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SEC Adopts T+2 Settlement Cycle for Securities Transactions

On March 22, 2017, the Securities and Exchange Commission ("SEC") adopted an amendment to Rule 15c6-1(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") to shorten the standard settlement cycle for most broker-dealer securities transactions from the present three business days after the trade date (known as T+3) to two business days after the trade date (T+2) (the "Amended Settlement Cycle Rule").[1] According to the SEC's press release,[2] the Amended Rule is "designed to enhance efficiency, reduce risk and ensure a coordinated and expeditious transition by market participants to a shortened standard settlement cycle."

The SEC believes that shortening the settlement cycle to T+2 will lead to a reduction in credit, market, and liquidity risk, and as a result, a reduction in systemic risk for U.S. market participants. In addition to reducing certain risks, the SEC believes that the shortened settlement cycle will enable market participants to gain quicker access to funds and securities and will more closely align the U.S. standard settlement cycle with those foreign markets that already have moved to a shorter settlement cycle.

As a result of the settlement cycle change to T+2, certain other rules that key off "settlement date" will be affected by the reduced timeframe, including, among others: (1) certain aspects of Regulation SHO that key off "trade date" and "settlement date" to determine timeframes for compliance relating to sales of equity securities and fails to deliver

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[1] The adopting release (Securities Exchange Act Release No. 34-80295) (March 22, 2017) is available at https://www.sec.gov/rules/final/2017/34-80295.pdf.
[2] The SEC press release dated March 22, 2017 is available at https://www.sec.gov/news/press-release/2017-68-0.

on settlement date; (2) certain aspects of financial responsibility rules under the Exchange Act that reference "settlement date" in explaining what it means to "promptly transmit" funds and to "promptly deliver" securities; (3) Exchange Act Rule 10b-10, which requires a broker-dealer to send a written trade confirmation at or before completion of a transaction.

The Amended Settlement Cycle Rule will not apply to certain categories of securities, such as exempted securities, government securities, municipal securities, commercial paper, bankers' acceptances and commercial bills. Significantly, the Amended Rule also does not affect the ability of parties to expressly agree at the time of a securities transaction, to use the "override provision" under Rule 15c6-1 and extend the settlement beyond the standard settlement cycle.

The SEC believes that shortening the standard settlement cycle is supported by significant changes in technology, operations and infrastructure that have occurred in the financial market since the SEC adopted Rule 15c6-1 in 1993 (when the SEC shortened the cycle from T+5 to T+3).

The compliance date for the Amended Rule is September 5, 2017. To prepare for implementation of a T+2 settlement cycle, the SEC has established an email address – T2settlement@sec.gov – for submitting inquiries to the SEC staff.

If you have any questions concerning the Amended Settlement Cycle Rule, please contact Meryl Wiener, any of the undersigned or your regular Warshaw Burstein attorney.

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