

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79658; File No. SR-NYSEMKT-2016-119)

December 22, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to Conform to Proposed Amendments to Securities Exchange Act Rule 15c6-1(a) to Shorten the Standard Settlement Cycle from Three Business Days after the Trade Date (“T+3”) to Two Business Days after the Trade Date (“T+2”)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 15, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 adopt new Rules 14T – Equities, 64T – Equities, 235T – Equities, 236T – Equities, 257T – Equities and 282.65T – Equities, and Sections 510T and 512T of the NYSE MKT Company Guide to conform to proposed amendments to Securities Exchange Act Rule 15c6-1(a) to shorten the standard settlement cycle from three business days after the trade date to two business days after the trade date. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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 proposes to adopt the following new rules to conform to proposed amendments to Securities Exchange Act Rule 15c6-1(a)⁴ to shorten the standard settlement cycle from T+3 to T+2:

- Rule 14T – Equities (Non-Regular Way Settlement Instructions for Orders);
- Rule 64T – Equities (Bonds, Rights and 100-Share-Unit Stocks);
- Rule 235T – Equities (Ex-Dividend, Ex-Rights);
- Rule 236T – Equities (Ex-Warrants);
- Rule 257T – Equities (Deliveries After "Ex" Date);
- Rule 282.65T – Equities (Failure to Deliver and Liability Notice Procedures); and
- Sec. 510T (Two Day Delivery Plan) and Sec. 512T (Ex-Dividend Procedure) of the NYSE MKT Company Guide (the "Company Guide").

⁴ See 17 CFR 240.15c6-1(a); see also notes 8-9, infra.

The proposed new rules would have the same numbering as the current rules, but with the modifier “T” appended to the rule number. For example, Rule 14 – Equities, governing non-regular way settlement instructions for orders, would remain unchanged and continue to apply to non-regular way settlements on the Exchange. Proposed Rule 14T – Equities would reflect that a regular way settlement would be two days and not the current three days. As discussed below, because the Exchange would not implement the proposed rules until after the final implementation of T+2, the Exchange proposes to retain the current versions of each rule on its books and not delete it until after the proposed rules are approved. The Exchange also proposes to file separate proposed rule changes to establish the operative date of the proposed rules and to delete the current version of each rule.

Background

In 1993, the Securities and Exchange Commission (the “SEC” or “Commission”) adopted Rule 15c6-1(a)⁵ under the Act, which established three business days after trade date instead of five business days (“T+5”), as the standard trade settlement cycle for most securities transactions. The rule became effective in June 1995.⁶ In November 1994, the Exchange amended its rules to be consistent with the T+3 settlement cycle for securities transactions.⁷

On September 28, 2016, the SEC proposed amendments to Rule 15c6-1(a) to shorten the standard settlement cycle from T+3 to T+2 on the basis that the shorter settlement cycle would

⁵ 17 CFR 240.15c6-1(a).

⁶ See Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (order adopting Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (order changing the effective date from June 1, 1995, to June 7, 1995).

⁷ See Securities Exchange Act Release Nos. 35110 (December 16, 1994), 59 FR 0 (December 23, 1994) (SR-NYSE-94-40) (Notice) and 35506 (March 17, 1995), 60 FR 15618 (March 24, 1995) (SR-NYSE-94-40) (Approval Order).

reduce the risks that arise from the value and number of unsettled securities transactions prior to completion of settlement, including credit, market and liquidity risk faced by U.S. market participants.⁸ The proposed rule amendment was published for comment in the Federal Register on October 5, 2016.⁹ In light of this action by the SEC, the Exchange proposes new rules to reflect “regular way” settlement as occurring on T+2.¹⁰

Proposed Rule Change

The Exchange proposes the following new rules identified with the modifier “T” in order to reflect a T+2 settlement cycle. Except for changes reflecting the shortened settlement period, the proposed rules are the same as their current counterparts:

- Current Rule 14(a)(i) – Equities defines non-regular way settlement instructions as instructions that allow for settlement other than regular way, that is, “settlement on the third business day following trade date for securities other than U.S. Government Securities”. The Exchange proposes a new Rule 14T – Equities that replaces “third” business day with “second”;
- Current Rule 64(a) – Equities defines “regular way” as “for delivery on the third business day following the day of the contract.” The Exchange

⁸ See SEC Press Release 2016-200: “SEC Proposes Rule Amendment to Expedite Process for Settling Securities Transactions” (September 28, 2016).

