



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84575; File No. SR-NASDAQ-2018-070]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment Nos. 1, 2, and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to List and Trade Corporate Non-Convertible Bonds on Nasdaq

November 13, 2018

I. Introduction

On August 27, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade corporate non-convertible bonds on the Exchange. The proposed rule change was published for comment in the Federal Register on September 6, 2018.³ On October 12, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On October 16, 2018, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 84001 (August 30, 2018), 83 FR 45289 (“Notice”).

⁴ In Amendment No. 1, the Exchange made clarifying and technical revisions to the proposal, including to the proposed rule text. The amendment is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-070/srnasdaq2018070-4514560-176013.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

institute proceedings to determine whether to disapprove the proposed rule change.⁶ On November 7, 2018, the Exchange filed Amendment No. 2 to the proposed rule change.⁷ On November 8, 2018, the Exchange filed Amendment No. 3 to the proposed rule change.⁸ The Commission received no comment letters on the proposed rule change. The Commission is publishing notice of the filing of Amendment Nos. 1, 2, and 3 to solicit comment from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment Nos. 1, 2, and 3

The Exchange proposes to amend its rules to permit the initial and continued listing of non-convertible corporate debt securities (“bonds” or “non-convertible bonds”) on Nasdaq and to establish fees for listing those bonds.⁹ The Exchange also proposes to adopt rules to trade such listed non-convertible bonds.

A. Listing Rules

For the initial listing of a non-convertible bond, the Exchange proposes to require that the following conditions be satisfied: (1) the principal amount outstanding or market value must be

⁶ See Securities Exchange Act Release No. 84439, 83 FR 53339 (October 22, 2018). The Commission designated December 5, 2018, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ In Amendment No. 2, the Exchange made additional clarifying and technical revisions to the proposal, including to the proposed rule text. The amendment is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-070/srnasdaq2018070-4629939-176409.pdf>.

⁸ In Amendment No. 3, the Exchange made two clarifying and technical revisions to the proposal, including to the proposed rule text. The amendment is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-070/srnasdaq2018070-4630086-176412.pdf>.

⁹ Nasdaq rules currently provide for the initial and continued listing of convertible bonds. See Nasdaq Rule 5515 and 5560.

at least \$5 million;¹⁰ and (2) the issuer of the non-convertible bond must have one class of equity security that is listed on the Exchange, the New York Stock Exchange LLC (“NYSE”), or NYSE American LLC (“NYSE American”).¹¹

The Exchange proposes the following requirements for the continued listing of a non-convertible bond: (1) the market value or principal amount of non-convertible bonds outstanding is at least \$400,000;¹² and (2) the issuer must be able to meet its obligations on the listed non-convertible bonds.¹³

The Exchange proposes to amend its current Rule 5810(c)(3) to provide that the failure of an issuer of a non-convertible bond to meet the \$400,000 public float requirement stipulated above for a period of 30 consecutive business days will constitute a deficiency. In such an event, the Exchange’s Listings Qualifications Department will promptly notify the deficient issuer, and the issuer will have a period of 180 calendar days from such notification to regain compliance. Compliance will be deemed to be regained by meeting the \$400,000 public float requirement for a minimum of 10 consecutive business days, unless the Listing Qualifications Department exercises its discretion to extend this 10-day period as set forth in Rule 5810(c)(3)(G).

The Exchange also proposes to amend its current Rule 5810(c)(1) to provide that the failure of an issuer to meet its obligations on the non-convertible bonds, as determined by the

¹⁰ See proposed Rule 5702(a)(1).

¹¹ See proposed Rule 5702(a)(2). The Exchange anticipates that it will not be ready, prior to the second quarter of 2019, to list non-convertible bonds of issuers whose equity securities are listed on NYSE or NYSE American. The Exchange states that it will post a notification via a trader alert at least seven days prior to accepting applications from issuers to list such non-convertible bonds.

¹² See proposed Rule 5702(b)(1).

¹³ See proposed Rule 5702(b)(2).

Exchange's Listings Qualifications Department, would result in immediate suspension and the commencement of delisting proceedings.

In addition to the proposed quantitative requirements for listing non-convertible bonds, the issuer of listed bonds would have to comply with other requirements that are generally applicable to companies listed on Nasdaq pursuant to Rule 5250 (Obligations for Companies Listed on The Nasdaq Stock Market).¹⁴ The Exchange proposes to amend its current Rule 5250(e)(3) to require issuers of non-convertible bonds to provide at least 10 calendar days advance notice to the Exchange of certain corporate actions, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol). In addition, the Exchange proposes to amend the definition of a "Substitution Listing Event" in its Rule 5005(a)(41) to provide that a change in the obligor of a listed debt security would constitute a Substitution Listing Event and thus require the issuer to notify the Exchange pursuant to Rule 5250(e)(4).¹⁵

In addition to the Exchange's rules that would apply to issuers of non-convertible bonds that list on Nasdaq,¹⁶ the Exchange states that such issuers would also be required to register non-convertible bonds listed on the Exchange with the Commission pursuant to Section 12(a) of the Act.¹⁷

¹⁴ See Nasdaq Rule 5250, requiring, among other things, that issuers provide certain information to the Exchange, make public disclosure of certain material information, and file all required periodic financial reports.

