August 3, 2022

Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549

Re: E-Delivery in a T+1 Environment

Dear Chair Gensler,

SIFMA[1] believes the pending acceleration of the securities settlement cycle heightens the need for the Securities and Exchange Commission ("Commission" or "SEC") to modernize its rules to make e-delivery the default mechanism for transmitting investor communications and disclosures.[2] As highlighted in SIFMA's T+1 comment letter, the shortened timeframe for sending confirmations, prospectuses, and disclosures to clients may require the use of e-delivery instead of postal mail to meet the proposed delivery timeframes to comply with Rule 15c6-1 under the Securities Exchange Act of 1934 ("Exchange Act") and related rules.[3] When receiving e-delivery, retail investors have quicker access to trade details and may identify errors much sooner than for paper delivery. E-delivery is also more secure and environmentally friendly than paper.

Further, as detailed in our letter dated July 18, 2022, a recent survey commissioned by SIFMA demonstrates investor support for making e-delivery the default mechanism for investor communications including confirmations and prospectuses.[4] Approximately 85% of individual

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[1] The Securities Industry and Financial Markets Association (SIFMA) is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.
[2] *See* Shortening the Securities Transaction Settlement Cycle, Exchange Act Release No. 94196 (Feb. 9, 2022) (the "Proposal").
[3] *See* letter to Vanessa Countryman from Thomas Price and Lindsey Keljo, SIFMA, April 13, 2022 (available at https://www.sifma.org/wp-content/uploads/2022/04/SIFMA-T1-Comment-Letter-Final-04.13.2022-1.pdf).
[4] *See* letter to Chair Gary Gensler from Kenneth E. Bentsen, Jr., SIFMA, July 18, 2022 (available at https://www.sifma.org/resources/submissions/e-delivery-investor-survey-results/).

investors regardless of age or income-level are comfortable with making e-delivery the default so long as there remains an option to opt-in to paper delivery. The survey results also demonstrate that investors still have challenges in signing up for e-delivery because 42% say they still receive paper documents of some kind but want all communications to be delivered electronically. The Commission can greatly reduce the ongoing burden on firms and investors by making e-delivery the default for all investor communications.

In a T+1 environment, firms will have increasingly challenging compliance obligations while timelines will be further compressed. Without a default to e-delivery, many firms may have difficulty complying with investor communication rules particularly Exchange Act Rule 10b-10 which governs the delivery of confirmations to customers.[5]

Under Rule 10b-10, broker-dealers must send customers a written confirmation "at or before the completion of a transaction," or, in other words, prior to settlement.[6] Broker-dealers have had challenges at times with meeting the 10b-10 requirements under T+2 particularly for postal delivery such as in March 2020 when the Covid-19 pandemic began. At that time, several large printing vendors were severely impacted leaving firms with few options to send investor documents. Mail service issues further complicated matters. Now the proposed compressed settlement timeline will leave broker-dealers with even less time to correct even minor delivery issues, but these issues will be further compounded for printing and mailing confirmations. Moreover, paper confirmations in a T+1 environment will be less practical as confirmations may not reach customers for five or more days after settlement and, therefore, making the confirmation less pertinent and will inevitably lead to an additional delay in customers notifying firms of any discrepancies on the confirmations.

As a result, SIFMA requests that the Commission expressly allow broker-dealers to adopt e-delivery as the default option for confirmations under Rule 10b-10. In the Proposal, the Commission stated that the existing delivery requirements – sending either paper or electronic confirmations – for the T+2 settlement cycle will remain unchanged. The Commission went on to state that broker-dealers may continue to use e-delivery systems to comply with their obligations under Rule 10b-10 but does not expressly state that broker-dealers may default to e-delivery.[7] E-delivery should be the default standard for all investor communications but most importantly the Commission should expressly allow a default e-delivery standard for confirmations under Rule 10b-10 as a part of the final T+1 rulemaking.

Finally, as you are aware, certain rule references trigger the requirements of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act") which imposes additional requirements when clients sign-up for e-delivery of investor documents.[8] The E-Sign

[5] *See* 17 CFR 240.10b-10.
[6] 17 CFR 240.10b-10.
[7] Proposal, 87 FR at 10463.
[8] *See* Electronic Signatures in Global and National Commerce Act, PL 106–229, June 30, 2000, 114 Stat 464; *see also* 15 USCA §§ 7001 to 7006, 7021, 7031.

Act requires that firms receive a reconfirmation of the e-delivery designation for documents required to be delivered “in writing.”[9] As such, the Commission should avoid any references to delivering documents or notices “in writing” in its final T+1 rulemaking and any other new rulemakings which would then trigger the E-Sign Act and inhibit the adoption of e-delivery.

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SIFMA and its members endorse your commitment and leadership in modernizing and enabling the use of new electronic communications technologies. We would appreciate the opportunity to discuss the survey results and the transition to e-delivery in the T+1 settlement cycle with you and your staff at your earliest convenience. Please reach out to Melissa MacGregor at mmacgregor@sifma.org or me at your convenience to schedule a meeting.

Sincerely,

Kenneth E. Bentsen, Jr.
President & CEO

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
Haoxiang Zhu, Director, Division of Trading and Markets
Tom Price, Managing Director, Technology & Operations, SIFMA
Melissa MacGregor, Managing Director & Associate General Counsel, SIFMA

[9] *Id*.