SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 275

[Release Nos. 34–96930, IA–6239; File No. S7–05–22]

RIN 3235–AN02

Shortening the Securities Transaction Settlement Cycle

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting 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''). In addition, the Commission is adopting new rules related to the processing of institutional trades by broker-dealers and certain clearing agencies. The Commission is also amending certain recordkeeping requirements applicable to registered investment advisers.

DATES:

Effective date: May 5, 2023.

Compliance date: The applicable compliance dates are discussed in Part VII of this release.

FOR FURTHER INFORMATION CONTACT: Matthew Lee, Assistant Director, Susan Petersen, Special Counsel, Andrew Shanbrom, Special Counsel, Jesse Capelle, Special Counsel, and Mary Ann Callahan, Senior Policy Advisor, at (202) 551–5710, Office of Clearance and Settlement, Division of Trading and Markets; Jennifer Porter, Senior Special Counsel, Amy Miller, Senior Counsel, and Holly H. Miller, Senior Financial Analyst, at (202) 551–6787, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: First, the Commission is amending paragraph (a) of 17 CFR 240.15c6–1 (''Rule 15c6–1'') 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, as discussed in Part II.C.1.[1] The Commission is also amending paragraph (b) of Rule 15c6–1 to exclude security-based swaps from the requirements under paragraph (a) of the rule, and amending paragraph (c) of Rule 15c6–1 to shorten the standard settlement cycle for firm commitment offerings priced after 4:30 p.m. Eastern Time (''ET'') from four business days after the trade date (''T+4'') to T+2, as discussed in Parts II.C.3 and II.C.4 respectively.

Second, to promote the completion of allocations, confirmations, and affirmations by the end of trade date for transactions between broker-dealers and their institutional customers, the Commission is adopting a new rule under the Exchange Act at 17 CFR 240.15c6–2 (''Rule 15c6–2''). Rule 15c6–2 requires a broker-dealer to either enter into written agreements as specified in the rule or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date. The specific requirements of the rule are discussed in Part III.C.

Third, the Commission is amending 17 CFR 275.204–2 (''Rule 204–2'') under the Investment Advisers Act of 1940 (''Advisers Act'') to require registered investment advisers to make and keep records of the allocations, confirmations, and affirmations for securities transactions subject to the requirements of Rule 15c6–2(a), as discussed in Part IV.C.

Fourth, the Commission is adopting a new rule under the Exchange Act at 17 CFR 240.17Ad–27 (''Rule 17Ad–27'') to require clearing agencies that provide a central matching service (''CMSPs'') to establish, implement, maintain, and enforce policies and procedures reasonably designed to facilitate straight-through processing (''STP'') and to file an annual report regarding progress with respect to STP. The specific requirements of the rule are discussed in Part V.C.

Fifth, the Commission is amending 17 CFR part 232 (''Regulation S–T'') to require that a CMSP submit the annual report required by Rule 17Ad–27 using the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') and tag the information in the report using the structured (*i.e.,* machine-readable) Inline eXtensible Business Reporting Language (''XBRL''). The Commission discusses this requirement in Part V.C.4.

Finally, the Commission solicited and received comments regarding the effect of shortening the settlement cycle on other Commission requirements, including 17 CFR 242.200 (''Regulation SHO''), 17 CFR 240.10b–10 (''Rule 10b–10''), the financial responsibility rules applicable to broker-dealers, requirements related to prospectus delivery and ''access versus delivery,'' and the impact on self-regulatory organization (''SRO'') rules and operations. These comments are discussed in Part VI.

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[1] *See* Part II.A (discussing the types of securities transactions that are currently covered by Rule 15c6–1(a)) and Part II.C.1 (discussing the types of securities transactions that will be covered by the rule following the rule changes being adopted in this release).

I. Introduction

Promoting the timely, orderly, and efficient settlement of securities transactions has been a longstanding Commission objective.[2] To advance this objective, the Commission first took steps in 1993 to establish a standard requiring the settlement of most securities transactions within three business days of trade date (''T+3''), shortening the prevailing practice at the time of settling securities transactions within five business days of trade date (''T+5'').[3] The Commission has on multiple occasions discussed how shortening the settlement cycle can protect investors, reduce risk in the financial system, and increase operational efficiency in the securities market.[4] In 2017, the Commission shortened the standard settlement cycle from T+3 to T+2.[5] Now, in part informed by episodes in 2020 and 2021 of increased market volatility that highlighted potential vulnerabilities in the U.S. securities market,[6] the Commission believes that shortening the settlement cycle from T+2 to T+1 can promote investor protection, reduce risk, and increase operational and capital efficiency.[7]

As discussed in the T+1 Proposing Release,[8] the Commission believes that substantial progress has been made toward identifying the technological and operational changes that are necessary to establish a T+1 settlement cycle, including the industry-level changes that would be necessary to transition from a T+2 standard to a T+1 standard settlement cycle. The Commission also discussed how additional regulatory steps were necessary to improve the processing of institutional transactions, advancing two other longstanding objectives shared by the Commission and the securities industry: the completion of trade allocations, confirmations, and affirmations on trade date (an objective often referred to as ''same-day affirmation'') and the straight-through processing of securities transactions.[9] Accordingly, the Commission proposed a combination of rule amendments and new rules to shorten the standard settlement cycle to T+1, establish new requirements for broker-dealers and investment advisers designed to advance the same-day affirmation objective, and to establish requirements for CMSPs to promote straight-through processing.[10]

The Commission received many comments in response to the T+1 Proposing Release.[11] Having considered the comments received, the Commission is adopting the proposed new rules and rule amendments with modifications, as discussed further below. Specifically, in Part II, the Commission discusses the comments received regarding the proposed amendments to Rule 15c6–1 under the Exchange Act, and

[2] *See* Exchange Act Release No. 94196, Investment Advisers Act Release No. 5957 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022) (''T+1 Proposing Release'').

[3] *See* Exchange Act Release No. 33023 (Oct. 6, 1993), 58 FR 52891 (Oct. 13, 1993) (''T+3 Adopting Release'').

[4] *See, e.g.,* Exchange Act Release No. 31904 (Feb. 23, 1993) 58 FR 11806 (Mar. 1, 1993) (''T+3 Proposing Release''); T+3 Adopting Release, *supra* note 3; Exchange Act Release No. 78962 (Sept. 28, 2016), 81 FR 69240 (Oct. 5, 2016) (''T+2 Proposing Release''); Exchange Act Release No. 80295 (Mar. 22, 2017), 82 FR 15564, 15601 (Mar. 29, 2017) (''T+2 Adopting Release''); T+1 Proposing Release, *supra* note 2.

[5] *See* T+2 Adopting Release, *supra* note 4.

[6] *See* T+1 Proposing Release, *supra* note 2, at 10444 n.61.

[7] As stated in the T+1 Proposing Release, the Investor Advisory Committee recommended in 2015 that the Commission pursue T+1 (rather than T+2), noting that retail investors would significantly benefit from a T+1 standard settlement cycle. *See id.* at 10439 & nn.28–29.

[8] *See id.* at 10447.

[9] As discussed in the T+1 Proposing Release, the Commission uses ''straight-through processing,'' or ''STP,'' to refer generally to processes that allow for the automation of the entire trade process from trade execution through settlement without manual intervention. *See id.* at 10458; *see also infra* note 323 and accompanying text.

[10] *See* T+1 Proposing Release, *supra* note 2, at 10436.

[11] Copies of all comment letters received by the Commission are available at *https://www.sec.gov/comments/s7-05-22/s70522.htm*.

modifications made in response to the comments. In Part III, the Commission discusses the comments received regarding proposed Rule 15c6–2 under the Exchange Act, and modifications made in response to the comments. In Part IV, the Commission discusses the comments received regarding the proposed amendment to Rule 204–2 under the Advisers Act, and modifications made in response to the comments. In Part V, the Commission discusses the comments received regarding proposed Rule 17Ad–27 under the Exchange Act, and modifications made in response to the comments. In Part VI, the Commission discusses the comments received regarding the effect of shortening the settlement cycle on other Commission requirements, including Regulation SHO, Rule 10b–10 under the Exchange Act, the financial responsibility rules applicable to broker-dealers, requirements related to prospectus delivery and ''access versus delivery,'' and the impact on SRO rules and operations.

II. Exchange Act Rule 15c6–1—Standard Settlement Cycle

A. Proposed Amendments to Rule 15c6–1

In the T+1 Proposing Release, the Commission proposed to amend Rule 15c6–1(a) to prohibit broker-dealers from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, 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.[12] The proposed amendment to Rule 15c6–1(a) would shorten the length of the standard settlement cycle for securities transactions covered by the existing rule from T+2 to T+1.[13]

In addition to the proposed amendment to paragraph (a) of Rule 15c6–1, the Commission proposed to delete paragraph (c) of the rule,[14] which would, in conjunction with the proposed amendment to paragraph (a), establish a T+1 standard settlement cycle for firm commitment offerings priced after 4:30 p.m. ET. However, the so-called ''override'' provisions in paragraphs (a) and (d) of Rule 15c6–1 would continue to allow contracts currently covered by paragraph (c) to provide for settlement on a timeframe other than T+1 if the parties expressly agree to a different settlement timeframe at the time of the transaction.

In addition to proposing to delete paragraph (c) of Rule 15c6–1, the Commission proposed conforming technical amendments to paragraphs (a), (b), and (d) of the rule. Specifically, the Commission proposed to delete all references to paragraph (c) of Rule 15c6–1 that currently appear in paragraphs (a), (b), and (d) of the rule.[15]

B. Comments

1. Length of Standard Settlement Cycle and Exchange Act Rule 15c6–1(a)

In response to the T+1 Proposing Release, the Commission received numerous comment letters supporting a shorter settlement cycle for securities transactions.[16] Many of these comment letters supported shortening the standard settlement cycle to T+1.[17] Several comment letters that supported the Commission's proposal to shorten the settlement cycle to T+1 also supported shortening the settlement cycle to ''T+0'' or instantaneous settlement.[18] Other comment letters

[12] *See* T+1 Proposing Release, *supra* note 2, at 10447.

[13] As explained in the T+1 Proposing Release, existing Rule 15c6–1(a) covers contracts for the purchase or sale of all types of securities except for the excluded securities enumerated in paragraph (a)(1) of the rule. *See id.* at 10446. The definition of the term ''security'' in section 3(a)(10) of the Exchange Act covers, among others, equities, corporate bonds, unit investment trusts (''UITs''), mutual funds, exchange-traded funds (''ETFs''), American depository receipts (''ADRs''), security-based swaps, and options. *See id.* at 10446 n.83. Application of Rule 15c6–1(a) extends to the purchase and sale of securities issued by investment companies (including mutual funds), private-label mortgage-backed securities, and limited partnership interests that are listed on an exchange. *See id.* at 10446 nn.84–85.

[14] *See id.* at 10448–49.

[15] *See id.* at 10449.

[16] *See, e.g.,* letters from Jaime N. Calaf (Feb. 9, 2022) (''Calaf Letter''); James Kelley (Feb. 9, 2022) (''Kelley Letter''); Kyle (Feb. 9, 2022) (''Kyle 1 Letter''); Curtis Robinson (Feb. 9, 2022) (''Robinson 1 Letter''); Ryan, Business Owner (Feb. 9, 2022) (''Ryan 1 Letter''); L. Martin Stewart (Feb. 9, 2022) (''Stewart Letter''); Anthony LaBree (Feb. 10, 2022) (''LaBree Letter''); Nicolas Zach (Feb. 13, 2022) (''Zach Letter''); Richard Stauts (Feb. 14, 2022) (''Stauts Letter''); PressPage Entertainment Inc. (Feb. 15, 2022) (''PressPage Letter''); Peter Duggan, President, Securities Transfer Association (Apr. 1, 2022), at 2 (''STA Letter''); Kirsten Wegner, Chief Executive Officer, Modern Markets Initiative (Apr. 4, 2022), at 1 (''MMI Letter''); Hope Jarkowski, General Counsel, NYSE Group, Inc. (Apr. 6, 2022), at 1 (''NYSE Letter''); Keith Evans, Executive Director, Canadian Capital Markets Association (Apr. 9, 2022), at 1 (''CCMA April Letter''); Steven Wager, Chair, Americas Focus Committee, Association of Global Custodians (Apr. 11, 2022), at 3 (''AGC April Letter''); Stephen Hall, Legal Director and Securities Specialist, and Jason Grimes, Senior Counsel, Better Markets, Inc. (Apr. 11, 2022), at 1 (''Better Markets Letter''); Paul Conn, President, Global Capital Markets, and Claire Corney, Senior Managing Director, Regulatory & Market Initiatives, Global Capital Markets, Computershare Limited (Apr. 11, 2022), at 1 (''Computershare Letter''); Birgitta Siegel, Esq., Adjunct Professor of Law, Cornell Law School Securities Law Clinic (Apr. 11, 2022), at 1 (''Cornell Law Letter''); Murray Pozmanter, Managing Director, Head of Clearing Agency Services & Global Business Operations, The Depository Trust and Clearing Corporation (Apr. 11, 2022), at 2 (''DTCC Letter''); Joanna Mallers, Secretary, FIA Principal Traders Group (Apr. 11, 2022), at 1 (''FIA PTG Letter''); Robert Adams, Chief Operations Officer, National Financial Services LLC (Apr. 11, 2022), at 1 (''Fidelity Letter''); Gail C. Bernstein, General Counsel, Investment Adviser Association (Apr. 11, 2022), at 1 (''IAA April Letter''); Susan Olson, General Counsel, and Joanne Kane, Chief Industry Operations Officer, Investment Company Institute (Apr. 11, 2022), at 1 (''ICI Letter''); Jack Rando, Managing Director, The Investment Industry Association of Canada (Apr. 11, 2022), at 1 (''IIAC Letter''); Jennifer Han, Executive Vice President, Chief Counsel & Head of Regulatory Affairs, Managed Funds Association (Apr. 11, 2022), at 1 (''MFA Letter''); Joseph Kamnik, Chief Regulatory Counsel, The Options Clearing Corporation (Apr. 11, 2022), at 1 (''OCC Letter''); Fran Garritt, Director, Securities Lending & Market Risk, and Mark Whipple, Chairman, Committee on Securities Lending, Securities Lending Council of the Risk Management Association (Apr. 11, 2022), at 3 (''RMA Letter''); Joseph Barry, Senior Vice President and Global Head of Regulatory, Industry and Government Affairs, State Street Corporation (Apr. 11, 2022), at 3 (''State Street Letter''); Robert McBey, Chief Executive Officer, Wilson-Davis & Co., Inc. (Apr. 14, 2022), at 1 (''Wilson-Davis Letter''); Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. (Apr. 11, 2022), at 1 (''Virtu Financial Letter''); Christopher A. Iacovella, Chief Executive Officer, American Securities Association (Apr. 12, 2022), at 1 (''ASA Letter''); Thomas Price, Managing Director, and Lindsey Weber Keljo, Head—Asset Management Group, Securities Industry and Financial Markets Association (Apr. 13, 2022), at 1–2 (''SIFMA April Letter'').

[17] *See, e.g.,* AGC April Letter, *supra* note 16, at 3; ASA Letter, *supra* note 16, at 1; letter from Jaiden Baker (Feb. 19, 2022) (''Baker Letter''); Better Markets Letter, *supra* note 16, at 1; CCMA April Letter, *supra* note 16, at 1; Computershare Letter, *supra* note 16, at 1; Cornell Law Letter, *supra* note 16, at 2; DTCC Letter, *supra* note 16, at 2; FIA PTG Letter, *supra* note 16, at 1; Fidelity Letter, *supra* note 16, at 2; IAA April Letter, *supra* note 16, at 1; ICI Letter, *supra* note 16, at 1; IIAC Letter, *supra* note16, at 1; Kyle 1 Letter, *supra* note 16, at 1; LaBree Letter, *supra* note 16, at 1; MFA Letter, *supra* note 16, at 2; MMI Letter, *supra* note 16, at 1; NYSE Letter, *supra* note 16, at 1; OCC Letter, *supra* note 16, at 2; PressPage Letter, *supra* note 16, at 1; RMA Letter, *supra* note 16, at 3; Robinson 1 Letter, *supra* note 16, at 1; Ryan 1 Letter, *supra* note 16, at 1; SIFMA April Letter, *supra* note 16, at 3; STA Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 3; Stauts Letter, *supra* note 16, at 1; Stewart Letter, *supra* note 16, at 1; Wilson-Davis Letter, *supra* note 16, at 1; letter from Rebecca Womack (Feb. 18, 2022) (''Womack Letter''); *Virtu Financial Letter, supra note* 16, at 3; Zach Letter, *supra* note 16, at 1.

[18] *See, e.g.,* Calaf Letter, *supra* note 16; letter from Degen Mahdere (Feb. 17, 2022) (''Mahdere Letter''); letter from Adam Rathbone (Feb. 17, 2022) (''Rathbone Letter''); letter from Hunter Gage Seeton (Feb. 18, 2022) (''Seeton Letter''); letter from Sam Oakes (Feb. 19, 2022) (''Oakes Letter''); letter from Matthew Risse (Feb. 19, 2022) (''Risse Letter''); letter from Ryan Webster (Oct. 31, 2022) (''Webster Letter''). Several of the comment letters referred to ''T+0'' without explaining that term. However, the T+1 Proposing Release defines T+0 as settlement no later than the end of trade date. *See* T+1 Proposing Release, *supra* note 2, at 10436, 10438.

were silent as to the Commission's proposal to shorten the settlement cycle to T+1, but expressed the view that a T+0 settlement cycle should be implemented either immediately or as soon as possible.[19]

Commenters supporting the Commission's proposal to shorten the standard settlement cycle to T+1 cited a number of benefits that a T+1 settlement cycle would deliver to market participants. For example, comment letters supporting a move to T+1 stated that shortening the settlement cycle to T+1 would result in reductions to existing levels of risk to central counterparties (''CCPs'') and market participants (including credit, market and liquidity risk),[20] lower margin requirements,[21] improved capital liquidity,[22] improvements to post-trade processing and operational efficiency,[23] increased financial stability,[24] and reduced systemic risk in the financial system.[25]

In addition, several comment letters stated that shortening the settlement cycle to T+1 would benefit retail investors.[26] For example, one commenter stated that retail investors would benefit from a move to T+1 through increased certainty, safety, and security in the financial system; access to the proceeds, or purchases, of their securities transactions a day earlier; and aligning the settlement cycles for ETF transactions (which now settle on T+2) with the settlement cycle for mutual funds (which typically settle on T+1).[27] Another commenter similarly stated that investors would benefit from earlier access to the proceeds of their securities transactions if the settlement cycle is shortened to T+1.[28]

The Commission also received comment letters that raised concerns regarding the Commission's proposal to shorten the standard settlement cycle to T+1.[29] These commenters, some of which were supportive of shortening the settlement cycle as a general matter, raised concerns about the prospective impact of mismatched settlement cycles across global markets that would result if the settlement cycle in the U.S. is shortened to T+1 without global coordination and harmonization of settlement cycles.[30] For example, a comment letter submitted by an industry association representing the alternative investment industry stated that the T+1 Proposing Release ''raises considerable risks for asset managers with primary or significant exposure to markets that will remain at T+2.'' [31] The comment letter further stated that ''[i]n absence of further global coordination, the resulting market misalignment from the move to T+1 poses a number of harmful unintended consequences to these asset managers, their counterparties and overall market health and stability.'' [32] The commenter's letter references specifically ''misalignment concerns'' relating to FX settlement risk,[33] international banking and coordination issues, and collateral/liquidity risk.[34]

With respect to FX settlement risk, the commenter stated that accelerating the U.S. settlement cycle to T+1 raises the risk that transaction funding dependent on FX ''may not occur on time.'' [35] The commenter further stated that alternative sources of funding for U.S. trades on T+1 may therefore need to be in place, which may increase costs and create allocation inefficiencies that may dissuade participation in U.S. markets.[36]

[19] *See, e.g.,* letter from Mark C. (Feb. 19, 2022) (''Mark C. Letter''); letter from Saul Nevarez (Feb. 19, 2022) (''Nevarez Letter''); letter from Clinton Lawler (Feb. 19, 2022) (''Lawler Letter''); letter from Alex McKay (Feb. 19, 2022) (''McKay Letter'').

[20] *See, e.g.,* DTCC Letter, *supra* note 16, at 2–3; Fidelity Letter, *supra* note 16, at 2; IAA April Letter, *supra* note 16, at 1; ICI Letter, *supra* note 16, at 1, 3; MFA Letter, *supra* note 16, at 1; OCC Letter, *supra* note 16, at 2; RMA Letter, *supra* note 16, at 3; SIFMA April Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[21] *See, e.g.,* Cornell Law Letter, *supra* note 16, at 3; DTCC Letter, *supra* note 16, at 2–3; Fidelity Letter, *supra* note 16, at 2; MMI Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[22] *See, e.g.,* DTCC Letter, *supra* note 16, at 2–3; MMI Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[23] *See, e.g.,* Cornell Law Letter, *supra* note 16, at 3; DTCC Letter, *supra* note 16, at 2–3; IAA April Letter, *supra* note 16, at 1; RMA Letter, *supra* note 16, at 3; State Street Letter, *supra* note 16, at 4.

[24] *See, e.g.,* ICI Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2.

[25] *See, e.g.,* Fidelity Letter, *supra* note 16, at 2; MFA Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2; RMA Letter, *supra* note 16, at 3;

[26] *See, e.g.,* Better Markets Letter, *supra* note 16, at 2–3; Fidelity Letter, supra note 16, at 2; IIAC Letter, *supra* note 16, at 1; LaBree Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2; Robinson 1 Letter, *supra* note 16, at 1; Ryan 1 Letter, *supra* note 16, at 1; Stauts Letter, *supra* note 16, at 1; letter from Tate Winter (Feb. 17, 2022) (''Winter Letter'').

[27] *See* Fidelity Letter, *supra* note 16, at 2; *see also* ICI Letter, *supra* note 16, at 3 (stating that a T+1 settlement cycle would enhance funds' cash and liquidity management; given that fund shares typically settle on a T+1 basis, a shorter settlement cycle would help align the settlement of a fund's portfolio securities and the settlement of its shares).

[28] *See* Cornell Law Letter, *supra* note 16, at 3 (''If [the Commission's T+1 proposal] were adopted, buyers and sellers would have access to their proceeds an entire day earlier relative to the T+2 settlement cycle. If the public comments submitted to date are any indication, this is of paramount concern to the lay investor.'').

[29] *See, e.g.,* letters from Jiří Król, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association (Apr. 11, 2022), at 2 (''AIMA Letter'') (commending the Commission's intended efforts to reduce risk in the U.S. settlement cycle and improve efficiency in post-trade processing); Kristin Swenton Hochstein et al., International Securities Association for Institutional Trade Communication (Apr. 8, 2022), at 2–7 (''ISITC Letter'') (not advocating for or against shortening the U.S. settlement cycle to T+1, but identifying certain challenges associated with moving to T+1); Scott Pintoff, General Counsel, MarketAxess Holdings Inc. (Apr. 11, 2022), at 1 (''MarketAxess Letter'') (generally favoring a shortening of the standard settlement cycle for most bond transactions from T+2 to T+1); State Street Letter, *supra* note 16, at 4; Virtu Financial Letter, *supra* note 16, at 2–3.

[30] Several of the comment letters that raised concerns regarding the Commission's proposal to shorten the settlement cycle to T+1 also raised concerns regarding proposed Rule 15c6–2. Those comments are discussed separately in Part III.B below.

[31] AIMA Letter, *supra* note 29, at 2. The AIMA Letter also cites to a letter AIMA submitted to Commission staff on October 27, 2021, which further details the concerns raised in the AIMA Letter. AIMA's 2021 submission to Commission staff was resubmitted to the Commission as an Annex to the AIMA Letter.

[32] *Id.*

[33] The comment letters that use the term ''FX'' do not define the term, but ''FX'' is commonly used to refer to foreign currency exchange. Market participants often rely on FX trades executed in the ''spot'' markets in order to fund securities transactions in the U.S. markets that settle in U.S. dollars, and the settlement cycle for spot FX transactions is typically T+2. However, spot transactions in certain FX pairs (*e.g.,* U.S. dollars vs. Canadian dollars) settle on T+1.

[34] AIMA Letter, *supra* note 29, at 5–6. The commenter explained its concerns relating to international banking and coordination issues by stating that ''the rigid deadlines of banking systems pose a significant risk, as do simple time zone or calendar differences that otherwise can be accommodated by a T+2 settlement cycle.'' *Id.* at 5. The commenter further stated that foreign banking deadlines and cutoff times for transaction processing in related markets must be carefully re-examined to ensure activity can be harmonized in an accelerated U.S. settlement framework. *Id.*

[35] *Id.* The commenter further stated that settlement of FX transactions generally occurs on T+2, ''although the period of irrevocability—between the unilateral cancellation deadline for the sold currency and actual receipt of the bought currency—can extend well beyond T+1.'' *Id.*

[36] *Id.* The commenter further stated that ''unilateral cancelation deadlines may need to be considered'' for FX transactions. *Id.* The length of such deadlines may impact when an FX transaction can be settled, in turn affecting the time it may take to secure funding for a securities transaction. The T+1 Report also states that such unilateral cancelation deadlines may need to be considered, and discusses how these deadlines may impact asset managers if the settlement cycle for securities transactions is shortened to T+1. *See* T+1 Report, *infra* note 61, at 17. The term ''unilateral cancelation deadline'' generally refers to the point in time after which a bank is no longer guaranteed that it can recall, rescind or cancel (with certainty) a previously submitted payment instruction. This deadline varies depending on the currency pair being settled, correspondent payment system practices, and operational, service and legal arrangements. *See* Bank for International Settlements, Supervisory Guidance for Managing Risks Associated with the Settlement of Foreign Exchange Transactions (Feb. 2013), *available at https://www.bis.org/publ/bcbs241.pdf. See infra* notes 617–619 and accompanying text (further discussing the anticipated economic effects resulting from mismatched settlement cycles).

With respect to the commenter's concerns regarding collateral and liquidity risks, the commenter stated that the above-described FX and coordination issues threaten asset managers' ability to ensure funding is available in time to settle their U.S. trades on T+1.[37] According to the commenter, uncertainty regarding collateral for settlement may mean that foreign asset managers would need to redeem money market funds to meet their financing needs, or forego transacting in U.S. markets in order to comply with the accelerated settlement requirements.[38] Ultimately, the commenter stated, trade financing issues will lead to both significantly lower trading volume and lower overall liquidity, which pose a very real risk to overall market health and stability.[39]

Another commenter was concerned that there may not be sufficient time for investment advisers to match foreign currency amounts to settle all trades on T+1, citing various factors that would make it costly and difficult for investment advisers to execute FX after the U.S. market close.[40] This commenter also stated that because FX transactions largely settle on a T+2 basis, market participants that seek to fund a cross-border securities transaction with the proceeds of an FX transaction would be required to settle the securities transaction before the proceeds of the FX transaction become available and pre-fund these securities transactions, which would potentially adversely impact client performance and increase operating and settlement risk for advisers. The commenter said that while both domestic and internationally based investment advisers would be impacted by these issues, non-U.S.-based investment advisers would face additional expenses because they would need to set up an FX trading and settlement presence in the U.S., or add staff abroad to create, execute, and settle FX transactions to meet a T+1 timeline.[41]

Another commenter that operates a broker-dealer and an electronic trading platform for corporate bonds stated that it had ''serious reservations regarding the impact the proposed amendments to Rule 15c6–1(a) and Rule 15c6–2 will have on cross border trading unless, and until, other global financial markets also shorten their settlement cycle.''[42] Specifically, the commenter stated that if the U.S. settlement cycle is shortened to T+1 while other major global financial centers remain on a T+2 settlement cycle, ''there will be increased operational cost and significant settlement risks associated with multi-leg cross border transactions.''[43]

The commenter further stated that it expects mismatched settlement cycles would result in increased financing costs associated with transactions in which a U.S. market participant is selling to a cross-border participant because ''we will be forced to receive (and pay for) a securities position on T+1 for the U.S. leg, but generally be unable to onward deliver the position on the foreign leg until T+2.''[44] In this scenario, the commenter stated that it would need to fund the position until the next settlement cycle.[45]

Additionally, the commenter stated its expectation that there will be a significant number of settlement fails when the U.S. participant is buying bonds and the cross-border participant is unable to deliver the bonds until T+2.[46] The commenter further argued that if the Commission's T+1 proposal is adopted and other financial markets do not move in lock-step, the increase in financing costs and settlement fails in connection with cross-border transactions may force broker-dealers to decrease or cease offering cross-border services to their clients.[47] Lastly, the commenter argued that any decrease or cessation of cross-border trading ultimately will reduce liquidity for U.S. investors.[48] For these reasons, the commenter encouraged the Commission to work with international regulators to coordinate a move to T+1 settlement on a global basis if possible.[49]

Another commenter stated that there may not be sufficient time for investment advisers to match foreign currency amounts to settle all trades on T+1.[50] In particular the comment highlighted the lack of time between the closure of the equity markets (at 4:00 p.m. ET in the U.S.) and the time when U.S.-based FX trading desks close for the evening (usually an hour or so later).[51] The commenter also discussed the reasons it believed that ''Far East'' trading desks may not seamlessly take over after the close of U.S.-based FX trading desks.[52] According to the commenter, these issues may impact both domestic and internationally based investment advisers.[53] However, in the commenter's view, non-U.S. based investment advisers will face additional expenses, as they will either be forced to set up an FX trading and settlement presence in North America (or Asia) or add staff abroad to create, execute, and settle FX transactions to meet a T+1 timeline.[54]

Finally, the commenter suggested certain ''options'' for actions that could be taken to reduce disruption in the FX markets. While recognizing that some of these options would be ''troublesome to implement,'' the commenter stated that two would be the most effective in alleviating the commenter's concerns.[55] First, the commenter suggested that appropriate market authorities mandate a change in ''the official equity trading day'' for U.S. markets to close one hour earlier, at 3:00 p.m. rather than 4:00 p.m. ET, which would provide firms more time to match trades and ensure the settlement FX is in place for the following day, without negatively impacting liquidity and trading volume.[56] Second, the commenter stated that the Commission could allow for a mismatch of FX settlement dates as a valid reason for T+2 settlement arrangements ''without [such arrangements] breaching an investment adviser's best execution obligation.''[57]

In the proposing release, the Commission asked commenters whether efforts to shorten the standard settlement cycle to T+1 is a logical step on the path to T+0 settlement, or would moving to a T+1 standard settlement cycle require investments or processes that would be outdated or unnecessary

[37] AIMA Letter, *supra* note 29, at 5.

[38] *Id.*

[39] *Id.*

[40] *See* IAA October Letter, *infra* note 222, at 3 (observing that there are circumstances in which a U.S.-based FX trading desk will switch over to its Asia-based FX trading desk upon the U.S. market close to provide ongoing liquidity, but not on Friday evenings, and certain asset owners and managers, including Sovereign Wealth Funds, only trade from their country of domicile).

[41] *Id.* at 4 (suggesting certain actions the Commission could take to reduce disruption in FX markets, such as by (i) working with other regulators and market participants to support the move to T+1 by, among other things, modifying the FX and equity trading day(s) in the U.S., and (ii) ''allow[ing] for a mismatch of FX settlement dates as a valid reason for T+2 settlement arrangements without it breaching an investment adviser's best execution obligation'').

[42] MarketAxess Letter, *supra* note 29, at 1.

[43] *Id.* at 2.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] Letter from Suzanne Quinn, Head of North America Compliance, Ballie Gifford Overseas Limited (Nov. 17, 2022), at 1 (''Ballie Gifford Letter'').

[51] *Id.*

[52] *Id.* at 1–2.

[53] *Id.* at 2.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.; see also supra* note 41 and accompanying text (discussing the same, including other related recommendations from the IAA).

in a T+0 environment.[58] Although no commenters discussed whether moving to a T+1 standard settlement cycle would require investments or processes that would be outdated or unnecessary in a T+0 environment, as discussed below, the Commission received numerous comments relating to T+0 settlement.

Several of the commenters that supported moving to a T+1 settlement cycle also stated that moving to a T+0 settlement cycle, or instantaneous settlement, is either not achievable or not practical in the near term.[59] These commenters cited several challenges associated with a prospective move to a T+0 settlement cycle,[60] including in the case of several comment letters, many of the same challenges that were cited in the ''T+1 Report,'' which the Commission discussed in the T+1 Proposing Release.[61] For example, one commenter stated that moving to T+0 ''would require the redesign of many securities processing functions, including [i]nstitutional [t]rade [p]rocessing, ETFs processing, options, margin investing, securities lending, FX markets, and global settlements across jurisdictions to meet the regulatory, operational, and contractual requirements.'' [62] Another commenter stated that:

> [I]mplementing T+0 as the required standard settlement cycle across the industry remains a significant undertaking that would require foundational changes to the way securities trade and settle today. Moreover, moving the entire industry to a T+0 standard settlement cycle would necessitate significant changes in industry conventions and major investments in automating processes and technology that will greatly exceed similar investments needed for T+1.[63]

Another commenter argued that moving to T+0 would require a ''rewrite'' of not only the current clearing and settlement infrastructure, but also the associated banking, securities custodian, and money market systems that are critical components of the clearing and settlement ecosystem.[64] This commenter further stated that moving to T+0 settlement would potentially require implementation of real-time currency movements during hours of the day at which such processes are not feasible.[65] In particular, the commenter argued, ''[n]ot only would this require major system upgrades, but as critical components of the settlement process, banks, wire systems, custodians, lenders, and money market funds, along with related staff, would need to be available well into the evening.'' [66]

Another commenter stated that T+0 settlement would present logistical concerns around borrowing and lending and would likely introduce challenges for batch processing.[67] More specifically, this commenter stated that while it is possible that trades could be netted throughout the day, it is unlikely that batch processing could capture all trades by the market close, and such netting could lead to multiple intraday margin calls by clearing agencies.[68] The same commenter stated that in a T+0 settlement environment it would be very difficult for investment advisers to process real-time trade allocations.[69] Additionally, the commenter argued that prime brokers would be required to overhaul their processes and technology to capture allocations, calculate margin requirements, ensure margin accuracy, and facilitate trade reporting and disaffirmations.[70] Finally, the commenter stated that moving to T+0 would require ''complete dematerialization of securities.'' [71]

Other commenters argued that any move to shorten the settlement cycle to T+0 should be considered only after a successful transition to T+1.[72] One such commenter stated that once the industry has established the full scope of work required for T+1 and is actively progressing towards implementation, the industry should conduct a ''full review'' to identify the scope of changes that are needed to effectuate a move to a T+0 standard settlement cycle.[73]

Another commenter stated that moving 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,[74] but believed that the transition to a T+1 settlement cycle would be a 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.[75] However, according to the commenter, industry discussions on implementing T+0 at this time ''may inadvertently divert resources from focusing on the requirements and issues related to delivering T+1 in the near future.'' [76]

Those commenters supporting an immediate move to T+0 or instantaneous settlement neither explained how either T+0 settlement or instantaneous settlement could be implemented, nor addressed the impediments to T+0 settlement that were cited by several of the commenters who argued that T+0 settlement is not achievable or not practical in the near term. Nor did the comment letters supporting a T+0 settlement cycle or

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[58] *See* T+1 Proposing Release, *supra* note 2, at 10450.

[59] *See, e.g.,* DTCC Letter, *supra* note 16, at 6 (''[W]e do not believe the industry is currently ready to move to a T+0 standard settlement cycle . . .''); FIA PTG Letter, *supra* note 16, at 1–2; MMI Letter, *supra* note 16, at 3 (expressing commenter's concern that a move to T+0 would be potentially infeasible in the short term); NYSE Group Letter, *supra* note 16, at 2 (expressing commenter's view that T+0 settlement cycle is not practical in the near term); OCC Letter, *supra* note 16, at 4 (''OCC agrees with the consensus view reflected in [the T+1 Report] that same-day settlement is not achievable in the short-term, and that moving towards shortening the settlement cycle to T+0 would require an overhaul of the U.S. clearing and settlement infrastructure.''); SIFMA April Letter, *supra* note 16, at 15–20 (expressing commenter's view that T+0 settlement is not practical in the near term); Virtu Financial Letter, *supra* note 16, at 3–4 (''T+0 [settlement] is not feasible or attainable at this time.'').

[60] *See, e.g.,* DTCC Letter, *supra* note 16, at 5; NYSE Group Letter, *supra* note 16, at 2 (''T+0 settlement cycle would pose significant challenges to the industry, including eliminating the benefits of netting for settling trades, requiring that every transaction be funded instantly and individually, and additional complexities for foreign investors, options, ETFs and futures.''); SIFMA April Letter, *supra* note 16, at 16 (describing numerous challenges associated with moving to T+0 settlement); Virtu Financial Letter, *supra* note 16, at 3–4 (describing various challenges associated with moving to T+0 settlement); *see also* State Street Letter, *supra* note 16, at 5–10 (providing high-level observations on the implications of same-day settlement for various operational processes and investment products which are central to the custody bank business model).

[61] *See* T+1 Proposing Release, *supra* note 2, at 10438, 10445 (citing to Deloitte & Touche LLP, the Depository Trust and Clearing Corporation, the Investment Company Institute, and Securities Industry and Financial Markets Association, Accelerating the U.S. Securities Settlement Cycle to T+1 (Dec. 1, 2021) (''T+1 Report''), *https://www.sifma.org/wp-content/uploads/2021/12/Accelerating-the-U.S.-Securities-Settlement-Cycle-to-T1-December-1-2021.pdf*).

[62] SIFMA April Letter, *supra* note 16, at 16 (quoting T+1 Report, *supra* note 61).

[63] DTCC Letter, *supra* note 16, at 5.

[64] FIA PTG Letter, *supra* note 16, at 1.

[65] *Id.*

[66] *Id.* at 1–2.

[67] *See* Virtu Financial Letter, *supra* note 16, at 3–4.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *See, e.g.,* AGC April Letter, *supra* note 16, at 3–4; DTCC Letter, *supra* note 16, at 5; *see also* letter from Isabelle S. Corbett, Global Head of Government Relations, R3 LLC, at 3 (''R3 Letter'') (supporting the view that ''T+0 does not make sense today,'' and stating that ''further compression from T+1 should continue to be considered''); ASA Letter, *supra* note 16, at 3 (arguing that the market is not prepared to move to T+0, and urging the Commission to continue to study and solicit public feedback on moving to T+0 rather than using the Commission's T+1 proposal as a vehicle to accelerate that shift).

[73] *See, e.g.,* DTCC Letter, *supra* note 16, at 5.

[74] AGC April Letter, *supra* note 16, at 3.

[75] *See id.* at 3–4.

[76] *Id.* at 4.

instantaneous settlement explain how a settlement cycle shorter than T+1 would reduce overall levels of risk in the clearance and settlement system. These letters generally consisted of declaratory statements to the effect that either T+0 or instantaneous settlement is achievable now and should be implemented without delay, while offering no factual support for these views.[77]

2. Securities Excluded From Requirements Under Exchange Act Rule 15c6–1

The Commission also received comment letters discussing certain types of securities that the respective commenters believed should be excluded from the requirements under Exchange Act Rule 15c6–1, whether through amendment to the text of the rule or via separate exemptive relief. Two of these commenters discussed whether Rule 15c6–1 should apply to security-based swap transactions [78] and both expressed the view that the rule should not apply to such transactions.[79] One of the two commenters stated that Rule 15c6–1 is ''inapt'' with respect to security-based swap transactions, which are ''generally bilateral and executory in nature,'' meaning that there are numerous terms that the parties typically agree to fulfill at later dates.[80] This commenter further stated that ''the [Dodd-Frank Wall Street Reform and Consumer Protection Act (''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.'' [81] Because security-based swaps are already subject to a comprehensive regulatory regime, the commenter stated, these securities should not be subject to further regulation under the Commission's proposal.[82]

The same commenter highlighted certain ''key differences'' between security-based swaps and other types of securities.[83] In particular, the commenter stated that 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.[84] 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.[85] For all of these reasons, the commenter argued, the Commission should provide an express exclusion for security-based swaps, and ''at the very least, any doubt caused by the reference in the [T+1 Proposing release] to security-based swaps should be resolved by [the Commission] clarifying that counterparties to such instruments, who generally agree to specific payment and settlement terms in writing, benefit from the existing override provision in [Rule 15c6–1(a)].'' [86]

The other comment letter discussing the prospective application of Rule 15c6–1 to security-based swaps argued that the rule ''should not apply to security-based swap transactions effected by a 'security-based swap dealer,' which is dually registered as a broker-dealer.'' [87] In support of this argument, the commenter stated that security-based swap transactions are typically bilateral transactions between sophisticated counterparties who deal directly with each other, and which are subject to unique capital, margin, and segregation requirements.[88] Thus, according to the commenter, ''there is no principled basis to apply Rule 15c6–1 to security-based swap transactions solely for the reason that a security-based swap dealer is also registered as a broker-dealer.'' [89] Instead, the commenter argued, the Commission should modify the rule to exempt, or further exemptive relief should be provided for, security-based swaps ''as noted in the [T+1 Proposing Release].'' [90]

3. Proposed Deletion of Rule 15c6–1(c)

The Commission received one comment letter responding to the proposed deletion of paragraph (c) of Rule 15c6–1, and the commenter recommended that paragraph (c) be retained in a modified form, rather than being deleted.[91] Specifically, the commenter recommended 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.[92] Under the commenter's recommended modification, Rule 15c6–1(c) would provide a ''fallback'' to parties without an explicit agreement at the time of the transaction to settle on T+2 if unforeseen circumstances interfere with either party's ability to conform to a T+1 settlement date.[93] The commenter also supported the continued retention of paragraph (d) of Rule 15c6–1, stating that paragraph (d) is ''critically important for debt and preferred equity offerings.'' [94]

In support of the view that the Commission should retain a modified version of Rule 15c6–1(c), the commenter stated that reliance on paragraphs (a) and (d) would be insufficient to prevent transactions for securities priced after 4:30 p.m. ET from failing to settle.[95] Specifically, the commenter stated that while paragraphs (a) and (d) allow parties to agree to a longer settlement cycle, in order for the parties to avail themselves of that extended settlement date they must reach that agreement at the time of the transaction.[96]

The commenter further stated that, ''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 of the offering, in practically all such instances, the pricing of the offering would be delayed.'' [97] According to the commenter, the parties are ''by definition'' unable to foresee ''unanticipated issues'' prior to pricing of the offering.[98]

[77] *See, e.g.,* Calaf Letter, *supra* note 16; Clemens Letter, *supra* note 18; Mahdere Letter, *supra* note 18; Nevarez Letter, *supra* note 19; Oakes Letter, *supra* note 18; Rathbone Letter, *supra* note 18; Seeton Letter, *supra* note 18.

[78] *See* MFA Letter, *supra* note 16, at 2; SIFMA April Letter, *supra* note 16, at 11–12. As noted in the T+1 Proposing Release, the Commission previously issued an order that exempted security-based swaps from the requirements under Rule 15c6–1, and subsequently extended that exemptive relief on several occasions, but the exemptive relief that previously covered compliance with Rule 15c6–1 expired in 2020. *See* T+1 Proposing Release, *supra* note 2, at 10446 n.83.

[79] *See* MFA Letter, *supra* note 16, at 2; SIFMA April Letter, *supra* note 16, at 11–12. In addition to the comment letters discussing the prospective application of Rule 15c6–1 to security-based swap transactions, the Commission received a small number of comment letters that recommended the continuation and/or expansion of certain regulatory relief from Rule 15c6–1 previously provided by the Commission in certain exemptive orders. These comments are discussed in Part II.B.5, which follows discussion of the comment letters that relate more directly to the text of Rule 15c6–1.

[80] SIFMA April Letter, *supra* note 16, at 11.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] MFA Letter, *supra* note 16, at 2.

[88] *See id.*

[89] *Id.*

[90] *See id.; see also id.* at n.11 (citing to T+1 Proposing Release, *supra* note 2, at 10446 n.83).

[91] *See* SIFMA April Letter, *supra* note 16, at 9–11.

[92] *See id.* at 10.

[93] *Id.* at 10–11.

[94] *Id.* at 11.

[95] *See id.* at 10.

[96] *See id.*

[97] *Id.*

[98] *Id.*

Thus, the commenter stated that paragraphs (a) and (d) of Rule 15c6–1 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.[99] For example, according to the commenter, ''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.'' [100] Finally, in support of the commenter's belief that eliminating paragraph (c), together with a move to T+1, would lead to increased failures to settle trades with respect to firm commitment underwritings, the commenter cited the limited timeframe that would be available ''to resolve issues'' prior to settlement on T+1.[101]

4. Retention of Exchange Act Rule 15c6–1(d)

Paragraph (d) of Rule 15c6–1 provides that for purposes of paragraphs (a) and (c) of the rule, parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to such date for all securities sold pursuant to such offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.[102] The proposed rule text did not make any changes to paragraph (d) of Rule 15c6–1 other than technical conforming changes that would have been necessary if the Commission adopted the proposed deletion of paragraph (c) of the rule.[103]

The Commission received one comment letter supporting the retention of paragraph (d) because, according to the commenter, it is ''critically important for debt and preferred equity offerings.'' [104] However the comment letter did not further explain why paragraph (d) is important for such offerings.

5. Exemptive Orders Under Exchange Act Rule 15c6–1(b)

The T+1 Proposing Release stated that, pursuant to Rule 15c6–1(b), the Commission has granted certain exemptions from the requirements under Rule 15c6–1, including an exemption for securities that do not have facilities for transfer or delivery in the U.S. [105] The T+1 Proposing Release requested public comment on whether the conditions set forth in the Commission's exemptive order for securities traded outside the U.S. are still appropriate, and whether the exemption should be modified.[106] The Commission received several comment letters discussing whether the Commission should continue the exemption for foreign securities if the settlement cycle were shortened to T+1, and all of these commenters urged the Commission to retain the exemption, and/or recommended that the Commission make certain modifications to the exemption that would expand the scope of the exemption.[107]

One commenter recommended that the Commission retain this exemption and explicitly state in the adopting release that the permissible settlement period for securities traded outside of the U.S. should be defined by the local market.[108] The commenter stated that 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.[109]

Another commenter stated that the exemption for foreign securities should be retained and modified to address ''certain product misalignment matters.'' [110] This commenter observed that in many non-U.S. markets today, trades settle on a T+2 basis.[111] Therefore, the commenter stated, 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.[112]

Additionally, according to the commenter, retaining the exemption for transactions in foreign securities in non-U.S. markets would not address the misalignment of settlement cycles between U.S. securities and non-U.S. securities that impacts U.S. securities that are exchangeable for a foreign security or a basket of foreign securities.[113] The commenter highlighted in particular ADRs, and ETFs with an underlying basket of foreign securities, which according to the commenter, illustrate this misalignment.[114]

With respect to ADRs, the commenter stated that 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.[115] According to the commenter, 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.[116] The result, the commenter stated, 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.[117] Additionally, the commenter argued, 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, and a knock-on effect could be to increase the incidence of buy-ins as well.[118]

Separately, the same commenter argued that the ETF creation/redemption process is impacted by the misalignment of global securities transaction settlement cycles where the basket of securities underlying an ETF includes foreign securities.[119] In explaining this view, the commenter observed that ETF shares are created by an authorized participant (''AP'') depositing the daily creation basket of shares (and/or cash) with the ETF and, 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.'' [120] The commenter further stated that if foreign securities comprise some or all of the ETF creation basket, the AP will

[99] *See id.*

[100] *Id.*

[101] *Id.*

[102] *See* 17 CFR 240.15c6–1(d).

[103] *See* T+1 Proposing Release, *supra* note 2, at 10448–49.

[104] *See* SIFMA April Letter, *supra* note 16, at 11.

[105] *See* T+1 Proposing Release, *supra* note 2, at 10446–47 (citing to Exchange Act Release No. 35750 (May 22, 1995), 60 FR 27994, 27995 (May 26, 1995)).

[106] *See* T+1 Proposing Release, *supra* note 2, at 10451.

[107] *See* Fidelity Letter, *supra* note 16, at 5; SIFMA April Letter, *supra* note 16, at 1, 7–9; Virtu Financial Letter, *supra* note 16, at 2; *see also* ICI Letter, *supra* note 16, at 4.

[108] *See* Fidelity Letter, *supra* note 16, at 5.

[109] *See id.*

[110] SIFMA April Letter, *supra* note 16, at 7–9.

[111] *Id.* at 7.

[112] *See id.*

[113] *See id.* at 8.

[114] *See id.* As noted in the T+1 Proposing Release, under the Commission's existing 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. *See* T+1 Proposing Release, *supra* note 2, at 10446.

[115] *See* SIFMA April Letter, *supra* note 16, at 8.

[116] *See id.*

[117] *See id.*

[118] *See id.*

[119] *See id.*

[120] *Id.*

typically need to purchase those securities in the local market.[121]

Another commenter urged the Commission to ''exempt from T+1 settlement'' U.S.-listed ETFs with baskets that contain foreign securities and ADRs.[122] In support of this recommendation, the commenter stated that the misalignment in settlement cycles between the U.S. and foreign jurisdictions that continue to settle on a T+2 basis, coupled with time zone differences, may increase certain risks, such as failed trades, accrual differences, net asset value miscalculations, and investment guideline breaches. The same commenter stated that due to the resulting misalignment in settlement cycles between the U.S. and foreign markets upon transitioning to T+1, an ADR provider may incur borrowing and other costs related to the underlying foreign security to facilitate T+1 settlement of the ADR.[123] According to the commenter, these costs would likely be passed down to investors and thus make it more expensive to obtain investment exposure to foreign markets.[124]

As discussed in the T+1 Proposing Release, the Commission has also previously granted a separate exemption from Rule 15c6–1 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) 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 (''Securities Act'').[125] In granting this exemption, the Commission recognized that ''the mechanics of purchases and redemptions of insurance securities products are distinct from those of other securities and that, because of the time required to complete necessary preparations, such transactions typically require more protracted settlement periods,'' and that ''compliance with the unique requirements of state and Federal law, as well as of the particular administrative procedures, applicable to insurance securities products demands additional time beyond the standard settlement process.'' [126] The T+1 Proposing Release requested public comment on whether the conditions set forth in the exemptive order for insurance products continued to be appropriate, or if they should be modified.

The three commenters that discussed this exemption uniformly agreed that the conditions and considerations set forth in the Insurance Products Exemption Order apply as much today, if not with greater force, as when the Commission adopted the exemption in 1995 (and which it left in place in 2017), and that the exemption should be preserved.[127] In support of this view, one commenter said it was not aware of any material change of circumstances that would warrant a change.[128] Another commenter observed that the same administrative processes and regulatory requirements under state and Federal law that warranted the insurance products exemption were even more relevant for T+1 since insurance products have only grown more complex since the industry transitioned to T+2 in 2017.[129]

C. Final Rule and Discussion

1. Amendment to Exchange Act Rule 15c6–1(a)

The Commission is amending paragraph (a) of Exchange Act Rule 15c6–1 as proposed. Rule 15c6–1(a) will prohibit broker-dealers from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, 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. Subject to the exceptions enumerated in paragraphs (a) and (b) of the rule, the prohibition in paragraph (a) of Rule 15c6–1 applies to all securities. However, as discussed in Part II.C.3 below, the Commission is amending paragraph (b) of Rule 15c6–1 to exclude security-based swaps from the requirements under paragraphs (a) and (c) of the rule.

The Commission's reasons for amending Rule 15c6–1(a) to shorten the standard settlement cycle to T+1 are consistent with those articulated in the T+1 Proposing Release, [130] and many of the comment letters submitted in response to that release. First, the Commission continues to believe that shortening the standard settlement cycle to T+1 would result in a reduction in the number and total value of unsettled trades that exist at any point in time. Assuming that trading volume remains constant, shortening the standard settlement cycle to T+1 should also decrease the total market value of all unsettled trades in the U.S. clearance and settlement system. This reduction in the number and total value of unsettled securities transactions should result in a reduction in market participants' overall exposure to market risk that arises from such transactions.

As explained in the T+1 Proposing Release, the Commission believes that shortening the standard settlement cycle to T+1 should also reduce CCP exposure to credit, market, and liquidity risk arising from its obligations to its participants, promoting the stability of the CCP and thereby reducing the potential for systemic risk to transmit through the financial system.[131] Reducing these risks to the CCP would enable the CCP to reduce the overall size of the financial resources that the CCP requires of its participants, lowering costs to the CCP's participants, and potentially their customers (*i.e.,* other market participants and investors).

As further explained in the T+1 Proposing Release, in periods of market stress, liquidity demands imposed by the CCP on its participants, such as in the form of intraday margin calls, can produce procyclical effects that reduce overall market liquidity.[132] The T+1 Proposing Release further stated that reducing the CCP's liquidity exposure by shortening the settlement cycle can

[121] *See id.*

[122] *See* ICI Letter, *supra* note 16, at 4; *see also* Virtu Financial Letter, *supra* note 16, at 2 (recommending that for primary creations and redemptions alternative settlement date options be available so the foreign security basket and the U.S. ETF settlement can be ''in sync'').

[123] *See id.*

[124] *See id.*

[125] *See* T+1 Proposing Release, *supra* note 2, at 10447.

[126] Exchange Act Release No. 35815 (June 6, 1995), 60 FR 30906, 30907 (June 12, 1995) (''Insurance Products Exemption Order'').

[127] *See* letter from Eversheds Sutherland (US) LLP for the Committee of Annuity Insurers (Apr. 11, 2022), at 1–3; (''CAI Letter''); Fidelity Letter, *supra* note 16, at 5–6; SIFMA April Letter, *supra* note 16, at 9. These commenters also cited to comment letters that had been submitted in response to the T+2 Proposing Release in support of retaining the Insurance Products Exemption Order.

[128] *See* SIFMA April Letter, *supra* note 16, at 9 (stating that ''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''). This statement appears to collectively reference the exemption for insurance products, as well as the exemption for securities that do not have facilities for transfer and delivery in the U.S., both of which were issued in 1995.

[129] *See* Fidelity Letter, *supra* note 16, at 6.

[130] *See* T+1 Proposing Release, *supra* note 2, at 10447–49.

[131] *See id.* at 10448.

[132] *See id.*

help limit this potential for procyclicality, enhancing the ability of the CCP to serve as a source of stability and efficiency in the national clearance and settlement system.[133]

Shortening the standard settlement cycle to T+1 also would enable investors to access the proceeds of their securities transactions sooner than they are able to in the current T+2 environment. Specifically, in a T+1 environment, sellers would have access to cash proceeds one day sooner and buyers would see purchased securities in their accounts one day earlier relative to a T+2 standard settlement cycle.

Finally, market participants have already taken significant steps toward identifying the industry requirements and timelines for moving to T+1, and have made substantial progress in terms of planning such a move.[134] Due to these efforts, the Commission believes that a successful move to T+1 settlement can occur by the compliance date,[135] and the Commission believes that delaying such a move would allow undue risk to continue to exist in the U.S. clearance and settlement system.

In response to the comment letters focusing on the challenges and costs associated with the prospective misalignment of securities settlement cycles that may follow a move to T+1 in the U.S.,[136] the Commission agrees that such misalignment will likely present some challenges that may increase costs for certain market participants, including asset managers. For example, the Commission recognizes that financing U.S. market transactions that settle on T+1 with the proceeds of an FX transaction that settles on T+2 may become more difficult, and therefore more costly, than financing of T+2 transactions is today. However, market participants can modify their existing business practices in ways that allow their securities transactions in the U.S. to settle on T+1.[137]

For example, market participants may extend the closing time for their FX trading desks, or they may pre-fund certain T+1 transactions that would otherwise be funded by an FX transaction that is executed on the same day as the securities transaction in the U.S. In addition, as one commenter stated, asset managers may, in some cases, redeem money market positions, or rely on other financial resources, to meet their financing needs.[138] While the Commission acknowledges that undertaking any of the three adjustments described here may increase certain costs for some market participants, shortening the standard settlement cycle to T+1 will reduce other costs (*e.g.,* margin charges), increase capital efficiency, and reduce risk in the U.S. clearance and settlement system.[139]

With respect to the suggestion of one commenter that the ''appropriate market authorities'' mandate a change in ''the official equity trading day'' for U.S. markets to close one hour earlier, at 3:00 p.m. rather than 4:00 p.m. ET, to provide firms with more time to match trades and ensure the ''settlement FX'' is in place for the following day,[140] the Commission believes that such a change is not necessary for a successful transition to T+1 to occur, and is otherwise not justified. As explained in the paragraph immediately above, the Commission believes that market participants will be able to adjust their business practices to address the challenges associated with the misalignment of the T+1 settlement cycle for securities in the U.S. markets with the T+2 settlement cycle for FX transactions. In addition, the Commission believes that the commenter's recommendation to shorten the length of the trading day in the U.S. equity markets specifically to address the commenter's concern about FX transactions could have a negative impact on the trading activity and operations of market participants. In particular, the Commission believes that modifying the length of the trading day would alter the existing operations of the U.S. securities markets prior to market close in a way that is disproportionate to the impact of the Commission's proposal on the ability of market participants to use FX transactions to finance securities transactions in the U.S markets because market participants will be able to adjust their business practices to address the challenges.[141]

With respect to the commenter's suggestion that the Commission ''could allow for a mismatch of FX settlement dates as a valid reason for T+2 settlement arrangements without [such arrangements] breaching an investment adviser's best execution obligation,''[142] as explained above, the Commission believes that market participants will be able to adjust their business practices to address the challenges associated with the prospective mismatch between the settlement cycles for FX trades and the settlement cycle for securities transactions in the U.S. markets. Even if a mismatch between the settlement time for FX transactions and a T+1 standard settlement cycle for U.S. securities transactions raises the cost of funding some transactions, as discussed previously, the Commission also believes that shortening the standard settlement cycle to T+1 will reduce other costs (*e.g.,* margin charges), increase capital efficiency, and reduce risk in the U.S. clearance and settlement system.[143] Additionally, while the commenter correctly states that the Commission's proposal would allow parties to extend settlement only if they reach agreement at the time of the transaction, the commenter does not explain its understanding that ''this would be difficult to implement in the context of trades that require the settlement of FX transactions to occur,'' or that ''for this reason a standing option to settle at T+2 would be more effective.''[144] To the extent the commenter is recommending that the Commission establish a separate T+2 settlement cycle for transactions that are funded using FX transactions, such an approach is not workable because the counterparties to such transactions generally would not know whether the transaction had been funded in this way—unless the parties agreed to disclose in advance of the transaction the source of funding—and therefore also would not know whether to expect their securities transaction to settle on T+1 or T+2.

[133] *See id.*

[134] *See, e.g.,* Deloitte, DTCC, ICI, and SIFMA, T+1 Securities Settlement Industry Implementation Playbook (Aug. 2022, updated Dec. 2022) (''T+1 Playbook''), *https://www.dtcc.com/ust1/industry-playbook.* Additional information and documentation related to the industry's ongoing planning related to the prospective move to a T+1 settlement cycle is also publicly available at *https://www.dtcc.com/ust1/industry-playbook.*

[135] *See infra* Part VII.A (discussing the compliance date of May 28, 2024, for the amendments to Exchange Act Rule 15c6–1(a)).

[136] *See* MarketAxess Letter, *supra* note 29, at 1–2; ICI Letter, *supra* note 16, at 4; Ballie Gifford Letter, *supra* note 50, at 1–2.

[137] The Commission observes that settlement cycles vary across asset classes. For example, transactions in U.S. Treasury securities currently settle on a T+1 basis, and market participants use the proceeds of FX transactions to fund transactions in U.S. Treasury securities despite mismatched settlement cycles. *See infra* note 618 (discussing the same, as well as other examples).

[138] AIMA Letter, *supra* note 29, at 5–6.

[139] *See infra* Part VIII.C.1 (discussing the anticipated benefits of shortening the standard settlement cycle to T+1).

