

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101468; File No. S7-2024-07]

October 29, 2024

Notice of an Application of the New York Stock Exchange LLC for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 and Request for Comment

On April 12, 2024, the Securities and Exchange Commission (the “Commission”) received an application from the New York Stock Exchange LLC (the “NYSE”) to amend an exemption granted to the NYSE on November 16, 2006 (the “2006 Exemption”)¹ pursuant to Section 36² of the Securities Exchange Act of 1934 (the “Exchange Act”),³ in accordance with the procedures set forth in Exchange Act Rule 0-12.⁴ The 2006 Exemption granted exemptive relief from Section 12(a) of the Exchange Act⁵ to permit the NYSE’s members, brokers and dealers to trade debt securities not registered under the Exchange Act on the NYSE’s Automated Bond System, now known as “NYSE Bonds,” subject to certain conditions. One of those conditions is that an issuer of the debt securities, or the issuer’s parent if the issuer is a wholly-owned subsidiary, have at least one class of common or preferred equity securities that is (i) registered under Section 12(b) of the Exchange Act and (ii) listed on the NYSE.⁶ The

¹ Order Granting the New York Stock Exchange, Inc.’s (n/k/a the New York Stock Exchange LLC) Application for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934, Release No. 34-54766 (Nov. 16, 2006) [71 FR 67657 (Nov. 22, 2006)].

² 15 U.S.C. 78mm. Section 36(a)(1) of the Exchange Act gives the Commission the authority to exempt any person, security or transaction or any class or classes of persons, securities or transactions, conditionally or unconditionally, from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

³ 15 U.S.C. 78a *et seq.*

⁴ 17 CFR 240.0-12. Exchange Act Rule 0-12 sets forth the procedures for filing applications for orders for exemptive relief pursuant to Section 36.

⁵ 15 U.S.C. 78l(a).

⁶ See 2006 Exemption, *supra* note 1. See also Letter from Mary Yeager, New York Stock Exchange, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 26, 2005 (NYSE’s request for exemptive relief); Notice of an Application of the New York Stock Exchange, Inc. for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 and Request for Comment, Release No. 34-51998 (July 8, 2005) [70 FR 40748 (July 14, 2005)].

NYSE seeks to amend the 2006 Exemption by revising the condition that the class of listed common or preferred equity securities be listed on the NYSE. The NYSE requests that debt securities not registered under the Exchange Act be permitted to trade on NYSE Bonds if their issuer, or the issuer's parent if the issuer is a wholly-owned subsidiary, has a class of common or preferred equity securities listed on *any* registered national securities exchange, not only the NYSE. All other terms of the 2006 Exemption would remain in effect.⁷ We are publishing this notice to provide interested persons with an opportunity to comment.

I. Background

Section 12(a) of the Exchange Act provides in relevant part that it “shall be unlawful for any member, broker or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange.” Section 12(b)⁸ of the Exchange Act dictates how the registration referred to in Section 12(a) must be accomplished. Accordingly, all equity and debt securities that are not “exempted securities”⁹ or are not otherwise exempt from Exchange Act registration must be registered by the issuer under the Exchange Act before a member, broker or dealer may trade that class of securities on a national securities exchange.

At the same time, brokers or dealers who trade debt securities other than on a national securities exchange may trade debt securities regardless of whether the issuer registered that class of debt under the Exchange Act. This is the case because, while the Exchange Act requires issuers to register certain equity securities that are not traded on a national securities exchange, it does not require issuers to register debt securities that are not traded on a national

⁷ The NYSE's application for exemptive relief is included as an Appendix to this release.

⁸ 15 U.S.C. 78l(b).

