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By Email

Timothy Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

New York Stock Exchange LLC and NYSE American

Dear Mr. Henseler:

We submit this letter on behalf of our client Intercontinental Exchange, Inc. ("ICE"), a reporting company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934, in connection with the settlement of an administrative proceeding against the above-referenced indirect subsidiaries of ICE (together, the "NYSE" or the "Exchanges"), which are national securities exchanges registered with the Securities and Exchange Commission.

ICE requests a determination by the Commission that, for good cause shown, ICE should not, as a result of the settlement, be deemed an "ineligible issuer" as defined in Rule 405 under the Securities Act of 1933 (the "Securities Act"). ICE requests that this determination be made by the Division of Corporation Finance, acting pursuant to its delegated authority, or the Commission itself, to be effective upon entry of the order in the above-referenced settled administrative proceeding (the "Order").

We believe that relief from the ineligible-issuer provisions is appropriate for the reasons set forth below, including that (i) the violative conduct described in the Order occurred at two jointly operated indirect ICE subsidiaries, had no connection to ICE's role as an issuer of securities, and lasted for less than approximately 47 minutes on a single day more than two years ago; (ii) the Order states that the subsidiaries' conduct was merely negligent, and does not find any criminal conduct or scienter; (iii) ICE has never before requested a waiver of any disqualification or been disqualified from ineligible-issuer status; (iv) the subsidiaries have taken reasonable steps to enhance their policies and procedures to prevent a recurrence of the conduct; and (v) ICE's loss of its status as a Well-Known Seasoned Issuer ("WKSI") would harm

shareholders by unfairly and needlessly interfering with the company's ability to raise capital efficiently.

Background

Following discussions with the Division of Enforcement, the NYSE has submitted an offer of settlement pursuant to which it consents to the entry of the Order but neither admits nor denies any of the findings or violations described in the Order. In relevant part, the Order contains the following findings by the Commission: On July 8, 2015, the NYSE suspended intra-day trading for approximately three and one-half hours (the "Shutdown"). During the 47 minutes before the Shutdown, the Exchanges experienced escalating connectivity problems between their trading units and the communications "gateways" used by customers, which eventually prevented many customers from being able to consistently access quotations in a majority of the symbols traded on the Exchanges ("Impaired Symbols"). As a result, quotations in the Impaired Symbols were no longer automated. Nonetheless, during this time period, the Exchanges continued to disseminate quotations for the Impaired Symbols marked as "automated." The quotations that were inaccurately identified as automated after the Exchanges had reason to believe otherwise constituted negligent misrepresentations of material facts to market participants in violation of Section 17(a)(2) of the Securities Act.

Discussion

In 2005, the Commission revised the registration, communications, and offering procedures under the Securities Act.[1] As part of these reforms, the Commission created a category of issuer under Rule 405 known as the "ineligible issuer." Rule 405 defines "ineligible issuer" to include any issuer of securities with respect to which the following is true: "Within the past three years..., the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any...administrative...order arising out of a governmental action that... requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws...." The Order requires the NYSE to cease and desist from violating Section 17(a)(2) of the Securities Act, which is an anti-fraud provision. Because the NYSE is an indirect subsidiary of ICE,[2] the Order, absent a waiver, would cause ICE to become an ineligible issuer.

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[1] *See* Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

[2] ICE owns 12 exchanges and six clearinghouses in the United States and other jurisdictions. The NYSE is owned by NYSE Group, Inc., a subsidiary of NYSE Holdings LLC, which is a subsidiary of Intercontinental Exchange Holdings, Inc., which in turn is owned by ICE.

Reasons for Granting a Waiver

Rule 405 authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer." For the reasons explained below, we respectfully submit that good cause exists for the Commission to determine that it is not necessary that ICE be considered an ineligible issuer under Rule 405. Our views are outlined in accordance with the Revised Statement on Well-Known Seasoned Issuer Waivers issued by the Division of Corporation Finance on April 24, 2014.

Reliability of Disclosure; Responsibility for and Duration of the Violations

The findings in the Order have nothing to do with ICE's ability to file reliable reports with the Commission. None of the findings underlying the Order pertains to activities undertaken by ICE, its executives, or other affiliates or subsidiaries in connection with ICE's role as an issuer of securities. Nor does the violative conduct pertain to ICE's filings with the Commission. Instead, the Order relates to mismarked quotations issued by a subsidiary (the NYSE), over a period limited to, at most, 47 minutes during a single morning over two years ago. The Order does not find that any scienter or criminal conduct occurred.

