

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 58	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2016 - * 183	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>		Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposed rule change to amend Nasdaq Rules to shorten the standard settlement cycle for most broker dealer transactions from three business days after the trade date to two business days after the trade date."/>				
<b>Contact Information</b>				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="John"/>	Last Name *	<input type="text" value="Pickford"/>	
Title *	<input type="text" value="Enforcement Counsel"/>			
E-mail *	<input type="text" value="John.Pickford@nasdaq.com"/>			
Telephone *	<input type="text" value="(215) 496-5273"/>	Fax	<input type="text"/>	
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="12/22/2016"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="edward.knight@nasdaq.com"/>				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Nasdaq 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 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.<sup>3</sup>

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on Friday, November 18, 2016. No other action is necessary for the filing of the rule change.

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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> 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)(“SEC Proposing Release”).

Questions and comments on the proposed rule change may be directed to:

John C. Pickford  
Enforcement Counsel  
Nasdaq, Inc.  
(215) 496-5273

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

a. Purpose

SEC Proposing Release

On September 28, 2016, the Commission proposed amending SEA Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2 on the basis 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>4</sup> The proposed rule amendment was published for comment in the Federal Register on October 5, 2016.<sup>5</sup>

Background

In 1995, the standard U.S. trade settlement cycle for equities, municipal and corporate bonds, and unit investment trusts, and financial instruments composed of these products was shortened from five business days after the trade date ("T+5") to T+3.<sup>6</sup>

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<sup>4</sup> See Securities and Exchange Commission Press Release 2016-200: "SEC Proposes Rule Amendment to Expedite Process for Settling Securities Transactions" (September 28, 2016).

<sup>5</sup> See supra note 3.

<sup>6</sup> In 1993, the Commission adopted SEA Rule 15c6-1 which became effective in 1995. See Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993) and 34952 (November 9, 1994), 59 FR 59137 (November 16, 1994). SEA Rule 15c6-1(a) provides, in relevant part, that "a

Accordingly, Nasdaq and other self-regulatory organizations (“SROs”) amended their respective rules to conform to the T+3 settlement cycle.<sup>7</sup> Since that time, the SEC and the financial services industry have continued to explore the idea of shortening the settlement cycle even further.<sup>8</sup>

In April 2014, the Depository Trust & Clearing Corporation (“DTCC”) published its formal recommendation to shorten the standard U.S. trade settlement cycle to T+2 and announced that it would partner with market participants and industry organizations to devise the necessary approach and timelines to achieve T+2.<sup>9</sup>

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broker or dealer shall not effect or enter 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 third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.” 17 CFR 240.15c6-1(a). Although not covered by SEA Rule 15c6-1, in 1995, the Commission approved the Municipal Securities Rulemaking Board’s rule change requiring transactions in municipal securities to settle by T+3. See Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 (March 8, 1995) (Order Approving File No. SR-MSRB-94-10).

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR-NASD-94-56); Securities Exchange Act Release No. 35506 (March 17, 1995), 60 FR 15618 (March 24, 1995) (Order Approving File No. SR-NYSE-94-40); and Securities Exchange Act Release No. 35553 (March 31, 1995), 60 FR 18161 (April 10, 1995) (Order Approving File No. SR-Amex-94-57).

<sup>8</sup> See, e.g., Securities Industry Association (“SIA”), “SIA T+1 Business Case Final Report” (July 2000); Concept Release: Securities Transactions Settlement, Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004); and Depository Trust & Clearing Corporation, “Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle” (December 2011).

<sup>9</sup> See DTCC, “DTCC Recommends Shortening the U.S. Trade Settlement Cycle” (April 2014).

In an effort to improve the overall efficiency of the U.S. settlement system by reducing the attendant risks in T+3 settlement of securities transactions, and to align U.S. markets with other major global markets that have already moved to T+2, DTCC, in collaboration with the financial services industry, formed an Industry Steering Committee (“ISC”) and an industry working group and sub-working groups to facilitate the move to T+2.<sup>10</sup> In June 2015, the ISC published a White Paper outlining the activities and proposed time frames that would be required to move to T+2 in the U.S.<sup>11</sup> Concurrently, the Securities Industry and Financial Markets Association (“SIFMA”) and the Investment Company Institute (“ICI”) jointly submitted a letter to SEC Chair White, expressing support of the financial services industry’s efforts to shorten the settlement cycle and identifying SEA Rule 15c6-1(a) and several SRO rules that they believed would require amendments for an effective transition to T+2.<sup>12</sup> In March 2016, the ISC announced the industry target date of September 5, 2017 for the transition to a T+2 settlement cycle to occur.<sup>13</sup>

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<sup>10</sup> The ISC includes, among other participants, DTCC, the Securities Industry and Financial Markets Association and the Investment Company Institute.

<sup>11</sup> See “Shortening the Settlement Cycle: The Move to T+2” (June 18, 2015).

<sup>12</sup> See Letter from ICI and SIFMA to Mary Jo White, Chair, SEC, dated June 18, 2015. See also Letter from Mary Jo White, Chair to Kenneth E. Bentsen, Jr., President and CEO, SIFMA, and Paul Schott Stevens, President and CEO, ICI, dated September 16, 2015 (expressing her strong support for industry efforts to shorten the trade settlement cycle to T+2 and commitment to developing a proposal to amend SEA Rule 15c6-1(a) to require standard settlement no later than T+2).

<sup>13</sup> See ISC Media Alert: “US T+2 ISC Recommends Move to Shorter Settlement Cycle On September 5, 2017” (March 7, 2016).

Proposed Rule Change

In light of the SEC Proposing Release that would amend SEA Rule 15c6-1(a) to require standard settlement no later than T+2 and similar proposals from other SROs,<sup>14</sup> Nasdaq is proposing changes to its rules pertaining to securities settlement by, among other things, amending the definition of “standard” settlement as occurring on T+2. SEA Rule 15c6-1(a) currently establishes “standard” settlement as occurring no later than T+3 for all securities, other than an exempt security, government security, municipal security, commercial paper, bankers’ acceptances, or commercial bills.<sup>15</sup> Nasdaq is proposing changes to rules pertaining to securities settlement to support the industry-led initiative to shorten the standard settlement cycle to two business days. Most of the rules that Nasdaq has identified for these changes are successors to provisions under the legacy NASD Rules of Fair Practice and NASD Uniform Practice Code (“UPC”) that were amended when the Commission adopted SEA Rule 15c6-1(a), which established T+3 as the standard settlement cycle.<sup>16</sup> As such, Nasdaq is proposing to amend Nasdaq Rules 11140 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”), 11150

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<sup>14</sup> See, e.g., Securities Exchange Act Release No. 77744 (April 29, 2016), 81 FR 26851 (May 4, 2016) (Order Approving File No. SR-MSRB-2016-04).

<sup>15</sup> See supra note 7.

<sup>16</sup> The legacy NASD rules that were changed to conform to the move from T+5 to T+3 included Section 26 (Investment Companies) of the Rules of Fair Practice, and Section 5 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”), Section 6 (Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”), Section 12 (Dates of Delivery), Section 46 (Computation of Interest) and Section 64 (Acceptance and Settlement of COD Orders) of the UPC. See Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR-NASD-94-56). See also Notice to Members 95-36 (May 1995) (enumerating the various sections under the NASD Rules of Fair Practice and UPC that were amended to implement T+3 settlement for securities transactions).

(Transactions “Ex- Interest” in Bonds Which Are Dealt in “Flat”), 11320 (Dates of Delivery), and 11620 (Computation of Interest). In addition, Nasdaq is proposing to amend Nasdaq Rules 11210 (Sent by Each Party) and IM-11810 (Sample Buy-In Forms) to conform provisions, where appropriate, to the T+2 settlement cycle.<sup>17</sup>

The details of the proposed rule change are described below.

(1) Nasdaq Rule 11140 (Transactions in Securities “Ex-Dividend,” “Ex- Rights” or “Ex-Warrants”)

Rule 11140(b)(1) provides that for dividends or distributions, and the issuance or distribution of warrants, that are less than 25 percent of the value of the subject security, if definitive information is received sufficiently in advance of the record date, the date designated as the “ex-dividend date” 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. Nasdaq is proposing to shorten the time frames in Rule 11140(b)(1) by one business day.

(2) Nasdaq Rule 11150 (“Ex-Interest” in Bonds Which Are Dealt in “Flat”)

Rule 11150(a) prescribes the manner for establishing “ex-interest dates” for transactions in bonds or other similar evidences of indebtedness which are traded “flat.” Such transactions 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, or on the third business

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<sup>17</sup> Nasdaq Rules 11210 and IM-11810 are successors to legacy NASD UPC Section 9 (Sent by Each Party) and 59 (“Buying-in”), respectively, which remained unchanged during the transition from T+5 to T+3. See supra note 17.



day preceding the date on which an interest payment is to be made if no record date has been fixed. Nasdaq is proposing to shorten the time frames in Rule 11150(a) by one business day.

(3) Nasdaq Rule 11210 (Sent by Each Party)

Paragraphs (c) and (d) of Rule 11210 set forth the “Don’t Know” (“DK”) voluntary procedures for using “DK Notices” or other forms of notices, respectively. Depending upon the notice used, a confirming member may follow the “DK” procedures when it sends a comparison or confirmation of a trade (other than one that clears through the National Securities Clearing Corporation (“NSCC”) or other registered clearing agency), 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 (“T+4”). The procedures generally provide that after T+4, the confirming member shall send a “DK Notice” (or similar notice) to the contra-member. The contra-member then has four business days after receipt of the confirming member’s notice to either confirm or “DK” the transaction.

