

Commission believes that the proposal is reasonably balanced to allow issuers to express their analysis, while the proposed rules help to ensure that there will not be inaccurate, misleading or confusing public information through the Exchange's authority to issue its own public announcement in response to such issuer's announcement. The Commission expects the Exchange to actively monitor issuers' analysis and for the Exchange to promptly issue a public announcement if the Exchange detects misleading or inaccurate information.<sup>19</sup> Based on the above, the Commission believes that, consistent with Section 6(b)(5) of the Act, that the proposal should prevent fraudulent and manipulative acts and practices and further investor protection.

The Commission also finds that the proposed changes that would allow the Exchange to make an issuer's required public announcement about a Nasdaq Staff Determination should the issuer fail to do so within the time allotted or if the announcement does not contain all the required information are consistent with the requirements of the Act. The Commission notes that, for the same reasons noted above, it is important that there is adequate notification of a Nasdaq Staff Determination to investors and the public. Therefore, if the issuer fails to make the required disclosure the Exchange will have the authority to do so. The Commission notes that the proposal is similar to the rules of another national securities exchange.<sup>20</sup> As described above, the Exchange's proposal will also clarify some of the rule language concerning a trading halt that is imposed for an issuer's failure to make the public announcement, and update these requirements to reflect the other changes being adopted herein. The Commission believes these changes are appropriate and will ensure that a trading halt can be imposed for failure to adequately disclose information in the public announcement, and clarify that such trading halt would be lifted after the Exchange makes the public announcement assuming that is the only basis for the trading halt. Based on the above, the Commission believes that these aspects of the proposal are consistent with furthering investor protection and the public interest.

Finally, the Commission believes that the proposed new provision that gives

and does not address any issues or liabilities that may arise under the Act.

<sup>19</sup> The Commission expects Nasdaq to monitor the new requirements and propose to make changes if necessary.

<sup>20</sup> See New York Stock Exchange Listed Company Manual Section 802.02.

the Exchange the authority to make a public announcement involving an issuer's listing or trading on Nasdaq at any level of a proceeding under its Rule 5800 Series in order to maintain the quality of and public confidence in its markets and to protect investors and the public interest is consistent with the Act. For example, the Exchange could use this authority to counter any inaccurate or misleading statements in an issuer's own public announcement with respect to the issuer's delisting. The Commission also believes that this authority could be useful in those situations, as noted by Nasdaq in its filing, where an issuer is trading in the over-the-counter market pending its delisting appeal and does not make its own announcement when the appeal is finally denied. In such a situation, Nasdaq could use its authority to make such an announcement. In both situations noted above, allowing the Exchange to make a public announcement if there is a lack of accurate public information concerning a Nasdaq Staff Determination would be important for investors and the public interest consistent with Section 6(b)(5) of the Act.<sup>21</sup>

#### IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-NASDAQ-2012-118) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin O'Neill,**

*Deputy Secretary.*

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<sup>21</sup> The Commission does not believe giving the Exchange the authority to make such public announcements replaces any due process or rights to appeal a delisting notification or public reprimand letter under the Exchange's adjudicatory process, but rather is meant simply to provide a way for the public to get accurate information about an issuer that is subject to a Staff Determination. The Commission expects the Exchange to monitor its use of this authority consistent with this purpose.

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68337; File No. SR-ICC-2012-18]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Withdrawal of Proposed Rule Change To Add Rules Related to the Clearing of iTraxx Europe Index CDS and European Corporate Single-Name CDS

December 3, 2012.

On September 28, 2012, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to add rules related to the clearing of iTraxx Europe Index credit default swaps and European Corporate Single-Name credit default swaps. Notice of the proposed rule change was published in the **Federal Register** on October 17, 2012.<sup>3</sup> The Commission received no comments on the proposed change. On November 30, 2012, ICC withdrew the proposed rule change (SR-ICC-2012-18).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>4</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68340; File No. SR-NYSEMKT-2012-65]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 123C(9)(a)(1)(ii)—Equities To Delete the Requirement That the Order Acceptance Cut-Off Time Cannot Be Past 4:30 p.m.

December 3, 2012.

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 November 20, 2012, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the

<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. 34-68035 (October 11, 2012), 77 FR 63905 (October 17, 2012).

<sup>4</sup> 17 CFR 200.30-3(a)(12).

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

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