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**VIA ELECTRONIC TRANSMISSION**

[rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Ms. Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Proposal for Shortening the Securities Transaction Settlement Cycle (Release Nos. 34-94196, IA-5957; File Number S7-05-22)

Dear Ms. Countryman:

The Depository Trust and Clearing Corporation (“DTCC”), in conjunction with DTCC ITP LLC (“DTCC ITP”) and DTCC ITP Matching (US) LLC (“DTCC ITP Matching (US)”)<sup>1</sup> appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (“Commission”) regarding proposed rules (“Proposal”) to facilitate shortening the standard settlement cycle in the U.S. for most broker-dealer securities transactions from two business days after the trade date (“T+2”) to one business day after the trade date (“T+1”).<sup>2</sup> In offering electronic trade confirmation (“ETC”) and central matching services, DTCC ITP facilitates the straight-through processing (“STP”) of institutional trades by seamlessly connecting our global client community to an open and integrated ecosystem that services the full post-trade lifecycle. We therefore recognize the importance of the Proposal for institutional investors and other market participants and have been a key stakeholder in efforts to bring to fruition the policy goals of the Proposal.<sup>3</sup> We applaud, in particular, the Proposal’s focus on promoting same-day affirmation and STP as core building blocks to a successful transition to a T+1 standard settlement cycle.

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<sup>1</sup> DTCC ITP Matching (US) LLC is a wholly-owned subsidiary of DTCC ITP LLC, a Delaware limited liability company controlled by its sole member, DTCC. DTCC is also the parent company of National Securities Clearing Corporation and The Depository Trust Company (“DTC”), and in conjunction with those two SEC-registered clearing agency subsidiaries has submitted a separate comment letter on the aspects of the Proposal addressing T+1 and T+0. *See* Letter from Murray Pozmanter, DTCC Managing Director and Head of Clearing Agency Services & Global Business Operations, to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, dated April 11, 2022.

<sup>2</sup> *See* Securities Exchange Act Release Nos. 34-94196, IA-5957 (February 9, 2022) (“Proposing Release”), *available at*: <https://www.sec.gov/rules/proposed/2022/34-94196.pdf>.

<sup>3</sup> *See* Deloitte, DTCC, ICI & SIFMA, Accelerating the U.S. Securities Settlement Cycle to T+1 (December 1, 2021), *available at* <https://www.sifma.org/wp-content/uploads/2021/12/Accelerating-the-U.S.-Securities-Settlement-Cycle-to-T1-December-1-2021.pdf> (“T+1 Report”).

DTCC ITP Matching (US)<sup>4</sup> operates one of three entities that to date has received a Commission exemption from registration as a clearing agency to operate as a central matching service provider (“CMSP”).<sup>5</sup> Recognizing the Commission is requesting comment on all aspects of the Proposal, we have provided herein thematic responses to many of the issues and questions in the Proposal regarding same-day affirmation and proposed new requirements for broker-dealers (“Proposed Rule 15c6-2”), investment advisers (“Proposed Amended Rule 204-2”), and CMSPs (“Proposed Rule 17Ad-27”).

## **Introduction and Background**

DTCC ITP Matching (US) currently offers two services to facilitate the post-trade processing of institutional trades: TradeSuite ID<sup>®</sup>, which is our ETC service, and, in our capacity as a CMSP, CTM<sup>®</sup>, which is our central trade matching service for securities transactions. As mentioned above, DTCC ITP Matching (US) conducts its central matching service activities pursuant to a Commission exemption, which contains a series of conditions that cover the areas of operations and interoperability.<sup>6</sup> For these same purposes, DTCC ITP Matching (US) is also subject to the requirements of Regulation Systems Compliance and Integrity (“Regulation SCI”)<sup>7</sup> because the regulatory definition “SCI Entity” includes exempt clearing agencies that provide matching services.<sup>8</sup>

The TradeSuite ID ETC service allows broker-dealers, buy-side firms (i.e., investment managers, hedge funds, private banks and outsourcers), custodians, and agents to coordinate domestic post-trade activity in U.S. equity and fixed-income securities.<sup>9</sup> TradeSuite ID provides trading counterparties the ability to confirm and affirm the elements of their trades. This process automates electronic trade agreement between such counterparties and reduces operational risk by eliminating manual and verbal communications while accelerating the time from trade date to settlement.