Nasdaq is proposing to amend paragraphs (c) and (d) of Rule 11210 to provide that the “DK” procedures may be used by the confirming member if it does not receive a comparison or confirmation or signed “DK” from the contra-member by the close of one business day following the trade date of the transaction, rather than the current T+4.<sup>18</sup> In

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<sup>18</sup> As stated above, the time frames in Rule 11210 remained unchanged during the transition from T+5 to T+3. In light of the industry-led initiative to shorten the standard settlement cycle and the SEC Proposing Release to amend SEA Rule 15c6-1(a) to establish T+2 as the standard settlement for most broker dealer transactions, the Exchange believes that the current time frames in Rule 11210 are more protracted than necessary even in a T+3 environment and as such, the

addition, Nasdaq is proposing amendments to paragraphs (c)(2)(A), (c)(3), and (d)(5) of Rule 11210 to adjust the time in which a contra-member has to respond to a “DK Notice” (or similar notice) from four business days after the contra-member’s receipt of the notice to two business days.

(4) Nasdaq Rule 11320 (Dates of Delivery)

Rule 11320 prescribes delivery dates for various transactions. Paragraph (b) states that for a “regular way” transaction, delivery must be made on, but not before, the third business day after the date of the transaction. Nasdaq is proposing to amend Rule 11320(b) to change the reference to third business day to second business day. Paragraph (c) provides that in a “seller’s option” transaction, delivery may be made by the seller on any business day after the third business day following the date of the transaction.

Nasdaq is proposing to amend Rule 11320(c) to change the reference to third business day to second business day.

(5) Nasdaq Rule 11620 (Computation of Interest)

In the settlement of contracts in interest-paying securities other than for cash, Rule 11620(a) requires the calculation of interest at the rate specified in the security up to, but not including, the third business day after the date of the transaction. The proposed amendment would shorten the time frame to the second business day. In addition, the proposed amendment would make non-substantive technical changes to the title of paragraph (a).

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Exchange is proposing to amend these time frames to reflect more current industry practices.

(6) Nasdaq Rule IM-11810 (Sample Buy-In Forms)

Rule IM-11810(i)(1)(A) 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.<sup>19</sup>

Under Rule IM-11810(i)(1)(A), the receiving member delivers a liability notice to the owing counterparty. The liability notice sets a cutoff date for the delivery of the securities by the counterparty and provides notice to the counterparty of the liability attendant to its failure to deliver the securities in time. If the owing counterparty, or delivering member, delivers the securities in response to the liability notice, it has met its delivery obligation. If the delivering member fails to deliver the securities on the expiration date, it will be liable for any damages that may accrue thereby.

Rule IM-11810(i)(1)(A) further provides that when both parties to a contract are participants in a registered clearing agency that has an automated liability notification service, transmission of the liability notice must be accomplished through such system.<sup>20</sup>

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<sup>19</sup> Rule IM-11810(i) is the successor to legacy NASD UPC Section 59(i) (Failure to Deliver and Liability Notice Procedures). When this provision was added to NASD's existing close-out procedures in 1984, it was drafted to be similar to the liability notice provisions adopted by the NSCC so that members that were also participants in NSCC could use the same procedures for both ex-clearing and NSCC cleared transactions, thereby simplifying members' back office procedures.

<sup>20</sup> In 2007, NYSE Rule 180 was amended to require that when the parties to a failed contract were both participants in a registered clearing agency that had an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and the contract was to be settled through the facilities of that registered clearing agency, the transmission of the liability

When the parties to a contract are not both participants in a registered clearing agency that has an automated liability notification service, such notice must be issued using written or comparable electronic media having immediate receipt capabilities not 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.<sup>21</sup>

Given the proposed shortened settlement cycle, Nasdaq is proposing to amend Rule IM-11810(i)(1)(A) 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 IM-11810(i)(1)(A) would be amended to provide that in such cases, the receiving member must send the liability notice to the delivering member 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. Nasdaq believes that extending the time given to the receiving member to transmit liability notifications will maintain the efficiency of the notification process while mitigating the possible overuse of such notifications.

Currently, Nasdaq understands that the identity of the counterparty, or delivering member, becomes known to the receiving member by mid-day on the business day after

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notification must be accomplished through the use of the registered clearing agency's automated liability notification system. See Securities Exchange Act Release No. 55132 (January 19, 2007), 72 FR 3896 (January 26, 2007) (Order Approving File No. SR-NYSE-2006-57).

<sup>21</sup> While Rule IM-11810 has undergone amendments over the years, the one-day time frame in paragraph (j) has remained unchanged. The one-day time frame also appears in comparable provisions of other SROs. See, e.g., NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) (Effective August 10, 2016); NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures). See also *infra* note 28 and accompanying text.

trade date (“T+1”), and by that time, the receiving member will generally also know which transactions are subject to an event identified in Rule IM-11810(i)(1)(A) that would prompt the receiving member to issue a liability notice to the delivering member. Nasdaq believes that the receiving member regularly issues liability notices to the seller or other parties from which the securities involved are due when the security is subject to an event identified in Rule IM-11810(i)(1)(A) during the settlement cycle as a way to mitigate the risk of a potential fail-to-deliver. In the current T+3 settlement environment, the one business day time frame gives the receiving member the requisite time needed to identify the parties involved and undertake the liability notification process.

However, Nasdaq believes that the move to a T+2 settlement environment will create inefficiencies in the liability notification process under Rule IM-11810(i)(1)(A) when both parties to a contract are not participants in a registered clearing agency with an automated notification service. The shorter settlement cycle, with the loss of one business day, would not afford the receiving member sufficient time to: (1) ascertain that the securities are subject to an event listed in Rule IM-11810(i)(1)(A) during the settlement cycle; (2) identify the delivering member and other parties from which the securities involved are due; and (3) determine the likelihood that such parties may fail to deliver. Where the receiving member has sufficient time (e.g., one business day after), it can transmit liability notices as needed to the right parties. However, as a consequence of the shortened settlement cycle, the receiving member would be compelled to issue liability notices proactively to all potentially failing parties as a matter of course to preserve its rights against such parties without the benefit of knowing which transactions would actually necessitate the delivery of such notice. This would create a significant

increase in the volume of liability notices members send and receive, many of which may be unnecessary. Members would then have to manage this overabundance of liability notices, increasing the possibility of errors, which would adversely impact the efficiency of the process. Therefore, Nasdaq believes its proposal to extend the time for the receiving member to deliver a liability notice when the parties to a contract are not both participants in a registered clearing agency with an automated notification service would help alleviate the potential burden on the liability notification process in a T+2 settlement environment.

#### Implementation

Nasdaq will announce the effective 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 effective date of the Commission's proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2.<sup>22</sup>

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that it is designed 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, and, in general, to protect investors and the public interest. The Exchange believes that the

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<sup>22</sup> See supra note 3.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

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. Nasdaq believes that the proposed rule change will provide the regulatory certainty to facilitate the industry-led move to a T+2 settlement cycle. As noted herein, upon approval, Nasdaq will announce the effective 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 effective date of the Commission's proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2.

4. 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 proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2. Accordingly, Nasdaq 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.<sup>25</sup>

These conforming changes include changes to rules that specifically establish the settlement cycle as well as rules that establish time frames based on settlement dates,

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<sup>25</sup> See supra note 3.

including for certain post-settlement rights and obligations. Nasdaq believes that the proposed changes set forth in the filing are necessary to support a standard settlement cycle across the U.S. for secondary market transactions in equities, corporate and municipal bonds, unit investment trusts, and financial instruments composed of these products, among other things.<sup>26</sup> A standard U.S. settlement cycle for such products is critical for the operation of fair and orderly markets.

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

A previous version of the proposed rule change was published for comment in Equity Regulatory Alert 2016-4 on May 18, 2016. Two comments were received in response to the Regulatory Alert.<sup>27</sup> A copy of the Regulatory Alert is attached as Exhibit 2a. A list of comments is attached as Exhibit 2b and copies of the comment letters received in response to the Regulatory Notice are attached as Exhibits 2c.

Both of the letters received expressed support for the industry led move to T+2 stating, among other benefits, that the move will align U.S. markets with international markets that already work in the T+2 environment, improve the overall efficiency and liquidity of the securities markets, and the stability of the financial system by reducing counterparty risk and pro-cyclical and liquidity demands, and decreasing clearing capital requirements. SIFMA also provided their view on the proposed amendments to two rules under the Nasdaq Rule 11800 Series (Buying In).

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<sup>26</sup> See supra note 3.

<sup>27</sup> See Letter from Martin A. Burns, Chief Industry Operations Officer, Investment Company Institute to John Zecca, Senior Vice President, Marketwatch dated June 8, 2016 ("ICI"); letter from Thomas F. Price, Managing Director, Operations, Securities Industry and Financial Markets Association, to John Zecca, Senior Vice President Market Watch dated June 8, 2016 ("SIFMA").