⁹ An exempted security may be traded on a national securities exchange absent Exchange Act registration. Section 3(a)(12) of the Exchange Act [15 U.S.C. 78c(a)(12)] defines exempted security to include securities such as government securities, municipal securities, various trust fund interests, pooled income fund interests and church plan interests.

securities exchange. In particular, Section 12(g)¹⁰ of the Exchange Act, the only Exchange Act provision other than Section 12(a) to impose an affirmative Exchange Act registration requirement, requires the registration of equity securities only.¹¹

As the Commission has stated in the past, this disparate regulatory treatment between debt securities traded on an exchange versus “over-the-counter” (“OTC”) may have negatively and unnecessarily affected the structure and development of the debt markets.¹² Therefore, the Commission has taken steps to mitigate the effects of such disparate treatment. For example, in 1994, to reduce existing regulatory distinctions between exchange-traded debt securities and debt securities that trade in the OTC market, the Commission adopted Exchange Act Rule 3a12-11.¹³ Rule 3a12-11 provides for the automatic effectiveness of Form 8-A registration statements for exchange-traded debt securities, exempts exchange-traded debt from the borrowing restrictions under section 8(a) of the Exchange Act,¹⁴ and exempts exchange-traded debt from certain proxy and information statement requirements under sections 14(a), (b) and (c) of the Exchange Act.¹⁵

As another example, in 2002, the Commission approved the Financial Industry Regulatory Authority’s (“FINRA”) rules for the Transaction Reporting and Compliance Engine (“TRACE”) to, among other things, improve price transparency in the corporate bond

¹⁰ 15 U.S.C. 78l(g).

¹¹ Section 12(g)(1) of the Exchange Act and Rule 12g-1 [17 CFR 240.12g-1] promulgated thereunder require an issuer to register a class of equity securities if the issuer of the securities, at the end of its fiscal year, has more than \$10,000,000 in total assets and a class of equity securities held by either 2,000 persons or 500 persons who are not accredited investors. When Congress amended the Exchange Act in 1964 to add Section 12(g), it extended the registration requirement to specified equity securities that are not exchange-traded. No comparable provision was provided for debt securities that are not exchange-traded.

¹² See discussion of Exchange Act Rule 3a12-11 in the NYSE’s application for exemptive relief. See also Release Nos. 34-34922 (Nov. 1, 1994) [59 FR 55342 (Nov. 7, 1994)], and 34-34139 (June 1, 1994) [59 FR 29398 (June 7, 1994)]. See also *supra* note 1.

¹³ 17 CFR 240.3a12-11. Release No. 34-34922 (Nov. 1, 1994) [59 FR 55342 (Nov. 7, 1994)].

¹⁴ 15 U.S.C. 78h(a).

¹⁵ 15 U.S.C. 78n(a), (b) and (c).

market.¹⁶ Since 2002, FINRA has increased transparency in the corporate bond market through TRACE by, most recently, reducing the 15-minute reporting timeframe for transactions reported to FINRA's TRACE system to one minute.¹⁷

The Commission stated that granting the 2006 Exemption “will serve the public interest by minimizing unnecessary regulatory disparity and promoting competition” between the corporate debt security markets.¹⁸ The 2006 Exemption required the following conditions in order for debt securities not registered under the Exchange Act to trade on NYSE Bonds: (1) that the offer and sale of the debt securities traded on what is now NYSE Bonds be registered under the Securities Act; (2) that the issuer of the debt securities (or its parent if the issuer is a wholly-owned subsidiary) have at least one class of equity securities registered under Section 12(b) the Exchange Act and listed on the NYSE; (3) that the transfer agent for the debt securities be registered under Section 17A of the Exchange Act; (4) that the trust indenture for the debt security be qualified under the Trust Indenture Act of 1939; (5) that the NYSE comply with the undertakings set forth in its exemptive application to distinguish between debt securities registered under Section 12(b) of the Exchange Act and listed on the NYSE and debt securities trading pursuant to the exemptive order;¹⁹ and (6) that the NYSE would delist a class of debt securities that is listed on the NYSE as of the date of the order only if the issuer of that class of debt security did not object to the delisting of those securities.²⁰

The NYSE posts on its website a list of the bonds that can be traded on the NYSE Bonds platform.²¹ As of October 2024, this list contained over 8,000 securities. In its application, the

¹⁶ See Release No. 34-43873 (Jan. 23, 2001) [66 FR 8131 (Jan. 29, 2001)] (Order Approving File No. SR-NASD-99-65).

