



Securities Industry Association

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November 10, 2004

Robert L.D. Colby
Deputy Director
Division of Market Regulation
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: SEC Concept Release: Securities Transactions Settlement

Dear Mr. Colby:

The Securities Industry Association (“SIA”)¹ appreciated the opportunity to comment last June on the Securities and Exchange Commission (“SEC” or “Commission”) Concept Release on methods to improve the safety and operational efficiency of the U.S. clearance and settlement system and to help the U.S. securities industry achieve straight-through processing (“STP”) (the “Concept Release”).² We applaud the SEC staff for its efforts in addressing a very difficult, complex issue for the U.S. securities industry.

We have since had the opportunity to review the comments submitted on this release, and wish to note that we are encouraged by the uniformity of comments in most areas. In this regard, we thought it would be productive to convey our understanding of the outstanding STP issues, and to note that we are continuing to move forward on these issues. If you would like to meet with the industry on any of these issues, we of course would welcome the opportunity to discuss these important matters with you further.

¹The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs 790,600 individuals. Industry personnel manage the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated \$213 billion in domestic revenue and an estimated \$283 billion in global revenues. (More information about SIA is available on its home page: www.sia.com.)

² Securities and Exchange Commission Release Nos. 33-8398; 34-49405; IC-26384, March 11, 2004, 69 FR 12922. The SIA's comment letter was filed with the Commission on June 16, 2004, and can be found at: http://www.sia.com/2004_comment_letters/1631.pdf.

As you know, the Concept Release focused on three areas: changes to the confirmation/affirmation process, benefits to the industry of shortening the settlement cycle, and the immobilization and dematerialization of securities certificates. In its comment letter, the SIA stated that it:

- Supports same-day affirmation/matching and believes this should be implemented in phases, but further believes it will not be accomplished without a Commission rule (recognizing, too, that the Commission would have to work to harmonize all regulations, particularly those applicable to the buy-side community, to ensure that all market participants are held accountable for compliance);
- Believes the focus should be on the goal of same-day affirmation/matching and not on the means, *i.e.*, we do not believe that use of a central matching utility should be required;
- Believes the focus should be on achieving STP, *i.e.*, we do not support shortening the settlement cycle at this time;³
- Recommends that the Commission revisit the existing requirement for delivery of a final prospectus prior to or simultaneously with the confirmation, which would accommodate settlement of offerings in a T+3 environment but, more importantly, would be one of several necessary prerequisites to any further shortening of the settlement cycle; and
- Believes the Commission should support the industry's efforts to promote dematerialization of physical certificates as the ultimate goal; immobilization should continue to be pursued but only as a stepping-stone towards complete dematerialization.⁴

We read with interest the 50 plus other comment letters filed on the SEC Concept Release and, as mentioned above, are encouraged by the number of areas where there appeared to be agreement. Specifically, we thought that there appeared to be agreement on these points:

³ We believe most of the benefits of a shorter settlement cycle can be realized with implementation of STP. Therefore, we urge the Commission to work with the industry to facilitate STP and consider shortening the settlement cycle only when same-day affirmation/matching, elimination of physical certificates, and other STP milestones have been achieved.

⁴ As cited in our original comment letter, we believe that DRS, along with the Networking for Equities feature, provide the basis for complete immobilization and dematerialization. As such, we have been working with the exchanges to change their listing requirements to include DRS eligibility.

- While T+1 settlement may be a realistic goal for the industry in the future, now is not the time to pursue it. The common belief was that the majority of STP goals must first be in place before a T+1 business case could be considered a realistic goal.
- Respondents advocated trade date affirmation of institutional trades, but not restricting the means to accomplish this goal. Centralized matching, the use of FIX protocol messages, and other means of electronic allocations should be deemed acceptable.
- It is time to dematerialize physical stock certificates.

On the other hand, we note that there appeared to be less agreement in the following areas:

- The use of a regulatory mandate to achieve trade date affirmation.
- The existence of an option to obtain physical certificates for those investors who want them.

SIA is presently engaged in several ongoing STP projects. One such project involves re-evaluating the current institutional trade process with senior operations personnel, and prioritizing the work that is still needed in this area. Most likely, our initial efforts will focus on the development of a phased-in approach to trade date affirmation of institutional trades. We anticipate completing the re-evaluation of this process in the first quarter of 2005, and then would be interested in sharing the results of our efforts with you and, if appropriate, discussing any possible rule changes that may be necessary.

Another ongoing SIA project is to encourage the elimination of physical certificates through several channels: increased investor education regarding the risks and inconveniences of holding physical certificates; meetings with self-regulatory organizations to encourage changes to their listing requirements; possible joint efforts with AARP and certain sections of the American Bar Association, American Bankers Association, the American College of Estates and Trusts Councils, and the National Conference of Attorneys with Corporate Fiduciaries; and efforts directed at the remaining states that still require or allow for the provision of an option for investors to obtain physical certificates.

As you are aware, SIA's STP initiative includes and also extends beyond the areas addressed in the Concept Release. An example of one of our other STP projects is our focus on ways in which to improve the processing of corporate actions matters. We have had productive discussions with SEC staff on this issue, and also are working with the Special Committee on Mergers, Acquisitions and Corporate Control Contests of The Bar

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of the City of New York on the development of a standard data element protocol for different types of corporate actions matters. The dual objectives of this effort are to facilitate seamless processing of corporate actions matters while providing public shareholders with relevant information in a clear, concise and consistent manner. As the work progresses in this area, certain aspects of the implementation process may require some modifications to existing regulations, and we look forward to working with the SEC to effectuate such modifications.

SIA has been working diligently on the STP initiative for several years. To date, we have made progress on a majority of our STP goals. This initiative has been a formidable undertaking, consisting of a series of discrete but interrelated automation projects requiring a concerted effort by all market participants — regulators, exchanges, clearing corporations, depositories, securities firms, banks, institutional asset managers, vendors, and transfer agents. Overall, we believe that STP will provide benefits to investors and the industry through risk reduction, streamlined and efficient processing, improved functionality and service, greater capacity, and cost efficiencies.

We therefore look forward to continuing to work on achieving STP and, as mentioned earlier, would welcome an opportunity to meet with you on these issues should you find it beneficial. In this regard, you may contact the undersigned or John Panchery, Vice President and Managing Director, at 212-608-1500. We appreciate your time and consideration of these important matters.

Sincerely,

Donald D. Kittell
Executive Vice President

cc: Larry Bergmann, SEC
Jeffrey Mooney, SEC
John Panchery, SIA
Tom Tierney, SIA
Michael Udoff, SIA
Ann Vlcek, SIA
Larry Morillo, Pershing