¹⁵ The Exchange proposes to make this change with respect to convertible and non-convertible bonds.

¹⁶ In addition to Nasdaq Rule 5250, the Exchange notes that, currently, the Rule 5600 Series, which sets forth certain corporate governance requirements for listed issuers, would apply to non-convertible bonds listed on the Exchange.

¹⁷ Section 12(a) requires that, in order for an exchange member, broker or dealer to effect a transaction in a security on a national securities exchange, a registration must be effective

Finally, the Exchange proposes to make a non-substantive change to its current Rule 5515(b)(4) to replace references to the American Stock Exchange with NYSE American.¹⁸

B. Listing Fees

The Exchange proposes to impose a non-refundable application fee of \$5,000 to list a class of non-convertible bonds.¹⁹ The Exchange proposes to waive this application fee if a company will be switching the listing market for its non-convertible bonds from NYSE or NYSE American to the Exchange.²⁰

The Exchange also proposes to impose an annual fee of \$5,000 on the issuer of each class of non-convertible bonds listed pursuant to Rule 5702.²¹ A company that switches the listing market for its non-convertible bonds from NYSE or NYSE American to the Exchange would not be liable for the annual fee until January 1 of the calendar year following the effective date of the non-convertible bonds listing on the Exchange.²²

The Exchange also proposes to clarify rule text relating to listing fees for convertible bonds.²³

“as to such security for such exchange.” See 15 U.S.C. 78(l)(a). The Exchange notes that, because the Exchange is proposing as an initial listing requirement that the issuer currently list a class of equity security on the Exchange, NYSE, or NYSE American, listed issuers of non-convertible bonds may already disclose certain information required by Section 12(a) of the Act.

¹⁸ See Securities Exchange Act Release No. 80283 (Mar. 21, 2017), 82 FR 15244 (Mar. 27, 2017) (SR-NYSEMKT-2017-14).

¹⁹ See proposed Rule 5935(a).

²⁰ See id.

²¹ See proposed Rule 5935(b).

²² See id.

²³ Rule 5920(a)(2) requires a company that submits an application to list any class of convertible debentures on the Nasdaq Capital Market to pay an application fee of \$5,000 and a fee of \$1,000 or \$50 per million dollars face amount of debentures outstanding, whichever is higher. The Exchange proposes to clarify that the second fee is an entry fee,

C. Trading Rules

In conjunction with the Exchange's proposal to adopt listing rules for non-convertible bonds, the Exchange is proposing to trade such listed non-convertible bonds on an electronic system ("Nasdaq Bond Exchange") and is proposing rules to govern such trading.²⁴ The Exchange proposes that all orders in non-convertible bonds will be received, processed, executed, and reported by means of the Nasdaq Bond Exchange.²⁵ The Exchange's proposed trading rules would apply to: (i) all transactions effected through the Nasdaq Bond Exchange; (ii) all bids and offers made through the Nasdaq Bond Exchange; (iii) the handling of orders and the conduct of accounts and other matters relating to bidding, offering, and trading through the Nasdaq Bond Exchange; and (iv) any non-convertible bond that is traded on the Nasdaq Bond Exchange.²⁶

1. Order Types

The Exchange proposes to allow Users²⁷ of the Nasdaq Bond Exchange to enter two types of orders: (1) Nasdaq Bond Exchange Good for Day Limit Orders, and (2) Nasdaq Bond Exchange Fill-or-Kill All-Or-None Orders. A Nasdaq Bond Exchange Good for Day Limit Order is an order to buy or sell a stated quantity of units of non-convertible bonds at a specified

and that it is based upon the face amount of convertible bonds outstanding.

²⁴ The Nasdaq Bond Exchange will only trade non-convertible bonds that are listed on the Exchange. See Proposed Rule 4000B(e). The Exchange states that the Nasdaq Bond Exchange will offer Members certain core trading functionality that will be competitive with the NYSE bond trading platform ("NYSE Bonds"). The Exchange states that the Nasdaq Bond Exchange and the proposed trading rules that govern it are based on NYSE Bonds and NYSE Rule 86, albeit a "pared down version." See Notice, supra note 3, at 45292.

²⁵ See proposed Rule 4000B(a).

²⁶ See proposed Rule 4000B(b)(1).

