the opening of the market on the next business day. Thus, for these offerings there is less concern about an increase in failed transactions from secondary market trading or the need for special systems to accommodate two days of when-issued trading in order to effect delivery of securities in secondary market trades. The Four Firms are of the view that only minor systems modifications would be needed to accommodate a T+4 cycle, so the concerns previously expressed by the industry about the costs of maintaining systems for T+3 for all purposes except firm commitment offerings is reduced

The Commission is proposing to revise Rule 15c6–1 to establish T+4 as the standard settlement cycle for sales in connection with firm commitment offerings priced after the market closed and invites comment as to whether such a T+4 settlement period is workable. Specifically, would this period create confusion in the marketplace?

Some industry participants may believe that a T+4 requirement for firm commitment offerings is not sufficiently flexible. As an alternative, the Commission is publishing for comment a provision that would permit the settlement cycle for a firm commitment offering to be set for any period equal to or less than T+5. 42 Rule 15c6-1(a) contains an override provision that permits the parties to a contract to establish an alternate settlement time frame if expressly agreed to at the time of the transaction. In the release adopting the Rule 15c6-1, the Commission stated that this provision was not intended to permit brokerdealers to specify before execution of specific trades that a group of trades will settle in a time frame other than

If a situation occurs that requires more time for settlement of a firm commitment offering, it may be onerous for every broker-dealer in the offering to expressly set an alternate time frame for each individual trade. The Commission invites comment as to whether it would be appropriate to expand the override provision to allow the managing underwriter to establish T+3, T+4, or T+5 as the settlement time frame for the entire offering. ⁴³ The underwriter would be required to provide notice of

its intent to set an alternate time frame by sending written notice to prospective purchasers on or before the date the securities are priced and by providing notice of the alternate time frame to an exchange where the securities are listed or a registered securities association through which quotations are disseminated. Additionally, brokerdealers participating in the offering would retain their ability to use the specific trade override provision. Commenters are requested to provide comments on the benefits and drawbacks to this approach, including whether such an amendment would create uncertainty in the marketplace.

What are the relative benefits and drawbacks of the proposal establishing T+4 as the standard settlement cycle for offerings priced after the close of the market and the proposal giving underwriters the ability to select an alternate trade date? Would adoption of the first proposal make it unnecessary to adopt the second proposal? Should T+3 or T+4 be the standard for offerings that are priced after the close of the market?

B. The SIA Proposal and Related Commission Proposals

In the other proposal received by the Commission, the Securities Industry Association has recommended that the Commission adopt a rule allowing prospectus information to be delivered without the use of the traditional final prospectus (hereinafter, the "SIA" Proposal"). Where short-form registration 44 is not used, the SIA Proposal would provide that all required prospectus information be delivered to investors in the preliminary prospectus traditionally disseminated and, if necessary, a supplementing memorandum. 45 This supplementing memorandum would either set forth or summarize: (i) previously undisclosed information describing the registered securities (other than certain pricerelated information contained in the confirmation); 46 and (ii) previously undisclosed actual or anticipated changes between the preliminary prospectus circulated to investors and

the final prospectus filed with the Commission. ⁴⁷

For securities offerings that use shortform registration, the SIA Proposal contemplates different methods of delivery depending upon whether or not shelf registration is used. 48 For shelf offerings, the SIA Proposal would require delivery of the base prospectus 49 contained in the registration statement at the time it is declared effective and an abbreviated supplementing memorandum. 50 The abbreviated supplementing memorandum in that case would set forth or summarize only a description of the material changes in the registrant's affairs pursuant to Item 11 of Form S-3 or Form F-3 ("Item 11 information") that have not been disclosed in its Exchange Act reports. For non-shelf offerings using short-form registration, the SIA Proposal would require delivery of only an abbreviated supplementing memorandum describing Item 11 information. A preliminary prospectus would be delivered only at the issuer's discretion. Supplementing memoranda and abbreviated supplementing memoranda used under the SIA Proposal would be required to be filed with the Commission within two business days after first being sent to investors.

The Commission's proposal varies from the rule proposed by the SIA. Like the SIA Proposal, however, proposed Rule 434 under the Securities Act ⁵¹ would permit issuers to convey prospectus information in more than one document and allow such documents to be delivered to investors at separate intervals and in varying manners. ⁵²

The rule would provide that, in the aggregate, all required information be disclosed to investors on a timely basis

 $^{^{42}}$ See proposed Rule 15c6–1(e), 17 CFR 240.15c6–1(e).

⁴³This provision will be available for firm commitment offerings subject to a T+3 settlement time frame under paragraph (a) of Rule 15c6–1, 17 CFR 240.15c6–1(a), and for firm commitment offerings subject to a T+4 settlement time frame under paragraph (d) of Rule 15c6–1, 17 CFR 240.15c6–1(d).

 $^{^{44}}$ Short-form registration is used herein to refer to registration on Commission Forms S-3 or F-3.

⁴⁵ "Preliminary prospectus" is used herein to refer to either a preliminary prospectus used in reliance on Rule 430, 17 CFR 230.430, or a prospectus filed in accordance with Rule 430A(a), 17 CFR 230.430A(a), which omits specified pricerelated information.

⁴⁶This price-related information may be omitted from the registration statement at the time it is declared effective pursuant to Rule 430A under the Securities Act. The description of securities would be made in accordance with Item 202 of Regulation S–K, 17 CFR 229.202, or be a summary of such information.

⁴⁷ The final prospectus filed with the Commission would be the prospectus contained in the registration statement at the time it becomes effective, as modified subsequently by any prospectus filed pursuant to Rule 424(b), 17 CFR 230.424(b).

⁴⁸ "Shelf registration" is used herein to refer to registration of a delayed offering pursuant to Rule 415(a)(1)(x) under the Securities Act, 17 CFR 230.415(a)(1)(x).

⁴⁹ "Base prospectus" is used herein to refer to a prospectus contained in a registration statement at the time of effectiveness that omits information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x).

⁵⁰ For medium-term note programs, however, any program supplement also would be delivered under the SIA proposal.

^{51 17} CFR 230.434.

⁵²The Commission provided analogous treatment with respect to prospectus delivery in connection with employee benefit plans when it adopted revisions to Form S–8 in 1990. See Securities Act Release No. 6867 (June 13, 1990) [55 FR 23909].