May 15, 2018

TO: Board of Directors

FROM: Doreen R. Eberley
Director
Division of Risk Management Supervision

SUBJECT: Final Rule: Securities Transaction Settlement Cycle

Recommendation: Staff recommends that the FDIC Board of Directors ("Board") authorize for publication in the *Federal Register* the attached final rule ("Final Rule") entitled "Securities Transaction Settlement Cycle." The Final Rule would be jointly issued by the FDIC and the Office of the Comptroller of the Currency ("OCC") (collectively, the "Agencies"), and would amend the FDIC's rules to generally require FDIC-supervised institutions to settle securities transactions within the number of business days in the standard settlement cycle followed by registered broker dealers in the United States. The Final Rule would be responsive to the industry-wide shift in the standard settlement cycle from three days ("T+3") to two days ("T+2") after the trade date, as mandated by the Securities and Exchange Commission's ("SEC") recent amendments to SEC Rule 15c6-1(a). By requiring FDIC-supervised institutions to settle securities transactions within the standard settlement cycle provided in SEC Rule 15c6-1(a), the Final Rule would effectively conform the FDIC's rules to T+2, and would also accommodate future shifts in the standard settlement cycle. The Final Rule would be effective on the first calendar quarter date following thirty days from the date of publication in the *Federal Register*.

Concurrence:

Charles Yi
General Counsel

Discussion

Part 344 of the FDIC's regulations, 12 CFR Part 344, addresses recordkeeping and confirmation requirements for the settlement of securities transactions entered into or effected by FDIC-supervised institutions. Section 344.7 currently restricts an FDIC-supervised institution from effecting or entering into a contract for the purchase or sale of a security that provides for the payment of funds and delivery of securities later than the third business day after the date of the contract ("T+3"), unless otherwise expressly agreed to by the parties at the time of the transaction. When the FDIC adopted the T+3 provision of section 344.7 in 1997, it was consistent with the SEC's settlement cycle regulations.

On March 29, 2017, the SEC amended its regulations to shorten the standard securities settlement cycle from T+3 to T+2, effective September 5, 2017. The FDIC issued a Financial Institution Letter, FIL-32-2017, on July 26, 2017, to highlight actions that banks should take to prepare for this change. This FIL indicated that, "[t]he FDIC anticipates that, as of the T+2 compliance date, FDIC-supervised institutions would not effect or enter into a contract for the purchase or sale of an affected security that provides for payment of funds or delivery of securities later than the second business day after the date of the contract, unless otherwise agreed to by the parties at the time of the transaction."[1]

On September 1, 2017, the Board authorized for publication in the *Federal Register* with a comment period of 30 days a joint notice of proposed rulemaking ("NPR") with the OCC that

[1] The OCC issued OCC Bulletin 2017-22 on June 9, 2017, discussing the change in the settlement cycle from T+3 to T+2 as applied to national banks and federal savings associations.

proposed to amend section 344.7 to adopt a T+2 settlement period.[2] The NPR was published on September 11, 2017, and the comment period ended on October 11, 2017.[3] In the NPR, the Agencies proposed to amend the general requirement that banks must settle their securities transactions no later than the third business day after the date of the contract by shortening the permissible settlement period from three business days to two. The NPR did not otherwise affect the regulatory requirements, exceptions, and conditions provided in section 344.7.

The NPR also requested comment on an alternative to the approach described above, whereby the Agencies would implement T+2 by cross-reference to the standard settlement cycle provided under SEC Rule 15c6-l(a), 17 CFR 240.15c6-l(a).[4] Under this alternative approach, which would be consistent with the Federal Reserve Board's rule regarding the settlement of securities transactions,[5] securities transactions would generally be required to settle "within the number of business days in the standard settlement cycle for the security followed by registered broker dealers in the United States," unless otherwise agreed to by the parties at the time of the transaction. "Standard settlement cycle" would be defined by reference to SEC Rule 15c6-l(a). The Agencies invited comment on this alternative approach as well as the definition of the term "standard settlement cycle."

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[2] The proposed rule would make corresponding changes to the OCC's regulations applicable to national banks and federal savings associations, 12 CFR §§ 12.9 and 151.130.

[3] 82 FR 42619 (Sept. 11, 2017).

[4] 82 FR 42619, 42621.

[5] 12 CFR § 208.34(f). The Federal Reserve Board's rule provides as follows: "All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker dealers in the United States unless otherwise agreed to by the parties at the time of the transaction."

The Agencies received three comments on the NPR.[6] All of the commenters strongly supported the proposal to shorten the settlement cycle to T+2, emphasizing the importance of codifying the Agencies' commitment to T+2 settlement for securities trades involving OCC- and FDIC-supervised institutions, consistent with current SEC requirements. The Investment Company Institute and Securities Industry and Financial Markets Association expressed concern that without the rule change, discrepancies in the time periods for securities settlements could result in fragmented market practices, with certain segments of the securities markets routinely extending settlements beyond the T+2 industry standard.[7] These commenters also supported the alternative approach discussed in the NPR, by which the rule would reference the standard settlement cycle provided for under SEC Rule 15c6-1(a).[8] They indicated a preference for the alternative approach because additional rulemaking would likely not be necessary should the SEC further amend Rule 15c6-1(a) to require T+1 settlement in the future.[9]

Based on the comments received and following consultation with the OCC, FDIC staff recommends that the Board approve and authorize for publication in the *Federal Register* the attached Final Rule to require securities settlement to be completed within the number of business days in the standard securities settlement cycle in the United States, unless otherwise agreed to by the parties at the time of the transaction, and to include a reference to SEC Rule 15c6-1(a). The FDIC and OCC staffs believe that issuance of the Final Rule as described above would appropriately align the Agencies' securities transaction settlement rules with the financial

[6] *See* Comment letters from the Investment Company Institute (ICI Comment Letter), October 11, 2017, available at https://www.fdic.gov/regulations/laws/federal/2017/2017-securities-transaction-settlement-cycle-3064-ae64-c-001.pdf; Securities Industry and Financial Markets Association (SIFMA Comment Letter), November 3, 2017, available at https://www.regulations.gov/document?D=OCC-2017-0013-0004; and Mitchel Taylor, October 10, 2017, avail.at https://www.regulations.gov/document?D=OCC-2017-0013-0002.
[7] *See* ICI Comment Letter at 2; SIFMA Comment Letter at 2.
[8] *See* ICI Comment Letter at 3; SIFMA Comment Letter at 3.
[9] Id.

services industry movement to the shorter T+2 settlement cycle. In addition, the recommended changes would make the rules regarding the securities settlement cycle more consistent across the federal banking agencies and eliminate the need for future rulemaking in the event of a subsequent change in the standard settlement cycle.

ATTACHMENTS

Resolution

Final Rule

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