The CTM central matching service allows broker-dealers and buy-side firms to efficiently match blocks, allocations, and confirmations in order to mitigate exceptions. CTM supports multiple asset classes, including equities, fixed income, repurchase agreements, money market funds, and exchange-traded derivatives. Included within the CTM service is the functionality formerly performed via OASYS<sup>™</sup>, a trade

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<sup>4</sup> DTCC ITP Matching (US) is formerly known as GJV Matching Service – US, LLC. It was formed in 2000.

<sup>5</sup> See Order Granting Exemption from Registration as a Clearing Agency for Global Joint Venture Matching Services-U.S., LLC, Exchange Act Release No. 44188 (Apr. 17, 2001), 66 FR 20494, 20501 (Apr. 23, 2001) (“ITP Order”); Order Approving Applications for an Exemption from Registration as a Clearing Agency for Bloomberg STP LLC and SS&C Techs., Inc., Exchange Act Release No. 76514 (Nov. 24, 2015), 80 FR 75388, 75413 (Dec. 1, 2015) (“BSTP & SS&C Order” and, together with the ITP Order, “Exemptive Orders”).

<sup>6</sup> The Commission has stated that even though matching services fall within the definition of “clearing agency” as set forth in the Securities and Exchange Act of 1934, an entity that limits its clearing agency functions to providing matching services need not be subject to the full panoply of clearing agency regulation. Exchange Act Release No. 39829 (Apr. 6, 1998), 63 FR 17943, 17947 (Apr. 13, 1998).

<sup>7</sup> See Release No. 34-73639 (Nov. 19, 2014), 79 FR 72251 (Dec. 5, 2014); 17 CFR 242.1000 et seq.

<sup>8</sup> See 17 CFR 242.1000.

<sup>9</sup> See Securities Exchange Act Release No. 44188 (April 17, 2001), at fn. 38.

allocation and acceptance service that communicates trade and allocation details between buy-side firms and broker-dealers.<sup>10</sup>

## Comments

We are generally supportive of the Proposal's approach to facilitating a T+1 standard settlement cycle through the promotion of same-day affirmation, STP, and other enhancements to the processing of institutional trades. We agree that more can be done to facilitate further improvements to increase same-day affirmation rates and promote the development and implementation of more efficient automated systems in the institutional trade processing environment. While the rate of same-day affirmation has increased and improved across the U.S. securities markets over time, there is still more that needs to be done, particularly to ensure that a transition to a T+1 standard settlement cycle is not beset with unintended problems around settlement fails or other operational risk.<sup>11</sup> As such, we agree with the Proposal's view that promoting efforts to eliminate the use of tools that encourage or require manual processing, alongside the continued development and implementation of more efficient automated systems in the institutional trade processing environment, is essential to reducing risk and costs to ensure the prompt and accurate clearance and settlement of securities transactions.<sup>12</sup> At the same time, as discussed in more detail below, we believe that the Commission will be better able to achieve the Proposal's goals by making certain modifications to the proposed applicable legal requirements.

*We generally support not prescribing the meaning of the key terms and concepts for processing of institutional trades.*

As a general matter, we agree with the Commission's view that key terms used in the Proposal, such as "allocation," "confirmation," "affirmation," and "customer," are well-understood concepts that are best grounded in the general prevailing market practice and use cases understood by market participants who engage in institutional trade processing.<sup>13</sup> We further observe that this approach, in contrast to one that seeks to hardwire or otherwise crystallize operational and technological norms into regulation, is well-suited to the general area of institutional trade processing. This is because operational and technological processes and practices continually evolve across a diverse universe of broker-dealers, investment advisers, their agents, CMSPs, and potential future market entrants. Therefore, allowing these key terms to continue to evolve strikes us as an appropriate and forward-looking approach for the Commission to apply.

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<sup>10</sup> OASYS was fully decommissioned on March 31, 2022, after which all existing clients have been notified that the OASYS platform will no longer accept new trades. Clients have been engaged by DTCC ITP's Client Services and Relationship Management teams to assist with their migration from the OASYS to the CTM platform.

<sup>11</sup> See, e.g., Omgeo, Mitigating Operational Risk and Increasing Settlement Efficiency through Same Day Affirmation (SDA), at 2, 7 (Oct. 2010); DTCC, Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle, at 7 (Dec. 2011), <https://www.dtcc.com/en/news/2011/december/01/proposal-to-launch-a-new-cost-benefit-analysis-on-shortening-the-settlement-cycle.aspx>; Sean McEntee, Executive Director, ITP Product Management, DTCC, Remarks at the DTCC ITP Forum – Americas (June 17, 2021) (recording available at <https://www.dtcc.com/events/archives>).

<sup>12</sup> See Proposing Release, *supra* note 2, at 83.

