or a variable life insurance contract, or any other insurance contract registered as a security under the Securities Act of 1933.[12]

In 2016, the Commission requested comment on the continuing need for the insurance security exemption. Two commenters stated that the conditions underlying the exemption had not changed and the exemption should be retained.[13] SIFMA is not aware of any material change of circumstances and therefore recommends that this exemption be retained.

In addition to retaining the exemptions, SIFMA recommends that the exemptions either be codified in Rule 15c6-1(b), or that the Commission issue a new order to replace the orders issued in 1995 to facilitate access to the terms of the exemptions and to facilitate compliance with their terms.

e. The Commission should retain paragraph (c) of Rule 15c6-1 in limited form, subject to a T+2 settlement requirement.

As the Proposal notes, current Rule 15c6–1(c) allows a T+4 settlement cycle for firm commitment offerings for securities that are priced after 4:30 pm E.T., unless otherwise agreed to by the parties at the time of the transaction.[14] The Commission now proposes deleting this provision, which would establish a settlement cycle of T+1 for firm commitment underwritings that are priced after 4:30 pm E.T, unless 15c6-1(d) is utilized to agree to an alternate settlement date at the time of the transaction.[15]

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[12] Proposal, 87 FR at 10447. *See* Securities Exchange Act of 1934 Release No. 35815 (June 6, 1995), 60 FR 30906.
[13] 2017 Adopting Release at 15581.
[14] Proposal at 10448-10449.
[15] *Id.*

The Commission adopted paragraph (c) of Rule 15c6–1 in 1995, two years after Rule 15c6–1 was adopted.[16] The current version of paragraph (c) was added when the Commission adopted the T+3 settlement cycle.[17] The exemption was added because prospectuses for offerings priced after 4:30 pm E.T. often could not be printed and delivered prior to the trade date.[18] When the Commission shortened the settlement cycle to T+2, paragraph (c) was not amended.[19]

The Commission now proposes repealing paragraph (c), which would remove the exemption that allowed certain firm commitment offerings to settle as late as T+4 without express agreement to an extended (beyond the timeframe specified in paragraph (a) of the Rule) settlement date at the time of the transaction. The Commission notes that so-called "override" provisions in paragraphs (a) and (d) of Rule 15c6–1 would still allow contracts to provide for a longer settlement period if the parties expressly agree to an alternate date at the time of the transaction.[20]

In SIFMA's view, reliance on paragraphs (a) and (d) would be insufficient to prevent transactions for securities priced after 4:30 pm E.T. from failing to settle. While those provisions allow parties to agree to a longer settlement cycle, in order to avail themselves of that extended settlement date they must reach that agreement at the time of the transaction. However, particularly in the context of common stock offerings, where an extended settlement is extremely difficult to implement, if specific issues are identified prior to pricing, we expect that, in practically all such instances, the pricing of the offering will be delayed. By definition, the parties are unable to "foresee" unanticipated issues prior to pricing. Paragraphs (a) and (d) would not allow parties to agree to a longer settlement cycle when circumstances unforeseen at the time of the pricing of the transaction arise that prevent settlement on T+1. For example, it is not unusual to face unanticipated issues relating to transfer agents, legend removal, local law matters (including local court approval), medallion guarantees or non-U.S. parties. Given the limited timeframe available to resolve issues and settle by T+1, we believe that eliminating paragraph (c) while moving the default settlement period to T+1 will lead to increased failures to settle trades with respect to firm commitment underwritings.

Accordingly, SIFMA recommends that the paragraph be retained in a modified form, rather than being deleted as the Commission proposes. Specifically, SIFMA recommends that paragraph (c) be retained but modified to allow parties to settle on T+2, rather than T+1, in the case of a firm commitment underwriting. Under SIFMA's recommended modification, Rule 15c6–1(c) would provide a "fallback" to parties without an explicit agreement at the time of the

[16] 60 FR 26604 (May 17, 1995).
[17] 58 FR 52891 (Oct. 13, 1993).
[18] *Id*. at 52898.
[19] 82 FR 15564 (Mar. 29, 2017).
[20] 17 CFR 240.15c6–1(c). (a)(1). Under the current settlement timeframe, this requires a "close out" transaction by the opening of regular trading hours on T+3, absent an exception or exemption.

transaction to settle on T+2 if unforeseen circumstances interfere with either party's ability to conform to a T+1 settlement date.[21] SIFMA also strongly supports the continued retention of paragraph (d) in the rule as it is critically important for debt and preferred equity offerings.

f. Rule 15c6-1 should not apply to security-based swap transactions.

