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April 4, 2016

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street NW
Washington, DC 20006-1506

Re: Regulatory Notice 16-09 Request for Comments Concerning Proposed Rule Changes to Shorten the Settlement Cycle for Certain Securities to T+2

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association ("SIFMA") respectfully submits this letter in support of efforts by the financial services industry and its regulators to shorten the settlement cycle for secondary market transactions in equities, corporate and municipal bonds, unit investment trusts, and financial instruments comprised of these products.[1]

As you know, SIFMA has been one of the leaders of the industry initiative to shorten the settlement cycle from trade date plus three business days (commonly known as T+3) to trade date plus two business days, or T+2. Last year, SIFMA and the Investment Company Institute (the "ICI") submitted a joint comment letter to the Securities and Exchange Commission (the "SEC") declaring our support for a T+2 settlement cycle.[2] SIFMA, ICI and other industry participants also drafted a white paper and a more detailed "playbook" which discusses a T+2 implementation schedule, interim milestones and dependencies.[3]

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[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly one million employees provide access to the capital markets. Serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans, our members have raised over $2.5 trillion for businesses and municipalities in the U.S. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit http://www.sifma.org.

[2] *See* Letter from SIFMA & ICI to Mary Jo White, Chair, SEC (June 18, 2015), *available at* http://www.ust2.com/pdfs/SSCregfinal.pdf.

[3] *See* PRICEWATERHOUSECOOPERS, SHORTENING THE SETTLEMENT CYCLE: THE MOVE TO T+2 (June 18, 2015), *available at* http://www.ust2.com/pdfs/ssc.pdf; DELOITTE & TOUCHE, T+2 INDUSTRY IMPLEMENTATION PLAYBOOK (Dec. 18, 2015), *available at* http://www.ust2.com/pdfs/T2-Playbook-12-21-15.pdf.

As part of our ongoing support for the move to T+2, we are pleased to add our support to the proposed amendments to FINRA rules set forth in Regulatory Notice 16-09 and to respond to FINRA's request for comments. For ease of reference, we have reproduced the request in bold typeface, followed by our response in plain text.

1. **Would the proposed rule amendments have an effect on conduct that is required for compliance with any other FINRA rule?**

   No, we do not believe that the proposed rule amendments will have an effect on conduct that is required for compliance with any other FINRA rule.

2. **Are there any other FINRA rules that should be amended to support the move to T+2?**

   We note that a T+2 settlement cycle may impact the "cover/protect" process which permits the purchaser of a security that will shortly be subject to a corporate action to acquire the results of that corporate action, such as a dividend or tender or exchange offer, in addition to the security. In these circumstances, the purchaser has paid the seller an additional amount in order to purchase both the securities and the cash or securities that the issuer will pay upon completion of the corporate action.

   FINRA Rule 11810(j) generally sets forth procedures for this process. Under the rule, the purchaser, through its broker-dealer, must deliver a liability notice to the party who must deliver the outcome of the corporate action on behalf of the seller, ordinarily the seller's broker-dealer (the "delivering party"). The notice informs the delivering party of the obligation and that it will be liable for any damages caused by its failure to deliver.[4] Under the rule, the delivering party must receive the notice at least one day prior to the date on which it must make delivery.

   The industry has identified a number of situations where one-day notice may no longer be appropriate in a T+2 environment, including (1) where the delivery obligation is transferred to another party as a result of continuous net settlement, (2) settlements outside of National Securities Clearing Corporation (the "NSCC") and (3) settlements where the third party is not a FINRA member.

[4] *See* Order Granting Approval of a Proposed Rule Change Related to Mandated Use of an Automated Liability Notification System, 72 Fed. Reg. 73,927 (Dec. 28, 2007).

New York Stock Exchange ("NYSE") Rule 180 includes similar requirements for NYSE member firms, but it does not include a one-day notification requirement.[5] To ensure that purchasers receive the benefit of their bargain, we propose that Rule 11810(j) be amended to omit reference to a timeframe for notification, which would be in line with NYSE Rule 180. Alternatively, we propose that Rule 11810(j) be amended to require the liability notice be delivered a reasonable amount of time ahead of the settlement obligation, in light of facts and circumstances. In either instance, if the delivering party fails to deliver in a timely fashion, then it is liable for any damages caused by its failure to deliver.