<sup>13</sup> See Proposing Release, *supra* note 2, at 66.

We believe the same market practice-based approach described above should apply in respect of the Proposing Release's questions about potentially stipulating separate requirements and deadlines for each step in the allocation, confirmation, and affirmation processes.<sup>14</sup> In considering these questions, we observe that each participating entity involved in processing institutional trades (whether at the allocation, confirmation, or affirmation step) has a distinct role, as well as imperfect control over how the other parties involved in processing the trades perform their own responsibilities. As such, we believe a regulatory approach that provides for the overarching required outcome (e.g., achieve same-day affirmation) while recognizing that multiple entities shoulder collective responsibility for the outcome through the performance of distinct market practice-defined roles is appropriate, both for purposes of achieving same-day affirmation now and allowing market participants enough flexibility to innovate and evolve their roles and technology in the future.

*To ensure the Commission's goals for STP are achieved both now and in the future, the text of Proposed Rule 17Ad-27 should be amended so that a CMSP's policies and procedures are "reasonably designed" to facilitate STP.*

We agree with the Commission's view that rising transaction volume has made CMSPs increasingly critical to the functioning of the securities markets,<sup>15</sup> and appreciate the Commission's interest in ensuring that CMSPs continue to perform this role by encouraging both CMSPs and their users to facilitate further improvements in the processing of institutional trades. Encouraging the introduction of new technologies and the streamlining of operations is important not just for achieving a T+1 standard settlement cycle in the near term, but also for promoting future operational efficiencies and risk reductions for market participants in the future. In this regard, we are supportive of the Commission's high-level goal of eliminating over time the use of tools that encourage or require manual processing while market participants increase their use of new automated systems that increase efficiency and reduce risks and costs.

We also generally agree with the Commission's description of STP in the Proposing Release. In the Proposing Release, the Commission states that STP generally refers to processes that allow for the entire trade process from trade execution through settlement without manual intervention.<sup>16</sup> The Commission also states in the Proposing Release that in the institutional trade process context, STP occurs when a market participant or its agent uses the facilities of a CMSP to enter trade details and completes the trade allocation, confirmation, affirmation, and/or matching processes without manual intervention.<sup>17</sup> We believe the Commission is right to highlight in its description of STP the fact that multiple parties are involved in facilitating STP, including but not limited to the CMSP. More broadly, and as we noted above, when it comes to processing of institutional trades, each participating entity involved has a distinct role and

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<sup>14</sup> See Proposing Release, *supra* note 2, at 76.

<sup>15</sup> See, e.g., Press Release, DTCC, Over 1,800 Firms Agree to Leverage U.S. Institutional Trade Matching Capabilities in DTCC's CTM (Oct. 12, 2021), <https://www.dtcc.com/news/2021/october/12/over-1800-firms-agree-to-leverage-dtccs-ctm>; DTCC's Trade Processing Suite Traffics One Billion Trades, Traders Magazine (Feb. 13, 2017), <https://www.tradersmagazine.com/departments/clearing/dtccs-trade-processing-suite-traffics-one-billion-trades/>.

<sup>16</sup> See Proposing Release, *supra* note 2, at 83.

<sup>17</sup> See Proposing Release, *supra* note 2, at 83-84.

responsibility, as well as imperfect control over how the other participants perform their own responsibilities.

Appreciating, therefore, the Commission’s overarching policy approach in the Proposing Release to promoting the role of CMSPs in facilitating STP, we respectfully submit that the current text of Proposed Rule 17Ad-27 is not consistent with that approach and thus will not achieve the Commission’s goals for CMSPs and STP. To correct this inconsistency, we believe that the proposed rule text should be amended to provide that a CMSP’s policies and procedures for facilitating STP should be “reasonably designed.” We believe that such an approach is necessary for the following reasons:

