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Primary Market Transactions under the T+1 Shortened Settlement Cycle
April 3, 2024

Background:

On May 28, 2024, the Securities and Exchange Commission ("SEC") amendments to Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer securities transactions by one business day to "T+1" will become operative (with T being the transaction date). Since September 5, 2017, the standard settlement cycle for these transactions has been two business days, known as "T+2". As a result, broker-dealers will be required to comply with the amended rule beginning on May 28, 2024 (so, trades subject to the standard settlement cycle made on Friday, May 24, 2024 and on Tuesday, May 28, 2024 will both settle on Wednesday, May 29, 2024).

As stated in the SEC's rule, the T+1 requirement would not apply to certain categories of securities. In the case of firm commitment underwritten offerings, Rule 15c6-1(d) states:

> "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."

In its February 15, 2023 adopting release, the SEC noted:

> "…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, 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."

In addition to adopting the new T+1 requirement, the SEC adopted new Rule 15c6-2, which requires broker-dealers 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."

SIFMA also notes that on occasion, a non-U.S. company doing an equity capital market or debt capital market transaction with US Dollar proceeds may request that they receive net proceeds in their local currency. This may become more difficult to accomplish in a T+1 environment due to the need to conduct FX transaction(s) in addition to the equity or debt offering.

SIFMA, in consultation with its Primary Markets Committee, has outlined the following considerations relevant to primary market transactions under the T+1 shortened settlement cycle. Whether and to what extent any market participant takes these considerations into account is wholly voluntary and the parties to primary market transactions may, and should, decide for themselves how best to execute their transactions in compliance with the new rules.

Equities:

In general, for primary market transactions in equity securities (including initial public offerings), SIFMA notes that market participants will likely move with the shortened settlement cycle under Rule 15c6-1(a).

Furthermore, SIFMA observes that in the early stages of a transaction, the following transaction participants and service providers should consider holding discussions about each participant's readiness to adhere to the shortened settlement cycle:

- Company counsel (and selling shareholders' counsel, if any)
- Underwriters' counsel
- All accounting firms delivering a comfort letter to the underwriters
- Transfer agent or other service providers
- Financial printer

We highlight the below transaction types for additional attention regarding timing issues to meet T+1 shortened settlement cycle deadlines. The items listed for consideration in the subsections may apply generally to all equity transactions but warrant particular attention for these individual products.

1. *Transactions in Restricted Securities (e.g., Rule 144 transactions):*
   SIFMA notes that selling shareholders (and selling shareholders' counsel, if any), issuers, issuer counsel and transfer agents should give additional consideration to timing issues to ensure sufficient preparations are made to provide for the delivery of restricted securities and related documentation under the shortened settlement cycle. Particular attention should

be paid to the share de-legending opinions and process (especially for transactions involving former SPACs), share transfer / medallion guarantee process (which may require "wet ink" signatures and overnight courier services for delivery) and any time zone issues. If delivery cannot be made in time for settlement, the executing broker dealer may pass daily stock borrow charges to the selling shareholder (i.e., charges associated with borrowing securities for delivery to ensure the broker dealer does not fail on its continuous net settlement obligations). To ensure timely settlement, executing broker dealers may ask selling shareholders to support "pre-clearance" or "legend removal" on restricted securities ahead of sale to ensure timely delivery. Provided a broker dealer has sufficient internal controls and procedures to hold restricted securities (without a legend) and is willing to make representations to the issuer and/or selling shareholders and their respective counsel to provide assurances that resales will comply with applicable securities laws, selling shareholders, issuers and their respective counsel should consider pre-clearing restricted securities. Ultimately, if stock borrow charges are not acceptable to the selling shareholder(s) and the transaction participants do not agree on pre-clearing restricted securities, the executing broker dealer may decline the selling shareholder(s) order(s).

2. *Margined Securities:*
   The resale of margined securities (which may also be restricted securities) requires settlement of the corresponding margin loans, and many margin accounts require one (or two) days prior notice of prepayment. As a result, SIFMA notes that selling shareholders (and selling shareholders' counsel, if any), issuers, issuer counsel, broker dealers and their respective counsel should give additional consideration to ensure sufficient preparations are made to provide for the delivery of notices, margined securities and related documentation under the shortened settlement cycle, including advance coordination with margin lenders to arrange for accelerated repayment of margin loans and transfer of margined securities in connection with any resale transactions.

3. *Overnight Blocks / Bought Deals:*
   SIFMA notes that substantially all follow-on equity offerings will likely move to the shortened settlement cycle in order to align with the settlement cycle of the same CUSIP already trading in the secondary market in accordance with SEC Rule 15c6-1(a). As a result (particularly in the case of overnight block trades and bought deals of shares being sold by affiliates), the selling shareholders, underwriters, issuers and their respective counsel should give additional consideration to timing issues to ensure sufficient preparations are made to provide for the delivery of those securities and related documentation under the shortened settlement cycle, with particular attention paid to:

   - Share de-legending opinions and process
   - Share transfer / medallion guarantee process
   - Delivery of "wet ink" signatures on stock powers to transfer agents, which may require an overnight courier service
   - Local counsel opinions
   - Customer due diligence (CDD) or know-your-customer (KYC) documentation for selling shareholders (this is especially important when there are numerous shareholders selling in the offering)

- Overseas selling shareholders (and time zone and "signature pages stuck in customs" issues)
- Release / transfer from margin accounts
- Finalization of final prospectus and delivery of final comfort letter
- Filing of final prospectus versus time of settlement
- Closing the exercise of an overallotment option concurrently with the closing of the original "base deal"

4. *Rule 15c6-1(c) for Offerings Priced After 4:30 pm ET:*
Under the SEC's amendments to 15c6-1(c), primary market transactions that price after 4:30 pm ET may settle on a T+2 timeframe even if the parties to the transaction did not agree to a T+2 settlement at the time of the transaction. As we expressed in our comment letter to the SEC, in a T+1 settlement regime SIFMA expects 15c6-1(c) may be necessary to provide parties with a "fallback" to allow settlement on T+2 if unanticipated issues interfere with either party's ability to settle on a T+1 basis under 15c6-1(a). We anticipate that reliance on 15c6-1(c) may encounter unforeseen and unpredictable complications during the early adoption phase of T+1.

Fixed Income Securities:

In general, for primary market transactions in fixed income securities (other than equity-linked securities), SIFMA notes that market participants will likely, consistent with current market practice, opt for extended settlement under Rule 15c6-1(d), which permits parties to agree to an extended settlement date for firm commitment offerings.