



SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85743; File No. SR-NASDAQ-2019-031)

April 29, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 5702 Concerning an Issuer's Obligation to Disclose Material Information about the Issuer's Listed Non-Convertible Bonds

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 April 15, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 5702 to clarify the fact that Rule 5250(b)(1) and IM-5250-1, which presently obligate issuers of non-convertible bonds listed on the Nasdaq Bond Exchange to promptly disclose to Nasdaq any material information that would reasonably be expected to affect the value of their listed bonds or influence decisions to invest in such bonds, includes an obligation to disclose to Nasdaq material information about the company's equity securities, even if those securities are listed on a national securities exchange other than Nasdaq (including, for example, the New York Stock Exchange ("NYSE") or the NYSE American market), to the extent that information about such equity securities also would reasonably be expected to affect the value of or influence decisions to invest in the listed bonds.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

In November 2018, the Commission approved amendments to the Exchange's rules that permit the Exchange to list and trade non-convertible corporate debt securities (referred to herein as "bonds" or "non-convertible bonds") on the Nasdaq Bond Exchange.³ Under the Exchange's listing rules, at Rule 5702(a)(2), a non-convertible bond is eligible for listing on the Exchange only if its issuer concurrently lists at least one class of an equity security on Nasdaq, NYSE, or NYSE American. The Exchange noted in its proposal for the Nasdaq Bond Exchange that upon the effective date of its proposal, the Exchange would be capable of listing and trading non-convertible bonds only of issuers that list equity securities on Nasdaq.⁴ The Exchange stated that

³ See Securities Exchange Act Release No. 34-84575 (Nov. 13, 2018), 83 FR 58309 (Nov. 19, 2018).

⁴ See SR-NASDAQ-2018-070 (as modified by Amendment Nos. 1-3).

it expected to be ready to list and trade bonds of issuers with equity securities listed on NYSE or NYSE American by the Second Quarter of 2019.⁵

As the Exchange prepares to begin listing and trading bonds of issuers of NYSE and NYSE American listed equity securities, it proposes to further amend its Rules to ensure that it will have access to all of the information it needs to evaluate whether and when to suspend, delist, or halt trading in such bonds. Specifically, the proposed amendment would highlight to issuers that their obligation, under Rule 5250(b)(1) and IM-5250-1, to promptly disclose to Nasdaq material information that could reasonably be expected to affect the value of or influence decisions to invest in their Nasdaq-listed bonds, includes an obligation to promptly notify the Exchange of material news about their NYSE or NYSE American listed equity securities, to the extent that such information about such NYSE or NYSE American listed securities could also reasonably be expected to affect the value of or influence decisions to invest in the Nasdaq-listed bonds.

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 Exchange's regulatory capacity, it is necessary or 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 de-listed from, the Exchange or by its primary listing market (NYSE or NYSE American), as applicable; (3) news reports have a material impact on a 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 de-listing.

⁵ See id.

To assist the Exchange in determining when to halt or suspend trading in non-convertible bonds, Rule 5250(b)(1) and IM-5250-1 require that, except in unusual circumstances,⁶ Nasdaq listed companies, including issuers of non-convertible bonds listed on the Nasdaq Bond Exchange, shall disclose promptly to the public through any Regulation FD compliant method (or combination of methods) any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Under Rule 5250 and IM-5250-1, Nasdaq-listed companies must notify Nasdaq's MarketWatch Department⁷ prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made, from 7:00 am to 8:00 pm E.T, or prior to 6:50 am, if the company releases the news publicly other than between 7:00 am and 8:00 pm.⁸

The Exchange construes Rule 5250(b)(1) and IM-5250-1 as already obligating an issuer of a Nasdaq-listed bond to disclose and to provide notice of disclosure to the Nasdaq

⁶ As set forth in IM-5250-1, companies in unusual circumstances may not be required to make public disclosure of material events including, for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its legitimate corporate objectives. However, IM-5250-1 states that companies remain obligated to disclose this information to Nasdaq upon request pursuant to Rule 5250(a).

⁷ Nasdaq's MarketWatch Department monitors real time trading in all Nasdaq securities during the trading day for price and volume activity.