1. *The proposed standard is inconsistent with the Commission’s conception of STP and will undermine the Commission’s policy goal of facilitating STP both now and in the future.* We believe that omitting the reference to “reasonably designed” renders Proposed Rule 17Ad-27 an inflexible standard that places all responsibility for facilitating STP on the CMSPs. This outcome is inconsistent with the Commission’s description of STP, which as noted above does not entail a process whereby one party is primarily responsible (and therefore should be held primarily liable) for facilitating STP.<sup>18</sup> This standard also appears to be inconsistent with the Commission’s discussion in the Proposing Release of how a CMSP can facilitate STP.<sup>19</sup> For example, the Proposing Release states that a CMSP facilitates STP when its policies and procedures enable its users to minimize or eliminate, to the greatest extent that is technologically practicable, the need for manual input of trade details or manual intervention to resolve errors and exceptions that can prevent settlement of the trade.<sup>20</sup> The Proposing Release states that a CMSP also facilitates STP when it enables, to the greatest extent that is technologically practicable, the transmission of messages regarding errors, exceptions, and settlement status information among the parties to a trade and their settlement agents.<sup>21</sup> In both examples, viewed through the text of Proposed Rule 17Ad-27, the central interpretive question seems to revolve around whether the CMSP by itself has satisfied the obligation to “enable” its users to achieve a particular outcome and thus facilitated STP. But whether the user has in fact been enabled by the CMSP’s own policies or procedures is not an outcome exclusively controlled by the CMSP. This is because the user still has to take certain actions (such as providing complete and accurate trade and settlement data and having available inventory) in accessing the CMSP’s systems that will dictate whether the need for manual input or intervention has been minimized or eliminated to the greatest extent technologically possible. While a CMSP may reasonably design a system to enable both the user and the CMSP to achieve this outcome, the actual result remains in doubt pending the particular actions the user takes and how the CMSP’s systems are able to respond to those actions. However, as we read the plain text of Proposed Rule

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<sup>18</sup> *See id.*

<sup>19</sup> We note that the term “facilitate” as used in Proposed Rule 17Ad-27 could potentially be understood as a flexible standard under which the CMSP could be expected to satisfy its obligations insofar as “facilitate” simply means to make an outcome easier or to help bring an outcome about without necessarily guaranteeing it. However, the Proposing Release does not discuss any specific meaning or purpose behind the choice of this term and even if the Commission were to clarify that the choice of “facilitate” is meant to imply flexibility, we do not believe that explanation would result in a clearer or more well-established legal standard as compared to the much more established standard of policies and procedures “reasonably designed” to facilitate.

<sup>20</sup> *See* Proposing Release, *supra* note 2, at 84.

<sup>21</sup> *See id.*

17Ad-27, the burden of ensuring that STP is facilitated rests entirely on the CMSP as a matter of regulatory compliance. Thus, we believe that the examples the Commission offers in the Proposing Release around how a CMSP can facilitate STP are only applicable or reasonable if the CMSP is using policies and procedures that are “reasonably designed.”

As a result of the language in Proposed Rule 17Ad-27, we expect that CMSPs will avoid innovating and introducing new technologies and processes that promote further enhancements to STP because of legal liability concerns. CMSPs will also feel constrained in achieving the Commission’s goal of using policies and procedures as a basis for the CMSP to consider in a holistic fashion how the obligations the CMSP applies to its users will advance the implementation of methodologies, operational capabilities, systems, or services that support straight-through processing.<sup>22</sup> This is because under an inflexible standard CMSPs will implement such frameworks as narrowly circumscribed legal compliance tools, instead of tools that give the CMSPs and its users the necessary flexibility to advance the implementation of methodologies, operational capabilities, systems, or services that support STP. However, if the Commission were to amend Proposed Rule 17Ad-27 to reflect a “reasonably designed” standard, we believe the rule text would become consistent with the Commission’s stated policy goals and more rationally align with the helpful examples in the Proposing Release showing how multiple parties in fact must coordinate together where a CMSP has reasonably designed a way to facilitate STP.

2. *The proposed standard is inconsistent with the approach the Commission has applied to CMSPs in the Exemptive Orders.* We believe that the Commission’s approach in the Exemptive Orders to the CMSP’s roles and responsibilities is more flexible than, and therefore inconsistent with, what is provided for under Proposed Rule 17Ad-27. For example, one of the interoperability conditions in the Exemptive Orders requires a CMSP and its service providers to provide the Commission with reports regarding the time it takes a CMSP to process trades and forward information under various circumstances within 30 days of the Commission’s request for such reports.<sup>23</sup> In the last sentence of this particular condition, the Commission clarifies that the CMSP shall not be responsible for identifying the specific cause of any delay in performing its matching service where the fault for such delay is not attributable to the CMSP.<sup>24</sup> It is unclear to us how this condition is consistent with the comparatively more inflexible approach in Proposed Rule 17Ad-27 because in the condition the Commission acknowledges that delays can happen outside of the CMSP’s control. We believe that the approach laid out in the exemptive order is the appropriate one because it explicitly acknowledges the fact that the CMSP does not have perfect control over all aspects of trade processing, even in instances where its systems otherwise have been reasonably designed to facilitate STP for a user. Therefore, we believe that introducing a “reasonably designed” policies and procedure standard to Proposed Rule 17Ad-27 would eliminate inconsistencies in CMSP standards between the Proposal and the Exemptive Orders.

