

# ASSOCIATION OF GLOBAL CUSTODIANS

April 11, 2022

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

**RE: File Number S7-05-22: Proposed rule changes to reduce risk in the clearance and settlement of securities**

Dear Secretary Countryman,

The Association for Global Custodians (“AGC”)<sup>1</sup> appreciates the opportunity to provide comments on the Securities and Exchange Commission’s (“SEC” or “Commission”) proposed rule changes to reduce risk in the clearance and settlement of securities, including by shortening the standard settlement cycle for most securities transactions from two business days after the trade date (T+2) to one business day after the trade date (T+1).

AGC recognizes that the proposed rule change largely affects the broker-dealer community. However, such rule change has a significant impact on the entire settlement lifecycle which, in turn, affects investors and their agents. Custodians perform an agent role in the settlement process, but AGC also recognizes the importance of a custodian’s role to help facilitate a T+1 settlement cycle. As such, AGC supports an overall industry goal of risk reduction in the settlement cycle and improvements in post-trade processing efficiency. It also supports the recommendations set out in the “Accelerating the U.S. Securities Settlement Cycle to T+1” (the “T+1 Report”) issued by the Securities Industry and Financial Markets Association (“SIFMA”), Depository Trust and Clearing Corporation (“DTCC”), the Investment Company Institute (“ICI”), and Deloitte & Touche LLP (“Deloitte”).<sup>2</sup>

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<sup>1</sup> The AGC is a group of 12 financial institutions (see Appendix A) that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide. As a non-partisan advocacy organization, the AGC represents members’ common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations. The member banks are competitors, and the AGC does not involve itself in member commercial activities or take positions concerning how members should conduct their custody and related businesses.

<sup>2</sup> 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>.

Described below, AGC highlights four considerations related to the Commission's proposed rule change:

- Rule 15c6-2 with respect to the allocation, confirmation and affirmation process as it relates to settlement instructions
- Rule 10b-10 with respect to confirmation delivery via electronic means
- A potential move in the long term to a T+0 settlement cycle, and
- The compliance date for the shortening of settlement to T+1

**1. The Commission should consider Rule 15c6-2 with respect to the allocation, confirmation and affirmation process as it relates to settlement instruction.**

There has been a strong focus in recent years across the industry on Straight-Through-Processing (STP) rates and improving operational efficiency, which reduces risk and increases liquidity throughout the market. Custodians have often fulfilled the role of not just the settlement operator but as an affirmation agent for its clients. When the US settlement cycle migrated from T+3 to T+2 in 2017, custodians were broadly able to absorb the compressed settlement time period by focusing on their own operating models and processes. Reconciliation between affirmation and expected settlement instruction typically took place on a T+1 basis, with the understanding that settlement was effected on T+2. Compressing settlement to T+1 leaves less room for the counterparty to receive an affirmation and submit the settlement instruction. This places a greater reliance on efficient, timely and appropriate operating models and may introduce a higher settlement failure rate.

AGC acknowledges that in order to support a shortened settlement cycle to T+1, all market participants, including custodians, will need to adjust current operating models, implement new processes and update existing technology in certain instances. However, from a custodian as agent perspective, we are highly dependent on the implementation of efficient, timely and appropriate operating models and processes across market participants at the trading level, including institutional investor clients and broker dealers, before we can action settlement on our client's behalf. In a T+1 settlement cycle, without the implementation of these efficient, timely and appropriate operating models and processes across market participants there is a significant risk of settlement failures. Not only would settlement failure detract from the overarching purpose of reducing risk, increased fail rates reduce liquidity, increase cost, and create other systemic concerns with post-trade activity.

The market will induce risk in corporate action and income payment processing if efficient operating model, processes and rules are not put in place at the trading level. By way of an example, late settlement or settlement failures will result in corporate action events and income payment claims and penalties, creating a circular drag on the entire post-trade process given the increase for manual processing and remediation required. The root cause of settlement failures in a T+1 environment should be centrally monitored and reported for the industry to recommend viable solutions to mitigate risk, especially in preparation for a longer term goal of T+0. Additionally, the market should expand the DTCC Claim Connect to automatically align corporate action and income payment processing with late settlement and settlement fails.