²⁷ A "User" is any Nasdaq Member that has elected to receive access to the Nasdaq Bond Exchange. See Proposed Rule 4000B(b)(2)(D).

price or at a better price that, if not executed or cancelled, will expire at the end of the trading session on the day on which it is entered.²⁸ A Nasdaq Bond Exchange Fill-or-Kill All-Or-None Order is a market order that is to be executed immediately in its entirety against one or more contra parties at the best prices available, or if it is not executed immediately in its entirety, is cancelled.²⁹ All orders on the Nasdaq Bond Exchange will be displayed and will be anonymous.³⁰

2. Trading Units

The minimum unit of trading on the Nasdaq Bond Exchange will be one non-convertible bond unless the issuer otherwise specifies a larger minimum unit of trading in the bond indenture agreement.³¹ The Nasdaq Bond Exchange will accept and display bids and offers in bonds priced to three decimal places.³²

3. Order Entry and Execution

To post an order in a particular bond on the Nasdaq Bond Exchange, a User will be required to enter certain basic information including CUSIP number, order quantity, order type (e.g., Nasdaq Bond Exchange Good for Day Limit Order), price (up to three decimals), and side (buy or sell).³³ The terms of an order entered into the Nasdaq Bond Exchange may not be

²⁸ See proposed Rule 4000B(b)(2)(B)(i).

²⁹ See proposed Rule 4000B(b)(2)(B)(ii).

³⁰ See Notice, supra note 3, at 45292.

³¹ See proposed Rule 4000B(c).

³² See proposed Rule 4000B(d). The Exchange states that bonds priced to three decimal places is the market standard. See Notice, supra note 3, at 45292.

³³ See Notice, supra note 3, at 45292.

modified after entry.³⁴ An order may be cancelled at any time, provided the order has not been executed.³⁵

The Nasdaq Bond Exchange will be an electronic order-driven matching system.³⁶ Orders submitted by Users will be displayed, matched, and executed on a price/time priority basis.³⁷ Orders that are marketable at the time of entry will be matched and executed.³⁸ An order will be marketable when it enters the Nasdaq Bond Exchange system if contra side interest is available at that price or a better price.³⁹ Nasdaq Bond Exchange Good for Day Limit Orders that are not marketable at the time of entry would post to the Nasdaq Bond Exchange order book.⁴⁰

The Nasdaq Bond Exchange will provide an exception to its normal price/time system to allow Users to avoid internalizing orders.⁴¹ Pursuant to proposed Rule 4000B(g)(1)(C), Users may direct that orders entered into the Nasdaq Bond Exchange not execute against orders entered under the same MPID, and Users using the FIX order entry protocol (discussed below) may assign to orders entered through a specific order entry port a unique group identification modifier

³⁴ See proposed Rule 4000B(g)(2).

³⁵ See id.

³⁶ See Notice, supra note 3, at 45292.

³⁷ Specifically, buy and sell orders in the Nasdaq Bond Exchange will be displayed, matched, and executed in the Bond Trading Session in the following sequence: (i) according to price, with the highest bid price and the lowest offer price receiving highest priority; and (b) within each price, according to the time of the order entry in the Nasdaq Bond Exchange. See proposed Rule 4000(g)(1).

³⁸ See Notice, supra note 3, at 45292.

³⁹ See id.

⁴⁰ See id.

⁴¹ The Exchange states that Users may be interested in self-match prevention in order to run multiple strategies at once that may sit on opposite sides of the book. See Notice, supra note 3, at 45292.

that will prevent orders with such modifier from executing against each other. In such a case, a User may elect from the following options: (i) regardless of the size of the interacting orders, cancelling the oldest order in full; or (ii) regardless of the size of the interacting orders, cancelling the most recent of the orders in full.⁴² The foregoing options may be applied to all orders entered under the same MPID or through a specific order entry port (i.e., the FIX order entry protocol).⁴³

The Exchange will charge no fees for posting orders or executing trades on the Nasdaq Bond Exchange.⁴⁴

4. Clearing

According to the Exchange, most orders matched on the Nasdaq Bond Exchange will be locked-in trades and will be submitted without an omnibus account to the National Securities Clearing Corporation using Universal Trade Capture and then to the Depository Trust Company (“DTC”) for clearance and settlement.⁴⁵ Settlement of corporate bond trades will be consistent with current convention, i.e., two day settlement, and bonds that are not eligible for settlement at DTC will be settled manually (“ex-clearing”) between the two counterparties.⁴⁶

5. Bond Trading Session

The Nasdaq Bond Exchange will have one trading session per trading day from 8:30 a.m. until 4:00 p.m. E.T. (“Bond Trading Session”) during which non-convertible bonds will be

⁴² See proposed Rule 4000B(g)(1)(C).

⁴³ See id.

⁴⁴ See Notice, supra note 3, at 45292.

⁴⁵ See id.