The Commission states in the Proposal that Rule 15c6-1 would apply to the settlement of all securities, as defined under Section 3(a)(10) of the Exchange Act,[22] unless specifically exempted and notes that the definition of security includes security-based swaps.[23] In SIFMA's view, however, Rule 15c6-1 is inapt with respect to security-based swaps.

Security-based swaps are generally bilateral and executory in nature, meaning that there are numerous terms that the parties typically agree to fulfill at later dates. With that in mind, the Dodd Frank Act mandated numerous requirements for security-based swaps that address the very credit, market and liquidity risks that, for broker-dealer transactions in securities, are addressed by the shortening of the settlement cycle from T+2 to T+1. Security-based swaps and entities that transact in such securities are subject to a regulatory regime that is tailored to the specific qualities of those instruments.[24] Security-based swap dealers, in turn, are subject to specific reporting, timely confirmations, business conduct, capital, margin and segregation requirements, among other things.[25] Because security-based swaps are already subject to a comprehensive regulatory regime they should not be subject to further regulation under the Proposal.

In addition to regulatory considerations, it is also important to highlight some key differences between security-based swaps and other types of securities. For other types of securities, such as equity or debt, settlement occurs when the buyer receives the security purchased and the seller receives cash equaling the value of the security sold. For security-based swaps, however, a final net payment is paid by one party to the other at a future point in time to which the parties have contractually agreed.

That being said, the concept of a settlement cycle reflected in Rule 15c6-1 is simply inapposite and should not apply to security-based swaps. The SEC should provide for an express exclusion for security-based swaps. Nevertheless, given that the policy goal already is fully addressed under the Dodd Frank Act, at the very least, any doubt caused by the reference in the proposal to security-based swaps

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[21] When the Commission shortened the settlement cycle from T+3 to T+2 it did not change paragraph (c) from T+4 (which was one day longer than the T+3 settlement cycle) to T+3. The proposed change to T+2 would be consistent with the Commission's historic practice of allowing at least an additional day for settlement of equity offerings which price after 4:30 p.m

[22] 15 U.S.C. § 78c(a)(10).

[23] Proposal at 10446.

[24] See, e.g., SEC rules 3a67-1 through 3a67-10; 3a68-1 through 3a68-4; 3a71-1 through 3a71-2; SEC Regulation SBSR.

[25] SEC Rules 15Fb1-1 through 15Fb6-2; SEC Rules Fh-1 through Fh-6; SEC Rules Fi-5; SEC Rule Fk-1; SEC Rules 18a-1 through 18a-10.

should be resolved by the SEC clarifying that counterparties to such instruments, who generally agree to specific payment and settlement terms in writing, benefit from the existing override provision in 240.15c6-1(a).

For the reasons identified above, SIFMA requests that the Commission add “security-based swap” to the list of securities specifically carved out from amended Rule 15c6-1 (see amended language below).

§ 240.15c6-1 Settlement cycle.

(a) Except as provided in paragraphs (b) and (d) of this section, a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, a security-based swap, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the first business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

Absent excluding security-based swaps from Rule 15c6-1, SIFMA alternatively requests that the Commission issue an order granting such an exemption.

In the absence of such relief, parties to securities-based swap transactions may need to rely on the override provisions of the Proposal, identifying a settlement date longer than T+1 in each trade confirmation entered into.

g. SIFMA recommends that e-Delivery be the default method of prospectus and confirmation delivery if a T+1 settlement cycle is adopted.

In a T+2 settlement cycle, the printing and delivery of the final prospectus, along with other documentation required to effect the closing of new issue equity offerings, often occurs on the morning of settlement. Printing and preparing physical documents is a time-intensive process which is inconsistent with a T+1 settlement cycle. Additionally, delays related to document production could affect the ability of the securities to be handled in book-entry form at DTC/NSCC, delaying settlement beyond T+1. Without allowing e-Delivery of the prospectus including, but not limited to an ETF prospectus, and other required documents, firms may not be able to comply with a T+1 settlement date. SIFMA therefore requests that the Commission provide guidance allowing e-Delivery of prospectuses and other documentation without affirmative opt-in by the investor. SIFMA further recommends that the Commission provide guidance extending the use of e-Delivery to additional communications, namely Prime Brokerage Agreement Form 150, Prime Brokerage Clearance Services Agreement Form 151, trade details, trade allocations, and trade confirmations between and among broker-dealers, executing brokers, and other market participants.