[140] *See* Ballie Gifford Letter, *supra* note 50, at 2.

[141] *See infra* notes 617–619 and accompanying text (further discussing the anticipated economic effects resulting from mismatched settlement cycles).

[142] *See* Ballie Gifford Letter, *supra* note 50, at 2.

[143] *See supra* note 139 and accompanying text (further discussing the other costs that would be reduced, as well as the increase in capital efficiency, and the reduction in risk to the U.S. clearance and settlement system).

[144] *See* Ballie Gifford Letter, *supra* note 50, at 2.

The Commission has also considered the arguments submitted by one commenter that any misalignment of settlement cycles that follows a move to T+1 in the U.S. would increase the number of fails in connection with cross-border transactions and may force broker-dealers to decrease or cease offering cross-border services to their clients, and ultimately will reduce liquidity for U.S. investors.[145] The commenter also specifically stated its expectation that there will be a significant number of settlement fails when a U.S. market participant is buying bonds and a ''cross-border participant'' is unable to deliver the bonds until T+2.[146] The Commission disagrees with each of the commenter's statements for the reasons explained below.

The Commission does not believe that the prospective misalignment of settlement cycles resulting from a move to T+1 will increase the number settlement fails connected with cross-border transactions.[147] While settlement fails can occur for many different reasons, market participants will have many months to continue their planning and preparation for the move to T+1. By the time the transition to T+1 occurs, market participants will have had ample opportunity to analyze whether any given transaction presents an unacceptable risk of a settlement fail, and, as stated above,[148] have options for adjusting their business practices to account for the challenges associated with settlement of certain transactions in a T+1 environment, such as FX transactions or other transactions with cross-border considerations.

With respect to the commenter's specific statement regarding the purchase of bonds by a U.S. market participant and the inability of a ''cross-border participant'' to deliver such bonds until T+2, the Commission acknowledges that in some cases it may be difficult for market participants to deliver bonds on T+1 when they seek to purchase the bonds in a foreign market and sell the same bonds in the U.S. market on the same day. However, market participants will know the timing of their settlement obligations prior to entering into contracts to purchase bonds in a foreign market and sell them in the U.S. market. If a market participant knows that the standard settlement cycle for the U.S. market transaction is shorter than the settlement cycle for the foreign market transaction, it may plan to either make arrangements to purchase or borrow the bonds sufficiently in advance of entering into the U.S. market transaction, or agree to a settlement date that is later than T+1 for the U.S. market transaction. In cases where none of these options is viable, market participants may also decide not to enter into the U.S. market transaction rather than entering into a transaction that would predictably result in a settlement fail. In the Commission's view, these same options also may be available to market participants with respect to transactions in other types of securities and are not unique to bond market transactions.[149]

With respect to the commenter's concerns regarding liquidity, even if moving to a T+1 settlement cycle in the U.S. does increase the number of fails associated with certain securities transactions in the U.S. market, it does not necessarily follow that any prospective misalignment of settlement cycles would result in either increased fails in the U.S. market overall, or a reduction in the amount of liquidity available to U.S. investors.[150] As explained above, the Commission expects that shortening the standard settlement cycle to T+1 will reduce risk in the clearance and settlement system by reducing the number of unsettled transactions that exist at any given point in time,[151] and will result in increased overall liquidity in the U.S. markets. That view is also consistent with many of the comment letters submitted in response to the T+1 Proposing Release.[152]

With respect to the comment stressing the need for the Commission to work with international regulators to coordinate a move to T+1 settlement on a global basis if possible,[153] the Commission and its staff intend to continue to work with regulators in other jurisdictions to ensure that the move to a T+1 settlement cycle in the U.S. is successfully implemented while minimizing any adverse impact the transition may have on market participants who engage in transactions in both the U.S. market and foreign markets. However, the Commission believes that delaying the transition to T+1 in the U.S. until other jurisdictions have also committed to implementing T+1 is not necessary for a successful transition to T+1 to occur in the U.S.[154] As a general matter, the Commission and Commission staff continue to engage with authorities in other jurisdictions regarding regulatory changes in the U.S., including to discuss differences between U.S. requirements and requirements in other jurisdictions, including through the Commission's ongoing participation in the Financial Stability Board, the International Organization of Securities Commissions (''IOSCO''), and CPMI–IOSCO.[155]

2. Response to Comments Relating to T+0 Settlement

The Commission has carefully considered the comments it received relating to the prospective benefits and challenges associated with moving to a T+0 settlement cycle. The Commission believes that shortening the settlement cycle further than T+1 could ultimately produce considerable additional benefits to investors compared with shortening the settlement cycle to T+1. However, the Commission continues to believe that shortening the settlement cycle to T+0 would require the industry to develop solutions to the many challenges identified by market participants as impediments to such a move, as discussed at length in the T+1 Proposing Release,[156] in the T+1 Report,[157] and in several comment letters[158] submitted in response to the T+1 Proposing Release. Such impediments include, for example, challenges related to maintaining multi-lateral netting, institutional trade processing, securities lending practices, money settlement systems, mutual fund and ETF processing, transaction funding

[145] *See* MarketAxess Letter, *supra* note 29, at 1.

[146] *Id.*

[147] *See infra* notes 617–619 and accompanying text (further discussing the anticipated economic effects resulting from mismatched settlement cycles).

[148] *See supra* note 138 and accompanying text.

[149] *See infra* notes 617–619 and accompanying text (further discussing the anticipated economic effects resulting from mismatched settlement cycles).

[150] *See infra* Part VIII.C.4 (further discussing the anticipated impact on settlement fails and liquidity).

[151] *See supra* note 130 and accompanying text.

[152] *See supra* notes 20, 22, and accompanying text.

[153] *Id.*

[154] The Canadian Securities Authorities recently issued a proposal to transition the securities markets in Canada to T+1 to align with the T+1 standard settlement cycle adopted in this release. *See* Canadian Securities Administrators, Press Release, Canadian securities regulators outline steps to support transition to T+1, Dec. 15, 2022, *https://www.securities-administrators.ca/news/canadian-securities-regulators-outline-steps-to-support-transition-to-t1/*.

[155] CPMI–IOSCO refers to the work undertaken jointly by IOSCO and the Committee on Payment and Market Infrastructures (''CPMI'') to enhance the international coordination of standard and policy development and implementation regarding clearing, settlement, and reporting arrangements, including with respect to financial market infrastructures such as central counterparties and central securities depositories.

[156] *See* T+1 Proposing Release, *supra* note 2, at 10467–74.

[157] *See* T+1 Report, *supra* note 61, at 10–11.

[158] *See supra* notes 59–60, 62–71, and accompanying text.

requirements, and corporate action processing. Given the operational and technological challenges associated with moving to a T+0 settlement cycle, the Commission believes that a successful move to T+0 would take longer to design and implement, and cost more than, a successful move to a T+1 settlement cycle.[159]

Shortening the settlement cycle to T+1 will result in substantial benefits to market participants that will be attainable much sooner than shortening the settlement cycle to T+0. Thus, the Commission believes shortening the settlement cycle to T+1 to be the more prudent and practical approach to shortening the settlement cycle at this time.

However, the Commission continues to believe, as it stated in the T+1 Proposing Release, that the transition to a T+1 settlement cycle can be a useful step in identifying potential paths to T+0 settlement.[160] As the securities industry moves forward to implement a T+1 standard settlement cycle, this process generally should include consideration of the potential paths to achieving T+0 to help ensure that investments in new technology and operations undertaken to achieve T+1 can maximize the value of such investments over the long term. Following the transition to T+1 in the U.S. markets, Commission staff will continue to work with industry leaders, public interest advocates, investors and other regulators to assess the future feasibility of a T+0 settlement standard cycle, and seek to identify ways to overcome the challenges associated with such a move, as articulated in the T+1 Proposing Release.[161]

3. Amendments to Exchange Act Rule 15c6–1(b)

The Commission is amending paragraph (b) of Exchange Act Rule 15c6–1 to exclude security-based swaps from the requirements under paragraph (a) of the rule. The T+1 Proposing Release asked whether the Commission should provide exemptive relief from the requirements under Rule 15c6–1 for transactions in security-based swaps.[162] As discussed above, the Commission received two comment letters that discussed whether Rule 15c6–1 should apply to security-based swap transactions and both of these commenters urged the Commission to exclude security-based swaps from the requirements under the rule.[163] The Commission agrees with the comment letter highlighting ''key differences'' between security-based swaps and other types of securities, and agrees that such differences warrant excluding security-based swaps from the requirements under paragraph (a) of Rule 15c6–1. In the Commission's view, such characteristics of security-based swaps make transactions in security-based swaps inconsistent with the purpose, intent, and structure of Rule 15c6–1, as discussed further below.

First, consistent with the Commission's understanding of security-based swap transactions, the commenter explains that for security-based swaps ''final net payment is paid by one party to the other at a future point in time to which the parties have contractually agreed.'' [164] The commenter also states that Rule 15c6–1 is ''inapt'' with respect to security-based swap transactions, which are ''generally bilateral and executory in nature,'' meaning that there are numerous terms that the parties typically agree to fulfill at later dates.[165] The Commission believes that the commenter's description of security-based swaps is accurate.

The Commission further believes that excluding security-based swaps from the requirements under paragraph (a) of Rule 15c6–1 would be consistent with the purpose of the rule. The Commission first proposed Rule 15c6–1 to establish T+3 as ''the standard settlement time frame for broker-dealer trades,'' [166] and explained in the T+3 Proposing Release that the rule ''is designed to establish T+3 as a new 'default' contract term.'' [167] The T+3 Proposing Release further stated that most broker-dealers do not specify all of the terms of a trade before execution, but rely on industry custom and SRO rules for those terms, and the Commission did not intend to change industry custom to require broker-dealers to specify contract terms.[168] Unlike other securities transactions, however, security-based swap contracts generally do include contract terms that specify the timing of contractual obligations, and for that reason there is not a need for any rule-based ''default'' contract term that provides for the timing of such obligations.

Because security-based swap contracts provide for the timing of contractual obligations, the Commission does not anticipate that it will become necessary for Rule 15c6–1(a) to apply to security-based swap transactions at any point in the future. As such, the Commission is amending the text of Rule 15c6–1(b) to exclude security-based swaps from the requirements under Rule 15c6–1(a), rather than issuing a new exemptive order that would accomplish the same objective.

As discussed further in Part VII.B, the amendments to Rule 15c6–1(b) that the Commission is adopting in this document, including both the new provision that exempts security-based swaps from the scope of paragraph (a), as well as the technical conforming changes to Rule 15c6–1(b) described below, will become effective upon the effective date of the rule. The Commission has determined that these changes should become effective upon the effective date, rather than the compliance date for Rule 15c6–1 more generally, to avoid any possible confusion as to whether broker-dealer transactions in security-based swaps may or may not be subject to Rule 15c6–1(a) between the effective date and the compliance date.

As explained in the T+1 Proposing Release, Rule 15c6–1(b)(1) currently provides an exclusion for contracts involving the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association.[169] No commenters suggested amending the exclusion under existing Rule 15c6–1(b)(1), and the amendments to Rule 15c6–1(b) being adopted in this document do not include any changes to this exclusion.

In recognition of the fact that the Commission may not have identified all situations or types of trades where the application of Rule 15c6–1(a) would be problematic, existing Rule 15c6–1(b)(2) provides that the Commission may exempt by order additional types of trades from Rule 15c6–1(a), either unconditionally or on specified terms and conditions, if the Commission determines that such an exemption is consistent with the public interest and

[159] Because industry participants have not developed solutions to the technological, operational, and business challenges and impediments associated with a move to a T+0 settlement cycle, at this time the Commission cannot reasonably provide estimates regarding the length of time that would be necessary for a successful move to T+0, or the costs associated with such a move.

[160] *See* T+1 Proposing Release, *supra* note 2, at 10465.

[161] *Id.* at 10467–75.

[162] *See id.* at 10451.

[163] *See supra* note 78 and accompanying text.

[164] SIFMA April Letter, *supra* note 16, at 11.

[165] *Id.*

[166] T+3 Proposing Release, *supra* note 4, at 11806–07.

[167] *Id.* at 11809.

[168] *See id.*

[169] *See* T+1 Proposing Release, *supra* note 2, at 10446.

the protection of investors.[170] No commenters suggested any amendments to paragraph (b)(2) of Rule 15c6–1, and the Commission is not amending this provision of the rule. Accordingly, the Commission is making no substantive changes to the existing provision that is currently designated as paragraph (b)(2). However, the amendments to Rule 15c6–1(b) being adopted in this document will redesignate existing paragraph (b)(2) of the rule as paragraph (b)(3) of the rule, and a new provision that excepts security-based swap transactions from the requirements under paragraph (a) of Rule 15c6–1 will be designated as paragraph (b)(2) of the rule.[171]

The rule amendments being adopted in this document also strike the term ''contracts'' from the first clause in paragraph (b) of Rule 15c6–1, and add the words ''Contracts for'' to the beginning of paragraphs (b)(1) and (3) (formerly paragraph (b)(2)). These technical changes are intended to account for the fact that the definition of a security-based swap under section 3(a)(68) of the Exchange Act[172] incorporates the term ''contract'' and leaving the same term in the first clause of Rule 15c6–1(b) could create confusion as to the meaning of the new provision under paragraph (b)(2) of the rule, which refers to security-based swaps.

4. Amendment to Exchange Act Rule 15c6–1(c)

The Commission is amending paragraph (c) of Exchange Act Rule 15c6–1 to shorten the settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction. Specifically, the amendment to paragraph (c) of Rule 15c6–1 will shorten the standard settlement cycle for these offerings from T+4 to T+2. As amended, paragraph (c) of Rule 15c6–1 will provide that paragraph (a) of the rule does not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. ET on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act or sold to an initial purchaser by a broker-dealer participating in such offering provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the second business day after the date of the contract, unless otherwise expressly agreed to by the parties at the time of the transaction.[173]

As explained in the T+1 Proposing Release, in 1995 the Commission added paragraph (c) to Rule 15c6–1 in response to public comments stating that new issue securities could not settle on T+3 because prospectuses could not be printed prior to the trade date (the date on which the securities are priced).[174] The T+1 Proposing Release proposed to delete paragraph (c) based on the Commission's belief that expanded application of the ''access equals delivery'' standard for prospectus delivery supports removing paragraph (c) from Rule 15c6–1 because delays in the process that previously made delivery of the prospectus difficult to achieve under the standard settlement cycle have been mitigated by the ''access equals delivery'' standard.[175] However, the T+1 Proposing Release also acknowledged that the T+1 Report had recommended the Commission retain paragraph (c), but modify it to shorten the standard settlement cycle for firm commitment offerings priced after 4:30 p.m. ET from T+4 to T+2.[176] Additionally, the Commission requested public comment on the proposed deletion of paragraph (c) and requested that, to the extent that commenters agree with the T+1 Report, such commenters provide data or other detailed information explaining why a T+1 settlement cycle is an inappropriate standard for all firm commitment offerings priced after 4:30 p.m.[177]

After reviewing the comment letters received in response to the T+1 Proposing Release, the Commission continues to believe that the process that made delivery of the prospectus difficult to achieve under the standard settlement cycle has been mitigated by the ''access equals delivery'' standard. However, the Commission also is persuaded by the comment letter arguing that the Commission should retain paragraph (c) of Rule 15c6–1, but shorten the settlement cycle to T+2 for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction.[178]

The Commission is persuaded that a T+1 settlement cycle is not long enough to prevent firm commitment offerings priced after 4:30 p.m. ET from failing to settle on time. In particular, the Commission acknowledges that paragraphs (a) and (d) of Rule 15c6–1 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.[179] Specifically, while paragraphs (a) and (d) allow parties to agree to a longer settlement cycle, in order for the parties to avail themselves of that extended settlement date, they must reach that agreement at the time of the transaction and must take affirmative steps in advance of each such transaction in order to obtain relief under paragraph (a) or (d).

With respect to unforeseen circumstances that arise in connection with firm commitment offerings, for example, as stated by a commenter, it is not unusual for unanticipated issues relating to transfer agents, legend removal, local law matters (including local court approval), medallion guarantees or non-U.S. parties to arise.[180] Such unanticipated issues could lead to increased failures to settle trades on a T+1 basis with respect to firm commitment offerings priced after 4:30 p.m. ET. For these reasons, the Commission has reconsidered its proposed deletion of paragraph (c) of Rule 15c6–1.

As stated above, the comment letter discussing the proposed deletion of paragraph (c) stated that the Commission should amend paragraph (c) to establish a T+2 settlement cycle for firm commitment offerings priced after 4:30 p.m. ET.[181] The Commission agrees with the commenter's recommendation, and is amending paragraph (c) to establish a T+2 settlement cycle for these offerings, rather than deleting paragraph (c) as the Commission proposed. In the T+1 Proposing Release, the Commission considered such a T+2 standard as an alternative to deleting paragraph (c), but proposed deleting paragraph (c) to fully

[170] *See* 17 CFR 240.15c6–1(b)(1).

[171] *See* 17 CFR 240.15c6–1(b)(1)–(3).

[172] *See* 15 U.S.C. 78c(a)(68).

[173] *See* 17 CFR 240.15c6–1(c).

[174] *See* T+1 Proposing Release, *supra* note 2, at 10449.

[175] *See id.*

[176] *See id.* (citing T+1 Report, *supra* note 61, at 33).

[177] *See id.* at 10450.

[178] *See supra* Part II.B.3 (providing a detailed description of comment letters urging the Commission to adopt a T+2 settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction).

[179] In the T+1 Proposing Release the Commission acknowledged that the complex documentation associated with firm commitment offerings may in some cases require more time to complete than is available under a T+1 standard settlement cycle. *See* T+1 Proposing Release, *supra* note 2, at 10450–51.

[180] *See* SIFMA April Letter, *supra* note 16, at 10.

[181] *See id.*

harmonize the settlement of primary offerings with the settlement cycle for secondary market trades, thereby removing all financial and operational risks that can arise when the same security settles on two different settlement cycles.[182] In proposing this approach, the Commission stated its belief that paragraph (d) would provide sufficient flexibility to manage the need for a longer settlement cycle when it arises.[183] In light of the comments received, and as discussed above, the Commission now believes that the flexibility provided by paragraph (d) is insufficient to ensure timely settlement for certain firm commitment offerings under a T+1 standard settlement cycle. Accordingly, the Commission believes that the proposed alternative—retaining paragraph (c) but shortening the standard settlement cycle under the provision to T+2—would best achieve the Commission's stated objective of establishing a common standard that effectively minimizes the financial and operational risks associated with the settlement of firm commitment offerings. As discussed in the T+1 Proposing Release, the T+1 Report indicates that, under the existing T+4 settlement cycle for firm commitment offerings, most transactions currently settle on a T+2 basis. Consistent with the comments received, the Commission believes that a T+2 settlement cycle for firm commitment offerings priced after 4:30 p.m. ET provides sufficient time and flexibility to complete documentation and address any other issues that may arise in the preparation of a firm commitment offering to ensure timely settlement.

5. Retention of Existing Exchange Act Rule 15c6–1(d) Unchanged

Because the Commission is not deleting paragraph (c) of Rule 15c6–1, the Commission is not adopting the proposed technical changes to paragraph (d) of the rule. The Commission did not propose any other changes to paragraph (d) of Rule 15c6–1, and the Commission received no comments recommending changes to this provision of the rule.

The Commission agrees with the commenter stating that paragraph (d) should be retained[184] because paragraph (d) enables underwriters and the parties to a transaction to agree, in advance of the transaction, to a settlement cycle other than the standard settlement cycle specified in either paragraph (a) or (c) of the rule, when necessary to manage obligations associated with the firm commitment offerings. Market participants involved in firm commitment offerings of certain debt and preferred securities commonly rely on paragraph (d) of Rule 15c6–1 to extend settlement in order to allow time for the completion of the extensive documentation associated with such offerings,[185] and the Commission believes it is not always possible for such documentation to be completed within the time frames provided by under paragraphs (a) and (c) of Rule 15c6–1. Therefore the amendments to Rule 15c6–1 being adopted in this document do not include any changes to paragraph (d) of the rule.

6. Exemptive Orders Under Exchange Act Rule 15c6–1(b)

The Commission has reviewed the comments submitted in response to the T+1 Proposing Release that relate to the Commission's existing exemptive orders issued pursuant to Exchange Act Rule 15c6–1(b),[186] and, because no changes are needed to facilitate an orderly transition to a T+1 settlement cycle, the existing exemptive orders will remain in effect without modification. The Commission's view that no changes to the orders are needed is consistent with the comments urging that the Commission retain both the existing exemption for certain insurance products, as well as the exemption for certain foreign securities, as described above.[187]

With respect to the comments recommending that the Commission expand the scope of the existing exemptive order relating to securities that do not have facilities for transfer or delivery in the U.S.,[188] the Commission is not persuaded that expanding the scope of the order is necessary at this time and is declining to do so for the reasons discussed below. However, the Commission will continue to monitor how shortening the standard settlement cycle to T+1 in the U.S. affects market participants.

Notwithstanding the comments raising concerns that the existing exemption for certain foreign securities does not exempt ADRs from the T+1 standard settlement cycle,[189] the Commission believes that ADRs should continue to be subject to Rule 15c6–1(a). In response to one commenter's statements relating to the timely sale of ADR transactions using newly created ADRs,[190] the Commission understands that a large percentage of ADR trading activity involves purchases and sales of existing ADRs in the U.S. markets. Thus, the commenter's concerns would seem to relate to only a small percentage of ADR trading activity.[191]

The commenter stated that ''[t]his 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, and 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.[192] While bid-ask spreads could widen and costs could increase for this narrow category of ADR transactions, the Commission believes that ADRs should be subject to the requirements under Rule 15c6–1(a). Exempting ADRs from the requirements under Rule 15c6–1(a) would create another misalignment between the securities settlement cycle for ADRs and the standard settlement cycle for other types of securities, which the Commission believes would unduly dilute the benefits of a standard settlement cycle. As a general matter, a standard settlement cycle facilitates operational efficiency, reduces operational costs and transaction costs, and reduces risk for market participants.

In this particular case, the Commission believes that exempting ADRs from Rule 15c6–1(a) would diminish the benefits associated with shortening the standard settlement cycle to T+1. As previously discussed in detail, such benefits include risk reduction (*e.g.,* credit, market, liquidity and systemic risk), as well as increased capital efficiency.

The Commission also does not agree with the commenter that it will be impossible for market makers and other market participants to 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.[193] Rather, the Commission believes that market participants can borrow the underlying securities necessary to settle the newly created ADR on T+1 if the securities are available. While the commenter also raises the concern that in some cases it will not be possible to borrow the

[182] T+1 Proposing Release, *supra* note 2, at 10450.

[183] *Id.* at 10492.

[184] *See* SIFMA April Letter, *supra* note 16, at 11.

[185] *See* T+1 Report, *supra* note 61, at 33.

[186] *See supra* notes 105 and 126.

[187] *See supra* Part II.B.5.

[188] *See* SIFMA April Letter, *supra* note 16, at 8–9; ICI Letter, *supra* note 16, at 4.

[189] *See* SIFMA April Letter, *supra* note 16, at 8; ICI Letter, *supra* note 16, at 4.

[190] *See* SIFMA April Letter, *supra* note 16, at 8.

[191] *See infra* notes 606–616 (discussing the anticipated economic effect on transactions in ADRs).

[192] *See id.; see also* ICI Letter, *supra* note 16, at 4.

[193] *See* SIFMA April Letter, *supra* note 16, at 8.

securities to make delivery,[194] the possibility that certain securities may be costly or difficult to borrow at certain times is not limited to ADRs. As previously discussed, establishing a standard settlement cycle facilitates operational efficiency, reduces operational costs and transaction costs, and reduces risk for market participants. Providing exemptions for securities that can be costly or difficult to borrow—when the cost or difficulty to borrow will vary over time in response to movements in the price of the security, a dynamic unrelated to the length of the settlement cycle—would erode these benefits.

The Commission also has reviewed the comments urging the Commission to ''exempt from T+1 settlement'' U.S.-listed ETFs with baskets that contain foreign securities and ADRs,[195] and has determined that such an exemption is not warranted at this time for reasons that are similar to those discussed above in response to the comments raising concerns regarding the impact the move to T+1 will have on market participants trading ADRs. As a general matter, the Commission believes that allowing ETFs to settle on a settlement cycle that is longer than T+1 would diminish the benefits associated with a standard settlement cycle and shortening the standard settlement cycle to T+1.

The Commission recognizes that settling trades in U.S.-listed ETFs with baskets that contain foreign securities may become more costly for certain APs in a T+1 environment, as result of the prospective misalignment between the settlement cycle for such trades and the settlement cycle for the underlying foreign securities. For example, the Commission acknowledges that during the ETF share creation process, APs may need to post collateral or establish credit lines to satisfy foreign market requirements. However, as previously discussed, the Commission believes that moving to a T+1 settlement cycle will reduce other costs (*e.g.,* margin charges), increase capital efficiency, and reduce risk in the U.S. clearance and settlement system.[196]

The Commission also disagrees with the comment stating that the prospective misalignment in settlement cycles may increase certain risks, such as failed trades, accrual differences, net asset value miscalculations, and investment guideline breaches. Market participants will have many months to implement any operational requirements they identify associated with the move to a T+1 settlement cycle, including the operational requirements associated with the settlement of U.S.-listed ETFs with baskets that include foreign securities and/or ADRs. The industry has already identified many such requirements,[197] and the Commission believes that market participants will have sufficient time to complete the operational changes necessary to minimize these risks. Moreover, as explained above,[198] the Commission believes that shortening the settlement cycle will reduce certain risks for market participants overall (*e.g.,* credit, market and liquidity risk), including these risks faced by APs.

The Commission also does not believe that it is necessary at this time to amend the text of paragraph (b) of Rule 15c6–1 to codify the existing exemptive order for securities that do not have facilities for transfer or delivery in the U.S., or the existing exemptive order for certain insurance products. As noted above, one commenter recommended that the existing exemptions ''either be codified in Rule 15c6–1(b), or 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.'' [199]

Since these orders were first issued in 1995, both orders have provided adequate regulatory relief to market participants who engage in transactions that the orders were intended to cover. Codifying the exemptions is not necessary to facilitate the transition to a T+1 settlement cycle, and the Commission is aware of no evidence that market participants lack knowledge of the terms of the exemptive orders or have been unable to comply with the orders because they have not been codified in Rule 15c6–1.

III. Exchange Act Rule 15c6–2—Same-Day Affirmation

A. Proposed Rule 15c6–2

The Commission proposed Rule 15c6–2 to require that, where parties have agreed to engage in an allocation, confirmation, or affirmation process, a broker or dealer would be prohibited from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) on behalf of a customer unless such broker or dealer has entered into a written agreement with the customer that requires the allocation, confirmation, affirmation, or any combination thereof, be completed as soon as technologically practicable and no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with Rule 15c6–1(a).[200]

In proposing Rule 15c6–2, the Commission did not define the terms ''allocation,'' ''confirmation,'' or ''affirmation,'' but explained that trade allocation refers to the process by which an institutional investor (often an investment adviser) allocates a large trade among various client accounts or determines how to apportion securities trades ordered contemporaneously on behalf of multiple funds or non-fund clients.[201] The T+1 Proposing Release also explained that the terms ''confirmation'' and ''affirmation'' in proposed Rule 15c6–2 refer to the transmission of messages among broker-dealers, institutional investors, and custodian banks to confirm the terms of a trade executed for an institutional investor, a process necessary to ensure the accuracy of the trade being settled. The Commission stated its belief that these terms are widely used and generally understood by market participants who engage in institutional trade processing.[202]

In addition, in proposing Rule 15c6–2, the Commission used the term ''confirmation'' to refer to the operational message that includes trade details provided by the broker-dealer to the customer to verify trade information so that a trade can be prepared for settlement on the timeline established in Rule 15c6–1(a), in contrast to the confirmations required under Rule 10b–10, which concern a series of disclosures that broker-dealers are required to provide in writing to customers at or before completion of a transaction.[203] The Commission explained that the term ''confirmation,'' as used in proposed Rule 15c6–2, should be understood to refer to the institutional trade processing message or verification and not the disclosure required under Rule 10b–10.[204]

The Commission also explained that the term ''customer,'' as used in proposed Rule 15c6–2, includes any person or agent of such person who opens a brokerage account at a broker-

[194] *See id.*

[195] *See id.;* ICI Letter, *supra* note 16, at 4.

[196] *See supra* note 139 and accompanying text.

[197] *See* T+1 Playbook, *supra* note 134, at 33 (providing recommendations to improve timing in nightly batch cycles, make use of lines of credit to address the potential need for more collateral, and establishing connections for real-time messaging with NSCC).

[198] *See supra* note 139 and accompanying text.

[199] *See supra* note 128 and accompanying text.

[200] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[201] *Id.*

[202] *See id.*

[203] *See id.* 10453–54.

[204] *See id.* 10454.

dealer to effect an institutional trade or purchases or sells a security for which the broker-dealer receives or will receive compensation.[205] The Commission stated that the term is intended to cover both the institutional investor and any and all agents acting on its behalf.[206]

B. Comments

1. Existing Commercial Incentives for Timely Trade Allocations, Confirmations, and Affirmations

Two commenters stated that the written agreements required under proposed Rule 15c6–2 are unnecessary to improve same-day affirmation rates because commercial incentives to achieve timely trade allocations, confirmations, and affirmations already exist.[207] One commenter identified, for example, the following incentives for firms to achieve on-time settlement: increased cost of settling a trade without netting through the CCP; increased costs associated with the processing of trades that are not affirmed; costs associated with buy-ins for trades that are not settled on a timely basis; and the potential for customer dissatisfaction related to the failure to timely settle or the increased costs associated with such failure.[208] The second commenter stated that it is in an institutional customer's best interest to timely allocate, confirm, and affirm its trades, as doing so is the first step and a pre-condition to settling a trade.[209] This commenter also stated more generally that financial disincentives for institutional customers that do not meet a same-day affirmation timeline already exist.[210]

2. Linking Settlement Instructions to Affirmation

In the T+1 Proposing Release, the Commission stated that broker-dealers are best positioned to ensure the timely settlement of institutional trades and, as such, should be able to ensure via their customer agreements that institutional customers or their agents also adjust their operations to facilitate same-day affirmation.[211] In response to this statement, one commenter stated that settlement requires client instruction through a client's agents, who are typically custodians, against a broker-dealer's trades.[212] The commenter also stated that, because custodians often act as an agent for institutional clients, custodians are highly dependent on the implementation of efficient and timely operating models and processes across market participants at the trading level, including institutional clients and broker-dealers, before they can effect settlement on their client's behalf.[213] In this regard, the commenter requested that the Commission consider requiring through Rule 15c6–2 the linking of settlement instructions to the affirmation.[214]

3. Definitions of Certain Terms

In the T+1 Proposing Release, the Commission requested comment as to whether the terms ''allocation,'' ''confirmation,'' ''affirmation,'' ''end of the day on trade date,'' and ''customer'' should be defined for purposes of Rule 15c6–2.[215] In response, one commenter agreed with the Commission's view, as articulated in the T+1 Proposing Release, and expressed support for not defining these terms in the rule.[216] This commenter stated that, because operational and technological processes and practices continually evolve across market participants who engage in institutional trade processing, the above terms are best grounded in the prevailing market practices and uses understood by these market participants.[217] A second commenter, in contrast, stated that it would generally be helpful for the Commission to provide definitions of terms within the context of the proposed rule, even where such terms are commonly used in the industry.[218] The commenter recommended that the Commission define each of the above terms for purposes of Rule 15c6–2 and suggested that the Commission also define the term ''trade'' because there are multiple uses of this term by the industry.[219] The commenter further stated that the term ''affirmation'' is open to some interpretation and suggested that the Commission define this term in particular.[220]

4. Use of Third Parties To Achieve Same-Day Affirmation

One commenter requested that the Commission clarify whether, under proposed Rule 15c6–2, an investment adviser that has entered into an agreement with a broker-dealer pursuant to the proposed rule may rely on a third party—such as a third party order management system, sub-adviser, or custodian—to allocate or affirm trades.[221] This commenter, in a later letter, stated that ''upon further analysis, we understand that requiring advisers to enter into specific contractual arrangements would create significant challenges for advisers,'' and recommended that the Commission replace the proposed requirement of a written agreement with a requirement that investment advisers adopt and implement policies and procedures reasonably designed to ensure that allocations, confirmations, and affirmations are completed on a timeline that allows settlement on T+1.[222] As the commenter explained, this approach would ''relieve investment advisers, when they are parties to an allocation, confirmation, and affirmation process, from the burden of negotiating and having to regularly update written agreements,'' and ''create incentives for investment advisers to work with broker-dealers and other third parties to complete the process in a timely manner while allowing them greater flexibility to comply in a manner best suited to their existing infrastructure, clients, and resource levels.'' [223]

5. Challenges Associated With Requiring Written Agreements in Support of Increasing Same-Day Affirmations

Although commenters generally supported the Commission's overall goal of increasing same-day affirmations, several commenters expressed a number of concerns with

[205] *See id.*

[206] *See id.*

[207] *See* Fidelity Letter, *supra* note 16, at 3–4 (stating that proposed Rule 15c6–2 is not necessary because ''market incentives already exist to timely allocate, confirm, and affirm trades''); letter from Tom Price, Managing Director, SIFMA (Aug. 26, 2022), at 2 (''SIFMA August 26th Letter'') (stating that written agreements, as proposed by Rule 15c6–2, are unnecessary because ''there are many commercial incentives in place for industry participants to meet market standard settlement timelines'').

[208] *See* SIFMA August 26th Letter, *supra* note 207, at 2.

[209] *See* Fidelity Letter, *supra* note 16, at 3.

[210] *See id.*

[211] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[212] *See* AGC April Letter, *supra* note 16, at 3.

[213] *See id.*

[214] *See id.* at 2.

[215] *See* T+1 Proposing Release, *supra* note 2, at 10455.

[216] *See* letter from Matthew Stauffer, Managing Director and Head of DTCC Institutional Trade Processing, DTCC ITP LLC (Apr. 11, 2022), at 3 (''DTCC ITP April Letter'').

[217] *See id.* (explaining that by not prescribing definitions for the key terms used in proposed Rule 15c6–2, the Commission would allow such terms to continue to evolve).

[218] *See* letter from Jim Kaye, Americas Regional Director, FIX Trading Community (Apr. 11, 2022), at 2–3 (''FIX Trading Letter'').

[219] *See id.* The commenter provided suggested definitions for the terms ''allocation,'' ''confirmation,'' and ''affirmation'' and recommended that the term ''end of the day on trade date'' be defined as a specific time of day together with its time zone. *Id.* at 2.

[220] *See id.* at 2.

[221] *See* IAA April Letter, *supra* note 16, at 3–4.

[222] *See* letter from Gail C. Bernstein, General Counsel, and William A. Nelson, Associate General Counsel, Investment Adviser Association (Oct. 19, 2022), at 1–2 (''IAA October Letter'').

[223] *Id.*

the written agreement requirement in proposed Rule 15c6–2.[224] First, commenters stated that in many scenarios written agreements do not currently exist between the parties to an institutional transaction and would be highly burdensome to establish specifically for the purpose of facilitating same-day affirmation. For example, two commenters explained that agreements do not exist because the parties engage in their transactions on a receive-versus-payment/deliver-versus-payment (''RVP/DVP'') basis without an underlying agreement.[225] In an RVP/DVP transaction, securities are only delivered by the seller when payment has been made by the buyer.

Some commenters explained that where written agreements do not already exist, the parties would need to draft new agreements solely for the purpose of compliance with the rule.[226] In this regard, commenters stated that, as proposed, Rule 15c6–2 would result in burdensome, time consuming, and costly contract negotiations, as broker-dealers would have to enter into a new or amended written agreement with each of their institutional customers.[227] Moreover, another commenter stated that certain clients may not authorize their investment advisers to enter into the type of written agreement required under proposed Rule 15c6–2, while other clients may insist on negotiating bespoke guideline requirements, such as arbitration or governing law, into their written agreements.[228] Multiple commenters further expressed the view that the proposed written agreement requirement would create unnecessary practical burdens and costs.[229] Several of these commenters stated that it would be impracticable for institutional customers to enter into such agreements because they often rely on other parties to complete certain elements of the allocation, confirmation, and affirmation process.[230] One of these commenters stated more generally that a requirement for broker-dealers to enter into a written agreement with each of their institutional customers is not practically feasible.[231] One commenter also observed that it is unclear under proposed Rule 15c6–2 whether broker-dealers should be entering into the written agreements with the investment advisers or with their customers.[232]

Multiple commenters expressed a separate concern that proposed Rule 15c6–2 would expose a non-breaching broker-dealer to potential liability if its customer, or customer's agent, breaches the written agreement, even if through no fault of the broker-dealer.[233] In raising this concern, some commenters stated that the proposed rule does not specify what should happen if the broker-dealer's customer or its agent breaches the written agreement, which may put broker-dealers in the difficult position of trying to regulate the conduct of their customers through commercial contracts.[234] Another commenter also observed that the proposed rule would place the compliance burden on broker-dealers, even though the customer—and not the broker-dealer—has the necessary information to complete the allocation, confirmation, and affirmation process.[235] However, under proposed Rule 15c6–2, a broker-dealer is only responsible for its own actions and not for the actions of its customers or any other relevant parties to an institutional transaction, as discussed further in Part III.C.

Further, several commenters expressed the view that a written agreement requirement, as proposed in Rule 15c6–2, would not be an effective approach for achieving the Commission's overall goal of increasing same-day affirmations.[236] One commenter observed, for example, that a written agreement requirement is unnecessary because the industry recognizes the importance of same-day affirmations and is actively working toward achieving same-day allocations, confirmations, and affirmations.[237] In this regard, some commenters recommended that the Commission revise proposed Rule 15c6–2 to replace the written agreement requirement with a requirement that broker-dealers establish written policies and procedures reasonably designed to achieve same-day affirmation.[238] Some of these commenters further stated that such a principles-based approach would relieve the parties to an institutional transaction from the burden of negotiating a written agreement; incentivize broker-dealers to work with their customers to complete the allocation, confirmation, and affirmation process in a timely manner; and afford broker-dealers more flexibility to comply with the rule in a manner best suited to their specific business models, customer bases, and products.[239]

Finally, two commenters indicated that the proposed requirement for written agreements in Rule 15c6–2 may encourage parties to cancel their transactions before the end of trade date when an allocation, confirmation, or affirmation cannot be completed to avoid violating the proposed rule.[240]

6. End-of-Day Trading, Transactions Across Multiple Time Zones, and Variations in Local Holidays as Obstacles to Same-Day Affirmation

Several commenters raised concerns about certain obstacles—such as end-of-day trading, transactions across multiple time zones, and variations in holiday schedules—that could interfere with achieving same-day affirmation under proposed Rule 15c6–2.[241] One commenter stated that, given time zone

[224] *See* ASA Letter, *supra* note 16, at 2; Fidelity Letter, *supra* note 16, at 3–4; IAA October Letter, *supra* note 222, at 1–3; ICI Letter, *supra* note 16, at 5–7; ISITC Letter, *supra* note 29, at 2; MarketAxess Letter, *supra* note 29, at 2–3; SIFMA April Letter, *supra* note 16, at 5–6; State Street Letter, *supra* note 16, at 4; Virtu Financial Letter, *supra* note 16, at 3.

[225] *See* Fidelity Letter, *supra* note 16, at 4; SIFMA April Letter, *supra* note 16, at 5.

[226] *See* ISITC Letter, *supra* note 29, at 2; Fidelity Letter, *supra* note 16, at 4.

[227] *See* ICI Letter, *supra* note 16, at 5–6; MarketAxess Letter, *supra* note 29, at 2–3; SIFMA April Letter, *supra* note 16, at 5–6.

[228] *See* SIFMA April Letter, *supra* note 16, at 5.

[229] *See* ASA Letter, *supra* note 16, at 2; ICI Letter, *supra* note 16, at 5; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[230] *See* ICI Letter, *supra* note 16, at 5; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[231] *See* ASA Letter, *supra* note 16, at 2.

[232] *See* SIFMA April Letter, *supra* note 16, at 5.

[233] *See* Fidelity Letter, *supra* note 16, at 4; MarketAxess Letter, *supra* note 29, at 3; SIFMA April Letter, *supra* note 16, at 6; Virtu Financial Letter, *supra* note 16, at 3.

[234] *See* Fidelity Letter, *supra* note 16, at 4 (questioning whether, under proposed Rule 15c6–2, a broker-dealer would be subject to SEC enforcement if it failed to enforce private contractual provisions with its customers regarding same-day affirmation); MarketAxess Letter, *supra* note 29, at 3 (stating that broker-dealers are not regulators and, as such, cannot force their customers to upgrade their technology or processes to achieve same-day affirmations).

[235] *See* SIFMA April Letter, *supra* note 16, at 6.

[236] *See* ASA Letter, *supra* note 16, at 2; ICI Letter, *supra* note 16, at 5; ISITC Letter, *supra* note 29, at 2; MarketAxess Letter, *supra* note 29, at 3; SIFMA April Letter, *supra* note 16, at 5; State Street Letter, *supra* note 16, at 4.

[237] *See* ICI Letter, *supra* note 16, at 7.

[238] *See* ASA Letter, *supra* note 16, at 2; ICI Letter, *supra* note 16, at 7; MarketAxess Letter, *supra* note 29, at 3; SIFMA April Letter, *supra* note 16, at 6; State Street Letter, *supra* note 16, at 4; Virtu Financial Letter, *supra* note 16, at 3; *see also* IAA October Letter, *supra* note 222, at 1–2; SIFMA August 26th Letter, *supra* note 207, at 2.

[239] *See* ICI Letter, *supra* note 16, at 7; MarketAxess Letter, *supra* note 29, at 3; SIFMA April Letter, *supra* note 16, at 6; *see also* IAA October Letter, *supra* note 222, at 2–3; SIFMA August 26th Letter, *supra* note 207, at 2.

[240] *See* ICI Letter, *supra* note 16, at 7; Virtu Financial Letter, *supra* note 16, at 3.

[241] *See* AIMA Letter, *supra* note 29, at 2, 6–7; ISITC Letter, *supra* note 29, at 6; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

differences, a non-U.S. investment manager might not be able to fill and execute its U.S. securities transactions before its local close of business and, therefore, would not be able to achieve same-day affirmation.[242] Another commenter indicated that same-day affirmation may be difficult to achieve for those in the same or similar time zones for trades occurring at or near the U.S. market close, and that same-day affirmation may not be feasible for those located in time zones several hours ahead of the U.S., as new cut-off times would occur late into their overnight.[243] Some commenters stated that investment advisers and their clients often rely on other parties to complete certain aspects of the allocation, confirmation, and affirmation process and, in doing so, are subject to the time zones and local holiday schedules in the countries where these other parties operate, which could prevent achieving same-day affirmation.[244] The same commenters requested that the Commission modify proposed Rule 15c6–2 to offer broker-dealers some flexibility in situations where same-day affirmation cannot be achieved because of circumstances that are beyond their control.[245] In this regard, some commenters recommended that the Commission replace the written agreement requirement in proposed Rule 15c6–2 with a requirement that broker-dealers adopt written policies and procedures to facilitate same-day affirmation.[246]

7. Alternative Rule Recommended in SIFMA August Letter

The Commission received an additional comment letter from SIFMA addressing alternatives to proposed Rule 15c6–2.[247] SIFMA recommended that the Commission revise proposed Rule 15c6–2 to replace the written agreement requirement with a requirement for policies and procedures to support faster processing, as it would allow individual firms to design policies and procedures tailored to their business models, products, and unique customer bases while advancing the Commission's interest in same-day affirmation.[248] The Commission generally agrees that requiring broker-dealers to establish, maintain, and enforce policies and procedures for achieving same-day affirmation is an effective way to improve affirmation rates because it promotes an orderly settlement process, thereby helping to ensure timely settlement in a shortened settlement cycle. The Commission also believes that establishing, maintaining, and enforcing policies and procedures as an alternative approach to compliance aside from entering into written agreements enables broker-dealers to avoid the substantial burdens and challenges that may be associated with negotiating written agreements in some cases. Nonetheless, as previously discussed in Part III.B.5 above, the Commission also believes that it is appropriate to retain the requirement for written agreements as one of two options for broker-dealers to achieve compliance with Rule 15c6–2.

SIFMA's recommendation included a number of elements. First, SIFMA requested that Rule 15c6–2 be revised to require broker-dealers to establish, document, and uphold policies and procedures reasonably designed to maintain timely settlement rates.[249] Second, SIFMA recommended that such policies and procedures: (i) address the timing of allocations, confirmations, and affirmations to ensure timely settlement; (ii) include a communication plan with market participants; (iii) provide a description of a broker-dealer's ability to monitor compliance; (iv) include the development of controls and supervisory procedures; and (v) include the development of metrics to measure compliance.[250] The Commission generally agrees with SIFMA's approach and, as discussed in Part III.C below, is revising final Rule 15c6–2 to allow broker-dealers to achieve compliance with the rule either by (1) entering into written agreements or (2) establishing, maintaining, and enforcing reasonably designed policies and procedures. Below, the Commission discusses each of SIFMA's recommendations in turn.

First, SIFMA requested that Rule 15c6–2 be revised to require broker-dealers to establish, document, and uphold policies and procedures reasonably designed to maintain timely settlement rates.[251] While the Commission agrees that a policies and procedures approach can also advance the Commission's same-day affirmation objective, the Commission believes that timely settlement is a separate, if related, objective from same-day affirmation. Commission rules have long established the standard for timely settlement, as reflected by the requirements for the standard settlement cycle set forth in Rule 15c6–1. In contrast, Rule 15c6–2, as proposed, seeks to advance the objective of same-day affirmation. As discussed further in Part III.C, the Commission believes that improving affirmation rates on trade date is an objective separate and apart from, if nonetheless related to, shortening the settlement cycle because it promotes an orderly settlement process regardless of the length of the settlement cycle. In the T+1 Proposing Release, the Commission stated that, while proposed Rule 15c6–2 does not require settlement of the transaction on trade date, the requirement for same-day affirmation supports orderly settlement by reducing the likelihood of exceptions or other processing errors that can lead to settlement fails.[252] The Commission recognizes that Rule 15c6–1 already addresses the concept of timely settlement by establishing a standard settlement cycle. As a result, the Commission believes that, while proposed Rule 15c6–2 should be revised to incorporate a policies and procedures approach, the specific objective of same-day affirmation, and not the more general objective of timely settlement, remains the objective that such policies and procedures should be reasonably designed to achieve.

Second, SIFMA suggested that policies and procedures be designed to address the timing of allocations, confirmations, and affirmations to ensure timely settlement.[253] The Commission agrees that addressing the timing of allocations, confirmation, and affirmations on trade date can help advance the objective of same-day affirmation, and, as discussed further in Part III.C below, the Commission is including in the final rule a requirement for policies and procedures to include target time frames on trade date for achieving allocations, confirmations, and affirmations.[254]

Third, SIFMA suggested that policies and procedures be designed to include a communication plan with market

[242] *See* ISITC Letter, *supra* note 29, at 6.

[243] *See* AIMA Letter, *supra* note 29, at 2, 6–7.

[244] *See* ICI Letter, *supra* note 16, at 5–6; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[245] *See* ICI Letter, *supra* note 16, at 7; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[246] *See* ICI Letter, *supra* note 16, at 7; SIFMA April Letter, *supra* note 16, at 5; Virtu Financial Letter, *supra* note 16, at 3.

[247] *See* SIFMA August 26th Letter, *supra* note 207, at 2–3.

[248] *See id.* at 2. In Part III.B.5 above, the Commission has previously discussed why it believes it appropriate to retain the written agreement requirement in the rule, while also adding an option to establish, maintain, and enforce written policies and procedures.

[249] *See id.*

[250] *See id.* at 2–3.

[251] *Id.* at 2.

[252] *See* T+1 Proposing Release, *supra* note 2, at 10454–55.

[253] *See* SIFMA August 26th Letter, *supra* note 207, at 2.

[254] *See* Rule 15c6–2(b)(2).

participants.[255] The Commission agrees with this suggestion, and, as discussed further in Part III.C below, the Commission is including in the final rule a requirement for reasonably designed policies and procedures that include the procedures the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation process can be completed by the target time frames on trade date.[256]

Finally, SIFMA suggested that the policies and procedures be designed to provide a description of a broker-dealer's ability to monitor compliance, include the development of controls and supervisory procedures, and include the development of metrics to measure compliance.[257] The Commission also agrees that these elements can ensure that policies and procedures are effective at helping to ensure that allocations, confirmations, and affirmations can be completed on trade date. Accordingly, and as discussed further in Part III.C below, the Commission is including in the final rule similar requirements as those described by SIFMA for reasonably designed policies and procedures that identify and describe any technology systems, operations, and processes used to coordinate with relevant parties to ensure completion of the allocation, confirmation, or affirmation process; [258] describe how the broker-dealer plans to identify and address delays;[259] and measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of trade date.[260]

C. Final Rule and Discussion

After considering the above comments, the Commission continues to believe that implementing a T+1 standard settlement cycle will require significant improvements in the current rates of same-day affirmations to help ensure timely settlement in a T+1 environment.[261] Although the Commission agrees that the incentives identified by commenters in Part III.B.1 exist and help ensure timely settlement, the Commission believes that these incentives alone are insufficient to significantly improve same-day affirmation rates, as required to facilitate shortening the standard settlement cycle to T+1.[262] While data cited in the T+1 Proposing Release indicates that affirmation rates have improved over time, the improvements have been only modest.[263] Currently, despite existing commercial incentives and efforts to establish ''same-day affirmation'' as an industry best practice, only about 68% of trades achieve affirmation on trade date.[264] Because the above incentives and efforts, on their own, have not sufficiently improved the current rate of same-day affirmations, the Commission believes that additional regulatory steps—including establishing a Commission requirement designed to advance the same-day affirmation objective—are needed. In this way, a Commission rule effectively targeted to the same-day affirmation objective can increase the rate of same-day affirmation for several reasons.[265]

First, in the absence of such a rule, the existing incentives identified by commenters tend only to impose substantial costs on the parties if a transaction fails to settle on time (*i.e.,* pursuant to the standard settlement cycle set forth in Rule 15c6–1(a)). However, failing to affirm by the end of trade date increases the likelihood that errors or exceptions will not be resolved in time for settlement. The sooner the parties have affirmed the trade information for their transaction, the lower the likelihood of a settlement fail because the parties will have more time to identify and resolve any potential errors. Second, many institutional transactions are not eligible for netting through the CCP because the relevant securities are held by a custodian bank that is not a CCP participant, and so market participants that use such a custodian do not have the option for—or the accompanying incentive to complete allocations, confirmations, and affirmations by the submission times that would facilitate—netting at the CCP.[266] While industry planning for T+1 does contemplate creating new incentives to specifically induce same-day affirmations by certain cutoff times,[267] even when the transaction will not be submitted to the CCP for netting, the associated costs for failing to meet such cutoff times are likely to be minor in comparison to the costs associated with a failure to settle the transaction.[268] As a result, market participants may not take steps to realize the benefits that accrue from achieving allocations, confirmations, and affirmations on trade date, even when they are subjected to costs that arise from failing to achieve timely settlement. Third, the costs associated with failing to affirm a transaction, or with failing to achieve a buy-in, can be shifted among the parties settling the transaction, reducing the likelihood that these incentives will induce the parties to identify potential improvements to their processes over time because they do not internalize the full costs of failing to complete the allocation, confirmation, and affirmation process on trade date. In addition, because of the costs associated with improving processes and implementing new technologies, these incentives may only induce change when a broker-dealer is engaged in a high volume of

[255] *See* SIFMA August 26th Letter, *supra* note 207, at 2.

[256] *See* Rule 15c6–2(b)(3).

[257] *See id.* at 2–3.

[258] *See* Rule 15c6–2(b)(1).

[259] *See* Rule 15c6–2(b)(4).

[260] *See* Rule 15c6–2(b)(5).

[261] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[262] *See* T+1 Report, *supra* note 61, at 13 (highlighting the need for achieving affirmation on trade date and encouraging that affirmations be completed by 9:00 p.m. ET on trade date to facilitate shortening the standard settlement cycle to T+1).

[263] T+1 Proposing Release, *supra* note 2, at 10453 n.156 (citing DTCC, Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle (Dec. 2011), *available at https://www.dtcc.com/en/news/2011/december/01/proposal-to-launch-a-new-costbenefit-analysis-on-shortening-the-settlementcycle.aspx*).

[264] *See* Sean McEntee, Executive Director, ITP Product Management, DTCC, Remarks at the DTCC ITP Forum—Americas (June 17, 2021) (''DTCC ITP Forum Remarks''), *available at https://www.dtcc.com/events/archives*.

[265] *See infra* notes 578–581 and accompanying text (discussing the anticipated economic benefits of Rule 15c6–2 for the rate of same-day affirmations).

[266] NSCC and DTCC ITP jointly offer an optional service called ''ID Net'' for transactions affirmed by DTCC ITP. The service enables broker-dealers who are members of both NSCC and DTC to aggregate and net for delivery purposes their institutional transactions, affirmed via DTCC ITP, with their transactions pending for settlement in NSCC's Continuous Net Settlement (''CNS'') system. *See* DTCC, ID Net, *https://www.dtcc.com/settlement-and-asset-services/settlement/id-net*. Nevertheless, such affirmed transactions are not guaranteed by NSSC and NSCC does not provide any margin offset to the broker-dealers' clearing fund requirements. *See* Exchange Act Release No. 93070 (Sept. 20, 2021), 86 FR 53125 (Sept. 24, 2021) (SR–NSCC–2021–011) (approving NSCC rule change to remove ID Net transactions from required fund deposit calculations).

[267] *See* T+1 Report, *supra* note 61, at 13–14 (for a T+1 settlement cycle, encouraging allocations be complete by 7:00 p.m. ET on trade date and recommending a new affirmation cutoff time of 9:00 p.m. ET on trade date).

[268] Specifically, failing to submit allocation, confirmation, and affirmation data by the cutoff time will likely require a participant to submit the transaction manually to DTC, raising the cost of the transaction. *See infra* note 269 and accompanying text (discussing the different fees that DTC applies depending on the timing or method of submission for settlement). If, a market participant fails to settle the transaction, however, it may be subject to buy-in obligations, whereby the market participant may need to internalize not just the cost of completing the transaction manually but also the cost of replacing the trade to the extent that the market price of the transaction has moved against the market participant since trade execution.

transactions for which errors are recurring and is also internalizing the costs associated with correcting those errors. Otherwise, a broker-dealer and the relevant parties may deploy ''just in time'' solutions, where the allocation, confirmation, and affirmation process is completed on settlement date or never completed, while shifting any higher costs associated with ensuring the timely settlement of the transaction to others.[269]

In proposing a requirement for written agreements, the Commission intended for the relevant parties, through these agreements, to establish more thoughtful and orderly processes—established prior to trade execution—so that the parties to the transaction and their agents would have a shared understanding as to what steps were necessary to ensure that allocations, confirmations, and affirmations could be completed across the range of transactions into which they enter, and what consequences would result if a party (or its agent) failed to provide the necessary allocation, confirmation, or affirmation no later than the end of trade date.[270]

In addition, the Commission believes that it is appropriate to impose obligations on a broker-dealer, even though the broker-dealer is only responsible for its own actions and not for the actions of others under Rule 15c6–2, because the broker-dealer has the ability, in some circumstances, to modify the conduct of the other relevant parties with which the broker-dealer may participate in the allocation, confirmation, and affirmation process to ensure its own compliance with the rule. As a result, the Commission believes that imposing such obligations on broker-dealers can increase the rate of same-day affirmation for institutional transactions,[271] thereby promoting the timely and orderly settlement of securities transactions, because many broker-dealers will have relationships across multiple advisers, custodians, and other types of agents, and therefore can introduce better processes and procedures across a range of different relationships. Although the broker-dealer ultimately may not be in a position to bind the behavior of others,[272] the Commission believes that market participants are generally aligned in support of facilitating same-day allocations, confirmations, and affirmations for their transactions to the greatest extent possible. The Commission believes that same-day affirmation is an important objective that can facilitate an orderly and efficient transition to a T+1 and shorter settlement cycles, and that Rule 15c6–2 will incentivize broker-dealers to identify and deploy effective practices for achieving allocations, confirmations, and affirmations ex ante, thereby improving the rate of allocations, confirmations, and affirmations over time.

As explained in the T+1 Proposing Release, the compliance burden imposed on broker-dealers by Rule 15c6–2 is to have a written agreement in place with its customers that requires that the allocation, confirmation, and affirmation process be completed as soon as technologically practicable and no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with Rule 15c6–1(a).[273] In the Commission's view, even a simple requirement to have an agreement in place can effectively promote same-day affirmation because it helps ensure that the parties to a transaction where allocation, confirmation, or affirmation will occur have agreed in advance of entering the transaction as to the operational arrangements necessary to ensure the allocation, confirmation, or affirmation of the transaction. Rule 15c6–2 would not expose a non-breaching broker-dealer to liability for violating the rule based on the actions of its customer, or customer's agent, provided that the written agreement describes the obligations of the parties to ensure the allocation, confirmation, or affirmation of the transaction, and the broker-dealer itself has complied with its obligations under the written agreement. The Commission understands that commercial relationships between broker-dealers and other parties, such as investment advisers, often describe and, when possible, quantify expectations between the parties as to the timing of and other circumstances affecting the transfer of securities and funds, establishing costs and other terms that may apply if one of the parties to the agreement fails to meet its obligations for a certain threshold of transactions within a certain timeframe. Adding a contractual requirement for the same-day allocation, confirmation, and affirmation of institutional transactions that would be executed and settled as part of such commercial relationship, in the Commission's view, is likely to increase the percentage of transactions for which allocations, confirmations, and affirmations are completed on trade date.

As a general matter, the Commission acknowledges that some of the incentives identified by commenters may better align with the objective of same-day affirmation in a T+1 environment than in a T+2 environment because market participants are likely to endeavor to submit trades that are eligible for netting to the CCP for settlement during a new overnight process planned for the evening of trade date,[274] a process that would be unavailable unless the parties complete trade allocations, confirmations, and affirmations on trade date. As stated by some commenters, the final design of deadlines and related operational requirements at the CCP, and at the industry level more generally, will encourage market participants to improve the rate of allocations, confirmations, and affirmations completed on trade date, as will the shortening of the settlement cycle more generally.[275] Nonetheless, the Commission believes that final Rule 15c6–2, modified as discussed further below, can help ensure that incentives with respect to allocations, confirmations, and affirmations are aligned with timely and orderly settlement, critical to ensuring that the rate of settlement fails remains low as the settlement cycle continues to shorten.[276]

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[269] *See, e.g.,* DTCC, Guide to the 2023 DTC Fee Schedule, *https://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/DTC-Fee-Schedule.pdf* (setting different prices for night deliver orders, day deliver orders, matched institutional trades, and exceptions processing).

[270] To promote such preparation ex ante, the Commission has modified the final rule to enable broker-dealers to pursue a policies and procedures approach as an alternative to written agreements. *See infra* Part III.C.2 (discussing the policies and procedures alternative).

[271] To measure progress on the same-day affirmation objective, the Commission is also adopting a requirement for CMSPs to submit to the Commission an annual report on straight-through processing that is required to include data on the rate of allocations, confirmations, and affirmations, enabling the Commission to measure progress on these metrics over time. *See infra* Part V.C.2.(c) (discussing the data elements required in the annual report, which include data concerning allocations, confirmations, and affirmations).

[272] Nonetheless, brokers do design their fees, in part, to address the risks that they face, including settlement risk. *See infra* notes 567–568 and accompanying text (explaining that broker-dealers set their fees, in part, to manage settlement risks). Broker-dealers may determine to raise the cost of trading for customers that do not facilitate same-day affirmation pursuant to a broker-dealer's written agreements or written policies and procedures, as applicable.