⁴⁶ See id.

available for trading.⁴⁷ There will be no pre-market or post-market session; the Nasdaq Bond Exchange will immediately start processing orders as they are entered upon opening.⁴⁸ Orders submitted outside of the Bond Trading Session will not be accepted.⁴⁹

6. Clearly Erroneous Executions

All matters related to clearly erroneous transactions executed on the Nasdaq Bond Exchange will be initiated and adjudicated pursuant to Nasdaq Rule 11890, which governs the process for addressing clearly erroneous trades.⁵⁰ A “Clearly Erroneous Execution” on the Nasdaq Bond Exchange refers to an execution involving an obvious error in any term of an order participating in such execution, such as price, unit of trading, or identification of the non-convertible bond.⁵¹

A User that receives an erroneous execution may request the Exchange to review the transaction.⁵² A request for review of an execution must include certain information, including the time of the transaction, security symbol, number of bonds, price, side (bought or sold), and factual basis for believing that the trade is clearly erroneous.⁵³ The request for review must be submitted within 30 minutes of the trade in question.⁵⁴ The other party (or parties) to the trade will be notified of the request for review.⁵⁵ Thereafter, an Exchange official will review the transaction and make a determination as to whether it was clearly erroneous within 30 minutes of

⁴⁷ See proposed Rule 4000B(f).

⁴⁸ See Notice, supra note 3, at 45293.

⁴⁹ See proposed Rule 4000B(f).

⁵⁰ See proposed Rule 4000B(h).

⁵¹ See proposed Rule 4000B(b)(2)(C).

⁵² See Nasdaq Rule 11890(a).

⁵³ See Rule 11890(a)(2) (as proposed to be amended).

⁵⁴ See Rule 11890(a)(2)(A).

⁵⁵ See Rule 11890(a)(2).

receipt of the complaint, but in no case later than the start of the Bond Trading Session on the following trading day.

The Exchange proposes that, when determining whether a trade in non-convertible bonds listed on the Nasdaq Bond Exchange is clearly erroneous, a Nasdaq official may consider any and all relevant factors of an execution on a case by case basis including, but not limited to, the following: (i) execution price; (ii) volume and volatility of a non-convertible bond; (iii) news released for the issuer of the non-convertible bond and/or the related equity security; (iv) trading halts; (v) corporate actions; (vi) general market conditions; (vii) the rating of the non-convertible bond; (viii) interest and/or coupon rate; (ix) maturity date; (x) yield curves; (xi) prior print, if available within a reasonable time frame; (xii) executions inconsistent with the trading pattern of a non-convertible bond; (xiii) current day's trading high/low; (xiv) recent day's and week's trading high/low; (xv) executions outside the 52-week high/low; (xvi) effect of a single large order creating several prints at various prices; and (xvii) quotes and executions of other market centers.⁵⁶

The parties will be promptly notified of the reviewer's determination and, in the event that the Nasdaq official determines that the transaction in dispute is clearly erroneous, the official will declare the transaction null and void.⁵⁷ If the reviewer determines that the execution is not clearly erroneous, then no corrective action will be taken in relation to the transaction.⁵⁸ If one

⁵⁶ See proposed Rule 11890(a)(2)(C)(4). These criteria would be in lieu of the criteria presently used to determine clearly erroneous executions of equity securities, which are set forth in Rule 11890(a)(2)(C)(1)-(C)(3). See id.

⁵⁷ See Rule 11890(a)(2)(B).

⁵⁸ See Notice, supra note 3, at 45293.

party does not agree with the determination, then that party may request further review or an appeal to the Nasdaq Review Council pursuant to the procedures set forth in Rule 11890(c).⁵⁹

Rule 11890(b) provides that, in the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of the Exchange, including the Nasdaq Bond Exchange, in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of the Exchange or any designated officer or senior level employee of the Exchange (each, a “Senior Official”) may, without the need for a request for review, review such transactions and determine if any are erroneous.⁶⁰ In addition, Rule 11890(b) further provides that a Senior Official may, on his or her own motion, review potentially erroneous executions.⁶¹ In such situations, the Senior Official will rely on the criteria set forth in proposed Rule 11890(a)(2)(C)(4). Any such action of the Senior Official must be taken within 30 minutes of detection of the erroneous transaction (in extraordinary circumstances, no later than the start of the Bond Trading Session on the trading day following the date of execution(s) under review), and each party to the erroneous transaction will be notified of the situation and the specific action as soon as practicable.⁶² Subject to certain exceptions, a User may appeal an erroneous

⁵⁹ The Exchange states that it expects that the existing Member representatives of the Nasdaq Review Council will adequately represent the interests of Users in appeals of clearly erroneous determinations. The Exchange represents that, if it becomes apparent to the Exchange that the roster of the Nasdaq Review Council does not adequately represent the interests of Users, then it will, at the appropriate time, consider nominating one or more Users to the Nasdaq Review Council. See Notice, *supra* note 3, at 45293, n. 33.