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<sup>22</sup> See Proposing Release, *supra* note 2, at 85.

<sup>23</sup> See ITP Order at 20500 (Condition 15); BSTP and SS&C Order at 75413 (Condition 14).

<sup>24</sup> See *id.*

3. *The proposed standard is inconsistent with the economic analysis of Proposed Rule 17Ad-27.* In the economic analysis section of the Proposing Release, the Commission states that the policies and procedures requirement in Proposed Rule 17Ad-27 should result in the same estimated costs that “similar policies and procedures requirements and corresponding burden estimates” entailed for registered clearing agencies that had to come into compliance with Exchange Act Rules 17Ad-22(d)(8) and (e)(2).<sup>25</sup> However, those registered clearing agency policies and procedures requirements, and any attendant compliance burdens and costs, are based upon the Commission’s economic analysis of a “reasonably designed” standard. Therefore, we do not believe that the Commission’s proposed economic analysis around the burdens and costs of Proposed Rule 17Ad-27 is in fact consistent with the underlying legal standard reflected in the actual proposed rule text.<sup>26</sup>
4. *Precedent clearly shows that the Commission’s stated goals regarding the facilitation of STP can be achieved by using a standard that includes “reasonably designed.”* The Commission has long recognized the benefits of granting registrants a reasonable degree of flexibility designing policies and procedures to meet targeted results, which facilitates effective implementation while allowing for changing circumstances and technologies. Indeed, throughout the Commission’s requirements for registered clearing agencies, the rules are replete with obligations for such entities to have policies and procedures “reasonably designed” to achieve a particular result.<sup>27</sup>

Further, we recall the Commission’s sound reasoning behind applying such an approach: it is important for clearing agencies to have the flexibility of reasonably designed policies and procedures so that they may use their experience and understanding of the markets they serve to shape the rules, policies, and procedures implementing such rules.<sup>28</sup> We agree with that view and believe it is thematically consistent with the Commission’s goal of ensuring that a CMSP’s policies and procedures remain effective over time as CMSPs consider and offer new technologies and operations to improve the settlement of institutional trades. As a broader matter, we also believe that the Commission should apply a “reasonably designed” approach to Proposed Rule 17Ad-27 because such an approach in other clearing agency rules has resulted in outcomes that benefit the resilience and ongoing evolution of the national clearance and settlement system. Therefore, we recommend

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<sup>25</sup> See Proposing Release, *supra* note 2, at 209.

<sup>26</sup> We also note that Rules 17Ad-22(d)(8) and (e)(2) address the broad area of registered clearing agency governance. It is unclear to us how Proposed Rule 17Ad-27’s much narrower requirement regarding the facilitation of STP, which we believe entails a very specific form of operational requirement, is comparable to governance requirements for registered clearing agencies.

<sup>27</sup> See, e.g., 17 CFR 240.17Ad-22(e); Release Nos. 34-78961 (Sept. 28, 2016), 81 FR 70785 (Oct. 13, 2016) (“CCA Standards adopting release”). This approach is not limited to clearing agencies but can be found across a wide range of policy and procedures requirements for SEC-registered entities. We also note that CMSPs are already subject to a reasonably designed policies and procedures standard: Regulation SCI. See 17 CFR 242.1001 et seq.

<sup>28</sup> See CCA Standards adopting release at 70796. Several years after the adoption and implementation of these rules, Commission staff in the Divisions of Exams and Trading and Markets issued a report where, among other conclusions, they reinforced the utility of the reasonably designed policies procedures approach and observed that the clearing agencies subject to such a standard have made positive strides in pursuing initiatives that are consistent with current regulatory standards for critical market infrastructure. See Staff Report on the Regulation of Clearing Agencies by Division of Trading and Markets and Office of Compliance Inspections and Examinations, October 1, 2020, *available at*: <https://www.sec.gov/files/regulation-clearing-agencies-100120.pdf>.

that the Commission apply the same legal standard of “reasonably designed” policies and procedures equally across all clearing agencies, including CMSPs.

For all of the above reasons, we recommend that the Commission amend Proposed Rule 17Ad-27 as follows: a CMSP must establish, implement, maintain and enforce policies and procedures reasonably designed to facilitate STP for transactions involving broker-dealers and their customers.