⁹ See Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (File No. S7-22-16) (“SEC Proposing Release”).

¹⁰ Earlier this year the MSRB also filed a rule change to reflect “regular way” settlement as occurring on T+2. See Securities Exchange Act Release Nos. 77744 68678 [sic] (April 29, 2016), 81 FR 14906 (March 18, 2016) (SR-MSRB-2016-04) (approving proposed amendments to MSRB Rules G-12 and G-15 to define regular-way settlement for municipal securities transactions as occurring on a two-day settlement cycle and technical conforming amendments).

proposes new Rule 64T(a) – Equities that changes “third” business day to “second.” Current Rule 64 – Equities (a)(ii) provides that on the second and third business days preceding the final day for subscription, bids and offers in rights to subscribe shall be made only “next day.” To conform with the move to a T+2 settlement cycle, proposed Rule 64T(a)(ii) – Equities would not contain a clause referring to the second and third business days preceding the final day for subscription because the third business day preceding the final day for subscription in a T+2 settlement cycle would simply be a regular way settlement. Finally, current Rule 64(c) – Equities requires “seller’s option” trades, defined as trades for delivery between two and 60 business days, to be reported to the tape only in calendar day. Proposed Rule 64T(c) – Equities would define “seller’s option” trades as trades for delivery between three and 60 business days to reflect the shortened settlement period. Further, the final sentence of the current Rule provides that the settlement date of a “seller’s option” transaction printed as calendar days cannot coincide with the normal three business day “regular way” settlement. In proposed Rule 64T – Equities, the Exchange would change the reference to “regular way” settlements to two business day.¹¹

¹¹ The Exchange also proposes to make several non-substantive changes. As reflected in proposed Rule 64T(a)(i) – Equities, italics would be removed from the single quote before the words “issued” and “regular” and a missing parenthesis added before the word “See” in the second sentence of the second paragraph. Italics would also be removed from the single quote before the word “seller’s” in five places in proposed Rule 64T(c) – Equities as well as before the word “regular” in the last sentence. Finally, as reflected in proposed Rule 64T(a)(1), (a)(ii) and (b) – Equities, bold would be removed from “(a)(i),”

- Rule 235 – Equities provides that transactions in stocks, except those made for “cash” as prescribed in Rule 14 – Equities, shall be ex-dividend or ex-rights on the second business day preceding the record date fixed by the corporation or the date of the closing of transfer books. The Exchange proposes to adopt proposed Rule 235T – Equities that would delete the word “second” so the reference would be to the “business day” preceding the record date. The current Rule further provides that if the record date or closing of transfer books occurs upon a day other than a business day, Rule 235 – Equities shall apply for the third preceding business day. The Exchange proposes to change “third preceding business day” to “second preceding business day” in proposed Rule 235T – Equities;¹²
- Current Rule 236 – Equities prescribes that ex-warrant trading will begin on the second business day preceding the date of expiration of the warrants, except that when expiration occurs on a non-business day, in which case it will begin on the third business day preceding date of expiration. The Exchange proposes to adopt proposed Rule 236T – Equities and change the warrant period to the business day preceding expiration of the warrants instead of the second business day. Under the proposed Rule, when warrant expiration occurs on other than a business day, the ex-warrant period will begin on the second business day

“(ii)” and “(b).”