Similarly, the default method of confirmation delivery should be via electronic means. Under Rule 10b-10, broker-dealers must send customers a written confirmation "at or before the completion of a transaction."[26] Because transactions are generally understood to be completed at settlement, moving to a T+1 settlement cycle will affect broker-dealer obligations under Rule 10b-10.[27] In adopting the T+2 settlement cycle, the Commission stated that broker-dealers may comply with this obligation either through sending physical or electronic confirmations.[28] In the Proposal, the Commission states that this will remain unchanged and that broker-dealers may continue to use electronic delivery systems to comply with their obligations under Rule 10b-10.[29]

SIFMA recommends the use of e-Delivery for confirmation as the default choice under Rule 10b-10 and requests that the Commission provide guidance allowing e-Delivery of confirmations without affirmative opt-in by the customer. Furthermore, the SEC should clarify the definition of "e-Delivery" and/or "electronic means" and exclude facsimile ("fax") from the definition as receiving information from clients via fax still requires significant physical and manual processing.

With the move to a T+1 settlement date, delivery of physical confirmations is no longer practical or feasible within that timeframe. Moreover, the benefits of e-Delivery greatly outweigh those of postal delivery. Many financial services firms have built e-delivery systems that provide faster, more efficient delivery than is possible with physical documents. Further, e-Delivery systems are also more secure and allow faster confirmation of delivery than traditional postal service. Overall, e-Delivery systems allow for improved methods of communication with investors and a more efficient process for delivering confirmations for broker-dealers in accordance with their obligations under Rule 10b-10. By expressly acknowledging that broker-dealer may adopt e-Delivery as the default option for confirmation delivery under Rule 10b-10, the Commission will be reflecting prevailing consumer practices and aid the adoption of superior and more efficient delivery methods which benefit the broker-dealers, investors, and financial markets.

SIFMA also recommends that the Commission provide for the use of an electronic platform that provides users with current standardized agreements (similar to the FIA Electronic Give-Up Agreement System (EGUS) in place to execute Give-Up Agreements) for the execution of industry standard documents, including Form 150 and Form 151.

h. Rule 15c2-8(b) should not apply in a T+1 environment.

Rule 15c2-8 under the Exchange Act, the "preliminary prospectus delivery rule" requires a broker-dealer to deliver a copy of the preliminary prospectus for a previously non-reporting issuer to a

[26] 17 CFR 240.10b-10.
[27] Proposal, 87 FR at 10463.
[28] *Id*.
[29] *Id*.

prospective purchaser at least 48 hours prior to the sending of the confirmation of the trade. If T+1 settlement is adopted, the timeframe for sending confirmations will be compressed. Rule 10b-10 requires that a confirmation be sent to a customer at or before completion of the transaction (as defined in Rule 15c1-1), i.e., prior to settlement. In a T+1 environment, many broker-dealers will send confirmations on T to achieve settlement by T+1. Rule 15c2-8 does not reflect present-day offering procedure timelines, public availability of preliminary prospectuses on EDGAR, and electronic delivery facilities.

i. SIFMA recommends that to the extent that cover/protect periods will remain in effect, they should be aligned to the new T+1 settlement cycle.

The issuer often offers a guarantee of delivery that allows investors to purchase securities on the offer's expiration date and still participate in the offer while their securities are in the process of settling. This is also known as the cover/protect period where purchased yet-to-settle securities are instructed in the form of a "protect" and then that protect is subsequently "covered" once the securities settle. Typically, this cover/protect period is aligned to the market's settlement cycle; however, there are exceptions where the time to cover a protect may be shorter or longer. The period is ultimately defined by the issuer and described in detail in the event's offering materials. In a T+2 settlement cycle, the cover/protect period is often expiration date plus two (2) trading days.