*We support further standardization of Industry Protocols and Reference Data.*

We appreciate the Commission’s characterization of CMSPs as entities that help promote standardization in the post-trade settlement space for institutional trading, and also note the questions the Commission posed around encouraging further standardization (including the use of standardized protocols and standardization of reference data) and automation in the processing of institutional trades.<sup>29</sup> Over time, DTCC, DTCC ITP and DTCC ITP Matching (US) have engaged in sustained efforts to promote the benefits of increased standardization across multiple facets of the post-trade settlement environment. Therefore, in response to the questions the Commission poses about further potential steps that could be taken in this space, we recommend that the Commission prioritize the development of proposals requiring market participants to increase the use of standardized settlement instructions (“SSIs”).

As the T+1 Report indicates, promoting greater adoption of SSIs is critical to addressing the potential risk of settlement errors and fails in a T+1 environment.<sup>30</sup> We further believe that the use case for centrally managed SSIs becomes even more critical in terms of the secure transmission of sensitive account and reference data necessary for settlement. Increased focus on and the consequences of cyber risk and fraudulent activity also necessitate the need for fully automated and centralized management and secure communication of critical SSI reference data. In addition, a recent industry survey noted that SSI-related issues continue to be one of the most common reasons for settlement fails.<sup>31</sup> Based on our own user experience, we strongly believe the industry is in support of a regulatory requirement to use centrally managed and automated solutions for this purpose.

*We believe the Commission should provide more clarity around its expectations for the ongoing presence and utilization of ETCs and manual processes.*

We believe that central matching is the proven, most efficient method to achieving the Commission’s goals around same-day affirmation. At the same time, we also believe that the Proposal should not abruptly force or otherwise require an immediate or otherwise disorderly elimination of ETC services and related manual processes used by market participants today. Therefore, our comments below reflect two concerns we would recommend the Commission address more directly: (i) ensuring that Proposed Rule 17Ad-27 does not force market participants to move away from ETC services in a sudden

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<sup>29</sup> See Proposing Release, *supra* note 2, at 73.

<sup>30</sup> See T+1 Report, *supra* note 3, at 27.

<sup>31</sup> See International Securities Services Association, The New Norm, *available at*: <https://issanet.org/content/uploads/2021/11/ISSA-The-New-Norm-WG-SSIs-Article-FINAL-1.pdf>.



and disruptive manner; and (ii) clarifying the degree to which CMSPs are responsible for realizing the Commission's goal of moving away from manual processes as soon as technologically practicable.

As a starting point, we appreciate and generally agree with the Commission's statements in the Proposing Release regarding the ongoing role and presence of ETC services for institutional trade processing. We believe it is right that the Commission recognize that it may not be technologically or operationally practicable to eliminate all manual processes immediately.<sup>32</sup> We also agree, and find it consistent with our own user experience, that in certain circumstances the parties to a trade may need to engage in manual interventions to ensure the accuracy of trade and settlement information and minimize operational or other risks that may prevent settlement.<sup>33</sup> Therefore, we support the statement in the Proposing Release that Proposed Rule 17Ad-27 should not require CMSPs to remove manual processes if doing so would clearly undermine the prompt and accurate clearance and settlement of securities transactions.<sup>34</sup>

At the same time, while the high-level Proposing Release statements discussed immediately above are helpful, we are concerned that the practical application is less well-understood. For example, how could removing a manual process "clearly undermine" the prompt and accurate clearance and settlement of securities? What factors would the Commission take into account in applying this standard? Are unmatched trades (which generally require manual amendments to cancel and resubmit allocations and confirmations) and settlement fails or exceptions relevant for this purpose (and if so, to what degree)? And how does the "prompt and accurate" standard compare to the standard set forth in Proposed Rule 17Ad-27 with regard to "facilitating STP"? As a related matter, when does the Commission believe that the parties to a trade may need to engage in manual interventions to ensure the accuracy of trade information and minimize operational or other risks that may prevent settlement? Are there certain trade flows or trading contexts that the Commission has in mind? For example, based upon our own user experience, we see that our own ETC offerings remain deeply embedded in the back office systems of broker-dealers, prime brokers and custodians. Therefore, should the Commission wish to effectuate a rapid change in either of the above areas, we recommend that the industry be permitted to conduct further study around the scope, costs, risks, and other possible effects of making this sort of broad and sudden change.

