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## SEC Adopts T+1 Settlement Cycle for Most Securities Transactions but Permits T+2 for Firm Commitment Offerings

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

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On February 15, 2023, the Securities and Exchange Commission (SEC) adopted final rule amendments that will shorten the standard settlement cycle for most broker-dealer securities transactions from two business days after the trade date (T+2) to one business day (T+1). The SEC believes that further shortening the settlement cycle to T+1 will reduce market participants' exposure to credit, market and liquidity risk arising from unsettled transactions. The SEC will continue to assess the feasibility of an eventual shift to a "same-day settlement" (T+0) standard cycle.

The final rules will become effective 60 days from the date of publication in the Federal Register but are subject to a lengthy transition period. Broker-dealers will not be required to comply with the amended rules until May 28, 2024.

### Key Changes

#### Firm Commitment Cash Offerings

Currently Rule 15c6-1(c) allows a T+4 settlement cycle for firm commitment offerings for securities that are priced after 4:30 p.m. ET, unless otherwise agreed to by the parties at the time of the transaction. The SEC proposed deleting this provision in favor of a settlement cycle of T+1 for firm commitment underwritings that are priced after 4:30 pm E.T, unless the parties agreed to an alternate settlement date.

Critics persuasively argued that eliminating a longer settlement cycle for firm commitment offerings would lead to more failures to settle trades. They argued that the "override provision" that allows parties to negotiate an extended settlement date requires an agreement at the time of the transaction, which often is not realistic, especially in the case of a common stock offering.

In response to those concerns, and in lieu of deleting the provision that allows a longer settlement cycle for firm commitment offerings, the SEC shortened the settlement cycle for firm commitment offerings from four to two days unless the parties agree to a later date at the time of the transaction.

Specifically, the amended rule provides that the standard T+1 settlement cycle does not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. ET on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act or sold to an initial purchaser by a broker-dealer participating in such offering, provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than

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the second business day after the date of the contract, unless otherwise expressly agreed to by the parties at the time of the transaction.

### Delivery of the Prospectus

Securities Act Rule 172 currently provides for an “access equals delivery” model that permits, with certain exceptions, the prospectus delivery obligation to be satisfied by the filing of a final prospectus with the SEC, rather than physical delivery of the final prospectus to purchasers. Given the expanded application of “access equals delivery,” the SEC believes that the transition to a T+1 settlement cycle will not cause significant operational concerns that would impede a broker-dealer’s ability to comply with prospectus delivery requirements.

However, for securities transactions that do not benefit from “access equals delivery” or otherwise require the delivery of a physical final prospectus, the move to a T+1 settlement cycle may leave little margin for any operational difficulties that could delay the delivery of a final prospectus despite a good faith effort by the broker-dealer.

### Same-Day Allocations and Affirmations

As part of the amendments, the SEC adopted additional rules for broker-dealers, investment advisers and central matching service providers (CMSPs) designed to improve institutional trades and straight-through processing. The final rules include new requirements under Rule 15c6-2 for broker-dealers to establish and maintain policies and procedures reasonably designed to ensure completion of allocations, confirmations and affirmations as soon as technologically possible, but no later than the end of the trade date (or alternatively, enter into contracts with institutional customers to achieve such same-day affirmations).

Similarly, an amendment to Rule 204-2 of the Investment Advisers Act of 1940 now requires advisers to make and retain records of confirmations, allocations and affirmations sent to broker-dealers for certain securities transactions. Further, CSMPs will be required to adopt policies and procedures to facilitate straight-through processing and comply with an annual reporting requirement detailing such efforts.

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