The cover/protect period is currently inconsistently applied for many offers and is a current challenge such that member participants have discussed eliminating the cover/protect period. SIFMA intends to continue these discussions with its member participants on whether to recommend that the cover/protect period be eliminated altogether. However, SIFMA recommends that to the extent cover/protect periods will remain in effect, they should be aligned to the new T+1 settlement cycle.

j. SIFMA recommends the commission consider specific Corporate Action risks and impacts related to the transition.

Corporate Action events pose a risk and liability to firms and shareholders relying on timely notification, efficient trading/settlement reconciliation, and proper processing mechanisms. Timely payments are essential for proper allocation to shareholders on the payment date and for broker-dealer regulatory obligations under SEC Rule 204 and Federal Reserve Board Regulation T.[30] SIFMA also advocates for more standardized practices within corporate action events and urges the Commission to consider more automation and transparency in issuer declarations of corporate action events to improve timeliness, as is needed in a T+1 environment.

SIFMA also urges the Commission to support various SROs in adjusting certain rules related to corporate action processing. This includes establishing an ex-date for distributions *(Rule 11140)* and

[30] *See* SEC Rule 204; *see also* Federal Reserve Board Regulation T.

procedures for liability notices for the failure to deliver securities *(Rule 11810)*.[31] More timely counterparty obligation reconciliation will be critical in a T+1 environment, necessitating various improvements and automation in the net settlement systems and more systemic mechanisms for managing liabilities.

Many broker-dealers have no-action letters and exemptive relief for providing dividend reinvestment programs (DRIP) to their customers. SIFMA seeks assurances that moving to a T+1 settlement cycle would not depart from the relief from Rule 10b-10, allowing for monthly account statements for trade activity.

k. Standard Settlement Instructions.

SIFMA recommends all market participants to adopt automated transmission and secure electronic storage of standardized settlement instructions ("SSIs") to facilitate timely settlement. As the T+1 Report indicates, promoting greater adoption of efficient SSI management is critical to addressing the potential risk of settlement errors and fails in a T+1 environment. We further believe that the case for efficient SSI management becomes even more critical in terms of the secure transmission of sensitive account and reference data necessary for settlement. Additionally, there should exist an increased focus on fully automated and centralized management and secure communication of critical SSI reference data.

l. Physical Certificates & Related Paperwork, and Medallion Signature Guarantees.

In order to support security movements between counterparties, it is critical that we employ an infrastructure that allows straight through processing without physical certificates and the related paperwork. SIFMA supports the use of an electronic medallion signature guarantee, and a central hub to move documents electronically between financial institutions. It is critical this hub is secure and contains an audit trail of the receipt of documentation.

We welcome the SEC's support to help us move forward with electronic securities movement and away from antiquated paper and certificate processing. These initiatives may lead to some required modifications to the possession and control rules for physical securities, as well as to the industry's procedures for the acceptance and processing of medallion signature guarantees. We appreciate your support with the dematerialization of physical certificates, and we request continuing support for the electronic movement of securities throughout the financial industry.

II. SIFMA believes that transition to a T+0 settlement cycle is not practical in the near term.

SIFMA agrees that a T+0 settlement cycle, which the Commission defines one option as "netted settlement at the end of the day on T+0," could produce market, credit and liquidity risk reduction, as the

[31] *See* FINRA Rule 11140; *see also* FINRA Rule 11810.

Commission notes in the Proposal.[32] A transition to a T+0 settlement cycle, however, faces a number of difficult hurdles. Those hurdles include, by way of example, the following:

- **End-of-day**. There is a fundamental question as to whether the industry would move to T+0 settlement, meaning settlement on T+0 by a specified time, or to continuous settlement.
- **The need to reengineer and align securities processing functions**. As discussed in the T+1 Report, a T+0 settlement cycle "would require the redesign of many securities processing functions, including Institutional Trade Processing, ETFs processing, options, margin investing, securities lending, FX markets, and global settlements across jurisdictions to meet the regulatory, operational, and contractual requirements."[33] Consistent with the preceding, we note that current technology is insufficient to accommodate T+0 settlement.
- **Batch processing considerations**.
    - Trades could be netted on a batch basis throughout the trading day; however, batch processing likely would not capture all trades by market close. DTC settlement and cutoff times would need to be expanded.
    - Netting on a batch basis throughout the day could lead to multiple intraday margin calls by clearing agencies.
- **Issue resolution.** T+0 settlement makes resolving errors, the impact of outages, and addressing other issues in a timely manner to allow T+0 settlement to occur difficult given the resiliency required and challenges with technology and resourcing which impact issue resolution.
- **Allocations**. Real-time trade allocation likely would be challenging and inefficient for investment advisers. Investment advisers often execute block trades over the course of the trading day. Allocations are then delivered to a broker-dealer by end of day and weighted average pricing is applied. This practice may no longer be possible with a T+0 settlement.
- **Securities lending**. Timely recall of securities loaned upon a sale of those securities would become more difficult in a T+0 environment. Broker-dealers would need to employ significant resources to facilitate recalls on a short timeframe and would need to develop new technology to facilitate the recalls.[34] Likewise, borrowers would need to develop the infrastructure and technology to respond to recalls in a significantly reduced timely manner.
- **Prime brokerage**. As discussed in the T+1 Report, current prime brokerage processes are not set up to capture allocations, calculate margin requirements, and ensure margin accuracy

