

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80020; File No. SR-NYSEMKT-2016-119)

February 10, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Approval of a Proposed Rule Change to Conform to Proposed Amendment to Rule 15c6-1(a) under the Securities Exchange Act of 1934 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”)

I. Introduction

On December 15, 2016, NYSE MKT LLC (“NYSE MKT” or “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) 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”).³ The proposed rule change was published for comment in the Federal Register on December 29, 2016.⁴ The Commission received two comments on the proposal, each of which supports the proposed rule change.⁵ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78962 (Sept. 28, 2016), 81 FR 69240 (Oct. 5, 2016) (File No. S7-22-16) (“T+2 Proposing Release”).

⁴ See Securities Exchange Act Release No. 79659 (Dec. 22, 2016), 81 FR 84635 (Dec. 29, 2016).

⁵ See Letters from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated January 19, 2017; and Thomas F. Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association (“SIFMA”), dated January 19, 2017.

II. Description of the Proposal

The Exchange proposes to adopt Equities Rules 14T – Equities (Non-Regular Way Settlement Instructions for Orders); 64T – Equities (Bonds, Rights and 100-Share-Unit Stocks); 235T – Equities (Ex-Dividend, Ex-Rights); 236T – Equities (Ex-Warrants); 257T – Equities (Deliveries After “Ex” Date); 282.65T – Equities (Failure to Deliver and Liability Notice Procedures); and Sections 510T (Three Day Delivery Plan) and 512T (Ex-Dividend Procedure) of the NYSE MKT Company Guide, in order to conform the Exchange’s rulebook to the Commission’s proposed amendment to Rule 15c6-1(a) under the Act, which would shorten the standard settlement cycle from T+3 to T+2 for most broker-dealer transactions.

Exchange Rule 14 – Equities defines “non-regular way” settlement instructions as instructions that allow for settlement other than “regular way” (i.e., other than settlement on the third business day following trade date for securities other than U.S. Government Securities). Proposed Exchange Rule 14T – Equities would amend this definition to replace “third business day” with “second business day.”

Similarly, Exchange Rule 64(a) – Equities defines “regular way” as “for delivery on the third business day following the day of the contract.” Proposed Exchange Rule 64T(a) – Equities would replace “third business day” with “second business day.”⁶ Exchange Rule 64(a)(ii) – Equities currently provides that on the second and third business days preceding the

⁶ The Exchange also proposes to make several non-substantive changes. As reflected in proposed Exchange 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 Exchange Rule 64T(c) – Equities as well as before the word “regular” in the last sentence. Finally, as reflected in proposed Exchange Rule 64T(a)(1), (a)(ii) and (b) – Equities, bold would be removed from “(a)(i),” “(ii)” and “(b).”

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 Exchange Rule 64T(a)(ii) – Equities would delete the reference to the third business day preceding the final day for subscription because in a T+2 settlement cycle, bids and offers in rights to subscribe on that day would simply be subject to “regular way” settlement. Under Current Exchange Rule 64(c) – Equities, all “seller’s option” trades, for delivery between 2 and 60 business days, should be reported to the tape only in calendar days. The Exchange proposes to amend Exchange Rule 64T(c) – Equities to replace the reference to “two” with a reference to “three.”

Exchange Rule 235 – Equities provides that transactions in stocks, except those made for “cash” as prescribed in Exchange 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 in Exchange Rule 235T – Equities to change “second business day preceding” to “business day preceding.” The current Exchange Rule 235 – Equities further provides that, if the record date or closing of transfer books occurs upon a day other than a business day, Exchange Rule 235 shall apply for the third preceding business day. The Exchange proposes to change “third preceding business day” to “second preceding business day” in proposed Exchange Rule 235T – Equities.⁷

Exchange Rule 236 – Equities pertaining to ex-warrants similarly provides that transactions in securities that have subscription warrants attached, except those made for cash,

⁷ The Exchange also proposes to make non-substantive changes to correct punctuation in proposed Exchange Rule 235T – Equities by removing italics from the single quote before the word “cash” in two places.

shall be ex-warrants on the second business day preceding the date of expiration of the warrants, except that when the date of expiration occurs on a day other than a business day, the transactions shall be ex-warrants on the third business day preceding the date of expiration. The Exchange proposes to adopt proposed Exchange Rule 236T – Equities and change the warrant period to the business day preceding expiration of the warrants instead of the second business day. Under proposed Exchange Rule 236T – Equities, when warrant expiration does not occur on a business day, the ex-warrant period will begin on the second business day preceding the expiration date instead of on the third business day.⁸

