

Haynes, Lanea

From: Sheinberg, Samuel I.
Sent: Thursday, February 08, 2018 1:42 PM
To: Sheinberg, Samuel I.
Subject: FW: T+3

From: Gillis, Diana L.
Sent: Tuesday, November 28, 2017 3:52:02 PM
To: [REDACTED]
Cc: HSRHelp
Subject: RE: T+3
Auto forwarded by a Rule

The SEC's move to a T+2 (trade date + 2 business days) settlement cycle does impact prior PNO guidance related to T+3. In general, under T+2, when an investor buys a security, the brokerage firm must receive payment from the investor no later than 2 business days after the trade is executed. Similarly, when an investor sells a security, the investor must deliver the security to the brokerage firm no later than 2 business days after the sale. Day 1 is the first business day after the trade day.

The PNO has historically applied the T+3 settlement cycle in connection with the 7A(c)(10) exemption, which exempts from HSR filing requirements "acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer." T+3 has primarily been used in the application of 7A(c)(10) where a company executive exercises stock options through a cashless transaction and immediately sells all of the stock that was received pursuant to the option exercise; or, where an executive arranges for restricted stock to be sold immediately upon vesting.

The PNO will continue to apply the SEC's settlement requirements, and will therefore also shift its guidance from T+3 to T+2. The PNO would like to clarify the limited circumstances in which this is permissible; the following must apply to the transaction:

- (1) On Trade Day, the investor acquires stock and, on the same day, instructs his/her broker to sell stock.**
The application of T+2 provides a grace period for a trade to settle, not an open trading period. That is, it does not create a 2-day window in which an investor may trade. If an investor acquires stock in Issuer X on Trade Day, it must also initiate a sale of Issuer X stock on Trade Day. Investor cannot wait a day and then decide to sell the stock.
- (2) By the settlement date, the percentage of stock held by the investor is the same or lower than the percentage that was held before the stock that was acquired on Trade Day.**
T+2 applies in the context of 7A(c)(10) only.

If you have a question on T+2 and 7A(c)(10), particularly for scenarios outside the two outlined above, we recommend you contact the PNO.

From: [REDACTED]
Sent: Tuesday, November 28, 2017 3:44 PM
To: Gillis, Diana L.
Subject: T+3

Beginning on September 5, 2017, the SEC shortened the standard settlement cycle for most broker-dealer securities transaction from 3 business days (“T+3”) to 2 business days (“T+2”). Does this impact the PNO’s interpretations involving T+3? See Informal Interpretation 0505001, and #34 in the 5th Ed of the Premerger Notification Practice Manual.