¹² The Exchange also proposes to make non-substantive changes to correct punctuation in proposed Rule 235T – Equities by removing italics from the single quote before the word “cash” in two places.

preceding the expiration date instead of on the third business day;¹³

- Current Rule 257 – Equities prescribes the time frame for delivery of dividends or rights for securities sold before the “ex” date but delivered after the record date. The current time frame is within three days after the record date. Consistent with the T+2 initiative, proposed Rule 257T – Equities the time frame is being shortened to two days;¹⁴
- Subdivision (1)(A) of Supplementary Material .65 to current Rule 282 – Equities sets forth the fail-to-deliver and liability notice procedures where a securities contract is for warrants, rights, convertible securities or other securities which have been called for redemption; are due to expire by their terms; are the subject of a tender or exchange offer; or are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered is the settlement date of the contract or later.

Under current Rule 282.65(1)(A) – Equities, the receiving member organization delivers a liability notice to the delivering member organization as an alternative to the close-out procedures set forth in the Rule. The liability notice sets a cutoff date for the delivery or surrender of the securities and provides notice to the delivering member organization of

¹³ The Exchange also proposes to make non-substantive changes to correct punctuation in proposed Rule 236T – Equities by removing italics from the single quote before the word “cash” in two places.

¹⁴ The Exchange also proposes to make non-substantive changes to correct punctuation in proposed Rule 257T – Equities by removing italics from the single quote before the word “Ex” in the heading and the word “cash” in the rule text.

the liability attendant to its failure to deliver or surrender the securities in time. If the delivering member organization delivers or surrenders the securities in response to the liability notice, it has met its delivery obligation. If the delivering member organization fails to deliver or surrender the securities on the expiration date, it will be liable for any damages that may accrue thereby.

Current Rule 282.65(1)(A) – Equities further provides that when the parties to a contract are both participants in a Qualified 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 transmission of the liability notice must be accomplished through such automated notification service.

When the parties to a contract are not both participants in a Qualified Clearing Agency¹⁵ that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such 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 other event in order to obtain the

¹⁵ Rule 180 – Equities governs failure to deliver and provides in part that “[w]hen the parties to a contract are both participants in a registered clearing agency which has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and that contract was to be settled through the facilities of said registered clearing agency, the transmission of the liability notification must be accomplished through use of said automated notification service.” Rule 180 – Equities does not address the transmission of the liability notification for parties to a contract that are not both participants in a registered clearing agency, which is governed by Rule 282.65 – Equities.

protection provided by this Rule.¹⁶

Given the proposed shortened settlement cycle, and in order to address concerns that the requirement for the delivering member organization to deliver a liability notice to the receiving member no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by the Rule may no longer be appropriate in a T+2 environment,¹⁷ the Exchange proposes to amend Rule 282.65(1)(A) – Equities in situations where both parties to a contract are not participants of a registered clearing agency with an automated notification service by extending the time frame for delivery of the liability notice. Rule 282.65(1)(A) – Equities would accordingly be amended to provide that in such cases, the receiving member organization must send the liability notice to the delivering member organization 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 to obtain the protection provided by the Rule. The proposed change would be the only

¹⁶ The one-day time frame also appears in comparable provisions of other SROs. See, e.g., FINRA Rule 11810(j)(1)(A); NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) (Effective August 10, 2016); and Nasdaq Rule IM–11810 (Buying-in).