[32] Proposal at 10465.
[33] T+1 Report at 11.
[34] *See* 87 FR at 10461-10463 discussing the adjustments that broker-dealers may need to make to their lending agreement to require delivery of recalled securities in a T+1 settlement environment. A T+0 settlement timeframe would lead to additional challenges.

prior to Fedwire deadlines on trade date, and facilitate trade reporting and disaffirmations given sequential dependencies between counterparties.[35]

- **Dematerialization**. T+0 settlement is not possible without complete dematerialization of securities. Events which may impact the processing of physical securities certificates, such as natural disasters or pandemics, can cause severe disruptions to market functions. This happened during both Hurricane Sandy and the Covid-19 pandemic, when the DTCC was forced to temporarily halt its processing of physical securities certificates, impacting the entire financial services industry, and causing frustrations to firms and investors. While some hurdles to dematerialization remain, such as record-keeping, inventory, resilience, and controls, some market participants can eliminate physical securities certificates. For example, transfer agents, broker-dealers, clearing agencies, and investment advisers, can all eliminate physical certificates and fall under the Commission's jurisdiction. SIFMA recommends that the Commission lead the effort to move these market participants towards dematerialization as part of a larger effort to achieve full dematerialization in the future.
- **Pre-Funding**. Pre-funding presents threshold issues for investment advisers regardless of the settlement cycle timing (e.g., T+0 and/or T+1). These issues include:
    - Regulatory. Custody rules that apply to 1940 Act funds and UCITS funds would prohibit them from transferring fund assets outside of the custody of their qualified custodian or depositary in advance of any payment or settlement obligation. Trades would no longer be delivery versus payment (DVP), but in reality free of payment (FOP), which may not be permitted by certain clients and/or regulations.
    - Risk. Certain funds (e.g., UCITS) have counterparty exposure limits. Pre-funding amounts would need to be included in such exposure calculations. Separately, clients may be unable to deliver assets to a broker-dealer prior to a trade as a matter of prudent risk management.
    - Best Execution. Investment advisers may be unable to deliver assets to a broker-dealer before the terms of a trade have been memorialized because a best execution analysis cannot be completed as of that point in time.
    - Performance. Assets reserved for pre-funding can create a drag on a portfolio, hurting performance for investors. Reserving assets in this way can also create tracking errors.
- **Securities netting**: Significant changes to NSCC securities netting may be required in order to maintain the benefits that the process provides and may require large volumes of securities and cash to move throughout the trading day, which will likely increase the risk of trade errors and subsequent settlement fails.

[35] *Id.*

- **Funding requirements**: Funding trades would require foundational changes, such as requiring the Federal Reserve's payment systems to maintain services for longer periods of time throughout the day to determine funding requirements between counterparties, particularly in order to post funding to clearinghouses to facilitate services. Further, we know from experience that market utilities, including the Fedwire, are not immune from outages, and an overly compressed settlement cycle would not allow for addressing such situations.
- **Impact on retail investors**: Many retail investors submit payment after placing orders, and in fact some market participants report as many as 20% still make payment by paper check. In a T+0 environment, retail investors would be required to deposit funds in trading accounts in advance of trading (pre-fund) given the time required to process ACH actions and wire transfers from consumer banks to securities accounts, potentially leaving cash in low-yielding investments.
- **Global settlement**: Like retail investors, foreign investors may be required to pre-fund cash positions and deposit securities prior to trading. This could result in cash being underinvested, make the delivery securities more complicated and also riskier, and could make the U.S. markets less attractive to international investors.
- **Mutual funds**: A move to T+0 would dislocate the settlement between the mutual fund's portfolio securities transactions and the mutual fund's shares transactions. Mutual Funds cannot easily move to T+0, as it would require structural change including earlier cutoff times and NAV strikes. By moving to T+1 for the portfolio securities settlement, portfolio activity is perfectly aligned with mutual fund share activity, which removes the possibility of detrimental impacts due to timing for the mutual fund shareholders.[36]