Nasdaq Rule IM-11810(i) – Sample Buy-In Forms

In its comment letter, SIFMA raised a concern with the one-day time frame in Rule IM-11810(i)(1)(A), asserting that the requirement for the delivering member 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 in some situations such as where the delivery obligation is transferred to another party as a result of continuous net settlement, settlements outside of the NSCC, and settlements involving a third party that is not a Nasdaq member firm. SIFMA noted that NYSE Rule 180 (Failure to Deliver) includes a similar requirement for NYSE member firms that are participants in a registered clearing agency to transmit liability notification through an automated notification service and proposed amending Rule IM-11810(i)(1)(A) to omit the reference to a notification time frame, which would align with NYSE Rule 180.<sup>28</sup> In the alternative, SIFMA proposed amending Rule IM-11810(i)(1)(A) to require that the liability notice be delivered in a “reasonable amount of time” ahead of the settlement obligation in light of facts and circumstances. SIFMA maintained that under either

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<sup>28</sup> See NYSE Rule 180 (Failure to Deliver) providing 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.” Nasdaq notes that NYSE Rule 180 does not address the transmission of the liability notification for parties to a contract that are not both participants in a registered clearing agency (or non-participants). The transmission of the liability notification for non-participants is addressed under NYSE Rule 282.65 (Failure to Deliver and Liability Notice Procedures). See supra note 22.

proposed amendment to paragraph (j), the delivering member would be liable for any damages caused by its failure to deliver in a timely fashion.

While Nasdaq did not initially propose amendments to Rule IM-11810 for the T+2 initiative,<sup>29</sup> in light of SIFMA's concern regarding Rule IM-11810(i)(1)(A), Nasdaq is proposing to amend the Rule to provide that, where both parties to a contract are not participants of a registered clearing agency with an automated notification service, the receiving member must send the liability notice to the delivering member 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.<sup>30</sup>

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

No applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on the SEC Proposing Release and would facilitate amendments to SEA Rule 15c6-1<sup>31</sup> and FINRA 2016-47.

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<sup>29</sup> See Equity Regulatory Alert 2016-4.

<sup>30</sup> Nasdaq expects similar amendments to other comparable SRO provisions in NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures) and FINRA Rule 11810 (Buying-in), and NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) to address SIFMA's concern about the one-day notification time frame.

<sup>31</sup> See supra note 3.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act  
Not applicable.
10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act  
Not applicable.
11. Exhibits
  1. Notice of Proposed Rule Change for publication in the Federal Register.
  - 2a. Equity Regulatory Alert 2016-4 (May 18, 2016).
  - 2b. Issuer Alert 2016-02.
  - 2c. List of comment letters received in response to Regulatory Alert 2016-4 (May 18, 2016).
  - 2d. Copies of the comment letters received in response to Regulatory Alert 2016-4 (June 8, 2016).
  5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2016-183)

January \_\_, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Shorten the Settlement Cycle from T+3 to T+2.

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 December 22, 2016, 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, II, and III, 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 Nasdaq 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 SEA Rule 15c6- 1(a) to shorten the standard settlement cycle for most broker-dealer transactions from three business

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

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

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.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.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 Statutory Basis for, the Proposed Rule Change

1. Purpose

SEC Proposing Release

On September 28, 2016, the Commission proposed amending SEA Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer transactions from T+3 to T+2 on the basis 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

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<sup>3</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)(“SEC Proposing Release”).

participants.<sup>4</sup> The proposed rule amendment was published for comment in the Federal Register on October 5, 2016.<sup>5</sup>

### Background

In 1995, the standard U.S. trade settlement cycle for equities, municipal and corporate bonds, and unit investment trusts, and financial instruments composed of these products was shortened from five business days after the trade date (“T+5”) to T+3.<sup>6</sup> Accordingly, Nasdaq and other self-regulatory organizations (“SROs”) amended their respective rules to conform to the T+3 settlement cycle.<sup>7</sup> Since that time, the SEC and

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<sup>4</sup> See Securities and Exchange Commission Press Release 2016-200: “SEC Proposes Rule Amendment to Expedite Process for Settling Securities Transactions” (September 28, 2016).

<sup>5</sup> See supra note 3.

<sup>6</sup> In 1993, the Commission adopted SEA Rule 15c6-1 which became effective in 1995. See Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (October 13, 1993) and 34952 (November 9, 1994), 59 FR 59137 (November 16, 1994). SEA Rule 15c6-1(a) provides, in relevant part, that “a broker or dealer shall not effect or enter 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 third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.” 17 CFR 240.15c6-1(a). Although not covered by SEA Rule 15c6-1, in 1995, the Commission approved the Municipal Securities Rulemaking Board’s rule change requiring transactions in municipal securities to settle by T+3. See Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 (March 8, 1995) (Order Approving File No. SR-MSRB-94-10).

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR-NASD-94-56); Securities Exchange Act Release No. 35506 (March 17, 1995), 60 FR 15618 (March 24, 1995) (Order Approving File No. SR-NYSE-94-40); and Securities Exchange Act Release No. 35553 (March 31, 1995), 60 FR 18161 (April 10, 1995) (Order Approving File No. SR-Amex-94-57).

the financial services industry have continued to explore the idea of shortening the settlement cycle even further.<sup>8</sup>

In April 2014, the Depository Trust & Clearing Corporation (“DTCC”) published its formal recommendation to shorten the standard U.S. trade settlement cycle to T+2 and announced that it would partner with market participants and industry organizations to devise the necessary approach and timelines to achieve T+2.<sup>9</sup>

In an effort to improve the overall efficiency of the U.S. settlement system by reducing the attendant risks in T+3 settlement of securities transactions, and to align U.S. markets with other major global markets that have already moved to T+2, DTCC, in collaboration with the financial services industry, formed an Industry Steering Committee (“ISC”) and an industry working group and sub-working groups to facilitate the move to T+2.<sup>10</sup> In June 2015, the ISC published a White Paper outlining the activities and proposed time frames that would be required to move to T+2 in the U.S.<sup>11</sup> Concurrently, the Securities Industry and Financial Markets Association (“SIFMA”) and the Investment Company Institute (“ICI”) jointly submitted a letter to SEC Chair White, expressing support of the financial services industry’s efforts to shorten the settlement cycle and

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<sup>8</sup> See, e.g., Securities Industry Association (“SIA”), “SIA T+1 Business Case Final Report” (July 2000); Concept Release: Securities Transactions Settlement, Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004); and Depository Trust & Clearing Corporation, “Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle” (December 2011).

<sup>9</sup> See DTCC, “DTCC Recommends Shortening the U.S. Trade Settlement Cycle” (April 2014).

<sup>10</sup> The ISC includes, among other participants, DTCC, the Securities Industry and Financial Markets Association and the Investment Company Institute.

<sup>11</sup> See “Shortening the Settlement Cycle: The Move to T+2” (June 18, 2015).

identifying SEA Rule 15c6-1(a) and several SRO rules that they believed would require amendments for an effective transition to T+2.<sup>12</sup> In March 2016, the ISC announced the industry target date of September 5, 2017 for the transition to a T+2 settlement cycle to occur.<sup>13</sup>

#### Proposed Rule Change

In light of the SEC Proposing Release that would amend SEA Rule 15c6-1(a) to require standard settlement no later than T+2 and similar proposals from other SROs,<sup>14</sup> Nasdaq is proposing changes to its rules pertaining to securities settlement by, among other things, amending the definition of “standard” settlement as occurring on T+2. SEA Rule 15c6-1(a) currently establishes “standard” settlement as occurring no later than T+3 for all securities, other than an exempt security, government security, municipal security, commercial paper, bankers’ acceptances, or commercial bills.<sup>15</sup> Nasdaq is proposing changes to rules pertaining to securities settlement to support the industry-led initiative to shorten the standard settlement cycle to two business days. Most of the rules that Nasdaq has identified for these changes are successors to provisions under the legacy NASD

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<sup>12</sup> See Letter from ICI and SIFMA to Mary Jo White, Chair, SEC, dated June 18, 2015. See also Letter from Mary Jo White, Chair to Kenneth E. Bentsen, Jr., President and CEO, SIFMA, and Paul Schott Stevens, President and CEO, ICI, dated September 16, 2015 (expressing her strong support for industry efforts to shorten the trade settlement cycle to T+2 and commitment to developing a proposal to amend SEA Rule 15c6-1(a) to require standard settlement no later than T+2).

<sup>13</sup> See ISC Media Alert: “US T+2 ISC Recommends Move to Shorter Settlement Cycle On September 5, 2017” (March 7, 2016).

<sup>14</sup> See, e.g., Securities Exchange Act Release No. 77744 (April 29, 2016), 81 FR 26851 (May 4, 2016) (Order Approving File No. SR-MSRB-2016-04).

<sup>15</sup> See supra note 7.



Rules of Fair Practice and NASD Uniform Practice Code (“UPC”) that were amended when the Commission adopted SEA Rule 15c6-1(a), which established T+3 as the standard settlement cycle.<sup>16</sup> As such, Nasdaq is proposing to amend Nasdaq Rules 11140 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”), 11150 (Transactions “Ex- Interest” in Bonds Which Are Dealt in “Flat”), 11320 (Dates of Delivery), and 11620 (Computation of Interest). In addition, Nasdaq is proposing to amend Nasdaq Rules 11210 (Sent by Each Party) and IM-11810 (Sample Buy-In Forms) to conform provisions, where appropriate, to the T+2 settlement cycle.<sup>17</sup>

The details of the proposed rule change are described below.