[273] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[274] *See* T+1 Report, *supra* note 61, at 13.

[275] *See supra* Part III.B.1 (discussing these comments).

[276] *See infra* note 272 (discussing the ability of broker-dealers to use their schedule of fees to impose costs on customers or agents thereof that

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On balance, the Commission believes that final Rule 15c6–2, with the modifications discussed below to address specific concerns raised by commenters, will increase the incentive to submit allocations, confirmations, and affirmations on trade date, discouraging ''just in time'' solutions that may jeopardize timely settlement in a T+1 environment. In particular, the Commission believes that ''just in time'' solutions may increase the rate of settlement fails in a T+1 environment because the parties to a transaction will have significantly less time to resolve issues that can prevent settlement, raising the possibility that errors associated with the allocation, confirmation, and affirmation process may delay timely settlement. Improving the rate of same-day affirmations thereby promotes an orderly and efficient settlement process. More generally, as discussed in the T+1 Proposing Release, agreeing to trade information as close in time as is technologically practicable to trade execution helps ensure that any discrepancies in trade details are identified and resolved far enough in advance to ensure timely and orderly settlement.[277] In this way, Rule 15c6–2 can promote an orderly and efficient process in a T+1 environment because it substantially increases incentives for market participants to complete the key task of agreeing to trade information, including the price of the transaction and quantity of shares to be transferred, on trade date.

1. Modifications to Requirement for Written Agreements

The Commission is adopting Rule 15c6–2 with several modifications. First, with respect to the requirement to enter written agreements to ensure the completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction, the Commission is revising the rule to replace references in the text to ''customer'' with ''relevant parties'' to better align the obligations under Rule 15c6–2 with the market dynamics that currently exist between broker-dealers, their customers, and their customers' use of advisers, custodians, and other third party agents as they participate in post-trade processes, including the allocation, confirmation, and affirmation process.

The Commission believes that this modification helps reduce the likelihood that broker-dealers would need to enter into new agreements with their customers specifically for the purpose of ensuring the same-day affirmation of the transaction. It also removes the need for a broker-dealer to enter into an agreement with its customer specific to same-day affirmation if a third-party, such as an adviser, custodian or other agent of its customer, would be the party to engage with the broker-dealer to ensure the allocation, confirmation, or affirmation of the transaction. As discussed in the T+1 Proposing Release,[278] the Commission intended for ''customer'' to include the relevant parties to a transaction that would participate in the allocation, confirmation, and affirmation process and would include the customer, the customer's investment adviser, the customer's custodian, or any other agent acting (directly or indirectly) on behalf of the customer. The modification helps ensure that, when a broker-dealer is considering whether and with which entities to enter into written agreements, the broker-dealer needs to identify only the relevant party or parties that will have a role or roles in completing the allocation, confirmation and affirmation process. The Commission also believes that this modification helps ensure that Rule 15c6–2 is appropriately designed to impose a written agreement requirement where a written agreement is practical and can help ensure the same-day affirmation of a transaction, even if many broker-dealers may ultimately choose to implement the rule through the policies and procedures alternative discussed in Part III.C.2.

The Commission's understanding is that, even if such party is not the broker-dealer's own customer, some broker-dealers may choose to enter into commercial agreements with such other relevant parties in order to support their customer relationships, collect fees, and otherwise facilitate the operational processes necessary to complete and settle the transaction. Rule 15c6–2 does not require, however, that a broker-dealer enter into written agreements with parties that do not have a role in the allocation, confirmation, and affirmation process. For example, if a broker-dealer is acting in the capacity of an executing broker on behalf of a customer and another broker-dealer will take responsibility for completing the allocation, confirmation, and affirmation process with the relevant parties to settle the transaction (a ''clearing broker'' in this context), then the executing broker need only comply with the rule to the extent that it participates in the allocation, confirmation, and affirmation process. An executing broker that does not participate in such processes would face no obligations under the rule. If an executing broker does undertake certain obligations with respect to its customer, such as may be delineated in its commercial arrangements with the relevant clearing broker, then under Rule 15c6–2 such a broker-dealer generally should ensure that its arrangements with the clearing broker identify that the clearing broker will be the broker-dealer ''engaging in the allocation, confirmation, and affirmation process'' for compliance with Rule 15c6–2. If the executing broker and the clearing broker do not have written agreements that establish the commercial relationship between them, then the executing broker generally should consider whether it needs to establish, implement, and maintain policies and procedures to identify and explain its role and its relationship with the clearing broker, consistent with Rule 15c6–2(a)(2), discussed in Part III.C.2. In contrast to an executing broker—which may not participate in the allocation, confirmation, and affirmation process—the clearing broker that facilitates the settlement of the transaction, and thereby participates in the allocation, confirmation, and affirmation process, would need to comply with Rule 15c6–2.

Second, the Commission is making other technical changes to the written agreements requirement to simplify the rule text and to accommodate the new alternative for broker-dealers to establish, maintain, and enforce written policies and procedures to ensure completion of the allocation, confirmation and affirmation as soon as technologically practicable and no later than the end of the day on trade date.[279] The Commission is removing the prohibition language in the rule (*i.e.,* ''No broker or dealer . . . shall'') and replacing it with an affirmative obligation (*i.e.,* ''A broker or dealer shall'').

In addition, the Commission has removed language that paralleled the language in Rule 15c6–1 regarding the scope of affected securities under the rule (''a contract for the purchase or sale

prevent completion of the allocation, confirmation, and affirmation process on trade date).

[277] *See* T+1 Proposing Release, *supra* note 2, at 10454–55.

[278] *See* T+1 Proposing Release, *supra* note 2, at 10454; see also Part III.A.

[279] *See infra* Part III.C.2 (discussing the policies and procedures alternative in Rule 15c6–2(a)(2)).

of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills)''). The Commission has replaced the proposed language with a cross reference to the rule (*e.g.,* ''a securities transaction that is subject to the requirements of § 240.15c6–1(a)''). The purpose of this change is to simplify the rule text and ensure that the scope of transactions relevant to compliance with Rule 15c6–2 remains consistent with the scope of transactions under Rule 15c6–1(a). The scope of transactions remains unchanged from the proposed rule, as discussed in the T+1 Proposing Release, and is the same scope of transactions as those covered by Rule 15c6–1(a) for which the broker-dealer will engage in the allocation, confirmation, or affirmation process with another party.[280]

Finally, as discussed further in Part III.C.2, the Commission is modifying proposed Rule 15c6–2 to provide two options by which broker-dealers may comply with the rule, as adopted. The two options are set forth in new paragraphs (a)(1) and (2). The first option, reflected in paragraph (a)(1), is the proposed requirement for written agreements, modified in the ways discussed above. The second option, reflected in paragraph (a)(2), provides an alternative to the written agreements requirement, where, in lieu of a written agreement, a broker-dealer may choose to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.

While the Commission believes that a policies and procedures approach can relieve the parties to an institutional transaction from the burden of negotiating a written agreement where one does not exist, the Commission believes that the written agreement requirement may be useful to those broker-dealers that have already established written agreements that govern the operational arrangements for certain commercial relationships. Specifically, such broker-dealers that already have written agreements in place to manage their commercial relationships with their customers' advisers, custodians or other agents may find it efficient to revise these written agreements to comply with Rule 15c6–2. Even where written agreements do not currently exist, if the relevant parties are amenable to entering into a written agreement to manage their responsibilities under the allocation, confirmation, and affirmation process, a broker-dealer may find that such agreement is an effective tool for identifying the circumstances and operational arrangements that the relevant parties ought to negotiate and agree to ensure the same-day allocation, confirmation and affirmation of the transaction, in a similar way that developing policies and procedures would also identify and describe the circumstances and operational arrangements for each relevant relationship that would be necessary to ensure the completion of allocations, confirmations and affirmations.

Ultimately, the written agreement requirement is designed to achieve the same goals as the alternative policies and procedures requirement, and broker-dealers may elect to comply with the alternative that they believe is better suited to their existing operations, specific business model, customer base, securities offered for settlement, and commercial relationships. In some cases, because written agreements would be individually tailored to a specific commercial relationship, they may help broker-dealers and the other relevant parties to an institutional transaction develop innovations that improve the allocation, confirmation, and affirmation process. Nonetheless, as previously discussed, the Commission acknowledges that the costs and challenges of negotiating a written agreement with the relevant parties may lead broker-dealers to choose to implement the rule via the policies and procedures requirement.

In addition, the Commission believes that replacing the term ''customer'' with ''other relevant parties'' and to add an option to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of allocations, confirmations, and affirmations addresses the comments regarding use of third parties discussed in Part III.B.4.[281] First, the modifications ensure that the requirements apply not to the broker-dealer and its customer but instead to the broker-dealer and the relevant parties that ensure the completion of the allocation, confirmation, and affirmation process. Such parties may be the customer, the customer's investment adviser, the customer's custodian, or another agent acting directly or indirectly on behalf of the customer.[282] Second, where the adviser is the relevant party with whom the broker-dealer will engage to complete the allocation, confirmation, or affirmation process, then the broker-dealer may seek either to establish a written agreement to ensure compliance with the rule, or the broker-dealer may instead choose to establish, maintain, and enforce policies and procedures under the rule. In the latter case, the broker-dealer may still seek to establish arrangements with the relevant parties to achieve compliance with the rule.[283]

2. New Policies and Procedures Alternative to Written Agreements Requirement

As previously discussed, the Commission is modifying proposed Rule 15c6–2 to enable a broker-dealer either to (1) enter into written agreements or (2) establish, maintain, and enforce reasonably designed written policies and procedures to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for a transaction as soon as technologically practicable and no later than the end of the day on trade date, in such form as necessary to achieve settlement. The Commission is providing broker-dealers with this discretion under the rule to allow broker-dealers to select the approach that best aligns with their existing business practices and customer relationships, and to consider the approach that best enables the broker-dealer to ensure the completion of allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of the trade date.

In response to the concerns raised by commenters in Part III.B.5, the

[280] *See* T+1 Proposing Release, *supra* note 2, at 10453.

[281] Such policies and procedures would be required to include the elements described in Part III.C.3 below.

[282] *See supra* notes 205–206 and accompanying text (describing the same).

[283] For example, consistent with the requirements of Rules 15c6–2(b)(3) and (4), as discussed further in Part III.C.3, policies and procedures would be required to, under paragraph (b)(3) describe the procedures that the broker or dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date, and, under paragraph (b)(4), describe how the broker or dealer plans to identify and address delays if another party (such as an investment adviser or a custodian) is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation. It may be useful for broker-dealers to engage with the relevant parties to the allocation, confirmation, and affirmation process regarding the nature of these communications.

Commission generally agrees that requiring policies and procedures as an alternative approach to compliance, separate from entering into written agreements, provides broker-dealers with more flexibility to achieve same-day affirmation. As a general matter, the Commission believes that the policies and procedures alternative in Rule 15c6–2 can help ensure that, when the parties to a transaction encounter obstacles that may prevent them from completing an allocation, confirmation, or affirmation on trade date, they have policies and procedures to navigate, address, and when possible mitigate or overcome such obstacles.[284] The Commission also acknowledges that, in cases where written agreements do not already exist, a requirement to enter into such agreements specifically to achieve same-day affirmations may create substantial burdens and challenges. Such challenges may include, for example, a client who chooses not to authorize its investment adviser to enter into such agreement or circumstances where multiple third parties are relied upon to complete elements of the allocation, confirmation, and affirmation process. Similarly, in the context of RVP/DVP transactions discussed in Part III.B.5, while some broker-dealers that regularly engage in RVP/DVP transactions may choose to enter into commercial agreements with their counterparties or agents of their counterparties to help facilitate this process, not all do and may instead rely on a combination of best practices, relationship management, and the obligations imposed by Commission or SRO rules as a substitute for a formal written agreement among the parties necessary to ensure the allocation, confirmation, and affirmation of the transaction. For those broker-dealers who do choose to enter into such agreements, the requirement for written agreements can be an effective and efficient mechanism for advancing the same-day affirmation requirement because it enables them to leverage their existing operational arrangements already established under the written agreements to codify the steps that the parties will take to ensure the same-day affirmation of transactions executed pursuant to the agreement. Nonetheless, the Commission also believes that an alternative policies and procedures requirement will help relieve broker-dealers of the burdens and challenges that, in some cases, may arise if broker-dealers are required to enter into new written agreements specifically for the purpose of facilitating same-day affirmation.[285] The Commission recognizes that, in response to this modification, and due to the costs and challenges of entering into written agreements identified by commenters generally, nearly all broker-dealers that do not already have written agreements may choose to implement the rule through the policies and procedures requirement rather than the written agreement requirement.[286]

Regardless of the alternative chosen, the Commission recognizes that same-day affirmation still may not be achievable in all circumstances due to particular obstacles associated with the transaction, including the time of the transaction, the time zone in which a party to the transaction resides, and/or variations in local holidays.[287] The difficulty associated with achieving a same-day affirmation will necessarily vary depending on the types of transactions entered, the locations of the parties, and the sophistication of their operational arrangements. The Commission also generally agrees with commenters that requiring policies and procedures as an alternative approach to compliance, separate from entering into written agreements, provides broker-dealers with more flexibility to achieve same-day affirmation while also avoiding the substantial burdens and challenges that, in some cases, may result from having to enter into written agreements specifically to address the same-day affirmation objective.

Whatever approach the broker-dealer determines is most appropriate for its circumstances and set of relationships, the Commission believes that either written agreements or policies and procedures can be structured to address challenges associated with the timing considerations raised by the commenters. Where commercial relationships exist, for example, the parties retain the ability to specify in their written agreements what steps are appropriate to ensure that allocations, confirmations, and affirmations can be completed on trade date. They can choose to specify how to accelerate the process to accommodate end of day trading, as well as how to staff their operations to ensure that the parties are available to complete allocations, confirmations, and affirmations across multiple time zones and, when needed, to plan for and accommodate local holidays. In some cases, depending on the business model and scope of relationships that a broker-dealer employs to complete allocations, confirmations, and affirmations, establishing, maintaining, and enforcing written policies and procedures may be a more effective tool for navigating the challenges that may occur for some end-of-day transactions and transactions across multiple jurisdictions. For example, to be reasonably designed, policies and procedures generally should address the steps that would be taken in response to known obstacles to same-day affirmation, such as when transactions are entered at the end of the trading day, transactions where one or both parties operate in other jurisdictions, and circumstances where local holidays or different time zones may limit the ability of the parties to communicate. Where the parties cannot reach agreement on these matters in their written agreements, reasonably designed policies and procedures generally should establish the steps that a broker-dealer would take to accommodate multiple time zones and local holidays, and how the broker-dealer would plan to accelerate its processes to ensure the completion of allocations, confirmations, and affirmations for transactions entered near the end of day. Written agreements and reasonably designed policies and procedures could also clearly define, for example, circumstances to avoid, or acceleration procedures to follow, when a same-day affirmation may otherwise be difficult to achieve because of potential timing constraints.

For broker-dealers that maintain written agreements, such written agreements often establish thresholds or expectations regarding the completion of certain operational processes, and such agreements could incorporate thresholds or expectations with respect to end-of-day trading, time zones, and local holidays. When time pressures are especially difficult, the parties could negotiate acceleration procedures to complete allocations, confirmations, and affirmations on trade date. When this is not possible, a broker-dealer's

[284] For example, reasonably designed policies and procedures generally could include robust compliance and monitoring systems; processes to escalate identified instances of noncompliance for remediation; procedures that designate responsibility to business line personnel for supervision of functions and persons; processes for escalating issues; processes for periodic review and testing of the adequacy and effectiveness of policies and procedures; and training on policies and procedures. The Commission discusses the specific elements required of reasonably designed written policies and procedures under Rule 15c6–2(b) in Part III.C.3.

[285] *See supra* Part III.B.1 and *infra* Part III.B.7.

[286] For purposes of estimating the Paperwork Reduction Act (''PRA'') burdens under Rule 15c6–2, the Commission has assumed that all respondent broker-dealers will implement the rule through the policies and procedures requirement. *See infra* Part IX.C.

[287] *See supra* Part III.B.6 (discussing comments expressing concerns about these obstacles).

policies and procedures generally should establish target time frames on trade date for completing allocations, confirmations, and affirmations and describe how the broker-dealer plans to identify and address delays. The Commission is also including in the final rule a requirement that policies and procedures specify the procedures the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure completion of the allocation, confirmation, and affirmation by the target time frames on trade date.

In this regard, the Commission does not believe the rule, as modified, incentivizes the parties to cancel trades because a broker-dealer would not be in violation of Rule 15c6–2 by failing to achieve the allocation, confirmation, or affirmation on trade date for a single trade unless it had failed to either enter into written agreements or establish, maintain, and enforce reasonably designed policies and procedures consistent with the rule. With respect to policies and procedures under Rule 15c6–2, the Commission believes that maintaining and enforcing such policies and procedures means that a broker-dealer generally should ensure that it has designed its own systems and operations, and deployed sufficient resources to address, any potential systemic failures within its own process.[288]

In addition, while the Commission specifies in Part III.C.3 several elements that such policies and procedures must include to be reasonably designed under Rule 15c6–2 (*e.g.,* identification and description of technology systems, operations, and processes that the broker-dealer uses to coordinate with other relevant parties to ensure completion of the allocation, confirmation, or affirmation process for the transaction), the Commission has not included in the rule similar elements to be required of written agreements, allowing a broker-dealer flexibility to negotiate and draft written agreements with the other parties and, potentially, to explore innovative methods for ensuring the allocation, confirmation, and affirmation of the transaction where unique operational arrangements specific to a given commercial relationship may enable new or specific approaches. Because written agreements are subject to negotiation with the other relevant parties, they are likely to consider a range of commercial interests that derive from the relationship between the parties.

The Commission is not requiring investment advisers to adopt similar policies and procedures because investment advisers will not always be among the relevant parties completing the allocation, confirmation, and affirmation. An adviser that enters into a Rule 15c6–2 agreement with a broker-dealer, or transacts with a broker-dealer that has policies and procedures reasonably designed to ensure timely completion of the allocation, confirmation, affirmation processes pursuant to the requirements of Rule 15c6–2, may, as a best practice, wish to evaluate whether its policies and procedures are sufficient to ensure compliance with such agreement or other obligations requested by the broker-dealer.

3. Elements of Reasonably Designed Policies and Procedures

The Commission believes that a policies and procedures approach can be an effective tool for ensuring the completion of allocations, confirmations, and affirmations so long as they consider holistically the broker-dealer's available set of tools, responsibilities to the relevant parties, ability to communicate and resolve issues among the parties for a given transaction, and provide a mechanism for tracking progress over time. With these objectives in mind, and to ensure policies and procedures are effective at achieving the stated objective, the Commission is adding new paragraph (b) to Rule 15c6–2 to specify the elements that such policies and procedures should include, as discussed further below.

First, the Commission is requiring under paragraph (b)(1) that policies and procedures be reasonably designed to identify and describe any technology systems, operations, and processes that the broker-dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction. The purpose of this provision is to ensure that the broker-dealer considers holistically the range of systems and tools it has available to facilitate the same-day affirmation objective, as well as the range of operations and processes that a broker-dealer uses to facilitate same-day affirmations across different customer and commercial relationships. In this way, such policies and procedures can establish whether and when different processes are necessary to facilitate same-day affirmations because certain transactions or customer types require different arrangements. For example, a broker-dealer may have a specific policy or operational arrangement that addresses allocations, confirmations, and affirmations for a customer whose securities are held by a prime broker versus a customer whose securities are held by a bank custodian. A broker-dealer generally should also seek written assurances from advisers or custodians to help ensure that they understand and internalize their respective roles in facilitating completion of the allocation, confirmation, and affirmation process.[289] Similarly, the broker-dealer may require different arrangements for a customer who engages directly with the broker-dealer versus a customer whose investment adviser or custodian engages with the broker-dealer on its behalf. The broker-dealer may also require different systems, operations, or processes to manage customer relationships where the other relevant parties to the transaction operate in other time zones or jurisdictions. Consistent with paragraph (b)(1), reasonably designed policies and procedures are required to identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties (such as investment advisers and custodians) to ensure completion of the allocation, confirmation, or affirmation process for the transaction. To be reasonably designed, such policies and procedures would need to categorize and assess the range of operational arrangements and processes that would be used to facilitate the allocation, confirmation, and affirmation process across the full range of different customer and

[288] *See supra* note 284 (also discussing several processes that policies and procedures generally could include to promote the objectives of the Rule 15c6–2).

[289] As stated in Part III.C.2, the Commission is not requiring investment advisers to adopt policies and procedures similar to those in Rule 15c6–2(b) because investment advisers will not always be among the relevant parties completing the allocation, confirmation, and affirmation. However, an adviser that transacts with a broker-dealer that has policies and procedures pursuant to Rule 15c6–2 may wish to evaluate whether its own policies and procedures are sufficient to ensure compliance with obligations requested by the broker-dealer. Where an adviser transacts with such a broker-dealer, the broker-dealer's policies and procedures may provide that it generally should seek written assurances from the adviser that its policies and procedures are sufficient to ensure compliance with obligations requested by the broker-dealer. Similarly, where a custodian participates in the allocation, confirmation, or affirmation process with such a broker-dealer, the broker-dealer's policies and procedures may provide that it generally should seek written assurances that the custodian would comply with obligations requested by the broker-dealer.

transaction types for which it offers services.

Second, the Commission is requiring under paragraph (b)(2) that policies and procedures be reasonably designed to set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction. As discussed above, the Commission remains mindful that a broker-dealer may not be able to complete the allocation, confirmation, and affirmation process on the trade date with respect to every transaction it executes for every customer in every circumstance. Thus, Rule 15c6–2 requires policies and procedures that set target time frames on trade date for completing the allocation, confirmation, and affirmation for transactions. The broker-dealer must also enforce its policies and procedures, including those related to target time frames, for the range of transaction and customer types it serves, as well as the range of systems and operational processes it might employ. For example, for highly automated transactions with high volume customers with direct control over their securities located in the same time zone, reasonably designed policies and procedures would set target time frames for completing the allocation, confirmation, and affirmation of the transaction very close in time to trade execution (*i.e.,* as soon as technologically practicable). For transactions that are more complex, such as those where a customer or its agent operates in other time zones or jurisdictions, or a separate custodian maintains securities or cash accounts on the customer's behalf, a broker-dealer may consider how to structure the time frames to accommodate the level of effort that will be necessary to complete the allocation, confirmation, and affirmation. Pursuant to Rule 15c6–2(b)(1), reasonably designed policies and procedures would be able to categorize the range of transactions and customer relationships that it has established and estimate the length of time it takes to complete each of the allocation, confirmation, and affirmation to set its target time frames. As discussed in Part III.B.1, a broker-dealer is required to enforce its policies and procedures, meaning that it is obligated to design its systems and commit the necessary resources to ensure that it can comply with its own policies and procedures under the rule.

Third, the Commission is requiring under paragraph (b)(3) of Rule 15c6–2 that policies and procedures be reasonably designed to describe the procedures that the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date. Although target time frames will not always be met, and although affirmations will not always be complete on trade date, a broker-dealer is required to enforce its policies and procedures under Rule 15c6–2, and so reasonably designed policies and procedures would need to ensure that an action fully within the broker-dealer's own control is not preventing the completion of the allocation, confirmation, or affirmation for the transaction. Thus, paragraph (b)(3) of the rule requires that policies and procedures lay out the ex ante steps that the broker-dealer will take to promptly communicate trade information, as well as to investigate discrepancies and adjust trade information in response to information the broker-dealer receives.

Fourth, the Commission is requiring under paragraph (b)(4) of Rule 15c6–2 that policies and procedures be reasonably designed to describe how the broker-dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker-dealer experiences delays in promptly completing the confirmation. As with paragraph (b)(3) of the rule, the purpose of paragraph (b)(4) is to ensure, to the greatest extent possible, that the broker-dealer is not the source of delay in completing the allocation, confirmation, and affirmation process. As such, pursuant to paragraph (b)(4), the broker-dealer should establish ex ante the steps that it would take in attempting to obtain an allocation or affirmation from its customer or the other relevant parties to the transaction (such as investment advisers or custodians). In the Commission's view, broker-dealers generally should take reasonable steps to escalate issues with their customers, or the other relevant parties acting on their customers' behalf, to resolve issues and meet the target time frames set forth in the broker-dealer's policies and procedures. In addition, the broker-dealer's policies and procedures generally should identify the circumstances under which a broker-dealer may experience delays in promptly completing the confirmation and what steps it would take to resolve the delay. In addition, because a broker-dealer is required to enforce its policies and procedures, the Commission believes that it should consider having policies and procedures that explain what efforts it would take to resolve recurring problems, particularly if they recur with respect to one particular counterparty, customer, or custodian that, for example, routinely fails to meet the broker-dealer's targets.

Finally, the Commission is requiring under paragraph (b)(5) of Rule 15c6–2 that policies and procedures be reasonably designed to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed within the target time frames established under paragraph (b)(2) of the rule, as well as the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of trade date. The purpose of this requirement is to ensure that each broker-dealer is taking steps to identify when allocations, confirmations, and affirmations are completed, whether those completed actions occurred within the target time frames established pursuant to paragraph (b)(2), and if not, whether those allocations, confirmations, and affirmations were completed on trade date. In designing its policies and procedures, a broker-dealer generally should consider defining what operational processes and time frames would enable a transaction to be completed as soon as technologically practicable, so that a broker-dealer can assess the rate of transactions that are allocated, confirmed, and affirmed as soon as technologically practicable on trade date. While Rule 15c6–2 does not require that same-day affirmation occur for every transaction that a broker-dealer executes and settles, for policies and procedures to be effective, the broker-dealer generally should have a sense for how well its policies and procedures ensure the completion of the allocation, confirmation, and affirmation process as soon as technologically practicable and no later than the end of trade date. Metrics developed in response to paragraph (b)(5) generally should be used by the broker-dealer to identify and assess the circumstances under which allocations, confirmations, and affirmations are less likely to be achieved as soon as technologically practicable and no later than the end of trade date so that policies and procedures are updated and revised over time with improvements. This would help ensure that the broker-dealer is effectively maintaining and enforcing its policies and procedures, as required by the rule.

4. Use of Defined Terms Other Than ''Customer''

The Commission has previously discussed modifications to Rule 15c6–1(a) to address concerns about use of the term ''customer'' in the rule. After considering the comments regarding definitions of other terms discussed in Part III.B.3, the Commission continues to believe that the terms ''allocation,'' ''confirmation,'' ''affirmation,'' and ''end of the day on trade date,'' are widely used by the industry and are sufficiently understood to facilitate compliance with the rule.[290] The T+1 Proposing Release explained the commonly understood meanings of these terms.[291] Importantly, the specific application of these concepts may vary in different operational arrangements, and ultimately the parties to a transaction must all share a common understanding of their meaning to effectively complete the allocation, confirmation, or affirmation process and the settlement of the transaction. Therefore, the Commission is not revising Rule 15c6–2 to define the terms ''allocation,'' ''confirmation,'' ''affirmation,'' ''end of the day on trade date,'' or ''trade'' for purposes of the rule.

When a broker-dealer will use written agreements under Rule 15c6–2(a)(1), the Commission believes that the parties generally should retain discretion to negotiate terms and expectations that are consistent with their specific operational arrangements and processes, and such negotiations will be most effective without defining terms that, when they do vary in their meaning, do so because they have been defined in the context of the operational arrangements established to facilitate the affirmation and settlement of the trade. When a broker-dealer determines to establish, maintain, and enforce policies and procedures consistent with Rule 15c6–2(a)(2), the broker-dealer may choose to define these terms, and any other terms relevant to the same-day affirmation objective, either in coordination with the relevant parties to the written agreement or in its policies and procedures, to help ensure that all the relevant parties have a shared understanding of these generally understood terms.

5. No Requirement To Link Settlement Instructions to Affirmations

Regarding the comment discussed in Part III.B.2, the Commission is declining to modify Rule 15c6–2 to require that the sending of settlement instructions be linked to completion of the affirmation. As first discussed in the T+1 Proposing Release, the Commission believes that same-day affirmation reduces the likelihood of exceptions or other processing errors that can prevent a transaction from achieving timely settlement.[292] While completing the affirmation on trade date is an indicator that a trade is ready for settlement, it does not necessarily mean that the trade can or will settle on a timely basis. For example, the relevant parties to the transaction may still need to take additional steps to facilitate settlement, such as ensuring that securities and funds are available in the relevant accounts, after the affirmation has been received. Accordingly, the Commission believes that it may not be appropriate in every circumstance to link the sending of settlement instructions with the receipt of an affirmation because this would not necessarily accommodate taking of these additional steps necessary to ensure timely settlement. Nonetheless, the Commission has a strong interest in advancing the objective of straight-through processing,[293] and one effect of increasing the adoption of straight-through processing techniques over time may be that, for certain transactions, the parties may determine to link the sending of settlement instructions with the submission of a completed affirmation to facilitate the efficient and timely settlement of the transaction without unnecessary manual intervention.[294]

In addition, the Commission understands that the customer or the customer's custodian generally retains discretion to determine under what circumstances it is appropriate to link the transmission of settlement instructions to the receipt of an affirmation. The Commission is mindful that Rule 15c6–2 only applies to broker-dealers, and, as such, the Commission believes that the linking of settlement instructions with the completion of the affirmation would likely require the cooperation of the custodian in many cases. For this reason, the Commission is not modifying the rule to include a requirement for linking the transmission of settlement instructions to the receipt of an affirmation. Nonetheless, a broker-dealer could, either in its written agreements or in its policies and procedures, set parameters for engaging with its customer or its customer's custodian for the linking of settlement instructions to the completion of the affirmation.

IV. Advisers Act Rule 204–2—Investment Adviser Recordkeeping

A. Proposed Amendments to Rule 204–2

Under the Commission's proposed Rule 15c6–2, for contracts where parties agreed to engage in an allocation, confirmation, or affirmation process, a broker-dealer would have been prohibited from effecting or entering into a contract for the purchase or sale of certain securities on behalf of a customer unless it entered into a written agreement with the customer that required the allocation, confirmation, affirmation, or any combination thereof to be completed as soon as technologically practicable and no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with proposed Rule 15c6–1(a). To the extent that investment advisers were party to these agreements, the Commission would have required the adviser to retain related records.[295] Specifically, the Commission proposed to amend Rule 204–2 under the Advisers Act by adding a requirement that if the adviser is a party to a contract under proposed Rule 15c6–2, it must make and keep 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.[296]

B. Comments

While commenters generally did not oppose the recordkeeping requirement regarding confirmations, allocations, and affirmations, a number of commenters suggested certain modifications or clarifications. One commenter opposed proposed Rule 15c6–2's contract requirement but nonetheless supported the recordkeeping of allocations, confirmations, and affirmations, stating that ''such recordkeeping, coupled with the amendments to the settlement cycle rule, should suffice to achieve the Commission's policy objectives without imposing additional burdensome

[290] *See* T+1 Proposing Release, *supra* note 2, at 10453–54.

[291] *See id.*

[292] *See* T+1 Proposing Release, *supra* note 2, at 10454.

[293] *See infra* Part V (discussing the importance of advancing the objective of straight-through processing and adopting new Rule 17Ad–27).

[294] *See infra* Part V.C.1 (discussing the relationship between policies and procedures for straight-through processing at CMSPs and the use of manual processes to complete the settlement of securities transactions).

[295] *See* T+1 Proposing Release, *supra* note 2, at 10456 (discussing proposed Rule 204–2(a)(7)(iii)).

[296] *Id.*

documentation requirements.'' [297] Another commenter sought clarification regarding an adviser's ability to rely on third parties to meet its recordkeeping obligations for allocations, confirmations, and affirmations.[298] One commenter objected to the proposed amendments to Rule 204–2 on the grounds that neither they, nor proposed Rule 15c6–2, were necessary for the transition from to T+2 to T+1 and should not be adopted.[299]

C. Final Rule and Discussion

The Commission is amending the investment adviser recordkeeping rule to require registered investment advisers to make and keep records of confirmations they receive and of allocations and affirmations they send or receive for any transaction that is subject to the requirements of Rule 15c6–2(a).[300] Specifically, the Commission is amending Rule 204–2(a)(7)(iii) under the Advisers Act to require investment advisers registered or required to be registered under section 203 of the Advisers Act to make and keep true, accurate and current certain records with respect to any transaction that is subject to the requirements of Rule 15c6–2(a), specifically those transactions where a broker-dealer engages in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of § 240.15c6–1(a). The required records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received. As with other records required under Rule 204–2(a)(7), advisers will be required to keep originals of written confirmations received, and copies of all allocations and affirmations sent or received, but may maintain records electronically if they satisfy certain conditions.[301] The final amendments to Rule 204–2 largely reflect, with certain modifications, the approach in the Proposal.

Requiring the retention of these records is important for the Commission staff's use in its regulatory and examination program and will be helpful to monitor the transition from T+2 to T+1. The Commission disagrees with a commenter that argued the proposed amendments to Rule 204–2 and proposed Rule 15c6–2 are not necessary for the transition from to T+2 to T+1. The Commission believes that the timing of communicating allocations to the broker or dealer is a critical pre-requisite to help ensure that confirmations can be issued in a timely manner, and affirmation is the final step necessary for an adviser to acknowledge agreement on the terms of the trade or alert the broker or dealer of a discrepancy. The Commission believes the recordkeeping requirements for investment advisers should help establish that obligations of the various parties involved in the settlement process related to achieving a matched trade have been met. Moreover, the amendments to Rule 204–2 are intended to reduce risk following the transition to T+1 by improving affirmation rates.

The final amendments to Rule 204–2 apply the new recordkeeping requirements to all registered advisers for any transaction that is subject to the requirements of Rule 15c6–2(a). Although the proposed recordkeeping requirements would have applied to any registered adviser that is a party to a contract under proposed Rule 15c6–2, final Rule 15c6–2 includes a second ''policies and procedures'' option for a broker-dealer engaging in a transaction subject to Rule 15c6–1(a). Despite this change, paragraph (a) of the final Rule 15c6–2 applies to the same subset of transactions to which proposed Rule 15c6–2 would have applied, and, accordingly, the final amendments are designed to keep the scope of the final recordkeeping requirements the same as proposed.[302] The Commission believes that requiring registered advisers to make and keep records of confirmations received, and allocations and affirmations sent or received with respect to these transactions supports the Commission's policy objectives to ensure that the transaction process is completed and trades timely settle on T+1. In addition, instead of requiring advisers to make and keep copies of allocations *or* affirmations *sent* and date and time stamps showing when they were *sent to the broker or dealer,* as proposed, the final rule will include allocations *and* affirmations that are *sent* or *received* and require date and time stamps showing when they were *sent* or *received* to clarify the rule text from the proposal. Finally, instead of requiring ''a date and time stamp for each allocation *(if applicable)*'' (emphasis added), the Commission removed ''if applicable'' to clarify that a date and time stamp should be included for each allocation sent. These changes are designed to cover circumstances where an adviser receives a copy of allocations or affirmations from a third party, such as a custodian or sub-adviser or other party involved in the transaction, and require a date and time stamp in each case.

Based on staff experience as discussed in the T+1 Proposing Release, as well as the comments received, the Commission believes that majority of advisers that place the order for execution—or sub-advisers or other third parties acting on an adviser's behalf—make and keep originals and/or electronic copies of allocations, confirmations, and affirmations sent or received.[303] Advisers, which have varied trade allocation processes, often allocate trades through the use of internal systems, portfolio management systems and order management systems.[304] Some advisers, however, may not make and keep these records or may only retain them on paper. In many cases, affirmation is performed by the asset owner's custodian (or its prime broker) on the asset owner's behalf.[305] In response to a comment received, the Commission is confirming that an adviser may rely on a third party to make and keep the required records, although using a third party to make and keep records does not reduce an adviser's obligations under Rule 204–2. As discussed above, in recognition of the role of third parties, the Commission is requiring advisers to keep records of allocations or affirmations *sent* or *received,* in the event that the adviser

[297] ICI Letter, *supra* note 16, at 5 n.15.

[298] *See* IAA April Letter, *supra* note 16, at 5–6.

[299] *See* Fidelity Letter, *supra* note 16, at 5.

[300] *See* Rule 204–2(a)(7)(iii).

[301] *See* Rule 204–2(a)(7) (requiring making and keeping originals of all written communications received and copies of all written communications sent by an investment adviser relating to the records listed thereunder)*; but see* Rule 204–2(g) (permitting advisers to maintain records electronically if they establish and maintain required procedures).

[302] Consistent with the T+1 Proposing Release, we estimate that certain investment advisers registered with the Commission will not be required to make and keep the required records because they do not have any institutional advisory clients and therefore will not facilitate transactions subject to Rule 15c6–2(a). *See* T+1 Proposing Release, *supra* note 2, at nn.424–425 and related text (estimating that certain advisers registered with the Commission would not be required to make and keep the proposed required records because they do not have any institutional advisory clients and therefore would not enter into a contract under proposed Rule 15c6–2).

[303] *See* T+1 Proposing Release, *supra* note 2, at 10457; *see also* IAA April Letter, *supra* note 16, at 4–7; ICI Letter, *supra* note 16, at 5; ISITC Letter, *supra* note 29, at 2.

[304] *See* IAA April Letter, *supra* note 16, at 4.

[305] *See* DTCC ITP Forum Remarks, *supra* note 264 (stating that up to 70% of institutional trades are affirmed by custodians); IAA April Letter, *supra* note 16, at 4 (agreeing that 70% of adviser trades are affirmed by the custodian, consistent with information received from its members); *see also* ICI Letter, *supra* note 16, at 5; ISITC Letter, *supra* note 29, at 2.

receives a copy of such records from a third party.

As stated in the T+1 Proposing Release, based on staff experience, the Commission believes many records are already consistently date and time stamped to the nearest minute using either a local time zone or a centralized time zone, such as coordinated universal time, or ''UTC.'' [306] The final amendments to Rule 204–2 require advisers to time and date stamp each allocation and affirmation.

The three commenters that discussed the proposed time and date stamping requirement for allocations and affirmations did not oppose the proposed time and date stamping requirements, although some sought clarification regarding how the requirement would be applied in practice.[307] One commenter observed that storing timestamps of processing events such as the generation or receipt of messages is a good practice that provides opportunities to analyze specific points of latency and contributes to an accurate audit trail.[308] This commenter also stated that electronic communication protocols inevitably include storage of complete event history with timestamps. Another commenter, while stating that time stamps are employed today, interpreted our proposal to require a single, industry-approved time stamp format based on a common clock, indicating such an approach would be challenging.[309] This commenter raised other questions, such as what is end of trade date in regard to time stamping, and suggested that timestamps for processes that occur post-midnight ET may incorrectly identify properly affirmed trades as non-compliant.[310] Another commenter suggested that the T+1 Proposing Release significantly underestimated the system and process changes that will be required and that the proposed requirement for advisers to timestamp certain trading records would add further complexity and costs to managers' efforts.[311]

Although the Commission previously stated in the T+1 Proposing Release that the adviser generally should time and date stamp records of allocations and affirmations to the nearest minute,[312] the Commission agrees with commenters that imposing more prescriptive requirements such as an agreed time stamp could result in additional challenges. The Commission is not adopting any such requirements for the time and date stamp format in Rule 204–2 or requiring that the format used be based on a common clock. This approach is designed to provide flexibility to date and time stamp allocations and affirmations in accordance with existing processes and industry practices, while still providing information about when allocations or affirmations were sent or received. This approach also avoids the need for prescriptive guidance about what end of trade date means, requiring everyone to handle different time zones in the same way, and any related costs incurred to follow such guidance.

Requiring these records, including a time and date stamp of all affirmations and allocations (but not confirmations), will aid the Commission staff in preparing for examinations of investment advisers and assessing adviser compliance with Rule 204–2 and ultimately help ensure that trades involving such advisers will timely settle on T+1. In addition, this requirement will help advisers research and remediate issues that may cause delays in the issuance of allocations and affirmations and improve their timeliness overall. Requiring these records also will help advisers establish that they have timely met contractual obligations, if applicable, or any requirements broker-dealers impose in light of their compliance obligations under final Rule 15c6–2.

V. Exchange Act Rule 17Ad–27—Requirement for CMSPs To Facilitate Straight-Through Processing

A. Proposed Rule 17Ad–27

In the T+1 Proposing Release, the Commission proposed new Rule 17Ad–27 to establish new requirements for certain clearing agencies acting as CMSPs.[313] The Commission proposed these requirements to improve the efficiency of institutional trade processing, and better position CMSPs to provide services that would not only reduce risk generally, but also help facilitate an orderly transition to a T+1 standard settlement cycle, as well as potential further shortening of the settlement cycle in the future.[314] CMSPs have become increasingly critical to the functioning of the securities market over the past twenty years, due in part to the rising volume of securities transactions for which CMSPs provide matching and other services.[315] A shortened settlement cycle may lead to expanded use of CMSPs, as well as an increased focus on enhancing the services and operations of the CMSPs themselves.[316] While the introduction of new technologies and streamlined operations such as those offered by CMSPs have improved the efficiency of post-trade processing over time, the Commission stated in the T+1 Proposing Release that more could be done to facilitate further improvements.[317] Specifically, the Commission explained that eliminating the use of tools that encourage or require manual processing, alongside the continued development and implementation of more efficient automated systems in the institutional trade processing environment, is essential to reducing risk and costs to ensure the prompt and accurate clearance and settlement of securities transactions, particularly in a T+1 environment.[318]

As proposed, Rule 17Ad–27 was comprised of two requirements. First, the proposed rule would require a clearing agency that provides central matching services for transactions involving broker-dealers and their customers (*i.e.,* CMSPs) to establish, implement, maintain and enforce policies and procedures to facilitate STP for transactions involving broker-dealers

[306] T+1 Proposing Release, *supra* note 2, at 10456–57.

[307] *See* ISITC Letter, *supra* note 29, at 4–5; FIX Trading Letter, *supra* note 218, at 4; AIMA Letter, *supra* note 29, at 2.

[308] FIX Trading Letter, *supra* note 218, at 4.

[309] ISITC Letter, *supra* note 29, at 4–5.

[310] *Id.* at 4–5 (noting that such considerations include the agreement on the time stamp format, evidence of time stamps (for compliance or audit purposes), time differences due to multiple systems and participants resulting in time stamps that may not perfectly match, and new processes needed to govern resolution of time stamps that could delay trade processing when all pertinent trade details are otherwise correct and agreed).

[311] *See* AIMA Letter, *supra* note 29, at 2.

[312] *See* T+1 Adopting Release, *supra* note 2, at 10456.

[313] *See id.* at 10457. CMSPs are clearing agencies as defined in section 3(a)(23) of the Exchange Act, and as such, are required to register as a clearing agency or obtain an exemption from registration. The Commission has currently exempted three CMSPs from the registration requirement. The Commission also has adopted rules that apply to both registered and exempt clearing agencies, including CMSPs operating pursuant to an exemption from registration. *See, e.g.,* Regulation Systems Compliance and Integrity, Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) (''Regulation SCI Adopting Release'').

[314] *See* T+1 Proposing Release, *supra* note 2, at 10458.

[315] *See id.; see also* Press Release, DTCC, Over 1,800 Firms Agree to Leverage U.S. Institutional Trade Matching Capabilities in DTCC's CTM (Oct. 12, 2021), *https://www.dtcc.com/news/2021/october/12/over-1800-firms-agree-to-leverage-dtccs-ctm*; DTCC's Trade Processing Suite Traffics One Billion Trades, Traders Magazine (Feb. 13, 2017), *https://www.tradersmagazine.com/departments/clearing/dtccs-trade-processing-suite-traffics-one-billion-trades/*.

[316] *See* T+1 Proposing Release, *supra* note 2, at 10458.

[317] *See id.* at 10457.

[318] *See id.* at 10458.

and their customers.[319] Second, the proposed rule would require a CMSP to submit to the Commission every twelve months a report that describes (i) the CMSP's current policies and procedures for facilitating straight-through processing; (ii) the CMSP's progress in facilitating straight-through processing during the twelve month period covered by the report; and (iii) the steps the CMSP intends to take to facilitate and promote STP during the twelve month period following the period covered by the report.[320]

Proposed Rule 17Ad–27 would require a CMSP to submit the annual report to the Commission using EDGAR, and to tag the information in the report using structured XBRL.[321] The Commission stated in the proposal that this annual report would be made publicly available on the Commission's website to enable the public to review and analyze progress on achieving straight-through processing, identify potential improvements to further facilitate straight-through processing, and provide the Commission and the public with a centralized, publicly accessible electronic database for the reports, facilitating the use of the reported data on straight-through processing.[322] The proposing release also discussed the Commission's preliminary view as to its intended understanding of various aspects of the two main requirements under proposed Rule 17Ad–27, including terms used in the rule text.[323]

B. Comment Letters From DTCC ITP

The Depository Trust & Clearing Corporation (''DTCC''), in conjunction with DTCC ITP LLC and DTCC ITP Matching (US) LLC, (collectively ''DTCC ITP'') submitted two comment letters discussing proposed Rule 17Ad–27,[324] and these were the only comments received by the Commission that extensively discussed proposed Rule 17Ad–27.[325] DTCC ITP Matching (US) LLC (''ITP Matching US'') operates one of three entities that to date have received from the Commission an exemption from registration as a clearing agency to operate as a CMSP.[326] ITP Matching US currently offers two services to facilitate post-trade processing of institutional trades: (i) TradeSuite ID, an electronic trade confirmation (''ETC'') service; [327] and (ii) a central trade matching service (''CTM'') for securities transactions (in its capacity as a CMSP).[328]

While DTCC ITP generally supported ''the Commission's approach to facilitating T+1 through the promotion of same-day affirmation, STP and other enhancements in the processing of institutional trades at CMSPs as core building blocks to a successful transition to T+1,'' DTCC ITP raised several concerns about specific aspects of the proposed rule and requested specific modifications to the proposed rule text. DTCC ITP stated that these changes would provide additional flexibility and clarity, and better position CMSPs to achieve the stated goals of the proposed rule.[329] Specifically, and as detailed below, DTCC ITP expressed in its comment letters the following concerns.

1. Amend Policies and Procedures Requirement To Add ''Reasonably Designed'' to the Current Text

In its initial comment letter, DTCC ITP suggested that the requirement in proposed Rule 17Ad–27 for a CMSP to establish, implement, maintain, and enforce policies and procedures should be amended so that a CMSP's policies and procedures are ''reasonably designed'' to facilitate STP.[330] The commenter provided a number of reasons to support the amendment.[331] First, in the commenter's view, the

[319] *See id.* at 10458–59.

[320] *See id.* at 10459–60.

[321] *See id.* at 10459. This requirement would be implemented by including a cross-reference to Regulation S–T in proposed Rule 17Ad–27, and by amending Regulation S–T to include the proposed straight-through processing reports. Pursuant to 17 CFR 232.301 (''Rule 301 of Regulation S–T''), the EDGAR Filer Manual is incorporated by reference into the Commission's rules. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission.

[322] *See id.*

[323] For example, the commonly used term ''straight-through processing'' was explained in the T+1 Proposing Release as to generally refer to processes that allow for the automation of the entire trade process from trade execution through settlement without manual intervention. *Id.* at 10458 (citing to Securities Industry Association (SIA), T+1 Business Case Final Report (July 2000) (''SIA Business Case Report''), *https://www.sifma.org/wp-content/uploads/2017/05/t1-business-case-final-report.pdf*).

[324] *See* DTCC ITP April Letter, *supra* note 216; letter from Matthew Stauffer, Managing Director and Head of DTCC Institutional Processing, DTCC (Sept. 30, 2022) (''DTCC ITP September Letter''). DTCC ITP Matching (US) LLC is a wholly-owned subsidiary of DTCC ITP LLC, a Delaware limited liability company controlled by its sole member, DTCC. DTCC is the parent company of The Depository Trust Company, the National Securities Clearing Corporation, and the Fixed Income Clearing Corporation, all registered with the Commission as clearing agencies under section 17A of the Exchange Act.

[325] In addition, the Commission received three comment letters from The Options Clearing Corporation (''OCC''), State Street, and the FIX Trading Community that referenced proposed Rule 17Ad–27. Like DTCC ITP, OCC recommended including ''reasonably designed'' in the text of any rule requiring a ''registrant'' to maintain policies and procedures. *See* OCC Letter, *supra* note 15, at 3. State Street supported measures intended to enhance STP at CMSPs, including the annual publication of data on matching rates and other similar efficiency metrics. *See* State Street Letter, *supra* note 15, at 4. FIX supported efforts to retire manual mechanisms while ensuring that electronic bilateral and central matching mechanisms that support STP are permitted. *See* FIX Trading Letter, *supra* note 227, at 4. Given the brief and general nature of these comments, and the fact that they are aligned with comments also made by DTCC ITP, the Commission has focused its discussion for the remainder of Part V on the substantive points raised by DTCC ITP.

[326] *See* Order Granting Exemption from Registration as a Clearing Agency for Global Joint Venture Matching Services—U.S., LLC, Exchange Act Release No. 33188 (Apr. 17, 2001), 66 FR 20494, (Apr. 23, 2001) (''GJVMS Exemption Order''); Order Approving Application for an Exemption from Registration as a Clearing Agency for Bloomberg STP LLC and SS&C Techs, Inc., Exchange Act Release No. 76514 (Nov. 24, 2015), 80 FR 75388, 75413 (Dec. 1, 2015) (''Bloomberg STP and SS&C Techs Exemption Order''). DTCC ITP Matching US is formerly known as GJV Matching Service—US, LLC.

[327] An ETC allows market participants, such as broker-dealers, investment managers, hedge funds, banks, custodians, and agents, to coordinate domestic post-trade activities, generally by providing trade counterparties with the ability to electronically confirm and affirm certain details of their trades. This automated process eliminates manual and verbal communications in the confirmation and affirmation process, thereby reducing risks and facilitating shorter settlement timeframes. For a description of ETCs generally, *see* GJVMS Exemption Order, *supra* note 326, at 20496.

[328] *See* DTCC ITP April Letter, *supra* note 216, at 2. Generally, TradeSuite ID allows broker-dealers, buy-side firms, custodians, and agents to confirm and affirm elements of their trades in equity and fixed income securities through an automated post-trade process. CTM allows broker-dealers and buy-side firms to electronically match block trades, allocations, and confirmations in trades involving a wide variety of asset classes and provides a trade allocation and acceptance service that communicates trade and allocation details between parties. *See id.* at 2–3.

[329] For example, DTCC ITP supported the concept of requiring policies and procedures and submission of an annual report but suggested specific recommendations regarding what should be included in the annual report. Further, it supported not ''prescribing'' the meaning of key terms and concepts used in the rule text, such as ''allocation,'' ''confirmation,'' ''affirmation,'' and ''customer,'' or stipulating separate requirements and deadlines for each of these processing functions or specifying separate requirements and deadlines for each processing step. *See id.* at 3–4.

[330] *See id.* at 4. The Commission described STP in the T+1 Proposing Release as generally referring to the processes that allows for automation of the entire trade process from trade execution through settlement without manual intervention. *See* T+1 Proposing Release, *supra* note 2, at 10458. In the context of institutional trade processing, STP occurs when a market participant or its agent uses the facilities of a CMSP to enter trade details and completes the trade allocation, confirmation, affirmation, and/or matching processes without manual intervention. *See* DTCC ITP April Letter, *supra* note 216, at 5.

[331] As discussed further in Part V.C.1 below, the Commission concurs with DTCC ITP's general suggestion that amending the policies and procedures requirement to add ''reasonably designed'' is appropriate, but for reasons other than those cited by DTCC ITP in its comment letter. *See* DTCC ITP April Letter, *supra* note 216, at 4.

proposed rule is an inflexible standard that places ''all responsibility'' for facilitating STP on the CMSPs, and as such, is inconsistent with the Commission's view of STP generally, and with regard to CMSPs specifically, will undermine the stated goal of facilitating STP.[332] Further, DTCC ITP expects that the proposed text would result in CMSPs avoiding innovation of new technologies that promote STP because of liability concerns.[333] In contrast, DTCC ITP stated, amending the rule text to reflect a ''reasonably designed standard'' would make the rule consistent with the Commission's stated policy goals.

Second, DTCC ITP stated that the ''standard'' in proposed Rule 17Ad–27 is inconsistent with the approach the Commission has applied to CMSPs in the orders exempting matching services from registration as a clearing agency because the approach in the exemptive orders is more flexible than that of the proposed rule.[334] For example, the commenter stated that the exemptive orders applicable to CMSPs clarify that, in reports required of CMSPs and their service providers indicating trade processing timeframes, the CMSP is not responsible for identifying the specific cause of any delay in performing its matching service where the fault for such delay is not attributable to the CMSP.[335] DTCC ITP stated that the approach laid out in the exemptive order is the appropriate one because it explicitly acknowledges the fact that the CMSP does not have ''perfect'' control over all aspects of trade processing, even in instances where its systems otherwise have been reasonably designed to facilitate STP. Accordingly, DTCC ITP maintains that introducing the reasonably designed policies and procedures standard would eliminate inconsistencies between the proposed rule and the exemptive orders.

Third, DTCC ITP asserts that the proposed standard is inconsistent with the Commission's economic analysis of proposed Rule 17Ad–27.[336] Referring to the Commission's statement in the T+1 Proposing Release that the policies and procedures requirement should result in the same estimated costs as similar policies and procedures requirements and burden estimates under other rules for registered clearing agencies, DTCC ITP noted that those requirements and the attendant compliance burdens and costs are based on a ''reasonably designed'' standard.[337] Therefore, DTCC ITP stated that it does not believe that the proposed economic analysis relating to burdens and costs of proposed Rule 17Ad–27 is consistent with the underlying legal standard reflected in the proposed rule.[338]

Fourth, DTCC ITP stated that ''precedent shows'' that the Commission's stated STP goals can be achieved by using a standard that includes ''reasonably designed.'' As examples, DTCC ITP cited to the requirements for registered clearing agencies, which it noted are ''replete with obligations for such entities to have policies and procedures 'reasonably designed' to achieve a particular result.'' [339] Such an approach, DTCC ITP stated, allows the clearing agencies to use their experience and understanding of the markets they serve to shape the rules, policies, and procedures implementing such rules and such an approach with other clearing agencies' rules has resulted in outcomes that benefit the resilience and ongoing evolution of the national clearance and settlement system.[340] DTCC ITP also stated that CMSPs are already subject to a reasonably designed policies and procedures standard pursuant to their requirements under 17 CFR 242.1000 through 242.1007 (''Regulation SCI'').[341]

2. Use of ETCs and Manual Processes

DTCC ITP stated that the proposed rule should not ''abruptly force'' or require an immediate ''disorderly elimination'' of ETC services and related manual processes used by market participants today.[342] Instead, DTCC ITP recommended ensuring that the proposed rule does not force market participants to move away from ETC services in a sudden and disruptive manner and clarify the degree to which CMSPs are responsible for realizing the Commission's goal of moving away from manual processes as soon as technologically practicable.[343]

[332] *See id.* at 5. Because the obligation to develop policies and procedures to facilitate STP, as described in proposed Rule 17Ad–27 applies to CMSPs only, the scope of the policies and procedures would only include those activities that are within the control of the CMSP, which in turn would bind only those entities that are in contractual privity with the CMSP. Moreover, the Commission proposed a number of other rules that required other market participants, namely broker-dealers and investment advisers, to comply with specified rules addressing same-day affirmation that the Commission anticipates will not only facilitate T+1 but encourage the development of more efficient and automated operations, which will in turn further STP. *See supra* Parts III.A and IV.A concerning proposed Rule 15c6–2 and amended Rule 204–2, respectively. Accordingly, the Commission does not believe that the policies and procedures requirement under the proposed rule imposes an inflexible standard that places ''all responsibility'' for facilitating STP on the CMSPs or is inconsistent with the Commission's view of STP generally or its stated policy goals.

[333] *See* DTCC ITP April Letter, *supra* note 216, at 6.

[334] *See id.* The Commission does not agree with DTCC that the ''standard'' in proposed Rule 17Ad–27 applicable to the policies and procedures requirement is inconsistent with the approach taken in the exemptive orders applicable to CMSPs, but the obligations of the proposed rule and the exemptive order are separate and distinct from each other. The terms of the exemptive order include certain obligations relating to (i) operational conditions (*e.g.,* providing the Commission with certain audit reports, annual report, annual risk assessments, notice of significant system outages, advance notice of material changes, affirmation rate data, record retention, copies of service agreements, obligation to not perform any clearing agency function other than those permitted by the exemptive order); (ii) interoperability conditions relating to linkages and interfaces with other CMSPs; (iii) requirement to negotiate fair and reasonable prices relating to such interfaces; and (iv) obligations relating to customer charges for certain activities and information. *See* GJVMS Exemption Order, *supra* note 326, at 20498–501. These conditions were established to ensure that ITP Matching US will have sufficient operational and processing capacity to facilitate prompt and accurate matching services and are designed to enable the Commission to monitor its risk management procedures, operational capacity and safeguards, corporate structure and ability to operate in a manner to further the fundamental goals of section 17A of the Exchange Act. Proposed Rule 17Ad–27 would impose an additional and separate obligation to develop policies and procedures that facilitate STP. In the exemptive order, the Commission has reserved the right to modify by order the terms, scope, or conditions of the exemption if it determines that such modification is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the Exchange Act. GJVMS Exemption Order, *supra* note 326, at 20501. The Commission believes no such modification is necessary because proposed Rule 17Ad–27 is consistent with the conditions set forth within the exemptive order.

[335] *See* GJVMS Exemption Order, *supra* note 326, at 20500.

[336] *See* DTCC ITP April Letter, *supra* note 216, at 7.

[337] *See id.*

[338] *See id.; see also infra* Part VIII.C for further information on DTCC ITP's comment regarding the Commission's economic analysis.

[339] DTCC ITP April Letter, *supra* note 216, at 7. DTCC ITP specifically cites to Rule 17Ad–22(e), the set of Commission rule provisions applicable to covered clearing agencies. *See* 17 CFR 240.17Ad–22(e).

[340] *See* DTCC ITP April Letter, *supra* note 216, at 7.

[341] *See id.; see also* 17 CFR 242.1001 through 242.1007.

[342] DTCC ITP April Letter, *supra* note 216, at 7. *See infra* Part V.C.1 (discussing the Commission's approach to the use of manual operations, including those related to ETC services, under adopted Rule 17Ad–27).