We have similar concerns and questions around the way in which the Commission describes the designated CMSP role for facilitating a transition away from manual processes. For example, the Proposing Release states that where a CMSP still offers ETC services, which often rely on legacy technologies, a CMSP's policies and procedures generally should establish a timeline for transitioning users away from manual processes to matching services that reduce a party's reliance on the manual, often sequential, entry and reconciliation of trade information.<sup>35</sup> While we generally agree with and are supportive of the Commission's proposed approach, we are concerned about what the Commission's specific expectations would be regarding what steps or processes are considered "manual" in this particular context and recommend that the Commission offer further guidance in this regard. Based upon our own experience, we believe that "manual" means, for example, activity occurring directly between broker-dealers and their

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<sup>32</sup> See Proposing Release, *supra* note 2, at 86.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> See *supra* note 20.

customers via email, phone, fax, etc., and not through an automated (i.e., machine to machine) or electronic channel. We recommend that the Commission provide similar clarity around the firmness and length of any established CMSP timelines for transitioning away from manual processes, particularly in light of the fact that the actual timing of implementation for systems changes is not perfectly in the control of the CMSP.

We also note that the Proposing Release elsewhere provides that where a CMSP continues to permit manual reconciliation or other types of human intervention, it generally should (i) explain in its policies and procedures why those manual processes remain necessary as part of its systems and processes, and (ii) consider developing processes that ultimately would eliminate the underlying issues that drive the use of manual processes in order to facilitate a more automated approach.<sup>36</sup> While we can appreciate and support this proposed guidance in theory, we are unclear on how it relates back to the broader related aspects of the Proposal. For example, how does this statement align with Proposed Rule 17Ad-27's requirement to facilitate STP? What practical efforts should a CMSP undertake when it considers developing processes that ultimately eliminate the underlying reason for why manual processes persist? Is a cost benefit analysis relevant? What other facts should a CMSP consider?

To help address the above concerns, we recommend that the Commission provide further guidance regarding what is intended by the concept "as soon as technologically practicable" for the purposes of minimizing or eliminating the need for manual input of trade details or manual intervention to resolve errors and exceptions that can prevent settlement of a trade. While we appreciate that this concept is commonly used or invoked across different trade processing and reporting rule sets, we believe that explaining further how this concept could operate in the particular context of processing of institutional trades could benefit clients (both direct and indirect) of CMSPs, as well as CMSPs themselves. For this particular purpose, we believe that guidance in the form of a high-level principle or standard would be appropriate. For example, we would offer that achieving something as soon as technologically practicable for the purposes of CMSPs entails a determination that the intended outcome is commercially reasonable and economically viable, as well as operationally scalable.

*While we support more transparency around the role and utility of CMSPs, we believe that the Commission should amend the annual reporting requirements in Proposed Rule 17Ad-27 to better achieve this goal.*

We are generally supportive of a requirement for CMSPs to file annual reports as an additional means of supporting STP. However, we do not understand how the particular elements the Commission proposes to include in the annual report will, in fact, support this goal. In the discussion below we expand on these concerns while also recommending alternative elements the Commission should consider including in the CMSP annual report.

We understand that the Commission preliminarily intends the CMSP annual report to achieve a number of different desirable policy outcomes around facilitating STP, including: (i) informing the Commission and the public (particularly direct and indirect users of the CMSP) of year-on-year progress in respect of STP implementation by a CMSP; (ii) providing information in the public space that can be used by the industry and the general public to consider potential ways to increase availability of STP; (iii) encouraging a CMSP to generally evaluate how (in submitting matched or confirmed or affirmed trades) it

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<sup>36</sup> See Proposing Release, *supra* note 2, at 86-87.

participates in the process for overnight positioning of settling transactions,<sup>37</sup> as well as to evaluate how the CMSP itself can support improvements to the timing and manner of settlement obligations (e.g., intraday) to increase efficiency in the national clearance and settlement system; and (iv) enabling the Commission to evaluate actions taken by the CMSP to ensure compliance with Proposed Rule 17Ad-27 and to help fulfill the Commission's responsibility for the oversight of the national clearance and settlement system, both as it relates to CMSPs specifically and the national clearance and settlement system more generally.<sup>38</sup> While we appreciate that all of the above-described policy goals are important and should be pursued in the most effective manner possible, we have concerns about how a CMSP would actually complete the annual report consistent with those goals, as well as how the proposed components of the annual report actually facilitate the Commission's own goals in respect of STP.

