

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- 81446; File No. SR-NASDAQ-2017-084)

August 21, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Address the Application of Rule 11140 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 18, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) 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 the Exchange. 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

The Exchange proposes to address the application of Rule 11140 as it relates to the ex-dividend date in connection with the implementation of the T+2 settlement cycle on September 5, 2017.

No change to the text of Rule 11140 is required by this proposal.

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

In its filing with the Commission, the Exchange 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange 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

The Exchange is proposing to address the application of Rule 11140 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”) as it relates to the ex-dividend date in connection with the implementation of the trade date plus two business days (T+2) settlement cycle on September 5, 2017.

On September 28, 2016, following a recommendation by the securities industry, the Commission proposed amending Exchange Act Rule 15c6-1(a)<sup>3</sup> to shorten the standard settlement cycle for most broker-dealer transactions from trade date plus three business days (T+3) to T+2.<sup>4</sup> The rationale for this proposal was that the shorter settlement cycle would reduce the risks that arise from the value and number of unsettled securities transactions prior to the completion of settlement, including credit, market, and liquidity risk directly faced by U.S. market participants.<sup>5</sup> The SEC adopted the proposed changes to Rule 15c6-1(a) on March 22, 2017.<sup>6</sup>

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<sup>3</sup> 17 CFR 240.15c6-1(a).

<sup>4</sup> 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).

<sup>5</sup> Id.

<sup>6</sup> See Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (File No. S7-22-16).

In connection with the amendments to Rule 15c6-1(a) and the adoption of the shortened settlement cycle, Nasdaq submitted a proposed rule change implementing the new settlement cycle and making corresponding changes to its applicable rules, including Rule 11140(b).<sup>7</sup>

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. In order to avoid confusion about the proper settlement date and to coordinate with other SROs, Nasdaq and the other SROs have agreed that no securities will be ex-dividend on September 5, 2017.

The Exchange is therefore now 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.

The ex-dividend date is the date on which a security is first traded without the right to receive a distribution of cash, stock or warrants. Rule 11140(b)(1) establishes the “ex-dividend date” for “normal” distributions of cash, stock or warrants. The rule provides that, in 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,<sup>8</sup> the date designated as the “ex-dividend date”

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<sup>7</sup> See Securities Exchange Act Release No. 79687 (December 23, 2016), 81 FR 96545 (December 30, 2016) (Order approving SR-NASDAQ-2016-183).

<sup>8</sup> The record date is “the date fixed by the trustee, registrar, paying agent or issuer for the

shall be 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 Nasdaq Regulation as a non-delivery date.

Rule 11140(b)(2) establishes the ex-dividend date with respect to “large” distributions, e.g., 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. In this case, the ex-dividend date is the first business day following the payable date.<sup>9</sup>

Consistent with the compliance date of the amendments to Rule 15c6-1(a), the securities industry has adopted Tuesday, September 5, 2017 as the implementation date of the T+2 settlement cycle.<sup>10</sup> With the implementation of the T+2 settlement cycle, the ex-dividend date for “normal” distributions pursuant to Rule 11140(b)(1) will be the first business day before the record date.<sup>11</sup> Accordingly, Nasdaq proposes to interpret Rule 11140(b)(1) so that the first record date to which this new ex-dividend date rationale will be applied will be Thursday, September 7, 2017. During the implementation of the T+2 settlement cycle, the “regular” ex-dividend dates will be as follows:

Record Date 9/1/2017	Ex date 8/30/2017
Record Date 9/5/2017	Ex date 8/31/2017
Record Date 9/6/2017	Ex date 9/1/2017

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purpose of determining the holders of equity securities, bonds, similar evidences of indebtedness or unit investment trust securities entitled to receive dividends, interest or principal payments or any other distributions.” See Rule 11120(e).

<sup>9</sup> The payable date is the date on which a declared stock dividend is scheduled to be paid.

<sup>10</sup> See Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017) (File No. S7-22-16).

<sup>11</sup> See Securities Exchange Act Release No. 79687 (December 23, 2016), 81 FR 96545 (December 30, 2016).

Record Date 9/7/2017      Ex date 9/6/2017<sup>12</sup>

As described above, the ex-dividend date for “large” distributions under Rule 11140(b) is the first business day following the payable date. This provision was not amended in connection with the adoption of the T+2 settlement cycle. In order to ensure that no securities will be ex-dividend on September 5, 2017 for purposes of “large” distributions, Nasdaq similarly proposes to interpret Rule 11140(b) so that, if an issuer sets September 1, 2017 as the payment date for a large distribution, the ex-dividend date would be September 6, 2017, not September 5, 2017.

Nasdaq notes that it previously issued an Issuer Alert addressing the application of the T+2 implementation date on Rule 11140(b).<sup>13</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In the interest of minimizing potential confusion about proper settlement in connection with the implementation of the T+2 settlement cycle on September 5, 2017, the SROs have agreed that no securities will be ex-dividend on September 5, 2017. This proposal is consistent with the Act because it interprets the application of Rule 11140(b) on September 5, 2017 so that neither “normal” nor “large” distributions will be ex-divided on that

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<sup>12</sup> September 4, 2017 is Labor Day and not a business day.

<sup>13</sup> See Nasdaq Issuer Alert 2017-001 (Changes to Ex-dividend Procedures Effective September 5, 2017 to Accommodate T+2 Settlement), available at <http://nasdaq.cchwallstreet.com/nasdaq/pdf/nasdaq-issalerts/2017/2017-001.pdf>.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

date, thereby interpreting the application of the Rule on that date while minimizing the possibility of additional operational complexity and potential confusion about settlement that could occur if the rule were interpreted differently.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the SROs, including DTC, have collectively agreed that no securities will be ex-dividend on September 5, 2017 in order to minimize confusion about proper settlement. Accordingly, the proposed rule change interprets the application of Rule 11140(b) on September 5, 2017 so that neither "normal" nor "large" distributions will be ex-dividend on that date.

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

No written comments were either solicited or 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 Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange'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. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>18</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>19</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange 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.<sup>20</sup>

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 approved or disapproved.

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<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> 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).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-084 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-NASDAQ-2017-084. 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 the Exchange. 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-NASDAQ-2017-084, 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.<sup>21</sup>

Robert W. Errett  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).