¹⁷ See, e.g., Letter from Thomas F. Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated April 4, 2016 (“SIFMA”) (April 4, 2016), noting in connection with FINRA Rule 11810(j), the comparable provision to Rule 282.65(1)(A) – Equities, that the “industry has identified a number of situations where one-day notice may no longer be appropriate in a T+2 environment, including (1) where the delivery obligation is transferred to another party as a result of continuous net settlement, (2) settlements outside of National Securities Clearing Corporation (the “NSCC”) and (3) settlements where the third party is not a[n NYSE MKT] member.”

change to the text of current Supplementary Material .65;

- Current Sec. 510 of the Company Guide provides that all transactions effected on the Exchange (unless otherwise specified) will be settled in three business days and that a “regular way” transaction is due for settlement by delivery of the securities against payment on the third business day after the transaction date. To reflect the change to a two day delivery rule, proposed Sec. 510T would change both references from three business days to two business days. Additionally, current Sec. 510 provides an example of the delivery plan for ex-dividend and ex-rights, and states that a “regular way” transaction made on a Friday is due for settlement on Wednesday of the following week and that a transaction on Monday is due for settlement on Thursday. To reflect the change to a two day delivery rule, proposed Sec. 510T would change the Wednesday to Tuesday and Thursday to Wednesday in the example; and
- Current Sec. 512 of the Company Guide provides that transactions in stocks (except those made for “cash”) are ex-dividend on the second business day preceding the record date unless the record date selected is not a business day, in which case the stock will be quoted ex-dividend on the third preceding business day. Consistent with the T+2 initiative, proposed Sec. 512 would shorten the time frames to the business day preceding the record date and in cases where the record date is not a business day, the second preceding business day.

Operative Date Preambles

As noted above, because the Exchange would not implement the proposed rules until after the final implementation of T+2, the Exchange proposes to retain the current versions of each rule on its books and not delete them until after the proposed rules are approved. The Exchange also proposes to file separate proposed rule changes as necessary to establish the operative date of the proposed rules and to delete the current version of each rule.

To reduce the potential for confusion regarding which version of a given rule governs, the Exchange proposes to add a preamble to each current rule providing that: (1) the rule will remain operative until the Exchange files separate proposed rule changes as necessary to establish the operative date of the revised rule, to delete the current rule and proposed preamble, and to remove the preamble text from the revised rule; and (2) in addition to filing the necessary proposed rule changes, the Exchange will announce via Information Memo the operative date of the deletion of the current rule and implementation of the proposed rule designated with a T.

The Exchange also proposes to add a preamble to each proposed rule that would provide that: (1) the Exchange will file a separate rule change to establish the operative date of the proposed rule, delete the current version and the proposed preamble, and remove the preamble text from the revised rule; and (2) until such time, the current version of the rule will remain operative and that, in addition to filing the necessary proposed rule changes, the Exchange will announce via Information Memo the implementation of the proposed rule and the operative date of the deletion of the current rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, 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 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 particular, the Exchange believes that the proposed rule change supports the industry-led initiative to shorten the settlement cycle to two business days. Moreover, the proposed rule change is consistent with the SEC's proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2. The Exchange believes that the proposed rule change will provide the regulatory certainty to facilitate the industry-led move to a T+2 settlement cycle. Further, the Exchange believes that, by shortening the time period for settlement of most securities transactions, the proposed rule change would protect investors and the public interest by reducing the number of unsettled trades in the clearance and settlement system at any given time, thereby reducing the risk inherent in settling securities transactions to clearing corporations, their members and public investors. The Exchange also believes that adding a preamble to each current rule and to each proposed rule clarifying the operative dates of the respective versions would remove impediments to and perfect the mechanism of a free and open market and a national market system by adding clarity and transparency to the Exchange's rules, reducing potential confusion, and making the Exchange's rules easier to navigate.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather facilitate the industry's transition to a T+2 regular-way settlement cycle. The Exchange also believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. Moreover, the proposed rule changes are consistent with the SEC's proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2. Accordingly, the Exchange believes that the proposed changes do not impose any burdens on the industry in addition to those necessary to implement amendments to SEA Rule 15c6-1(a) as described and enumerated in the SEC Proposing Release.²⁰

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

²⁰ See note 9, supra.

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-NYSEMKT-2016-119 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEMKT-2016-119. 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-NYSEMKT-2016-119, 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.²¹

Eduardo A. Aleman
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).