

SECURITIES AND EXCHANGE COMMISSION  
(Release No 34-81501; File No. SR-Phlx-2017-71)

August 30, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rules 431, 432, and 835 to Conform them to Securities Exchange Act Rule 15c6-1(a), which Shortens the Settlement Cycle to Two Dates after the Trade Date, and to Interpret the Amended Rules to Exclude September 5, 2017 as the First Ex-Dividend Date Thereunder

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 22, 2017, NASDAQ PHLX LLC (“Phlx” 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 amend PHLX Rules 431, 432, and 825 to conform them to SEA Rule 15c6-1(a) 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”) and the industry-led initiative to shorten the settlement cycle from T+3 to T+2. The proposal also addresses the application of these Rules as they relate to establishing ex-dividend dates in connection with the implementation of the T+2 settlement cycle on September 5, 2017.

The Exchange requests that the Commission waive the five-day pre-filing requirement and the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</sup> While

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on September 5, 2017.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 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

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 T+3 to T+2.<sup>4</sup> The industry-wide initiative is designed to reduce a number of risks,

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<sup>4</sup> 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

including credit risk, market risk, and liquidity risk and, as a result, reduce systemic risk for U.S. market participants.<sup>5</sup> The compliance date for the rule amendments is September 5, 2017.

The Exchange [sic] proposing changes to its Rules pertaining to securities settlement to conform them to SEA Rule 15c6-1(a), as amended, and to conform them to similar changes that other exchanges have made.<sup>6</sup>

Specifically, the Exchange proposes to amend Rule 431 (Ex-dividend, Ex-rights), which presently provides that transactions in stocks (except for those made for cash) 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 thereof. It also provides that if the record date or closing of transfer books occurs on a day other than a business day, the transaction will be ex-dividend or ex-rights on the third preceding business day. The Exchange proposes to amend this Rule to provide that: (1) the transactions shall be ex-dividend or ex-rights on the first business day preceding the record date fixed by the corporation or the date of the closing of transfer books thereof; and (2) the transaction will be ex-dividend or ex-rights on the second preceding business day if the record date or closing of transfer books occurs on a day other than a business day.

Similarly, the Exchange proposes to amend Rule 432 (Ex-warrants), which presently provides that transactions in securities which have subscription warrants attached (except those made for cash) 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

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to by the parties at the time of the transaction).

<sup>5</sup> See id.

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 34-80640 (May 16, 2017), 82 FR 22598 (May 10, 2017) (Order Approving File No. SR-NASDAQ-2017-13).

day, the transactions will be ex-warrants on the third business day preceding the date of expiration. The proposal will amend this Rule to provide that transactions in securities which have subscription warrants attached (except those made for cash) shall be ex-warrants on the first 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 will be ex-warrants on the second business day preceding the date of expiration.

Third, the Exchange proposes to amend Rule 825 (Ex-dividend Procedure), which sets forth the ex-dividend rules for transactions in securities subject to unlisted trading privileges. The Rule presently provides that transactions in stocks (except those made for cash) are ex-dividend on the second business day preceding the record date and that, if the record date selected is not a business day, then the stock will be quoted ex-dividend on the third preceding business day. The proposal would amend this Rule by providing instead that that transactions in stocks (except those made for cash) are ex-dividend on the first business day preceding the record date and that, if the record date selected is not a business day, then the stock will be quoted ex-dividend on the second preceding business day.

Lastly, the Exchange proposes to implement the foregoing Rules in a manner that avoids confusion and accords with the proposals of other exchanges and self-regulatory organizations (“SROs”). Consistent with the compliance date of the amendments to SEA Rule 15c6-1(a), the industry adopted Tuesday, September 5, 2017 as the transition date to the T+2 settlement cycle.<sup>7</sup> In the lead-up to this transition date, however, the industry and SROs, including The Depository Trust Company (“DTC”), 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

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<sup>7</sup> See Nasdaq Equity Trader Alert 2017-174 (July 28, 2017).

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.<sup>8</sup> In order to avoid this confusion about the proper settlement date, the Exchange proposes to interpret its Rules 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:

<b>Record Date</b>	<b>Ex-Date</b>
Friday, September 1, 2017 <sup>9</sup>	Wednesday, August 30, 2017
Tuesday, September 5, 2017 <sup>10</sup>	Thursday, August 31, 2017 <sup>11</sup>
Wednesday, September 6, 2017	Friday, September 1, 2017 <sup>12</sup>
Thursday, September 7, 2017 <sup>13</sup>	Wednesday, September 6, 2017

## 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

<sup>8</sup> 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>.

<sup>9</sup> The last day of the T+3 settlement cycle.

<sup>10</sup> The first day of the T+2 settlement cycle.

<sup>11</sup> Monday, September 4, 2017 is Labor Day, a Federal holiday.

<sup>12</sup> See *id.*

<sup>13</sup> 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.

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.

The Exchange believes that the proposed rule change supports the [sic] supports [sic] the industry-led initiative to shorten the settlement cycle to two business days. Moreover, the proposed rule change is consistent with the SEC's 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.

Similarly, the Exchange believes that the proposal to address the application of Rules 341 [sic], 342 [sic], and 825 to exclude September 5, 2017 as an ex-dividend date for 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.

**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. The proposed rule change makes changes to rules pertaining to securities settlement and is intended to facilitate the implementation of the industry-led transition to a T+2 settlement cycle. Moreover, the proposed rule changes are consistent with the SEC's amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2.

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

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

Meanwhile, the proposal to interpret the Rules to exclude an ex-dividend date of September 5, 2017 will minimize potential confusion about proper settlement that may arise during the transition to the T+2 settlement cycle.<sup>16</sup> The Exchange believes that the proposal would not impose any additional costs on the industry.

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>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of

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<sup>16</sup> 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).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</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 Commission has waived this requirement.

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

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 in time for the compliance date of September 5, 2017 for the T+2 settlement cycle. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that the proposed rule change and interpretation will be operative as the industry moves to a T+2 settlement cycle on September 5, 2017. The Commission notes that the proposed rule change would amend Exchange rules to conform to the amendment that the Commission has adopted to Rule 15c6-1(a) under the Act<sup>21</sup> and support a move to a T+2 standard settlement cycle. The Commission further notes that the interpretation regarding the proper settlement date in connection with the transition to the T+2 settlement cycle on September 5, 2017 would help to avoid the confusion that could arise if “regular” distributions were to be ex-dividend on that date and is consistent with the rules of other self-regulatory organizations.<sup>22</sup> Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>23</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

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<sup>21</sup> See supra note 4.

<sup>22</sup> See Securities Exchange Act Release Nos. 81448 (August 21, 2017), 82 FR 40610 (August 25, 2017) (SR-FINRA-2017-026) and 81446 (August 21, 2017), 82 FR 40604 (August 25, 2017) (SR-NASDAQ-2017-084).

<sup>23</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).

Commission shall institute proceedings to determine whether the proposed rule should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-71 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-Phlx-2017-71. 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-Phlx-2017-71, 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>24</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).