Further considerations concerning the problems associated with a move to a T+0 settlement date was outlined by SIFMA in a February 2022 publication entitled "T+0? More Risk, Fewer Benefits."[37] Some of these considerations include:

- **Impact on competition**. A T+0 settlement date might have unintended impacts on the competitive landscape of the financial services industry. Transitioning to T+0 will require significant investment and sufficient scale on the part of participants. This will place smaller participants with more limited resources at a competitive disadvantage relative to larger firms whose scale and resources are more easily able to support the necessary investments. The impacts of a T+0 settlement date on competition go beyond participant size. Firm operations related to cross-border issues, institutional versus retail, and fixed income versus equities would be required to drastically alter their processes for settling trades in different markets

[36] SIFMA, *T+0? More Risk, Fewer Benefits*, February 2, 2022, https://www.sifma.org/resources/news/t0-more-risk-fewer-benefits/
[37] *Id.*

and the resulting stress on firm operations may change the competitive landscape. The effects on competition extend even to retail investors, many of whom use pre-funded accounts or checks, who would be required to change their behavior in response to a T+0 settlement date as well.

- **Increased number of failed trades**. Given the more compressed timeline available for a T+0 settlement, there will be less time for firms to repair human errors before a trade fails. Fails are currently caused by mistakes such as incorrect settlement instructions, trade details, and other human errors. In a T+0 settlement, firms will have little time to correct such settlement errors before settlement date. This will naturally lead to a substantially increased number of failed trades, especially during periods of high volume and volatility.
- **Cybersecurity**. A T+0 settlement date would also negatively impact firms' ability to identify and address cybercrime and fraud.

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.[38]

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.[39] We believe that after an industry move to T+1, an SEC staff retrospective review of the industry transition to T+1 will 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, including a related examination of the move to T+1, in the adopting release of the Proposal.

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[38] *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

[39] 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.

As securities industry participants implement the T+1 settlement cycle, they will learn lessons that can be used to evaluate if and how a T+0 settlement cycle can be implemented. In the Proposal, the Commission posed questions that SIFMA believes can be addressed through participants' experiences with implementation of the T+1 settlement cycle. For example, the Commission asks a number of questions about multilateral netting and the ability to maintain such netting in a T+0 environment. The impact of T+1 settlement on multilateral netting will be invaluable in assessing the impact of T+0 settlement on multilateral netting and if and how such netting can be maintained in a compressed settlement cycle. Similarly, the Commission asked about the ability of DTC to provide settlement services in a T+0 environment.[40] DTC and its members will have a sense of the impact of a compressed settlement cycle on the deadlines for submission of information and data to DTC to allow it to perform necessary functions after completion of the T+1 settlement cycle implementation. SIFMA would like to continue to engage with the Commission on a T+0 settlement cycle both as the industry transitions to a T+1 settlement cycle and after that transition is complete. We believe that such engagement will be important and value of both to the securities industry and to the Commission.

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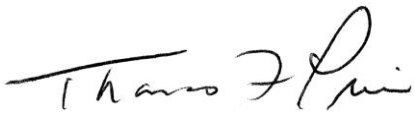
SIFMA sincerely appreciates the opportunity to comment and your consideration of these views. We stand ready to provide any additional information or assistance that the Commission might find useful. In particular, we and our members would welcome the opportunity to work with the Commission and other industry representatives to address future policy measures for accelerating the settlement cycle in the U.S. Please feel free to contact Thomas Price at 212-313-1260 or at [redacted] or Lindsey Keljo at 202-962-7312 or [redacted].

Sincerely,



Thomas Price
Managing Director

Lindsey Weber Keljo
Head - Asset Management Group

[40] Proposal at 10467.

cc: The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Allison Herren Lee
The Honorable Caroline Crenshaw

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