[343] *See id.* at 8–9. The T+1 Proposing Release stated that with respect to the use of ETCs that impede the development of STP and which often rely on legacy technologies, a CMSP's policies and procedures generally should establish a timeline for transitioning users away from such manual processes to service offerings that can reduce a party's reliance on the manual, often sequential, entry and reconciliation of trade information. T+1 Proposing Release, *supra* note 2, at 10458. However, as stated in that release, proposed Rule 17Ad–27 did not require CMSPs to remove manual processes if doing so would clearly undermine the prompt

Continued

DTCC ITP requested additional clarity around the practical applications of manual processing when its use is necessary for, or its elimination may undermine, prompt and accurate settlement of transactions.[344] Further, DTCC ITP noted that in certain circumstances the parties to a trade may need to engage in manual interventions to ensure the accuracy of trade and settlement information and minimize operational or other risks that may prevent settlement.[345] Therefore, according to DTCC ITP, the rule should not require without further study the removal of manual processes if doing so would undermine the prompt and accurate settlement of securities transactions. Similarly, DTCC ITP stated that it seeks more clarity around the Commission's description of the CMSP's role in facilitating a transition away from manual processes, particularly as it relates to ETC services and timelines for transitioning away from manual processes, some of which may not be under the CMSP's control.[346]

DTCC ITP also raised concerns about the requirement that the CMSP explain in its policies and procedures why manual processes remain necessary as part of its systems and processes and consider developing processes that would eliminate the underlying issues that drive the use of manual process.[347] It is unclear, according to DTCC ITP, how this requirement relates to the broader aspects of the proposal concerning the facilitation of STP. By way of example, DTCC ITP posed a number of questions regarding: (i) how the requirement aligns with the requirement to facilitate STP; (ii) what practical efforts should the CMSP undertake when it considers developing processes that eliminate the underlying reason for the persistent use of manual processes; (iii) what is the relevancy of a cost benefit analysis in developing policies and procedures; and (iv) what particular factors a CMSP should consider.[348]

To help address these concerns, DTCC ITP recommended that the Commission provide further guidance in the form of high-level principles or standards regarding what is intended by the concept ''as soon as technologically practicable'' to minimize or eliminate manual processing for either the input of trade details or to resolve errors and exceptions that can prevent settlement.[349] DTCC ITP suggested that achieving something as soon as technologically practicable should entail a determination that the intended outcome is commercially reasonable, economically viable, and operationally scalable.[350]

3. Amend the Annual Reporting Requirement To Better Achieve Transparency

While generally supporting the requirement for CMSPs to file annual reports, DTCC ITP stated that it did not understand the particular elements it would be required to include in the annual report, or how those elements supported the Commission's stated objectives of the annual report, and expressed concerns about a CMSP's ability to complete the annual report consistent with the Commission's goals.[351] DTCC ITP also expressed concerns that a description of some types of information in its policies and procedures may contain proprietary or confidential information, and as such, a description of its policies and procedures should not be required in the annual report.[352] As an alternative, DTCC ITP recommended that the annual report provision of the proposed rule be amended to focus more on quantitative reporting and less on qualitative descriptive reporting. Specifically, DTCC ITP recommended eliminating proposed subsections (a) through (c) of proposed Rule 17Ad–27 requiring specified descriptions, and instead recommended including a requirement in the rule text for public reporting of quantitative data on an anonymized and aggregated level for rates of allocation, confirmation, affirmation and/or matching over the twelve month period covered by the report.[353] Further, DTCC ITP suggested disclosure of additional data elements, such as affirmation rates for institutional trade and prime brokerage trade flows, and affirmation rates for institutional trade flows achieved separately through an ETC or through a central matching facility.[354]

To provide further detail regarding the content of the annual report as it relates to quantitative reporting requirements, DTCC ITP submitted its second comment letter.[355] Based on its review of the data available in its systems, DTCC ITP stated its belief that certain high-level categories of metrics that should be included in the rule text for proposed Rule 17Ad–27 to help

and accurate clearance and settlement of securities transactions. *See id.* at 10458–59. As discussed in Part V.C below, Rule 17Ad–27 will allow CMSPs some flexibility in designing policies and procedures that reduce or eliminate manual operations in a manner that does not undermine the CMSP's obligations under section 17A of the Exchange Act and are appropriate for the CMSP's particular operations, services, and business models. *See infra* Part V.C.1. This flexibility applies to CMSPs general operations as well as any associated with ETC services. Moreover, if the ETC is not impeding the development of STP, the CMSP may determine the use and operations of the ETC is consistent with both the obligations required of CMSPs pursuant to adopted Rule 17Ad–27 as well as those under section 17A of the Exchange Act.

[344] *See* DTCC ITP April Letter, *supra* note 216, at 9. DTCC ITP stated that more clarity is needed to better understand what constitutes a manual process and if, when, and how the use of manual processes may be acceptable under proposed Rule 17Ad–27. For example, DTCC ITP cited the need for additional clarity as to how removing a manual process could ''clearly undermine'' settlement, what factors would be taken into account in applying this standard, and whether unmatched trades and fails or exceptions. *See id.*

[345] *See id.*

[346] *See id.* at 9–10.

[347] *See id.* at 10.

[348] *See id.* As discussed in Part V.C of this release, the use of manual operations or automated operations that may result in manual intervention is a potential source of risk and costs both at the CMSPs and in the U.S. clearance and settlement system. Moving towards a processing environment that facilitates STP at the CMSP should help alleviate some of these risks and costs. As stated in the T+1 Proposing Release, the Commission understands that at this time there may be certain scenarios where human intervention is necessary or prudent, however, as technology and the markets evolve over the near term, the expectation is that CMSPs would attempt to reduce or eliminate instances where human intervention is required. T+1 Proposing Release, *supra* note 2, at 10458–59.

[349] *See* DTCC ITP April Letter, *supra* note 216, at 10. The T+1 Proposing Release stated that a CMSP facilitates STP when its policies and procedures enable its users to minimize or eliminate, to the greatest extent that is technologically practicable, the need for manual input of trade details or manual intervention to resolve errors and exceptions that can prevent settlement of the trade. A CMSP also facilitates straight-through processing when it enables, to the greatest extent that is technologically practicable, the transmission of messages regarding errors, exceptions, and settlement status information among the parties to a trade and their settlement agents. T+1 Proposing Release, *supra* note 2, at 10458. However, as discussed in Part V.C.2 below, there may be situations where the minimization or elimination of certain manual operations is not appropriate or feasible in the near term. The facts and circumstances determining ''as soon as technologically practicable'' will vary across CMSPs, depending upon their services, systems, and business models. Accordingly, CMSPs should generally use their expertise to assess the extent to which a specific policy or procedure is appropriately designed to facilitate STP.

[350] *See* DTCC ITP April Letter, *supra* note 216, at 10.

[351] *See id.* at 11. For example, DTCC ITP expressed concerns that the term ''description'' needs more clarity related to required content and level of detail.

[352] *See id.* DTCC ITP stated that requiring a CMSP to engage in the future cost and effort of analyzing the need for confidential treatment of such information will impede efforts by CMSP to innovate. *See infra* Part V.C.2 for the Commission's discussion of treatment of confidential information.

[353] *See* DTCC ITP April Letter, *supra* note 216, at 12. As discussed further in Part V.C.2 below, the Commission is retaining the qualitative and quantitative aspects of the annual report, but has modified that requirement to address the anonymization and aggregation issues described in this comment letter.

[354] *See id.; see also infra* Part V.C.2 for the discussion of the metric requirements under Rule 17Ad–27(b), as adopted.

[355] *See* DTCC ITP September Letter, *supra* note 325.

objectively demonstrate trends toward more automation, less manual intervention, and progress towards STP.[356] Defining specific metric categories, DTCC ITP stated, would promote consistency and clarity across reporting and leave some flexibility for CMSPs to provide metrics which may be most appropriate to their specific activities and services.[357] Recommendations for specific data categories included: (i) trade volume metrics, such as the total number of allocations and confirms submitted to a CMSP's matching service and total number of confirmations and cancelled confirmations submitted to an ETC service; (ii) matching metrics, such as the percentage of allocations and confirmations submitted to the CMSP that are matched or matched/auto-affirmed by specified timeframes on trade date; (iii) affirmation metrics, including the percentage of institutional and prime broker confirmations submitted to an ETC that are affirmed by specified timeframes on trade date; and (iv) STP metrics, such as data concerning manual processes.[358]

DTCC ITP also requested clarity as to when CMSPs would be required to submit their initial annual reports, as well as the time period applicable to the actual content to be included in the initial annual report.[359] DTCC ITP recommended that the initial twelve-month reporting period should begin after both the T+1 compliance date and the same-day affirmation rules come into effect, which according to DTCC ITP will provide a baseline that is predicated on implementation of all Commission requirements designed for a T+1 settlement cycle, and will provide a clear review and analysis of progress in advancing STP on a year-by-year basis without having to adjust to interpret reporting periods when the rules were not entirely in effect across the whole post-trade market.[360]

4. Support Further Standardization of Industry Protocols and Reference Data

DTCC ITP recommended that the Commission prioritize the development of proposals requiring market participants to increase the use of standardized settlement instructions (''SSIs'').[361] Promoting greater adoption of SSIs, DTCC ITP stated, is critical to addressing the potential risk of settlement errors and fails in a T+1 environment, and DTCC ITP further stated its belief that centrally managed SSIs become even more critical in terms of the secure transmission of sensitive account and reference data necessary for settlement.[362] DTCC ITP asserted that increased focus on, and the consequences of, cyber risk and fraudulent activity also necessitate the need for fully automated and centralized management and secure communication of critical SSI reference data, and noted an industry survey that indicated SSI-related issues continue to be one of the most common reasons for settlement fails.[363]

C. Final Rule and Discussion

CMSPs facilitate communications among a broker-dealer, an institutional investor or its investment adviser, and the institutional investor's custodian to reach agreement on the details of a securities transaction, enabling the trade allocation, confirmation, affirmation, and/or the matching of institutional trades.[364] Once the trade details have been agreed among the parties or matched by the CMSP, the CMSP can then facilitate settlement of the transaction.

As mentioned above and detailed in the T+1 Proposing Release, the rising volume of transactions for which CMSPs provide matching and other services have caused CMSPs to become increasingly critical to the functioning of the securities market.[365] The Commission anticipates that a shortened settlement cycle may lead to further expanded use of CMSPs, as well as increased focus on enhancing the services and operations of the CMSPs themselves.[366] In addition, some SRO rules currently require the use of CMSP services for institutional trade processing.[367] The Commission believes that more could and should be done to ensure that CMSPs, as critical utilities in the securities market, are operating in a manner that improves the clearance and settlement of securities transactions through improvements in efficiency, risk reduction, and costs. Reducing and, where possible, eliminating the use of tools and services that encourage or require manual processing, along with the continued development and implementation of more efficient automated systems that facilitate STP in the institutional trade processing environment at the CMSP, is essential to improving those efficiencies, as well as reducing risk and costs, to ensure the prompt and accurate clearance and settlement of securities transactions.[368]

Over the past decade CMSPs have become increasingly connected to a wide variety of market participants in the U.S.[369] New Rule 17Ad–27 will require CMSPs, and by extension their users, to assess their processes and find solutions to reduce or eliminate reliance on services at CMSPs that involve manual or inefficient processes or otherwise do not further facilitate STP in the institutional trade processing environment. This in turn should better position CMSPs to provide services that not only reduce processing risk and costs, but also generally facilitate a more orderly transition to a T+1 standard settlement cycle in the near term,[370] as well as potential further shortening of the settlement cycle in the future.

Accordingly, the Commission is adopting proposed Rule 17Ad–27 with modifications. As explained further below, the Commission is adding the language ''reasonably designed'' to the policies and procedures requirement in

[356] *See id.* at 2.

[357] *See id.*

[358] *See id.* at 2–3. Part V.C.2 below further discusses the quantitative data requirements under Rule 17Ad–27(b), as modified. As discussed in that section, the Commission is opting to specify the particular data required under the rule rather than require data categories to ensure the data will capture specific information that can enable effective analysis of the CMSPs' progress in facilitating STP.

[359] *See id.* at 3. Part V.C.3 below further discusses the required contents and timing of the initial and subsequent annual reports under adopted Rule 17Ad–27(c).

[360] *See id.* DTCC ITP indicated in its comment letter that it is considering publishing the annual report on its website to provide the public with ready access to the information. *See id.* at 4. Part V.C.4 below further describes the filing requirements and provides related guidance regarding the filing of the annual report.

[361] *See* DTCC ITP April Letter, *supra* note 216, at 8. The use of SSIs is just one of many standardization mechanisms available to assist CMSPs in streamlining their internal operations to reduce reliance on manual processes, which can facilitate STP. Part V.C.1 below discusses SSIs in the context of the development of the CMSP's policies and procedures under Rule 17Ad–27(a). *See infra* note 386.

[362] *See id.*

[363] *See id.*

[364] For a general description of the role of CMSPs in the U.S. markets, *see* T+1 Proposing Release, *supra* note 2, at 10439.

[365] *See supra* note 315 and accompanying text.

[366] *See* T+2 Proposing Release, *supra* note 4, at 69258. For example, increasing the efficiency of using a CMSP can reduce the risk that a trade will fail to settle and reduce costs associated with correcting errors that result from the use of manual processes and data entry, thereby improving the overall efficiency of the U.S. clearance and settlement system.

[367] *See, e.g.,* Financial Industry Regulatory Authority (FINRA) Rule 11860 (requiring a broker-dealer to use a registered clearing agency, a CMSP, or a qualified vendor to complete delivery-versus-payment transactions with their customers).

[368] *See* T+1 Report, *supra* note 61, at 9.

[369] *See, e.g.,* DTCC, About DTCC Institutional Trade Processing, *https://www.dtcc.com/about/businesses-and-subsidiaries/dtccitp* (noting that DTCC ITP, parent to DTCC ITP Matching, serves 6,000 financial services firms in 52 countries).

[370] As discussed in Part II above, the T+1 Report contemplates moving the ''ITP Affirmation Cutoff'' from 11:30 a.m. ET on the day after trade date to 9:00 p.m. ET on trade date. *See* T+1 Report, *supra* note 61, at 13, 39.

paragraph (a), adding additional requirements in paragraph (b) to specify the data to be included in the annual report, and adding paragraph (c) to explain the required timing of filing the annual report. The Commission believes these changes are responsive to the commenter's concerns and provide CMSPs flexibility to address individualized operations, services, types of users, and business objectives, and provide specificity to the data requirements while at the same time retaining those provisions that facilitate achieving the stated objectives of the new rule. In addition, and as discussed in more detail below, the Commission is making several technical modifications, including reorganizing the specific obligations under the proposed rule by subdividing those obligations into paragraphs (a) through (d), and adopting revisions to other technical aspects of and terms used in the proposed rule text to improve clarity.

1. New Rule 17Ad–27(a)—Requirement for Policies and Procedures

As discussed below, the Commission is retaining the proposed requirement in Rule 17Ad–27 to establish, implement, maintain, and enforce policies and policies, but is making several modifications. As with the proposed rule, the final rule will require CMSPs to develop policies and procedures focused on facilitating improvements in their operations, systems, and user obligations to further the development of STP [371] in the processing of institutional trades, improve efficiency, facilitate both cost and risk reduction in the clearance and settlement of institutional trades generally, and better accommodate shorter settlement cycles.[372] The requirement to establish, implement, maintain and enforce policies and procedures in new Rule 17Ad–27(a) is as an important and efficient mechanism that will require CMSPs, and by extension those market participants that choose to rely on CMSPs to facilitate clearance and settlement, to develop and implement specific operational procedures and systems to facilitate STP. This, in turn, will enable, over time, STP in the post-trade processing of institutional trades. Importantly, the rule will also encourage the development of strategic plans on a forward-looking basis to facilitate STP within the CMSP's operating framework and to facilitate internal and external assessments as to the viability and implementation of those strategic plans. By virtue of the expanded use of CMSPs generally and the global nature of post-trade processing today, the Commission anticipates that these efforts will require CMSPs to coordinate their development activities with a variety of other market participants that impact the CMSPs' ability to provide beneficial efficiencies, which should in turn encourage the use of CMSPs. Finally, the development of policies and procedures by CMSPs will facilitate the Commission's ongoing development of the national clearance and settlement system generally by enhancing the oversight of CMSPs and ensuring a documented approach to further STP.

Specifically Rule 17Ad–27(a), as adopted, requires a clearing agency that provides a central matching service (*i.e.,* a CMSP) to establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate straight-through processing of securities transactions at the clearing agency.[373] Because the policies and procedures requirement is distinct from the annual report requirement (discussed below), this requirement is now designated as new paragraph (a) in final Rule 17Ad–27, as adopted. The final rule also removes the reference to ''transactions involving broker-dealers and their customers'' because it is only explanatory text describing the types of parties that may use a central matching service and therefore is unnecessary to include in the rule text.[374] Lastly, the final rule makes clear that the policies and procedures must be ''written.''

The provision to ''establish, implement, maintain, and enforce'' written policies and procedures requires the CMSP to establish and implement such policies and procedures by the compliance date and to ensure that the policies and procedures remain current on an ongoing basis, including by implementing timely updates or revisions.[375] Moreover, the requirement to ''enforce'' requires the CMSP to develop a reasonable approach with sufficient specificity to ensure that its users comply with any required user obligations and to make clear any consequences of non-compliance within the established policies and procedures framework and the timeframes associated with any such consequences. The Commission encourages, but does not require, the CMSP to provide users with access to the required CMSP policies and procedures well in advance of any compliance obligations applicable to users to ensure that they can thus make the necessary arrangements or changes to comply with any user obligations contained therein.

The periodic review required by the ''establish, implement and maintain'' component of the CMSP's policies and procedures requirement under adopted Rule 17Ad–27(a) should also help ensure that a CMSP considers in a holistic fashion how the obligations it requires of its users will advance the implementation of methodologies, operational capabilities, systems, or services that support STP. It should also encourage the CMSP and its users to identify inefficiencies and manual processes that impede the STP objective and, to the extent possible, develop automated and streamlined solutions to address those issues.

The scope of the policies and procedures required under new paragraph (a) generally should focus on those aspects of the CMSP's operations and services that directly or indirectly relate to facilitating STP in the processing of institutional trades at the CMSP.[376] The Commission understands that the CMSP only controls its internal functions, and not those of its users, and as such, the rule as adopted requires the CMSP to design its policies and procedures around its own internal functions and services. However, and to the extent practicable, the Commission encourages CMSPs to develop a policies

[371] As discussed above, the term ''straight-through processing,'' as used by the financial services industry, generally refers to processes that allow for the automation of the entire trade process from trade execution through settlement without manual intervention. *See supra* note 330. In the context of institutional trade processing under this rule, STP occurs when a market participant or its agent uses the facilities of a CMSP to enter trade details and completes the trade allocation, confirmation, affirmation, matching processes, or any combination thereof, without manual intervention.

[372] In some cases, the use of manual or inefficient processing introduces errors and operational risks that delay settlement and may result in a failure to settle the transaction. The Commission believes that, by engaging in the process of developing and periodically assessing their policies and procedures, CMSPs will not only foster solutions to mitigate or alleviate these inefficiencies and risks internally but also consider these issues as they apply to the general processing stream that may be relevant to the CMSP's operations and its users.

[373] The new rule text adds the word ''written'' to the policies and procedures requirement to require that the policies and procedures must be established as a written document.

[374] *See, e.g.,* Bloomberg STP and SS&C Techs Exemption Order, *supra* note 326, at 75388–90 (generally describing the clearing agency applicants as providers of a ''matching service'' or ''central matching service'' without reference to the types of customers served).

[375] *See infra* Part VII for a discussion of the compliance dates.

[376] Accordingly, those aspects of the CMSP's operations or services that are not directly or indirectly related to facilitating STP are not required to be included in the policies and procedures required under Rule 17Ad–27(a). However, the rule does not preclude the CMSP from adopting policies and procedures that are beyond the scope of Rule 17Ad–27(a).

and procedures framework that incentivizes CMSP users and their customers to adopt and implement the necessary systems and services within their own firms to make full use of the CMSP's systems that facilitate STP.[377] While some of this may occur organically as CMSP users that agree to use specific CMSP services or systems reconfigure their systems to accommodate the initial and updated CMSP policies and procedures, CMSPs generally should also endeavor to create incentives within the policies and procedures framework that encourage more widespread use of their STP-oriented systems, both among current CMSP and non-CMSP users. For example, creating cost-saving operational efficiencies within the CMSP or developing attractive price structures may create incentives for more widespread use of the CMSPs services.

Moreover, the policies and procedures framework generally should also endeavor, to the extent prudent, to dis-incentivize the use of manual systems or automated systems that do not facilitate STP.[378] The Commission views the facilitation of STP as providing the necessary efficiencies, both on a technological, operational, and service level, to remove to the extent practicable and prudent the need for manual intervention (or automated systems that result in the need for manual intervention) in the acceptance of trade information and the process by which the CMSP provides for allocation, confirmation, affirmation, and matching services. The Commission also understands that at this time there may be scenarios where human intervention is necessary or prudent. However, as technology and the markets evolve over the near term, CMSPs should consider reducing or eliminating instances where human intervention is required as soon as reasonably possible, both on a technological and operational basis.

To provide flexibility and discretion in the development of a particular CMSP's policies and procedures, the Commission is adding the new language ''reasonably designed'' to the policies and procedures requirement in final Rule 17Ad–27(a), as adopted. The insertion of the language ''reasonably designed'' in the policies and procedures requirement should allow CMSPs to tailor their policies and procedures to accommodate their individualized internal operations, systems, business models and users as they determine how best to facilitate STP within their particular processing environment and to mitigate any issues particular to that CMSP that frustrate achieving STP. That discretion should allow the CMSP to determine whether specific policies and procedures designed to further STP are reasonable relative to certain considerations applicable to that particular CMSP and its users, particularly as those assessments may change over time. Moreover, and as explained by the commenter, given that other Commission rules applicable to clearing agencies incorporate a ''reasonably designed'' component in the policies and procedures required under such rules, CMSPs should have familiarity and experience in drafting ''reasonably designed'' policies and procedures, as required by new Rule 17Ad–27(a).[379]

In structuring a plan to facilitate STP through reasonably designed policies and procedures, a CMSP generally should evaluate its operations and systems to determine potential sources of inefficiency or manual operation that exist within the current CMSP's processing stream, and consider addressing these frictions in a manner that does not disrupt the CMSP's ability to facilitate the prompt and accurate settlement of securities transactions.[380] Rule 17Ad–27 does not require CMSPs to force market participants to move away from ETC services in a sudden and disruptive manner or eliminate manual processing completely or on any particular timeframe if doing so would result in creating inefficiencies or impair the prompt and accurate settlement of securities transactions.[381] CMSPs generally should, however, review their STP plans annually to assess whether new disincentives to use manual processes are appropriate, particularly in light of any recent market changes or technological innovations.

As it develops its policies and procedures to facilitate STP, a CMSP may consider factors relevant to that CMSP in assessing whether any identified issues can or should be addressed and if so, how best to implement those changes.[382] For example, such factors may include: (i) the significance of certain obstacles to STP as it relates to other clearance and settlement functions and objectives, including operational efficiency and operational risk management; (ii) the frequency and impact of a particular issue; or (iii) the cost of resolving the issue versus the benefit. The flexibility afforded by the insertion of the reasonably designed language in new Rule 17Ad–27(a) also should allow CMSPs to better account for changes over time in technology, markets, business, and other advancements that promote accurate clearance and settlement, as well as any costs associated with particular policies or procedures relative to the benefits. Accordingly, the inclusion of ''reasonably designed'' should aid in the development of more effective and efficient CMSP policies and procedures required under Rule 17Ad–27, as adopted.

Under the rule, a CMSP facilitates STP when its policies and procedures enable its users to minimize or eliminate, to the greatest extent that is technologically practicable, the need for

[377] While the CMSPs policies and procedures will *directly* affect the systems and processes of its users by requiring the use of those systems and processes to be in compliance with the CMSP's STP friendly systems and processes, the CMSP's STP efforts also may *indirectly* affect the systems and process of other non-user market participants that either interact with CMSP users or by virtue of the CMSP role as a centralized utility in the market. The standardization of industry practices toward realizing increased STP capabilities internal and external to the CMSPs should in turn promote the eventual elimination of manual processing.

[378] For example, as noted by DTCC ITP in its comment letter, systems or operations that standardize certain operational functions, such as the use of SSIs, may help alleviate the need for manual operations. *See* DTCC ITP September Letter, *supra* note 325, at 2–3. However, as noted above, the use of SSIs is just one of many mechanisms available to assist CMSPs in streamlining their internal operations and in turn facilitating STP. Given that individual CMSPs may vary in the services provided or the operations and systems used to provide those services, to the extent that the use of SSIs is applicable in a particular CMSP's operations, the Commission encourages the CMSPs to consider developing incentives or requirements in their policies and procedures to encourage or compel the use of SSIs. *See supra* note 361.

[379] *See, e.g.,* 17 CFR 232.1001(a)(1), (b)(1), and (c)(1) (relating to the policies and procedures requirements under Regulation SCI). Regulation SCI is applicable to both clearing agencies that are registered as well as those that are exempted from registration. *See, e.g.,* 17 CFR 240.17Ad–22(d) and (e) (relating to the core clearing agency rules under section 17A of the Exchange Act, which are applicable to only those clearing agencies that are registered).

[380] The use of manual operations may arise for a number of reasons, including because (i) there is no automated system that facilitates a particular activity; (ii) a user has not availed itself of the automated process offered by a CMSP; or (iii) input into an automated system is rejected, resulting in the need to manually reconcile the situation. STP endeavors to eliminate manual processes by automating the entire trade process from trade execution through settlement without manual intervention. *See* T+1 Proposing Release, *supra* note 2, at 10458; *see also supra* note 323 and accompanying text.

[381] *See supra* Part V.B.2 (discussing DTCC ITP comments regarding manual processing).

[382] As discussed further below, the CMSP will be required pursuant to Rule 17Ad–27(b)(2) to provide a qualitative description of its progress in facilitating STP in its annual report to the Commission. For example, the report may describe the CMSP's approach and rationale for addressing or not addressing any issues identified as obstacles to facilitating STP. *See infra* Part V.C.2.

manual input of trade details, the manual intervention to resolve errors and exceptions that can prevent settlement of the trade, or the transmission of messages regarding errors, exceptions, and settlement status information among the parties to a trade and their settlement agents that impede the ability of the CMSP to achieve an STP environment. In considering generally how to develop policies and procedures that facilitate STP, a CMSP generally should consider the full range of operations and services related to the processing of institutional trades for settlement and establish a holistic framework for STP on a CMSP-wide basis. CMSPs should also generally consider and address how the services, systems, and any operational requirements a CMSP applies to its users ensure that the CMSP's policies and procedures advance the goal of achieving straight-through processing for trades processed through it. Moreover, the CMSP generally should ensure that its systems, operational requirements, and the other choices it makes in designing its services, enable and incentivize prompt and accurate settlement without manual intervention or without automated processes that may result in manual intervention.

For example, a CMSP's policies and procedures generally should explain the criteria that the CMSP applies to determine when a ''match'' has been achieved, including any relevant tolerances that it or its users might apply to achieve a match, and the extent to which such criteria should be standardized or customized.[383] With respect to the use of ETCs that impede the development of STP, and which often rely on legacy technologies, a CMSP's policies and procedures generally should establish a timeline for transitioning users away from such manual processes to service offerings that can reduce a party's reliance on the manual, often sequential, entry and reconciliation of trade information.[384] Where the CMSP acts as a communication platform for different market participants to transmit messages regarding errors, exceptions, and settlement status information among the parties to a trade and their settlement agents, the CMSP generally should consider the extent to which its policies, procedures, and processes restrict, inhibit, or delay the ability of users to transmit such messages used in the preparation or transmission of trades for settlement and have policies and procedures that promote the automated transmission of messages among the relevant parties to a transaction to ensure timely settlement and reduce the potential for errors.

The Commission recognizes it may not be technologically or operationally practicable to eliminate all manual processes immediately. Indeed, in certain circumstances, the parties to a trade may need to engage in manual interventions to ensure the accuracy of trade information and minimize operational or other risks that may prevent settlement. Rule 17Ad–27(a), as adopted, does not require CMSPs to remove a manual process if doing so would clearly undermine the prompt and accurate clearance and settlement of securities transactions. However, where a CMSP continues to permit manual reconciliation or other types of human intervention, it generally should explain in its policies and procedures why those manual processes remain necessary as part of its systems and processes and initiate incremental steps to alleviate the need for any manual process. In addition, the CMSP should consider developing processes that ultimately would eliminate the underlying issues that drive the use of manual processes in order to facilitate a more automated and STP-focused approach.

2. New Rule 17Ad–27(b)—Annual Report

The Commission is retaining the general requirement under proposed Rule 17Ad–27 to require a CMSP to submit a report every twelve months to the Commission that includes specified qualitative and quantitative information used to assess the CMSP's progress in facilitating STP during the twelve-month period covered by the annual report. However, as explained in more detail below, the Commission is making one substantive and several technical modifications to the final rule, as adopted. The purpose of these modifications is to require the CMSPs to disclose qualitative and quantitative information in the annual report. The Commission continues to believe that the annual report component of Rule 17Ad–27(b), as adopted, will enable the Commission to (i) assess the qualitative and quantitative progress made by the CMSP and its users to further STP efforts in the processing of institutional transactions; (ii) evaluate the need for additional regulatory action; and (iii) further its oversight of, and the development of, the national clearance and settlement system.

The Commission is retaining the 12-month reporting timeframe requirement, as proposed, for the annual report under new Rule 17Ad–27(b) for several reasons. First, a yearly review on progress with respect to the CMSP's efforts to facilitate STP should be a sufficient timeframe in which the CMSP is able to consider, develop, and implement iterative improvements over time on a forward-looking basis, while also ensuring that progress towards STP is describable, measureable and implemented as expeditiously and prudently possible. Second, a twelve month period would provide the CMSP with a sufficient look-back period to complete a meaningful review on an organization-wide basis and time to test the efficacy of any material changes to technologies and procedures in the preceding year.

Third, an annual reporting requirement, as opposed to a monthly or semi-annual requirement, should help ensure that the information provided to the Commission reflects meaningful and substantive progress by the CMSP, as opposed to focusing attention on smaller, technical changes in services and policies that would be less relevant or less informative to the CMSP, its users, the Commission, or the public as to their understanding of the overall progress towards achieving straight-through processing by the CMSP. And fourth, the Commission believes that the annual report requirement, as now structured in adopted Rule 17Ad–27, would enable the Commission to evaluate actions taken by the CMSP to ensure compliance with the rule and to help fulfill the Commission's responsibility for oversight of the national clearance and settlement system, both as it relates to the CMSP specifically and the national system more generally.

[383] The use of SSIs is just one of many standardization mechanisms available to assist CMSPs in streamlining their internal operations to reduce reliance on manual processes, which can facilitate STP. Given that individual CMSPs may vary in the services provided or the operations and systems used to provide those services, the Commission does not believe requiring the use of SSI, or any other particular standardization mechanism, in Rule 17Ad–27 would be appropriate. However, to the extent that the use of SSIs is applicable in a particular CMSP's operations, the CMSP generally should consider developing incentives or requirements in its policies and procedures to encourage or compel the use of SSIs. *See supra* note 362.

[384] In its comment letter, DTCC ITP sought more clarity around the Commission's description of the CMSP's role in facilitating a transition away from manual processes, particularly as it relates to ETC services and timelines for transitioning away from manual processes, some of which may not be under the CMSP's control. *See* DTCC ITP April Letter, *supra* note 216, at 7. As discussed above, the Commission is not advocating the elimination of ETC to the extent that its use does not impede the development of STP at the CMSP. In the event that use of the ETC is impeding STP, CMSPs generally should use their expertise to develop an appropriate methodology and timeframe to transition away from the use of such ETC.

New Rule 17Ad–27(b) also retains the general requirement to provide both qualitative and quantitative information in the annual report, as proposed. The Commission believes that both types of analysis are necessary to better explain the current operational environment relative to STP development and the obstacles preventing further STP development, and to provide appropriate context to the metrics, from a current as well as a retrospective and prospective viewpoint. Moreover, the qualitative aspects of the requirements under paragraph (b) will provide the Commission with the CMSP's expertise in the assessments and analysis of its STP progress, providing additional context for the quantitative data required in the annual report.

The Commission also is retaining the provision making the annual report required under adopted Rule 17Ad–27(b) publicly available on its website to enable the public to review and analyze progress on achieving STP.[385] As discussed in the T+1 Proposing Release and detailed below, to the extent that an annual report includes confidential commercial or financial information, a CMSP can request confidential treatment of those specific portions of the report.[386]

To clarify that the content of the annual report requirement is distinct from the policies and procedures requirement (discussed above), the annual report requirement is now designated as new paragraph (b) under the adopted Rule 17Ad–27. Specifically, new Rule 17Ad–27(b), as adopted, requires a clearing agency that provides a central matching service for transactions involving users to submit to the Commission every twelve months a report that includes five component requirements, now delineated as Rule 17Ad–27(b)(1) through (5). Paragraphs (b)(1), (2), and (5) include modified versions of the proposed requirements under proposed Rule 17Ad–27(a), (b), and (c). In addition, new paragraph (b) includes paragraphs (b)(3) and (4) which detail the data elements required in the report, consistent with the discussion in the T+1 Proposing Release but not specified in the rule text as proposed.[387] In particular, paragraphs (b)(3) and (4) incorporate the substance of the recommendations made by DTCC ITP requesting more specificity for the data required to be included in the report under the rule.[388] The Commission believes that these changes are consistent with its intent as to the contents and objective of the annual report, as proposed, and should provide beneficial clarity to CMSPs regarding their obligations under these provisions.

The Commission is also amending paragraph (b) to delete the phrase ''for transactions involving broker-dealers and their customers'' for the same reason it deleted the text in paragraph (a), as discussed in Part V.C.1.

(a) New Rule 17Ad–27(b)(1)—Summary of Policies and Procedures

The first of the five components under adopted Rule 17Ad–27(b) requires the CMSP to provide pursuant to new paragraph (b)(1) a summary of its policies and procedures required under adopted Rule 17Ad–27(a), current as of the last day of the twelve month period covered by the report. The Commission is making a technical change to paragraph (b)(1) to clarify that only a ''summary'' of the CMSP's policies and procedures current as of the last day of the twelve month period covered by the report need be included in the report, and not the policies and procedures in their entirety or policies and procedures current under any other timeframe.[389] Today, CMSPs' policies and procedures are not publicly available. By providing a summary of the CMSPs policies and procedures, the Commission, indirect CMSP users, and the public will be able to understand at a high level the important aspects of the CMSP's operations and systems, which the Commission anticipates will in turn facilitate market-wide discussions regarding the adoption of more efficient post-trade processing generally and within the context of using CMSPs for some or all of a market participant's post-trade processing needs specifically. Moreover, this information should help readers of the annual report to be better able to analyze other aspects of the annual report, particularly those related to the quantitative and forward-looking qualitative information required under the rule, as adopted.

The summary description of the CMSP's policies and procedures required by paragraph (b)(1) generally should provide a brief overview of the policies and procedures developed pursuant to new Rule 17Ad–27(a). To the extent applicable, the scope of the summary generally should focus on those aspects of the CMSP's policies and procedures that describe and explain its operations, systems, services, and user obligations generally and those aspects of its policies and procedures that facilitate STP-oriented operations or systems specifically, including any material changes made to the relevant policies and procedures during the reporting period. Because the Commission will make the report publicly available, it would be helpful for a CMSP to orient the information contained in the summary to market participants that engage in the post-trade processing of securities transactions to help ensure that the report is useful and informative to both existing and potential users.

(b) New Rule 17Ad–27(b)(2)—Qualitative Description of STP Progress

The second component of the annual report under adopted Rule 17Ad–27(b) requires the CMSP to provide pursuant to new paragraph (b)(2) a qualitative description of the CMSP's progress in facilitating STP during the twelve-month period covered by the report required under paragraph (b)(1). The Commission is modifying the proposed requirement, formerly in proposed Rule 17Ad–27(b), to add the text ''qualitative description'' in new paragraph (b)(2) to clarify the type of information required in the CMSP's description of its progress in facilitating STP during the period covered by the report and to assist CMSP compliance with this provision of the rule.

The qualitative report required under paragraph (b)(2) will provide the Commission and the public with an understanding of the specific actions the CMSP has taken over the twelve-month period covered by the report to facilitate STP. To the extent practicable, the Commission encourages CMSPs to use their expertise to include their assessment of the impact of any actions discussed in the qualitative section of the report on the furtherance of its STP efforts, both as it relates to the CMSP specifically and the markets generally. The Commission and CMSP users will use this information to better understand the CMSP's STP initiatives, as well as encourage market participants to begin analyzing their own internal systems and operations to develop and incorporate more STP-oriented mechanisms themselves. In addition, the qualitative report required under this provision should also help inform

[385] DTCC ITP indicated in its comment letter that it is considering publishing the annual report on its website to provide the public with ready access to the information. *See* DTCC ITP September Letter, *supra* note 325, at 4.

[386] *See* 17 CFR 240.24b–2.

[387] A CMSP generally should include in its report a summary of key settlement data relevant to its STP objective, such as data related to the rates of allocation, confirmation, affirmation, and/or matching achieved via straight-through processing. *See* T+1 Proposing Release, *supra* note 2, at 10459.

[388] *See* DTCC ITP September Letter, *supra* note 325, at 2–3.

[389] Proposed Rule 17Ad–27(a) required that the annual report must include ''[I]t's current policies and procedures for facilitating straight-through processing.'' T+1 Proposing Release, *supra* note 2, at 10459.

an analysis of the quantitative data required under new Rule 17Ad–27(b)(3) and (4) by providing context for the metrics regarding the efficacy of the CMSP's actions to facilitate STP.

A qualitative description of the CMSPs progress during the twelve month period covered by the report generally should describe the services and systems used during the period covered by the report that illustrate the CMSP's progress in facilitating STP, as well as any applicable analysis or additional information that aids in understanding or supporting the qualitative description. This qualitative description should generally focus on the CMSP's progress in facilitating STP with respect to the processes used in the allocation, confirmation, affirmation, and matching of institutional trades, the communication of messages among the parties to the transactions, and the availability of service offerings that reduce or eliminate the need for manual processing. However, the CMSP should consider including any reasonable and applicable indicia of STP progress to supplement their descriptions under paragraph (b).

As is the case with other provisions of adopted Rule 17Ad–27(b), the qualitative description submitted pursuant to Rule 17Ad–27(b)(2) in the first reporting period may benefit from a more robust discussion of the current systems used by the CMSP in order to put a discussion of its STP progress in context.[390] However, the qualitative description in subsequent annual reports should generally be able to build on the initial report by relying on any background or foundational information provided in the initial reporting period, and instead focus primarily on the current year's progress.

(c) New Rule 17Ad–27(b)(3)—Quantitative Data

The third component of the annual report required under adopted Rule 17Ad–27(b) requires the CMSP to include pursuant to new paragraph (b)(3) a quantitative presentation of data that specifies five sets of data. The Commission concurs with DTCC ITP's recommendation that any requirements to include specific data in the annual report should be expressly included in the rule text.[391] While DTCC ITP recommended specifying in the rule certain categories of data, the Commission is opting to break down those categories into the specific data elements described in paragraph (b)(3).[392] Specifying the particular data and metrics will promote the capture of specific, standardized data points relevant to advancing the straight-through processing objective, which should enable more effective comparison and analysis of the data year over year and as between CMSPs. While requiring specific data elements removes some of the CMSP's discretion under the rule to determine how best to quantify advancements related to straight-through processing, the Commission believes that requiring the specific data elements in paragraph (b)(3) is necessary to understand existing market dynamics and, as noted above, to facilitate comparisons across CMSPs and over time.

Accordingly, the Commission is modifying the proposed annual report requirement to add a quantitative data requirement under paragraphs (b)(3)(i) through (v) specifying the key metrics related to the processing of securities transactions at CMSPs that are required in the annual report.[393] Specifically, Rule 17Ad–27(b)(3) requires the CMSP to provide data that includes: (i) the total number of trades submitted to the clearing agency for processing; (ii) the total number of allocations submitted to the clearing agency; (iii) the total number of confirmations submitted to the clearing agency, as well as the total number of confirmations cancelled by users; (iv) the percentage of confirmations submitted to the clearing agency that are affirmed on trade date, specifying to the extent practicable the time of affirmation on trade date; (v) the percentage of allocations and confirmations submitted to the clearing agency that are matched and automatically confirmed through the clearing agency's services; and (vi) metrics concerning the use of manual and automated processes by the CMSP's users with respect to the CMSP's services that may be used to assess progress in facilitating STP. The data required under this provision should provide baseline information and insight into CMSP's progress with regard to facilitating STP, CMSP user performance, and potential indications of specific impediments in improving efficiencies in the post-trade processing environment.

Although the metrics required under paragraphs (b)(3)(i) through (v) will provide a high-level view of certain functions at the CMSP, the Commission believes this data will objectively demonstrate trends with regard to automation, manual intervention and overall progress towards STP and may provide indications of certain systemic or operational issues impeding the CMSP's STP progress. Defining the specific metrics required in the annual report should also have the effect of promoting consistencies across reporting periods at a single CMSP and across multiple CMSPs, which should in turn improve the Commission's and the public's ability to analyze the data over time. The Commission considers the data requirements under paragraph (b)(3) to be the key information necessary to analyze the CMSP progress in facilitating STP. In the event the CMSP determines that additional data is necessary or would be helpful to support its qualitative descriptions required under Rule 17Ad–27(b)(2) or (5), the Commission encourages the CMSP to include such additional quantitative data under paragraph (b)(3).

With regard to metrics concerning the use of manual and automated processes by the CMSP's users with respect to the CMSP's services that are indications of progress in facilitating STP, as required under paragraph (b)(3)(vi), the Commission has not specified the type of metrics that should be used to comply with this provision of the new rule. CMSPs are encouraged to design metrics specific to their services and users that would best indicate whether users are in fact using manual processes for allocations, confirmations or other processing activities and whether over time these users have migrated to an automated processing that replaced their use of manual processing. For example, DTCC ITP cited to the use of SSI metrics as one such measure, which could provide details on the quality of SSIs established at the CMSP, the use of such SSIs by its users in the actual processing stream, and automation of

[390] For more information related to the content and filing of the initial and subsequent annual reports pursuant to adopted Rule 17Ad–27(c), *see infra* Part V.C.3.

[391] *See* DTCC ITP April Letter, *supra* note 216, at 12; DTCC ITP September Letter, *supra* note 325, at 2–3.

[392] *See* DTCC ITP September Letter, *supra* note 325, at 2–3.

[393] In its initial comment letter, DTCC ITP recommended that the annual report should require the quantitative data in lieu of the policies and procedures and qualitative description requirements. *See* DTCC ITP April Letter, *supra* note 216, at 12. DTCC ITP also recommended that the quantitative aspects of the report should include specified metric categories, in which DTCC ITP suggested specific types of data that should be included in those metric categories. *See* DTCC ITP September Letter, *supra* note 325, at 2. As discussed above, the Commission is opting to require specific data requirements under adopted Rule 17Ad–27(b), in lieu of metric categories. *See supra* notes 391–392 and accompanying text. Most of the data elements incorporated into Rule 17Ad–27(b)(2) and (3) reflect the recommendations made by DTCC ITP. *See* DTCC ITP September Letter, *supra* note 325, at 2–3.

SSIs as possible indicators of STP improvements.[394]

Given that the data required under paragraph (b)(3)(vi) is one of the core measurements central to the objective of Rule 17Ad–27, the Commission encourages CMSPs to design these metrics to be as expansive and granular as reasonably feasible, to better provide a detailed view of the STP progress, and to adjust such metrics as necessary to accommodate the onboarding of new services, technologies or operations. Retaining sufficient continuity year-to-year in the CMSP's metrics could ensure year-over-year measurability of the STP progress made during the time period covered by any particular annual report. Any new metrics added to an annual report covering a particular twelve month period due to a change in the CMSP's services, operations or systems could be discussed in the qualitative description required under new Rule 17Ad–27(b)(5).

(d) New Rule 17Ad–27(b)(4)—Quantitative Data Organization and Categorization

The fourth component of the annual report requires the CMSP to submit, pursuant to Rule 17Ad–27(b)(4), the data sets required by paragraph (b)(3) in the following manner: (i) organized on a month-by-month basis beginning with January of each year, for the twelve months covered by the report required under paragraph (b) of the rule; (ii) separated, where applicable, between the use of central matching and electronic trade confirmation services offered by the clearing agency; (iii) separated, as appropriate, by asset class; (iv) separated by type of user; and (v) presented on an anonymized and aggregated basis.[395]

The Commission agrees with DTCC ITP that further distinguishing any required data sets by asset class, type of CMSP service used, user type, and presented on an anonymized and aggregated basis, should better demonstrate automation trends and STP progress. The Commission also believes that further subcategorizing the required data as now required under adopted Rule 17Ad–27(b)(4) enables more thorough and useful analysis of the progress toward STP and helps identify potential hindrances in achieving full STP.[396] Organizing each of the data sets required under paragraph (b)(3) to further divide the data on a month-by month basis, and to identify the submission of trades by entity type (*i.e.,* ETC versus matching), user type, and asset class should assist in the Commission's and the public's analysis of the data and more precise identification of any potential sources of issues hindering STP progress. Moreover, the identification of certain subcategories should apprise users and their customers of any issues raised by the data that is specifically applicable to a particular user.

The Commission understands that there may be circumstances when the identification of a particular data set does not lend itself to further subcategorization under paragraph (b)(4)(ii) requiring CMSP service type designation or paragraph (b)(4)(iii) requiring asset class designation. This may be particularly true as CMSPs services and technology evolve to accommodate improvements or changing business or market conditions. For example, a CMSP's ETC or matching service may not perform certain functions that are subject to the data set requirements under paragraph (b)(3). Similarly, a specific CMSP function may involve multiple asset classes and, as a result, may be difficult to parse out in a manner that would aid an analysis of the information or aid in assessing STP progress. In those cases, the CMSP generally should use reasonable efforts to organize the data sets in a manner that best informs the Commission, CMSP users, and the public as to the current and future status of the CMSP's progress in facilitating STP at the CMSP.

To the extent applicable and feasible, subcategorizing data required under paragraph (b)(3) by user type generally should include those entities that are directly interfacing with the CMSP to facilitate allocation, confirmation, affirmation or matching functions for themselves or their clients. Such entities may include investment managers, broker-dealers (in their capacity as executing or prime broker-dealers), and custodians. However, to the extent that other user types, including indirect users of CMSP services, can be identified and distinguished in the data sets required under paragraph (b)(3), the CMSP could consider including those categorizations as well if such information would benefit an analysis of the required data.

The Commission is also adopting new Rule 17Ad–27(b)(4)(v) which requires the information to be presented on an anonymized and aggregated basis.[397] Given that the annual report has information that the Commission believes should be available to the public, and that the Commission would likely sustain a confidential treatment request under 17 CFR 240.24b–2 by the CMSP for sensitive, proprietary and confidential data included in the annual report,[398] the contents of the annual report need to be anonymized and aggregated.

(e) New Rule 17Ad–27(b)(5)—Qualitative Description of STP Facilitation

The fifth component of the annual report under Rule 17Ad–27(b) requires the CMSP to provide pursuant to new paragraph (b)(5) a description of the actions the CMSP intends to take to further facilitate STP of securities transactions at the clearing agency during the twelve-month period that follows the period covered by the report. The Commission is adopting this provision generally as proposed, but is making one modification to the proposed rule text by replacing the text ''[T]he steps'' in proposed Rule 17Ad–27(c) with the text ''a description of the actions'' in new paragraph (b)(5). This modification will facilitate a more detailed description of the CMSP's actions to facilitate STP in the upcoming twelve months.

The purpose of paragraph (b)(5) is two-fold. First, the provision is intended to inform the Commission, CMSP users and market participants generally as to the CMSP's intended actions to facilitate STP in the upcoming year. The Commission anticipates that advance notice of a CMSP's intentions to take certain actions oriented toward STP development may allow other market participants to make the necessary changes to accommodate the CMSP's activities and may facilitate innovation to improve other aspects of the post-trade processing environment external to the CMSP, some of which may encourage or allow for future improvements at the CMSP.

Second, new paragraph (b)(5) is intended to encourage CMSPs to develop a culture of focusing on enabling a fully automated STP

[394] *See* DTCC ITP September Letter, *supra* note 325, at 3 for more detail on DTCC ITP's comments related to data requirements in the annual report.

[395] To support transparency around the role and utility of CMSPs and objectively demonstrate trends toward more automation and STP progress, DTCC ITP recommended in its comment letter that the Commission amend proposed Rule 17Ad–27 to include a specific requirement for reporting quantitative data on an anonymized and aggregated level for rates of allocation, confirmation, affirmation, and/or matching that a CMSP has achieved via STP and distinguishing trade information by asset class, type of processing service (*i.e.,* ETC versus matching), and ''customer segment'' (referred to as ''user type'' in Rule 17Ad–27, as adopted). *See* DTCC ITP September Letter, *supra* note 325, at 2.

[396] *See id.*

[397] *See id.; see also* DTCC ITP April Letter, *supra* note 216, at 12.

[398] *See* 17 CFR 240.24b–2.

environment as it considers future developments of its services, operations, and business model. The Commission believes that the CMSP can and should be a leading force in encouraging the development of more efficient, automated, and STP-focused systems in post-trade processing market-wide. While the CMSP does not have control over actions taken or services utilized by its users and their customers, the actions it takes to provide and promote STP services and capabilities at the CMSP level should have a direct impact on its users' and an indirect impact on its users' customers with respect to future developments of their individual internal operations and systems, as well as an impact on the state of post-trade processing within the market as a whole.

In describing the actions it intends to take in the twelve-month period following the period covered by the annual report as required under new Rule 17Ad–27(b)(5), the CMSP should generally consider including any material changes that it intends to make with respect to its policies, procedures, operations, systems or services that relate to the furtherance of facilitating STP. While paragraph (b)(5) requires the CMSP to identify those actions the CMSP will in fact implement during the required timeframe, the CMSP should also consider including those actions that have a high degree of likelihood of being implemented during the timeframe. To the extent practicable and related to STP development, the CMSP should also consider including a summary of the underlying rationale as to why the CMSP intends to take a particular action required to be described under paragraph (b)(5) and a description of the expected impact of any such action or actions as it relates to the CMSP's facilitation of STP.

The Commission anticipates that the metrics required under new Rule 17Ad–27(b)(3) should help inform the CMSP and shape future considerations by providing data that evidences whether progress has made in moving toward full STP during the period covered by the preceding year and what if any obstacles remain that should be analyzed and addressed in future iterations of its services and operations. For example, changes in manual touch rates by user type may indicate issues that can and should generally be addressed on a policy or systems basis to reduce those rates. From a qualitative perspective, CMSPs should consider reviewing their operations on a system-wide basis to design future solutions to address the use of manual processes or automated process that result in manual intervention, with the goal of reducing or eliminating the use of such processes.

3. New Rule 17Ad–27(c)—Timing of Filing Annual Report

The Commission is adopting new Rule 17Ad–27(c) to require that the annual report required under Rule 17Ad–27(b) must be filed with the Commission within 60 days of the end of the twelve-month period covered by the report, and the twelve month period covered by each report must commence on January 1 of the calendar year.[399] The Commission believes that requiring the filing of the annual report within 60 days of the end of the twelve month period covered by the report is an appropriate amount of time because it balances the competing interests of providing the CMSPs sufficient time to compile the data and descriptions required under new Rule 17Ad–27(b) and providing sufficiently recent and relevant data for the Commission and public review and analysis. Moreover, CMSPs may choose to plan and compile the contents of the annual report throughout the reporting year as new relevant data and information becomes available, in part because the CMSPs already provide on a monthly basis some data contemplated in the annual report pursuant to the terms of the exemptive orders. Based on the Commission's experience in requiring other types of clearing agencies to provide financial statements within sixty days of the end of the year,[400] the Commission believes a 60-day period would provide the CMSP sufficient time to compile and complete the remaining portions of the report and seek the appropriate internal approval to file the report with the Commission.

The Commission is also requiring that the time period covered by the annual report contain information relevant to the requirements under new paragraph (b) of Rule 17Ad–27 from January 1 through December 31 of each calendar year. By synchronizing the submission the annual reports to a uniform time frame across all CMSPs, the Commission, CMSP users, and the public will be able to better analyze the data and assess compliance with the rule and progress of the CMSPs, on an individual CMSP level and across all CMSPs, in facilitating STP. In the event there is a partial year on the first year a CMSP is obligated to comply with Rule 17Ad–27(b), then the CMSP should generally file its first annual report to cover that partial year through December 31 of that year.[401]

4. New Rule 17Ad–27(d)—Filing Annual Report in EDGAR and Confidentiality Issues

The Commission is adopting as proposed the provision under proposed Rule 17Ad–27 that requires CMSPs to file the annual report on EDGAR.[402] Pursuant to new Rule 17Ad–27(d), a CMSP is required to submit its annual report to the Commission using EDGAR, and tag the information in the report using the structured (*i.e.,* machine-readable) Inline XBRL data language. Specifically, Rule 17Ad–27(d) requires that the report required under paragraph (b) of the new rule be filed electronically on EDGAR and must be provided as interactive data as required by 17 CFR 232.405 (''Rule 405 of Regulation S–T'') in accordance with the EDGAR Filer Manual.[403]

Using EDGAR will provide the Commission and the public with a centralized, publicly accessible electronic database for the reports, facilitating the use of the reported data on straight-through processing. Moreover, requiring Inline XBRL tagging of the reported disclosures, which would specifically include an Inline XBRL block text tag for each of the required narrative disclosures as well as

[399] DTCC ITP recommended that the Commission should provide further clarification as to when CMSPs would be required to submit their initial annual report to the Commission, as well as the time period applicable to the actual content to be included in initial annual report. DTCC ITP raised concerns that depending on when the initial report was due, the variance in pre and post T+1 implementation data could result in unclear analysis of STP progress. *See* DTCC ITP September Letter, *supra* note 325, at 3. The Commission believes DTCC ITP's concern is addressed, regardless of the time period covered by the initial or subsequent annual reports or whether the data reflects pre or post T+1 implementation, because the data will be presented on a month-by-month basis pursuant to new Rule 17Ad–27(b)(4)(i), and therefore amenable to an analysis on any timeframe.

[400] *See, e.g.,* 17 CFR 240.17Ad–22(c)(2). In the post-trade environment more generally, the Commission also requires security-based swap data repositories to file an annual report with the Commission within sixty days of the end of the fiscal year. *See* 17 CFR 240.13n–11.

[401] For example, the compliance date for adopted Rule 17Ad–27 is May 28, 2024. *See infra* Part VII.D. The first annual report will cover the time period from April 1, 2024, through December 31, 2024.

[402] DTCC ITP did not comment on the use of EDGAR to file the proposed annual report, but did mention in the context of filing on EDGAR that it was considering publishing the annual report on its website. *See* DTCC ITP September Letter, *supra* note 325, at 3.

[403] *See* 17 CFR 232.101 and 232.405. In a non-substantive change from the proposal, rather than adding new 17 CFR 232.409 (''Rule 409 of Regulation S–T''), the Commission is expanding Rule 405 of Regulation S–T to effectuate the Inline XBRL requirement. This approach will be consistent with other Commission rulemakings that have featured Inline XBRL requirements. *See, e.g.,* Exchange Act Release No. 95607 (Aug. 25, 2022), 87 FR 55134, 55196 (Sept. 8, 2022).

detail tags for individual data points, should make the disclosures more easily available and accessible to and reusable by market participants and the Commission for retrieval, aggregation, and comparison across time periods for a single CMSP or across different CMSPs and time periods.[404] Detail tags will also be helpful relative to the disclosure in the annual report of individual data points, including the rates of allocation, confirmation, affirmation, and/or matching achieved via straight-through processing. As a general matter, incorporating submission via EDGAR and requiring Inline XBRL tagging under Rule 17Ad–27 will facilitate access to data included in reports submitted pursuant to the rule in a manner that is machine-readable, human-readable, and accessible via application programming interface where appropriate.[405] In the Commission's view, the Inline XBRL tagging requirement will facilitate efficient analysis of information that CMSPs include in their annual reports, providing CMSP users (*e.g.,* institutional investors and broker-dealers acting on behalf of institutional investors) and the general public greater insight into policies and procedures, progress, quantitative data, and qualitative descriptions related to straight-through processing.

As discussed in the T+1 Proposing Release, the Commission will make the annual report required under adopted Rule 17Ad–27(b) publicly available on its website to enable the public to review and analyze data regarding, and progress towards, straight-through processing.[406] The public availability of the annual report would help inform the public, particularly the direct and indirect users of CMSPs, as to the progress being made each year to advance implementation of STP with respect to the allocation, confirmation, affirmation, and matching of institutional trades, the communication of messages among the parties to the transactions, and the availability of service offerings that reduce or eliminate the need for manual processing. In addition, allowing for additional transparency may facilitate innovation in the public forum as to how CMSPs may improve their systems and services to improve STP specifically, and the institutional processing environment generally.

The Commission does not believe the annual report requires the inclusion of proprietary information, trade secrets, or personally identifiable information. To the extent that an annual report includes confidential commercial or financial information, a CMSP could request confidential treatment of those specific portions of the report.[407]

VI. Impact on Certain Commission Rules, Guidance, and SRO Rules

The Commission stated in the T+1 Proposing Release that the proposed rules and rule amendments may affect compliance with other existing Commission rules and guidance that reference the settlement cycle or settlement processes. The Commission identified a preliminary list of rules that could be affected by a move to a T+1 standard settlement cycle, determined that changes to those rules were not necessary, and solicited comment regarding the potential impact of a T+1 settlement cycle. In response, several commenters identified elements of Commission rules, as well as existing Commission guidance, exemptive relief related to those rules, and staff no-action letters,[408] that may be impacted by shortening the standard settlement cycle to T+1.

A. Regulation SHO

In the T+1 Proposing Release, the Commission identified provisions of Regulation SHO under the Exchange Act that may be impacted by the adoption of a T+1 standard settlement cycle. Certain provisions of Regulation SHO use ''trade date'' and ''settlement date'' to determine the time frames for compliance relating to sales of equity securities and fails to deliver on settlement date. These references are not to a particular settlement cycle (*e.g.,* T+2); however, the time frames for these provisions can change in tandem with changes in the standard settlement cycle.[409] The Commission received the following comments regarding Regulation SHO.

One commenter stated its belief that the Commission should reevaluate the deadlines under Rule 204 in the context of a T+1 settlement cycle.[410] The commenter expressed concern that moving to T+1 would reduce the time available for a bona fide market maker[411] to close out fail-to-deliver

[404] *See* Exchange Act Release No. 10514 (June 28, 2018), 83 FR 40846, 40847 (Aug. 16, 2018). Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. *Id.* at 40851. Using Inline XBRL as compared to an unstructured PDF, HTML, or ASCII format requirement for the reports would facilitate analysis of the information contained therein. *Id.* With respect to the metrics concerning the use of manual and automated processes by a CMSP's users required under paragraph (b)(3)(vi)—which may vary across CMSPs—the Commission anticipates that the tagged data will facilitate useful comparisons over time at a particular CMSP, even though it may facilitate only limited comparisons across CMSPs.

[405] These considerations are consistent with objectives of the recently enacted Financial Data Transparency Act (''FDTA''), which concerns the manner in which the Commission collects and disseminates information. The FDTA was signed into law on December 23, 2022, as Title LVIII of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. See James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263 (Dec. 23, 2022). Public Law 117–263, 136 Stat. 2395 (2022). Section 5811 of the FDTA directs the Commission and other covered agencies (*e.g.,* financial regulators) to jointly issue proposed rules for public comment that establish data standards for the collections of information reported to each covered agency by financial entities and for the data collected from covered agencies on behalf of the Financial Stability Oversight Council. The data standards must meet specified criteria relating to openness and machine-readability and promote interoperability of financial regulatory data across members of the Financial Stability Oversight Council. In addition, section 5822 of the Financial Data Transparency Act requires that all public data assets published by the Commission under the securities laws and the Dodd-Frank Act be made available in accordance with specified criteria relating to openness and machine-readability. Section 5811 of the FDTA directs the Commission and other covered agencies (*e.g.,* financial regulators) to jointly issue proposed rules for public comment that establish data standards for the collections of information reported to each covered agency by financial entities and for the data collected from covered agencies on behalf of the Financial Stability Oversight Council. The data standards must meet specified criteria relating to openness and machine-readability and promote interoperability of financial regulatory data across members of the Financial Stability Oversight Council. In addition, section 5822 of the Financial Data Transparency Act requires that all public data assets published by the Commission under the securities laws and the Dodd-Frank Act be made available in accordance with specified criteria relating to openness and machine-readability. *See* 44 U.S.C. 3502(20) (defining the term ''open Government data asset'' to mean, among other things, machine-readable and available (or could be made available) in an open format).

[406] DTCC ITP has indicated that it is considering publishing the report on its website, where it believes that the public will have ready access to the information. *See* DTCC ITP September Letter, *supra* note 325, at 3.

[407] *See* 17 CFR 240.24b–2.