(1) Nasdaq Rule 11140 (Transactions in Securities “Ex-Dividend,” “Ex- Rights” or “Ex-Warrants”)

Rule 11140(b)(1) provides that for dividends or distributions, and the issuance or distribution of warrants, that are less than 25 percent of the value of the subject security, if definitive information is received sufficiently in advance of the record date, the date designated as the “ex-dividend date” shall be the second business day preceding the

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<sup>16</sup> The legacy NASD rules that were changed to conform to the move from T+5 to T+3 included Section 26 (Investment Companies) of the Rules of Fair Practice, and Section 5 (Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”), Section 6 (Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”), Section 12 (Dates of Delivery), Section 46 (Computation of Interest) and Section 64 (Acceptance and Settlement of COD Orders) of the UPC. See Securities Exchange Act Release No. 35507 (March 17, 1995), 60 FR 15616 (March 24, 1995) (Order Approving File No. SR-NASD-94-56). See also Notice to Members 95-36 (May 1995) (enumerating the various sections under the NASD Rules of Fair Practice and UPC that were amended to implement T+3 settlement for securities transactions).

<sup>17</sup> Nasdaq Rules 11210 and IM-11810 are successors to legacy NASD UPC Section 9 (Sent by Each Party) and 59 (“Buying-in”), respectively, which remained unchanged during the transition from T+5 to T+3. See supra note 17.

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. Nasdaq is proposing to shorten the time frames in Rule 11140(b)(1) by one business day.

(2) Nasdaq Rule 11150 (“Ex-Interest” in Bonds Which Are Dealt in “Flat”)

Rule 11150(a) prescribes the manner for establishing “ex-interest dates” for transactions in bonds or other similar evidences of indebtedness which are traded “flat.” Such transactions 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, or on the third business day preceding the date on which an interest payment is to be made if no record date has been fixed. Nasdaq is proposing to shorten the time frames in Rule 11150(a) by one business day.

(3) Nasdaq Rule 11210 (Sent by Each Party)

Paragraphs (c) and (d) of Rule 11210 set forth the “Don’t Know” (“DK”) voluntary procedures for using “DK Notices” or other forms of notices, respectively. Depending upon the notice used, a confirming member may follow the “DK” procedures when it sends a comparison or confirmation of a trade (other than one that clears through the National Securities Clearing Corporation (“NSCC”) or other registered clearing agency), 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 (“T+4”). The procedures generally provide that after T+4, the confirming member shall send a “DK Notice” (or similar notice) to the contra-member. The contra-

member then has four business days after receipt of the confirming member's notice to either confirm or "DK" the transaction.

Nasdaq is proposing to amend paragraphs (c) and (d) of Rule 11210 to provide that the "DK" procedures may be used by the confirming member if it does not receive a comparison or confirmation or signed "DK" from the contra-member by the close of one business day following the trade date of the transaction, rather than the current T+4.<sup>18</sup> In addition, Nasdaq is proposing amendments to paragraphs (c)(2)(A), (c)(3), and (d)(5) of Rule 11210 to adjust the time in which a contra-member has to respond to a "DK Notice" (or similar notice) from four business days after the contra-member's receipt of the notice to two business days.

#### (4) Nasdaq Rule 11320 (Dates of Delivery)

Rule 11320 prescribes delivery dates for various transactions. Paragraph (b) states that for a "regular way" transaction, delivery must be made on, but not before, the third business day after the date of the transaction. Nasdaq is proposing to amend Rule 11320(b) to change the reference to third business day to second business day. Paragraph (c) provides that in a "seller's option" transaction, delivery may be made by the seller on any business day after the third business day following the date of the transaction.

Nasdaq is proposing to amend Rule 11320(c) to change the reference to third business day to second business day.

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<sup>18</sup> As stated above, the time frames in Rule 11210 remained unchanged during the transition from T+5 to T+3. In light of the industry-led initiative to shorten the standard settlement cycle and the SEC Proposing Release to amend SEA Rule 15c6-1(a) to establish T+2 as the standard settlement for most broker dealer transactions, the Exchange believes that the current time frames in Rule 11210 are more protracted than necessary even in a T+3 environment and as such, the Exchange is proposing to amend these time frames to reflect more current industry practices.

(5) Nasdaq Rule 11620 (Computation of Interest)

In the settlement of contracts in interest-paying securities other than for cash, Rule 11620(a) requires the calculation of interest at the rate specified in the security up to, but not including, the third business day after the date of the transaction. The proposed amendment would shorten the time frame to the second business day. In addition, the proposed amendment would make non-substantive technical changes to the title of paragraph (a).

(6) Nasdaq Rule IM-11810 (Sample Buy-In Forms)

Rule IM-11810(i)(1)(A) 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.<sup>19</sup>

Under Rule IM-11810(i)(1)(A), the receiving member delivers a liability notice to the owing counterparty. The liability notice sets a cutoff date for the delivery of the securities by the counterparty and provides notice to the counterparty of the liability attendant to its failure to deliver the securities in time. If the owing counterparty, or delivering member, delivers the securities in response to the liability notice, it has met its

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<sup>19</sup> Rule IM-11810(i) is the successor to legacy NASD UPC Section 59(i) (Failure to Deliver and Liability Notice Procedures). When this provision was added to NASD's existing close-out procedures in 1984, it was drafted to be similar to the liability notice provisions adopted by the NSCC so that members that were also participants in NSCC could use the same procedures for both ex-clearing and NSCC cleared transactions, thereby simplifying members' back office procedures.

delivery obligation. If the delivering member fails to deliver the securities on the expiration date, it will be liable for any damages that may accrue thereby.

Rule IM-11810(i)(1)(A) further provides that when both parties to a contract are participants in a registered clearing agency that has an automated liability notification service, transmission of the liability notice must be accomplished through such system.<sup>20</sup> When the parties to a contract are not both participants in a registered clearing agency that has an automated liability notification service, such notice must be issued using written or comparable electronic media having immediate receipt capabilities not 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.<sup>21</sup>

Given the proposed shortened settlement cycle, Nasdaq is proposing to amend Rule IM-11810(i)(1)(A) 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 IM-11810(i)(1)(A) would be amended to provide that in such cases, the receiving member must send the liability

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<sup>20</sup> In 2007, NYSE Rule 180 was amended to require that when the parties to a failed contract were both participants in a registered clearing agency that had an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver and the contract was to be settled through the facilities of that registered clearing agency, the transmission of the liability notification must be accomplished through the use of the registered clearing agency's automated liability notification system. See Securities Exchange Act Release No. 55132 (January 19, 2007), 72 FR 3896 (January 26, 2007) (Order Approving File No. SR-NYSE-2006-57).

<sup>21</sup> While Rule IM-11810 has undergone amendments over the years, the one-day time frame in paragraph (j) has remained unchanged. The one-day time frame also appears in comparable provisions of other SROs. See, e.g., NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) (Effective August 10, 2016); NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures). See also *infra* note 28 and accompanying text.

notice to the delivering member 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. Nasdaq believes that extending the time given to the receiving member to transmit liability notifications will maintain the efficiency of the notification process while mitigating the possible overuse of such notifications.

Currently, Nasdaq understands that the identity of the counterparty, or delivering member, becomes known to the receiving member by mid-day on the business day after trade date (“T+1”), and by that time, the receiving member will generally also know which transactions are subject to an event identified in Rule IM-11810(i)(1)(A) that would prompt the receiving member to issue a liability notice to the delivering member. Nasdaq believes that the receiving member regularly issues liability notices to the seller or other parties from which the securities involved are due when the security is subject to an event identified in Rule IM-11810(i)(1)(A) during the settlement cycle as a way to mitigate the risk of a potential fail-to-deliver. In the current T+3 settlement environment, the one business day time frame gives the receiving member the requisite time needed to identify the parties involved and undertake the liability notification process.

However, Nasdaq believes that the move to a T+2 settlement environment will create inefficiencies in the liability notification process under Rule IM-11810(i)(1)(A) when both parties to a contract are not participants in a registered clearing agency with an automated notification service. The shorter settlement cycle, with the loss of one business day, would not afford the receiving member sufficient time to: (1) ascertain that the securities are subject to an event listed in Rule IM-11810(i)(1)(A) during the settlement cycle; (2) identify the delivering member and other parties from which the

securities involved are due; and (3) determine the likelihood that such parties may fail to deliver. Where the receiving member has sufficient time (e.g., one business day after), it can transmit liability notices as needed to the right parties. However, as a consequence of the shortened settlement cycle, the receiving member would be compelled to issue liability notices proactively to all potentially failing parties as a matter of course to preserve its rights against such parties without the benefit of knowing which transactions would actually necessitate the delivery of such notice. This would create a significant increase in the volume of liability notices members send and receive, many of which may be unnecessary. Members would then have to manage this overabundance of liability notices, increasing the possibility of errors, which would adversely impact the efficiency of the process. Therefore, Nasdaq believes its proposal to extend the time for the receiving member to deliver a liability notice when the parties to a contract are not both participants in a registered clearing agency with an automated notification service would help alleviate the potential burden on the liability notification process in a T+2 settlement environment.

