

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80640; File No. SR-BX-2017-013)

May 10, 2017

Self-Regulatory Organizations; NASDAQ BX, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Shorten the Settlement Cycle from T+3 to T+2

I. Introduction

On March 9, 2017, NASDAQ BX, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to conform its rules to an amendment proposed by the Commission to Rule 15c6-1(a)³ under the Act to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date (“T+3”) to two business days after the trade date (“T+2”).⁴ On March 13, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ On March 22, 2017, the Commission adopted an amendment to Rule 15c6-1(a) under the Act to shorten the standard settlement cycle to T+2 and set a compliance date of September 5, 2017.⁶ The Exchange’s proposed rule change, as modified by Amendment No.1, was published for comment in the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.15c6-1(a).

⁴ See Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7-22-16).

⁵ In Amendment No. 1, the Exchange proposes to capitalize the letter “d” in the word “department” in the proposed revisions to Rule 11140(b)(1), as set forth in Exhibit 5 to the filing, to conform to the Exchange’s current rule text.

⁶ See Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (“SEC Adopting Release”).

Federal Register on March 27, 2017.⁷ The Commission did not receive any comment letters on the proposed rule change, as modified by Amendment No. 1. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to amend Exchange Rules 11140 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”), 11150 (Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”), 11210 (Sent by Each Party), 11320 (Dates of Delivery), 11620 (Computation of Interest), and IM-11810 (Sample Buy-In Forms), to conform to the Commission’s proposed amendment to Rule 15c6-1(a) under the Act that would shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2.

Exchange Rule 11140(b)(1) concerns the determination of normal ex-dividend and ex-warrants dates for certain types of dividends and distributions. Currently, 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, if the definitive information is received sufficiently in advance of the record date, the date designated as the “ex-dividend date” is the second business day preceding the record date if the record date falls on a business day, or the third business day preceding the record date if the record date falls on a day designated by the Exchange’s Regulation Department as a non-delivery day. Under the proposal, the “ex-dividend date” would be 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 the Exchange’s Regulation Department as a non-delivery date.

⁷ See Securities Exchange Act Release No. 80282 (March 21, 2017), 82 FR 15258.

Exchange Rule 11150(a) concerns the determination of normal ex-interest dates for certain types of transactions. Currently, all transactions, except “cash” transactions, in bonds or similar evidences of indebtedness which are traded “flat” are “ex-interest” on the second business day preceding the record date if the record date falls on a business day, on the third business day preceding the record date if the record date falls on a day other than a business day, and on the third business day preceding the date on which an interest payment is to be made if no record date has been fixed. Under the proposal, these transactions would be “ex-interest” on the first business day preceding the record date if the record date falls on a business day, on the second business day preceding the record date if the record date falls on a day other than a business day, and on the second business day preceding the date on which an interest payment is to be made if no record date has been fixed.

Exchange Rules 11210(c) and (d) set forth “DK” procedures using “Don’t Know Notices” and other forms of notices, respectively.⁸ Exchange Rule 11210(c) currently provides that, when a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK from the contra-member by the close of four business days following the trade date of the transaction, the party may use the procedures set forth in the rule. The Exchange proposes to shorten the “four business days” time period to one business day. Exchange Rule 11210(c)(2)(A) currently provides that a contra-member has four business days after the “Don’t Know Notice” is received to either confirm or DK the transaction in accordance with Exchange Rule 11210(c)(2)(B) or (C). The Exchange proposes to shorten the “four business

⁸ Exchange Rule 11210 does not apply to transactions that clear through the National Securities Clearing Corporation or other clearing organizations registered under the Act. See Exchange Rule 11210(a)(4).

days” time period to two business days.⁹ Exchange Rule 11210(c)(3) currently provides that if the confirming member does not receive a response from the contra-member by the close of four business days after receipt by the confirming member the fourth copy of the “Don’t Know Notice” if delivered by messenger, or the post office receipt if delivered by mail, such shall constitute a DK and the confirming member shall have no further liability for the trade. The Exchange proposes to shorten the “four business days” time period to two business days.

The Exchange proposes similar changes to Exchange Rule 11210(d). Exchange Rule 11210(d) currently provides that, when a party to a transaction sends a comparison or confirmation of a trade, but does not receive a comparison or confirmation or a signed DK from the contra-member by the close of four business days following the date of the transaction, the party may use the procedures set forth in the rule. The Exchange proposes to shorten the “four business days” time period to one business day. Exchange Rule 11210(d)(5) currently provides that if the confirming member does not receive a response in the form of a notice from the contra-member by the close of four business days after receipt of the confirming member’s notice, such shall constitute a DK and the confirming member shall have no further liability. The Exchange proposes to shorten the “four business days” time period to two business days.