[408] Staff reports, Investor Bulletins, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these staff documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[409] *See* T+1 Proposing Release, *supra* note 2, at 10444 (discussing the potential impacts of a T+1 standard settlement cycle on the closeout of a fail-to-deliver position under 17 CFR 242.204 (''Rule 204'') and the application of 17 CFR 242.200(g) (''Rule 200(g)'')).

[410] *See* Virtu Financial Letter, *supra* note 16, at 3.

[411] Under Regulation SHO's bona fide market making exceptions, the broker-dealer generally

Continued

positions and could adversely impact the liquidity role those market makers provide.

As discussed in the T+1 Proposing Release,[412] shortening the standard settlement cycle to T+1 would reduce the time frames to effect the closeout of most types of fail-to-deliver positions under Rule 204.[413] The applicable closeout date for a fail-to-deliver position can differ depending on its Rule 204 categorization, including whether it results from a short sale, a long sale, or bona fide market making activity. If a fail-to-deliver position results from bona fide market making activity, the participant must close out the fail-to-deliver position by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Under the current T+2 standard settlement cycle, the closeout for long sales or bona fide market making activity is required by the beginning of regular trading hours on T+5. If the Commission adopts a T+1 standard settlement cycle, this closeout requirement would be shortened from T+5 to T+4.

As explained above, most Rule 204 time frames automatically adjust to a new shortened settlement cycle, and the impact of such an alignment was considered during the rulemaking process for Rule 204 as well as during the proposal of the T+1 cycle. Accordingly, given the time available to comply under a T+1 standard settlement cycle, the Commission does not believe that a reevaluation of the Rule 204 time frames is necessary at this time.[414]

Two commenters addressed the impact of a T+1 settlement cycle to the application of Rule 200(g)(1) as it pertains to loaned but recalled securities. One commenter stated that the move to T+1 will shorten the recall period by one day and recommended that the Commission modify its interpretation in the Regulation SHO Adopting Release regarding the recall period to reflect this shortened period.[415] The other commenter stated that if the standard settlement cycle is shortened to T+1, the requirements under Rule 200(g) may result in a change in the timing by which a broker-dealer would need to initiate a bona fide recall of a loaned security to mark the sale of such loaned, but recalled, security ''long'' for purposes of Rule 200(g)(1).[416] The commenter observed that some broker-dealers may have shortened the previous three business day recall period to two business days under the T+2 standard settlement cycle to ensure settlement on the proper settlement date. The commenter explained that, in a T+1 environment, the recall period would be even shorter, which may limit securities lending participants' ability to comply with these rules. The commenter recommended that, should the implementation of T+1 result in any changes to Regulation SHO, the Commission's guidance regarding classification of the sale of a security that is on loan as ''long'' remain unchanged.

In the T+1 Proposing Release, the Commission discussed the close-out scenarios under Regulation SHO in a T+1 environment and provided a figure to illustrate the timing.[417] To satisfy the requirements of Rule 200(g), it was acknowledged that some broker-dealers may need to initiate a bona fide recall as early as trade date or may choose to modify securities lending agreements to shorten the recall period. Such measures would need to be taken to meet the timing obligations under a T+1 cycle, and the Commission believes that such measures could facilitate the fulfillment of timing obligations without changing the requirements of Regulation SHO or related guidance. The industry used such measures to make a similar successful adjustment in the prior shortening of the settlement cycle from T+3 to T+2, and the Commission believes that such measures could again ensure compliance in a T+1 environment. The Commission will continue to monitor the impact of a T+1 settlement cycle on the ability of broker-dealers to comply with Rule 200(g).

B. Delivery of Rule 10b–10 Confirmations and Prospectuses

As discussed in the T+1 Proposing Release,[418] Rule 10b–10 under the Exchange Act provides customers confirmations of transactions and serves a significant investor protection function.[419] Rule 10b–10 does not directly refer to the settlement cycle,[420] but instead requires that a broker-dealer

should be holding itself out as standing ready and willing to buy and sell the security by continuously posting widely accessible quotes that are near or at the market. The market maker must be at economic risk for such quotes. *See* Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690, 61699 (Oct. 17, 2008) (''2008 Regulation SHO Amendments''); *see also* Exchange Act Release No. 94524 (Mar. 28, 2022), 87 FR 23054, 23068 n.157 (Apr. 18, 2022) (''Dealer Release'') (''Broker-dealers that do not publish continuous quotations, or publish quotations that do not subject the broker-dealer to such risk (*e.g.,* quotations that are not publicly accessible, are not near or at the market, or are skewed directionally towards one side of the market) would not be eligible for the bona-fide market-maker exceptions under Regulation SHO. In addition, broker-dealers that publish quotations but fill orders at different prices than those quoted would not be engaged in bona-fide market making for purposes of Regulation SHO.''). Thus, a market-maker that continually executed short sales away from its posted quotes would generally be unable to rely on the bona-fide market making exceptions of Regulation SHO. *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 n.68 (Aug. 6, 2004). Further, broker-dealers that publish quotations but fill orders at different prices than those quoted would not be engaged in bona fide market-making for purposes of Regulation SHO. *See, e.g.,* Dealer Release, *supra* note 411, at 23068 n.157. The market-maker must also be engaged in bona fide market making in that security at the time of the short sale for eligibility for the exceptions. *See* 2008 Regulation SHO Amendments, *supra* note 411, at 61699.

[412] *See* T+1 Proposing Release, *supra* note 2, at 10461.

[413] A T+1 standard settlement cycle would reduce close out time frames for all Rule 204 fail-to-deliver positions except those that fall within Rule 204(a)(2).

[414] As discussed in the T+1 Proposing Release, the time frame to recall a loaned security corresponds to the then current standard settlement cycle. As the standard settlement cycle has been modified from T+3 to T+2 to T+1, the Commission has provided additional guidance regarding the probable time frame necessary to recall a loaned security so as to ensure timely delivery to close out a failure to deliver that may have occurred. Extending the time frame to recall a loaned security further could result in failures to deliver not being closed out as is required by Rule 204 of Regulation SHO. *See* T+1 Proposing Release, *supra* note 2, at 10461–62 (stating that previous guidance ''was predicated on the Commission's belief that, under then current industry standards, recalls for loaned securities would likely be delivered within three business days after the initiation of a recall. In that case, a broker-dealer that initiated a bona fide recall by T+2 would receive delivery of loaned securities by T+5 and then be able to close out any failure to deliver on a ''long'' sale of the loaned but recalled securities by the beginning of regular trading hours on T+6, as then required by Rule 204 in a T+3 environment.''); *see also* T+2 Adopting Release, *supra* note 4, at 15578 (stating that ''to the extent that customers have not made timely deliveries and have caused a fail to deliver by a broker-dealer, any indirect impacts on such customers are warranted,'' and expressing specific concerns related to continued failures to deliver further: ''In the Rule 204 Adopting Release, the Commission recognized that requiring broker-dealers to close-out fails to deliver promptly after they occur may result in costs to certain participants, but believed that 'such costs are limited and are justified by the fact that the rule will continue our efforts to achieve our goals of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission, and addressing potentially abusive 'naked' short selling and, thereby help restore, maintain, and enhance investor confidence in the markets.' '').

[415] *See* Fidelity Letter, *supra* note 16, at 7 (further explaining, ''[w]hile 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.'').

[416] *See* RMA Letter, *supra* note 16, at 4–5.

[417] *See* T+1 Proposing Release, *supra* note 2, at 10462.

[418] *See id.* at 10463.

[419] 17 CFR 240.10b–10.

[420] Rule 10b–10 was adopted in 1977 before the Commission adopted Rule 15c6–1, establishing the standard settlement cycle of T+3 in 1993. *See* Exchange Act Release No. 13508 (May 5, 1977), 42 FR 25318 (May 17, 1977).

''gives or sends'' a customer a written confirmation disclosing specified information at or before ''completion of the transaction.'' [421]

The Commission has considered how and when broker-dealers typically comply with the requirement to send out a Rule 10b–10 confirmation when changes have been made to the standard settlement cycle. In 1993, when Rule 15c6–1 was initially adopted, the Commission was aware that broker-dealers typically sent out Rule 10b–10 customer confirmations on the day after trade date.[422] By 2017, when the Commission shortened the standard settlement cycle from T+3 to T+2, the Commission had established a framework for electronic delivery of required information to investors.[423] At that time, the Commission stated that, while broker-dealers may continue to send physical customer confirmations on the day after the trade date, broker-dealers may also send electronic confirmations to customers on the trade date. The Commission also acknowledged that, in a T+2 settlement cycle, broker-dealers would have a shorter timeframe to send out the confirmation but did not believe that a shortened settlement cycle would create problems with regards to a broker-dealer's ability to comply with Rule 10b–10. When proposing T+1, the Commission expressed a similar belief that T+1 would not create a compliance issue for broker-dealers under Rule 10b–10, although broker-dealers would again need to accommodate the shortened timeframes of T+1.[424] The Commission solicited comment on the extent to which the T+1 rule proposals may impact compliance with Rule 10b–10.

One commenter stated that broker-dealers have had challenges at times meeting the Rule 10b–10 requirements under T+2, particularly for postal delivery such as in March 2020 at the beginning of the Covid–19 pandemic, and that the proposed compressed timeframe of T+1 will leave broker-dealers with even less time to correct minor delivery issues.[425] Another commenter responded that shortening the settlement cycle to T+1 will make the delivery of physical confirmations no longer practical or feasible.[426] However, as noted above, Rule 10b–10 requires that a broker-dealer ''give or send'' the confirmation prior to settlement; it does not require that the Rule 10b–10 confirmation be received prior to settlement. Shortening the settlement cycle does not affect the ability of the broker-dealer to give or send Rule 10b–10 confirmations, and therefore does not impact a broker-dealer's ability to comply with Rule 10b–10. Accordingly, the Commission believes it is unnecessary to modify Rule 10b–10 to facilitate an effective transition to a T+1 standard settlement cycle. In addition, to the extent that a broker-dealer and its customer would like to ensure that the customer receives Rule 10b–10 confirmation documents prior to settlement, as explained above and discussed further below, broker-dealers and their customers have the option to establish an arrangement for electronic delivery.

The Commission requested comment on whether guidance regarding ''delivery'' for electronic confirmations under Rule 10b–10 needed to be updated to facilitate a T+1 standard settlement cycle.[427] In the context of sending Rule 10b–10 confirmations and prospectus delivery obligations (discussed further below in Part VI.C), several commenters asked that the Commission consider, on a wider basis, making electronic delivery (''e-delivery'') the default method for communicating with investors or customers.[428] The Commission observes that broker-dealers already may use ''e-delivery'' to provide this information to investors.[429] The Commission believes that considering widespread changes to e-delivery standards is not appropriate in the context of shortening the settlement cycle because it is not necessary to establish an e-delivery default to shorten the standard settlement cycle to T+1. In a T+1 environment, no Commission rule would require the delivery of paper documentation by mail on T+1. Moreover, the issues associated with e-delivery are complex and multi-faceted, affecting a wide range of disclosure documents, and imposing a range of potential impacts on investors who currently receive physical documents.[430] The Commission believes considering changes to existing guidance warrants further consideration. Accordingly, the Commission declines to make such change to the existing guidance in this rulemaking.

One commenter sought assurance that moving to T+1 would not affect existing no-action letters and exemptive relief under Rule 10b–10 for dividend reinvestment programs (''DRIP'') that allow monthly account statements for trade activity.[431] The Commission observes that a shorter settlement cycle would not change the relevant facts and circumstances described in the applicable staff no-action letters or exemptive relief regarding the application of Rule 10b–10 to DRIP transactions.

C. Other Prospectus Delivery Matters

As stated in the T+1 Proposing Release,[432] broker-dealers have to comply with prospectus delivery obligations under the Securities Act.[433]

[421] Generally, 17 CFR 240.15c1–1 (''Rule 15c1–1'') defines ''completion of the transaction'' to mean the time when: (i) a customer purchasing a security pays for any part of the purchase price after payment is requested or notification is given that payment is due; (ii) a security is delivered or transferred to a customer who purchases and makes payment for it before payment is requested or notification is given that payment is due; (iii) a security is delivered or transferred to a broker-dealer from a customer who sells the security and delivers it to the broker-dealer after delivery is requested or notification is given that delivery is due; or (iv) a broker-dealer makes payment to a customer who sells a security and delivers it to the broker-dealer before delivery is requested or notification is given that delivery is due. *See* 17 CFR 240.15c1–1(b).

[422] *See* T+1 Proposing Release, *supra* note 2, at 10463.

[423] *See, e.g.,* Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (providing Commission views on electronic delivery of required information by broker-dealers, transfer agents, and investment advisers); *see also* T+1 Proposing Release, *supra* note 2, at 10643 n.222.

[424] *See* T+1 Proposing Release, *supra* note 2, at 10463.

[425] *See* letter from Kenneth E. Bentsen, Jr., President and Chief Executive Officer, Securities Industry and Financial Markets Association (Aug. 3, 2022), at 2 (''SIFMA August 3rd Letter'').

[426] *See* AGC April Letter, *supra* note 16, at 3.

[427] *See* T+1 Proposing Release, *supra* note 2, at 10463 n.222.

[428] *See* SIFMA August 3rd Letter, *supra* note 425, at 1 (stating that this acceleration of the settlement cycle heightens the need for the Commission to modernize its rules to make e-delivery the default mechanism for transmitting investor communications and disclosures); ICI Letter, *supra* note 16, at 11–12 (recommending that e-delivery should be the default method for delivering Rule 10b–10 confirmations); ASA Letter, *supra* note 16, at 3 (stating that, given the growing preferences of investors to receive such documentation electronically, it would be cost-effective and in the best interest of investors to allow e-delivery to be the default option for sending prospectuses and trade confirmations, adding that investors who wish to receive paper documents would still be afforded the ability to opt-in to receive paper).

[429] *See* T+1 Proposing Release, *supra* note 2, at 10463 n.222.

[430] Among other things, considering a transition to e-delivery by default would need to assess the implication of such a change with regard to the timing, format, and delivery mechanism, and those implications may differ among different types of documents, depending on the nature and purpose of the document. Another issue to consider would be how e-delivery by default would affect investor engagement with important information.

[431] SIFMA April Letter, *supra* note 16, at 15.

[432] T+1 Proposing Release, *supra* note 2, at 10464.

[433] 15 U.S.C. 77a *et seq.* Section 5(b)(2) of the Securities Act makes it unlawful to deliver (*i.e.,* as part of settlement) a security ''unless accompanied

Continued

The regulations at 17 CFR 230.172 (''Securities Act Rule 172'') implement an ''access equals delivery'' model that permits, with certain exceptions, final prospectus delivery obligations to be satisfied by the filing of a final prospectus with the Commission, rather than delivery of the prospectus to purchasers.[434] The Commission stated its preliminarily belief that a T+1 standard settlement cycle would not raise any significant legal or operational concerns for issuers or broker-dealers to comply with the prospectus delivery obligations under the Securities Act.[435] The Commission also requested comment on the following: (i) whether any specific legal or operational concerns would arise for issuers or broker-dealers to comply with the prospectus delivery obligations under the Securities Act if the settlement cycle is shortened to T+1, and (ii) the extent to which the T+1 rule proposals may impact compliance with the prospectus delivery requirements under the Securities Act.

One commenter stated that the requirements of 17 CFR 240.15c2–8(b) should not apply in a T+1 environment.[436] Under Exchange Act Rule 15c2–8(b), with respect to an issue of securities where the issuer has not been previously required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act,[437] unless the issuer has been exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Exchange Act,[438] a broker-dealer is required to deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation (''48-hour preliminary prospectus delivery requirement'').[439] The commenter stated that in a T+1 settlement cycle, many broker-dealers will send confirmations on trade date to achieve settlement by T+1, and that Rule 15c2–8 does not reflect present-day offering procedure timelines, public availability of preliminary prospectuses on EDGAR, or electronic delivery facilities.[440] However, because the Commission is adopting a T+2 standard settlement cycle for firm commitment offerings priced after 4:30 p.m. ET, and not a T+1 standard settlement cycle for these offerings, in final Rule 15c6–1(c),[441] no inconsistency exists between the requirements set forth in the final amendments to Rule 15c6–1 and existing Rule 15c2–8(b). Accordingly, the Commission does not believe that Rule 15c2–8 should be modified.

D. Financial Responsibility Rules for Broker-Dealers

As noted in the T+1 Proposing Release, certain provisions of the broker-dealer financial responsibility rules under the Exchange Act[442] reference explicitly or implicitly the settlement date of a securities transaction.[443] For example, paragraph (m) of 17 CFR 240.15c3–3 references the settlement date to prescribe the timeframe in which a broker-dealer must complete certain sell orders on behalf of customers.[444] Specifically, Rule 15c3–3(m) provides that if a broker-dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own) and if for any reason the broker-dealer has not obtained possession of the securities from the customer within ten business days after the settlement date, the broker-dealer must immediately close the transaction with the customer by purchasing securities of like kind and quantity.[445] In addition, settlement date is incorporated into paragraph (c)(9) of 17 CFR 240.15c3–1,[446] defining what it means to ''promptly transmit'' funds and ''promptly deliver'' securities within the meaning of paragraphs (a)(2)(i) and (v) of Rule 15c3–1.[447] The concepts of promptly transmitting funds and promptly delivering securities are incorporated in other provisions of the financial responsibility rules as well, including paragraphs (k)(1)(iii) and (k)(2)(i) and (ii) of Rule 15c3–3,[448] paragraph (e)(1)(i)(A) of 17 CFR 240.17a–5,[449] and paragraph (a)(3) of 17 CFR 240.17a–13.[450]

The Commission requested comment regarding the potential impact that shortening the standard settlement cycle from T+2 to T+1 may have on the ability of broker-dealers to comply with the financial responsibility rules. The Commission received one comment stating that shortening the standard settlement cycle to T+1 would 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).[451] The commenter indicated that it did not believe T+1 would materially burden broker-dealers or their customers and did not recommend changes to the rule.[452]

The commenter also recommended that the Commission revisit Rule 15c3–3(d).[453] Under Rule 15c3–3(d), 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.[454] According to the commenter, existing interpretative guidance allows a firm to release securities a day prior to settlement, under certain conditions. The commenter said that it is not clear what this guidance means in a T+1 environment. The commenter offers an 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 assets should be calculated and enforced in a T+1 environment.[455] The commenter

or preceded'' by a prospectus that meets the requirements of section 10(a) of the Securities Act (known as a ''final prospectus''). 15 U.S.C. 77e(b)(2).

[434] 15 U.S.C. 77e(b)(2). Under Securities Act Rule 172(b), an obligation under section 5(b)(2) of the Securities Act to have a prospectus that satisfies the requirements of section 10(a) of the Securities Act precede or accompany the delivery of a security in a registered offering is satisfied only if the conditions specified in paragraph (c) of Rule 172 are met. 17 CFR 230.172(b). Pursuant to Rule 172(d), ''access equals delivery'' generally is not available to the offerings of most registered investment companies (*e.g.,* mutual funds), business combination transactions, or offerings registered on Form S–8. 17 CFR 230.172(d). The Commission recently amended Rule 172 to allow registered closed-end funds and business development companies to rely on the rule. *See* Securities Offering Reform for Closed-End Investment Companies, Investment Company Act Release No. 33836 (Apr. 8, 2020), 85 FR 33353 (June 1, 2020).

[435] T+1 Proposing Release, *supra* note 2, at 10464.

[436] SIFMA April Letter, *supra* note 16, at 13–14.

[437] 15 U.S.C. 78m(a); 15 U.S.C. 78*o*(d).

[438] 15 U.S.C. 78*l*(h).

[439] Exchange Act Rule 15c2–8(b).

[440] SIFMA April Letter, *supra* note 16, at 14.

[441] *See supra* Part II.C.4.

[442] For purposes of this release, the term ''financial responsibility rules'' includes any rule adopted by the Commission pursuant to section 8, 15(c)(3), 17(a), or 17(e)(1)(A) of the Exchange Act, any rule adopted by the Commission relating to hypothecation or lending of customer securities, or any rule adopted by the Commission relating to the protection of funds or securities. The Commission's broker-dealer financial responsibility rules include 17 CFR 240.15c3–1, 240.15c3–3, 240.17a–3, 240.17a–4, 240.17a–5, 240.17a–11, and 240.17a–13.

[443] *See* T+1 Proposing Release, *supra* note 2, at 10462–63.

[444] Exchange Act Rule 15c3–3(m).

[445] However, paragraph (m) of Rule 15c3–3 provides that the term ''customer'' for the purpose of paragraph (m) does not include a broker or dealer who maintains an omnibus credit account with another broker or dealer in compliance with 12 CFR 220.7(f) (Rule 7(f) of Regulation T).

[446] Exchange Act Rule 15c3–1(c)(9).

[447] 17 CFR 240.15c3–1(a)(2)(i) and (v).

[448] 17 CFR 240.15c3–3(k)(1)(iii), (k)(2)(i)–(ii).

[449] Rule 17a–5(e)(1)(i)(A).

[450] Rule 17a–13(a)(3).

[451] *See* Fidelity Letter, *supra* note 16, at 7.

[452] *Id.* at 7–8.

[453] *Id.* at 8.

[454] 17 CFR 240.15c3–3(d)(1).

[455] *See* Fidelity Letter, *supra* note 16, at 8.

requested that the Commission work with broker-dealers to better understand the timeframes involved in the segregation process and how they can operate in a T+1 environment. The Commission expects that the staff will continue to monitor the impact of a T+1 settlement cycle on this rule.

E. Changes to SRO Rules and Operations

In the T+1 Proposing Release, the Commission stated that, as with the T+2 transition, it anticipated that the proposed transition to T+1 would require changes to SRO rules and operations to achieve consistency with a T+1 standard settlement cycle.[456] Certain SRO rules reference existing Rule 15c6–1 or currently define ''regular way'' settlement as occurring on T+2 and, as such, may need to be amended in connection with shortening the standard settlement cycle to T+1.[457] Certain timeframes or deadlines in SRO rules also may refer to the settlement date, either expressly or indirectly. In such cases, the SROs may need to amend these rules in connection with shortening the settlement cycle to T+1.[458]

In addition, the Commission also stated that SRO rules and operations may be affected to a greater extent than occurred during the T+2 transition, in part because the Commission has proposed more rule changes in the T+1 Proposing Release than in the T+2 Proposing Release.[459] For example, Financial Industry Regulatory Authority (''FINRA'') Rule 11860, which could be used to facilitate compliance with proposed Rule 15c6–2, currently requires that affirmations be completed no later than the day after trade date and therefore may need to be amended to align with the requirements in final Rule 15c6–2. The Commission solicited comment on the extent to which the T+1 rule proposals may impact existing SRO rules and operations.[460]

While urging the Commission to implement T+1, one commenter requested that the Commission deny or delay implementation of a National Securities Clearing Corporation (''NSCC'') rule to enhance capital requirements, stating that the NSCC rule would undermine the benefits of T+1 and that the calculation method is flawed.[461] The Commission has completed its review of the NSCC proposed rule change and consideration of the comments on the proposal,[462] and the Commission issued an approval order finding that the NSCC proposed rule change was consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NSCC.[463] Furthermore, the rule change concerned membership standards at NSCC related to minimum capital requirements, designed to ensure that capital requirements applied to NSCC members appropriately incorporate the risks of their clearing activity, has already been implemented, and has no bearing on the length of the settlement cycle.

In the context of corporate action events, one commenter advocated for more standardized practices, urging the Commission to consider more automation and transparency in issuer declarations of events to improve timeliness as well as support various SROs in adjusting certain rules related to the processing of events (*e.g.,* FINRA Rules 11140 and 11810).[464] The commenter did not make any specific suggestion for policy action regarding corporate action events that should be taken in connection with the current rulemaking or the transition to a shorter settlement cycle, and the Commission is not taking additional action at this time.

In the T+1 Proposing Release, the Commission asked whether the DTC's ''cover/protect'' process for certain voluntary reorganizations including tenders, exchanges, or rights offerings would be affected operationally or need to be changed in under a T+1 settlement cycle.[465] One commenter claimed that the cover/protect period is inconsistently applied currently for many offers and recommended that, to the extent cover/protect periods will remain in effect, they should be aligned to the new T+1 settlement cycle.[466] The commenter, however, did not identify any specific instances where the T+1 settlement cycle would give rise to issues with the ''cover/protect'' process. In 2022, DTCC issued two reports identifying the functional changes at NSCC, DTC, and DTCC ITP that will be implemented for T+1, including the planned approach to the cover/protect process.[467] Such planning documents can help market participants understand and prepare for potential changes to processes like the cover/protect process. If during implementation specific issues arise, the Commission encourages industry participants to bring them to the attention of Commission staff. Accordingly, the Commission is not at this time providing additional guidance.

One commenter stated that it appreciates the support of the Commission in the dematerialization of physical certificates, and the commenter requested continuing support for the electronic movement of securities, stating its support for the use of electronic medallion signature guarantees and a central hub to move documents between financial institutions that is secure and contains an audit trail of the receipt of documentation. As stated in the T+1 Proposing Release, the Commission has long advocated a reduction in the use of certificates in the trading environment by immobilizing or dematerializing securities and has acknowledged that the use of certificates increases the costs and risks of clearing and settling securities for all parties processing the securities, including those involved in the U.S. system for clearance and settlement.[468]

[456] *See* T+1 Proposing Release, *supra* note 2, at 10464.

[457] *See, e.g.,* Exchange Act Release No. 79734 (Jan. 4, 2017), 82 FR 3030 (Jan. 10, 2017) (File No. SR–NSCC–2016–009).

[458] The T+1 Report similarly indicates that SROs will likely need to update their rules to facilitate a transition to a T+1 standard settlement cycle. *See* T+1 Report, *supra* note 61, at 35–36.

[459] *See* T+1 Proposing Release, *supra* note 2, at 10464 (discussing the same); *see also* T+2 Adopting Release, *supra* note 4, at 15568–75 (discussing the effect of the T+2 transition on SRO rules and operations).

[460] T+1 Proposing Release, *supra* note 2, at 10464.

[461] Wilson-Davis Letter, *supra* note 16, at 1.

[462] Comments responding to the NSCC rule proposal are available at *https://www.sec.gov/comments/sr-nscc-2021-016/srnscc2021016.htm.*

[463] *See* Exchange Act Release No. 95618 (Aug. 26, 2022); 87 FR 53796 (Sept. 1, 2022) (SR–NSCC–2021–016) (approving proposed rule change to enhance capital requirements and make other changes); *see also* Exchange Act Release No. 93856 (Dec. 22, 2021), 86 FR 74185 (Dec. 29, 2021) (SR–NSCC–2021–016) (publishing notice of filing and soliciting public comment); Exchange Act Release No. 94068 (Jan. 26, 2022), 87 FR 5544 (Feb. 1, 2022) (SR–NSCC–2021–016) (designating a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove); Exchange Act Release No. 94494 (Mar. 23, 2022), 87 FR 18444 (Mar. 30, 2022) (SR–NSCC–2021–016) (instituting proceedings to determine whether to approve or disapprove); Exchange Act Release No. 94168 (June 23, 2022), 87 FR 38792 (June 29, 2022) (SR–NSCC–2021–016) (designating a longer period for Commission action on the proceedings to determine whether to approve or disapprove).

[464] SIFMA April Letter, *supra* note 16, at 14–15.

[465] *See* T+1 Proposing Release, *supra* note 2, at 10452. This procedure enables DTC participants to allow their investors to make or change their final elections until the end of an offer's expiration date; where an offer allows, participants provide DTC with a notice of guaranteed delivery, allowing later delivery of the shares or rights. *See id.; see also* T+1 Report, *supra* note 61, at 20.

[466] *See* SIFMA April Letter, *supra* note 16, at 14.

[467] *See* DTCC, Accelerated Settlement (T+1)—DTC, NSCC and ITP Functional Changes 14–15 (Aug. 2022), *https://www.dtcc.com/-/media/Files/PDFs/T2/T1-Functional-Changes.pdf*; DTCC, T+1 Test Approach 15–16 (Aug. 2022), *https://www.dtcc.com/-/media/Files/PDFs/T2/T1-Test-Approach.pdf* (each discussing changes to the cover/protect process).

[468] T+1 Proposing Release, *supra* note 2, at 10474.

VII. Compliance Dates

A. Exchange Act Rule 15c6–1

In the T+1 Proposing Release, the Commission proposed March 31, 2024 as the compliance date for each of the proposed rules.[469] The Commission received numerous comments regarding the compliance dates for Rules 15c6–1, 15c6–2, and 204–2, generally focused on the impact the proposed compliance date would have on the timing of an industry-wide effort to transition to a T+1 standard settlement cycle. The commenters offered a range of potential alternatives. For example, many individual investors recommended that the Commission accelerate the compliance date so that they and other retail investors could obtain the benefits of a shorter settlement cycle sooner than 2024.[470] One commenter supported the proposed compliance date of March 31, 2024, stating that such a date was generally aligned with the industry-led effort regarding the T+1 transition.[471] Given the extent of planning, operational changes, and testing necessary to achieve a successful and orderly transition to a T+1 standard settlement cycle, as discussed further below, the Commission is moving the compliance date to Tuesday, May 28, 2024, which follows a Federal holiday for which both markets and banks will be closed, providing market participants with a three-day weekend to facilitate the transition to a T+1 standard settlement cycle.

Multiple comments, including those submitted by members of the Industry Working Group (''IWG'') leading at the industry level the effort to facilitate an orderly transition to T+1,[472] recommended specifically that the Commission postpone the compliance date from March 31, 2024, to September 3, 2024.[473] Some commenters recommended that the Commission postpone the compliance date further, to no sooner than two years from the adoption of the proposed rules.[474] In general, a commenter representing the IWG indicated that approximately 16 to 24 months from adoption of a final rule would be necessary to implement a T+1 settlement cycle.[475]

The above commenters provided several reasons for postponing from March to September. First, they prefer to align the transition with the Labor Day holiday weekend so that market participants can implement technology and other changes with the benefit of an extra day when markets would be closed. Some commenters believe that the absence of a three-day weekend would create financial risk for market participants because they would lack sufficient time to validate production changes and validate a ''fall back'' plan to a T+2 standard if necessary in response to any issues that arise.[476] Second, they prefer to enable the U.S. and Canadian markets to complete the transition over a commonly shared holiday weekend, and explain that Labor Day weekend is the only such weekend in 2024.[477] In the commenters' view, the absence of a unified transition in the U.S. and Canada would result in duplicative testing, as well as introduce issues with respect to dual-listed products, depository receipt conversions, ETF creations and redemptions, ADR conversions, buy-ins, and other activities associated with cross-border transactions.[478] Third, they prefer to take more time to complete the transition process, including to budget, design and implement technology and operational changes, to conduct both individual-level and industry-wide testing in advance of the transition, and to educate their customers and market participants generally regarding the operational and other changes necessary to ensure an orderly transition to a T+1 standard settlement cycle.[479] Fourth, they believe that third-party vendors that support the U.S. securities market, including transfer agents and custodians, will not begin to plan for and implement operational changes until the Commission adopts a final rule.[480] The current version of the T+1 Playbook, published by the IWG, and which market participants are using to identify, design, and plan for the individual-level and industry-level implementation of a T+1 standard settlement cycle, contemplates activities, including industry-wide testing, that would continue into third

[469] *Id.* at 10436.

[470] *See, e.g.,* letter from Chris Barnard (Feb. 22, 2022); Mark C. Letter, *supra* note 19; letter from Jacy Carroll (Feb. 19, 2022); letter from Scott Clarke (Feb. 17, 2022); letter from Isaac Crawford (Feb. 20, 2022); letter from Nathan D. (Mar. 8, 2022); letter from Austin Englebert (Feb. 22, 2022); letter from Justina Fullwood (Feb. 17, 2022); letter from Brayan Hernandez (Feb. 17, 2022); Kelley Letter, *supra* note 16; Kyle 1 Letter, *supra* note 16; letter from Jason Layne (Feb. 19, 2022); letter from Jordan Liske (Mar. 3, 2022); letter from Trevor Longmire (Feb. 17, 2022); letter from Joshua Lory (Feb. 20, 2022); Mahdere Letter, *supra* note 18; letter from Cain Maynard (Feb. 17, 2022); letter from Brian Padrick (Feb. 18, 2022); letter from Jimmy Pham (Feb. 18, 2022); letter from Anthony R. (Feb. 18, 2022); Rathbone Letter, *supra* note 18; letter from Brian Renner (Feb. 9, 2022); letter from Daniel Richardson (Feb. 17, 2022); letter from Andrew Robison (Apr. 8, 2022); letter from Michael Ruiz (Feb. 17, 2022); Ryan 1 Letter, *supra* note 16; letter from Adrian Santos (Feb. 17, 2022); letter from Christopher Sneed (Feb. 18, 2022); Stauts Letter, *supra* note 16; Stewart Letter, *supra* note 16; letter from Casey C. Vallett (Feb. 17, 2022); Zach Letter, *supra* note 16.

[471] *See* Better Markets Letter, *supra* note 16, at 5–6.

[472] As discussed in the T+1 Proposing Release, *supra* note 2, at 10445, the IWG is comprised of representatives from SIFMA, ICI, and DTCC, and is being coordinated in part by Deloitte. The IWG published the T+1 Report, *supra* note 61, in September 2021 and the T+1 Playbook, *supra* note 134, in August 2022.

[473] *See, e.g.,* CCMA April Letter, *supra* note 16, at 2; Fidelity Letter, *supra* note 16, at 12; IAA October Letter, *supra* note 222, at 1–2; ICI Letter, *supra* note 16, at 2, 8; MFA Letter, *supra* note 16, at 2; SIFMA April Letter, *supra* note 16, at 2; SIFMA August 26th Letter, *supra* note 207, at 1; letter from Tom Price, Managing Director, SIFMA, et al (Oct. 10, 2022), at 1 (''The Associations and DTCC Letter''); letter from Ken Bentsen, Jr., President and CEO, SIFMA (Dec. 20, 2022), at 1 (''SIFMA December Letter''); letter from Ken Bentsen, Jr., President and CEO, SIFMA (Feb. 8, 2023), at 1 (''SIFMA February Letter'').

[474] *See, e.g.,* SIFMA April Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 5 (citing the planning, operational changes, and testing necessary for a successful transition).

[475] *See* SIFMA December Letter, *supra* note 473, at 3.

[476] *See id.* at 3; *see also* DTCC Letter, *supra* note 16, at 3 (supporting a three-day weekend to manage operational risks associated with the transition process); IAA April Letter, *supra* note 16, at 8 (supporting a three-day weekend to complete and test changes to systems outside of an active trading day); STA Letter, *supra* note 16, at 2.

[477] *See* SIFMA December Letter, *supra* note 473, at 2; SIFMA February Letter, *supra* note 473, at 1; letter from Christopher Climo, Chief Operating Officer, Investment Industry Association of Canada (Feb. 9, 2023), at 2 (also stating a preference for a long weekend because of the extra day to validate that the transition went as planned, and for avoiding transitions at quarter-ends, such as March 31, because they are significant trading days, as well as corporate action dates).

[478] *See* SIFMA December Letter, *supra* note 473, at 4.

[479] *See, e.g.,* CCMA April Letter, *supra* note 16, at 2; Fidelity Letter, *supra* note 16, at 12; IAA October Letter, *supra* note 222, at 1–2; ICI Letter, *supra* note 16, at 2, 8; MFA Letter, *supra* note 16, at 2; SIFMA April Letter, *supra* note 16, at 2; SIFMA August 26th Letter, *supra* note 207, at 1; *see also* OCC Letter, *supra* note 16, at 3 (stating that firms may already be engaged in other large technology projects that could impact T+1 readiness); SIFMA December Letter, *supra* note 473, at 2 (stating that firms have planned to complete technology projects related to the LIBOR transition in Q2 2023); SIFMA February Letter, *supra* note 473, at 1 (explaining that the March date ''will pose substantial and unnecessary risk to the marketplace and potentially create an immense amount of fails in the system'' and that ''[w]ithout proper testing, socialization, and notification, U.S. and international markets would be negatively impacted''); letter from Keith Evans, Executive Director, Canadian Capital Markets Association (Feb. 9, 2023), at 1 (explaining that a compliance date in the first quarter would introduce significant risks such as a material increase in failed trades, increased buy-ins, and higher collateral costs for Canadian and American market participants) (''CCMA February Letter''); letter from Deborah Mercer-Miller, Chair, Association of Global Custodians (Feb. 11, 2023) (also stating that a March 31, 2024 compliance date ''could pose significant and unnecessary risk to the market and potentially create a high number of failed trades,'' and expressing concern ''about the ability of smaller market participants, vendors, and other service providers to enable T+1 settlement on a 13-month implementation timetable'').

[480] *See* SIFMA December Letter, *supra* note 473, at 4.

quarter (Q3) 2024.[481] DTCC has also published an industry-wide testing plan that contemplates testing until September 2024,[482] though DTCC has also publicly acknowledged that the ultimate T+1 transition date would depend on the compliance date set by the Commission in this release.[483]

The Commission acknowledges that a three-day weekend that includes a bank holiday will assist market participants in completing the transition to a T+1 standard settlement cycle in an orderly manner. Although March 31, 2024 falls at the end of a three-day weekend commenters noted that this weekend is not a Federal holiday and does not provide a bank holiday, and so the banking industry and U.S. securities markets would not be synchronized in terms of implementing final testing and systems changes.[484] As discussed throughout this section, the Commission is adopting a compliance date of May 28, 2024, which follows a Federal holiday for which both markets and banks will be closed.

The Commission also acknowledges that aligning the U.S. and Canadian transitions would be beneficial to market participants in both markets, reducing complexity with respect to cross-border transactions between the two jurisdictions. The Canadian Securities Authorities proposed in December to implement a T+1 settlement cycle in Canada, explaining that ''the close ties between the Canadian and American markets, in particular the large number of inter-listed securities'' make it ''critical'' for Canadian markets to move in concert with the U.S.[485] The Commission intends to work closely with the relevant Canadian authorities to ensure an orderly transition to T+1 for the securities markets in the U.S. and Canada that minimizes the potential for risk, such as the risks associated with settlement fails.

Some commenters explained that market participants tend to implement technology freezes in the November to February timeframe to minimize the impact of staff on leave during the holidays and to facilitate various year-end accounting activities, including tax preparation.[486] In the view of these commenters, a March 2024 compliance date would require that a substantial portion of technology changes and testing not occur in the November to February window, meaning they may need to occur primarily in March 2024, close in time to the compliance date. The Commission believes that a May 28, 2024, transition date will provide sufficient time beyond the typical November to February technology freeze to ensure an orderly transition. In total, market participants will have more than fifteen months following the adoption of the final rules to take the appropriate steps to implement any technology or other changes to support a T+1 standard settlement cycle, providing a substantial amount of time to plan for and structure any technology freezes and to address personnel shortages while developing, building, testing and implementing technology changes to support a T+1 standard settlement cycle. Market participants should take appropriate steps, mindful of the May 28, 2024 compliance date, to ensure that technology implementation can occur consistent with the compliance date. While a May 28, 2024 compliance date may require market participants to reallocate some resources and reprioritize some technology projects as compared to a September 3, 2024 compliance date, the Commission believes that a May 28, 2024 compliance date would also allow the substantial benefits of shortening the settlement cycle to be achieved sooner.[487]

With respect to the preference for a September 2024 compliance date more generally to ensure appropriate time for sufficient planning, testing, and coordination with third-party vendors,[488] the Commission appreciates that providing a longer implementation period until the compliance date for any rule necessarily provides more time to prepare, test, and educate than a shorter implementation period would. As discussed in the T+1 Proposing Release, however, the Commission's objective is to ensure an orderly transition to a T+1 standard settlement cycle that realizes the substantial benefits of shortening the settlement cycle as soon as possible. In light of its objective of ensuring an orderly transition, the Commission is not accelerating the proposed compliance date, even though many commenters recommended that the Commission pursue a more expeditious timetable for the transition than even March 2024.[489] Given that some market participants expressed interest for a faster transition to a T+1 settlement cycle,[490] the Commission believes that May 28, 2024, provides an effective balance of ensuring that the compliance date provides sufficient time for planning and executing an orderly transition while also promoting an expeditious process that will allow market participants to realize the substantial benefits of shortening the settlement cycle sooner than later. In addition, the Commission believes that the May 28, 2024, compliance date will help ensure that market participants have sufficient time to implement the changes necessary to reduce risk, such as risks associated with the potential for increases in settlement fails. The Commission also believes that the additional time will help ensure that market participants complete appropriate levels of testing, provide timely notice to potentially affected parties and vendors, and, more generally, engage in the education and outreach necessary to ensure an orderly transition.[491]

Some commenters indicated that the Commission should set the compliance date no sooner than two years from the adoption of final rules. As discussed above, while an additional seven months of preparation (*i.e.,* two years from adoption of the final rules) likely would facilitate a higher level of preparation, testing, and education, the Commission believes that providing more than fifteen months until the compliance date for a T+1 standard settlement cycle is sufficient to ensure an orderly transition. Also as discussed above, while fifteen months of

[481] *See* T+1 Playbook, *supra* note 134, at 10–14. The T+1 Playbook was most recently updated in December 2022.

[482] *See* DTCC, DTCC T+1 Test Approach: Detailed Testing Framework (Jan. 2023), *https://www.dtcc.com/ust1/-/media/Files/PDFs/T2/UST1-Detailed-Test-Document* (explaining that the T+1 transition date has yet to be determined, and so for planning purposes the document references a Sept. 3, 2024 transition date).

[483] *See* Richard Schwartz, 'We're halfway through a marathon' says DTCC as it releases document to help preparations for T+1, The Trade, Jan. 24, 2023, *https://www.thetradenews.com/were-halfway-through-a-marathon-says-dtcc-as-it-releases-document-to-help-preparations-for-t1/* (quoting Robert Cavallo, director, clearance and settlement, product management at DTCC as follows: ''We are halfway through a marathon and still have a long way to go, but now that 2024 is in sight—whether that ultimate date is determined to be March or September—we must move from planning and development to testing.'').

[484] *See, e.g.,* SIFMA December Letter, *supra* note 473, at 3.

[485] CSA, Notice and Request for Comment—Proposed Amendments to National Instrument 24–101 Institutional Trade Matching and Settlement and Proposed Changes to Companion Policy 24–101 Institutional Trade Matching and Settlement, Dec. 15, 2022, *https://www.osc.ca/sites/default/files/2022-12/ni_20221215_24-101_rfc_trade-matching-settlement.pdf.*

[486] *See, e.g.,* ICI Letter, *supra* note 16, at 9; *see also* AGC April Letter, *supra* note 16, at 4; SIFMA April Letter, *supra* note 16, at 3–4.

[487] *See infra* Part VIII.C.1 (discussing the anticipated benefits of shortening the settlement cycle).

[488] *See supra* notes 479–480 and accompanying text.

[489] *See supra* note 470 and accompanying text.

[490] *See id.*

[491] *See supra* note 479 and accompanying text.

preparation rather than two years may require some broker-dealers to reallocate some resources or reprioritize some technology projects to meet the May 28, 2024, transition, the Commission believes that the substantial benefits of shortening the settlement cycle would also be achieved sooner with a May 28, 2024, transition.[492]

Accordingly, the compliance date for the amendments to Rule 15c6–1—other than the amendment discussed in Part VII.B below—will be May 28, 2024.

B. Exchange Act Rule 15c6–1(b): Exclusion for Security-Based Swaps

In response to comments received, and as discussed in Parts II.B.2 and II.C.3, the Commission has modified Rule 15c6–1(b) to exclude security-based swaps from the requirements under Rule 15c6–1(a). For the reasons discussed in Part II.C.3, and because Rule 15c6–1(b) concerns the scope of transactions excluded from the requirements of the Rule 15c6–1(a), the amendment will become effective upon the effective date.

C. Exchange Act Rule 15c6–2 and Advisers Act Rule 204–2

With respect to proposed Exchange Act Rule 15c6–2 and the proposed amendments to Advisers Act Rule 204–2, some commenters requested that the Commission set a compliance date later than the compliance date for Rule 15c6–1 to allow market participants time to focus their efforts on the T+1 transition, including the related technology and operational changes that they would need to design, build, test, and implement, without also having to take steps to ensure compliance with respect to same-day allocations, confirmations, and affirmations.[493] The Commission disagrees. Any technology changes, operational changes, or other efforts necessary to advance the same-day affirmation objective should occur in tandem with efforts focused on the T+1 transition, and so the Commission is adopting a May 28, 2024, compliance date for these rules, for the same reasons discussed in Part VII.A. In the Commission's view, market participants are more likely to take steps that materially advance the same-day affirmation objective if they consider such steps alongside a more holistic review and, where necessary, modification of systems and operations to support the standard settlement cycle because, for institutional transactions, allocations, confirmations, and affirmations are integral to the settlement process. The Commission believes that, because the systems and operational changes necessary to facilitate a transition to T+1 standard settlement cycle generally would overlap with the systems that facilitate same-day affirmation, market participants would benefit from considering at the same time changes that can accommodate both sets of requirements.

Accordingly, the compliance date for Rule 15c6–2 and the amendments to Rule 204 will be May 28, 2024.

D. Exchange Act Rule 17Ad–27

The Commission received one comment regarding the compliance date for Rule 17Ad–27, in which the commenter requested that, with respect to Rule 17Ad–27(b) requiring an annual report on straight-through processing, the Commission require submission of the first annual report only after the T+1 transition has been completed because it will help ensure a consistent baseline over time in the data provided by the CMSP as part of its annual report.[494] Because the Commission is adopting a compliance date of May 28, 2024, for Rule 15c6–2 and the amendments to Rules 15c6–1 and 204–2, and the Commission proposed the same compliance date for Rule 17Ad–27 as the other rules and rule amendments, a CMSP would not be required to submit its first annual report until after the T+1 transition has been completed. Accordingly, the Commission believes that a May 28, 2024, compliance date is also appropriate for Rule 17Ad–27 and consistent with the comment received. Consistent with the requirement in Rule 17Ad–27(d) that the report must be filed within 60 days of the end of the twelve-month period covered by the report, the first report must be filed no later than March 1, 2025.

VIII. Economic Analysis

The Commission has prepared an economic analysis in connection with the amendments to Rules 15c6–1 and 204–2 and new Rules 15c6–2 and 17Ad–27. The economic analysis begins with a discussion of the risks inherent in the standard settlement cycle for securities transactions and the impact that shortening the standard settlement cycle may have on the management and mitigation of these risks. Next, the economic analysis summarizes and addresses comments relating to the costs and benefits of a shorter settlement cycle, as well as comments about the economic analysis provided in the T+1 Proposing Release. Finally, the economic analysis discusses certain market frictions that potentially impair the ability of market participants to shorten the settlement cycle in the absence of a Commission rule.

The discussion regarding settlement cycle risks and market frictions frames the Commission's analysis of the rule's benefits and costs in later sections. The Commission believes that the amendment to Rule 15c6–1(a) will ameliorate these market frictions and thus will reduce the risks inherent in settlement. The Commission further believes that the combination of amendments and new rules that it is adopting will advance two longstanding objectives shared by the Commission and the securities industry: the completion of trade allocations, confirmations, and affirmations on trade date (an objective often referred to as ''same-day affirmation'') and the straight-through processing of securities transactions.[495]

After discussing the aforementioned risks and market frictions, the economic analysis provides a baseline of current practices. The economic analysis then discusses the likely economic effects of the amendments and new rules, such as the costs and benefits of the adopted amendments and new rules, as well as its effects on efficiency, competition, and capital formation.[496] The Commission has, where possible, attempted to quantify the economic effects expected to result from the amendments and new rules. However, the Commission is unable to quantify some economic effects because it lacks the information necessary to provide a reasonable estimate. In those instances, the discussion of the economic effects of

[492] *See infra* Part VIII.D.5 (discussing the potential economic effects of a May 28, 2024, compliance date versus a later compliance date).

[493] *See, e.g.,* Fidelity Letter, *supra* note 16, at 12 (stating that ''the proposed Compliance Date should apply only to the proposed move to T+1''); ICI Letter, *supra* note 16, at 5–7 (indicating that efforts to ensure compliance with Rule 15c6–2 would likely divert the time and resources that industry participants need to focus on the transition to T+1 settlement).

[494] *See* DTCC ITP September Letter, *supra* note 325, at 3.

[495] *See* T+1 Proposing Release, *supra* note 2, at 10452–53.

[496] Exchange Act section 3(f) requires the Commission, when it is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). In addition, Exchange Act section 23(a)(2) requires the Commission, when making rules pursuant to the Exchange Act, to consider among other matters, the impact that any such rule would have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

the amendments and new rules is qualitative in nature.

A. Background

As previously discussed, the amendment to Rule 15c6–1(a) prohibits, unless otherwise expressly agreed to by both parties at the time of the transaction, a broker-dealer from effecting or entering into a contract for the purchase or sale of certain securities that provides for payment of funds and delivery of securities later than the first business day after the date of the contract subject to certain exceptions provided in the rule. Several commenters addressed the impact that the length of the settlement cycle would have on risk to central counterparties (''CCPs'') and market participants (including credit, market and liquidity risk),[497] margin requirements,[498] capital liquidity,[499] post-trade processing and operational efficiency,[500] financial stability,[501] and systemic risk in the financial system.[502] In its analysis of the economic effects of the new rules and amendments to existing rules, the Commission has considered the risks that market participants, including broker-dealers, clearing agencies, investment advisers, and institutional and retail investors are exposed to during the settlement cycle and how those risks change with the length of the cycle.

The settlement cycle spans the time between when a trade is executed and when cash and securities are delivered to the seller and buyer, respectively. During this time, each party to a trade faces the risk that its counterparty may fail to meet its obligations to deliver cash or securities. When a counterparty fails to meet its obligations to deliver cash or securities, the non-defaulting party may bear costs as a result. For example, if the non-defaulting party chooses to enter into a new transaction, it will be with a new counterparty and will occur at a potentially different price.[503] The length of the settlement cycle influences this risk in two ways: (i) through its effect on counterparty exposures to price volatility, and (ii) through its effect on the value of outstanding obligations.

First, additional time allows asset prices to move further away from the price of the original trade. For example, in a simplified model, where daily asset returns are statistically independent, the variance of an asset's return over t days is equal to t multiplied by the daily variance of the asset's return. Thus, when the daily variance of returns is constant, the variance of returns increases linearly in the number of days.[504] In other words, the more days that elapse between when a trade is executed and when a counterparty defaults, the larger the variance of price change will be, and the more likely that the asset's price will deviate from the execution price. The price change could be positive or negative, but in the event of a price increase, the buyer must pay more than the original execution price, and in the event of a price decrease, the buyer may buy the security for less than the original execution price.[505]

Second, the length of the settlement cycle directly influences the quantity of transactions awaiting settlement. For example, assuming no change in transaction volumes, the volume of unsettled trades under a T+1 settlement cycle is approximately half the volume of unsettled trades under a T+2 settlement cycle.[506] Thus, in the event of a default, counterparties would have to enter into a new transaction, or otherwise close out approximately half as many trades under a T+1 standard settlement cycle than under a T+2 standard. This means that for a given adverse move in prices, the financial losses resulting from a counterparty default will be approximately half as large under a T+1 standard settlement cycle.

Market participants manage and mitigate settlement risk in a number of specific ways.[507] Generally, these methods entail costs to market participants. In some cases, these costs may be explicit. For instance, clearing brokers typically explicitly charge introducing brokers to clear trades. Other costs are implicit, such as the opportunity cost of assets posted as collateral or limits placed on the trading activities of a broker's customers.

The Commission believes that, given current trading volumes and complexity, certain market frictions may prevent securities markets from shortening the settlement cycle in the absence of regulatory intervention. The Commission has considered two key market frictions related to investments required to implement a shorter settlement cycle. The first is a coordination problem that arises when some of the benefits of actions taken by one or more market participants are only realized when other market participants take a similar action. For example, under the current regulatory structure, if a particular institutional investor were to make a technological investment to reduce the time it requires to match and allocate trades without a corresponding action by its clearing broker-dealers, the institutional investor cannot fully realize the benefits of its investment, as the settlement process is limited by the capabilities of the clearing agency for trade matching and allocation. More generally, when every market participant must incur costs of an upgrade for the entire market to enjoy a benefit, the result is a coordination problem where each market participant may be reluctant to make the necessary investments until it can be reasonably certain that others will also do so. In general, these coordination problems may be resolved if all parties can credibly commit to the necessary infrastructure investments. Regulatory intervention is one possible way of coordinating market participants to undertake the investments necessary to support a shorter settlement cycle. Such intervention could come through Commission rulemaking or through a coordinated set of SRO rule changes.

In addition to coordination problems, a second market friction related to the

[497] *See, e.g.,* DTCC Letter, *supra* note 16, at 2–3; Fidelity Letter, *supra* note 16, at 2; IAA April Letter, *supra* note 16, at 1; ICI Letter, *supra* note 16, at 1, 3; MFA Letter, *supra* note 16, at 1; OCC Letter, *supra* note 16, at 2; RMA Letter, *supra* note 16, at 3; SIFMA April Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[498] *See, e.g.,* Cornell Law Letter, *supra* note 16, at 3; DTCC Letter, *supra* note 16, at 2–3; Fidelity Letter, *supra* note 16, at 2; MMI Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[499] *See, e.g.,* DTCC Letter, *supra* note 16, at 2–3; MMI Letter, *supra* note 16, at 2; State Street Letter, *supra* note 16, at 4.

[500] *See, e.g.,* Cornell Law Letter, *supra* note 16, at 3; DTCC Letter, *supra* note 16, at 2–3; IAA April Letter, *supra* note 16, at 1; RMA Letter, *supra* note 16, at 3; State Street Letter, *supra* note 16, at 4.

[501] *See, e.g.,* ICI Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2.

[502] *See, e.g.,* Fidelity Letter, *supra* note 16, at 2; MFA Letter, *supra* note 16, at 1; MMI Letter, *supra* note 16, at 2; RMA Letter, *supra* note 16, at 3.

[503] This applies to the general case of a transaction that is not novated to a CCP. As described above, in its role as a CCP, NSCC becomes counterparty to both initial parties to a centrally cleared transaction. In the case of such transactions, while each initial party is not exposed to the risk that its original counterparty defaults, both are exposed to the risk of CCP default. Similarly, the CCP is exposed to the risk that either initial party defaults.

[504] More generally, because total variance over multiple days is equal to the sum of daily variances and variables related to the correlation between daily returns, total variance increases with time so long as daily returns are not highly negatively correlated. *See, e.g.,* Morris H. DeGroot and Mark J. Schervish, Probability and Statistics 216 (Addison-Wesley Publishing Co., 4th ed. 1986).

[505] Similarly, a seller whose counterparty fails faces similar risks with respect to the security price but in the opposite direction.

[506] The relationship is approximate because some trades may settle early or, if both counterparties agree at the time of the transaction, settle after the time limit in Rule 15c6–1(a).

[507] *See* T+2 Proposing Release, *supra* note 4, at 69251 (discussing the entities that compose the clearance and settlement infrastructure for U.S. securities markets).

settlement cycle involves situations where one market participant's investments result in benefits for other market participants. For example, if a market participant invests in a technology that reduces the error rate in its trade matching, not only does it benefit from fewer errors, but its counterparties and other market participants may also benefit from more robust trade matching. However, because market participants do not necessarily take into account the benefits that may accrue to other market participants (also known as ''externalities'') when market participants choose the level of investment in their systems, the level of investment in technologies that reduce errors might be less than efficient for the entire market. More generally, underinvestment may result because each participant only takes into account its own costs and benefits when choosing which infrastructure improvements or investments to make, and does not take into account the costs and benefits that may accrue to its counterparties, other market participants, or financial markets generally.

Moreover, because market participants that incur similar costs to move to a shorter settlement cycle may nevertheless experience different levels of economic benefits, there is likely heterogeneity across market participants in the demand for a shorter settlement cycle. This heterogeneity may exacerbate coordination problems and underinvestment. Market participants that do not expect to receive direct benefits from settling transactions earlier may lack incentives to invest in infrastructure to support a shorter settlement cycle and thus could make it difficult for the market as a whole to realize the overall risk reduction that the Commission believes a shorter settlement cycle may bring.

For example, the level and nature of settlement risk exposures vary across different types of market participants. A market participant's characteristics and trading strategies can influence the level of settlement risk it faces. For example, large market participants will generally be exposed to more settlement risk than small market participants because they trade in larger volume. However, large market participants also trade across a larger variety of assets and may face less idiosyncratic risk in the event of counterparty default if the portfolio of trades that may have to be replaced is diversified.[508] As a corollary, a market participant who trades a single security, in a single direction, against a given counterparty, may face more idiosyncratic risk in the event of counterparty failure than a market participant who trades in both directions with that counterparty.

Furthermore, the extent to which a market participant experiences any economic benefits that may stem from a shortened standard settlement cycle likely depends on the market participant's relative bargaining power. While larger intermediaries may experience direct benefits from a shorter settlement cycle as a result of being required to post less collateral with a CCP, if they do not effectively compete for customers through fees and services as a result of market power, they may pass only a portion of these cost savings through to their customers.[509]

The Commission believes that the amendment to Rule 15c6–1(a), which shortens the standard settlement cycle from T+2 to T+1 may mitigate the market frictions of coordination and underinvestment described above. The Commission believes that by mitigating these market frictions, and for the reasons discussed below, the transition to a shorter standard settlement cycle will reduce the risks inherent in the clearance and settlement process.

The shorter standard settlement cycle might also affect the level of operational risk in the clearance and settlement system. Shortening the settlement cycle by one day will reduce the time that market participants have to resolve any errors that might occur in the clearance and settlement process. Tighter operational timeframes and linkages required under a shorter standard settlement cycle might introduce new fragility that could affect market participants, specifically an increased risk that operational issues could affect transaction processing and related securities settlement.[510]

In part, to lessen the likelihood that shortening the settlement cycle might negatively affect operational risk, the Commission and market participants have emphasized on multiple occasions the importance of accelerating the institutional trade clearance and settlement process by improving, among other things, the allocation, confirmation, and affirmation processes for the clearance and settlement of institutional trades, as well as improvements to the provision of central matching and electronic trade confirmation.[511] A 2010 white paper by Omgeo (now DTCC ITP), published when the standard settlement cycle in the U.S. was still T+3, described same-day affirmation as ''a prerequisite'' of shortening the settlement cycle because of its impact on settlement failure rates and operational risk.[512] According to previously cited statistics published by DTCC in 2011, regarding affirmation rates achieved through industry utilization of a certain matching/ETC provider, on average, 45% of trades were affirmed on trade date, 90% were affirmed by T+1, and 92% were affirmed by noon on T+2.[513] Currently, only about 68% of trades achieve affirmation by 12:00 midnight at the end of trade date.[514] While these numbers have improved over time, the improvements have been incremental and fallen short of achieving an affirmed confirmation by the end of trade date as is considered a securities industry best practice.[515] Accordingly, and as described more fully below, to achieve the maximum efficiency and risk reduction that may result from completing the allocation, confirmation, and affirmation process on trade date, and to facilitate shortening the settlement cycle to T+1 or shorter, the Commission is adopting new Rule 15c6–2 under the Exchange Act to facilitate trade date completion of institutional trade allocations, confirmations, and affirmations. Similarly, the Commission is also adopting new Rule 17Ad–27 under the Exchange Act to facilitate straight-through processing by certain clearing agencies acting as CMSPs.

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[508] *See* Ananth Madhavan et al., *Risky Business: The Clearance and Settlement of Financial Transactions* (U. Pa. Wharton Sch. Rodney L. White Ctr. for Fin. Res. Working Paper No. 40–88, 1988), at 4–5, *https://rodneywhitecenter.wharton.upenn.edu/wp-content/uploads/2014/04/8840.pdf*; *see also* John H. Cochrane, Asset Pricing 15 (Princeton Univ. Press rev. ed. 2009) (defining the idiosyncratic component of any payoff as the part that is uncorrelated with the discount factor).