#### Implementation

Nasdaq will announce the effective 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 effective date of the Commission's proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2.<sup>22</sup>

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<sup>22</sup>

See supra note 3.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that it is designed 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, and, in general, to protect investors and the public interest. 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. Nasdaq believes that the proposed rule change will provide the regulatory certainty to facilitate the industry-led move to a T+2 settlement cycle. As noted herein, upon approval, Nasdaq will announce the effective 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 effective date of the Commission's proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2.

### 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

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<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).



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 proposed amendment to SEA Rule 15c6-1(a) to require standard settlement no later than T+2. Accordingly, Nasdaq 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.<sup>25</sup>

These conforming changes include changes to rules that specifically establish the settlement cycle as well as rules that establish time frames based on settlement dates, including for certain post-settlement rights and obligations. Nasdaq believes that the proposed changes set forth in the filing are necessary to support a standard settlement cycle across the U.S. for secondary market transactions in equities, corporate and municipal bonds, unit investment trusts, and financial instruments composed of these products, among other things.<sup>26</sup> A standard U.S. settlement cycle for such products is critical for the operation of fair and orderly markets.

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

A previous version of the proposed rule change was published for comment in Equity Regulatory Alert 2016-4 on May 18, 2016. Two comments were received in response to the Regulatory Alert.<sup>27</sup> A copy of the Regulatory Alert is attached as Exhibit

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<sup>25</sup> See supra note 3.

<sup>26</sup> See supra note 3.

<sup>27</sup> See Letter from Martin A. Burns, Chief Industry Operations Officer, Investment Company Institute to John Zecca, Senior Vice President, Marketwatch dated June 8, 2016 ("ICI"); letter from Thomas F. Price, Managing Director, Operations, Securities Industry and Financial Markets Association, to John Zecca, Senior Vice President Market Watch dated June 8, 2016 ("SIFMA").

2a. A list of comments is attached as Exhibit 2b and copies of the comment letters received in response to the Regulatory Notice are attached as Exhibits 2c.

Both of the letters received expressed support for the industry led move to T+2 stating, among other benefits, that the move will align U.S. markets with international markets that already work in the T+2 environment, improve the overall efficiency and liquidity of the securities markets, and the stability of the financial system by reducing counterparty risk and pro-cyclical and liquidity demands, and decreasing clearing capital requirements. SIFMA also provided their view on the proposed amendments to two rules under the Nasdaq Rule 11800 Series (Buying In).

Nasdaq Rule IM-11810(i) – Sample Buy-In Forms

In its comment letter, SIFMA raised a concern with the one-day time frame in Rule IM-11810(i)(1)(A), asserting that the requirement for the delivering member 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 in some situations such as where the delivery obligation is transferred to another party as a result of continuous net settlement, settlements outside of the NSCC, and settlements involving a third party that is not a Nasdaq member firm. SIFMA noted that NYSE Rule 180 (Failure to Deliver) includes a similar requirement for NYSE member firms that are participants in a registered clearing agency to transmit liability notification through an automated notification service and proposed amending Rule IM-11810(i)(1)(A) to omit

the reference to a notification time frame, which would align with NYSE Rule 180.<sup>28</sup> In the alternative, SIFMA proposed amending Rule IM-11810(i)(1)(A) to require that the liability notice be delivered in a “reasonable amount of time” ahead of the settlement obligation in light of facts and circumstances. SIFMA maintained that under either proposed amendment to paragraph (j), the delivering member would be liable for any damages caused by its failure to deliver in a timely fashion.

While Nasdaq did not initially propose amendments to Rule IM-11810 for the T+2 initiative,<sup>29</sup> in light of SIFMA’s concern regarding Rule IM-11810(i)(1)(A), Nasdaq is proposing to amend the Rule to provide that, where both parties to a contract are not participants of a registered clearing agency with an automated notification service, the receiving member must send the liability notice to the delivering member 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.<sup>30</sup>

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<sup>28</sup> See NYSE Rule 180 (Failure to Deliver) providing 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.” Nasdaq notes that NYSE Rule 180 does not address the transmission of the liability notification for parties to a contract that are not both participants in a registered clearing agency (or non-participants). The transmission of the liability notification for non-participants is addressed under NYSE Rule 282.65 (Failure to Deliver and Liability Notice Procedures). See supra note 22.

<sup>29</sup> See Equity Regulatory Alert 2016-4.

<sup>30</sup> Nasdaq expects similar amendments to other comparable SRO provisions in NYSE Rule 282.65 (Fail to Deliver and Liability Notice Procedures) and FINRA Rule 11810 (Buying-in), and NSCC Rules & Procedures, Procedure X (Execution of Buy-Ins) to address SIFMA’s concern about the one-day notification time frame.

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 within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-NASDAQ-2016-183 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-NASDAQ-2016-183. 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 Web site (<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-2016-183 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>31</sup>

Robert W. Errett  
Deputy Secretary

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<sup>31</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 2a**

<https://www.nasdaqtrader.com/MicroNews.aspx?id=ERA20164>

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Equity Regulatory Alert #2016 - 4

Nasdaq Makes Preparations To Shorten Settlement Cycle from T+3 to T+2

In connection with the industry-led initiative to shorten the settlement cycle for transaction in U.S. equities, corporate and municipal bonds, unit investment trusts and related financial instruments from trade date plus three business days (T+3) to trade date plus two business days (T+2), Nasdaq, Inc. has preliminarily identified the rules on The Nasdaq Stock Market (Nasdaq) and Nasdaq BX (BX) that establish or reference a T+3 settlement cycle and would need amendment to reflect a T+2 settlement cycle. The following rules are impacted by this upcoming change:

- Nasdaq and BX Rule 2830. Investment Company Securities (incorporated by reference from NASD Rule 2830).
- Nasdaq and BX Rule 11210(c) and (d). Sent by Each Party.
- Nasdaq and BX Rule 11320(b) and (c). Dates of Delivery.
- Nasdaq and BX Rule 11140(b)(1). Transactions in Securities "Ex=Dividend," "Ex-Rights" or "Ex-Warrants."
- Nasdaq and BX Rules 11150(a). Transactions "Ex-Interest" in Bonds Which are Dealt in "Flat".
- Nasdaq and BX Rule 11620. Computation of Interest.
- Nasdaq BX Rule 11820. Buy-In.

In addition, Nasdaq is aware that certain other rules, while not directly referencing a fixed settlement cycle, may be impacted by the change to T+2 settlement and that certain industry and exchange processes may be affected by a shortened settlement cycle.

Nasdaq is requesting industry feedback on the following questions:

1. Is the list of rules requiring amendment complete and accurate? Are there other Nasdaq rules that should be amended?
2. Will the proposed rules have an effect on conduct that is required for compliance with other Nasdaq rules?
3. With respect to Ex-dividend dates rulings, Nasdaq intend to modify Rule 11140(b)(1) to provide that the "ex-dividend date," which is the date on which a security is traded without the right to receive a dividend or distribution that has been declared by the company generally will be the first business day before the record date.

- a. Are there process or procedure changes that would assist market participants and listed companies in complying with this requirement?
  - b. Are there ways Nasdaq can assist participants in preparing for these changes?
4. Are there other processes or procedures established by Nasdaq's exchanges that should be modified to assist the industry in complying with T+2 settlement cycle?

Nasdaq anticipates filing rule amendments to accommodate the new T+2 settlement cycle in the first half of 2016 and anticipates implementing T+2 settlement in conjunction with the industry in the third quarter of 2017.

Nasdaq encourages interested parties to comment on this equity trader alert prior to June 8, 2016.

Please email comments to [Nasdaq MarketWatch](#).

Questions regarding this notice should be directed to Nasdaq MarketWatch at 1-800-537-3929.

Please refer to [Nasdaq and BX Rules to Change](#) which sets forth a list of the rules and affected rule text that will require amendment. Each Exchange will file rule changes in support of this change.

Additionally, PHLX intends to amend its Rule book and delete Rules 823, 825, and 831. These rules, while referencing T+3 settlement, do not apply to PSX, PHLX's cash equities trading platform.

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Additions underlined  
Deletions [bracketed]

### **Nasdaq Stock Market and Nasdaq BX Rules**

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#### **11210. Sent by Each Party** **(a) Comparisons or Confirmations**

(1) Each party to a transaction, other than a cash transaction, shall send a Uniform Comparison or Confirmation of same on or [before the first business day following the date of] the day of the [transaction]trade.

(2) through (4) No Change

(b) No change

**(c) "DK" Procedures Using "Don't Know Notices" (NASD Form No. 101)**

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]one business day[s] following the trade date of the transaction, the following procedure may be utilized.

(1) The confirming member shall send by certified mail, return receipt requested, or messenger, a "Don't Know Notice" on the form prescribed by NASD Rule 11210 to the contra-member in accordance with the directions contained thereon. If the notice is sent by certified mail the returned, signed receipt therefor must be retained by the confirming member and attached to the fourth copy of the "Don't Know Notice." If delivered by messenger, the fourth copy must immediately be dated and manually receipted by, and imprinted with the firm stamp of, the contra-member pursuant to the provisions of paragraph (c)(4) of this Rule, returned to the messenger and thereafter be retained by the confirming member.

(2)(A) After receipt of the "Don't Know Notice" as specified in paragraph (c)(1) of this Rule, the contra-member shall have [four] two business days after the notice is received to either confirm or DK the transaction in accordance with the provisions of subparagraphs (B) or (C) below.