⁶⁰ See Nasdaq Rule 11890(b)(i).

⁶¹ See Nasdaq Rule 11890(b)(ii).

⁶² See Nasdaq Rules 11890(b)(i)-(ii).

determination made by a Senior Official acting on his or her own motion or pursuant to a system disruption or malfunction to the Nasdaq Review Council.⁶³

7. Halting and Suspending Bond Trading on the Exchange

The Exchange proposes to halt or suspend trading in a non-convertible bond on the Nasdaq Bond Exchange in certain circumstances.⁶⁴ Proposed Rule 4000B(i)(1) provides that the Exchange may halt or suspend trading in non-convertible bonds listed on the Nasdaq Bond Exchange when: (1) in the exercise of its regulatory function, the Exchange determines such action is necessary and appropriate to maintain a fair and orderly market, to protect investors, or is in the public interest, due to extraordinary circumstances or unusual market conditions; (2) a class of equity that is issued by the same issuer as the non-convertible bond has been halted or suspended by, or delisted from, the Exchange or its primary listing market (NYSE or NYSE American), as applicable; (3) news reports have a material impact on the non-convertible bond, its issuer, or related stock of its issuer; or (4) the non-convertible bond is to be called for redemption or will mature or become subject to retirement, and thereafter it will be subject to delisting. In the event of a trading halt or suspension under any of the foregoing circumstances, a halt or suspension message will be disseminated by the Exchange to subscribers to the Nasdaq Corporates Totalview Data Feed (discussed below) to signal the commencement and end of the halt or suspension.⁶⁵ Upon commencement of a halt or suspension, all pending orders in the Nasdaq Bond Exchange will be cancelled and new orders entered into the Nasdaq Bond Exchange during a bond halt or suspension will not be accepted.⁶⁶ The Nasdaq Bond Exchange

⁶³ See Nasdaq Rule 11890(c).

⁶⁴ See proposed Rule 4000B(i)(1).

⁶⁵ See proposed Rule 4000B(i)(2).

⁶⁶ See id.

will resume accepting new orders and trading once the Exchange declares an end to a bond halt or suspension.⁶⁷

8. Dissemination of Trading Information

The Exchange will disseminate via the Nasdaq Corporates Totalview Data Feed, a real-time data feed, best bid and offer information for non-convertible bonds for which there are orders posted to the Nasdaq Bond Exchange's order book, as well as last sale information (including sale price and trade size) for trades executed on the Nasdaq Bond Exchange.⁶⁸ The Exchange states that the Nasdaq Corporates Totalview Data Feed would reflect all orders in time sequence in the Nasdaq Bond Exchange's order book.⁶⁹ The Exchange states that the Nasdaq Corporates Totalview Data Feed will be available free of charge to those who request access and agree to the Exchange's terms.⁷⁰

9. Access to the Nasdaq Bond Exchange System

The Exchange proposes that Members⁷¹ of the Exchange that enter into a Nasdaq U.S. Services Agreement and elect to receive access to the Nasdaq Bond Exchange on their Member application form will be authorized Users and able to access the Nasdaq Bond Exchange.⁷² The Exchange states that existing Members of the Exchange will not be required to amend their

⁶⁷ See id.

⁶⁸ See proposed Rule 7050. The Exchange represents that, pursuant to FINRA Rule 6730(e)(2), transactions on the Nasdaq Bond Exchange need not be reported to FINRA's Trade Reporting and Compliance Engine because only bonds listed on Nasdaq may be traded on the Nasdaq Bond Exchange and the transaction information will be disseminated publicly. See Notice, supra note 3, at 45294 n. 43.

⁶⁹ See Notice, supra note 3, at 45294.

⁷⁰ See proposed Rule 7050. See also Notice, supra note 3, at 45294.

⁷¹ A "Member" means any registered broker or dealer that has been admitted to membership in Nasdaq. See Rule 0120(i).

⁷² See proposed Rule 4000B(b)(2)(D) (defining "User"). See also Notice, supra note 3, at 45294.

Nasdaq U.S. Services Agreements to obtain access to the Nasdaq Bond Exchange; rather, they will be required to complete a form expressing their interest in becoming a Nasdaq Bond Exchange User.⁷³

The Exchange states that Users of the Nasdaq Bond Exchange will gain access to the system via direct or indirect electronic linkages utilizing the Financial Information Exchange or “FIX” protocol.⁷⁴ The Nasdaq Bond Exchange will use the FIX protocol for message transmittal, including for the entry, modification, and cancellation of orders in non-convertible bonds.⁷⁵ The Exchange states that Users may establish connectivity to the Nasdaq Bond Exchange either directly or through third-party connectivity providers.⁷⁶ The Exchange will not charge any fees for FIX port connectivity to the Nasdaq Bond Exchange or to its disaster recovery system.⁷⁷

10. Reports and Recordkeeping

The Exchange proposes that Users of the Nasdaq Bond Exchange will have to comply with all relevant rules of the Exchange and the Commission in relation to reports and

⁷³ See id.