[509] *See infra* Parts VIII.C.1. (Benefits) and VIII.C.2. (Costs).

[510] For example, the ability to compute an accurate net asset value (''NAV'') within the settlement timeframe is a key component for settlement of ETF transactions. *See, e.g.,* Barrington Partners, An Extraordinary Week: Shared Experiences from Inside the Fund Accounting Systems Failure of 2015 (Nov. 2015), *https://www.mfdf.org/docs/default-source/fromjoomla/uploads/blog_files/sharedexperiencefromfasystemfailure2015.pdf*.

[511] *See supra* Part III.A.; *see also* T+1 Proposing Release, *supra* note 2, at 10452 nn.146–148 and accompanying text.

[512] Omgeo, *Mitigating Operational Risk and Increasing Settlement Efficiency through Same Day Affirmation (SDA),* at 2, 7 (Oct. 2010) (''Omgeo Study''), *https://www.sifma.org/resources/thought-leader-resource-type/white-papers/*.

[513] DTCC, *Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle,* at 7 (Dec. 2011), *supra* note 263.

[514] DTCC ITP Forum Remarks, *supra* note 264.

[515] *See* T+1 Report, *supra* note 61, at 5.

B. Baseline

The Commission uses as its economic baseline the clearance and settlement process as it exists today. In addition to the current process that was described in the T+1 Proposing Release, the baseline includes rules adopted by the Commission, including Commission rules governing the clearance and settlement system, SRO rules,[516] as well as rules adopted by regulators in other jurisdictions to regulate securities settlement in those jurisdictions. The following section discusses several additional elements of the baseline that are relevant for the economic analysis of the amendment to Rule 15c6–1(a) because they are related to the financial risks faced by market participants that clear and settle transactions and the specific means by which market participants manage these risks.

1. Central Counterparties

NSCC, a subsidiary of DTCC, is a clearing agency registered with the Commission that operates the CCP for U.S. equity securities transactions.[517] One way that NSCC mitigates the credit, market, and liquidity risk that it assumes through its novation and guarantee of trades as a CCP is by multilateral netting of securities trades' delivery and payment obligations across its members. By offsetting its members' obligations, NSCC reduces the aggregate market value of securities and cash it must deliver to clearing members. While netting reduces NSCC's settlement payment obligations by a daily average of 98%,[518] it does not fully eliminate the risk posed by unsettled trades because NSCC is responsible for payments or deliveries on any trades that it cannot fully net. NSCC reported clearing an average of approximately $2.191 trillion each day during the second quarter of 2022,[519] suggesting an average net settlement obligation of approximately $44 billion each day.[520]

The aggregate settlement risk faced by NSCC is also a function of the probability of clearing member default. NSCC manages the risk of clearing member default by imposing certain financial responsibility requirements on its members. For example, as of 2022, broker-dealer members of NSCC that are not municipal securities brokers, and do not intend to clear and settle transactions for other broker-dealers, must have excess net capital of $500,000 over the minimum net capital requirement imposed by the Commission, and $1,000,000 over the minimum net capital requirement if the broker-dealer member clears for other broker-dealers.[521] Furthermore, each NSCC member is subject to other ongoing membership requirements, including a requirement to furnish NSCC with assurances of the member's financial responsibility and operational capability, including, but not limited to, periodic reports of its financial and operational condition.[522]

In addition to managing the member default risk, NSCC also takes steps to mitigate the impacts of a member default. For example, in the normal course of business, CCPs are generally not exposed to market or liquidity risk because they expect to receive every security from a seller they are obligated to deliver to a buyer, and they expect to receive every payment from a buyer that they are obligated to deliver to a seller. However, when a clearing member defaults, the CCP can no longer expect the defaulting member to deliver securities or make payments. CCPs mitigate this risk by requiring clearing members to make contributions of financial resources to the CCP so that it may make payments or deliver securities in the event of a member default. The level of financial resources CCPs require clearing members to commit may be based on, among other things, the market and liquidity risk of a member's portfolio, the correlation between the assets in the member's portfolio and the member's own default probability, and the liquidity of the assets posted as collateral.

2. Market Participants—Investors, Broker-Dealers, and Custodians

As discussed in Part II.B of the proposal, broker-dealers serve both retail and institutional customers.[523] Aggregate statistics from the Board of Governors of the Federal Reserve System suggest that at the end of the second quarter 2022, U.S. households held approximately 40% of the value of corporate equity outstanding, 56% of the value of mutual fund shares outstanding, 2% of the value of corporate and foreign bonds, and 43% of the value of municipal securities, which provides a general picture of the share of holdings by retail investors.[524]

In the third quarter of 2022, approximately 3,500 broker-dealers filed FOCUS Reports[525] with FINRA. These firms varied in size, with median assets of approximately $1.3 million and average assets of approximately $1.6 billion. The top 1% of broker-dealers held 80% of the assets of broker-dealers overall, indicating a high degree of concentration in the industry. Of the approximately 3,500 filers, as of the end of 2021, 92 reported self-clearing public customer accounts and acting as introducing broker and sending orders to another broker-dealer for clearing, 1,114 reported acting only as an introducing broker and sending orders to another broker-dealer for clearing, and 68 reported acting as both.[526] Broker-dealers that identified themselves as self-clearing broker-dealers, on average, had higher total assets than broker-dealers that identified themselves as introducing broker-dealers. While the decision to self-clear

[516] Certain SRO rules currently define ''regular way'' settlement as occurring on T+2 and, as such, would need to be amended in connection with shortening the standard settlement cycle to T+1. *See, e.g.,* MSRB Rule G–12(b)(ii)(B); FINRA Rule 11320(b). Further, certain timeframes or deadlines in SRO rules key off the current settlement date, either expressly or indirectly. In such cases, the SROs may also need to amend these rules. *See* T+1 Proposing Release, *supra* note 2, at 10464.

[517] A second DTCC subsidiary, DTC, also a clearing agency registered with the Commission, operates a central securities depository (''CSD'') with respect to securities transactions in the U.S. in several types of eligible securities including, among others, equities, warrants, rights, corporate debt and notes, municipal bonds, government securities, asset-backed securities, depositary receipts, and money market instruments.

[518] According to the DTCC, centralized multilateral netting reduces the value of payments that need to be exchanged each day by an average of 98%, and netting is particularly important during times of heightened volatility and volume. DTCC, Advancing Together: Leading the Industry to Accelerated Settlement, at 2 (Feb. 2021) (''DTCC White Paper''), *https://www.dtcc.com/-/media/Files/PDFs/White%20Paper/DTCC-Accelerated-Settle-WP-2021.pdf.*

[519] *See* DTCC, Fixed Income Clearing Corporation and National Securities Clearing Corporation Public Quantitative Disclosure for Central Counterparties, Q2 2022, at 19 (Sept. 2022) (''DTCC Quantitative Disclosure Results Q2 2022''), *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/CPMI-IOSCO-Quantitative-Disclosure-Results-2022Q2-1.pdf.*

[520] Calculated as $2.191 trillion × 2% = $43.82 billion.

[521] For a description of NSCC's financial responsibility requirements for registered broker-dealers, *see* NSCC Rules and Procedures, at 386 (effective Oct. 3, 2022) (''NSCC Rules and Procedures''), *https://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.* Pursuant to Rule 11 and Addendum K to NSCC's Rules and Procedures, NSCC guarantees the completion of Continuous Net Settlement System (''CNS'') settling trades (''NSCC trade guaranty'') that have been validated. *Id.* at 108–113, 414.

[522] *See, e.g., id.* at 89.

[523] *See* T+1 Proposing Release, *supra* note 2, at 10439–44.

[524] *See* Board of Governors of the Federal Reserve System, Federal Reserve Statistical Release, Z.1, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, at 121, 122, 130 (Sept. 23, 2021), *https://www.federalreserve.gov/releases/z1/20210923/z1.pdf.*

[525] FOCUS Reports, or ''Financial and Operational Combined Uniform Single'' Reports, are monthly, quarterly, and annual reports that broker-dealers generally are required to file with the Commission and/or SROs pursuant to Exchange Act Rule 17a–5, 17 CFR 240.17a–5.

[526] 68 filers reported clearing public customer accounts via self clearing and via introducing.

may be based on many factors, this evidence is consistent with the argument that there may currently be high barriers to entry for providing clearing services as a broker-dealer.

Clearing broker-dealers face liquidity risks, as they are obligated to make payments to clearing agencies on behalf of customers who purchase securities. As discussed in more detail below, because customers of a clearing broker may default on their payment obligations to the broker, particularly when the price of a purchased security declines before settlement, clearing broker-dealers routinely seek to reduce the risks posed by their customers. For example, clearing broker-dealers may require customers to contribute financial resources in the form of margin to margin accounts, to pre-fund purchases in cash accounts, or may restrict the use of customers' unsettled funds. These measures are in many ways analogous to measures taken by clearing agencies to reduce and mitigate the risks posed by their clearing members. In addition, clearing broker-dealers may also mitigate the risks posed by customers by charging higher transaction fees that reflect the value of the customer's option to default, thereby causing customers to internalize the cost of default that is inherent in the settlement process.[527] While not directly reducing the risk posed by customers to clearing members, these higher transaction fees indirectly reduce that risk by allocating to customers a portion of the expected direct costs of customer default.

Another way the settlement cycle may affect transaction prices involves the potential use of funds during the settlement cycle. To the extent that buyers may use the cash to purchase securities during the settlement cycle for other purposes, they may derive value from the length of time it takes to settle a transaction. Testing this hypothesis, studies have found that sellers demand compensation for the benefit that buyers receive from deferring payment during the settlement cycle and that this compensation is incorporated in equity returns.[528]

The settlement process also exposes investors to certain risks. The length of the settlement cycle sets the minimum amount of time between when an investor places an order to sell securities and when the customer can expect to have access to the proceeds of that sale. Investors take this into account when they plan transactions to meet liquidity needs. For example, under T+2 settlement, investors who experience liquidity shocks, such as unexpected expenses that must be met within one day, could not rely on obtaining funding solely through a sale of securities because the proceeds of the sale would not typically be available until the end of the second day after the sale. One possible strategy to deal with such a shock under T+2 settlement would be to borrow to meet payment obligations on day T+1 and repay the loan on the following day with the proceeds from a sale of securities, incurring the cost of one day of interest. Another strategy that investors may use is to hold financial resources to insure themselves from liquidity shocks.

Some securities transactions depend on an FX transaction to provide the necessary funds. When settlement times for FX transactions are longer than that of the securities transaction it is meant to finance, the purchaser may be required to find an alternative source of funds to settle the securities transaction. The Commission is unable to quantify the fraction of securities trades that depend on a corresponding FX transaction or the relative frequency with which market participants employ alternative methods when FX and securities settlement cycles differ, because it is unaware of a source for data on how securities transactions are funded that would be a necessary prerequisite to providing a reasonable estimate. It is the experience of Commission staff that, for retail investors, many brokers require their retail clients to prefund their transactions including those that require a corresponding FX transaction.

Integral to settlement of institutional trades is achieving an affirmed confirmation, which can require a series of communications between a broker-dealer and its institutional customer. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions.[529] An affirmed confirmation by the end of trade date is considered a securities industry best practice.[530] Currently, despite existing commercial incentives and continuing efforts to promote ''same-day affirmation'' as an industry best practice, only about 68% of trades achieve affirmation on trade date.[531]

In order to deliver shares that a customer has sold, it may be necessary for a broker-dealer to initiate a bona fide recall of a loaned security to be able to mark the sale of such loaned but recalled security ''long'' for purposes of Rule 200(g)(1).[532] Under a T+2 standard settlement cycle, the closeout period for sales marked ''long'' is T+5, and so recalls of loaned securities need to be delivered by T+4 to be available to close out any fails on sales marked ''long'' by the beginning of regular trading hours on T+5. To meet this timeframe, a number of broker-dealers have securities lending agreements that set the period of delivery for delivering loaned but recalled securities to two settlement days after initiation of a recall. The recall of a loaned security does not require that a reason be given so it is not possible to determine the volume of security loan recalls that are initiated in order to complete settlement before the closeout period.

Rule 15c6–1(c) establishes a T+4 settlement cycle for firm commitment underwritings for securities that are priced after 4:30 p.m. Eastern Time (''ET'').[533] Under the rule, the broker or dealer must effect or enter into a contract for the purchase or sale of those securities that provide for payment of funds and delivery of securities no later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. Table 1 provides statistics for the number of initial public offerings of equity and aggregate proceeds by year from 2000–2022. The Commission believes that most equity initial public offerings (''IPOs''), particularly larger offerings, are made on a firm commitment basis. Although the Commission is not aware of a comprehensive and accessible database that includes settlement time by offering, it understands that the current market practice for substantially all equity offering is to settle on the current T+2 timeframe, notwithstanding the exceptions provided in Rule 15c6–1(c) for firm commitment offerings priced after 4:30 p.m. ET.[534] The third and fourth columns of Table 1 contain estimates for total IPO proceeds from separate sources using separate

[527] *See infra* Parts VIII.C.2. and VIII.C.4.

[528] *See* Victoria Lynn Messman, Securities Processing: The Effects of a T+3 System on Security Prices (May 2011) (Ph.D. dissertation, University of Tennessee—Knoxville), *http://trace.tennessee.edu/utk_graddiss/1002/*; Josef Lakonishok & Maurice Levi, *Weekend Effects on Stock Returns: A Note,* 37 J. Fin. 883 (1982), *https://www.jstor.org/stable/pdf/2327716.pdf*; Ramon P. DeGennaro, *The Effect of Payment Delays on Stock Prices, 13 J. Fin. Res. 133* (1990), *http://onlinelibrary.wiley.com/doi/10.1111/j.1475–6803.1990.tb00543.x/abstract.*

[529] *See, e.g.,* SIFMA August 26th Letter, *supra* note 207, at 2.

[530] *See* T+1 Report, *supra* note 61, at 5.

[531] *See* DTCC ITP Forum Remarks, *supra* note 264.

[532] *See* T+1 Proposing Release, *supra* note 2, at 10461.

[533] 17 CFR 240.15c6–1(c).

[534] *See* T+1 Report, *supra* note 61, at 31. The U.S. moved to the current T+2 settlement in September 2017.

methodologies but show similar patterns. The Commission understands that debt offerings frequently make use of the exception provided by 15c6–1(d) and that substantially all of the purchasers in debt securities offerings are large, sophisticated institutions.

TABLE 1—NUMBER OF INITIAL PUBLIC OFFERINGS AND AGGREGATE PROCEEDS

[2000–2022] [1]

Year	Number of IPOs	Aggregate proceeds ($ billions)	Aggregate proceeds SIFMA ($B)
2000	380	64.80	106.2
2001	80	35.29	46.0
2002	66	22.03	27.2
2003	63	9.54	18.1
2004	173	31.19	50.5
2005	159	28.23	40.7
2006	157	30.48	46.4
2007	159	35.66	52.3
2008	21	22.76	26.7
2009	41	13.17	27.0
2010	91	29.82	43.5
2011	81	26.97	40.1
2012	93	31.11	46.2
2013	158	41.56	60.0
2014	206	42.20	93.5
2015	118	22.00	32.2
2016	75	12.52	20.7
2017	106	22.98	39.2
2018	134	33.47	49.9
2019	112	39.18	48.8
2020	165	61.87	85.4
2021	311	119.36	153.6
2022	39	7.01	8.5

[1] The second and third columns contain estimates derived from IPOs with an offer price of at least $5.00, excluding ADRs, unit offers, closed-end funds, real estate investment trusts (''REITs''), natural resource limited partnerships, small best efforts offers, banks and savings and loans (S&Ls), and stocks not listed in data maintained by the Center for Research in Security Prices (''CRSP'' includes Amex, NYSE, and NASDAQ stocks). Proceeds exclude overallotment options. Estimates from IPO Statistics, Jay Ritter, University of Florida, at 3, *https://site.warrington.ufl.edu/ritter/files/IPO-Statistics.pdf*. The fourth column provides an estimate by SIFMA of total IPO proceeds using their own methodology. The data is available at *https://www.sifma.org/resources/research/us-equity-and-related-securities-statistics/*, but we understand their reported IPO data ''includes rank eligible deals; excludes BDCs, SPACs, ETFs, CLEFs & rights offers.'' See SIFMA Research Quarterly—3Q22 (Oct. 2022), at 5, *https://www.sifma.org/wp-content/uploads/2022/10/US-Research-Quarterly-Equity-2022-10-19-SIFMA.pdf*.

Custodians hold customers' securities for safekeeping in order to minimize the risk of the misappropriation, misuse, or theft.[535] One of the primary responsibilities of a custodian is the tracking, settling, and reconciling of assets that are acquired and disposed of by the investor. In this role, custodians affirm up to 70% of institutional trades [536] and up to 70% of investment adviser trades.[537] There are 48 custodian banks that are members of The Depository Trust Company (''DTC'').

3. Investment Companies and Investment Advisers

Shares issued by investment companies may settle on different timeframes. For example, ETFs, certain closed-end funds, and mutual funds that are sold by brokers generally settle on T+2.[538] By contrast, mutual fund shares that are directly purchased from the fund generally settle on T+1. Mutual funds that settle on a different basis than the underlying investments currently face liquidity risk as a result of a mismatch between the timing of mutual fund share transaction settlement and the timing of fund portfolio security transaction order settlements. Mutual funds may manage these particular liquidity needs by, among other methods, using cash reserves, back-up lines of credit, or interfund lending facilities to provide cash to cover the settlement mismatch.[539] As of the end of 2021, there were 11,577 open-end funds (including money market funds and ETFs).[540] The assets of these funds were approximately $34.2 trillion.[541] Of the 11,577 funds noted, 2,690 were ETFs with combined assets of $7.2 trillion.[542]

Under section 22(e) of the Investment Company Act, an open-end fund generally is required to pay shareholders who tender shares for redemption within seven days of their tender.[543] Open-end fund shares that are sold through broker-dealers must be redeemed within two days of a

[535] Although many securities are held in electronic form, *e.g.,* equities at DTC, the custodian performs similar functions whether the securities are held in physical or electronic form.

[536] *See* DTCC ITP Forum Remarks, *supra* note 264.

[537] *See* IAA April Letter, *supra* note 16, at 4; *see also* ICI Letter, *supra* note 16, at 5; ISITC Letter, *supra* note 29, at 2.

[538] The Commission applied Rule 15c6–1 to broker-dealer contracts for the purchase and sale of securities issued by investment companies, including mutual funds, because the Commission recognized that these securities represented a significant and growing percentage of broker-dealer transactions. T+3 Adopting Release, *supra* note 3, at 52900.

[539] *See* Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Investment Company Act Release No. 31835 (Sept. 22, 2015), 80 FR 62274, 62285 n.100 (Oct. 15, 2015).

[540] *See* ICI, 2022 Investment Company Fact Book, A Review of Trends and Activities in the Investment Company Industry, at 21 (2022) (''2022 ICI Fact Book''), *https://www.icifactbook.org/pdf/2022_factbook.pdf*. This comprises 8,887 open-end mutual funds, including mutual funds that invest primarily in other mutual funds, and 2,690 ETFs, including ETFs that invest primarily in other ETFs.

[541] *See id.* at 22.

[542] *See id.*

[543] 15 U.S.C. 80a–22(e).

redemption request because broker-dealers are subject to Rule 15c6–1(a).

Furthermore, 17 CFR 270.22c–1,[544] the ''forward pricing'' rule, requires funds, their principal underwriters, and dealers to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to purchase or redeem fund shares, even though cash proceeds from purchases may be invested or fund assets may be sold in subsequent days in order to satisfy purchase requests or meet redemption obligations.

Based on Form ADV filings received through August 31, 2022, the Commission estimates that there are approximately 15,160 advisers registered with the Commission are required to make and keep copies of books and records relating to their advisory business.[545] For any transaction that is subject to the requirements of Rule 15c6–2(a), the final amendments to Rule 204–2 will require registered investment advisers to make and keep copies of confirmations received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received. The Commission understands that not all investment advisers may engage in transactions that are subject to the requirements of Rule 15c6–2(a).[546] Of the 15,160 advisers registered with the Commission, we estimate that 12,991 manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6–2(a).[547]

One commenter stated that timestamps are already included in electronic communications protocols.[548] As discussed in Part IV.C, the Commission believes that timestamps are generally included in many electronic communications and many advisers currently send allocations and affirmations electronically, though some advisers may not retain these types of records.

4. Current Market for Clearance and Settlement Services

As described in Part II.B of the proposal, two affiliated entities, NSCC and DTC, facilitate clearance and settlement activities in U.S. securities markets in most instances.[549] There is limited competition in the provision of the services that these entities provide. NSCC is the CCP for trades between broker-dealers involving equity securities, corporate and municipal debt, and UITs for the U.S. market. DTC is the CSD that provides custody and book-entry transfer services for the vast majority of securities transactions in the U.S. market involving equities, corporate and municipal debt, money market instruments, ADRs, and ETFs. CMSPs electronically facilitate communication among a broker-dealer, an institutional investor or its investment adviser, and the institutional investor's custodian to reach agreement on the details of a securities trade, thereby creating binding terms.[550] As discussed further in Part III.D of the T+1 Proposing Release, FINRA currently requires broker-dealers to use a clearing agency, such as DTC or a CMSP, or a qualified vendor under the rule to complete delivery-versus-payment transactions with their customers.[551]

In addition, a CMSP may offer a ''matching'' process by which it compares and reconciles the broker-dealer's trade details with the institutional investor's trade details to determine whether the two descriptions of the trade agree, at which point it can generate an affirmation to effect settlement of the trade. As part of such process, the CMSP may offer services that can assist with the automated identification of trades that do not match, allowing market participants to identify errors and remediate any trade information that does not match. Market participants also rely on a variety of ''local'' matching tools that allow them to compare trade information received from another party against their own trade information.[552] These local matching tools often rely on inconsistent SSI data independently maintained by broker-dealers, investment managers, custodians, sub-custodians, and agents on separate databases.[553] As discussed in Part II.B., processing institutional trades requires managing the back and forth involved with transmitting and reconciling trade information among the parties, functionally matching and re-matching with the counterparties to the trade, as well as custodians and agents, to facilitate settlement. It also requires market participants to engage in allocation processes, such as allocation-level cancellations and corrections, some of which are still processed manually.[554]

Broker-dealers compete to provide services to retail and institutional customers. Based on the large number of broker-dealers, there is likely a high degree of competition among broker-dealers. However, the markets that broker-dealers serve may be segmented along lines relevant for the analysis of competitive effects of the amendment to Rule 15c6–1(a). As noted above, the number of broker-dealers that self-clear public customer accounts is smaller than the set of broker-dealers that introduce and do not self-clear. This could mean that introducing broker-dealers compete more intensively for customers than clearing broker-dealers. Further, clearing broker-dealers must meet requirements set by NSCC and DTC, such as financial responsibility requirements and clearing fund requirements. These requirements represent barriers to entry for brokers that may wish to become clearing broker-dealers, limiting competition among such entities.

Competition for customers affects how the costs associated with the clearance and settlement process are allocated among market participants. In managing the expected costs of risks from their customers and the costs of compliance with SRO and Commission rules, clearing broker-dealers decide what fraction of these costs to pass

[544] Rule 22c–1 under the Investment Company Act.

[545] *See infra* note 4 to Table 2.

[546] For more discussion, *see infra* Part IX.A.

[547] *See infra* note 4 to Table 2.

[548] *See* FIX Trading Letter, *supra* note 218; *cf.* a separate commenter stated ''Additional requirements for registered investment advisers to timestamp certain trading records adds further complexity and cost to those managers' efforts.'' *See* AIMA Letter, *supra* note 29, at 2.

[549] *See* T+1 Proposing Release, *supra* note 2, at 10439–40.

[550] *See id.; see also* T+2 Proposing Release, *supra* note 4, at 69246. Although there are three CMSPs, only one is active. That CMSP currently submits nonpublic monthly reports that include data on monthly trade volume processed and affirmations completed on T, T+1, and settlement date.

[551] *See* T+1 Proposing Release, *supra* note 2, at 10458 n.181 and accompanying text.

[552] Local matching platforms include, for example, the trade reconciliation and inventory management tools that market participants use to reconcile trade information. *See* DTCC, Embracing Post-Trade Automation: Seven Ways the Sell-Side Will Benefit from No-Touch Future (Nov. 2020) (''DTCC Embracing Post-Trade Automation''), *https://www.dtcc.com/itp-hub/dist/downloads/broker_supplement_11.11.20z.pdf.* Examples of such service providers include Bloomberg, Corfinancial, Lightspeed, and SS&C Technologies.

[553] *See id.* for more information about the use and impact of ''local'' matching platforms. A 2020 DTCC survey of global broker-dealers found that certain institutional post-trade processing costs could be reduced by 20–25% through leveraging post-trade automation, which would in turn eliminate redundancies and manual processing and mitigate operational risks. *See* DTCC, *DTCC Identifies Seven Areas of Broker Cost Savings as a Result of Greater Post-Trade Automation* (Nov. 18, 2020), *https://www.dtcc.com/news/2020/november/18/dtcc-identifies-seven-areas-of-broker-cost-savings-as-a-result-of-greater-post-trade-automation.*

[554] *See* DTCC, Re-Imagining Post-Trade: No-Touch Processing Within Reach, at 4 (Sept. 2019), *https://www.dtcc.com/-/media/Files/Downloads/Institutional-Trade-Processing/ITP-Story/DTCC-Re-Imagining-Post-Trade.pdf.*

through to their customers in the form of fees and margin requirements, and what fraction of these costs to bear themselves. The level of competition that a clearing broker-dealer faces for customers will dictate the extent to which it is able to pass these costs through to its customers.

In addition, several factors affect the current levels of efficiency and capital formation in the various functions that make up the market for clearance and settlement services. First, at a general level, market participants occupying various positions in the clearance and settlement system must post or hold liquid financial resources, and the level of these resources is a function of the length of the settlement cycle. For example, NSCC collects clearing fund contributions from members to help ensure that it has sufficient financial resources in the event that one of its members defaults on its obligations to NSCC. As discussed above, the length of the settlement cycle is one determinant of the size of NSCC's exposure to clearing members. As another example, mutual funds may manage liquidity needs by, among other methods, using cash reserves, back-up lines of credit, or interfund lending facilities to provide cash. These liquidity needs, in turn, are related to the mismatch between the timing of mutual fund transaction order settlements and the timing of fund portfolio security transaction order settlements.

Holding liquid assets solely for the purpose of mitigating counterparty risk or liquidity needs that arise as part of the settlement process could represent an allocative inefficiency. That is, because firms that are required to hold these assets might prefer to put them to alternative uses, and because these assets may be more efficiently allocated to other market participants who value them for their fundamental risk and return characteristics rather than for their value as collateral. To the extent that any intermediaries between buyer and seller, who facilitate clearance and settlement of the trade, bear costs as a result of inefficient allocation of collateral assets, these inefficiencies may be reflected in higher transaction costs.

The settlement cycle may also have more direct impacts on transaction costs. As noted above, clearing broker-dealers may charge higher transaction fees to reflect the value of the customer's option to default and these fees may cause customers to internalize the cost of the default options inherent in the settlement process. However, these fees also make transactions more costly and may influence the willingness of market participants to efficiently share risks or to supply liquidity to securities markets. Taken together, inefficiencies in the allocation of resources and risks across market participants may serve to impair capital formation.

Finally, market participants may make processing errors in the clearance and settlement process.[555] Market participants have stated that manual processing and a lack of automation result in processing errors.[556] Although some of these errors may be resolved within the settlement cycle and not result in a failed trade, those that are not may result in failed trades, which appear in the failure to deliver data.[557] Further, market participants may incorporate the likelihood that processing errors result in delays in payments or deliveries into securities prices.[558] Figure 1 shows total fails to deliver in shares at mid-month and end-of-month from January 2016 through mid-December 2022. The change in the U.S. settlement cycle from T+3 to T+2 became effective in September 2017. Although processing errors are only one reason a trade may result in a fail to deliver, there is no marked change in the fails data around the previous shortening of the settlement cycle.

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[555] *See, e.g.,* Omgeo Study, *supra* note 512, at 12; *see also* T+1 Report, *supra* note 61, at 26.

[556] Matthew Stauffer, Managing Director, Head of Institutional Trade Processing at DTCC, stated, ''The findings of our survey highlight the benefits of leveraging automated post-trade solutions to reduce the costs of operational functions and the risk inherent in manual processes.'' *See DTCC Identifies Seven Areas of Broker Cost Savings as a Result of Greater Post-Trade Automation, supra* note 524.

[557] *See* Statement by The Depository Trust & Clearing Corporation, U.S. Securities and Exchange Commission Securities Lending and Short Sales Roundtable, at 3 (Sept. 30, 2009), *https://www.sec.gov/comments/4-590/4590-32.pdf*; *see also* T+1 Report, *supra* note 61, at 26.

[558] *See* Messman, *supra* note 528.

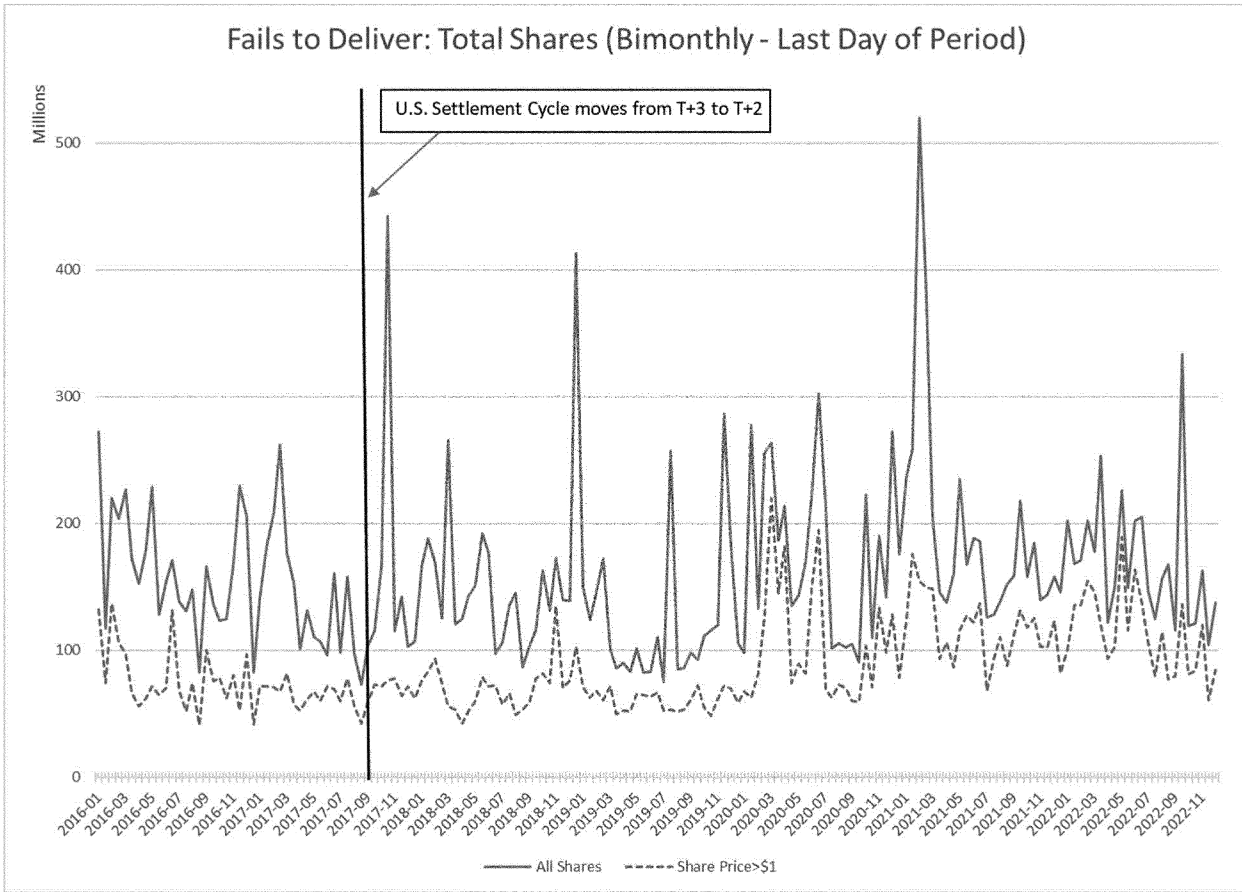

Figure 1. *Outstanding fails to deliver in shares.*
Total fails-to-deliver in shares represents the aggregate net balance of shares that failed to be delivered as of the last trading day prior to mid-month and the last trading day prior to the end of the month recorded in the NSCC CNS system. "Share Price>$1" or "Share Price greater than $1" includes only fails-to-deliver for shares with a closing price greater than $1 as of the end of the period. The data is available at https://www.sec.gov/data/foiadocsfailsdatahtm.

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C. Analysis of Benefits, Costs, and Impact on Efficiency, Competition, and Capital Formation

1. Benefits

Several commenters noted that shortening the settlement cycle would reduce the risks associated with the settlement cycle.[559] Shortening the settlement cycle should reduce both the aggregate market value of all unsettled trades and the amount of time that CCPs, or the counterparties to a trade, may be subject to market and credit risk from an unsettled trade.[560] First, holding transaction volumes constant, the market value of transactions awaiting settlement at any given point in time under a T+1 settlement cycle will be approximately one half lower than under the current T+2 settlement cycle. Using the risk mitigation framework described in Part VIII.B.1, based on published statistics from the second quarter of 2022,[561] and holding average dollar volumes constant, the aggregate notional value of unsettled transactions at NSCC is estimated to fall from nearly $88 billion to approximately $44 billion.[562]

Second, a market participant that experiences counterparty default and enters into a new transaction under a T+2 settlement cycle is exposed to more market risk than would be the case under a T+1 settlement cycle. As a result, market participants that are exposed to market, credit, and liquidity risks would be exposed to less risk under a T+1 settlement cycle. This reduction in risk may also extend to mutual fund transactions conducted with broker-dealers that currently settle on a T+2 basis.[563] To the extent that these transactions currently give rise to counterparty risk exposures between mutual funds and broker-dealers, these exposures may decrease as a consequence of a shorter settlement cycle. In addition, a shorter standard settlement cycle should reduce liquidity risks that could arise by allowing investors to obtain the proceeds of securities transactions sooner. These

[559] *See supra* notes 497–502.

[560] *See* T+1 Proposing Release, *supra* note 2, at 10447–48.

[561] *See* DTCC Quantitative Disclosure Results Q2 2022, *supra* note 519, at 14.

[562] *See id.* at 20.

[563] In today's environment, ETFs and certain closed-end funds clear and settle on a T+2 basis. Open-end funds (*i.e.,* mutual funds) generally settle on a T+1 basis, except for certain retail funds which typically settle on T+2. Thus, the proposed amendment to Rule 15c6–1(a) would require ETFs, closed-end funds, and mutual funds settling on a T+2 basis to revise their settlement timeframes.

risks affect all market participants, are difficult to diversify away, and require resources to manage and mitigate.

CCPs require clearing members to post financial resources in order to secure members' obligations to deliver cash and securities to the CCP. Clearing members in turn impose fees on their customers, *e.g.,* introducing broker-dealers, institutional investors, and retail investors. The margin requirements required by the CCP are a function of the risk posed to the CCP by the potential default of the clearing member. That risk is a function of several factors including the value of trades submitted for clearing but not yet settled, and the volatility of the securities prices that make up those unsettled trades. As these factors are an increasing function of the time to settlement, by reducing settlement from T+2 to T+1, a CCP may require less collateral from its members, and the CCP's members may, in turn, reduce fees that they may pass down to other market participants, including introducing broker-dealers, institutional investors, and retail investors.

Any reduction in clearing broker-dealers' required margin should provide multiple benefits. First, financial resources that are used to mitigate the risks of the clearance and settlement process can be put to alternative uses. Reducing the financial risks associated with the overall clearance and settlement process should reduce the amount of collateral required to mitigate these risks, which should reduce the costs that market participants bear to manage and mitigate these risks, and the allocative inefficiencies that may stem from risk management practices.[564] Second, assets that are valuable because they are particularly suited to meeting financial resource obligations may be better allocated to market participants that hold these assets for their fundamental risk and return characteristics. This improvement in allocative efficiency may improve capital formation.

A portion of the savings from less costly risk management under a T+1 standard settlement cycle relative to a T+2 standard settlement cycle may flow through to investors. Investors may be able to profitably redeploy financial resources that were once needed to fund higher clearing fees, for example.

Market participants might also individually benefit through reduced clearing fund deposit requirements. In 2012, the BCG Study estimated that cost reductions related to reduced clearing fund contributions resulting from moving from a T+3 to a T+2 settlement cycle would amount to $25 million per year.[565] In addition, a shorter settlement cycle might reduce liquidity risk by allowing investors to obtain the proceeds of their securities transactions sooner. Reduced liquidity risk may be a benefit to individual investors, but it may also reduce the volatility of securities markets by reducing liquidity demands in times of adverse market conditions, potentially reducing the correlation between market prices and the risk management practices of market participants.[566]

Shortening the settlement cycle may reduce incentives for investors to trade excessively in times of high volatility.[567] Such incentives exist because investors do not always bear the full cost of settlement risk for their trades. Broker-dealers incur costs in managing settlement risk with CCPs. Broker-dealers can set their fees so that they recover the average cost of risk management from their customers, but those fees depend on a variety of factors that impact settlement risk. If a particular trade has above-average settlement risk, such as when market prices are unusually volatile, broker-dealers may not be able to adjust fees to reflect the higher marginal cost. In extreme cases, broker-dealers may prevent a customer from trading.[568] Shortening the settlement cycle reduces the cost of risk management and should reduce any such incentives to trade more than they otherwise would if they bore the full cost of settlement risk for their trades.

The benefits of harmonized settlement cycles may also accrue to mutual funds. As described above,[569] transactions in mutual fund shares typically settle on a T+1 basis even when transactions in their portfolio securities settle on a T+2 basis. As a result, there is a one-day mismatch between when these funds make payments to shareholders that redeem shares and when the funds receive cash proceeds for portfolio securities they sell. This mismatch represents a source of liquidity risk for mutual funds. Shortening the settlement cycle by one day will mitigate the liquidity risk due to this mismatch. As a result, mutual funds that settle on a T+1 basis may be able to reduce the size of cash reserves or the size of back up credit facilities that some currently use to manage liquidity risk from the mismatch in settlement cycles. Further, mutual funds may be able to invest incoming cash more quickly when funds have net subscriptions, because the settlement time for the purchase of fund shares will be aligned with the settlement time for portfolio investments, thus allowing funds to maximize their exposure to their defined investment strategies.

Adoption of a T+1 standard settlement cycle could also have the second-order, longer-term benefit to U.S. investors of incentivizing other jurisdictions to emulate U.S. markets in adopting a standard settlement time of T+1. By virtue of U.S. capital markets' prominent role in global finance, a transition to a shorter settlement cycle would act as an incentive for other jurisdictions to also compress their settlement times to match U.S. processing times. This would be a product of non-U.S. jurisdictions' desire to reduce transactions costs attendant to settlement mismatches.[570] As a result,

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564 *See supra* Part VIII.B. (further discussing financial resources collected to mitigate and manage financial risks).

565 *See* The Boston Consulting Group ("BCG"), Cost Benefit Analysis of Shortening the Settlement Cycle, at 10 (Oct. 2012) ("BCG Study"), *https://1library.net/document/ynm3kx1z-cost-benefit-analysis-of-shortening-the-settlement-cycle.html.* According to SIFMA, average daily trading volume in U.S. equities grew from $253.1B in 2011 to $564.7B in 2021, an increase of 123%. See CBOE Exchange, Inc., and SIFMA, US Equities and Related Statistics (Dec. 1, 2022), *https://www.sifma.org/resources/research/us-equity-and-related-securities-statistics/us-equities-and-related-statistics-sifma/.* Price volatility, as measured by the standard deviation of the price, is concave in time, which means that as a period of time increases, volatility will increase, but at a decreasing rate. This suggests that the reduction in price volatility from moving from T+2 settlement to T+1 settlement is larger than the reduction in price volatility from moving from T+3 settlement to T+2 settlement. These two facts suggest that the estimated reduction in clearing fund contributions would be more than $25 million per year.

566 *See* Peter F. Christoffersen & Francis X. Diebold, *How Relevant is Volatility Forecasting for Financial Risk Management?,* 82 Rev. Econ. & Stat. 12 (2000), *http://www.mitpressjournals.org/doi/abs/10.1162/003465300558597#.V6xeL_nR-JA.* The paper shows that volatility can be predicted in the short run, and concludes that short run forecastable volatility would be useful for risk management practices.

567 *See* Sam Schulhofer-Wohl, *Externalities in Securities Clearing and Settlement: Should Securities CCPs Clear Trades for Everyone?* (Fed. Res. Bank Chi. Working Paper No. 2021–02, 2021).

568 This occurred in January 2021 following heightened interest in certain ''meme'' stocks. *See* T+1 Proposing Release, *supra* note 2, at 10438–39.; *see also* Staff Report on Equity and Options Market Structure Conditions in Early 2021, at 31–35 (Oct. 14, 2021), *https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf.*

569 *See supra* note 563; *see also supra* Part VIII.B.3.

570 *See, e.g.,* Association for Financial Markets in Europe, T+1 Settlement in Europe: Potential Benefits and Challenges, at 4 (Sept. 2022), stating ''Given that some major jurisdictions will be adopting T+1, the end users of capital markets—companies seeking to issue capital and consumers seeking to invest capital—may benefit from Europe following the same approach. This would also avoid a potential gap in the perceived

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U.S. investors who deploy capital abroad would enjoy the benefits of compressed settlement times that the Commission has already described for the domestic T+1 settlement framework: lower market, credit and liquidity risks; and additional capital efficiencies via lower margin and clearing fund deposit requirements. In addition, a migration to T+1 in other jurisdictions would reduce the settlement mismatch costs described below in Part VIII.C.2.

The Commission believes that these benefits are unlikely to be substantially mitigated by the exceptions to Rule 15c6–1(a) discussed in Part II.A. Market participants that rely on Rule 15c6–1(b) in order to transact in limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association are likely to continue to rely on the exception after the Commission adopts the amendment to Rule 15c6–1(a). Similarly, those that rely on the exemption from Rule 15c6–1 for securities that do not have facilities for transfer or delivery in the U.S. are likely to continue to do so, as indicated by the public comments urging the Commission to retain this exemption.[571] There may be transactions covered by Rule 15c6–1(b) that in the past did not make use of this exception because they settled within two business days, but that may require use of this exception under the amendment to paragraph (a) of the rule because they require more than one business day to settle. However, the Commission did not receive public comments on this point, and does not have data on whether transactions that previously did not make use of the exemption might now do so.

Finally, the extent to which different types of market participants experience any benefits that stem from the amendment to Rule 15c6–1(a) may depend on their market power. As discussed in the proposing release,[572] the clearance and settlement system involves a number of intermediaries that provide a range of services between the ultimate buyer and seller of a security. Those market participants that have a greater ability to negotiate with customers or service providers may be able to retain a larger portion of the operational cost savings from a shorter settlement cycle than others, as they may be able to use their market power to avoid passing along the cost savings to their clients.

Although the Commission proposed deleting Rule15c6–1(c), it is instead, for the reasons discussed above, amending paragraph (c) of Exchange Act Rule 15c6–1 to shorten the settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction.[573]

As discussed in the proposing release, paragraph (c) is rarely used in the current T+2 settlement environment, but the IWG expects a T+1 standard settlement cycle would increase reliance on paragraph (c).[574] The Commission is persuaded by comments stating that a T+1 settlement cycle is not sufficiently long enough to prevent firm commitment offerings priced after 4:30 p.m. ET from failing to settle on time, and the Commission acknowledges that paragraphs (a) and (d) of Rule 15c6–1 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. The Commission further acknowledges that, while paragraphs (a) and (d) allow parties to agree to a longer settlement cycle, in order for the parties to avail themselves of that extended settlement date, they must reach that agreement at the time of the transaction.

The Commission believes that amending Rule 15c6–1(c) as discussed in Part II.C.4 above will realize the benefits of shortening the settlement cycle discussed above for the specific transactions covered by paragraph (c) while allowing an extra day to resolve issues unanticipated at the time of the transaction. According to one commenter, it is not unusual for unanticipated issues relating to transfer agents, legend removal, local law matters (including local court approval), medallion guarantees or non-U.S. parties to arise.[575] Such unanticipated issues could lead to increased failures to settle trades on a T+1 basis with respect to firm commitment offerings.

In addition to the amendments to Rule 15c6–1(a) and (c), the Commission is adopting three rules applicable, respectively, to broker-dealers, investment advisers, and CMSPs to improve the efficiency of managing the processing of institutional trades under the shortened timeframes that will be available in a T+1 environment. First, the Commission had proposed new Rule 15c6–2 to require that, where parties have agreed to engage in an allocation, confirmation, or affirmation process, a broker or dealer would be prohibited from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) on behalf of a customer, unless such broker or dealer has entered into a written agreement with the customer that requires the allocation, confirmation, affirmation, or any combination thereof, be completed as soon as technologically practicable and no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with Rule 15c6–1(a).[576] The Commission is adopting a modified new Rule 15c6–2 that, in addition to technical changes,[577] and for the reasons discussed in Part III.C.2 above, modifies the proposed rule by adding a new paragraph (a), under which a broker-dealer can determine either to enter into written agreements, or establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for a transaction as soon as technologically practicable, and no later than the end of the day on trade date, in such form as necessary to achieve settlement.

The Commission believes that implementing a T+1 standard settlement cycle, as well as any potential further shortening beyond T+1, will necessitate increases in same-day affirmation rates because same-day affirmations will be critical to achieving timely T+1 settlement.[578] In this way, the Commission also believes that new Rule 15c6–2 should facilitate timely settlement as a general matter because it will accelerate the transmission and affirmation of trade data to trade date, improving the accuracy and efficiency of institutional trade processing, and reducing the potential for settlement failures. The Commission further anticipates that proposed Rule 15c6–2 will likely stimulate further development of automated and standardized practices among market

competitiveness of European markets vis-à-vis its global peers.''

[571] *See* discussion in sections II.B.5 and II.C.6.

[572] *See* T+1 Proposing Release, *supra* note 2, at 10439–44.

[573] *See* T+1 Proposing Release, *supra* note 2, at 10449–50.

[574] T+1 Report, *supra* note 61, at 33–35.

[575] *See supra* Part II.B.3. for detailed description of comment letters urging the Commission to adopt a T+2 settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise expressly agreed to by the parties at the time of the transaction.

[576] *See* T+1 Proposing Release, *supra* note 2, at 10453; *see also supra* Part III.A.

[577] *See supra* Part III.C.1.

[578] *See supra* note 262.

participants more generally, particularly those that currently rely on manual processes to achieve settlement.

Although same-day affirmation is considered a best practice for institutional trade processing, this practice is not universal across market participants or even across all trades entered by a given participant.[579] As discussed in Part VIII.B above, the collection of redundant, often manual steps and the use of uncoordinated (*i.e.,* not standardized) databases can lead to delays, exceptions processing, settlement fails, wasted resources, and economic losses. The Commission believes that proposed Rule 15c6–2 should increase the percentage of trades that achieve an affirmed confirmation on trade date and should help facilitate an orderly transition to T+1. Proposed Rule 15c6–2 would also improve the efficiency of the settlement cycle by incentivizing market participants to commit to operational and technological upgrades that facilitate same-day affirmation to eliminate, among other things, manual operations, while also reducing operational risk, discouraging the use of ''just in time'' solutions, and promoting readiness for shortening the settlement cycle.[580]

Second, the Commission is amending the recordkeeping obligations of investment advisers to ensure that they are properly documenting their related allocations and affirmations, as well as the confirmations they receive from their broker-dealers.[581] The amendment to Rule 204–2 requires advisers to time and date stamp records of any allocation and each affirmation with respect to any securities transaction that is subject to the requirements of Rule 15c6–2(a). The Commission believes that the timing of communicating allocations to the broker or dealer is a critical pre-requisite to help ensure that confirmations can be issued in a timely manner, and affirmation is the final step necessary for an adviser to acknowledge agreement on the terms of the trade or alert the broker or dealer of a discrepancy. The Commission believes the recordkeeping requirements should help establish that obligations to achieve a matched trade have been met. Requiring the retention of these records also is important for the Commission staff's use in its regulatory and examination program and will be helpful for the Commission to monitor the transition from T+2 to T+1. Moreover, the amendments to Rule 204–2 are intended to reduce risk following the transition to T+1 by improving affirmation rates.

Finally, the Commission is adopting a requirement for CMSPs to establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate straight-through processing.[582] Under the rule, a CMSP facilitates straight-through processing when its policies and procedures enable its users to minimize, to the greatest extent that is technologically practicable, the need for manual input of trade details or manual intervention to resolve errors and exceptions that can prevent settlement of the trade.[583]

The Commission believes that increasing the usage of CMSPs can reduce costs and risks associated with processing institutional trades and improve the efficiency of the national clearance and settlement system.[584] CMSPs have become increasingly connected to a wide variety of market participants in the U.S. and elsewhere,[585] increasing the need to reduce risks and inefficiencies that may result from use of a CMSPs' systems. The Commission believes the new rule will better position CMSPs to provide services that not only reduce the risk inherent in manual processing, but also help facilitate an orderly transition to a T+1 standard settlement cycle, as well as potential further shortening of the settlement cycle in the future.[586] The new requirement supports some of the benefits derived from a shortening of the settlement cycle, and mitigates any subsequent potential increase in fails that may be caused by the reduced time to remediate any errors in trades.

New Rule 17Ad–27 also requires a CMSP to submit every twelve months to the Commission a report that describes the following: (i) a summary of the CMSP's current policies and procedures for facilitating straight-through processing;[587] (ii) a qualitative description of its progress in facilitating straight-through processing during the twelve month period covered by the report;[588] (iii) a quantitative presentation of data that includes six specified sets of data;[589] (iv) requirements concerning quantitative data organization and categorization;[590] and (v) the steps the CMSP intends to take to facilitate and promote straight-through processing during the twelve month period that follows the period covered by the report.[591] The new requirement also informs the Commission and the public, particularly the direct and indirect users of the CMSP, as to the progress being made each year to advance implementation of straight-through processing with respect to the allocation, confirmation, affirmation, and matching of institutional trades, the communication of messages among the parties to the transactions, and the availability of service offerings that reduce or eliminate the need for manual processing.

New Rule 17Ad–27 requires the CMSP to file the report on EDGAR using Inline XBRL, a structured (machine-readable) data language.[592] The Commission does not currently require CMSPs to provide the specific disclosures set forth in Rule 17Ad–27, but CMSPs may provide disclosures

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579 *See supra* Part III.B.1. for a discussion of comments that argue that commercial incentives to achieve timely trade allocations, confirmations, and affirmations already exist. Although the Commission agrees that the incentives identified by commenters exist and help ensure timely settlement, the Commission believes that these incentives alone are insufficient to significantly improve same-day affirmation rates, as required to facilitate shortening the standard settlement cycle to T+1.

580 *See* discussion in section III.B.5. and *supra* note 294 and accompanying text.

581 *See supra* Part IV.C.

582 *See supra* Part V.C.; *see also* T+1 Proposing Release, *supra* note 2, at 10458 (further discussing the term ''straight-through processing'').

583 *See* T+1 Proposing Release, *supra* note 2, at 10458.

584 *See supra* note 539 and accompanying discussion of processing errors.

585 *See* DTCC, *About DTCC Institutional Trade Processing, https://www.dtcc.com/about/businesses-and-subsidiaries/dtccitp* (noting that DTCC ITP, parent to DTCC ITP Matching, serves 6,000 financial services firms in 52 countries).

586 *See supra* Part V.C. for related discussion.

587 *See supra* Part V.C.2.(a).

588 *See supra* Part V.C.2.(b).

589 *See supra* Part V.C.2.(c). Specifically, Rule 17Ad–27(b)(3) requires the CMSP to provide data that includes (i) the total number of trades submitted to the clearing agency for processing; (ii) the total number of allocations submitted to the clearing agency; (iii) the total number of confirmations submitted to the clearing agency, as well as the total number of confirmations cancelled by a user; (iv) the percentage of confirmations submitted to the clearing agency that are affirmed on trade date, specifying to the extent practicable the time of affirmation on trade date; (v) the percentage of allocations and confirmations submitted to the clearing agency that are matched and automatically confirmed through the clearing agency's services; and (vi) metrics concerning the use of manual and automated processes by the CMSP's users with respect to the CMSP's services that may be used to assess progress in facilitating STP.

590 *See supra* Part V.C.2.(d). Specifically, Rule 17Ad–27(b)(4) requires the CMSP to submit, pursuant to paragraph (b)(4), the data sets required under paragraph (b)(3) of the new rule and which must be: (i) organized on a month-by-month basis beginning with January of each year, for the twelve months covered by the report required under paragraph (b) of the rule; (ii) separated, where applicable, between the use of central matching and electronic trade confirmation services offered by the clearing agency; (iii) separated, as appropriate, by asset class; (iv) separated by type of user; and (v) presented on an anonymized and aggregated basis.

591 *See supra* Part V.C.2.(e).

592 *See supra* Part V.C.4.

related to straight-through processing as part of Exhibit J or Exhibit S to their exemption applications (or updates thereto) on Form CA–1.[593] These disclosures are not centrally filed on an electronic database, nor are they machine-readable; instead, clearing agencies are required to mail four completed copies of Form CA–1 to the Commission's headquarters.[594]

Requiring a centralized filing in EDGAR using location and a machine-readable data language for the reports facilitates access, retrieval, analysis, and comparison of the disclosed straight-through processing information across different CMSPs and time periods by the Commission and the public, thus potentially augmenting the informational benefits of the report requirement.

2. Costs

The Commission believes that compliance with a T+1 standard settlement cycle will involve initial fixed costs to update systems and processes.[595] The Commission does not have all of the data necessary to form its own firm-level estimates of the costs of updates to systems and processes, as the types of data needed to form these estimates are difficult or impossible for the Commission to collect. However, the Commission has used inputs provided by industry studies discussed in this release to quantify these costs to the extent possible in Part VIII.C.5. In the proposing release, the Commission encouraged commenters to provide any additional or more current information or data on the costs to market participants of the proposed rule. Information received in public comments has informed this analysis.

The operational cost burdens associated with the amendment to Rule 15c6–1(a) for different market participants may vary depending on each market participant's degree of direct or indirect inter-connectivity to the clearance and settlement process, regardless of size. For example, market participants that internally manage more of their own post-trade processes directly incur more of the upfront operational costs associated with the amendment to Rule 15c6–1(a), because they are required to directly undertake more of the upgrades and testing necessary for a T+1 standard settlement cycle. As mentioned in Part II.B of the proposing release, other market participants might outsource the clearance and settlement of their transactions to third-party providers of back-office services. The exposures to the operational costs associated with shortening the standard settlement cycle should be indirect to the extent that third-party service providers pass through the costs of infrastructure upgrades to their customers. The degree to which customers bear operational costs depends on their bargaining position relative to third-party providers. Large customers with market power may be able to avoid internalizing these costs, while small customers in a weaker negotiation position relative to service providers may bear the bulk of these costs. In either case, to the extent that the costs of infrastructure upgrades are fixed, the distribution of the cost burden across many customers of the third-party service provider implies that the costs to each individual customer is likely to be less than if they did not outsource the clearance and settlement of their transactions.

Further, changes to initial and ongoing operational costs may make some self-clearing market participants alter their decision to continue internally managing the clearance and settlement of their transactions. Entities that currently internally manage their clearance and settlement activity may prefer to restructure their businesses to rely instead on third-party providers of clearance and settlement services that may be able to amortize the initial fixed cost of upgrade across a much larger volume of transaction activity.

In addition, the shortening of the settlement cycle may increase the need for some market participants engaging in cross-border and cross-asset transactions to hedge risks stemming from mismatched settlement cycles and differences in time zones, resulting in additional costs. For example, as discussed in Part II.B.1 above, a comment letter submitted by an industry association representing the alternative investment industry stated that the T+1 Proposing Release ''raises considerable risks for asset managers with primary or significant exposure to markets that will remain at T+2.'' [596] The commenter's letter references specifically ''misalignment concerns'' relating to FX settlement risk, international banking and coordination issues, and collateral/liquidity risk.[597]

One commenter stated that because FX transactions largely settle on a T+2 basis, market participants that seek to fund a cross-border securities transaction with the proceeds of an FX transaction would be required to settle the securities transaction before the proceeds of the FX transaction become available and pre-fund these securities transactions, which would potentially adversely impact client performance and increase operating and settlement risk for advisers.[598] The commenter said that, while both domestic and internationally based investment advisers would be impacted by these issues, non-U.S.-based investment advisers would face additional expenses because they would need to set up an FX trading and settlement presence in the U.S., or add staff abroad to create, execute, and settle FX transactions to meet a T+1 timeline.[599] Although there currently exists misalignment of settlement cycles across asset classes and as a result of time zone differences, the Commission agrees that misalignment introduced by the rule amendment being adopted will likely present some challenges for, and increase costs for, certain market participants, including asset managers.[600] For example, as discussed in the proposing release, under the T+1 settlement cycle, a market participant selling a security in European equity markets to fund a purchase of securities

[593] In the past, applicants have discussed on the Form CA–1 application how their services might relate to the overall objective of straight-through processing. *See, e.g.,* Bloomberg STP LLC Form CA–1 (Jan. 21, 2015), *https://www.sec.gov/rules/other/2015/34-74394-form-ca-1.pdf*. Exhibit J to Form CA–1 requires clearing agencies to provide narrative descriptions of each service or function performed by the registrant. Exhibit S to Form CA–1 requires a statement demonstrating why the granting of an exemption from registration as a clearing agency would be consistent with the public interest, the protection of investors and the purposes of section 17A of the Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

[594] *See* Instruction I.2. to Form CA–1.

[595] Industry sources have suggested some updates to systems and processes might yield operational cost savings after the initial update. For example, the T+1 Report stated that ''[w]hile there may be . . . up-front implementation costs to transition the industry to T+1, the industry foresees long-term cost reduction for market participants, and by extension, costs borne by end investors, given the benefits of moving to T+1 settlement.'' T+1 Report, *supra* note 61, at 9; *see infra* Part VIII.C.5.(a). for industry estimates of the costs and benefits of the proposed amendment to Rule 15c6–1(a).

[596] *See supra* note 31.

[597] *See supra* note 34.

[598] IAA October Letter, *supra* note 222, at 4. The commenter also suggested certain actions the Commission could take to reduce disruption in FX markets. *See supra* note 41.

[599] IAA October Letter, *supra* note 222, at 4 (suggesting certain actions the Commission could take to reduce disruption in FX markets, such as by (i) working with other regulators and market participants to support the move to T+1 by, among other things, modifying the FX and equity trading day(s) in the U.S., and (ii) ''allow[ing] for a mismatch of FX settlement dates as a valid reason for T+2 settlement arrangements without it breaching an investment adviser's best execution obligation'').

[600] *See* Part II.C.1. (discussing challenges and costs associated with the misalignment of securities and FX settlement cycles).

in U.S. markets would face a one day lag between settlement in Europe and settlement in the U.S. The market participant could choose between bearing an additional day of market risk in the U.S. trading markets by delaying the purchase by a day, or funding the purchase of U.S. shares with short-term borrowing. Additionally, because the FX market has a T+2 settlement cycle,[601] the market participant will also be faced with a choice between bearing an additional day of currency risk due to the need to sell foreign currency as part of the transaction, or incurring the cost related to hedging away this risk in the forward or futures market.