¹⁷ See Release No. 34-101121 (Sept. 20, 2024) [89 FR 78930 (Sept. 26, 2024)] (Order Approving File No. SR-FINRA-2024-004).

¹⁸ See *supra* note 1 at 67658.

¹⁹ For a description of the undertakings, see the NYSE’s application for exemptive relief, Appendix at 3.

²⁰ See *supra* note 1 at 67659.

²¹ See <https://www.nyse.com/products/bonds>.

NYSE states that, of the bonds that can be traded on the NYSE Bonds platform, the listed bonds total more than 1,000 securities and represent a notional value of about \$464 billion, and the unlisted bonds total more than 7,000 securities and represent a notional value of about \$840 billion.²²

II. Summary of the Application

In its application, the NYSE requests that we amend one of the conditions in the 2006 Exemption. That exemption permits the NYSE to trade debt securities²³ not registered under Section 12(b) of the Exchange Act on NYSE Bonds subject to certain conditions. One of those conditions requires that an issuer, or the issuer's parent if the issuer is a wholly-owned subsidiary, have at least one class of common or preferred equity securities that is (i) registered under Section 12(b) of the Exchange Act and (ii) listed on the NYSE. The NYSE asks the Commission to amend item (ii) to require that an issuer have at least one class of preferred or common equity securities that is listed on *any* registered national security exchange, not just the NYSE. All other conditions of the 2006 Exemption, including item (i), would remain the same. Specifically, debt securities traded on NYSE Bonds would be required to meet the following conditions:

- (a) The issuer of the debt security has registered the offer and sale of such security under the Securities Act of 1933;²⁴
- (b) The issuer of the debt security or the issuer's parent company if the issuer is a wholly-owned subsidiary, has at least one class of common or preferred equity

²² See the NYSE's application for exemptive relief, Appendix at 1.

²³ The 2006 Exemption defines "debt security" as any security that, if the class of securities were listed on the NYSE, would be listed under Sections 102.03 or 103.05 of the NYSE's Listed Company Manual. Under this definition, a debt security does not include any security that, if the class of securities were listed on the NYSE, would be listed under Sections 703.19 or 703.21 of the NYSE's Listed Company Manual. A debt security also does not include any security that is defined as an "equity security" under Section 3(a)(11) of the Exchange Act [15 U.S.C. 78c(a)(11)]. The references to Section 102.03, 103.05, 703.19 and 703.21 of the NYSE's Listed Company Manual are to those sections as in effect on January 31, 2005. The proposed exemptive order would not change this definition.

²⁴ 15 U.S.C. 77a.

- securities registered under Section 12(b)²⁵ of the Exchange Act and listed on a registered national security exchange;
- (c) The transfer agent of the debt security is registered under Section 17A²⁶ of the Exchange Act;
 - (d) The trust indenture for the debt security is qualified under the Trust Indenture Act of 1939;²⁷
 - (e) The NYSE has complied with the undertakings (see below) set forth in its exemptive application to distinguish between debt securities registered under Section 12(b) of the Exchange Act and listed on the NYSE and debt securities trading pursuant to this requested exemptive relief; and
 - (f) The NYSE will delist a class of debt securities that were listed on the NYSE as of November 16, 2006 only if the issuer of such class of debt securities does not object to the delisting of those securities.

The NYSE states that it would continue to comply with the undertakings that are a condition of the 2006 Exemption in connection with its current request.²⁸ Specifically, in its application the NYSE states that it would continue to:

- (a) Provide definitions of “listed” debt securities and “traded” debt securities on NYSE Bonds and on the NYSE’s website;
- (b) Identify on NYSE Bonds and on the NYSE’s website whether a particular debt security is “listed” or “traded”²⁹;

²⁵ 15 U.S.C. 78l(b).

