

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.¹⁹ 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.²⁰ 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.

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

²⁰ 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.²¹

IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Act,²² 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.²³

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012-29605 Filed 12-6-12; 8:45 am]

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²¹ 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.

²² 15 U.S.C. 78s(b)(2).

²³ 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 1934,¹ and Rule 19b-4 thereunder,² 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, 2012.³ 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.⁴

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-29564 Filed 12-6-12; 8:45 am]

BILLING CODE 8011-01-P

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")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 20, 2012, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 34-68035 (October 11, 2012), 77 FR 63905 (October 17, 2012).

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend 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. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend 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. (or 30 minutes after the scheduled close in the case of an earlier close).³

Background

Pursuant to Rule 123C(9)(a)(1)—Equities, the Exchange may suspend Rule 52—Equities (Hours of Operation) to resolve an extreme order imbalance that may result in a price dislocation at the close as a result of an order entered into Exchange systems, or represented to a Designated Market Maker ("DMM") orally at or near the close. Rule

123C(9)(a)(1)—Equities was intended to be and has been invoked to attract offsetting interest in rare circumstances where there exists an extreme imbalance at the close such that a DMM is unable to close the security without significantly dislocating the price.

Pursuant to Rule 123C(9)(a)(1)(ii)—Equities, once it has been determined to suspend Rule 52 and solicit offsetting interest, the Exchange is responsible for soliciting such offsetting interest from both on-Floor and off-Floor participants. Such solicitation requests include, at a minimum, the security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time. The Exchange designates the order acceptance cut-off time, but the Rule currently provides that in no event shall the order acceptance cut-off time be later than 4:30 p.m. (or 30 minutes after the scheduled close in the case of an earlier close).

Currently, the Exchange uses Trader Updates to solicit interest from off-Floor participants. The Exchange's Trader Updates are posted on the Exchange's Web site and are distributed both by RSS feed and by email to anyone who subscribes to receive such free updates.

Since January 3, 2011, when the Rule, which was previously operated on a pilot bases, became a permanent rule, the Exchange and NYSE, which has an identical rule, have invoked the relief available pursuant to the Rule only once, on September 21, 2012. In 2010, Rule 123C(9)(a)(1)—Equities was invoked only three times on both markets.

Proposed Amendment

The Exchange proposes to amend Rule 123C(9)(a)(1)(ii)—Equities to delete the requirement that the order acceptance cut-off time shall be no later than 4:30 p.m., or in the case of an early scheduled close, 30 minutes after the closing time. The Exchange believes it is appropriate to delete the bright-line cut off time because it hinders the ability of the Exchange to ensure a fair and orderly close if adhering to the 4:30 p.m. order acceptance cut-off time is not possible under the particular circumstances.

In particular, the Exchange notes that for two of the four times that the rule has been invoked since 2010 on both the Exchange and the NYSE, the NYSE has extended the order acceptance cut-off time past 4:30 p.m. The reasons for the extensions differed, but the Exchange believes that given the rarity of the need to invoke the provisions of Rule 123C(9)(a)(1)—Equities in the first instance, together with what the NYSE has experienced in those few events

with its parallel rule, it is appropriate to delete the bright-line 4:30 p.m. cut-off time.

For example, on February 12, 2010, due to corporate actions in Berkshire Hathaway (BRK) Class A and B securities, an NYSE-listed security, there was significant trading volume in those securities, including at the close. In the circumstances, it was determined that the most efficient manner to effect the close of trading in those securities was to effect the closing transaction in BRK-B before closing the BRK-A shares. After closing the BRK-B security at 4:19 p.m., the DMM assessed the shares eligible to be executed for the BRK-A close and determined that the imbalance was significant enough to invoke the procedures of NYSE Rule 123C(9)(a)(1). Due to the complexity of the situation, the NYSE was not able to issue its solicitation of offsetting interest until 4:27 p.m. Because three minutes was not sufficient time to receive incoming offsetting interest and close the security, the NYSE accepted order flow past the 4:30 p.m. order acceptance cut-off time. The NYSE filed with the Commission a rule proposal that permitted the temporary suspension of NYSE Rule 123C(9)(a)(1)(ii) 4:30 p.m. order acceptance cut-off time.⁴