⁷⁴ See id.

⁷⁵ See id.

⁷⁶ See id. The Exchange notes that Users that purchase FIX port connectivity to the Exchange will need to obtain one or more additional FIX ports to connect to the Nasdaq Bond Exchange. Separately from port connectivity, the Exchange notes that Users will need to establish physical connections to the Nasdaq Bond Exchange, as set forth in General 8 of the Nasdaq Rules. In addition, the Exchange states that, to the extent that a User already purchases physical connectivity to the Exchange, that purchase will also provide for the User to connect to the Nasdaq Bond Exchange, and the User will not incur an additional fee for the new connection. The Exchange states that new Users that do not already purchase physical connectivity to the Exchange will need to do so pursuant to General 8 of the Nasdaq Rules. See id. at nn. 44-45.

⁷⁷ See proposed Rule 7015(b).

recordkeeping of transactions on the Nasdaq Bond Exchange, including, but not limited to, Rules 17a-3 and 17a-4 under the Act.⁷⁸

11. Regulation and Surveillance

The Exchange represents that it will regulate the Nasdaq Bond Exchange and enforce compliance with its rules by leveraging its existing infrastructure for operating a national securities exchange in compliance with Section 6 of the Act.⁷⁹ The Exchange states that its existing disciplinary rules and processes, set forth in its Rule 8000 and 9000 Series, will govern the discipline of Members that participate in corporate bond trading.⁸⁰ The Exchange further represents that it will enforce its non-convertible bond listing requirements as well as perform real-time surveillance of trading on the Nasdaq Bond Exchange.⁸¹

The Exchange states that its MarketWatch Department (“MarketWatch”) monitors real time trading in all Nasdaq securities during the trading day for price and volume activity.⁸² The Exchange states that MarketWatch will also perform real-time surveillance of the Nasdaq Bond Exchange for the purpose of maintaining a fair and orderly market at all times.⁸³ For example, the MarketWatch will monitor trading on the Nasdaq Bond Exchange market on a real-time basis to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation.⁸⁴

⁷⁸ See proposed Rule 4000B(j).

⁷⁹ See Notice, supra note 3, at 45294.

⁸⁰ See id.

⁸¹ See id.

⁸² See Notice, supra note 3, at 45291.

⁸³ See Notice, supra note 3, at 45294.

⁸⁴ See id.

The Exchange further notes that Nasdaq Regulation will oversee the process for determining and implementing trade halts and identifying and responding to unusual market conditions.⁸⁵

12. System Information

The Exchange states that the Nasdaq Bond Exchange will operate out of the same data center in Carteret, New Jersey, as does Nasdaq and other exchanges owned by Nasdaq, Inc., but it will use equipment separate from that used by those other exchanges.⁸⁶

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with the requirements of Section 6 of the Act⁸⁷ and the rules and regulations thereunder applicable to the Exchange.⁸⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and Section 6(b)(5) of the Act,⁹⁰ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote

⁸⁵ See id.

⁸⁶ See id. The Nasdaq Bond Exchange backup data center will be in Chicago, Illinois, and the Exchange represents that it will be designed to resume operations of the Nasdaq Bond Exchange, in the event of a system failure, in accordance with the requirements of Regulation Systems Compliance and Integrity. See id.

⁸⁷ 15 U.S.C. 78f(b).

⁸⁸ In approving these proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸⁹ 15 U.S.C. 78f(b)(4).

⁹⁰ 15 U.S.C. 78f(b)(5).

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, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

A. Listing Rules

The development and enforcement of adequate initial and continued listing standards for securities listed on a national securities exchange is of critical importance to financial markets and the investing public. The Commission believes that the Exchange's proposal is reasonably designed to determine which non-convertible bonds warrant listing on the Exchange and ensure that investors receive the protections of the Exchange's listing standards. Specifically, the Exchange's initial listing standards are reasonably designed to ensure that only companies capable of meeting their financial obligations are eligible to have their non-convertible bonds listed on Nasdaq, as the proposal requires these issuers to also have one class of equity security listed on Nasdaq, NYSE, or NYSE American. In addition, by limiting listing to non-convertible bond issues with a principal amount outstanding or a market value of at least \$5 million, the proposal is reasonably designed to exclude from Nasdaq Bond Exchange securities that would not have sufficient liquidity for a fair and orderly market. Furthermore, as noted by the Exchange, the proposed initial listing standards for non-convertible bonds are substantially similar to those of NYSE and NYSE American.⁹¹

⁹¹ See Notice, supra note 3, at 45289-90. Both NYSE and NYSE American require that a debt issue have an aggregate market value or principal amount of no less than \$5 million for initial listing. See Section 102.03 of the NYSE Listed Company Manual and Section