Another commenter stated that if the U.S. settlement cycle is shortened to T+1 while other major global financial centers remain on a T+2 settlement cycle, ''there will be increased operational cost and significant settlement risks associated with multi-leg cross border transactions.'' [602] This commenter further stated that it expects mismatched settlement cycles would result in increased financing costs associated with transactions in which a U.S. market participant is selling to a cross-border participant because ''we will be forced to receive (and pay for) a securities position on T+1 for the U.S. leg, but generally be unable to onward deliver the position on the foreign leg until T+2.'' [603] This commenter also stated its expectation that mismatched settlement cycles will result in a significant number of settlement fails, that the increase in financing costs and settlement fails in connection with cross-border transactions may force broker-dealers to decrease or cease offering cross-border services to their clients, that any decrease or cessation of cross-border trading ultimately will reduce liquidity for U.S. investors.[604]

Another commenter stated that the shortened settlement cycle in conjunction with time zone differences between markets may not allow sufficient time for investment advisers to match foreign currency amount to settle all trades on T+1.[605] In the context of discussing potential exemptions to 15c6–1, another commenter stated that 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.[606]

Commenters also stated that the misalignment of settlement cycles between U.S. securities and non-U.S. securities will impact U.S. securities that are exchangeable for a foreign security or a basket including foreign securities.[607] The commenter highlighted in particular ADRs, and ETFs with an underlying basket that includes foreign securities, which according to the commenter, illustrate this misalignment.[608] The commenter stated that 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.[609] According to the commenter, 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.[610] The result, the commenter stated, 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.[611] Additionally, the commenter argued, 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, and a knock-on effect could be to increase the incidence of buy-ins as well.[612]

Separately, the same commenter argued that the ETF creation/redemption process is impacted by the misalignment of global securities transaction settlement cycles where the basket of securities underlying an ETF includes foreign securities.[613] A second commenter stated that the misalignment in settlement cycles between the U.S. and foreign jurisdictions that continue to settle on a T+2 basis, coupled with time zone differences, may increase certain risks, such as failed trades, accrual differences, net asset value miscalculations, and investment guideline breaches.[614] The same commenter stated that due to the resulting misalignment in settlement cycles between the U.S. and foreign markets upon transitioning to T+1, an ADR provider may incur borrowing and other costs related to the underlying foreign security to facilitate T+1 settlement of the ADR.[615] According to the commenter, these costs would likely be passed down to investors and thus make it more expensive to obtain investment exposure to foreign markets.[616]

The Commission understands that variation in the length of the settlement cycle across asset classes and jurisdictions and variation in time zone introduce certain risks and costs on investors, broker-dealers, custodians, and other market participants,[617] but the Commission notes that currently and in the recent past settlement cycles have varied across asset classes and jurisdictions. The Commission further understands that the financial services industry has managed the challenges provided by these settlement cycle mismatches and time zone differences between markets albeit at some cost.[618] Our information on these costs is limited regarding how firms will overcome the specific challenges identified by certain commenters. If other jurisdictions subsequently follow the U.S. in shortening the settlement cycle, however, many of the additional costs will only be incurred during that interval.[619] In addition, the Commission understands that solutions to specific challenges may still need to be worked out by the affected industry participants and that those solutions may require additional costs to overcome.

The way that different market participants will likely bear costs as a result of the amendment to Rule 15c6–1(a) may also vary based on their business structure. For example, a shorter standard settlement cycle will require payment for securities that settle regular-way by T+1 rather than T+2.

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601 *See, e.g.,* CME, CME Rulebook Chapter 13, at 3, *https://www.cmegroup.com/content/dam/cmegroup/rulebook/CME/I/13.pdf* (''Spot FX Transaction means a currency purchase and sale that is bilaterally settled by the counterparties via an actual delivery of the relevant currencies within two Business Days.''). U.S. and Canadian dollar spot FX transactions settle on the next business day. *Id.* at 5–6.

602 *See supra* note 43.

603 *Id.*

604 *Id.*

605 *See supra* note 50. This commenter also suggested certain ''options'' for actions that could be taken to reduce disruption in the FX markets. *See supra* Part II for a discussion of these options.

606 *See supra* note 107.

607 *See* SIFMA April Letter, *supra* note 15, at 8.

608 *See id.*

609 *See* SIFMA April Letter, *supra* note 16, at 8.

610 *See id.*

611 *See id.*

612 *See id.*

613 *See id.* and referencing text for a discussion of settlement cycle misalignment on the create and redeem process for ETFs that include securities not traded in the U.S.

614 *See supra* note 122.

615 *See id.*

616 *See id.*

617 *See supra* Part II.C.1. for a discussion of the Commission's recognition of the challenges and costs associated with the prospective misalignment of settlement cycles, the Commission actions suggested by commenters, and examples of actions market participants may take in order to mitigate those challenges and costs.

618 For example, during periods of heightened uncertainty it is common for some investors to sell equities, including foreign equities, and invest in U.S. Treasury securities (which generally settle on T+1). Such a trade would include many of the issues cited by commenters including differences in time zones, currency, and settlement cycle.

619 *See supra* Part VIII.C.1.

Generally, regardless of current funding arrangements between investors and broker-dealers, removing one business day between execution and settlement will mean that broker-dealers could choose between requiring investors to fund the purchase of securities one business day earlier, while extending the same level of credit they do under T+2 settlement, or providing an additional business day of funding to investors.[620] In other words, broker-dealers could pass through some of the costs of a shorter standard settlement cycle by imposing the same shorter cycle on investors, or they could pass these costs on to investors by raising transactions fees to compensate for the additional business day of funding the broker-dealer may choose to provide. The extent to which these costs get passed through to customers may depend on, among other things, the market power of the broker-dealer. Generally, if a broker-dealer does not face significant competition, it will have an incentive to absorb part of the cost increase. On the other hand, in the extreme case of a perfectly competitive market, there are no economic profits and price equals marginal costs so an increase in cost could be fully passed through to the customer.[621]

However, broker-dealers that predominantly serve retail investors may experience the costs of an earlier payment requirement differently from broker-dealers with more institutional clients or large custodian banks because of the way retail investors fund their accounts. Retail investors may find it difficult to accelerate payments associated with their transactions, which may cause broker-dealers, who are unwilling to extend additional credit to retail investors, to instead require that these investors pre-fund their transactions.[622] These broker-dealers may also experience costs unrelated to funding choices. For instance, retail investors may require additional or different services such as education regarding the impact of the shorter standard settlement cycle.

Finally, a shorter settlement cycle may result in higher costs associated with liquidating a defaulting member's position, as a shorter horizon may result in larger price impacts, particularly for less liquid assets. For example, when a clearing member defaults, NSCC is obligated to fulfill its trade guarantee with the defaulting member's counterparty. One way it accomplishes this is by liquidating assets from clearing fund contributions from clearing members. However, liquidating assets in shorter periods of time can have larger adverse impacts on the prices of the assets. Shortening the standard settlement cycle from two business days to one business day could reduce the amount of time that NSCC has to liquidate its assets, which may exacerbate the price impact of liquidation.

As discussed above, the Commission is amending the recordkeeping obligations of investment advisers with respect to any securities transaction that is subject to the requirements of Rule 15c6–2(a) to require advisers to make and keep records of their related allocations and affirmations sent or received, as well as the confirmations they receive.[623] The amendment to Rule 204–2 requires advisers to time and date stamp records of any such allocation and affirmation. The Commission recognizes, however, that requiring these records, and adding time and date stamps to records, will add additional costs and burdens for those advisers that do not currently make and keep these records, or do not use electronic systems to send allocations and affirmations to brokers or dealers, or retain confirmations.[624] For example, some advisers may incur costs to update their processes to accommodate these records.

3. Economic Implications Through Other Commission Rules

As noted in Part III.E of the T+1 proposing release, the amendment to Rule 15c6–1(a), by shortening the standard settlement cycle, could have an ancillary impact on the means by which market participants comply with existing regulatory obligations that relate to the settlement timeframe. The Commission also provided illustrative examples of specific Commission rules that include such requirements or are otherwise reference the settlement date, including Regulation SHO,[625] and certain provisions included in the Commission's financial responsibility rules.[626] The Commission invited and received public comment on these effects, and these comments are discussed in detail in Part VI. Those public comments inform this analysis, but did not provide information the Commission could use to quantify the ancillary economic impact the amendments and new rules might have on how market participants comply with other Commission rules.

Financial markets and regulatory requirements have evolved significantly since the Commission adopted Rule 15c6–1 in 1993. Market participants have responded to these developments in diverse ways, including implementing a variety of systems and processes, some of which may be unique to specific market participants and their businesses, and some of which may be integrated throughout business operations of certain market participants. Because of the broad variety of ways in which, depending on their particular circumstances, market participants currently satisfy regulatory obligations pursuant to Commission rules, it is difficult to identify particular practices that may be specific to a single or group of market participants will need to change in order to meet these other obligations. In this case, the Commission is unable to quantify the ancillary economic impact that the amendment to Rule 15c6–1(a) will have on how market participants comply with other Commission rules. As above, the Commission invited commenters to provide quantitative and qualitative information about these potential economic effects. These comments are discussed in in detail in Part VI above and inform this analysis.

In certain cases, based on information about current market practices, the Commission believes that the

[620] The direct cost of such a delay would be the one-day borrowing cost of the market intermediary providing the extra day of financing or the opportunity cost of funds to the investor times the value of the transaction. Such funding and opportunity costs will vary across investors, intermediaries, and time.

[621] More specifically, the market clearing quantity of the good or service supplied will adjust and the extent of industry-wide cost pass-through in a perfectly competitive market depends on the elasticity of demand relative to supply. The more elastic is demand, and the less elastic is supply, the smaller the extent of pass-through, all else being equal. *See* RBB Economics, Cost Pass-through: Theory, Measurement and Potential Policy Implications, A Report Prepared for the Office of Fair Trading, at 4 (Feb. 2014) *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf.*

[622] *See infra* Part VIII.C.5.(b)(3) for additional discussion regarding retail investors and their broker-dealers.

[623] *See supra* Part IV.C.

[624] A commenter sought clarification regarding an adviser's ability to rely on third parties to meet its recordkeeping obligations for allocations, confirmations, and affirmations. *See supra* note 304 and accompanying text. As discussed above in Part IV.C., the Commission is confirming that an adviser may rely on a third party to make and keep the required records, although using a third party to make and keep records does not reduce an adviser's obligations under Rule 204–2.

[625] 17 CFR 242.200 through 242.204.

[626] *See* T+1 Proposing Release, *supra* note 2, at 10462–63; *see also supra* Parts VI.A. and VI.C. (discussing comments received). The Commission also solicited comment on the impact of shortening the settlement cycle on compliance with Rule 10b–10 under the Exchange Act and broker-dealer obligations with regard to prospectus delivery. *See* T+1 Proposing Release, *supra* note 2, at 10463–64; *see also supra* Parts VI.B. and VI.C. (discussing comments received).

amendment to Rule 15c6–1(a) will be unlikely to change the means by which market participants comply with existing regulatory requirements. In these cases, the Commission believes that market participants will not incur significant increased costs of compliance from such regulatory requirements from shortening the settlement cycle to T+1.

In other cases, however, the amendment may incrementally increase the costs associated with complying with other Commission rules, where such rules potentially require broker-dealers to engage in purchases of securities. Two examples of these types of rules are Regulation SHO and the Commission's financial responsibility rules. In most instances, Regulation SHO governs the timeframe in which a ''participant'' of a registered clearing agency must close out a fail to deliver position by purchasing or borrowing securities.[627] Similarly, some of the Commission's financial responsibility rules relate to actions or notifications that reference the settlement date of a transaction. For example, Exchange Act Rule 15c3–3(m)[628] uses the settlement date to prescribe the timeframe in which a broker-dealer must complete certain sell orders on behalf of customers. As noted above, the term ''settlement date'' is also incorporated into paragraph (c)(9) of Rule 15c3–1,[629] which explains what it means to ''promptly transmit'' funds and ''promptly deliver'' securities within the meaning of paragraphs (a)(2)(i) and (a)(2)(v) of Rule 15c3–1. As explained above, the concepts of promptly transmitting funds and promptly delivering securities are incorporated in other provisions of the financial responsibility rules.[630] Under the amendment to Rule 15c6–1(a), the timeframes included in these rules will be one business day closer to the trade date.

The Commission believes that shortening these timeframes should not materially affect the costs that broker-dealers incur to meet their Regulation SHO obligations and obligations under the Commission's financial responsibility rules.[631] Nevertheless, the Commission acknowledges that a shorter settlement cycle could affect the processes by which broker-dealers manage the likelihood of incurring these obligations. For example, broker-dealers may currently have in place inventory management systems that help them avoid failing to deliver securities by T+2. Broker-dealers will likely incur costs in order to update these systems to support a shorter settlement cycle.

In cases where market participants will need to adjust the way in which they comply with other Commission rules, the magnitude of the costs associated with these adjustments is difficult to quantify. As noted above, market participants employ a wide variety of strategies to meet regulatory obligations. For example, broker-dealers may ensure that they have securities available to meet their obligations by using inventory management systems, or they may choose instead to borrow securities. An estimate of costs is further complicated by the possibility that market participants could change their compliance strategies in response to a shorter standard settlement cycle.

As with the T+2 transition, the Commission anticipates that the transition to T+1 will again require changes to SRO rules and changes to the operations or market participants subject to those rules to achieve consistency with a T+1 standard settlement cycle. Certain SRO rules reference existing Rule 15c6–1 or currently define ''regular way'' settlement as occurring on T+2 and, as such, may need to be amended in connection with shortening the standard settlement cycle to T+1. Certain timeframes or deadlines in SRO rules also may refer to the settlement date, either expressly or indirectly. In such cases, the SROs may need to amend these rules in connection with shortening the settlement cycle to T+1.[632]

The Commission invited commenters to provide quantitative and qualitative information about the impact of the amendment to Rule 15c6–1(a) on the costs associated with compliance with other Commission rules. Although several commenters raised issues related to SRO rules and operations,[633] no commenters provided quantitative information about the impact of the rules and rule amendments being adopted on the costs associated with compliance with other Commission rules or SRO rules.

4. *Effect on Efficiency, Competition, and Capital Formation*

In response to the T+1 Proposing Release, the Commission received numerous comment letters supporting a shorter settlement cycle for securities transactions citing positive effects of the proposed rule on efficiency, competition, and capital formation. One commenter stated that the Commission's proposal to shorten the settlement cycle is an example of an initiative aimed at introducing more efficiency to the marketplace while reducing risks for investors and other market participants.[634] Another commenter noted that shortening the current settlement cycle would improve capital and operational efficiencies.[635] Another commenter cited benefits of the proposed rule including enhanced efficiency of the equity markets and better use of capital.[636] Another commenters stated that the proposed rule may improve capital efficiency and may increase competition.[637] A commenter also noted that the ''reasonably designed'' standard for policies and procedures fosters innovation and encourages competition by enabling each registrant to adopt compliance methodologies aligned to its role and capabilities.[638] While discussing changes necessary to implement a shorter settlement cycle, a commenter noted that the settlement process would be modernized to remove dependencies on manual processes and facilitate straight-through processing utilizing technology to achieve a more robust process which would reduce risks and remove impediments to an efficient settlement process.[639]

Market participants may incur initial costs for the investments necessary to comply with a shorter standard settlement cycle.[640] However, these

[627] *See* T+1 Proposing Release, *supra* note 2, at 10461–62.

[628] 17 CFR 240.15c3–3(m).

[629] 17 CFR 240.15c3–1(c)(9).

[630] *See, e.g.,* 17 CFR 240.15c3–1(a)(2)(i) and (v); 17 CFR 240.15c3–3(k)(1)(iii) and (k)(2)(i) and (ii); 17 CFR 240.17a–5(e)(1)(i)(A); 17 CFR 240.17a–13(a)(3).

[631] *See supra* Parts VI.A. (Regulation SHO) and VI.C. (Financial Responsibility Rules for Broker-Dealers) for a discussion of commenters concerns and the reasons why the Commission believes that costs should not be materially affected.

[632] The T+1 Report similarly indicates that SROs will likely need to update their rules to facilitate a transition to a T+1 standard settlement cycle. T+1 Report, *supra* note 61, at 35.

[633] *See supra* Part VI.E.

[634] *See* Virtu Financial Letter, *supra* note 16, at 5.

[635] *See* Cornell Law Letter, *supra* note 16, at 3; *see also* RMA Letter, *supra* note 16, at 3, stating that ''We further agree that acceleration of the standard settlement cycle to T+1 could increase the efficiency of capital market transactions and reduce systemic risk.'' *See also* NYSE Group Letter, *supra* note 16, at 1, stating that ''A T+1 settlement cycle will significantly increase market efficiency, mitigate risk (particularly during times of extreme volatility and stressed markets) and free up liquidity—cash or shares—held to ensure the completion of trades. This will allow industry participants to take advantage of capital and operational efficiencies, and benefit from significant risk reduction and a potential lowering of margin requirements.''

[636] *See* MMI Letter, *supra* note 16, at 2.

[637] *See* Wilson-Davis Letter, *supra* note 16, at 5–6.

[638] *See* OCC Letter, *supra* note 16, at 3.

[639] *See* Jeffrey S. Davis, Senior Vice President, Senior Deputy General Counsel, Nasdaq (April 11, 2022) (''Nasdaq Letter''), at 2.

[640] *See supra* Part VIII.C.2.

costs are likely to differ across market participants, and these differences may exacerbate coordination problems. First, per-transaction operational costs clearing members incur in connection with the clearing services they provide may be higher for members that clear fewer transactions than such costs are for members that clear a higher volume of transactions. Thus, the extent to which many of the upgrades necessary for a T+1 standard settlement cycle are optimal for a member to adopt unilaterally may depend, in part, on the transaction volume cleared by such member. For example, certain upgrades necessary for a T+1 standard settlement cycle may result in economies of scale, where large clearing members are able to comply with the amendment to Rule 15c6–1(a) at a lower per-transaction cost than smaller members. As a result, larger members might take a short time to recover their initial costs for upgrades; smaller members with lower transaction volumes might take longer to recover their initial cost outlays and might be more reluctant to make the upgrades in the absence of the amendment. These differences in cost per transaction may be mitigated through the use of third-party service providers.

In addition, the Commission acknowledges that the upgrades necessary to implement a shorter standard settlement cycle may produce indirect economic effects. We analyze some of these indirect effects, such as the impact on competition and third-party service providers, in the following section.

A shorter settlement cycle might improve the efficiency of the clearance and settlement process through several channels. First, the Commission believes that the primary effect that a shorter settlement cycle will have on the efficiency of the settlement process will be a reduction in the credit, market, and liquidity risks that broker-dealers, CCPs, and other market participants are subject to during the standard settlement cycle.[641] A shorter standard settlement cycle will generally reduce the volume of unsettled transactions that could potentially pose settlement risk to counterparties. Shortening the period between trade execution and settlement should enable trades to be settled with less aggregate risk to counterparties or the CCP. A shorter standard settlement cycle may also decrease liquidity risk by enabling market participants to access the proceeds of their transactions sooner, which may reduce the cost market participants incur to handle idiosyncratic liquidity shocks (*i.e.,* liquidity shocks that are uncorrelated with the market). That is, because the time interval between a purchase/sale of securities and payment is reduced by one business day, market participants with immediate payment obligations that they could cover by selling securities will be required to obtain short-term funding for one less day.[642] As a result of reduced cost associated with covering their liquidity needs, market participants may, under particular circumstances, be able to shift assets that would otherwise be held as liquid collateral towards more productive uses, improving allocative efficiency.[643]

Second, a shorter standard settlement cycle may increase price efficiency through its effect on credit risk exposures between financial intermediaries and their customers. In particular, a prior study noted that certain intermediaries that transact on behalf of investors, such as broker-dealers, may be exposed to the risk that their customers default on payment obligations when the price of purchased securities declines during the settlement cycle.[644] As a result of the option to default on payment obligations, customers' payoffs from securities purchases resemble European call options and, from a theoretical standpoint, can be valued as such. Notably, the value of European call options increases in the time to expiration[645] suggesting that the value of call options held by customers who purchase securities is increasing in the length of the settlement cycle. In order to compensate itself for the call option that it writes, an intermediary may include the cost of these call options as part of its transaction fee and this cost may become a component of bid-ask spreads for securities transactions. By reducing the value of customers' option to default by reducing the option's time to maturity, a shorter standard settlement cycle may reduce transaction costs in U.S. securities markets. In addition, to the extent that any benefit buyers receive from deferring payment during the settlement cycle is incorporated in securities returns,[646] the amendment to Rule 15c6–1(a) may reduce the extent to which such returns deviate from returns consistent with changes in fundamentals.

As discussed in more detail in Part VIII.C.2 above, the Commission believes that the amendment to Rule 15c6–1(a) will likely require market participants to incur costs related to infrastructure upgrades, and will likely yield benefits to market participants, largely in the form of reduced operational and financial risks related to settlement. As a result, the Commission believes that the amendment to Rule 15c6–1(a) could affect competition in a number of different, and potentially offsetting, ways.

The prospective reduction in financial risks related to shortening the standard settlement cycle may represent a reduction in barriers to entry for certain market participants.[647] Reductions in the financial resources required to cover an NSCC member's clearing fund requirements that result from a shorter standard settlement cycle could encourage financial firms that currently clear transactions through NSCC clearing members to become clearing members themselves.

Their entry into the market could promote competition among NSCC clearing members. Furthermore, if a reduction in settlement risks results in lower transaction costs for the reasons discussed above, market participants that were, on the margin, discouraged from supplying liquidity to securities markets due to these costs, could choose to enter the market for liquidity suppliers, increasing competition.

At the same time, the Commission acknowledges that the process improvements required to enable a shorter standard settlement cycle could adversely affect competition. Among clearing members, where such process improvements might be necessary to comply with the shorter standard settlement cycle required under the amendment to Rule 15c6–1(a), the cost associated with compliance might increase barriers to entry, because new firms will incur higher fixed costs associated with a shorter standard settlement cycle if they wish to enter the market. Clearing members might choose to comply by upgrading their systems and processes or may choose instead to exit the market for clearing services. The exit of clearing members could have negative consequences for competition

[641] Reduction of these risks should result in the reduction of margin requirements and other risk management activity that requires resources that could be put to another use.

[642] *See supra* Part VIII.B.2.

[643] *See supra* Part VIII.A.

[644] *See* Madhavan et al., *supra* note 508.

[645] All other things equal, an option with a longer time to maturity is more likely to be in the money given that the variance of the underlying security's price at the exercise date is higher.

[646] *See supra* Part VIII.B.2.

[647] *See supra* Part VIII.C.1. for a discussion of the reduction in credit, market, and liquidity risks to which NSCC would be subject as a result of a shortening of the settlement cycle and the subsequent reduction financial resources dedicated to mitigating those risks.

among clearing members. Clearing activity tends to be concentrated among larger broker-dealers.[648] Clearing member exit could result in further concentration and additional market power for those clearing members that remain.

Alternatively, some current clearing members may choose to comply in part by outsourcing their operational needs to third-party service providers. Use of third-party service providers may represent a reasonable response to the operational costs associated with the amendment to Rule 15c6–1(a). To the extent that third-party service providers are able to spread the fixed costs of compliance across a larger volume of transactions than their clients, the Commission believes that the use of third-party service providers might impose a smaller compliance cost on clearing members than if these firms directly bore the costs of compliance. The Commission believes that this impact may stretch beyond just clearing members. The use of third-party service providers may mitigate the extent to which the amendment to Rule 15c6–1(a) raises barriers to entry for broker-dealers. Because these barriers to entry may have adverse effects on competition between clearing members, the Commission believes that the use of third-party service providers may mitigate the adverse effects of the amendment to Rule 15c6–1(a) on competition between broker-dealers.

Existing market power may also affect the distribution of competitive impacts stemming from the amendment to Rule 15c6–1(a) across different types of market participants. While, as noted above, reductions in the credit, market, and liquidity risks that broker-dealers, CCPs, and other market participants are subject to during the standard settlement cycle could promote competition among clearing members and liquidity suppliers, these groups may benefit to differing degrees, depending on the extent to which they are able to capture the benefits of a shortened standard settlement cycle.

Finally, a shorter standard settlement cycle might also improve the capital efficiency of the clearance and settlement process, which will promote capital formation in U.S. securities markets and in the financial system generally.[649] A shorter standard settlement cycle will reduce the amount of time that collateral must be held for a given trade, thus freeing the collateral to be used elsewhere earlier. For a given quantity of trading activity, collateral will also be committed to clearing fund deposits for a shorter period of time. The greater collateral efficiency promoted by a shorter settlement cycle might also indirectly promote capital formation for market participants in the financial system in general. Specifically, the improved capital efficiency that results from a shorter standard settlement cycle will enable a given amount of collateral to support a larger amount of financial activity.

5. Quantification of Direct and Indirect Effects of a T+1 Settlement Cycle

In previous years, several industry groups have released estimates for compliance costs associated with a shorter standard settlement cycle, including the SIA, the Industry Steering Committee (''ISC''), and BCG.[650] Although all of these studies examined prior shortenings of the settlement cycle including from T+5 to T+3 and from T+3 to T+2, in the absence of a current study examining shortening from the current T+2 to T+1, they serve as a useful rough initial estimate of the costs involved in a settlement cycle shortening. The most recent of these, the BCG Study, performed a cost-benefit analysis of a T+2 standard settlement cycle. Below is a summary of the cost estimates in the BCG Study, and in the following subsections, an evaluation of these estimates as part of the discussion of the potential direct and indirect compliance costs related to the amendment to Rule 15c6–1(a). In addition, the Commission encouraged commenters to provide additional information to help quantify the economic effects that we are currently unable to quantify due to data limitations.

(a) Industry Estimates of Costs and Benefits

The BCG Study concluded that the transition to a T+2 settlement cycle would cost approximately $550 million in incremental initial investments across industry constituent groups,[651] which would result in annual operating savings of $170 million and $25 million in annual return on reinvested capital from clearing fund reductions.[652]

The BCG Study also estimated that the average level of required investments per firm could range from $1 to 5 million, with large institutional broker-dealers incurring the largest amount of investments on a per-firm basis, and buy side firms at the lower end of the spectrum.[653] The investment costs for ''other'' entities, including DTCC, DTCC ITP Matching (US) LLC (f/k/a Omgeo Matching (US) LLC), service bureaus, registered investment companies (''RICs''), and non-self-clearing broker-dealers totaled $70 million for the entire group. Within this $70 million, DTCC and Omgeo were estimated to have a compliance investment cost of $10 million each. The study's authors estimated that institutional broker-dealers would have operational cost savings of approximately 5%, retail broker-dealers of 2% to 4%, buy-side firms of 2%, and custodial banks of 10% to 15% for an industry total operational cost savings of approximately $170MM per year.[654]

The BCG Study also estimated the annual clearing fund reductions resulting from reductions in clearing firms' clearing funds requirements to be $25 million per year.[655] The study estimated this by multiplying the reduction in clearing fund requirements and the average Federal Funds target rate for the 10-year period up until 2008 (3.5%). The BCG Study also estimated the value of the risk reduction in buy side exposure to the sell side. The implied savings were estimated to be $200 million per year, but these values were not included in the overall cost-benefit calculations.

Several factors limit the usefulness of the BCG Study's estimates of potential costs and benefits of the amendment to Rule 15c6–1(a). First, a further shortening of the settlement cycle to T+1 may require investments in new technology and processes that were not necessary under the previous shortening to T+2. Second, technological improvements since 2012 when the report was first published, such as the increased use of computers and automation in post-trade processes, may have reduced the cost of the upgrades necessary to comply with a shorter

[648] *See supra* Part VIII.B.2.

[649] *See supra* Part VIII.A. for more discussion regarding capital formation and efficiency.

[650] *See* SIA Business Case Report, *supra* note 323; *see also* BCG Study, *supra* note 565; PricewaterhouseCoopers LLP & ISG, Shortening the Settlement Cycle: The Move to T+2 (June 2015) (''ISG White Paper''), *http://www.ust2.com/pdfs/ssc.pdf.* This release uses ''ISG'' rather than ''ISC'' (''Industry Steering Committee,'' the term used in the ISG White Paper) when referring to the T+2 effort so that this release clearly distinguishes between the ISC's current work on T+1. The SIA has since merged with other groups to form SIFMA.

[651] The BCG Study generally refers to ''institutional broker-dealers,'' ''retail broker-dealers,'' ''buy side'' firms, and ''custodian banks,'' without defining these particular groups. The Commission uses these terms when referring to estimates provided by the BCG Study but notes that its own definitions of various affected parties may differ from those in the BCG Study.

[652] *See* BCG Study, *supra* note 565, at 9–10.

[653] *Id.* at 30–31.

[654] *Id.* at 41.

[655] *See supra* note 565 for a discussion of the impact on this estimate of increases in daily trading volume since the time of the BCG study.

settlement cycle. This may, in turn, reduce the costs associated with the amendment,[656] as a larger portion of market participants may have already adopted many processes that would reduce the cost of a transition to a shorter settlement cycle. In addition, the BCG Study considered as a part of its cost estimates operational cost savings as a result of improvements to operational efficiency.

Lastly, the BCG Study was premised on survey responses by a subset of market participants that may be affected by the rule. Surveys were sent to 270 market participants and 70 responses were received, including 20 institutional broker-dealers, prime brokers, and correspondent clearers; 12 retail broker-dealers; 17 buy side firms; 14 registered investment advisers; and seven custodian banks. Given the low response rate, as well as the uncertainty regarding the sample of market participants that was asked to complete the survey, the Commission cannot conclude that the cost estimates in the BCG Study are representative of the costs of all market participants.[657]

(b) Estimates of Costs

The amendment to Rule 15c6–1(a) will generate direct and indirect costs for market participants, who may need to modify and/or replace multiple systems and processes to comply with a T+1 standard settlement cycle. The T+1 Playbook included a timeline with milestones and dependencies necessary for a transition to a T+1 standard settlement cycle, as well as activities that market participants should consider in preparation for the transition, and the Commission believes that this provides an initial guide to the activities that will be necessary for a transition to a T+1 standard settlement cycle.[658] The Commission estimates that many of the activities for migration to a T+1 standard settlement cycle will stem from behavior modification of market participants and systems testing.[659] These modifications will include a compression of the settlement timeline, as well as an increase in the fees that brokers may impose on their customers for trade failures. Although the T+1 Playbook does not include any direct estimates of the compliance costs for a T+1 standard settlement cycle, the Commission utilizes the timeline in the T+1 Playbook for specific actions necessary to migrate to a T+1 settlement cycle to directly estimate the inputs needed for migration, and form preliminary compliance cost estimates for the shortening to T+1 standard settlement cycle.

In addition, the T+1 Playbook, the ISG White Paper, and the BCG Study identified several categories of actions that market participants might need to take to comply with a T+2 settlement cycle and likely also with a T+1 settlement cycle—processing, asset servicing, and documentation.[660] While the following cost estimates for these remedial activities span industry-wide requirements for a migration to a T+1 settlement cycle, the Commission does not anticipate each market participant directly undertaking all of these activities for several reasons. First, some market participants work with third-party service providers to facilitate certain functions that may be impacted by a shorter standard settlement cycle, such as trade processing and asset servicing, and thus may only bear the costs of the requirements through updates to systems and processes that interface with and fees paid to those service providers. Second, certain costs might only fall on specific categories of entities. For example, the costs of updating the Continuous Net Settlement (''CNS'') and ID Net systems should only directly fall on NSCC, DTC, and members/participants of those clearing agencies. Finally, some market participants may already have the processes and systems in place to accommodate a T+1 standard settlement cycle or will be able to adjust to a T+1 settlement cycle without incurring significant costs. For example, some market participants may already have the systems and processes in place to meet the requirements for same-day trade affirmation and matching consistent with the requirements in new Rule 15c6–2.[661] These market participants may thus bear a significantly lower cost to update their trade affirmation systems/processes to settle on a T+1 standard settlement cycle.[662]

The following section examines several categories of market participants and includes estimates the compliance costs for each category. The Commission's estimate of the number and type of personnel that may be required is based on the scope of activities for a given category of market participant necessary for the market participant to migrate to a T+1 settlement cycle, the market participant's role within the clearance and settlement process, and the amount of testing required to minimize undue disruptions.[663] Hourly salaries for personnel are from SIFMA's Management and Professional Earnings in the Securities Industry 2013.[664] These estimates use the timeline from the T+1 Playbook to determine the length of time personnel will work on the activities necessary to support a T+1 settlement cycle. The timeline provides an indirect method to estimate the inputs necessary to migrate to a T+1 settlement cycle, rather than relying directly on survey response estimates. The Commission acknowledges many entities are already undertaking activities to support a migration to a T+1 settlement cycle in anticipation of the amendment. However, to the extent that the costs of these activities have already been incurred, the Commission considers these costs sunk, and they are not included in the analysis below.

(1) FMUs—CCPs and CSDs

CNS, NSCC/DTC's ID Net service, and other systems will require adjustment to support a T+1 standard settlement cycle. The T+1 Playbook includes an estimate that regulation-dependent planning, implementation, testing, and migration activities associated with the transition to a T+1 settlement cycle could last up to six quarters.[665] The Commission estimates that these activities will impose a one-time compliance cost of $16.1 million[666] for

[656] *See supra* Part VIII.A. While market participants may have already made investments consistent with implementing a shorter settlement cycle, the fact that these investments have not resulted in a shorter settlement cycle is consistent with the existence of coordination problems among market participants.

[657] *See* BCG Study, *supra* note 565, at 15.

[658] *See* T+1 Playbook, *supra* note 134.

[659] *See id.* at 67–68 (discussing customer and staff education); *see also id.* at 103–107 (discussing testing and migration).

[660] *See id.* at 14.

[661] *See* BCG Study, *supra* note 565, at 23.

[662] The BCG Study, as it is based on survey responses from market participants, does reflect the heterogeneity of compliance costs for market participants.

[663] For example, FMUs that play a critical role in the clearance and settlement infrastructure would require more testing associated with a T+1 standard settlement cycle than institutional investors.

[664] To monetize the internal costs, the Commission staff used data from SIFMA publications, modified by Commission staff to account for an 1800 hour work-year, and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. *See* SIFMA, *Management and Professional Earnings in the Security Industry—2013* (Oct. 7, 2013); SIFMA, *Office Salaries in the Securities Industry—2013* (Oct. 7, 2013). These figures have been adjusted for inflation using the Bureau of Labor Statistics' Consumer Price Index inflation calculator, *https://www.bls.gov/data/inflation_calculator.htm.*

[665] *See* T+1 Playbook, *supra* note 134, at 14. The T+1 Playbook assumes an implementation date during the third quarter of 2024. We assume that the necessary tasks and the total time required to complete them would be similar for an earlier implementation date.

[666] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity, industry testing, and

DTC and NSCC each. After this initial compliance cost, the Commission expects that both DTC and NSCC will incur minimal ongoing costs from the transition to a T+1 standard settlement cycle, because the Commission estimates that the majority of costs will stem from pre-migration activities, such as implementation, updates to systems and processes, and testing.

(2) Matching/ETC Providers—Exempt Clearing Agencies

Matching/ETC Providers may need to adapt their trade processing systems to comply with a T+1 standard settlement cycle. This may include actions such as updating reference data, configuring trade match systems, and configuring trade affirmation systems to affirm trades on T+0. Matching/ETC Providers will also need to conduct testing and assess post-migration activities. The Commission estimates that these activities will impose a one-time compliance cost of up to $16.1 million [667] for each Matching/ETC Provider. However, the Commission acknowledges that some ETC providers may have a higher cost burden than others based on the volume of transactions that they process. The Commission expects that ETC providers will incur minimal ongoing costs after the initial transition to a T+1 standard settlement cycle because the Commission estimates that the majority of the costs of migration to a T+1 settlement cycle entail behavioral changes of market participants and pre-migration testing.

New Rule 17Ad–27 requires a CMSP to establish, implement, maintain, and enforce reasonably designed, written policies and procedures. Based on the similar policies and procedures requirements, and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(8) and (e)(2),[668] the Commission estimates that respondent CMSPs will incur an aggregate one-time cost of approximately $27,600.[669]

The rule also imposes ongoing burdens on a respondent CMSP as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to the required annual report. As discussed in Part V.C.2, the Commission has modified the final rule to identify specific data elements to be included in the annual report. Based on the similar reporting requirements, and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(e)(23),[670] the Commission estimates that the ongoing activities required by new Rule 17Ad–27 will impose an aggregate annual cost of this ongoing burden of approximately $71,400.[671]

(3) Market Participants—Investors, Broker-Dealers, Investment Advisers, and Bank Custodians

The overall compliance costs that a market participant incurs will depend on the extent to which it is directly involved in functions related to clearance and settlement including trade confirmation/affirmation, asset servicing, and other activities. For example, retail investors may bear few (if any) direct costs in a transition to a T+1 standard settlement cycle, because their respective broker-dealer handles the back-office functions of each transaction. However, as is discussed below, this does not imply that retail investors will not face indirect costs from the transition, such as those passed through from broker-dealers or banks.

Institutional investors may need to configure systems and update reference data, which may also include updates to trade funding and processing mechanisms, to operate in a T+1 environment. The Commission estimates that this will require an initial expenditure of $4.29 million per entity.[672] However, these costs may vary depending on the extent to which a particular institutional investor has already automated its processes. The Commission expects institutional investors will incur minimal ongoing direct compliance costs after the initial transition to a T+1 standard settlement cycle.

Broker-dealers that serve institutional investors will not only need to configure their trading systems and update reference data, but may also need to update trade confirmation/affirmation systems, documentation, cashiering and asset servicing functions, depending on the roles they assume with respect to their clients. The Commission estimates that, on average, each of these broker-dealers will incur an initial compliance cost of $8.74 million.[673] The Commission expects that these broker-dealers will incur minimal ongoing direct compliance costs after the initial

migration lasting six quarters. The Commission assumes 10 operations specialists (at $159 per hour), 10 programmers (at $316 per hour), and 1 senior operations manager (at $426/hour), working 40 hours per week. (10 × $159 + 10 × $316 + 1 × $426) × 6 × 13 × 40 = $16,149,120.

[667] The estimate is based on the T+1 Playbook timeline, which estimates regulation- dependent implementation activity for trade systems, matching, affirmation, testing, and post- migration testing lasting six quarters. The Commission assumes 10 operations specialists (at $159 per hour), 10 programmers (at $316 per hour), and 1 senior operations manager (at $426/hour), working 40 hours per week. (10 × $159 + 10 × $316 + 1 × $426) × 6 × 13 × 40 = $16,149,120.

[668] *See* Clearing Agency Standards, Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66219, 66260 (Nov. 2, 2012) (''Clearing Agency Standards Adopting Release''); Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70891–92 (Oct. 13, 2016) (''CCA Standards Adopting Release'').

[669] There are currently three CMSPs and the Commission anticipates that one additional entity may seek to become a CMSP in the next three years. The aggregate cost was estimated as follows: (Assistant General Counsel at $543/hour × 8 hours = $4,344) + (Compliance Attorney at $426/hour × 6 hours = $2,556) = $6,900 × 4 CMSPs equals $27,600.

[670] *See* CCA Standards Adopting Release, *supra* note 668, at 70899.

[671] This figure was calculated as follows: [(Compliance Attorney at $426/hour × 24 hours = $10,224) + (Computer Operations Manager at $514/hour × 10 hours = $5,140) = $15,364 × 4 CMSPs = $61,456]. In addition, we estimate that the Inline XBRL requirement would require respondent CMSPs to spend $1,200 each year to license and renew Inline XBRL compliance software and/or services, and incur 3 internal burden hours to apply and review Inline XBRL tags for the disclosure requirements on the report, resulting in a total annual aggregate cost of $9,912 [(Compliance Attorney at $426/hour × 3 hours = $1,278) + $1,200 in external costs = $2,478 × 4 CMSPs = $9,912]. The total costs are the non-XBRL related costs ($61,546) + XBRL related costs ($9,912) = $71,368. We have increased these estimates because, compared to the proposal, the reports required by Rule 17Ad–27 will contain significantly more disclosures, and each of those additional disclosures will need to be tagged. In addition, respondent CMSPs that do not already have access to EDGAR would be required to file a Form ID so as to obtain the access codes that are required to file or submit a document on EDGAR. We anticipate that each respondent would require 0.30 hours to complete the Form ID, and for purposes of the PRA, that 100% of the burden of preparation for Form ID will be carried by each respondent internally. Because two respondent CMSPs already have access to EDGAR, we anticipate that proposed amendments would result in a one-time nominal increase of 0.60 burden hours for Form ID, which would not meaningfully add to, and would effectively be encompassed by, the existing burden estimates associated with these reports.

[672] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity for trade systems, reference data, and testing activity to last six quarters. We assume 2 operations specialists (at $159 per hour), 2 programmers (at $316 per hour), and 1 senior operations manager (at $426 per hour), working 40 hours per week. (2 × $159 + 2 × $316 + 1 × $426) × 6 × 13 × 40 = $4,293,120.

[673] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity for trade systems, reference data, documentation, asset servicing, and testing to last six quarters. We assume 5 operations specialists (at $159 per hour), 5 programmers (at $316 per hour), and 1 senior operations manager (at $426 per hour), working 40 hours per week. (5 × $159 + 5 × $256 + 1 × $345) × 6 × 13 × 40 = $8,739,120.

transition to a T+1 standard settlement cycle.

Broker-dealers that also serve retail customers may need to spend significant resources during the implementation period to educate their clients about the shorter settlement cycle. The Commission estimates that these broker-dealers will incur an initial compliance cost of $12.73 million each.[674] However, unlike previously mentioned market participants, the Commission expects that broker-dealers that serve retail investors may face significant one-time compliance costs after the initial transition to T+1. Retail investors may require additional education and customer service, which may impose costs on their broker-dealers. The Commission estimates that a reasonable upper bound for the costs associated with this requirement is $30,000 per broker-dealer.[675] Assuming all clearing and introducing broker-dealers must educate retail customers, the upper bound for the aggregate costs of post implementation retail investor education will be approximately $38.2 million.[676]

As discussed above in Part III.C, the Commission is modifying proposed Rule 15c6–2 to provide two options by which broker-dealers may comply with the rule, as adopted. The two options are set forth in new paragraphs (a)(1) and (2). The first option, reflected in paragraph (a)(1), is the proposed requirement for written agreements, modified in the ways discussed above. The second option, reflected in paragraph (a)(2), is an alternative to the written agreements requirement, in lieu of which a broker-dealer may choose to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.

The first option, reflected in paragraph (a)(1), will require broker-dealers to either enter into or modify existing written agreements with the relevant parties that ensure the completion of the allocation, confirmation, and affirmation process. Such parties may be the customer, the customer's investment adviser, the customer's custodian, or another agent acting directly or indirectly on behalf of the customer. The number of such agreements will vary depending on the number of relevant parties which will vary by the size of the broker-dealer, the number of customers, and the particular business relationship that the broker-dealer has with each of them. As discussed in Part III.B.5 above, several commenters expressed a number of concerns with the written agreement requirement as proposed. First, commenters stated that in many scenarios written agreements do not currently exist between the parties to an institutional transaction and would be highly burdensome to establish specifically for the purpose of facilitating same day affirmation. In addition, commenters expressed the view that the proposed written agreement requirement would create unnecessary practical burdens and costs.[677]

The Commission acknowledges that in cases such as the ones described by commenters above—where these written agreements do not already exist, a client may not authorize its investment adviser to enter into this type of written agreement, or various third parties are relied upon to complete certain elements of the allocation, confirmation, and affirmation process—a requirement to enter into written agreements specifically to address the same-day affirmation objective may create substantial burdens and challenges for the parties to an institutional transaction. Accordingly, as discussed in Part III.C above, the Commission is including in the final rule a second option, reflected in paragraph (a)(2), that specifies as an alternative to the written agreement requirement a policies and procedures requirement.

The Commission believes that establishing policies and procedures as an alternative approach to compliance aside from entering into written agreements enables broker-dealers to avoid the substantial burdens and challenges that may be associated with negotiating written agreements in some cases. However, the Commission also believes that it may be less costly for broker-dealers that already use written agreements to manage their commercial relationships with their customers' advisers, custodians or other agents using such agreements and that broker-dealers will generally chose to comply with the rule using the option that is less costly for that broker-dealer's particular circumstances.

The second option, reflected in paragraph (a)(2) of new Rule 15c6–2, requires a broker-dealer to establish, maintain, and enforce policies and procedures to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for a transaction as soon as technologically practicable and no later than the end of the day on trade date, in such form as necessary to achieve settlement. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions,[678] and the securities industry considers achieving ''same-day affirmation'' an industry best practice.[679] Nonetheless, the Commission believes that respondent broker-dealers will need to evaluate existing policies and procedures, identify any gaps, and then develop modifications to address those gaps.[680] Accordingly, the Commission estimates that respondent broker-dealers would incur an aggregate one-time burden of approximately 240 hours to create policies and procedures required under the rule,[681] and that the cost of this one

[674] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity for trade systems, reference data, documentation, asset servicing, customer education and testing to last five quarters. We assume 5 operations specialists (at $159 per hour), 5 programmers (at $316 per hour), 5 trainers (at $256 per hour) and 1 senior operations manager (at $426 per hour), working 40 hours per week. (5 × $159 + 5 × $316 + 5 × $256 + 1 × $426) × 6 × 13 × 40 = $12,732,720.

[675] This estimate is based on the assumption that a broker-dealer chooses to educate customers using a 10-minute video that takes at most $3,000 per minute to produce. *See* Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71388, 71529 n.1683 (Nov. 16, 2015).

[676] Calculated as $30,000 per broker-dealer × (92 broker-dealers reporting as self-clearing but not introducing + 1,114 broker-dealers reporting as introducing but not self-clearing + 68 broker-dealers reporting as introducing and self-clearing) = $38,220,000.

[677] *See supra* note 222.

[678] *See, e.g.,* SIFMA August 26th Letter, *supra* note 207, at 2.

[679] *See supra* note 515.

[680] Rule 15c6–2(b)(1) requires that the written policies and procedures that any broker or dealer may establish, maintain, and enforce as required by Rule 15c6–2 should, among other requirements: (1) Identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction, and (2) Describe how the broker or dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation. In cooperation with the broker or dealer, the relevant parties (including investment advisers and custodians) may incur some costs; however, those costs will vary depending on current systems at the relevant party and broker or dealer, the nature of the business relationship between the relevant party and the broker or dealer, and how the business of the relevant party is organized.

[681] This figure was calculated as follows: (Assistant General Counsel for 20 hours + Compliance Attorney for 120 hours + Senior Risk Management Specialist for 20 hours + Risk Management Specialist for 80 hours) = 240 hours × 411 respondents = 98,640 hours.

time burden per broker-dealer would be $88,880.[682] The Commission estimates that approximately 411 broker-dealers would be subject to the requirements of Rule 15c6–2.[683] The total industry cost is estimated to be approximately $36.5M.[684]

Rule 15c6–2 also imposes ongoing burdens on a respondent broker-dealer as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the rule; and (ii) ongoing documentation activities with respect to its obligations to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date. The Commission estimates that the ongoing activities required by Rule 15c6–2 would impose an aggregate annual burden on respondent broker-dealers of 480 hours,[685] and a cost per broker-dealer of $172,416.[686] The total industry cost is estimated to be approximately $107M.[687]

The Commission believes this estimate is an upper bound on the compliance costs associated with the second option, reflected in paragraph (a)(2) of new Rule 15c6–2 for at least two reasons. First, broker-dealers may choose the first option, reflected in paragraph (a)(1), if it is less burdensome for them to do so. Second, if a large number of broker-dealers chose the second option it may be more efficient for a third party to develop a set of best practices that could form the basis of the policies and procedures required for each broker-dealer that choses the second option.

Custodian banks will need to update their asset servicing functions to comply with a shorter settlement cycle. The Commission estimates that custodian banks will incur an initial compliance cost of $4.29 million,[688] and expects custodian banks to incur minimal ongoing compliance costs after the initial transition because the Commission believes that most of the costs will stem from pre-migration updates and testing.

The amendment to Rule 204–2 will require registered investment advisers to make and keep records of confirmations they receive and of allocations and affirmations they send or receive for securities transactions that are subject to the requirements of Rule 15c6–2(a). Based on Form ADV filings, approximately 15,160 advisers registered with the Commission are required to make and keep copies of certain books and records relating to their advisory business.[689] The Commission further estimates that of these advisers, 2,169 registered advisers will not retain the required records under the final rule because they do not have any institutional advisory clients. Therefore, the Commission estimates that 12,991 advisers will be subject to the final amendment to Rule 204–2 under the Advisers Act because they will facilitate transactions with a broker or dealer that is subject to the requirements of Rule 15c6–2(a) and therefore will be subject to the related recordkeeping requirement.[690] As discussed above, based on staff experience, the Commission believes that many advisers already have recordkeeping processes in place to make and keep records of confirmations received, and allocations and affirmations sent or received. The Commission believes these are customary and usual business practices for many advisers, but that some small and mid-size advisers may not currently retain these records. Further, the Commission believes that the vast majority of these books and records are kept in electronic fashion with an ability to capture a date and time stamp, such as in a trade order management or other recordkeeping system, through system logs of file transfers, email archiving, or as part of DTC's Institutional Trade Processing services, but that some advisers maintain paper records (*e.g.,* confirmations) and/or communicate allocations by telephone. In addition, as noted in Part III.C above, we believe that up to 70% of institutional trades are affirmed by custodians, and therefore advisers may not retain or have access to the affirmations these custodians sent to brokers or dealers.[691]

In a change from the proposal, we estimate three-hour information collection burden annually per impacted adviser associated with the new recordkeeping requirements.[692] We estimate that the amendments to Rule 204–2 will result in an additional internal cost of approximately $3.02 million per year.[693] This estimate takes into account potential additional burdens associated with the new recordkeeping requirement for advisers that do not currently retain these records, but will be required to do so under the final rule. These estimates are also designed to address any burdens for advisers that may retain such documents, but do not do so electronically and/or do not time and date stamp such documents or otherwise retain the documents in a way that complies with the final rule.[694] In addition, the revised estimates factor in any costs associated with receiving copies of, or having access to, required records that are retained by a custodian or other third-party, including cost-savings associated with the adviser's ability to rely on third parties to meet its recordkeeping obligations under the rule.[695]

(4) Indirect Costs

In estimating these implementation costs, the Commission notes that market

[682] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 20 hours = $10,860) + (Compliance Attorney at $426/hour × 120 hours = $51,120) + (Senior Risk Management Specialist at $417/hour × 20 hours = $8,340) + (Risk Management Specialist at $232/hour × 80 hours = $18,560) = $88,880 × 411 respondents = $36,529,680.

[683] *See infra* Part IX.C.2.

[684] *See supra* note 682.

[685] This figure was calculated as follows: (Assistant General Counsel for 48 hours + Compliance Attorney for 192 hours + Senior Risk Management Specialist for 48 hours + Risk Management Specialist for 192 hours) = 480 hours × 411 respondents = 197,280 hours.

[686] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 48 hours = $26,064) + (Compliance Attorney at $426/hour × 192 hours = $81,792) + (Senior Risk Management Specialist at $417/hour × 48 hours = $20,016) + (Risk Management Specialist at $232/hour × 192 hours = $44,544) = $172,416 × 411 respondents = $70,862,976.

[687] This figure was calculated as follows: $36,529,680 (industry one-time burden) + $70,862,976 (industry ongoing burden) = $107,392,656.

[688] The estimate is based on the T+1 Playbook timeline, which estimates regulation-dependent implementation activity for asset servicing and testing to last six quarters. We assume 2 operations specialists (at $159 per hour), 2 programmers (at $316 per hour), and 1 senior operations manager (at $426 per hour), working 40 hours per week. (2 × $159 + 2 × $316 + 1 × $426) × 6 × 13 × 40 = $4,293,120.

[689] *See infra* note 4 to Table 2.

[690] *See id.*

[691] *See* DTCC ITP Forum Remarks, *supra* note 264.

[692] The Commission believes that most of the necessary records are already being retained as advisers generally retain their communications and trade instructions to comply with other recordkeeping obligations. If these records are not being kept, the Commission believes the burden will be small to start retaining them because the requirement pertains to records that are sent or received and does not require new records to be created.

[693] The estimate assumes that the amendments to Rule 204–2 will result in an incremental increase in the collection of information burden estimate by 3 hours for 12,991 investment advisers. For each such adviser, we assume 1.5 hour for a compliance clerk (at $82 per hour) and 1.5 hour for a general clerk (at $73 per hour) = $233 per investment adviser * 12,991 investment advisers = an incremental increase of $3,020,408 in internal costs.

[694] For more discussion, *see infra* Part IX.A.

[695] One commenter recommended that the Commission update these estimates. *See infra* Part IX.A for a discussion of the commenter's recommendation and the Commission's justification for the burden estimates.

participants who bear the direct costs of the actions they undertake to comply with the amendment to Rule 15c6–1 may pass these costs on to their customers. For example, retail and institutional investors might not directly bear the cost of all of the necessary upgrades for a T+1 standard settlement cycle, but might indirectly bear these costs as their broker-dealers might increase their fees to amortize the costs of updates among their customers. The Commission is unable to quantify the overall magnitude of the indirect costs that retail and institutional investors may bear, because such costs will depend on the market power of each broker-dealer, and each broker-dealer's willingness to pass on the costs of migration to a T+1 standard settlement cycle to its customers. However, the Commission believes that in situations where broker-dealers have little or no competition, broker-dealers will have an incentive to absorb part of the cost increase. As discussed in Part VIII.C.5.b)(3) above, this could be as high as the full amount of the estimated $8.74 million for each broker-dealer that serves institutional investors, and $12.73 million for each broker-dealer that serves institutional and retail investors. However, in situations where broker-dealers face heavy competition for customers, there may be little or no economic profits and price may equal marginal cost so an increase in costs could be fully passed through to the customer.[696]

As noted in Part VIII.B.4, the ability of market participants to pass implementation costs on to customers likely depends on their relative bargaining power. For example, CCPs, like many other utilities, exhibit many of the characteristics of natural monopolies and, as a result, may have market power, particularly relative to broker-dealers who submit trades for clearing. This means that CCPs may be able to share implementation costs they directly face related to shortening the settlement cycle with broker-dealers through higher clearing fees. Conversely, to the extent that institutional investors have market power relative to broker-dealers, broker-dealers may not be in a position to impose indirect costs on them.

(5) Industry-Wide Costs

To estimate the aggregate, industry-wide cost of a transition to a T+1 standard settlement cycle, the Commission takes its own per-entity estimates and multiplies them by our estimate of the respective number of entities. The Commission estimates that there are 1,229 buy-side firms, 160 self-clearing broker-dealers, and 48 custodian banks.[697] Additionally, while there are three Matching/ETC Providers, the Commission believes that only one of these is currently providing services in the U.S. We estimate there are 1,274 broker-dealers that will incur investor education costs. One way to establish a total industry initial compliance cost estimate is to multiply each estimated per-entity cost by the respective number of entities and sum these values, which results in an estimate of $7.76 billion.[698] The Commission, however, believes that this estimate is likely to overstate the true initial cost of transition to a T+1 standard settlement cycle for a number of reasons. First, our per-entity estimates do not account for the heterogeneity in market participant size, which may have a significant impact on the costs that market participants face. While the BCG Study included both estimates of the number of entities in different size categories as well as estimates of costs that an entity in each size category is likely to incur, it did not provide sufficient underlying information to allow the Commission to estimate the relationship between participant size and compliance cost and, thus, we cannot produce comparable estimates. The Commission solicited comment on the extent to which market participants believe that the compliance costs for Rule 15c6–1(a) would scale with market participant size and did not receive data that could be used to improve these estimates.

Second, investments by third-party service providers may mean that many of the estimated compliance costs for market participants are duplicated. The BCG Study suggests that ''leverage'' from service providers may yield a savings of $194 million, reducing aggregate costs by approximately 29%.[699] In the T+1 Proposing Release, the Commission sought further comment on the extent to which the efficiencies generated by the investments of service providers might reduce the compliance costs of market participants. Taking into account potential cost reductions due to repurposing existing systems and using service providers as described above, the Commission believes that $5.51 billion represents a reasonable range for the total industry initial compliance costs.[700]

In addition to these initial costs, a transition to a shorter settlement cycle may also result in certain ongoing industry-wide costs. Though the Commission believes that a move to a shorter settlement cycle will generally bring with it a reduced reliance on manual processing, a shorter settlement cycle may also exacerbate remaining operational risk. This is because a shorter settlement cycle will provide market participants with less time to resolve errors. For example, if there is an entry error in the trade match details sent by either counterparty for a trade, both counterparties will have one extra day to resolve the error under the baseline than in a T+1 environment. For these errors, a shorter settlement cycle may increase the probability that the error ultimately results in a settlement fail. However, the Commission believes that a large variety of operational errors are possible in the clearance and settlement process, and some of these errors are likely to be infrequent, the Commission is unable to quantify the impact that a shorter settlement cycle may have on the ongoing industry-wide costs stemming from a potential increase in operational risk.

D. Consideration of Reasonable Alternatives

1. Delete 15c6–1(c) to T+2

In the T+1 Proposing Release the Commission proposed to delete paragraph (c) of the rule,[701] which would, in conjunction with the proposed amendment to paragraph (a), establish a T+1 standard settlement cycle for firm commitment offerings priced after 4:30 p.m. ET. The Commission requested comment on whether, as an alternative to deleting paragraph (c), it be amended in order to shorten the settlement cycle for firm commitment offerings to T+2. In response to comments received and as discussed in Part II.B.3 and Part II.C.4

[696] *See supra* note 621.

[697] The estimate for the number of buy-side firms is based on the Commission's 13(f) holdings information filers with over $1 billion in assets under management, as of December 31, 2020. The estimate for the number of broker-dealers is based on FINRA FOCUS Reports of firms reporting as self-clearing. *See supra* note 525 and accompanying text. The estimate for the number of custodian banks is based on the number of ''settling banks'' listed in DTC's Member Directories, *http://www.dtcc.com/client-center/dtc-directories*.

[698] Calculated from estimates derived above in this section (Part VIII.C.5) as 160 broker-dealers (self-clearing) × $12,733,000 + + 48 custodian banks × $4,293,000 + 1,229 buy-side firms × $4,293,000 + 4 Matching/ETC Providers × ($16,149,000 + $6,900) + 2 FMUs × $16,149,000 + 12,991 IAs × $233 + 411 broker-dealers with institutional customers × $88,880$ 7,763M.

[699] *See* BCG Study, *supra* note 565, at 79.

[700] The lower bound of this range is calculated as ($7.76 billion × (1 − 0.29)) = $5.51 billion.

[701] *See* T+1 Proposing Release, *supra* note 2, at 10448–49.

above, the Commission is adopting this alternative.

2. Adopt 17Ad–27 To Require Certain Outcomes

The Commission proposed Rule 17Ad–27 to require a CMSP establish, implement, maintain, and enforce policies and procedures to facilitate straight-through processing for transactions involving broker-dealers and their customers.[702] As proposed, Rule 17Ad–27 would require a CMSP to submit every twelve months to the Commission a report that describes the following: (i) the CMSP's current policies and procedures for facilitating straight-through processing; (ii) its progress in facilitating straight-through processing during the twelve month period covered by the report; and (iii) the steps the CMSP intends to take to facilitate and promote straight-through processing during the twelve month period that follows the period covered by the report.[703]

The Commission proposed a ''policies and procedures'' approach in developing the rule because it believes such an approach will remain effective over time as CMSPs consider and offer new technologies and operations to improve the settlement of institutional trades. The Commission also believes that improving the CMSPs' systems to facilitate straight-through processing can help market participants consider additional ways to make their own systems more efficient. In addition, a ''policies and procedures'' approach can help ensure that a CMSP considers, in a holistic fashion, how the obligations it applies to its users will advance the implementation of methodologies, operational capabilities, systems, or services that support straight-through processing.