More recently, on Friday, September 21, 2012, there was a buy imbalance in Weatherford International LTD (WFT), an NYSE-listed security, that could not be satisfied by sell orders on the Book. Accordingly, the NYSE invoked procedures pursuant to NYSE Rule 123C(9) to solicit interest from both off-Floor and on-Floor participants to offset that imbalance. While the Exchange initiated publication of solicitation for such offsetting interest immediately following 4:00 p.m., due to delays in the Exchange's web and email systems, the Exchange's two solicitations of interest, which were sent at 4:22 p.m. and 4:28 p.m., did not leave Exchange systems until 4:29 p.m. and 4:35 p.m., respectively, and were time-stamped accordingly. Because of these delays, the Exchange extended the order acceptance cut-off time to 4:35 p.m., which is past the time prescribed in NYSE Rule 123C(9)(a)(1)(ii). By extending the order acceptance cut-off time to 4:35 p.m., the Exchange was able to attract sufficient sell-side interest to offset the buy imbalance and the stock was closed shortly thereafter on a transaction of 7.822 million shares,

³ The Exchange notes that parallel changes are proposed to be made to the rules of New York Stock Exchange LLC ("NYSE"). See Securities Exchange Act Release No. 68282 (Nov. 21, 2012), 77 FR 71023 (Nov. 28, 2012) (SR-NYSE-2012-63).

⁴ See Securities Exchange Act Release No. 61549 (Feb. 19, 2010), 75 FR 9009 (Feb. 26, 2010) (SR-NYSE-2010-09).

unchanged from the last sale price of \$13.54.⁵

Although the NYSE did not have rule authority to extend the order acceptance cut-off time in the WFT closing situation to 4:35 p.m., the NYSE believes that it acted appropriately under the circumstances to ensure that WFT could close in a fair and orderly manner at a price that was not significantly dislocated from the last sale price. In particular, the issue that the NYSE experienced with respect to its web and email system was unanticipated and the NYSE sought to respond in a manner that protected investors and the public interest by ensuring a fair and orderly close.

The Exchange believes it is appropriate to provide the Exchange with authority to designate an order acceptance cut-off time that is tailored to the particular situation, rather than have to adhere to the 4:30 p.m. time frame. The Exchange's ultimate goal is to ensure a fair and orderly close in a manner that is as close to the official 4:00 p.m. closing time as possible. However, depending on the circumstances, whether because of the complexity of the closing process for a particular security or because of a system or technology issue, requiring a bright-line order acceptance time may not be appropriate.

Moreover, the Exchange believes that adhering to such a bright-line cut-off time could harm investors and the public. For example, in both the BRK-A and WFT closes, if the NYSE had adhered to the 4:30 p.m. cut-off time, the NYSE would not have been able to complete its solicitation of offsetting interest. Without such offsetting interest, the Exchange had two alternatives, either close the stock at a price significantly dislocated from the last sale price, or invoke an order imbalance halt and not hold a closing transaction. The Exchange does not believe that either alternative is in the best interest of investors or the public. Rather, the Exchange believes that ensuring that the closing price is not significantly dislocated from the last sale, even if that means a delayed closing time, would benefit investors and the public.⁶

⁵ On September 27, 2012, the NYSE published a Trader Update that provided the public with notice of this issue: http://traderupdates.nyse.com/2012/09/weatherford_international_ltd.html.

⁶ The Exchange proposes to make clarifying changes to paragraphs (a)(1), (a)(1)(v), (a)(2), and (b) of Rule 123C(9)—Equities and Supplementary Material .20 and .30 to Rule 123C—Equities to either add the phrase “Equities” or delete the term “NYSE” in connection with references to other equity rules in the rule text.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁷ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

In particular, the Exchange believes that providing the Exchange with the authority to designate the order cut-off time as appropriately tailored to the particular situation removes impediments to and perfects the mechanism of a free and open market because it enables the Exchange to complete the process to solicit interest to offset an imbalance at the close that would otherwise result in a significant price dislocation. Without the relief requested herein, the Exchange may not be able to complete the process to solicit offsetting interest, which would result in either the stock closing at a dislocated price, or require the Exchange to invoke an order imbalance halt in the security. The Exchange believes such solutions could harm investors and the public because of either an unnecessarily dislocated closing price, or in the case of an imbalance halt, orders intended for the closing transaction would not be executed. The Exchange further believes that the proposed rule change would protect investors and the public interest because it would enable the Exchange to complete the process to ensure that the closing price that may be closer to the last sale price, rather than a closing price that is significantly dislocated from the last sale price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2012-65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2012-65. This file number should be included on the