(B) and (C) No Change

(3) If the confirming member does not receive a response from the contra-member by the close of [four]two business days after receipt by the confirming member of the fourth copy of the "Don't Know Notice" if delivered by messenger, or the post office receipt if delivered by mail, as specified in paragraph (c)(1) of this Rule, such shall constitute a DK and the confirming member shall have no further liability for the trade.

(4) and (5) No Change.

**(d) "DK" Procedure Using Other Forms of Notice**

When a party to a transaction sends 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 day[s] following the date of the transaction, the following procedure may be utilized in place of that provided in the preceding paragraph (c).

(1) Through (4) No Change

(5) If the confirming member does not receive a response in the form of a notice from the contra-member by the close of [four]two business days after receipt of



the confirming member's notice, such shall constitute a DK and the confirming member shall have no further liability.

(6) through (8) No Change.

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#### **11320. Dates of Delivery**

(a) No Change

**(b) "Regular Way"**

In connection with a transaction "regular way," delivery shall be made at the office of the purchaser on, but not before, the [third]second business day following the date of the transaction.

**(c) "Seller's Option"**

In connection with a transaction "seller's option," delivery shall be made at the office of the purchaser on the date on which the option expires; except that delivery may be made by the seller on any business day after the [third]second business day following the date of the transaction and prior to the expiration of the option, provided the seller delivers at the office of purchaser, on a business day preceding the day of delivery, written notice of intention to deliver.

(d) through (h) No Change.

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#### **11140. Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"**

(a) No Change

**(b) Normal Ex-Dividend, Ex-Warrants Dates**

**(1)** 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, the date designated as the "ex-dividend date" shall be the [second] first business day preceding the record date if the record date falls on a business day, or the [third] second business day preceding the record date if the record date falls on a day designated by Nasdaq Regulation as a non-delivery date.

**(2) and (3)** No Change

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#### **11150. Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"**

**(a) Normal Ex-Interest Dates**

All transactions, except "cash" transactions, in bonds or similar evidences of indebtedness which are traded "flat" shall be "ex-interest" as prescribed by the following provisions:

(1) On the [second]first business day preceding the record date if the record date falls on a business day.

(2) On the [third]second business day preceding the record date if the record date falls on a day other than a business day.

(3) On the [third]second business day preceding the date on which an interest payment is to be made if no record date has been fixed.

(b) No change

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### **11620. Computation of Interest**

#### **(a) Interest [T]to [B]be Added to the Dollar Price**

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]second business day following the date of the transaction. In transactions for "cash," interest shall be added to the dollar price at the rate specified in the security up to but not including the date of transaction.

(b) through (f) No Change.

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### **11810. Buying-In**

A contract which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the [third]second business day following the date delivery was due, in accordance with the following procedure:

#### **(a) Notice of "Buy-In"**

(1) Written notice of "buy-in" shall be delivered to the seller at his office not later than 12:00 noon, his time, [two]one business days preceding the execution of the proposed "buy-in."

(2) No Change

(B) No Change

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## Nasdaq makes preparations to shorten settlement cycle from T+3 to T+2

In connection with the industry-led initiative to shorten the settlement cycle for transactions in U.S. equities, corporate and municipal bonds, unit investment trusts and related financial instruments from trade date plus three business days (T+3) to trade date plus two business days (T+2), Nasdaq has preliminarily identified certain rules that establish or reference a T+3 settlement cycle and would need to be amended, including rules that establish the ex-dividend date for distributions by Nasdaq-listed companies.

In that regard, to implement a T+2 settlement cycle, Nasdaq would modify Rule 11140(b)(1) to provide that the "ex-dividend date," which is the date on which a security is traded without the right to receive a dividend or distribution that has been declared by the company, generally will be the first business day before the record date.

In addition, the following other Nasdaq rules would be impacted by this upcoming change:

- Rule 2830 (Investment Company Securities, incorporated by reference from NASD Rule 2830)
- Rule 11150(a) (Transactions "ex-Interest" in bonds which are dealt in "flat")
- Rules 11210(c) and (d) (Confirmations)
- Rule 11320(b) and 11320(c) (Dates of delivery)
- Rule 11620 (Computation of interest)

Text of the proposed changes to these rules is available [here](#).

Nasdaq anticipates filing rule amendments to accommodate the new T+2 settlement cycle later in 2016 and anticipates implementing T+2 settlement in conjunction with the industry in the third quarter of 2017. Nasdaq-listed companies are encouraged to consider these changes and are invited to comment on any potential impact arising from these rule changes or the transition to T+2 settlement. Interested parties can submit comments prior to September 30, 2016 to [Nasdaq MarketWatch](#).

Questions regarding this notice should be directed to Nasdaq MarketWatch at 1-800-537-3929.

**EXHIBIT 2c**

Comment Letters received In Resposne to Regulatory Alert 2016-04 (May 18, 2016)

1. Letter from Martin A. Burns, Chief Industry Operations Officer, Investment Company Institute to John Zecca, Senior Vice President, Marketwatch dated June 8, 2016
2. Letter from Thomas F. Price, Managing Director, Operations, Securities Industry and Financial Markets Association, to John Zecca, Senior Vice President Marketwatch dated June 8, 2016.



*Invested in America*

Exhibit 2d

June 8, 2016

Submitted Via Email to [DL-NASDAQ MarketWatch@nasdaq.com](mailto:DL-NASDAQ MarketWatch@nasdaq.com)

John Zecca  
Senior Vice President  
NASDAQ MarketWatch  
One Liberty Plaza  
New York, NY 10006

**Re: Shortening the Settlement Cycle | NASDAQ Equity Regulatory Alert #2016 - 4**

Dear Mr. Zecca:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> respectfully submits this letter in support of efforts by the financial services industry and its regulators to shorten the settlement cycle for secondary market transactions in equities, corporate and municipal bonds, unit investment trusts, and financial instruments comprised of these products.

As you know, SIFMA has been one of the leaders of the industry initiative to shorten the settlement cycle from trade date plus three business days (commonly known as T+3) to trade date plus two business days, or T+2. Last year, SIFMA and the Investment Company Institute (“ICI”) submitted a joint comment letter to the Securities and Exchange Commission (the “SEC”) declaring our support for a T+2 settlement cycle.<sup>2</sup> SIFMA, ICI and other industry participants also drafted a white paper and a more detailed “playbook,” which discusses a T+2 implementation schedule, interim milestones and dependencies.<sup>3</sup>

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<sup>1</sup> SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly one million employees provide access to the capital markets. Serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans, our members have raised over \$2.5 trillion for businesses and municipalities in the U.S. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit <http://www.sifma.org>.

<sup>2</sup> See Letter from SIFMA & ICI to Mary Jo White, Chair, SEC (June 18, 2015), available at <http://www.ust2.com/pdfs/SSCregfinal.pdf>.

<sup>3</sup> See PRICEWATERHOUSECOOPERS, SHORTENING THE SETTLEMENT CYCLE: THE MOVE TO T+2 (June 18, 2015), available at <http://www.ust2.com/pdfs/ssc.pdf>; DELOITTE & TOUCHE, T+2 INDUSTRY

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As part of our ongoing support for the move to T+2, we are pleased to add our support to nearly all proposed amendments to Nasdaq Stock Market and Nasdaq BX (hereinafter collectively “NASDAQ”) rules set forth in Equity Regulatory Alert #2016 – 4, and to respond to NASDAQ’s request for comments.<sup>4</sup> For ease of reference, we have reproduced below each request and our response.

**1. Is the list of rules requiring amendment complete and accurate? Are there other Nasdaq rules that should be amended?**

While generally complete and accurate, SIFMA requests that NASDAQ consider changes to the following three rules in the context of a move to a shorter settlement cycle: (1) Rule 11810, and specifically the lack of need for the proposed change to the timing of a notice of buy-in given the potential differences with other rule sets that the change may create; (2) IM-11810, and specifically whether the required period for the delivery of a cover / protect liability notice could be more closely aligned to other rule sets; and (3) Rule 11210(c)(1), and specifically whether changes to permit a firm to use an electronic medium to deliver a “Don’t Know” or “DK” notice would be appropriate.

*1) Rule 11810 – Buying-In*

The minimum timing of a buy-in related to a counterparty’s failure to deliver securities following a transaction is enshrined in several self-regulatory organization (“SRO”) rule sets, including the rules of the Financial Industry Regulatory Authority (“FINRA”),<sup>5</sup> the National Securities Clearing Corporation (the “NSCC”),<sup>6</sup> and NASDAQ.<sup>7</sup> Currently, each of these rules provides that a buyer may ‘buy-in’ (*i.e.*, replace securities a selling counterparty has failed to deliver) no sooner than three business days following the date the delivery was due from the seller (*i.e.*, settlement date).

In analyzing the rules that should change in a move to a shorter settlement cycle, the industry did not believe that the minimum buy-in period, which occurs after the regular-way settlement cycle, should change when the regular-way settlement cycle shortens from T+3 to T+2. The current Rule 11810 rubric of notice and buy-in provides a counterparty that has failed to deliver on a transaction two days following the notice of buy-in to make full delivery pursuant to the original transaction before the counterparty owed delivery can execute a buy-in transaction. In common practice, where a

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IMPLEMENTATION PLAYBOOK (Dec. 18, 2015), available at <http://www.ust2.com/pdfs/T2-Playbook-12-21-15.pdf>.