For continued listing standards, the Exchange requires that the market value or principal amount of non-convertible bonds outstanding is at least \$400,000 and the issuer must be able to meet its obligations on the listed non-convertible bonds. The Commission believes that such continued listing requirements for non-convertible bonds are reasonably designed to enable the Exchange to identify listed issuers that may have insufficient resources to meet their financial obligations or whose non-convertible bonds may lack adequate trading depth and liquidity. In addition, as noted by the Exchange, the proposed continued listing standards for non-convertible bonds are identical to the continued listing requirements for bonds imposed by NYSE American.⁹² Furthermore, the Commission notes that the Exchange's current rules allow Nasdaq to request additional information, either public or non-public, that it deems necessary to make a determination regarding a company's continued listing.⁹³

The Exchange represents that its proposal to amend Rule 5250(e)(3) to require an issuer to provide at least 10 calendar days advance notice of certain corporate actions related to non-convertible bonds listing on the Exchange will aid its Listings Qualification Department in assessing an issuer's compliance with the continued listing standards.⁹⁴ The Commission believes that requiring an issuer of non-convertible bonds to report such events, as well as requiring an issuer of a convertible or non-convertible bond to report a change in the obligor of a

104 of the NYSE American Company Guide. NYSE also requires that the issuer of the debt security has equity securities listed on the exchange or the debt security meets an alternative standard. See Section 102.03 of the NYSE Listed Company Manual. NYSE American requires that the issuer of the debt security has equity securities listed on the exchange, NYSE, or Nasdaq, or meets an alternative standard. See Section 104 of the NYSE American Company Guide.

⁹² See Notice, supra note 3, at 45290. See also Section 1003(b)(iv) of the NYSE American Company Guide.

⁹³ See id. at 45290. See also Nasdaq Rule 5250(a)(1).

⁹⁴ See Notice, supra note 3, at 45295, n. 58.

listed debt security as a Substitution Listing event, is appropriate and consistent with the Act, as such information will help the Exchange make determinations regarding the suitability of a debt security to stay listed on its market.

The Commission further believes it is consistent with the Act for the Exchange to immediately institute delisting proceedings if the Exchange determines that an issuer is unable to meet its obligations on its non-convertible bonds, as bonds with little or no value may not be appropriate for continued listing on the Exchange. Furthermore, the Commission believes that providing a 180-day compliance period for an issuer that fails to meet the \$400,000 market value or principal amount outstanding requirement is reasonably designed to ensure that the Exchange has an adequate procedure to permit an issuer to regain compliance before delisting a non-convertible bond that may lack adequate trading depth and liquidity and for which continued exchange trading may not be in the best interests of investors.

B. Trading Rules

The Exchange proposes to establish a new electronic trading platform, the Nasdaq Bond Exchange, to trade non-convertible bonds and to implement rules governing the trading of such bonds. The Commission believes that the establishment of the Nasdaq Bond Exchange to trade non-convertible bonds is generally consistent with the Act and may foster price discovery and competition in the non-convertible bonds market. As described above, the proposal includes provisions regarding access, order entry, order types, manner of execution, priority, trading sessions, trading units, clearing, trade halt and suspension procedures, clearly erroneous executions, reports and recordkeeping, dissemination of trading information, and regulation and surveillance. The Commission finds that these provisions are reasonably designed to promote the efficient functioning of the Nasdaq Bond Exchange and are generally consistent with the Act.

The Commission notes that the proposed rules closely parallel, and are substantially similar to, current NYSE Rule 86, which governs trading on NYSE Bonds, and which was filed with and approved by the Commission pursuant to Section 19(b) of the Act.⁹⁵ In addition, the proposed anti-internalization exception to price-time priority execution set forth in proposed Rule 4000B(g)(1)(C) is substantially similar to Nasdaq's anti-internalization exception.⁹⁶

The Commission notes that the Nasdaq Bond Exchange will only trade non-convertible bonds that are listed on Nasdaq. The Commission further notes that the Exchange is not charging any fees to post or execute trades on the Nasdaq Bond Exchange or for FIX port connectivity to the Nasdaq Bond Exchange or for connectivity to the Nasdaq Bond Exchange's disaster recovery system. In addition, the Nasdaq Corporates Totalview Data Feed will be available free of charge to those who request access.