²⁶ 15 U.S.C. 78qA.

²⁷ 15 U.S.C. 77aaa - 77bbbb.

²⁸ See the NYSE’s application for exemptive relief, Appendix at 3.

²⁹ The NYSE states that it would distinguish debt securities “listed” on NYSE Bonds from those “traded” on NYSE Bonds in the following manner: (1) The NYSE would uniquely identify “listed” and “traded” debt securities on the NYSE Bonds Bond Directory located on the NYSE’s website; (2) The NYSE would also make such information

- (c) Directly provide members and member organizations notification prior to the date that trading of the debt securities commences on NYSE Bonds to clarify the distinction between “listed” debt securities and “traded” debt securities and to provide notification that eligible debt securities will be traded on NYSE Bonds;
- (d) Issue a press release upon approval of this exemption request stating that “listed” debt securities would trade alongside “traded” debt securities on NYSE Bonds; and
- (e) Obtain corporate action information from a third-party bond issue tracking service for debt securities covered by this request.³⁰

The NYSE states that the current regulatory landscape puts the NYSE at a competitive disadvantage vis-à-vis Alternative Trading Systems (“ATs”), which are permitted to trade any corporate bond that is currently available to trade in the secondary market.³¹ NYSE states that NYSE Bonds is the only regulated platform for corporate bonds that offers firm prices that are live and executable versus what it describes as “subject pricing” on ATs.³² NYSE also states that NYSE Bonds, in contrast to the OTC bond markets, disseminates both last sale prices as they occur on NYSE Bonds exclusive of any mark-ups, mark-downs, or other charges, and bid and ask quotations. In addition, the NYSE states that such market data is accessible instantaneously on NYSE Bonds.³³ The NYSE further states that it is not aware of any comparable level of

available on the NYSE Bonds Security Master File on a daily basis through ICE Data Services (“IDS”); and (3) The NYSE would publish a Trader Update to notify members and member organizations each time a debt security becomes available to trade on NYSE Bonds.

³⁰ In its application for exemptive relief, the NYSE states that the third-party bond issue tracking service it currently uses is IDS. It also states in its application that it would use information from IDS and FactSet to comply with NYSE Listing Manual Rule 1401.

³¹ See the NYSE’s application for exemptive relief, Appendix at 6.

³² As stated in NYSE’s application for exemptive relief, ATs typically offer dealers on their platforms a “last look” to an otherwise firm price, which allows the dealer to review the posted price prior to any execution. The “last look” allows the dealer to reject the order if the price is no longer advantageous. NYSE states that this practice “can create a false sense of liquidity in the market.” See the NYSE’s application for exemptive relief, Appendix at 6.

³³ FINRA members generally are required to report transactions in corporate bonds to TRACE as soon as practicable

transparency that exists currently elsewhere for corporate bond trading.³⁴

Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”

In order to facilitate investor protection, we propose the following additional condition: the NYSE will ensure daily monitoring of delistings of equity securities of each issuer whose debt securities are listed for trading on NYSE Bonds or, if the issuer of the debt securities is a wholly-owned subsidiary, equity securities of the issuer’s parent company. The Commission preliminarily believes that this condition will help protect investors by facilitating appropriate monitoring and timely handling of equity security delistings for each issuer whose debt securities are listed for trading on NYSE Bonds or, if the issuer of the debt securities is a wholly-owned subsidiary, equity securities of the issuer’s parent company.

III. Request for Comment

We request and encourage any interested person to submit comments regarding the NYSE’s application, including whether the request should be granted. In particular, we solicit comment on the following questions:

1. Is the scope of the requested exemption appropriate? If not, please explain and provide examples of an appropriate scope.
2. Please describe how the requested exemption would or would not protect investors and the public interest. For example, would investors lose access to any material

but no later than 15 minutes from the time of execution. *See* FINRA Rule 6730(a)(1). FINRA publicly disseminates information on the transactions reported to TRACE immediately upon receipt. *See* FINRA Rule 6750(a).