Exchange Rule 11320 prescribes delivery dates for various types of transactions. Exchange Rule 11320(b) currently provides that in connection with a transaction “regular way,” delivery is made at the office of the purchaser on, but not before, the third business day following the date of the transaction. Under the proposal, delivery would be required to be made on, but not before, the second business day following the date of the transaction. Exchange Rule

⁹ The Exchange also proposes to make non-substantive, formatting changes to Exchange Rule 11210(c)(2)(A).

11320(c) currently provides in part that, in connection with a transaction “seller’s option,” delivery may be made by the seller on any business day after the third business day following the date of transaction and prior to the expiration of the option, provided the seller delivers at the office of the purchaser, on a business day preceding the day of delivery, written notice of intention to deliver. Under the proposal, delivery may be made by the seller on any business day after the second business day following the date of the transaction and prior to expiration of the option.¹⁰

Exchange Rule 11620 governs the computation of interest. Exchange Rule 11620(a) currently provides in part that, in the settlement of contracts in interest-paying securities other than for “cash,” there shall be added to the dollar price interest at the rate specified in the security, which shall be computed up to but not including the third business day following the date of the transaction. Under the proposal, the interest would be computed up to but not including the second business day following the date of the transaction.¹¹

Exchange Rule IM-11810(i)(1)(A) sets forth the circumstances under which a receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in Exchange Rule IM-11810(a)-(g). Currently, when the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the notice must be issued using written or comparable electronic media having immediate receipt capabilities “no later than one business day prior to the latest time and the date of the offer or

¹⁰ The Exchange also proposes to make a non-substantive change to Exchange Rule 11320(c).

¹¹ The Exchange also proposes to capitalize certain words in the title of Exchange Rule 11620(a).

other event” in order to obtain the protection provided by the rule. Under the proposal, the notice must be “sent as soon as practicable but not later than two hours prior to the cutoff time set forth in the instructions on a specific offer or other event” in order to obtain the protection provided by the rule.

The Exchange represents that it will announce the operative date of the proposed rule change in an Equity Regulatory Alert, which date would correspond with the industry-led transition to a T+2 standard settlement, and the compliance date of the amendment to Rule 15c6-1(a) under the Act.¹²

III. Discussion and Commission’s Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.¹³ Specifically, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,¹⁴ which requires that the rules of a national securities exchange be designed, among other things, 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, to remove impediments to and perfect the

¹² See SEC Adopting Release, supra note 6.

¹³ In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The Commission notes that the proposed rule change, as modified by Amendment No. 1, would amend Exchange rules to conform to the amendment that the Commission has adopted to Rule 15c6-1(a) under the Act¹⁵ and support a move to a T+2 standard settlement cycle. In the SEC Adopting Release, the Commission stated its belief that shortening the standard settlement cycle from T+3 to T+2 will result in a reduction of credit, market, and liquidity risk,¹⁶ and as a result a reduction in systemic risk for U.S. market participants.¹⁷ The compliance date for the amendment to Rule 15c6-1(a) under the Act is September 5, 2017.¹⁸ The Exchange has represented that it would announce the operative date of the proposed rule change in an Equity Regulatory Alert and that such date would correspond to the compliance date of the amendment to Rule 15c6-1(a) under the Act.

For the reasons noted above, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of the Act and would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the

¹⁵ See SEC Adopting Release, supra note 6.

¹⁶ Credit risk refers to the risk that the credit quality of one party to a transaction will deteriorate to the extent that it is unable to fulfill its obligations to its counterparty on settlement date. Market risk refers to the risk that the value of securities bought and sold will change between trade execution and settlement such that the completion of the trade would result in a financial loss. Liquidity risk describes the risk that an entity will be unable to meet financial obligations on time due to an inability to deliver funds or securities in the form required though it may possess sufficient financial resources in other forms. See id., at 15564 n. 3.

¹⁷ See id. at 15564.

¹⁸ See id.

mechanism of a free and open market and a national market system, and protect investors and the public interest.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change, (SR-BX-2017-013), as modified by Amendment No. 1, be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

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Assistant Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).