Section 11(a) of the Act⁹⁷ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion, unless an

⁹⁵ See Securities Exchange Act Release No. 55496 (March 20, 2007), 72 FR 14631 (March 28, 2007). The Commission notes that the Exchange's proposed trading rules and the Nasdaq Bond Exchange functionality are more limited in scope than NYSE Rule 86 and NYSE Bonds. The Nasdaq Bond Exchange, like NYSE Bonds, will display, match, and execute buy and sell orders on a price/time basis; however, unlike NYSE Bonds, the Nasdaq Bond Exchange will not conduct auctions or establish prices collars for orders. The Nasdaq Bond Exchange, like NYSE Bonds, will accept good-for-day limit orders and fill-or-kill orders; however, unlike NYSE Bonds, the Nasdaq Bond Exchange will not have additional order types (e.g., reserve orders, minimum quantity orders, good-til-cancelled orders, and timed orders). The Nasdaq Bond Exchange will have only one trading session each day as opposed to NYSE Bonds, which has three sessions. Furthermore, unlike NYSE Bonds, the Exchange is not proposing sponsored access to the Nasdaq Bond Exchange, nor is the Exchange proposing to have market makers on the Nasdaq Bond Exchange. See NYSE Rule 86. See also, Notice, *supra* note 3, at 45292.

⁹⁶ See Nasdaq Rule 4757(a)(4). The Exchange states that proposed Rule 4000B(g)(1)(C) is based on Nasdaq Rule 4757(a)(4). See Notice, *supra* note 3, at 45292.

⁹⁷ 15 U.S.C. 78k(a).

exception applies. The Commission notes that this general prohibition would not generally impact trading on the Nasdaq Bond Exchange because Rule 11a1-4(T) under the Act⁹⁸ deems transactions in bonds on a national securities exchange for a member's own account to be consistent with Section 11(a). Similarly, the Commission notes that Section 11(b) of the Act⁹⁹ and Rule 11b-1 thereunder,¹⁰⁰ which pertain to specialists and market-makers, would not be implicated because there would be no specialists or market makers on the Nasdaq Bond Exchange.

C. Listing Fees

The Commission believes that the proposed listing fees for non-convertible bonds are an equitable allocation of reasonable fees. The Exchange states that the proposed \$5,000 application fee and \$5,000 annual fee for listing non-convertible bonds will support the Exchange's regulatory program to review and qualify debt issuances for listing.¹⁰¹ In addition, the Exchange states that the proposed fees are competitive with the initial and annual fees that are currently assessed by NYSE American for the listing of bonds,¹⁰² and that the proposed \$5,000 application fee is the same as the application fee it currently charges for convertible bonds.¹⁰³

⁹⁸ 17 CFR 240.11a1-4(T).

⁹⁹ 15 U.S.C. 78k(b).

¹⁰⁰ 17 CFR 240.11b-1.

¹⁰¹ See Notice, supra note 3, at 45295.

¹⁰² See id. NYSE American charges an initial listing fee for bonds of \$100 per \$1 million principal amount (or fraction thereof) with a minimum fee of \$5,000 and a maximum fee of \$10,000. NYSE American charges an annual fee of \$5,000 for listed bonds and debentures of companies whose equity securities are not listed on NYSE American. See NYSE American Listed Company Guide Sections 140 and 141.

¹⁰³ See Nasdaq Rule 5920.

The proposed application listing fees will be applicable to all issuers seeking to list non-convertible bonds on the Exchange, other than issuers that switch their listing to the Exchange from NYSE or NYSE American. The Commission believes that the proposed waiver of the application fee and the first year's annual fee for issuers that switch their listings to Nasdaq from NYSE or NYSE American is reasonable and not unfairly discriminatory. The Exchange states that less work is required to process a listing application for a security that is already listed on another exchange than it is to process an application for listing a new security.¹⁰⁴ In addition, the Exchange states that issuers that have already paid their annual fees to NYSE or NYSE American would be disincentivized to switch their listings to the Exchange without the waiver.¹⁰⁵ Finally, the Exchange notes that it currently waives certain listing and annual fees for issuers of equity securities who transfer their listings to the Exchange from another national securities exchange.¹⁰⁶

IV. Solicitation of Comments on Amendment Nos. 1, 2, and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 1, 2, and 3 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

¹⁰⁴ See Notice, *supra* note 3, at 45295.

¹⁰⁵ See Notice, *supra* note 3, at 45296.

¹⁰⁶ See Securities Exchange Act Release No. 34-70418 (Sept. 16, 2013), 78 FR 57909 (Sept. 20, 2013) (SR-NASDAQ-2013-115).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-070 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2018-070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-070 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*].**

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 1, 2, and 3 in the Federal Register. The Commission notes that Amendment Nos. 1, 2, and 3 provide clarifications and additional information to the proposed rule change. The changes and additional information in Amendment Nos. 1, 2, and 3 assist the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁰⁷ to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰⁸ that the proposed rule change (SR-NASDAQ-2018-070), as modified by Amendment Nos. 1, 2, and 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁹

Eduardo A. Aleman,
Assistant Secretary.

¹⁰⁷ 15 U.S.C. 78s(b)(2).

¹⁰⁸ 15 U.S.C. 78s(b)(2).

¹⁰⁹ 17 CFR 200.30-3(a)(12).