<sup>4</sup> Equity Regulatory Alert #2016 – 4, Nasdaq Makes Preparations To Shorten Settlement Cycle from T+3 to T+2 (Wednesday, May 18, 2016), available at <http://www.phlx.com/MicroNews.aspx?id=ERA20164>.

<sup>5</sup> FINRA Rule 11810.

<sup>6</sup> NSCC Rule 11 and Procedure VII.

<sup>7</sup> NASDAQ Rule 11810.

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counterparty fails to make a delivery of securities on settlement date, the counterparty seeking delivery will notify the failing counterparty on settlement day plus one business day of their intention to buy-in the failure unless delivery is made by settlement day plus three business days. The counterparty that failed to deliver then has until settlement day plus three business days, or two business days from receipt of the notice, to close out its failure to deliver by delivering the securities owed. SIFMA members believe that the current buy-in period works in practice, and provides counterparties sufficient time to resolve failures to deliver through delivering the bargained for securities, which is generally preferred to executing a transaction to buy-in (replace) the securities that the original counterparty failed to deliver.

The proposed Rule 11810 language shortens the minimum buy-in period to two days after the original settlement date, and a minimum of one day following notice to buy-in. SIFMA members do not believe that a two-day minimum buy-in period following settlement, with a one-day period from notice to buy-in, is sufficient time to arrange for delivery in the instance of a failure to deliver securities.

Further, FINRA has not identified changes to FINRA Rule 11810, which outlines the minimum buy-in period and associated procedures, as part of the move to a shorter settlement cycle. Additionally, SIFMA does not believe that the NSCC intends to change its rules regarding the minimum buy-in period as part of the move to a shorter settlement cycle. To ensure consistency, and to prevent potential confusion among counterparties, SIFMA respectfully requests that NASDAQ not make changes to NASDAQ Rule 11810 as part of the move to a shorter settlement cycle.

*2) IM 11810 – Cover/Protect Liability Notice Delivery Period*

The move to a T+2 settlement cycle may impact the “cover/protect” process which permits the purchaser of a security that will shortly be subject to a corporate action to acquire the results of that corporate action, such as a dividend or tender or exchange offer, in addition to the security. In these circumstances, the purchaser has paid the seller an additional amount in order to purchase both the securities and the cash or securities that the issuer will pay upon completion of the corporate action.

NASDAQ IM-11810(i) generally sets forth procedures for this process. Under IM-11810(i), the purchaser, through its broker-dealer, must deliver a liability notice to the party who must deliver the outcome of the corporate action on behalf of the seller, ordinarily the seller’s broker-dealer (the “delivering party”). The notice informs the delivering party of the obligation and that it will be liable for any damages caused by

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its failure to deliver.<sup>8</sup> Under IM-11810(i)(1)(A), the delivering party must receive the notice at least one day prior to the date on which it must make delivery.

The industry has identified a number of situations where one-day notice may no longer be appropriate in a T+2 environment, including (1) settlements where the delivery obligation is transferred to another party as a result of continuous net settlement, (2) settlements outside of NSCC and (3) settlements where the third party is not a NASDAQ member.

New York Stock Exchange (“NYSE”) Rule 180 includes similar requirements for NYSE member firms, but it does not include a one-day notification requirement.<sup>9</sup> To ensure that purchasers receive the benefit of their bargain, we propose that IM-11810(i)(1)(A) be amended to omit reference to a timeframe for notification, which would be in line with NYSE Rule 180. Alternatively, we propose that IM-11810(i)(1)(A) be amended to require that the liability notice be delivered a reasonable amount of time ahead of the settlement obligation, in light of facts and circumstances. In either instance, if the delivering party fails to deliver in a timely fashion, then it is liable for any damages caused by its failure to deliver.

In response to FINRA’s Regulatory Notice 16-09,<sup>10</sup> seeking feedback from the industry on rules that FINRA proposes to change in the move to a shorter settlement cycle, SIFMA has advocated for substantially similar changes to FINRA Rule 11810(j), which addresses the same liability notice delivery procedures as NASDAQ IM-11810(i)(1)(A).<sup>11</sup> Consistency among the FINRA, NASDAQ, and NYSE rule sets regarding operational processes is critical, and SIFMA appreciates SRO efforts to harmonize their respective rule sets. As such, to the extent NASDAQ and FINRA intend to amend their respective liability notice delivery rules, SIFMA respectfully requests the alignment of such rules around one standard, and believes the omission of reference to a timeframe would be an appropriate standard for this purpose.

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<sup>8</sup> See Order Granting Approval of a Proposed Rule Change Related to Mandated Use of an Automated Liability Notification System, 72 Fed. Reg. 73,927 (Dec. 28, 2007).

<sup>9</sup> See NYSE, NYSE Rule 180, Failure to Deliver (2007), available at [http://nyserules.nyse.com/nyse/rules/nyse-rules/chp\\_1\\_3/chp\\_1\\_3\\_13/default.asp](http://nyserules.nyse.com/nyse/rules/nyse-rules/chp_1_3/chp_1_3_13/default.asp).

<sup>10</sup> Regulatory Notice 16-09, FINRA Requests Comment on Proposed Amendments to FINRA Rules to Support the Industry Initiative to Shorten the Settlement Cycle for Securities in the U.S. Secondary Market From T+3 to T+2 (March 2016), available at [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Regulatory-Notice-16-09.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-16-09.pdf).

<sup>11</sup> Letter from SIFMA to Marcia E. Asquith, Office of the Corporate Secretary, FINRA (April 4, 2016), available at [http://www.finra.org/sites/default/files/notice\\_comment\\_file\\_ref/16-09-SIFMA-comment.pdf](http://www.finra.org/sites/default/files/notice_comment_file_ref/16-09-SIFMA-comment.pdf).



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*3) Rule 11210(c)(1) - Delivery of “DK” Notice*

In the context of clearance and settlement outside the NSCC or other SEC-registered clearing corporations, in a process colloquially known as “ex-clearing” clearance and settlement, NASDAQ Rule 11210(c) provides procedures for using “DK” or “Don’t Know” notices. Rule 11210(c)(1) requires that such notice be sent “by certified mail, return receipt requested, or messenger.” SIFMA members believe that in such scenarios firms should have the flexibility to rely on electronic means to communicate DK notices, including, but not limited to, email and fax communication. Electronic communication is efficient and effective, and would assist firms in timely notifying counterparties of discrepancies and thereby speed the efficient resolution of such discrepancies. Such timely resolution is critical as the settlement cycle shortens.

**2. Will the proposed rules have an effect on conduct that is required for compliance with other Nasdaq rules?**

No, at this time we are not aware that the proposed rule amendments will have an effect on conduct that is required for compliance with any other NASDAQ rule.

**3. With respect to Ex-dividend dates rulings, Nasdaq intend to modify Rule 11140(b)(1) to provide that the “ex-dividend date,” which is the date on which a security is traded without the right to receive a dividend or distribution that has been declared by the company generally will be the first business day before the record date.**

**a. Are there process or procedure changes that would assist market participants and listed companies in complying with this requirement?**

In the context of these changes, SIFMA would appreciate a high level of NASDAQ communication with listed companies and issuer groups regarding the move to a shorter settlement cycle, and the impact that the move will have on corporate action activities. For example, it is critical that the issuer community be made aware of the planned September 5, 2017 migration date to T+2, and that issuers take into account the move to a shorter settlement cycle when planning and executing a corporate action on or around the migration date.

**b. Are there ways Nasdaq can assist participants in preparing for these changes?**

SIFMA appreciates the continued cooperation among SROs as they support the industry’s move to a shorter settlement cycle. Consistency among SROs is critical to a low risk and efficient migration to a shorter settlement cycle.

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Separately, SIFMA would greatly appreciate NASDAQ's participation in industry testing and coordination efforts, to the extent relevant.

**4. Are there other processes or procedures established by Nasdaq's exchanges that should be modified to assist the industry in complying with T+2 settlement cycle?**

No, at this time we are not aware of other processes or procedures that should be modified to assist the industry in complying with T+2 settlement for secondary market transactions.

**Primary Market Settlement**

For a host of reasons, including operational and legal documentation obstacles, significant portions of the primary markets continue to rely on permitted exemptions and opt-out provisions to the standard settlement cycle as provided in SEC Rule 15c6-1(b), (c) and (d). It is essential that these permitted SEC exemptions and opt-out provisions remain in place to support a robust and well-functioning primary market. This is especially true for debt markets where it is common to settle T+4 and beyond. Consistent with market practice, any initial secondary market trades will continue to have to settle in sync with the first settlement date of the new issue regardless of the time delay to settlement. In order for equity issues to move more substantially to a T+2 settlement cycle, relief will be needed for the current 48-hour physical prospectus delivery requirements for securities that do not qualify for access equals delivery. In the absence of changes to expand access equals delivery, SIFMA will urge the SEC to provide relief that permits for a 72-hour physical delivery of a prospectus with respect to the first settlement date (for both primary and secondary trades) to accommodate a T+2 settlement.