³⁴ *See* the NYSE’s application for exemptive relief, Appendix at 7.

information?

3. Please describe how the requested exemption would or would not help to maintain fair and orderly markets.
4. Would the requested exemption impact competition between exchanges and the OTC markets for trading in corporate bonds? If so, please describe the impact on competition, and how this impact would occur.
5. Would the requested exemption increase the transparency of the public debt markets? If so, please describe the kind of transparency it would foster.
6. Increased trading on the NYSE Bonds platform that might follow from the requested exemption would result in greater dissemination of last sale prices as they occur on NYSE Bonds exclusive of any mark-ups, mark-downs, or other charges, and bid and ask quotations. To what extent would the information disseminated by NYSE Bonds and, in particular, the pre-trade information improve overall market quality in the corporate bond market in terms of access to information, liquidity or other factors?
7. Would the requested exemption impact competition between national securities exchanges? If so, explain how.
8. Would issuers be more or less likely to issue debt securities to trade on NYSE Bonds in accordance with this exemptive relief?
9. Are there differences between issuers, in terms of industry, capitalization or other characteristics, who list their equity securities on the NYSE and those who list their equity securities on other registered national securities exchanges? If so, are there any such differences that warrant not expanding the 2006 Exemption as requested?
10. Are there differences between the listing standards for equity securities among national securities exchanges that warrant not expanding the 2006 Exemption as requested?

11. The current condition requiring the issuer of the debt security to have at least one class of common or preferred equity securities registered under Section 12(b) of the Exchange Act and listed on the NYSE was designed to assure that the issuer of debt securities has a significant and continuous listing (and oversight) relationship with the NYSE. Does the loss of such a direct relationship with the issuer under the requested exemption warrant not expanding the 2006 Exemption as requested?
12. Are there particular listing standards for an issuer's listed securities the presence of which should be a condition for expanding the 2006 Exemption?
13. Any new or amended listing standards must be filed with the Commission, meet the statutory standard and comply with Rule 19b-4, and be approved by the Commission. Would approving this request affect the incentives of each of the national securities exchanges, including the NYSE, to maintain or change its listing standards?
14. Are there differences between exchange-traded debt securities and debt securities traded in the OTC market broadly or on ATSS in particular that have developed since 2006 that warrant not expanding the 2006 Exemption as requested?
15. Are there any implications or concerns that may arise because NYSE members would be able to trade a debt security of an issuer that is not subject to the rules of the NYSE (even with respect to its equity securities) and where the NYSE has no formal listing agreement with the issuer, and the issuer's equity securities are listed on a national securities exchange other than the NYSE?
16. Should we condition the requested exemption on any additional listing standards on any exchange where the issuer's securities are listed?
17. Are the conditions sufficiently designed so that investors are appropriately protected?
18. Is the undertaking regarding the use of corporate action information from a third

party bond issue tracking service adequate to provide the NYSE and its members with sufficient information regarding corporate actions relevant to debt securities traded on NYSE Bonds? Is such undertaking sufficient for NYSE to ascertain compliance with the requirements of NYSE Rule 1401, on initial and continued trading? If not, what additional information or measures would be appropriate? Should any such additional information or measures be required as an additional condition of the exemption?