Exchange Rule 257 – Equities prescribes that the time frame for delivery of dividends or rights for securities sold before the “ex” date but delivered after the record date must occur within three days after the record date. Proposed Exchange Rule 257T – Equities would shorten the time frame to two days.⁹

Subdivision (1)(A) of Supplementary Material .65 to current Exchange Rule 282 – Equities provides that when a liability notice is sent by parties to a contract who are not 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, that notice must be issued 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 under Exchange Rule 282 – Equities. The Exchange proposes

⁸ 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.

⁹ 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.

to amend the Supplementary Material so that Exchange Rule 282.65T(1)(A) – Equities would provide that, to obtain the protection provided by Exchange Rule 282– Equities, 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.

Section 510 of the Exchange’s Company Guide provides that all transactions effected on the Exchange (unless otherwise specified) will be settled in three business days. Additionally, Section 510 states 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. Section 510 also provides an example stating 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 of the same week. The Exchange proposes in Section 510T to replace both references to “three business days” with a reference to “two business days.” Proposed Section 510T would also amend the example provided in Section 510 by changing “Wednesday” to “Tuesday” and “Thursday” to “Wednesday.”

Section 512 of the Exchange’s 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. Proposed Section 512T would shorten these time frames to the business day preceding the record date and the second business day preceding the record date, respectively.

The Exchange proposes to adopt the rules but delay making the rules operative until the compliance date of any amendment to Rule 15c6-1(a) under the Act that the Commission adopts.

The Exchange proposes to add preambles to each amended rule, and to the rule it would replace, to provide that (1) the existing 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.

III. Discussion and Commission's Findings

After careful review of the proposed rule change and the comments, 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.¹⁰ Specifically, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act,¹¹ 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 mechanism of a free and open market and a national market system, and to protect investors and the public interest.

¹⁰ In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

As noted above, the Commission received two comment letters on the proposed rule change.¹² Both comment letters express support for Commission approval of the proposed rule change.

The Commission notes that the proposal would amend the Exchange's rules to conform to the amendment that the Commission has proposed to Rule 15c6-1(a) under the Act¹³ and support a move to a T+2 standard settlement cycle. In the T+2 Proposing Release the Commission stated its preliminary belief that shortening the standard settlement cycle from T+3 to T+2 will result in a reduction of credit, market, and liquidity risk,¹⁴ and as a result a reduction in systemic risk for U.S. market participants.¹⁵ The Commission also notes that it has not yet adopted the proposed amendment to Rule 15c6-1(a) under the Act and that the Exchange has, accordingly, not proposed to make its amended rules operative at present. Instead, the Exchange has proposed to announce the operative date of the Exchange's proposal via Information Memo and by filing a separate proposed rule change. The Commission expects that the operative date of the proposed rule change would correspond with the compliance date of any amendment to Rule 15c6-1(a) that is adopted by the Commission. The Commission notes that, in October

¹² See supra note 5.

¹³ See supra note 3.

¹⁴ 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 T+2 Proposing Release, supra note 3, 81 FR at 69241 n. 3.

¹⁵ See T+2 Proposing Release, supra note 3, 81 FR at 69241.

2014, Depository Trust and Clearing Corporation, in collaboration with the Investment Company Institute, SIFMA, and other market participants, formed an Industry Steering Group (“ISC”) and an industry working group to facilitate the transition to a T+2 settlement cycle for U.S. trades in equities, corporate and municipal bonds, and unit investment trusts.¹⁶ The ISC has identified September 5, 2017, as the target date for the transition to a T+2 settlement cycle to occur.¹⁷

For the reasons noted above, the Commission finds that the proposal 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

¹⁶ See Press Release, DTCC, Industry Steering Committee and Working Group Formed to Drive Implementation of T+2 in the U.S. (Oct. 2014), <http://www.dtcc.com/news/2014/october/16/ust2.aspx>.

¹⁷ See Press Release, ISC, US T+2 ISC Recommends Move to Shorter Settlement Cycle On September 5, 2017 (Mar. 7, 2016), <http://www.ust2.com/pdfs/T2-ISC-recommends-shorter-settlement-030716.pdf>.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEMKT-2016-119), be and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).