The Commission has considered as an alternative to the policies and procedures approach in proposed Rule 17Ad–27, proposing a rule to require CMSPs to achieve certain outcomes that would facilitate straight-through processing. For example, the Commission considered a requirement that a CMSP do the following: (i) enable the users of its service to complete the matching, confirmation, or affirmation of the securities transaction as soon as technologically and operationally practicable and no later than the end of the day on which the transaction was effected by the parties to the transaction; or (ii) forward or otherwise submit the transaction for settlement as soon as technologically and operationally practicable, as if using fully automated systems.

However, as discussed in Part V.C.1. above, the Commission believes that a policies and procedures approach will better meet the objectives of promoting STP by requiring policies and procedures that include a holistic review and framework for considering how systems and processes facilitate straight-through processing, and that can adapt over time to changes in technology and operations, both among and beyond the CMSP's systems. Therefore the Commission is adopting new Rule 17Ad–27 as proposed but with the two modifications discussed above.

3. Adopt Rule Changes to Rule 15c6–2 as Recommended by SIFMA's August Comment Letter

As previously mentioned in Part III.B.7., the Commission received an additional comment letter from SIFMA addressing alternatives to proposed Rule 15c6–2.[704] SIFMA recommended that the Commission revise proposed Rule 15c6–2 to replace the written agreement requirement with a requirement for policies and procedures that can support faster processing, which would allow individual firms to advance the Commission's interest in same-day affirmation while ensuring that broker-dealers can design policies and procedures tailored to their business models, products, and unique customer bases.[705]

SIFMA's recommendation included a number of elements. First, SIFMA requested that Rule 15c6–2 be revised to require policies and procedures reasonably designed to maintain timely settlement rates.[706] Second, SIFMA recommended that such policies and procedures: (i) address the timing of allocations, confirmations, and affirmations to ensure timely settlement; (ii) include a communication plan with market participants; (iii) provide a description of a broker-dealers' ability to monitor compliance; (iv) include the development of controls and supervisory procedures; and (v) include the development of metrics to measure compliance.[707]

The Commission agrees that the policies and procedures approach is beneficial, and thus is revising final Rule 15c6–2 to allow broker-dealers to achieve compliance with the rule either by entering into written agreements or by establishing, implementing, and maintaining policies and procedures. Economically, options always have a positive value when they allow the holder to choose amongst a menu of choices; in this case, the ability to choose amongst approaches should present a benefit to broker-dealers, who can better assess which one of these two alternatives provides the most efficient path to compliance with the rule. Discussion of the costs for each of these alternatives can be found in section C.5.(b)(3).

In terms of what the policies and procedures dictate, the Commission believes, as mentioned in Part III.B.7, that timely settlement is a separate, if related, objective from same-day affirmation. As discussed in Part III.B.1 above, the Commission continues to believe that improving affirmation rates on trade date is an objective separate and apart from, though related to, shortening the settlement cycle, because it promotes an orderly settlement process regardless of the length of the settlement cycle.

Other than the different specifications of the policies and procedures just mentioned, the Commission believes that it is generally adopting SIFMA's recommendations with respect to: addressing the timing of allocations, confirmations, and affirmations to ensure timely settlement; including a communication plan with market participants; providing a description of a broker-dealers' ability to monitor compliance; including the development of controls and supervisory procedures; and including the development of metrics to measure compliance.

4. Replace the Written Agreement Requirement in Proposed Rule 15c6–2 With a Principles-Based Approach

The Commission received comment letters from the Investment Company Institute (ICI) and from the American Securities Association (ASA) that advocate for a principles-based approach that allows broker-dealers to adopt their own internal policies that promote the allocation, confirmation and affirmation of trades for relevant customers. That would include, according to ICI, a requirement that broker-dealers adopt policies and procedures ''reasonably designed'' to ensure that allocations, confirmations, and affirmations are completed on a timeline that allows settlement on T+1.

The Commission is mindful that each broker-dealer is best suited to assess the

[702] *See id.* at 10457–61.

[703] As adopted, the Rule 17Ad–27 reporting requirement has been revised. *See supra* Part V.C.

[704] *See* SIFMA August 26th Letter, *supra* note 194, at 2–3.

[705] *See id.* at 2. In Part III.B.5., above, the Commission has previously discussed why it believes it appropriate to retain the written agreement requirement in the rule, while also adding an option to establish, maintain, and enforce written policies and procedures.

[706] *See id.*

[707] *See id.* at 2–3.

challenges that it faces in accelerating the settlement process. Therefore, as already discussed, the Commission is providing broker-dealers with the additional choice of a policies and procedures alternative besides the written agreements requirement. The Commission believes that the policies and procedures alternative affords broker-dealers sufficient flexibility without sacrificing the main objective of the rule, which is solving the collective action problem of improving the overall current affirmation rates of 68%. A principles-based approach relies almost exclusively on the existing commercial incentives discussed on Part III.B.1, which the Commission already considered insufficient to overcome the incremental gains in same-day affirmation rates to date.

5. Select a Later Implementation Date for Adoption of the Rule

The Commission received a number of comment letters [708] that recommend a later date than the proposed implementation date of March 31, 2024. Reasons given by the industry for more time include the additional convenience attendant to a transition to T+1 settlement over a three-day weekend (*e.g.,* Memorial Day, Labor Day); the possibility of coordinating the T+1 settlement transition with a closely aligned market (*i.e.,* Canada on Labor Day 2024); and the ability to have more thorough preparation and testing protocols, among others.

The Commission acknowledges that there are additional costs to an earlier transition date, as a more compressed timeline to implementation will have an opportunity cost over scarce operational resources. Additional time also allows for more robust preparation and testing.[709] Nevertheless, postponing the implementation of T+1 settlement delays the realization of the market-wide benefits of the rule. While there may be increases in up-front costs from an earlier date, there are also benefits attendant to general reductions in liquidity, credit and market risk. Periods of high volatility could materialize on any date between the implementation date and any of the suggested dates, and such occurrence would reduce the benefits of the rule precisely at the moment when it is most useful. Given the extent of planning, operational changes, and testing necessary to achieve a successful and orderly transition to a T+1 standard settlement cycle,[710] the Commission is moving the compliance date to Tuesday, May 28, 2024, which follows a Federal holiday for which both markets and banks will be closed, providing market participants with a three-day weekend to facilitate the transition to a T+1 standard settlement cycle, and providing market participants an additional two months. The Commission believes that a May 28, 2024, compliance date will ensure an orderly transition to a T+1 standard settlement cycle that realizes the substantial benefits of shortening the settlement cycle as soon as possible.

IX. Paperwork Reduction Act

As discussed in the proposing release, Rule 17Ad–27 and the amendments to Rule 204–2(a) contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[711] The Commission submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. For the amendments to Rule 204–2(a), the title of the information collection is ''Rule 204–2 under the Investment Advisers Act of 1940'' (OMB Control No. 3235–0278). For Rule 17Ad–27, the title of the information collection is ''Shortening the Securities Transaction Settlement Cycle'' (OMB Control No. 3235–0799).[712] In addition, the modifications to Rule 15c6–2 contain ''collection of information'' requirements, which will be submitted to OMB for review in accordance with the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Commission received several comments concerning its PRA estimates for the proposed amendment to Rule 204–2, which are discussed below. In response to these comments, and in view of the changes between the proposed and adopted recordkeeping requirements, the Commission is modifying its PRA estimates, as reflected in Part IX.A. The Commission is also modifying its PRA estimates for Rule 17Ad–27 in view of the changes between the proposed and adopted rule requirements, as explained in Part IX.B. In addition, the Commission corrects a tabulation error for Rule 17Ad–27 that was included in the T+1 Proposing Release.

Finally, because the modifications to Rule 15c6–2 discussed in Part III.C would impose PRA burdens, the Commission below provides PRA estimates for Rule 15c6–2. The Commission will submit these burdens to OMB for review in accordance with the PRA.[713]

A. Advisers Act Rule 204–2

Under section 204 of the Advisers Act, investment advisers registered or required to register with the Commission under section 203 of the Advisers Act must make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Exchange Act), furnish copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Advisers Act Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is found at 17 CFR 275.204–2 and is mandatory. The Commission staff uses the collection of information in its regulatory and examination program. Responses to the requirements of the proposed amendments to Rule 204–2 that are provided to the Commission in the context of its regulatory and examination program are kept confidential subject to the provisions of applicable law.[714]

The final amendments to Rule 204–2 will require all registered investment advisers to make and keep certain records with respect to any securities transaction that is subject to the requirements of Rule 15c6–2(a). Those records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation were sent or received.

The proposed amendments to Rule 204–2 would have required recordkeeping by any registered adviser

[708] *See, e.g.,* DTCC Letter, *supra* note 16, at 4; SIFMA April Letter, *supra* note 16, at 4; State Street Letter, *supra* note 16, at 5; MFA Letter, *supra* note 16, at 2; ICI Letter, *supra* note 16, at 2; AGC April Letter, *supra* note 16, at 4; CCMA April Letter, *supra* note 16, at 1; RMA Letter, *supra* note 16, at 8; IAA April Letter, *supra* note 16, at 2; IIAC Letter, *supra* note 16, at 2; ASA Letter, *supra* note 16, at 1–2; OCC Letter, *supra* note 16, at 3; STA Letter, *supra* note 16, at 2.

[709] *See supra* Part VII.A.

[710] *Id.*

[711] *See* 44 U.S.C. 3501 *et seq.*

[712] The T+1 Proposing Release stated that the Commission intended to include Rule 17Ad–27 in an existing information collection, ''Clearing Agency Standards for Operation and Governance'' (OMB Control No. 3235–0695). The Commission has subsequently determined to request a new OMB Control Number for the collection of information in Rule 17Ad–27.

[713] *See supra* note 712 and accompanying text (providing the title of the information collection and the OMB control number for these rulemakings, ''Shortening the Securities Transaction Settlement Cycle'' (OMB Control No. 3235–0799)).

[714] *See* section 210(b) of the Advisers Act, 15 U.S.C. 80b–10(b).

that is a party to a contract under proposed Rule 15c6–2 while the final rule references more specifically transactions subject to Rule 15c6–2(a), although both concern the same subset of transactions. We estimate that 12,991 advisers, or 86% of the total registered advisers subject to amended Rule 204–2, will facilitate transactions subject to Rule 15c6–2(a) and thus be subject to the amendments.[715] As discussed in the T+1 Proposing Release, the Commission stated that based on staff experience, it believed that many advisers already have processes in place to make and keep records of confirmations received, and allocations and affirmations sent as part of their customary and usual business practices, though recognizing that some small and mid-sized advisers do not currently retain these records, and some advisers still maintain certain records in paper and/or communicate by telephone.[716] Paper records are less likely to be date and time stamped, and those communicated by telephone are not date or time-stamped at all, unless a memorial of the communication is retained). The Commission also stated that it believed many such records are electronically maintained, and are sent or received electronically, in which case such documents were already date and time stamped in many instances.[717]

Some commenters discussed aspects of the burden estimates for the proposed amendments to Rule 204–2. One commenter stated that the Commission has underestimated the time and cost burdens for implementing the proposed recordkeeping requirements but did not provide specific estimates.[718] As one basis for that statement, the commenter explained that most investment advisers use third parties to perform or communicate allocations or affirmations, and do not necessarily currently retain the records themselves.[719] This commenter stated that if such advisers were required to retain those records on an ongoing basis, they would likely incur costs associated with directing the third parties to electronically copy the investment adviser on any allocations or affirmations and ensuring that their own systems and infrastructure could adequately accommodate these additional records. The commenter suggested that if advisers could not rely on third parties to meet their recordkeeping obligations, the Commission should update its estimates, while also asking the Commission to review the potential cost savings associated with allowing advisers to use third parties to retain the required records.[720] In this regard, we note that investment advisers may continue to rely on third parties to meet their recordkeeping obligations, including those required by the final amendments to Rule 204–2.[721]

Several comments also addressed timestamping. One suggested that the costs could be higher than we estimated in the proposal,[722] while another stated that timestamps are already included in electronic communications protocols.[723] We agree, consistent with the latter comment, that timestamps are generally included in many electronic communications and many advisers currently send allocations and affirmations electronically.

In a change from the proposal, we estimate that each adviser that will be subject to the new recordkeeping requirements will incur an additional three-hour burden each year, increased from two hours as proposed. We are not amortizing any of the burdens as proposed, because we believe investment advisers that will be subject to the new requirements will incur the same hour burden initially and then annually thereafter.[724]

The Commission estimates that 12,991 registered advisers will be subject to the new recordkeeping requirements because they manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6–2(a).[725] This estimate takes into account potential additional burdens associated with the new recordkeeping requirement for advisers that do not currently make and retain these records, but will be required to do so under the final rule. The revised estimates are also designed to address any burdens for advisers that may make and retain such documents, but do not do so electronically and/or do not time and date stamp such documents or otherwise retain the documents in a way that complies with the final rule. In addition, the revised estimates factor in any costs associated with receiving copies of, or having access to, required records that are retained by a custodian or other third-party, offset by cost-savings associated with the adviser's ability to rely on third parties to meet its recordkeeping obligations under the rule. As discussed above, we believe that many advisers already have recordkeeping processes in place to retain the new required records, and may only incur minimal additional burdens to comply with the final recordkeeping requirements. However, some advisers may need to spend more time to modify their recordkeeping systems. Accordingly, the three-hour burden estimate reflects an average across all advisers likely to be subject to the new requirements. Finally, in response to the comment that our staffing cost estimates were too low, we have increased the hours burden to three and the time we estimate the compliance clerk and general clerk will spend on the collection of information, and we updated the wage rates to account for inflation.[726]

In our most recently approved Paperwork Reduction Act submission for Rule 204–2, we estimated for Rule

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[715] Based on Form ADV data as of June 2022. *See also infra* note 4 to Table 2.

[716] *See* T+1 Proposing Release, *supra* note 2, at 10494.

[717] *See* T+1 Proposing Release, *supra* note 2, at 10456–57, 10490, 10494.

[718] *See* IAA April Letter, *supra* note 16, at 7.

[719] *Id.* (noting the Commission's estimate in the T+1 Proposing Release that 70 percent of investment adviser trades are affirmed by their custodian is consistent with information received from IAA members, and also noting that advisers may utilize separately managed accounts where trading and allocations are conducted by a third-party investment manager under an agreement with the investment adviser).

[720] *Id.*

[721] *See supra* Part IV.C. As previously noted, we estimate that 70% of trades are affirmed by custodians, which may retain the affirmations on the adviser's behalf.

[722] AIMA Letter, *supra* note 29.

[723] FIX Trading Letter, *supra* note 218.

[724] The T+1 Proposing Release amortized the annual two-hour burden over three years, resulting in an annual internal burden of 0.667 hours per adviser per year.

[725] The Commission is using a different methodology than the proposal in order to simplify the calculation and include more advisers that we estimate will be subject to the new recordkeeping requirement. The final estimate includes one category of 12,991 advisers that will be subject to the new recordkeeping requirements because they manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6–2(a). The estimate excludes advisers that only have individuals or high-net-worth individuals as clients in Item 5.D. and do not report participation in any wrap fee program in Item 5.I., and advisers that do not report any regulatory assets under management in Item 5.F. In contrast, the T+1 Proposing Release estimated 11,283 of advisers that are subject to Rule 204–2, would enter a contract with a broker or dealer under proposed Rule 15c6–2 and therefore be subject to the related proposed recordkeeping amendment. The estimate included three categories of advisers that would have had the same burden hours: (1) 220 small and mid-size advisers that have institutional clients that we believed do not maintain the proposed records; (2) 113 advisers that have institutional clients that staff estimated do not send allocations or affirmations; and (3) 7,898 advisers with institutional clients that the staff estimated make institutional trades that are affirmed by custodians and therefore do not maintain the proposed affirmations.

[726] The wage rate estimate takes into account an updated inflation adjustment since the proposal and estimates that the higher paid compliance clerk will spend approximately 50% of the time performing the function instead of 17% as estimated in the T+1 Proposing Release.

204–2 a total annual aggregate hour burden of 2,764,563 hours, and a total annual aggregate internal cost burden of $175,980,426.[727] The estimated additional burdens associated with the final amendments to Rule 204–2, which take into account an increase in annual hour burdens and internal cost burdens due to the comments received and an increase in the internal wage rates due to an updated inflation adjustment reflecting inflation through the end of 2022, are reflected in the table below.

TABLE 2—SUMMARY OF BURDEN ESTIMATES FOR THE FINAL AMENDMENTS TO RULE 204–2

Advisers	Annual internal hour burden [1]	Internal wage rate [2]	Internal time cost per year [3]
12,991 advisers [4]	3 hours per adviser [5] Incremental aggregate burden = 38,973 hours (12,991 advisers × 3 hours = 38,973 hours).	$77.50 per hour	Incremental aggregate internal cost = $3,020,408 ($77.5 × 38,973 hours = $3,020,408).
Currently approved aggregate burden [6]	2,764,563 aggregate hours per year	$175,980,426	
Estimated revised aggregate burden [7]	2,803,536 aggregate hours per year	$179,000,834 [8]	

Notes:

[1] In a change from the Proposing Release, we are not amortizing the initial internal hour burden over a three-year period. Instead, we believe that the estimated internal hour burdens associated with the final amendments will be annual burdens.

[2] As with our estimates relating to the previous amendments to Advisers Act Rule 204–2, the Commission expects that performance of these functions will most likely be allocated between compliance clerks and general clerks. Data from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation through the end of 2022, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these position are $82 and $73, respectively. A blended hourly rate is therefore: ($82 + $73) ÷ 2 = $77.5 per hour.

[3] Under the currently-approved PRA for Rule 204–2, there is no cost burden other than the internal cost of the hour burden described herein, and we believe that the amendments will not result in any external cost burden.

[4] We estimate there were 15,160 total registered advisers as of June 2022 based on Form ADV filings received through the Investment Adviser Registration Depository (IARD) through August 31, 2022. Of these 15,160 advisers, we estimate that 12,991 will be subject to the new recordkeeping requirements because they manage institutional accounts and are thus likely to facilitate transactions that are subject to the requirements of Rule 15c6–2(a). We have excluded advisers that only have individuals or high-net-worth individuals as clients in Item 5.D. and do not report participation in any wrap fee program in Item 5.I. We also excluded advisers that do not report any regulatory assets under management in Item 5.F.

[5] We estimate an average of three hours per adviser to update procedures and instruct personnel to make and retain the required records in the advisers' recordkeeping systems, including any such documents it may receive in paper format and does not currently retain, and to actually retain those records for the required retention periods. Because we believe that many advisers already have recordkeeping systems to accommodate these records, which include, at a minimum, spreadsheet formats and email retention systems that have an ability to capture a date and time stamp, such advisers are likely to incur minimal incremental costs associated with the new recordkeeping requirement.

[6] *See supra* note 727.

[7] The new recordkeeping burden will add 38,973 aggregate annual hours, resulting in a revised estimate of 2,803,536 aggregate hours for all registered advisers subject to these amendments to Rule 204–2 (2,764,563 current hours + 38,973 additional hours = 2,803,536 aggregate hours per year). The new recordkeeping burden would also add $3,020,408 in aggregate internal costs, resulting in a revised estimate of $179,000,834 in aggregate internal costs ($175,980,426 current internal costs + $3,020,408 additional internal costs = $179,000,834).

[8] This reflects a reduction in the internal time cost per year that appeared in the T+1 Proposing Release, to account for corrections to the internal time costs calculations as they appeared in the T+1 Proposing Release.

B. Exchange Act Rule 17Ad–27

As discussed in the T+1 Proposing Release, the purpose of the collections under Exchange Act Rule 17Ad–27 is to ensure that CMSPs facilitate the ongoing development of operational and technological improvements associated with the straight-through processing of institutional trades. The collections are mandatory. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.[728]

Respondents under this rule are the three CMSPs to which the Commission has granted an exemption from registration as a clearing agency, as previously discussed in the T+1 Proposing Release. The Commission also continues to anticipate that one additional entity may seek to become a CMSP in the next three years, and so for purposes of this PRA collection the Commission has assumed four respondents.

As discussed in Part V.C.1, Rule 17Ad–27(a) requires a CMSP to establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate straight-through processing. Although the Commission has modified the text of Rule 17Ad–27(a) to provide that such policies and procedures be ''reasonably designed,'' the Commission believes that the initial burden under this portion of the rule is unchanged. As discussed in the T+1 Proposing Release, the Commission continues to estimate that respondent CMSPs would incur an aggregate one-time burden of approximately 56 hours to create such new policies and procedures,[729] and that the aggregate cost of this one time burden would be $27,600.[730]

Rule 17Ad–27 also imposes ongoing burdens on a respondent CMSP as follows: (i) ongoing monitoring and compliance activities with respect to the

[727] Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204–2, OMB Report, OMB 3235–0278 (Aug. 2021).

[728] *See, e.g.,* 5 U.S.C. 552 *et seq.* Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. *See* 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. *See* 5 U.S.C. 552(b)(8).

[729] This figure was calculated as follows: (Assistant General Counsel for 8 hours + Compliance Attorney for 6 hours) = 14 hours × 4 respondent CMSPs = 56 hours.

[730] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 8 hours = $4,344) + (Compliance Attorney at $426/hour × 6 hours = $2,556) = $6,900 × 4 CMSPs equals $27,600.

written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to the required annual report. As discussed in Part V.C.2, the Commission has modified the final rule to identify specific data elements to be included in the annual report. To accommodate the documentation and reporting of such data as contemplated in final Rule 17Ad–27(b), the Commission has revised its estimates such that the ongoing activities required by Rule 17Ad–27 would now impose an aggregate annual burden on respondent CMSPs of 148 hours,[731] with an internal aggregate cost (or monetized value of the hour burden) of $65,208.[732] The total industry internal cost is estimated to be $92,808.[733]

TABLE 3—SUMMARY OF BURDEN ESTIMATES FOR RULE 17Ad–27 [734]

Name of information collection	Type of burden	Number of respondents	Number of annual responses per respondent	Initial burden per respondent	Annualized initial burden per respondent	Ongoing burden per respondent	Total annual burden per respondent	Total annual industry burden (hours)
17Ad–27	Recordkeeping	4	1	[735] 14	4.67	37	41.67	166.67
Total Aggregate Burden for All Respondents.	....	....	....	....	....	....	....	166.67

C. Exchange Act Rule 15c6–2

As proposed, Exchange Act Rule 15c6–2 did not create any PRA burdens, so the T+1 Proposing Release did not estimate PRA burdens for the proposed rule. As discussed in Part III.C, the Commission is modifying the proposed rule at adoption to incorporate affirmative recordkeeping obligations, as explained below.

1. Summary and Proposed Use of Information

Rule 15c6–2(a) requires any broker or dealer engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of Rule 15c6–1(a) to either: (1) enter into a written agreement with the relevant parties to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction; or (2) establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.[736]

Pursuant to Rule 15c6–2(b), to ensure completion of the allocation, confirmation, affirmation, or any combination thereof for the transaction as soon as technologically practicable and no later than the end of the day on trade date, written policies and procedures required by paragraph (a)(2) of this section shall: (1) identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction; (2) set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction; (3) describe the procedures that the broker or dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date; (4) describe how the broker or dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation; and (5) measure, monitor, document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.[737]

The purpose of this information collection is to ensure that the parties to institutional transactions—that is, transactions where a broker-dealer or its customer must engage with agents of the customer, including the customer's investment adviser or its securities custodian, to prepare a transaction for settlement—can ensure the completion of the allocation, confirmation, and affirmation process as soon as technologically practicable and no later than the end of the day on trade date.[738] This objective, commonly referred to as "same-day affirmation," has been a longstanding goal of the securities industry and one that can help ensure the timely and orderly settlement of securities transactions.[739]

Rule 15c6–2 provides broker-dealers with two compliance alternatives that would create a recordkeeping burden: (i)

[731] This figure was calculated as follows: (Compliance Attorney for 24 hours + Computer Operations Manager for 10 hours) = 34 hours × 4 respondent CMSPs = 136 hours. In the T+1 Proposing Release, the number of hours for a Compliance Attorney was incorrectly stated as "25 hours" as opposed to "24 hours." *See* T+1 Proposing Release, *supra* note 2, at 10495 n.433. As discussed previously, *supra* note 671, the Commission estimates that the Inline XBRL requirement will require respondent CMSPs to incur three additional ongoing burden hours to apply and review Inline XBRL tags, as follows: (Compliance Attorney for 3 hours) × 4 CMSPs = 12 hours. Taken together, the total ongoing burden is 148 hours (136 hours + 12 hours = 148 hours).

[732] This figure was calculated as follows: (Compliance Attorney at $426/hour × 24 hours = $10,224) + (Computer Operations Manager at $514/hour × 10 hours = $5,140) = $15,364 × 4 CMSPs = $61,456. The Commission also estimates the costs associated with the three burden hours associated with applying and reviewing Inline XBRL tags are as follows: (Compliance Attorney at $426/hour × 3 hours = $1,278) × 4 CMSPs = $5,112. Taken together, the total amount is $65,208 ($60,096 + $5,112 = $65,208).

[733] This figure was calculated as follows: $27,600 (industry one-time burden) + $65,208 (industry ongoing burden) = $92,808.

[734] The T+1 Proposing Release incorrectly stated the amount for the total annual burden per respondent (91 hours) and the total annual industry burden (364 hours) because the initial burden used to calculate those amounts should have been annualized to 18.67 hours. The estimates have been corrected in Table 3 for this adopting release and reflect the PRA estimates that the Commission provided to OMB for this rulemaking.

[735] In the T+1 Proposing Release, Table 2: *Summary of burden estimates for Rule 17Ad–27* erroneously stated the total industry initial burden of 56 hours instead of the initial burden per entity of 14 hours. *See* T+1 Proposing Release, *supra* note 2, at 10496. The remaining entries in the table in this release have been updated accordingly.

[736] 17 CFR 240.15c6–2(a).

[737] 17 CFR 240.15c6–2(b).

[738] *See supra* Part III.

[739] *See id.; see also* T+1 Proposing Release, *supra* note 2, at 10452–53.

entering into written agreements pursuant to Rule 15c6–2(a)(1) or (ii) establishing, maintaining, and enforcing written policies and procedures pursuant to Rule 15c6–2(a)(2). Based on the comments received regarding the costs and challenges associated with entering into such written agreements under the rule, the Commission believes that broker-dealers are unlikely to enter into new written agreements specifically for the purpose of achieving compliance with Rule 15c6–2(a)(1) if they do not already have written agreements to manage their commercial relationships. Moreover, as discussed in Part III.B.5, a broker-dealer may choose to update existing agreements and commercial arrangements to achieve compliance with Rule 15c6–2(a)(1); [740] however, the Commission believes that broker-dealers are likely to choose to comply with the policies and procedures requirement under Rule 15c6–2(a)(2) if the costs and challenges (*i.e.,* for PRA purposes, the associated hour burdens) associated with updating existing agreement or arrangements would be higher than those associated with the policies and procedures requirement. For purposes of preparing this PRA analysis, the Commission assumes that all respondent broker-dealers will seek to achieve compliance with Rule 15c6–2 by establishing, maintaining, and enforcing policies and procedures consistent with Rule 15c6–2(a)(2).[741]

2. Respondents

As of December 31, 2021, 3,508 broker-dealers were registered with the Commission.[742] Of those, approximately 143 broker-dealers are participants of the DTC,[743] a clearing agency registered with the Commission that provides central securities depository services for transactions in U.S. equity securities. Participants in DTC can facilitate the settlement of securities transactions on behalf of their customers. For example, broker-dealers that participate in DTC are often referred to as ''clearing brokers'' within the securities industry. In addition to broker-dealers, DTC participants include bank custodians that may also hold securities on behalf of institutional customers. Among other things, DTC facilitates the settlement of securities transactions using the delivery-versus-payment (''DVP'') and receipt-versus-payment (''RVP'') methods, both of which are commonly used by buyers and sellers to settle an institutional transaction once the parties have completed the allocation, confirmation, and affirmation process. Because DTC is the only clearing agency that provides central securities depository services for U.S. equities, the Commission believes that the set of participants at DTC that are broker-dealers are a useful, if partial, estimate of broker-dealers that participate in the allocation, confirmation, and affirmation process and therefore of broker-dealers that would be subject to the requirements of Rule 15c6–2.

In addition, other broker-dealers may participate in the allocation, confirmation, and affirmation process but, because they do not maintain status as a participant in DTC, rely on commercial relationships with DTC participants (*i.e.,* clearing brokers) to facilitate final settlement of their institutional transactions. Using annual statistics compiled by the Financial Industry Regulatory Authority (''FINRA''), the Commission estimates that approximately 268 additional broker-dealers may serve institutional customers.[744] Accordingly, the Commission estimates that approximately 411 broker-dealers would be subject to the requirements of Rule 15c6–2.

3. Total Initial and Annual Reporting Burdens

The extent to which a respondent will be burdened by the proposed collection of information under Rule 15c6–2 will depend on two factors: (1) the extent to which the broker-dealer determines that its policies and procedures, as opposed to its written agreements, will be required to demonstrate compliance with the rule; and (2) the extent to which existing policies and procedures for ensuring timely settlement would need to be modified to address same-day affirmation. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions,[745] and the securities industry considers achieving ''same-day affirmation'' an industry best practice.[746] Nonetheless, the Commission believes that respondent broker-dealers will need to evaluate existing policies and procedures, identify any gaps, and then update their policies and procedures to address any gaps identified. Accordingly, the Commission estimates that respondent broker-dealers would incur an aggregate one-time burden of approximately 240 hours to create policies and procedures required under the rule,[747] and that the internal cost (or monetized value of the hour burden) of this one-time burden per broker-dealer would be $88,880.[748]

Rule 15c6–2 also imposes ongoing burdens on a respondent broker-dealer as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the rule; and (ii) ongoing documentation activities with respect to its obligations to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date. The Commission estimates that the ongoing activities required by Rule 15c6–2 would impose an aggregate annual burden on respondent broker-dealers of 480 hours,[749] and an internal cost (or monetized value of the hour burden) per broker-dealer of $172,416.[750] The total

[740] The existing requirements of 17 CFR 240.17a–4(b)(7) (''Rule 17a–4(b)(7)'') under the Exchange Act already require a broker or dealer to preserve all written agreements (or copies thereof) entered into by a member, broker or dealer relating to its business as such, including agreements with respect to any account. *See* 17 CFR 240.17a–4(b)(7).

[741] To the extent some broker-dealers choose to update their existing agreements and arrangements to achieve compliance with Rule 15c6–2(a)(1) because the associated costs and challenges (*i.e.,* for PRA purposes, the hour burdens) would be lower than those associated with the policies and procedures requirement, then the actual hour burden for this collection of information requirement in Rule 15c6–2 may be less than the estimated hour burden.

[742] This estimate is derived from FOCUS Report data as of December 31, 2021.

[743] *See* DTCC, DTC Member Directories, *https://www.dtcc.com/client-center/dtc-directories* (last updated Dec. 30, 2022).

[744] Specifically, statistics compiled by FINRA suggest that approximately 256 small firms and 12 medium-sized firms in the ''Trading and Execution'' category perform ''Institutional Brokerage.'' FINRA, 2022 FINRA Industry Snapshot 33, 34 (2022), *https://www.finra.org/sites/default/files/2022-03/2022-industry-snapshot.pdf*.

[745] *See, e.g.,* SIFMA August 26th Letter, *supra* note 207, at 2.

[746] *See* supra Part III.B.1.

[747] This figure was calculated as follows: (Assistant General Counsel for 20 hours + Compliance Attorney for 120 hours + Senior Risk Management Specialist for 20 hours + Risk Management Specialist for 80 hours) = 240 hours × 411 respondents = 98,640 hours.

[748] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 20 hours = $10,860) + (Compliance Attorney at $426/hour × 120 hours = $51,120) + (Senior Risk Management Specialist at $417/hour × 20 hours = $8,340) + (Risk Management Specialist at $232/hour × 80 hours = $18,560) = $88,880 × 411 respondents = $36,529,680.

[749] This figure was calculated as follows: (Assistant General Counsel for 48 hours + Compliance Attorney for 192 hours + Senior Risk Management Specialist for 48 hours + Risk Management Specialist for 192 hours) = 480 hours × 411 respondents = 197,280 hours.

[750] This figure was calculated as follows: (Assistant General Counsel at $543/hour × 48 hours = $26,064) + (Compliance Attorney at $426/hour × 192 hours = $81,792) + (Senior Risk Management Specialist at $417/hour × 48 hours = $20,016) + (Risk Management Specialist at $232/hour × 192 hours = $44,544) = $172,416 × 411 respondents = $70,862,976.

industry internal cost is estimated to be approximately $107M.[751]

TABLE 4—SUMMARY OF BURDEN ESTIMATES FOR RULE 15c6–2

Name of information collection	Type of burden	Number of respondents	Number of annual responses per respondent	Initial burden per respondent (hours)	Annualized initial burden per respondent	Ongoing burden per respondent (hours)	Total annual burden per respondent (hours)	Total annual industry burden (hours)
15c6–2	Recordkeeping	411	1	240	80	480	560	230,160
Total Aggregate Burden for All Respondents.								230,160

4. Collection of Information Is Mandatory

Where applicable, the collection of information pursuant to Rule 15c6–2 is mandatory.

5. Confidentiality

Where the Commission requests that a broker-dealer produce records retained pursuant to the requirements of Rule 15c6–2, a broker-dealer can request confidential treatment of the information.[752] If such confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.[753]

6. Retention Period

Pursuant to Exchange Act Rule 17a–4(b)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must preserve for a period of not less than three years, the first two years in an easily accessible place, all written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.[754]

Pursuant to 17 CFR 240.17a–4(e)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.[755]

X. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[756] Section 603(a) of the Administrative Procedure Act,[757] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on ''small entities.''[758] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[759] An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in conjunction with the T+1 Proposing Release, published in February 2022. The T+1 Proposing Release included, and solicited comment on, the IRFA.

A. Exchange Act Rules 15c6–1 and 15c6–2

Below is the Final Regulatory Flexibility Analysis for the amendments to Rule 15c6–1 and new Rule 15c6–2, prepared in accordance with the RFA.

1. Need for the Rules

The Commission is adopting the amendments to Rule 15c6–1 to shorten the standard settlement cycle from two days to one day, offering market participants benefits that include reduced exposure to credit, market, and liquidity risk, as well as related reductions to overall systemic risk. These benefits have been previously discussed in detail in Parts II and VIII above.

The Commission is adopting Rule 15c6–2 to establish requirements that facilitate the completion of allocations, confirmations, and affirmations by the end of the trade date, helping to facilitate the settlement of institutional transactions in a T+1 or shorter standard settlement cycle by promoting the timely and orderly transmission of trade data necessary to achieve settlement. In addition, Rule 15c6–2 can foster continued improvements in institutional trade processing, which should in turn also further promote accuracy and efficiency, reduce the potential for settlement fails, and more generally, reduce the potential for operational risk. These benefits have been previously discussed in detail in Parts III and VIII above.

The amendments to Rule 15c6–1 and new Rule 15c6–2 each advance the objectives of section 15(c)(6), 17A, and 23(a) of the Exchange Act.[760]

2. Summary of Significant Issues Raised by Public Comment

As noted above in Part X.A, the T+1 Proposing Release solicited comment on the IRFA. Although the Commission received no comments specifically concerning the IRFA, multiple commenters discussed the costs and burdens for broker-dealers associated with Rules 15c6–1 and 15c6–2. These comments have been discussed in detail in Parts II and III, and the Commission has modified the proposed rules at adoption to address these comments and, in part, to minimize the effect on small entities, as discussed further in Part X.A.5 below.

[751] This figure was calculated as follows: $36,529,680 (industry one-time burden) + $70,862,976 (industry ongoing burden) = $107,392,656.

[752] *See* 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available on the Commission's website at *http://www.sec.gov/foia/howfo2.htm#privacy.*

[753] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[754] 17 CFR 240.17a–4(b)(7).

[755] 17 CFR 240.17a–4(e)(7).

[756] *See* 5 U.S.C. 601 *et seq.*

[757] 5 U.S.C. 603(a).

[758] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' *See* 5 U.S.C. 601(b). The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this rulemaking, are set forth in 17 CFR 240.0–10.

[759] *See* 5 U.S.C. 605(b).

[760] *See* 15 U.S.C. 78*o*(c)(6); 15 U.S.C. 78q–1; 15 U.S.C. 78w(a).

3. Description and Estimate of Small Entities

Paragraph (c) of Rule 0–10 under the Exchange Act provides that, for purposes of Commission rulemaking in accordance with the provisions of the RFA, when used with reference to a broker or dealer, the Commission has defined the term ''small entity'' to mean a broker or dealer: (1) with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[761] or if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[762]

The amendments to Rule 15c6–1 and new Rule 15c6–2 each establish requirements that apply to broker-dealers, including those that are small entities. Based on FOCUS Report data, the Commission estimates that, as of June 30, 2022, approximately 1,393 broker-dealers might be deemed small entities for purposes of this analysis.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to Rule 15c6–1 do not impose any new reporting or recordkeeping requirements on broker-dealers that are small entities. However, the amendments to Rule 15c6–1 may impact certain broker-dealers, including those that are small entities, to the extent that broker-dealers may need to make changes to their business operations and incur certain costs in order to operate in a T+1 environment.

For example, implementing a T+1 standard settlement cycle may require broker-dealers, including those that are small entities, to make changes to their business practices, as well as to their computer systems, and/or to deploy new technology solutions. Implementation of these changes may require broker-dealers to incur new or increased costs, which may vary based on the business model of individual broker-dealers as well as other factors.[763]

Additionally, implementing a T+1 standard settlement cycle may result in an increase in costs to certain broker-dealers who finance the purchase of customer securities until the broker-dealer receives payment from its customers. To pay for securities purchases, many customers liquidate other securities or money fund balances held for them by their broker-dealers in consolidated accounts such as cash management accounts. However, some broker-dealers may elect to finance the purchase of customer securities until the broker-dealer receives payment from its customers for those customers that do not choose to liquidate other securities or have a sufficient money fund balance prior to trade execution to pay for securities purchases. Broker-dealers that elect to finance the purchase of customer securities may incur an increase in costs in a T+1 environment resulting from settlement occurring one day earlier unless the broker-dealer can expedite customer payments.

Comments directed to the burdens and costs associated with Rule 15c6–1 have been discussed in Part II.

As modified at adoption and as previously discussed in detail in Part III, Rule 15c6–2 imposes recordkeeping requirements on broker-dealers that are small entities because it includes a requirement to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion on trade of trade allocations, confirmations, and affirmations for their institutional trades. In addition, the rule may impact certain broker-dealers, including those that are small entities, to the extent that broker-dealers may need to make changes to their business operations and incur certain costs in order to implement such policies and procedures. These efforts may require broker-dealers, including those that are small entities, to make changes to their business practices, as well as to their computer systems, and/or to deploy new technology solutions. Implementation of these changes may require broker-dealers to incur new or increased costs, which may vary based on the business model of individual broker-dealers as well as other factors.

Comments directed to the burdens and costs associated with Rule 15c6–2 have been discussed in Part III.

5. Description of Commission Actions To Minimize Effect on Small Entities

As discussed in the IRFA, the Commission considered alternatives to the amendments to Rule 15c6–1 that would accomplish the stated objectives of the amendment without disproportionately burdening broker-dealers that are small entities, including: differing compliance requirements or timetables; clarifying, consolidating, or simplifying the compliance requirements; using performance rather than design standards; or providing an exemption for certain or all broker-dealers that are small entities. The purpose of Rule 15c6–1 is to establish a standard settlement cycle for broker-dealer transactions. Alternatives, such as different compliance requirements or timetables, or exemptions, for Rule 15c6–1, or any part thereof, for small entities would undermine the purpose of establishing a standard settlement cycle. For example, allowing small entities to settle at a time later than T+1 could create a two-tiered market that could work to the detriment of small entities whose order flow would not coincide with that of other firms operating on a T+1 settlement cycle. Additionally, the Commission believes that establishing a single timetable (*i.e.,* compliance date) for all broker-dealers, including small entities, to comply with the amendment is necessary to ensure that the transition to a T+1 standard settlement cycle takes place in an orderly manner that minimizes undue disruptions in the securities markets.[764] With respect to using performance rather than design standards, the Commission used performance standards to the extent appropriate under the statute.[765] In addition, under the amendment, broker-dealers have the flexibility to tailor their systems and processes, and generally to choose how, to comply with the rule.

The Commission also considered alternatives to Rule 15c6–2 and, in response to the comments received, has modified the rule at adoption to provide a policies and procedures alternative, as requested by the commenters, to reduce the burden and cost of the rule and to provide greater flexibility to broker-dealers to tailor their systems and

[761] 17 CFR 240.17a–5(c).

[762] 17 CFR 240.0–10(d).

[763] *See supra* Part VIII.C.2 (further discussing how large customers of third-party providers have market power that may enable them to avoid internalizing costs, while small customers in a weaker negotiating position relative to their service providers may bear the bulk of these costs).

[764] For example, because broker-dealers do not always know the identity of their counterparty when they enter a transaction, providing broker-dealers that are small entities with an exemption from the standard settlement cycle would likely create substantial confusion over when a transaction will settle.

[765] For example, for firm commitment offerings, the Commission modified the proposed rule at adoption to incorporate a T+2 rather than a T+1 standard, as discussed above in Part II.C.4. More generally, small entities retain the option under paragraph (d) to agree with their counterparty in advance of a transaction subject to Rule 15c6–1(a) to use a settlement cycle other than T+1. *See supra* Part II.C.5.

processes, and generally to choose how, to comply with the rule. The modifications to the rule made in response to the comments received have been discussed in detail in Part III.C.

B. Amendment to Advisers Act Rule 204–2

The Commission has prepared the following Final Regulatory Flexibility Analysis (''FRFA'') in accordance with section 4(a) of the RFA relating to the final amendments to Rule 204–2 under the Advisers Act.

1. Need for the Rule Amendment

As discussed above, we are adopting amendments to 17 CFR 275.206(4)–2 (''Rule 206(4)–2'') to require all registered investment advisers to make and keep certain records for any transaction that is subject to the requirements of Rule 15c6–2(a). Those records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received. The reasons for, and objectives of, the final amendments are discussed in more detail in Parts I and IV above. The burdens of these requirements on small advisers are discussed in Parts VIII and IX, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens are also discussed in Part IX.

2. Summary of Significant Issues Raised by Public Comment

In developing our approach to Rule 204–2, we considered the potential impact on small entities that would be subject to the final amendments. In the 2022 Proposing Release, we requested comment on the matters discussed in the IRFA, including the proposed amendments to Rule 204–2, as well as the potential impacts discussed in this analysis, and whether the proposal could have an effect on small entities that has not been considered. One commenter, concerned that the Commission had underestimated the time and cost burdens for implementing the proposed recordkeeping requirements, observed that if investment advisers that currently rely on third parties to meet their recordkeeping obligations were no longer be able to do so, and would instead have to obtain and maintain such records on an ongoing basis, advisers, ''especially smaller and mid-sized investment advisers,'' would incur costs to update their infrastructure to obtain and maintain the proposed trading records.[766] This commenter recommended that the Commission update its estimates, and specifically requested ''that the Commission review the potential cost savings from allowing investment advisers to utilize third parties to maintain required records under the Proposal.'' [767]

As discussed above, advisers may continue to rely on third parties to comply with their recordkeeping obligations, consistent with current practice, and we do not believe that the final amendments to Rule 204–2 will require most advisers to make significant changes to their current recordkeeping practices. We recognize that the amendments to final Rule 204–2 will require registered investment advisers to make and keep records of confirmations received, and any allocations and each affirmation sent or received for securities transactions that are subject to the requirements of Rule 15c6–2(a). Some advisers—including small advisers—may need to update their processes to retain and date stamp the specified records. After consideration of the comments received, we are revising our estimates to increase the number of small entities affected by the new rule and amendments, update the estimated wage rates, and increase the hourly burdens associated with the amendments to Rule 204–2.

3. Description and Estimate of Small Entities

The final amendments will affect certain investment advisers registered with the Commission, including some small entities. Under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[768]

As discussed in Part IX.A, the Commission estimates that as of June 2022, 12,991 registered investment advisers will be subject to the final amendments to Rule 204–2 under the Advisers Act. Based on IARD data, we estimate that, as of June 2022, approximately 522 SEC-registered advisers are small entities (''small advisers'').[769] Of these, the Commission anticipates that 33, or 6% of small advisers registered with the Commission, would be subject to the final amendment under the Advisers Act.[770]

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final amendments to Rule 204–2 will require all registered investment advisers to maintain make and keep certain records with respect to any securities transaction that is subject to the requirements of Rule 15c6–2(a). These records include each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation were sent or received. Each of these records will be required to be kept in the same manner, and for the same period of time, as other books and records required to be kept under Rule 204–2(a).[771] The PRA for Rule 204–2 discusses the type of professional skills necessary to conduct such activities. The Commission believes that no Federal rules duplicate, overlap or conflict with the final amendments to Rule 204–2. As discussed above, there are approximately 33 small advisers currently registered with us that we believe will impacted by the rule. As discussed in our Paperwork Reduction Act Analysis, the amendments to Rule

[766] IAA April Letter, *supra* note 16, at 7.

[767] *Id.*

[768] Advisers Act Rule 0–7(a).

[769] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV as of June 2022, incorporating Form ADV filings received through IARD through August 31, 2022. Only SEC-registered investment advisers with regulatory assets under management (''RAUM'') of less than $25 million, as indicated in Form ADV Item 5.F.(2)(c) are required to respond to Form ADV Item 12. For purposes of this analysis, a registered investment adviser is classified as a ''small business'' or ''small organization'' if they respond ''No'' to Form ADV Item 12.A., 12.B.(1), 12.B.(2), 12.C.(1), and 12.C.(2). These responses indicate that the registered investment adviser had RAUM of less than $25 million, did not have total assets of $5 million or more on the last day of the most recent fiscal year; and does not control, is not controlled by, and is not under common control with another investment adviser that has RAUM of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year, consistent with the definition of a small entity under the Advisers Act for purposes of the RFA.

[770] Based on data from Form ADV as of June 2022. This figure represents small registered investment advisers that: (i) report clients that are only individuals or high net worth individuals in response to Item 5.D, and (ii) do not report participating in wrap fee programs in response to Item 5.I, and (iii) have regulatory assets under management greater than zero in response to Item 5.D.

[771] *See, e.g.,* Advisers Act Rule 204–2(e)–(g).

204–2 under the Advisers Act will increase the annual burden by approximately three hours per adviser, or 99 incremental aggregate hours for small advisers. We therefore believe the annual monetized aggregate cost to small advisers associated with our amendments will be 7,673.[772]

5. Description of Commission Actions To Minimize Effect on Small Entities

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. The Commission considered alternatives to the final amendments to Rule 204–2 that would accomplish the stated objectives without disproportionately burdening investment advisers that are small entities, including: (1) differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating or simplifying the compliance and reporting requirements; (3) using performance rather than design standards; or (4) providing an exemption from coverage of all or part of the final rule amendments for investment advisers that are small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance, recordkeeping, or reporting requirements or timetables for small advisers, or exempting small advisers from the amended rule, or any part thereof, would be inappropriate under these circumstances. The protections of the Advisers Act are intended to apply equally to clients of both large and small firms and small entities currently follow the same requirements that large entities do when making and keeping books and records; therefore, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the final amendments to Rule 204–2. While the Commission estimates that 33 small advisers will incur costs to comply with the amendments, the Commission believes that the initial burden on small advisers of retaining the required records will not be large. As discussed above, the Commission believes that many advisers, including small advisers, already have processes in place to retain records of confirmations received, and allocations and affirmations sent and received as part of their customary and usual business practices, though some advisers do not currently retain these records and some still maintain certain records in paper and/or communicate by telephone. The Commission also believes many such records are electronically maintained, and are sent or received electronically, in which case such documents are already date and time stamped in many instances. As a result, the Commission does not believe the two hour additional burden of complying with the final amendments would warrant establishing a different timetable for compliance for small advisers. In addition, as discussed above, our staff would use the information that advisers would maintain to help prepare for examinations of investment advisers and verify that an adviser has completed the steps necessary to complete settlement in a timely manner in accordance with final Rule 15c6–1(a). Establishing different conditions for large and small advisers would negate these benefits.

Similarly, we do not believe it would be appropriate to exempt small advisers from the final amendments. We believe that 33 small advisers will be subject to amended Rule 204–2 and thus make and keep records of each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation were sent or received. This approach is designed to support the Commission's policy objectives in achieving same-day affirmation by helping to ensure that trades with advisers timely settle on T+1. In addition, this requirement will help advisers research and remediate issues that may cause delays in the issuance of allocations and affirmations and improve their timeliness overall. Requiring these records also will help advisers establish that they have timely met contractual obligations, if applicable, or any requirements broker-dealers impose in light of their compliance obligations under final Rule 15c6–2(a).

Regarding the second alternative, the Commission believes the final amendments are clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. Amended Rule 204–2 states the types of communications—confirmations, any allocations, and affirmations—that advisers must retain in their records, and that each allocation and affirmation must be date and time stamped. We believe that by clearly listing these types of communications as required records, advisers will not need to parse whether, and if so which, current requirement under Rule 204–2 captures these post-trade communications. Further, the requirement to date and time stamp each allocation and affirmation sent to a broker or dealer is clear and consistent with many advisers' current practices of date and time stamping these records.

Regarding the third alternative, the final amendments to Rule 204–2 use a combination of performance and design standards. The final Rule 204–2 amendments are narrowly tailored to correspond to the final rules and rule amendments under the Exchange Act. Although the amendments provide some flexibility to advisers in such practices as date- and time-stamping, we generally find that it is more useful to our regulatory and examination program, and therefore for our ability to protect investors, for advisers to retain books and records in a uniform and quantifiable manner.

C. Exchange Act Rule 17Ad–27

Exchange Act Rule 17Ad–27 applies to clearing agencies that are CMSPs. For the purposes of Commission rulemaking, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year, (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[773]

As discussed in the T+1 Proposing Release, and based on the Commission's existing information about the CMSPs that would be subject to Rule 17Ad–27, the Commission continues to believe that all such CMSPs would not fall within the definition of a small entity described above.[774] While other CMSPs may emerge and seek to register as clearing agencies or obtain exemptions from registration as a clearing agency with the Commission, the Commission does not believe that any such entities would be ''small entities'' as defined in 17 CFR 240.0–10(d). Accordingly, the Commission believes that any such CMSP would exceed the thresholds for

[772] Calculated as follows: (3 hours × 33 small advisers) × $77.5 per burden hour = $7,673.

[773] *See* 17 CFR 240.0–10(d).

[774] DTCC ITP Matching is a subsidiary of DTCC, and in 2020, DTCC processed $2.329 quadrillion in financial transactions. DTCC, 2020 Annual Report. As of December 1, 2021, SS&C Technologies Holdings, Inc. (NASDAQ: SSNC) had a market capitalization of $19.35 billion. Bloomberg STP LLC is a wholly-owned by Bloomberg L.P., a global business and financial information and news company.

''small entities'' set forth in in 17 CFR 240.0–10.

The Commission received no comments regarding its analysis for Rule 17Ad–27 in the T+1 Proposing Release. For the reasons described above, the Commission certifies that Rule 17Ad–27 will not have a significant economic impact on a substantial number of small entities.

XI. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[775] the Office of Information and Regulatory Affairs has designated these rules as a ''major rule,'' as defined by 5 U.S.C. 804(2).

Statutory Authority

The Commission is adopting amendments to Regulation S–T and Rule 15c6–1 and adopting new Rules 15c6–2 and 17Ad–27 under the Commission's rulemaking authority set forth in sections 15(c)(6), 17A, 23(a), and 35A of the Exchange Act [15 U.S.C. 78o(c)(6), 78q–1, 78w(a), and 78*ll*, respectively]. The Commission is adopting amendments to Rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b–4 and 80b–11].

List of Subjects in 17 CFR Parts 232, 240, and 275

Reporting and recordkeeping requirements, Securities.

Text of Amendment

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 232.101 by:

■ a. Removing the word ''and'' at the end of paragraph (a)(1)(xxix);

■ b. Removing the period at the end of paragraph (a)(1)(xxx) and adding ''; and'' in its place; and

■ c. Adding paragraph (a)(1)(xxxi).

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xxxi) Reports filed pursuant to § 240.17Ad–27 of this chapter (Rule 17Ad–27 under the Exchange Act).

* * * * *

■ 3. Amend § 232.405 by:

■ a. Revising the introductory text and paragraphs (a)(2), (a)(3)(i) introductory text, (a)(3)(ii), (a)(4), and (b)(1) introductory text;

■ b. Adding paragraph (b)(5); and

■ c. Revising Note 1 to § 232.405.

The addition and revisions read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of Form 11–K (§ 249.311), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), § 240.17Ad–27(d) of this chapter (Rule 17Ad–27(d) under the Exchange Act), Note D.5 of § 240.14a–101 of this chapter (Rule 14a–101 under the Exchange Act), Item 1 of § 240.14c–101 of this chapter (Rule 14c–101 under the Exchange Act), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by Item 601(b)(101) of Regulation S–K, General Instruction F of Form 11–K (§ 249.311), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Rule 17Ad–27(d) under the Exchange Act, Note D.5 of Rule 14a–101 under the Exchange Act, Item 1 of Rule 14c–101 under the Exchange Act, General Instruction C.3.(g) of Form N1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

(3) * * *

(i) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a separate account as defined in section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a clearing agency that provides a central matching service, and is not within one of the categories specified in paragraph (f)(1)(i) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to:

* * * * *

(ii) If the electronic filer is a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a separate account (as defined in section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, or a business development company as

[775] 5 U.S.C. 801 *et seq.*

defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a clearing agency that provides a central matching service, and is not within one of the categories specified in paragraph (f)(1)(ii) of this section, as partly embedded into a filing with the remainder simultaneously submitted as an exhibit to a filing that contains the disclosure this section requires to be tagged; and

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K, General Instruction F of Form 11–K (§ 249.311 of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Rule 17Ad–27(d) under the Exchange Act, Note D.5 of Rule 14a–101 under the Exchange Act, Item 1 of Rule 14c–101 under the Exchange Act, General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter); or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter).

(b) * * *

(1) If the electronic filer is not a management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), or a separate account (as defined in section 2(a)(14) of the Securities Act (15 U.S.C. 77b(a)(14)) registered under the Investment Company Act of 1940, or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), or a clearing agency that provides a central matching service, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

* * * * *

(5) If the electronic filer is a clearing agency that provides a central matching service, an Interactive Data File must consist only of a complete set of information for all corresponding data in the Related Official Filing, no more and no less, as follows:

(i) The information provided pursuant to Rule 17Ad–27 under the Exchange Act.

(ii) [Reserved]

* * * * *

Note 1 to § 232.405: Item 601(b)(101) of Regulation S–K specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 239.11 (Form S–1), 239.13 (Form S–3), 239.25 (Form S–4),239.18 (Form S–11), 239.31 (Form F–1), 239.33 (Form F–3), 239.34 (Form F–4), 249.310 (Form 10–K), 249.308a (Form 10–Q), and 249.308 of this chapter (Form 8–K). General Instruction F of Form 11–K (§ 249.311 of this chapter) specifies the circumstances under which an Interactive Data File must be submitted, and the circumstances under which it is permitted to be submitted, with respect to Form 11–K. Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter) and Paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to §§ 249.240f (Form 40–F) and 249.306 of this chapter (Form 6–K). Rule 17Ad–27(d) under the Exchange Act specifies the circumstances under which an Interactive Data File must be submitted with respect the reports required under Rule 17Ad–27. Note D.5 of Schedule 14A (§ 240.14a–101 of this chapter) and Item 1 of Schedule 14C (§ 240.14c–101 of this chapter) specify the circumstances under which an Interactive Data File must be submitted with respect to Schedules 14A and 14C. Item 601(b)(101) of Regulation S–K, paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a2(a)(48)), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 4. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5,78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 5. Revise § 240.15c6–1 to read as follows:

§ 240.15c6–1 Settlement cycle.

(a) Except as provided in paragraphs (b), (c), 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, 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.

(b) Paragraph (a) of this section shall not apply to:

(1) Contracts for the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) Security-based swaps; or

(3) Contracts for the purchase or sale of securities that the Commission may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of this section, either

unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern Time (ET) on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 or sold to an initial purchaser by a broker-dealer participating in such offering provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to such date for all securities sold pursuant to such offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

■ 6. Add § 240.15c6–2 to read as follows:

§ 240.15c6–2 Same-day allocation, confirmation, and affirmation.

(a) Any broker or dealer engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of § 240.15c6–1(a) shall:

(1) Enter into a written agreement with the relevant parties to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction; or

(2) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.

(b) To ensure completion of the allocation, confirmation, affirmation, or any combination thereof for the transaction as soon as technologically practicable and no later than the end of the day on trade date, the reasonably designed written policies and procedures required by paragraph (a)(2) of this section shall:

(1) Identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction;

(2) Set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction;

(3) Describe the procedures that the broker or dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date;

(4) Describe how the broker or dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation; and

(5) Measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

■ 7. Add § 240.17Ad–27 to read as follows:

§ 240.17Ad–27 Straight-through processing by clearing agencies that provide a central matching service.

(a) A clearing agency that provides a central matching service must establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate straight-through processing of securities transactions at the clearing agency.

(b) A clearing agency that provides a central matching service must submit to the Commission every twelve months a report that includes the following:

(1) A summary of the clearing agency's policies and procedures required under paragraph (a) of this section, current as of the last day of the twelve-month period covered by the report required under paragraph (b) of this section;

(2) A qualitative description of the clearing agency's progress in facilitating straight-through processing during the twelve-month period covered by the report required under paragraph (b) of this section;

(3) A quantitative presentation of data that includes:

(i) The total number of trades submitted to the clearing agency for processing;

(ii) The total number of allocations submitted to the clearing agency;

(iii) The total number of confirmations submitted to the clearing agency, as well as the total number of confirmations cancelled by a user;

(iv) The percentage of confirmations submitted to the clearing agency that are affirmed on trade date, specifying to the extent practicable the relevant timeframe in which the affirmation is processed on trade date;

(v) The percentage of allocations and confirmations submitted to the clearing agency that are matched and automatically confirmed through the clearing agency's services; and

(vi) Metrics concerning the use of manual and automated processes by the clearing agency's users with respect to its services that may be used to assess progress in facilitating straight-through processing.

(4) Each of the data sets required under paragraph (b)(3) of this section shall be:

(i) Organized on a month-by-month basis, beginning with January of each year, for the twelve months covered by the report required under paragraph (b) of this section;

(ii) Separated, where applicable, between the use of central matching and electronic trade confirmation services offered by the clearing agency;

(iii) Separated, as appropriate, by asset class;

(iv) Separated by type of user; and

(v) Presented on an anonymized and aggregated basis.

(5) A qualitative description of the actions the clearing agency intends to take to further facilitate straight-through processing of securities transactions at the clearing agency during the twelve-month period that follows the period covered by the report required under paragraph (b) of this section.

(c) Each report required under paragraph (b) of this section must be filed within 60 days of the end of the twelve-month period covered by the report required under paragraph (b) of this section, and the twelve-month period covered by each report shall commence on January 1 of the calendar year.

(d) The report required under paragraph (b) of this section must be filed electronically on EDGAR and must be provided in an Interactive Data File in accordance with § 232.405 of this chapter (Rule 405 of Regulation S–T) and the EDGAR Filer Manual.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 8. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

■ 9. Amend § 275.204–2 by revising paragraph (a)(7)(iii) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(7) * * *

(iii) The placing or execution of any order to purchase or sell any security; and, for any transaction that is subject to the requirements of § 240.15c6–2(a) of this chapter, each confirmation received, and any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received;

* * * * *

By the Commission.

Dated: February 15, 2023.

Vanessa A. Countryman,

Secretary.

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