By way of a second example, corporate action events with Rule 180 protect guarantee terms allow for late trading on expiration date, which is also the deadline for post-trade agents, including custodians, to submit elections on behalf of the investor to DTCC. A move to T+1 accelerates the key date for the securities associated with late trading to be delivered to the post-trade agents, including custodians, which will further increase the volume which already requires manual intervention. Opportunities should be addressed to implement a centralized and automated market utility function to provide full transparency, accountability and processing for late trades impacting corporate action events which have protect guarantee terms. These functions would significantly reduce the risk, manual interventions and remediations being carried out by post-trade agents, including custodians, to ensure that late trades settlements are completed, and positions are delivered timely to satisfy investor's election or interest.

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 trade, 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." AGC would respectfully point out that settlement requires client instruction through their agents, typically custodians, against a broker-dealers' trades. Consideration may be given towards the evaluation of linking settlement instruction to an affirmation thus linking the trade process closer with the settlement process.

**2. AGC is interested in the Commission's consideration of amending Rule 10b-10 to ensure the default option for confirmation delivery is via electronic means**

With a shortening of the settlement cycle to T+1, the delivery of physical confirmations is no longer practical or feasible. Moreover, E-delivery systems are more secure and resilient than traditional postal services, and allow for more efficiency throughout the value chain, which ultimately expedites the settlement process. AGC would be interested to see clarification that excludes facsimile ("fax") as a definition of "E-Delivery" or "electronic means", as receiving information from clients via fax still requires significant physical and manual processing. AGC has been evaluating how to apply similar principles to fax settlement instructions.

**3. A potential move in the long term to a T+0 settlement cycle**

A significant part of the Commission's proposal focusses on how the industry might reduce the settlement cycle to T+0 in the future. AGC believes a T+0 settlement cycle could, in certain aspects, reduce market, credit, and liquidity risk as the Commission suggests in the Proposing Release, and that a T+0 settlement cycle could potentially be a longer term goal for the industry.

However a transition to a T+0 settlement cycle would require significant industry and regulatory discussion, and technological upgrades and change, as well as the creation and implementation of new operating models and processes in many instances. AGC believes a key first step is the closer alignment of trade and settlement process as described above. The transition to a T+1 settlement cycle will be a

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valuable step towards T+0 as the industry would learn lessons that can be used to evaluate if and how a T+0 settlement cycle can be achieved in the longer term.

At this stage however, AGC is of the opinion that industry discussions on implementing T+0 today may inadvertently divert resources from focusing on the requirements and issues related to delivering T+1 in the near future.

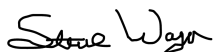
#### **4. The compliance date for transition to T+1**

AGC notes that the industry T+1 Report recommends a migration from T+2 to T+1 settlement cycle in Q1/Q2 2024, and the Commission has proposed a migration date of March 31, 2024. AGC's preference is a migration over Labor day weekend 2024 which is Saturday, August 31, 2024 through Monday, September 2, 2024.

Transitioning to a T+1 settlement cycle over a three day holiday period provides the industry an additional day to finalize the transition in case market participants experience any significant operational and technological issues during the migration. This would also be consistent with the approach taken when the industry migrated from T+3 to T+2 in 2017. The Commission's proposed migration date on March 31, 2024 is also a busy period for the industry given the proximity to the proxy voting and tax processing seasons. In addition, AGC's preference is that it will be important to align the transition with other jurisdictions, in particular, those with significant dual listed securities (e.g., Canada).

While custodians perform an agent role, they have been and remain integral to settlement efficiency. Maintaining and improving that efficiency as the settlement time period is reduced is and will continue to be a core principle for custodians. AGC appreciates the opportunity to provide comments on the Commission's proposed rule, and stands ready to work closely with the wider industry and Commission to achieve T+1 settlement compliance.

Yours sincerely,



Steven Wager  
Chair, Americas Focus Committee  
Association of Global Custodians

**Appendix A**

The Association of Global Custodians' members:

- BNP Paribas
- BNY Mellon
- Brown Brothers Harriman & Co.
- Citibank, N.A.
- Deutsche Bank
- HSBC Securities Services
- J.P. Morgan
- Northern Trust
- RBC Investor & Treasury Services
- Skandinaviska Enskilda Banken
- Standard Chartered Bank
- State Street Bank and Trust Company