

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81448; File No. SR-FINRA-2017-026)

August 21, 2017

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify Application of FINRA Rule 11140 (Transactions in Securities “Ex-Dividend,” “Ex-rights” or “Ex-Warrants) in Connection with the Implementation of the Shortened Settlement Cycle (T+2) on September 5, 2017

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 17, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to address the application of FINRA Rule 11140 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”) as it relates to establishing ex-dividend dates in connection with the implementation of the T+2 settlement cycle on September 5, 2017.

No change to the text of FINRA Rule 11140(b)(1) is required by this proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On March 22, 2017, the SEC adopted amendments to SEA Rule 15c6-1(a) to shorten the standard settlement cycle for U.S. secondary market transactions in equities, corporate and municipal bonds, unit investment trusts and financial instruments composed of these products, from three business days after the trade date (“T+3”) to two business days after the trade date (“T+2”).⁴ The industry-wide initiative is designed to reduce a number of risks, including credit risk, market risk, and liquidity risk and, as a result, reduce systemic risk for U.S. market participants.⁵ The compliance date for the rule amendments is September 5, 2017.

⁴ See Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (Securities Transaction Settlement Cycle) (File No. S7-22-16) (stating that, as amended, SEA Rule 15c6-1(a) will prohibit broker-dealers from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers’ acceptances or commercial bills) that provides for payment of funds and delivery of securities later than the second business day after the date of the contract, unless otherwise expressly agreed to by the parties at the time of the transaction).

⁵ See supra note 4.

In support of this initiative, FINRA proposed changes to its rules pertaining to securities settlement by, among other things, amending the definition of “regular way” settlement as occurring on T+2.⁶ On February 9, 2017, the SEC approved FINRA’s amendments to the applicable rules, including Rule 11140(b), that establish or reference T+3 to conform to T+2, and these amendments will become effective on September 5, 2017.⁷

During the transition period the industry and self-regulatory organizations (“SROs”), including The Depository Trust Company (“DTC”) which processes corporate action events, have raised concern that the September 5, 2017 industry-wide transition date from T+3 to T+2 will result in September 7, 2017 being a “double” settlement date for trades that occur on September 1, 2017 (under T+3 and reflecting the Labor Day holiday on September 4, 2017) and trades that occur on September 5, 2017 (under T+2), which generally will result in investors who trade on either date being deemed a record holder of September 7, 2017.⁸ In order to avoid confusion about the proper settlement date and to coordinate with other SROs, FINRA is proposing not to establish September 5, 2017 as an ex-dividend date for applicable securities.

Proposal

⁶ See Securities Exchange Act Release No. 79648 (December 21, 2016), 81 FR 95705 (December 28, 2016) (Notice of Filing of File No. SR-FINRA-2016-047).

⁷ See Securities Exchange Act Release No. 80004 (February 9, 2017), 82 FR 10835 (February 15, 2017) (Order Approving File No. SR-FINRA-2016-047) and Securities Exchange Act Release No. 80004A (March 6, 2017), 82 FR 13517 (March 13, 2017) (Correction to Order Approving File No. SR-FINRA-2016-047).

⁸ See, e.g., Nasdaq Issuer Alert 2017-001, Changes to Ex-dividend Procedures Effective September 5, 2017 to Accommodate T+2 Settlement, <http://nasdaq.cchwallstreet.com/nasdaq/pdf/nasdaq-issalerts/2017/2017-001.pdf>; NYSE, NYSE MKT, NYSE ARCA: Changes Related to the Shortened Settlement Cycle (T+2) (July 11, 2017), <https://www.nyse.com/trader-update/history#110000069618>.

FINRA is proposing to address the application of Rule 11140(b) as it relates to the ex-dividend date in connection with the implementation of the T+2 settlement cycle on September 5, 2017. As amended to address T+2, the timeframes in Rule 11140 to establish an ex-dividend date were generally reduced by one business day.

The ex-dividend date (or ex-date) is the date on or after which a security is traded without a specific dividend or distribution.⁹ Rule 11140(b) provides for the determination of normal ex-dividend and ex-warrant dates for certain types of dividends and distributions. As amended to address T+2, Rule 11140(b)(1) provides that with respect to cash dividends or distributions, or stock dividends, and the issuance or distribution of warrants, which are less than 25% of the value of the subject security (i.e., “regular” distributions), if the definitive information is received sufficiently in advance of the record date, the date designated as the “ex-dividend date” is the first business day preceding the record date if the record date falls on a business day, or the second business day preceding the record date if the record date falls on a day designated by FINRA’s Uniform Practice Code (“UPC”) Committee as a non-delivery date.¹⁰ Rule 11140(b)(2), which did not require amendment in connection with T+2, establishes the ex-dividend date as the first business day following the payable date with respect to cash dividends or distributions, stock dividends and/or splits, and the distribution of warrants, which are 25% or greater of the value of the subject security (i.e., “large” distributions).¹¹

⁹ See generally Notice to Members 00-54 (August 2000).

