INVESTMENT COMPANY INSTITUTE

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October 11, 2017

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Securities Transaction Settlement Cycle
Docket ID OCC-2017-0013
FDIC RIN 3064-AE64

Dear Sir/Madam:

The Investment Company Institute[1] strongly supports the proposal by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation (together, the Agencies) to shorten the settlement cycle for securities purchased or sold by national banks, federal savings associations, and FDIC-supervised institutions.[2] ICI, together with the Depository Trust & Clearing Corporation and the Securities Industry and Financial Markets Association, has been at the forefront of a years-long industry initiative to shorten the settlement cycle for US stocks, most bonds, and unit investment trusts from the third business day after the trade date (T+3) to the second business day after trade date (T+2). If adopted, the Agencies'

[1] The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$20.5 trillion in the United States, serving more than 100 million US shareholders, and US$6.7 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

[2] OCC and FDIC, Securities Transaction Settlement Cycle, 82 Fed. Reg. 42619 (Sept. 11, 2017) (Notice). The proposal would modify 12 C.F.R. § 12.9(a) (for national banks), 12 C.F.R. § 151.130(a)(1) (for federal savings associations), and 12 C.F.R. § 344.7(a) (for state nonmember banks and savings associations and insured branches of foreign banks) by requiring these institutions to effect settlement of certain securities transactions by the second business day after the trade date, unless otherwise agreed to by the parties. In this letter, we refer to the three regulations as the Agency Regulations.

proposal would align the regulations applicable to OCC- and FDIC-regulated institutions with those that apply to nearly all other market participants in the United States.

In this letter, we begin by emphasizing the importance of the Agencies' proposal. Next, we highlight some possible negative consequences of failing to align the Agency Regulations with the regulations on securities settlement that apply to other market participants. Finally, we explain why we prefer that the Agency Regulations be amended to cross-reference corresponding regulations issued by the Securities and Exchange Commission (Alternative Approach).

Importance of the proposal

As of September 5, 2017, the timeframe for settlement of most securities transactions in the United States was shortened from T+3 to T+2. Among the expected benefits of this shorter settlement cycle are reduced operational risks between trade date and settlement date, reduced market and counterparty risks for each party to a transaction during the settlement period, increased market liquidity, and greater harmonization with settlement practices in major international markets.

In the final months leading up to the September 5 "migration date," both Agencies signaled their commitment to the transition to T+2 settlement. OCC and FDIC staff issued written guidance highlighting the actions that their regulated institutions should take to prepare for the shortening of the settlement cycle.[3] In each case, the guidance expressed the staff's expectation that institutions would be prepared to meet the T+2 standard as of September 5.

With this proposal, the Agencies would codify their commitment to T+2 settlement for securities trades involving OCC- and FDIC-regulated institutions. In addition to providing greater clarity and certainty for these institutions, the proposed changes to the Agency Regulations would be consistent with the regulation-based requirements that apply to nearly all other market participants in the United States. SEC Rule 15c6-1(a), which is widely viewed as the "lead" regulation regarding securities settlement by non-bank entities, requires T+2 settlement for certain securities transactions as of September 5, 2017. The same is true of the Federal Reserve Board's Regulation H settlement requirement for state member banks, and the rules of various self-regulatory organizations: Municipal Securities Rulemaking Board; Financial

[3] *See Shortening the Settlement Cycle,* OCC Bulletin 2017-22 (June 9, 2017), available at https://www.occ.treas.gov/news-issuances/bulletins/2017/bulletin-2017-22.html; FDIC, *Securities and Exchange Commission Rule Amended to Shorten the Securities Transaction Settlement Cycle*, FIL -32-2017 (July 26, 2017), available at https://www.fdic.gov/news/news/financial/2017/fil17032.html.

Industry Regulatory Authority; New York Stock Exchange; Nasdaq Stock Market; Options Clearing Corporation; and Depository Trust & Clearing Corporation.

Possible consequences if the proposal is not adopted

If the Agencies fail to align their regulations with those of the regulatory bodies identified above, this fragmentation in US regulations could lead to fragmented market practices. This is not a theoretical concern. In October 2015, European markets moved to a T+2 settlement standard. Due to a drafting anomaly, however, there was—and continues to be—a gap that allows certain market participants to continue to settle on a T+3 basis. It is our understanding that, in the first few months of 2017, this gap contributed to settlement extending to T+3 and beyond for up to 10% of settlement activity. Were a similar gap to occur in the US market, it could result in millions of shares per day settling at T+3 or later.

Any discrepancy in the rules for settlement could become particularly problematic in stressed markets. In 2016, for example, trading in US equities accounted for a daily volume of more than 102 million shares with a value of $965 billion. If some market participants sought to extend trade settlement to T+3 for even a small portion of equity trading, it could have a dislocating effect during a period of market stress by creating a greater risk of fails, increasing credit risk, and undermining parties' expectations that trades will settle on a T+2 basis. Similar dislocating effects could occur with respect to trading in the corporate bond market.

Finally, any inconsistency among US regulations could prove problematic for securities settlement in Canada and Mexico. Markets in both nations are highly integrated with US trading and, in fact, both Canada and Mexico have moved to T+2 settlement in concert with the United States.

ICI's support for the Alternative Approach

The proposal would modify each Agency Regulation by replacing the reference to the "third business day" after the trade date with the "second business day." The Notice invites comment on whether the Agencies instead should implement the two-business day settlement requirement by cross-referencing the standard settlement cycle provided under SEC Rule 15c6-1(a) (Alternative Approach).

ICI prefers the Alternative Approach. As noted above, SEC Rule 15c-6-1(a) is widely viewed as the "lead" regulation regarding securities settlement by non-bank entities. The Alternative Approach would ensure that the Agency Regulations remain aligned with the settlement practices of the broader industry, even as those practices continue to evolve over the long term. For instance, we believe that the industry will make progress toward T+1 settlement. If the SEC amends Rule 15c6-1(a) to require T+1 settlement, the Alternative Approach would "update" the

Agency Regulations automatically and spare the OCC and FDIC from having to expend time and resources to engage in additional rulemaking.

We note that the Alternative Approach is consistent with the Federal Reserve Board's corresponding regulation for state member banks, 12 C.F.R. § 208.34(f), which incorporates the "standard settlement cycle for the security followed by registered broker dealers in the United States," *i.e.*, the settlement period set forth in SEC Rule 15c6-1(a).

* * * *

It is essential that all market participants adhere to the same timing requirements in settling securities transactions, to avoid any unintended market fragmentation or operational risk. We accordingly urge swift action by the OCC and FDIC to modify the Agency Regulations, either as set forth in the proposal or, preferably, through the Alternative Approach. Doing so would harmonize the Agency Regulations with those of the SEC, Federal Reserve Board, and various self-regulatory bodies.

If you have any questions regarding our comments or would like additional information, please contact me at (202) 326-5980 or mburns@ici.org; or Rachel H. Graham, Associate General Counsel, at (202) 326-5819 or rgraham@ici.org.

Sincerely,

/s/ Marty Burns

Marty Burns
Chief Industry Operations Officer
Investment Company Institute