⁸ As set forth in IM-5250-1, such events include: (1) financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or guidance; (2) corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships; (3) new products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order); (4) senior management changes of a material nature or a change in control; (5) resignation or termination of independent auditors, or withdrawal of a previously issued audit report; (6) events regarding the Company's securities, such as defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities; (7) significant legal or regulatory developments; or (8) any event requiring the filing of a Form 8-K.

MarketWatch Department of any news information – including information about the issuer’s equity securities – that is material to the value of or an decision to invest in the listed bond. For avoidance of doubt, however, the Exchange proposes to amend Rule 5702 to reiterate and make explicit this obligation.

Specifically, the Exchange proposes to reiterate, in new Rule 5702(c), that any company that has non-convertible bonds listed on the Exchange under Rule 5702 is concurrently obligated, under Rule 5250(b)(1) and IM-5250-1, to promptly disclose and provide notice of disclosure to Nasdaq’s MarketWatch Department of any material information that would reasonably be expected to affect the value of the bond or decisions to invest in the bond. The proposal would emphasize that this obligation extends to material information about the company’s equity securities, even if those securities are listed on a national securities exchange other than Nasdaq, to the extent that information about such equity securities also would reasonably be expected to affect the value of or influence decisions to invest in the bond. Potentially relevant news about the NYSE- or NYSE American-listed equity securities would include, among other things, a voluntary or involuntary delisting of the equity securities, a bankruptcy of the issuer, a corporate reorganization, a call for redemption of the equity securities, or a significant legal or regulatory development, such as a regulatory investigation or action.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

investors and the public interest. Specifically, the Exchange believes that the proposal will promote just and equitable principles of trade by helping to ensure that bond issuers provide prompt notice to Nasdaq's MarketWatch Department, in accordance with Rule 5250(b)(1) and IM-5250-1, of all material news – including material news about the issuer's equity securities listed on Nasdaq or another national securities exchange – that can reasonably be expected to affect the value of or influence a decision to invest in a Nasdaq-listed bond. The proposal will protect investors by ensuring that MarketWatch has the all of the information it reasonably requires to determine whether to suspend, delist, or halt trading in a listed bond, as set forth in Rule 4000B(i), and that it does not lack access to material information that is relevant to the value of or a decision to invest in the listed bonds due to the fact that the issuer has disclosed the information to another national securities exchange in connection with the listing of its equity securities on that other exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal is merely intended to help ensure that the Exchange has the information it needs in all instances to evaluate whether to suspend, delist, or halt trading in a Nasdaq-listed bond. The Exchange does not expect that its proposal will have any impact whatsoever on inter-industry competition. The Exchange also does not believe that the proposal will have an adverse impact on intra-industry competition. Although the proposal will specifically require bond issuers with equity securities listed on other national securities exchanges to promptly report material news about those equity securities to Nasdaq, bond issuers with Nasdaq-listed securities are subject to the same obligation. Moreover, the Exchange does not expect that its proposal will require issuers to

disclose any information to Nasdaq that they would not otherwise be required to disclose to NYSE or NYSE American for similar purposes.

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

No written comments were either solicited or received.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Exchange states that the waiver will allow the Exchange, as soon as it begins to list non-convertible bonds by issuers with equity securities listed on NYSE and

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

NYSE American,¹⁵ to have access to information about such issuers' equity securities that is material to the Exchange's decisions to suspend, de-list, or halt trading in the bonds.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change highlights in the Exchange bond listing rules the existing obligation of issuers listing non-convertible bonds to provide the Exchange with all material information that could reasonably be expected to affect the value of, or influence investors' decision, concerning Nasdaq listed non-convertible bonds including material information about an issuer's listed equity securities that could have such an affect, even if the equity security is listed on another national securities exchange.¹⁶ Such material information is important for the protection of investors and the public interest because this information will help the Exchange evaluate whether and when to suspend, de-list, or halt trading in the listed non-convertible bonds pursuant to Exchange rules. For these reasons, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.¹⁷

At any time within 60 days of the filing of the 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. If the Commission takes such action, the

¹⁵ Under Exchange Rule 5702(a)(2), a non-convertible bond is eligible for listing on the Exchange only if its issuer concurrently lists at least one class of an equity security on either Nasdaq, NYSE, or NYSE American.

¹⁶ See id.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-031 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-2019-031. 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 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. 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-2019-031 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Eduardo A. Aleman
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

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