¹⁰ The record date is the date fixed by an issuer for the purpose of determining the holder of the security who is eligible to receive the dividend, interest or principal payment, or any other distribution relating to the security. See generally Notice to Members 00-54 (August 2000).

¹¹ The payable date is the date that the dividend is sent to the record owner of the security. See generally Notice to Members 00-54 (August 2000).

Consistent with the compliance date of the amendments to SEA Rule 15c6-1(a), the industry and FINRA have adopted Tuesday, September 5, 2017 as the transition date to the T+2 settlement cycle.¹² To mitigate the potential confusion that may result concerning proper settlement during the transition period, FINRA, in coordination with other SROs, supports the proposal that Tuesday, September 5, 2017 should not be designated as an ex-dividend date.¹³

Accordingly, FINRA proposes to interpret Rule 11140(b)(1) so that the first record date to which the new ex-dividend date determination will be applied will be Thursday, September 7, 2017. The ex-dividend dates for “regular” distributions during the transition to T+2 will be as follows:

| Record Date | Ex-Date |
|---|---|
| Friday, September 1, 2017 ¹⁴ | Wednesday, August 30, 2017 |
| Tuesday, September 5, 2017 ¹⁵ | Thursday, August 31, 2017 ¹⁶ |
| Wednesday, September 6, 2017 | Friday, September 1, 2017 ¹⁷ |
| Thursday, September 7, 2017 ¹⁸ | Wednesday, September 6, 2017 |

¹² See Regulatory Notice 17-19 (SEC Approves Amendments to FINRA Rules to Conform to the Shortened Standard Settlement Cycle for Most Broker-Dealer Transactions From Three Business Days (T+3) to Two Business Days After the Trade Date (T+2)) (May 2017).

¹³ See, e.g., Nasdaq Issuer Alert 2017-001, Changes to Ex-dividend Procedures Effective September 5, 2017 to Accommodate T+2 Settlement, <http://nasdaq.cchwallstreet.com/nasdaq/pdf/nasdaq-issalerts/2017/2017-001.pdf>; NYSE, NYSE MKT, NYSE ARCA: Changes Related to the Shortened Settlement Cycle (T+2) (July 11, 2017), <http://www.ust2.com/pdfs/NYSE-T2-Announcements.pdf>.

¹⁴ The last day of the T+3 settlement cycle.

¹⁵ The first day of the T+2 settlement cycle.

¹⁶ Monday, September 4, 2017 is Labor Day, a Federal holiday.

¹⁷ See supra note 16.

¹⁸ The date on which previous trades settling on a T+3 settlement cycle and current trades on the T+2 settlement cycle will be processed.

As described above, the ex-date for “large” distributions under Rule 11140(b)(2) is the first business day following the payable date. This provision was not amended in connection with T+2. In order to ensure that September 5, 2017 will not be designated as an ex-dividend date for “large” distributions, FINRA will advise issuers to not set September 1, 2017 as the payable date for any “large” distribution under Rule 11140(b)(2) and proposes to interpret Rule 11140(b)(2) so that, if an issuer sets September 1, 2017 as the payable date for a “large” distribution, the ex-dividend date will be September 6, 2017, not September 5, 2017.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. FINRA believes that the proposal to address the application of Rule 11140(b) to exclude September 5, 2017 as an ex-dividend date for “regular” or “large” distributions supports the collective effort among the industry and SROs to mitigate the potential confusion concerning proper settlement during the transition from the T+3 settlement cycle to the T+2 settlement cycle.

¹⁹ 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the SROs support that no securities will be subject to an ex-date ruling on September 5, 2017. The primary benefit of this proposed rule change is to minimize potential confusion about proper settlement that may arise during the transition to the T+2 settlement cycle.²⁰ FINRA believes that the proposed rule change would not impose any additional costs on the industry. As noted above, the proposed rule change does not change the text to Rule 11140(b). Instead, the proposed rule change interprets the application of the rule solely to refrain from designating September 5, 2017 as an ex-dividend date for “regular” or “large” distributions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

²⁰ As a result of the September 5, 2017 transition date for regular-way settlement from T+3 to T+2, September 7, 2017 will be a “double” settlement date for trades that occur on September 1, 2017 (under T+3 and reflecting the Labor Day holiday on September 4, 2017) and trades that occur on September 5, 2017 (under T+2).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires FINRA to give the

A proposed rule change filed under Rule 19b-4(f)(6)²³ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated that the purpose of the proposed rule change is to minimize confusion about proper settlement that may arise during the transition to the T+2 settlement cycle on September 5, 2017. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest to avoid the confusion that could arise in connection with the transition to the T+2 settlement cycle on September 5, 2017, if normal or large distributions were to be ex-dividend on that date. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.²⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be

Commission written notice of FINRA's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

²⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2017-026 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2017-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2017-026, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Robert W. Errett
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).