No employees of the NYSE or ICE are named as respondents or charged with violating the securities laws in connection with the Order. The misrepresentations described in the Order were a product of automated NYSE systems; to the extent that individuals were involved, they were low-level employees in the operation of a subsidiary (NYSE), not ICE officers or directors. Senior ICE management became involved only in the decision to suspend trading after the quotes had already been disseminated as automated. No senior ICE officers were aware of or disregarded any warning signs, and the continued designation of quotations as automated during a brief period prior to the decision to suspend trading did not reflect any "tone at the top" that condoned or chose to ignore any misconduct. As a result, the findings in the Order do not call into question the reliability of any of ICE's current or future disclosures as an issuer of securities.

Remedial Steps Taken

ICE and the NYSE have fully cooperated with the Commission's inquiry into this matter. The NYSE responded to all document requests by the Staff and made the NYSE's employees available for investigative testimony.

The NYSE has also voluntarily taken substantial remedial steps. The Order finds that, after July 8, 2015, the NYSE enhanced its policies and procedures to include appropriate standards for determining if customer connectivity issues are insufficient to maintain automated quotations and, if such a determination is made, to suspend trading. The NYSE now has in place a failure scenario grid that outlines specific conditions under which the exchange's executive

management considers whether to delay the opening of trading in one or more stocks or, during the trading day, to consider whether to suspend trading and, if trading is suspended, whether and when trading may resume. For example, if connectivity problems like those experienced on July 8, 2015, were to recur, the executive management of the exchange would apply objective connectivity thresholds supplied by the failure scenario grid to determine if a trading suspension is required.

First Waiver Request

ICE has never before been found to be an ineligible issuer or received, or even had reason to request, a WKSI-related waiver. Accordingly, this is ICE's first request for a WKSI-related waiver.

Impact if the Waiver is Denied

ICE's WKSI status is important to ICE, which is a leading operator of exchanges and clearing houses around the world, and a leading provider of data and listing services. ICE is continually investing in technology to better its markets and its business. Loss of WKSI status could substantially prejudice ICE's ability to raise capital to invest in and expand these market services. Should ICE become an ineligible issuer, it would lose the ability to (i) offer additional securities of classes covered by a registration statement without filing a new registration statement, (ii) register additional classes of securities not covered by the registration statement by filing an immediately effective post-effective amendment, (iii) omit certain information from the prospectus, (iv) take advantage of pay-as-you go fees, (v) qualify a new indenture under the Trust Indenture Act of 1939, if needed, without filing or having the Commission declare effective a new registration statement, or (vi) use a free writing prospectus other than one that contains only a description of the terms of the offered securities or the offering itself.

For example, in the last three years, ICE has availed itself of WKSI status on multiple occasions to raise capital as part of its efforts to expand its services to the market. In 2015, it relied on its WKSI status to make secondary offerings of common shares in connection with its acquisitions of a provider of financial market data, analytics, and related trading solutions, and a provider of a technology platform for electronic and hybrid trade execution. ICE also relied on its WKSI status to issue $2,500,000,000 of senior notes in 2015 and $1,000,000,000 of senior notes in 2017.

In addition, denial of a waiver would result in a disproportionate hardship to ICE, since the violations described in the Order did not concern the company's financial disclosure, were not based on criminal conduct or scienter, occurred at a subsidiary, have been fully remediated, and were extremely brief. Applying ineligible issuer status to ICE would not be necessary to achieve the purpose of the Order and would be unduly severe.

Conclusion

Subjecting ICE to ineligible issuer status is not necessary or appropriate, is not in the public interest, and would disserve the Commission's mission to protect investors and promote capital formation. Accordingly, we respectfully request the Commission to determine that ICE should not be considered an ineligible issuer under Rule 405 as a result of the Order entered in this matter.

Very truly yours,

David L. Kornblau

cc (by email):

Erin Wilson, Division of Corporation Finance
Sheldon Pollock, Division of Enforcement, New York Regional Office