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

subject line if email 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 Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2012-65 and should be submitted on or before December 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-29567 Filed 12-6-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68339; File No. SR-NYSEArca-2012-130]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 6.62(cc) Making Available the Post No Preference Light Only Quotation to Options Classes Not Participating in the Penny Pilot

December 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on

November 20, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 6.62(cc) to make available the Post No Preference Light Only Quotation ("PNPLO Quotation") to options classes not participating in the penny pilot ("non-Penny Pilot Issues"). The text of the proposed rule change is available on the Exchange's Web site at www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 6.62(cc) to make available the Post No Preference Light Only Quotation ("PNPLO Quotation") to non-Penny Pilot Issues.

A PNPLO Quotation is an electronic Market Maker quotation that, upon initial entry into the NYSE Arca System, is only eligible to execute against displayed liquidity on the Consolidated Book.³ A PNPLO Quotation is similar to

the Post No Preference Light Order ("PNP-Light Order") under NYSE Arca Options Rule 6.62(v), which is a non-routable order type that is only eligible to execute against displayed liquidity. The PNPLO Quotation was recently approved by the Commission in June of 2012⁴ and provides a useful tool for Market Makers to provide quotations in the market. Upon entry of a PNPLO Quotation, the NYSE Arca System automatically removes the pre-existing quotation(s) of a Market Maker, as it does upon the entry of any other quotation, regardless of the acceptance or rejection of the PNPLO Quotation by the NYSE Arca System.⁵ The PNPLO Quotation also provides Market Makers with greater control over the circumstances in which their quotations interact with contra-side trading interest on the Exchange by preventing interaction with non-displayed liquidity. The increase in control afforded by the PNPLO Quotation is desirable from the perspective of Market Makers because it is difficult for them to account for non-displayed liquidity in their quoting models.

Currently, the PNPLO Quotation is only available for options classes participating in the Penny Pilot Program. Market Makers may only submit PNPLO Quotation orders for options classes in the Penny Pilot Program. The Exchange now proposes to allow the use of the PNPLO Quotation by Market Makers for quoting in non-Penny classes as well.

In the initial Notice, the Exchange stated that Market Makers on NYSE Arca in penny pilot issues receive post liquidity credits for electronic

Additionally, a PNPLO Quotation that, upon entry, would execute against both displayed and non-displayed liquidity on the Consolidated Book immediately executes only against the displayed liquidity, but not against the non-displayed liquidity, and any remaining size of the PNPLO Quotation will be immediately rejected by the NYSE Arca System. Furthermore, a PNPLO Quotation that, upon entry, would execute exclusively against displayed liquidity on the Consolidated Book immediately executes against the displayed liquidity and any remaining size of the PNPLO Quotation is placed on the Consolidated Book and treated like a standard Market Maker quotation. Lastly, a PNPLO Quotation that would not execute against either displayed or non-displayed liquidity is placed in the Consolidated Book and treated as a standard Market Maker quotation.

⁴ See Securities Exchange Act Release No. 67252 (June 25, 2012), 77 FR 38879 (June 29, 2012) (Order approving PNPLO Quotation) ("Order"). See also Securities Exchange Act Release No. 66937 (May 7, 2012), 77 FR 27820 (May 11, 2012) ("Notice").

⁵ Accordingly, in the event that a PNPLO Quotation is rejected by the NYSE Arca System, the Market Maker is required to re-enter a quotation for purposes of satisfying any applicable quoting obligations under NYSE Arca Options Rule 6.37B. See Notice, 77 FR at 27821.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 6.62(cc). In this regard, a PNPLO Quotation is similar to the Post No Preference Light Order ("PNP-Light Order") under NYSE Arca Options Rule 6.62(v), which is a non-routable order type that is only eligible to execute against displayed liquidity. A PNPLO Quotation that, upon entry, would execute exclusively against non-displayed liquidity on the Consolidated Book is immediately rejected by the NYSE Arca System.