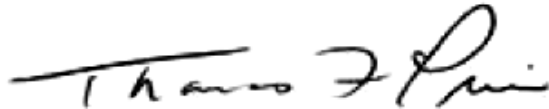
While we are not presently aware of NASDAQ rules that will act as fundamental impediments to the move to T+2 for primary markets, there is the risk of creating friction if related rules are not structured so as to ensure the intended flexibility for settlement periods. We urge NASDAQ to continue to review related rules for any such friction. In that regard, where references to "trade date" exist to establish a time threshold, we suggest NASDAQ consider whether references to a period relative to "settlement date" may more consistently and more accurately incorporate the necessary flexibility.

Mr. John Zecca  
June 8, 2016  
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\* \* \*

SIFMA appreciates the opportunity to voice its support for the NASDAQ rule changes necessary to facilitate a move to a shorter settlement cycle. We would be pleased to discuss these matters further. Please feel free to contact the undersigned at (212) 313-1260 or [tprice@sifma.org](mailto:tprice@sifma.org).

Sincerely,



Thomas F. Price  
Managing Director  
Operations, Technology & BCP

cc: Tara Petta, Director, NASDAQ  
William Keefe, Assistant Director, NASDAQ  
Steve Luparello, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission  
Gary Goldsholle, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission



1401 H Street, NW, Washington, DC 20005-2148, USA  
202/326-5800 www.ici.org

June 8, 2016

Mr. John Zecca  
Senior Vice President  
Nasdaq MarketWatch  
One Liberty Plaza  
New York, NY 10006

Re: Nasdaq Makes Preparations to Shorten Settlement Cycle from T+3 to T+2  
(Equity Regulatory Alert # 2016-4)

Dear Mr. Zecca:

The Investment Company Institute<sup>1</sup> is pleased to provide its strong support for Nasdaq's proposed efforts to facilitate shortening the settlement cycle for securities in the U.S. secondary market.<sup>2</sup> These efforts are in response to a financial services industry-led initiative to shorten the regular-way settlement for equities, corporate bonds, municipal bonds, and unit investment trusts from T+3 (trade date plus three days) to T+2 (trade date plus two days).<sup>3</sup> We believe a shorter settlement cycle will help improve the overall efficiency of securities markets, align the United States with other global markets, and promote financial stability.

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<sup>1</sup> The Investment Company Institute (ICI) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$17.8 trillion and serve more than 90 million U.S. shareholders.

<sup>2</sup> Equity Regulatory Alert # 2016-4 (May 18, 2016), available at <https://www.nasdaqtrader.com/MicroNews.aspx?id=ERA20164>.

<sup>3</sup> The industry formed an Industry Steering Committee, an Industry Working Group, and five sub-working groups to facilitate the move to a shorter settlement cycle. For background on the T+2 industry-led initiative and its benefits, see <http://www.ust2.com/>. See also Letter from Paul Schott Stevens, President and CEO, Investment Company Institute, and Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association (SIFMA), to Mary Jo White, Chair, Securities and Exchange Commission (SEC) (June 18, 2015) (identifying the SEC and self-regulatory organization (SRO) rule changes that the industry believes would be necessary to support a T+2 settlement cycle). In September 2015, SEC Chair Mary Jo White sent a letter to ICI and SIFMA noting her strong support for the industry's efforts to shorten the settlement cycle. See Letter from Mary Jo White, Chair, Securities and Exchange Commission, to Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association, and Paul Schott Stevens, President and CEO, Investment Company Institute (September 16, 2015) ("Chair White Letter").

Mr. John Zecca

June 8, 2016

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To support this industry-led initiative, Nasdaq has preliminarily identified various of its rules that may be affected by a shortened settlement cycle and anticipates filing rule amendments to accommodate the new T+2 settlement cycle in the first half of 2016.

The industry has proposed a migration timeline outlining the necessary activities required to complete a move to T+2 by the third quarter of 2017. Regulatory action is a critical prerequisite to achieving a shortened settlement cycle. Indeed, SEC Chair White recognized that amendments to the various rules of the SROs that specifically mandate T+3 (or that are keyed to the settlement date and require pre-settlement actions) are the most significant regulatory changes necessary to support the industry's move to T+2.<sup>4</sup> As such, we strongly support Nasdaq's proposed efforts to facilitate shortening the settlement cycle for securities in the U.S. secondary market. Also, as co-chair of the Industry Steering Committee, ICI stands ready to assist Nasdaq, the other SROs, and the SEC to implement T+2.

\* \* \* \*

We look forward to working with the SEC and the SROs as they continue their efforts to support a T+2 regular way settlement for the U.S. securities markets. In the meantime, if you have any questions, please feel free to contact me directly at (202) 326-5980 or Jane Heinrichs, Associate General Counsel, at (202) 371-5410.

Sincerely,

/s/ Martin A. Burns

Chief Industry Operations Officer

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<sup>4</sup> See Chair White Letter.

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**The NASDAQ Stock Market Rules****Equity Rules**

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**11100. SCOPE OF UNIFORM PRACTICE CODE**

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**11140. Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants”**

(a) No change

**(b) Normal Ex-Dividend, Ex-Warrants Dates**

(1) 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, the date designated as the “ex-dividend date” shall be the [second]first business day preceding the record date if the record date falls on a business day, or the [third]second business day preceding the record date if the record date falls on a day designated by Nasdaq Regulation as a non-delivery date.

(2) and (3) No change.

(c) – (e) No change.

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**11150. Transactions “Ex-Interest” in Bonds Which Are Dealt in “Flat”****(a) Normal Ex-Interest Dates**

All transactions, except “cash” transactions, in bonds or similar evidences of indebtedness which are traded “flat” shall be “ex-interest” as prescribed by the following provisions:

(1) On the [second]first business day preceding the record date if the record date falls on a business day.

(2) On the [third]second business day preceding the record date if the record date falls on a day other than a business day.

(3) On the [third]second business day preceding the date on which an interest payment is to be made if no record date has been fixed.

(b) No change

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## **11200. Comparisons or Confirmations and “Don't Know Notices”**

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### **11210. Sent by Each Party**

#### **(a) Comparisons or Confirmations**

(1) - (4) No change.

(b) No change

#### **(c) “DK” Procedures Using “Don't Know Notices” (NASD Form No. 101)**

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]one business day[s] following the trade date of the transaction, the following procedure may be utilized.

(1) No change.

(2)

(A) After receipt of the “Don't Know Notice” as specified in paragraph (c)(1) of this Rule, the contra-member shall have [four]two business days after the notice is received to either confirm or DK the transaction in accordance with the provisions of [sub]paragraph[s] (c)(2)(B) or (c)(2)(C) below.

(B) and (C) No change.

(3) If the confirming member does not receive a response from the contra-member by the close of [four]two business days after receipt by the confirming member of the fourth copy of the “Don't Know Notice” if delivered by messenger, or the post office receipt if delivered by mail, as specified in paragraph (c)(1) of this Rule, such shall constitute a DK and the confirming member shall have no further liability for the trade.

(4) and (5) No change.

**(d) “DK” Procedure Using Other Forms of Notice**

When a party to a transaction sends 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]one business day[s] following the date of the transaction, the following procedure may be utilized in place of that provided in the preceding paragraph (c).

(1) - (4) No change.

(5) If the confirming member does not receive a response in the form of a notice from the contra-member by the close of [four]two business days after receipt of the confirming member's notice, such shall constitute a DK and the confirming member shall have no further liability.

(6) - (8) No change.

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**11300. Delivery of Securities**

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**11320. Dates of Delivery**

(a) No change.

**(b) “Regular Way”**

In connection with a transaction “regular way,” delivery shall be made at the office of the purchaser on, but not before, the [third]second business day following the date of the transaction.

**(c) “Seller's Option”**

In connection with a transaction “seller's option,” delivery shall be made at the office of the purchaser on the date on which the option expires; except that delivery may be made by the seller on any business day after the [third]second business day following the date of the transaction and prior to the expiration of the option, provided the seller delivers at the office of purchaser, on a business day preceding the day of delivery, written notice of intention to deliver.

(d) - (h) No change.

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**11600. Delivery of Bonds and Other Evidences of Indebtedness**



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**11620. Computation of Interest****(a) Interest [T]to [B]be Added to the Dollar Price**

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]second business day following the date of the transaction. In transactions for “cash,” interest shall be added to the dollar price at the rate specified in the security up to but not including the date of transaction.

(b) - (f) No change.

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**IM-11810. Sample Buy-In Forms**

(a) – (g) No change.

**(h) “Close-Out” Under Nasdaq Regulation, Securities Association or Other Exchange Rulings**

(1) – (3) No change.

(4) All close-outs executed pursuant to the provisions of this paragraph shall be executed for the account and liability of the member in question. Notification of all close-outs shall immediately be sent to such member pursuant to the confirmation provisions of the Rule 11200 Series.

**(i) Failure to Deliver and Liability Notice Procedures**

(1)

(A) If a contract is for warrants, rights, convertible securities or other securities which (i) have been called for redemption; (ii) are due to expire by their terms; (iii) are the subject of a tender or exchange offer; or (iv) 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 (the expiration date) is the settlement date of the contract or later the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g). When the parties to a contract are 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 transmission of the liability notice must be accomplished through the use of said automated notification service. 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, 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 protection provided by this Rule.]and 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 to obtain the protection provided by this Rule.

**(B)** and **(C)** No change.

**(2)** – **(4)** No change.

**(j)** – **(m)** No change.

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