3. **Are there any economic impacts, including costs and benefits, to the industry that are associated specifically with FINRA's proposed rule changes and are they in addition to those arising from the industry-wide move to T+2 and the SEC's anticipated amendments to SEA Rule 15c6-1?**

SIFMA and the industry plan to submit a detailed economic impact analysis to the SEC in response to the SEC's planned rule change proposal to change SEC Rule 15c6-1, the keystone rule for the move to a shorter settlement cycle. This analysis will address the economic impact of the shortened settlement cycle, and will discuss all rule changes that we expect to occur for the effective implementation of a T+2 settlement cycle. We expect that analysis to conclude that the economic impacts will be net positive for the industry, broker-dealers and investors.[6] The industry is happy to perform this robust economic impact study once other regulators provide guidance so as to ensure that we effectively answer specific questions and optimize the resources of member participants. Once that analysis is complete, we intend to provide a copy to FINRA.

From a qualitative standpoint, SIFMA strongly believes that a shorter settlement cycle will have a beneficial economic impact because it will promote financial stability and significantly mitigate risks to the financial system.

Specifically, among other benefits, a shorter settlement cycle will reduce the capital impact of the NSCC's clearing fund, which insures the NSCC, as a central counterparty, against potential losses due to unlikely event of the failure of a counterparty for whom it is guaranteeing the delivery of money or securities. While somewhat dated, a 2012 report by The Boston Consulting Group found that

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5 *See* NYSE, NYSE Rule 180, Failure to Deliver (2007), http://nyserules.nyse.com/nyse/rules/nyse-rules/chp_1_3/chp_1_3_13/default.asp.

6 *See, e.g.*, THE BOSTON CONSULTING GROUP, COST BENEFIT ANALYSIS OF SHORTENING THE SETTLEMENT CYCLE (Oct. 2012), *available at* http://www.dtcc.com/~/media/Files/Downloads/WhitePapers/CBA_BCG_Shortening_the_Settlement_Cycle_October2012.pdf.

a move from T+3 to T+2 implied a 15% and 24% reduction in the average clearing fund amount during a "typical" 10-month period and a 1-month "high volatility" period, respectively.[7] This reduction in the clearing fund has a positive impact on liquidity, since such a reduction is effectively a release of capital.[8] The Depository Trust & Clearing Corporation plans to update this analysis as part of the economic impact analysis discussed above.

Furthermore, a T+2 settlement cycle will help to improve operational processes and procedures and to mitigate the operational risks that may be present between trade date and settlement date. A shortened settlement cycle also will increase the overall efficiency of the securities markets by, for example, reducing the market and counterparty risk each market participant faces during the settlement period. In particular, retail investors will benefit from T+2 when requesting money from their accounts. Finally, a move to T+2 will align U.S. settlement cycles with major international markets, as most European Union member states and major markets in the Asia-Pacific region have adopted at most a two-day securities settlement cycle.

Primary Market Settlement

For a host of reasons, including operational and legal documentation obstacles, significant portions of the primary markets continue to rely on permitted exemptions and opt-out provisions to the standard settlement cycle as provided in SEC Rule 15c6-1(b), (c) and (d). It is essential that these permitted SEC exemptions and opt-out provisions remain in place to support a robust and well-functioning primary market. This is especially true for debt markets where it is common to settle T+4 and beyond. Consistent with market practice, any initial secondary market trades will continue to have to settle in sync with the first settlement date of the new issue regardless of the time delay to settlement. In order for equity issues to move more substantially to a T+2 settlement cycle, relief will be needed for the current 48-hour physical prospectus delivery requirements for securities that do not qualify for access equals delivery. In the absence of changes to expand access equals delivery, SIFMA will urge the SEC to provide relief that permits for a 72-hour physical delivery of a prospectus with respect to the first settlement date (for both primary and secondary trades) to accommodate a T+2 settlement.

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7 *See id*. at 33.
8 *See id*. at 34.

While we are not presently aware of FINRA rules that will act as fundamental impediments to the move to T+2 for primary markets, there is the risk of creating friction if related rules are not structured so as to ensure the intended flexibility for settlement periods. We urge FINRA to continue to review related rules for any such friction. In that regard, where references to "trade date" exist to establish a time threshold, we suggest FINRA consider whether references to a period relative to "settlement date" may more consistently and more accurately incorporate the necessary flexibility.

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SIFMA appreciates the opportunity to voice its support for the FINRA rule changes necessary to facilitate a move to a shorter settlement cycle. We would be pleased to discuss these matters further. Please feel free to contact the undersigned at (212)-313-1260 or tprice@sifma.org.

Sincerely,

Thomas F. Price
Managing Director
Operations, Technology & BCP

cc: Patricia Gliniecki, Senior Vice President and Deputy General Counsel, Financial Industry Regulatory Authority Office of General Counsel
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