For example, we believe more clarity is needed around what the Commission proposes to have CMSPs include in the form of a "description." While we appreciate the Commission's statement in the Proposing Release that this requirement is not intended to cover the disclosure of proprietary information, trade secrets, or personally identifiable information, we believe that the Commission should provide CMSPs and the broader public with clearer guidance regarding how the term "description" would operate for these purposes. For example, we could envision a description of a CMSP's STP policies and procedures that is a high-level discussion of the names of the different ETC and central matching products offered, with attendant high-level diagrams showing the relevant operational steps and post-trade settlement flows and certain indicated information such as cut-off times for particular steps or flows. We further believe that a similar approach could apply with respect to a description of a CMSP's 12-month prior STP performance and anticipated future 12-month plans to continue to facilitate STP. However, we do not think a description of these matters should entail disclosing a CMSP's actual policies and procedures which, as a practical matter, can contain proprietary or confidential information. We also do not believe it is appropriate or consistent with the Commission's articulated policy goals to require a CMSP to include in its description any discussion of confidential or otherwise sensitive commercial information (including a CMSP's intellectual property) around current or future business initiatives or product development, including in respect of facilitating STP. Indeed, we are concerned that requiring CMSPs to disclose this type of information in an unprotected and untimely manner will effectively become an obstacle to efforts by CMSPs and the public to consider potential ways to increase the availability of STP, which is one of the Commission's articulated goals for public disclosure.<sup>39</sup> Furthermore, while we appreciate the Commission's statement in the Proposing Release that a CMSP has the ability under existing Commission regulation to request confidential treatment,<sup>40</sup> we believe that requiring CMSPs to engage in the future cost and effort of analyzing (and potentially contesting) the need for confidential treatment will still impede efforts by CMSPs to innovate. Therefore, we respectfully recommend that the Commission further clarify or provide guidance to allow both CMSPs and potential readers of the proposed annual report to better

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<sup>37</sup> We do not understand what the Commission means when it refers in the Proposing Release to "overnight positioning of settling transactions" and recommend that the Commission clarify its intentions around this concept and the related policy objective. We suspect this may be a reference to the DTC night cycle but there is no explanation in the Proposing Release.

<sup>38</sup> See Proposing Release, *supra* note 2, at 87-88.

<sup>39</sup> See Proposing Release, *supra* note 2, at 88.

<sup>40</sup> See *id.*

anticipate and evaluate what the Commission intends to achieve via disclosure based on the term “description.”

We believe that the Commission should amend the CMSP annual reporting requirement in Proposed Rule 17Ad-27 by focusing more on quantitative reporting and less on qualitative descriptive reporting. For example, in the Proposing Release the Commission states that the annual report generally should include a summary of key settlement data relevant to its STP objective.<sup>41</sup> The Commission also suggests in the Proposing Release that such a summary “could” include the rates of allocation, confirmation, affirmation and/or matching achieved via STP.<sup>42</sup> However, we do not see this suggested language in the rule text for Proposed Rule 17Ad-27. Therefore, we recommend that the Commission amend Proposed Rule 17Ad-27 by including a specific requirement for the public reporting by a CMSP of quantitative data (in each instance on an anonymized and aggregated level with respect to a CMSP’s customers) for rates of allocation, confirmation, affirmation, and/or matching that a CMSP has achieved with its clients via STP over a given 12-month period. We further recommend that this amended public reporting requirement also provide for disclosure of the following additional data elements (in each instance on an anonymized and aggregated level with respect to a CMSP’s customers): (i) affirmation rates for institutional trade flows; (ii) affirmation rates for prime brokerage trade flows; and (iii) for institutional trade flows, the affirmation rate achieved via ETC and the affirmation rate achieved via matching. We make these recommendations as an alternative approach to the current proposed descriptive reporting requirements set forth in subsections (a) through (c) of the Proposed Rule. We have pointed out the challenges with a descriptive reporting approach above and would add here that we believe making specified quantitative information publicly available in a uniform manner to the marketplace will be more useful to the Commission, market participants and the broader public for purposes of understanding and comparing the relative progress CMSPs and their users are making in achieving STP. We also believe that making this information available will be more useful to the Commission and other parties interested in evaluating whether policy initiatives focused on institutional trade processing beyond those set forth in the Proposal are required to further promote STP.

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We appreciate this opportunity to comment on the merits of the Proposal’s requirements for broker-dealers, investment advisers, and CMSPs with respect to the processing of institutional trades, and your consideration of the views expressed in this letter. We look forward to continuing to engage with our stakeholders, the Commission, and the broader industry on these important initiatives. We welcome the opportunity to further discuss any of these comments with you at your convenience. If you have any questions or need further information, please contact me at [mstauffer@dtcc.com](mailto:mstauffer@dtcc.com).

Sincerely,

*Matt Stauffer*

Matthew Stauffer

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<sup>41</sup> See *id.*

<sup>42</sup> See *id.*