19. Should the provision of corporate action information provided by a third-party bond issue tracking service to the NYSE and its members be a condition of the exemption?
20. Should we require additional conditions to the requested exemption if any of the events identified in the information to be provided by the third-party bond issue tracking service to the NYSE were to occur?
21. The NYSE states that it would continue to “[i]dentify on NYSE Bonds and on the NYSE’s website whether a particular debt security is “listed” or “traded” and the NYSE explains the manner in which it would do so.³⁵ Should the NYSE also be required to identify the exchanges where the equity securities of its NYSE Bond issuers are listed? If so, should this identification be required as a condition of the exemptive order?
22. Should we add the proposed condition that the NYSE ensure daily monitoring of delistings of equity securities of each issuer whose debt securities are listed for trading on NYSE Bonds or, if the issuer of the debt securities is a wholly-owned subsidiary, equity securities of the issuer’s parent company? Would that condition help to ensure compliance with the requested exemption and timely handling of an

³⁵ See the NYSE’s application for exemptive relief, Appendix at 3.

event of delisting of such equity securities?

23. Should we make any other modifications to the existing conditions or add any other conditions?

24. Would the requested change to the listing condition impact any of the other conditions to the exemption? If so, which condition or conditions, and why?

25. Would there be any adverse consequences to market participants if we granted this exemption as requested?

Comments should be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/exorders.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-2024-07 on the subject line.

Paper Comments:

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

All submissions should refer to File Number S7-2024-07. This file number should be included on the 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 website (<https://www.sec.gov/rules/exorders.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the notice that are filed with the Commission, and all written communications relating to the notice 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

For further information, you may contact Ingram Weber, Special Counsel, Office of Rulemaking, at (202) 551-3430, in the Division of Corporation Finance or Justin Pica, Assistant Director, at (202) 551-7476, in the Division of Trading and Markets; U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

By the Commission.

Dated: October 29, 2024

Sherry R. Haywood,
Assistant Secretary.

Appendix: The New York Stock Exchange LLC's application for an exemption pursuant to Section 36 of the Exchange Act

April 12, 2024

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Dear Ms. Countryman:

The New York Stock Exchange LLC (the “Exchange” or “NYSE”) requests that the Securities and Exchange Commission (the “Commission”) amend a single term of previously granted exemptive relief to permit Exchange members and member organizations to trade certain debt securities that are not registered under Section 12(b)¹ of the Securities Exchange Act of 1934 (the “Exchange Act”).²

Background / Exemptive Relief Requested

Section 12(a)³ of the Exchange Act provides that it shall be unlawful for any “member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange.”

In 2006, the Commission granted exemptive relief from Section 12(a) of the Exchange Act to permit Exchange members and member organizations to trade unregistered debt securities on the NYSE’s Automated Bond System (ABS),⁴ now known as “NYSE Bonds.”⁵

¹ 15 U.S.C. 78l(b).

² 15 U.S.C. 78a.

³ 15 U.S.C. 78l(a).

⁴ See Exchange Act Release No. 54766 (November 16, 2006), 71 FR 67657 (November 22, 2006) (Order Granting the New York Stock Exchange Inc.’s (n/k/a the New York Stock Exchange LLC) Application for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934) (the “2006 Exemption”). See also Letter from Mary Yeager, New York Stock Exchange, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 26, 2005 (NYSE’s request for exemptive relief).

⁵ See Securities Exchange Act Release No. 55496 (March 20, 2007), 72 FR 14631 (March 28, 2007) (SR-NYSE-2006-37) (Order Granting Accelerated Approval of Proposed Rule Change Relating to the Establishment of NYSE Bonds).

The 2006 Exemption is limited to debt securities of an issuer, or a wholly-owned subsidiary of an issuer, with at least one class of common or preferred equity securities that is (i) registered under Section 12(b) of the Exchange Act and (ii) listed on the NYSE. The Exchange now asks the Commission to amend this single limitation. As amended, unregistered debt securities could be traded on NYSE Bonds if their issuer (or their issuer's parent) had a class of common or preferred equity listed on *any* registered national securities exchange, not just the NYSE. All other terms of the 2006 Exemption would remain in effect.

More specifically, if the Commission were to grant the Exchange's request, in order for an unregistered debt security to be traded on NYSE Bonds, the debt security would have to meet the following conditions:

- (a) The issuer of the debt securities registered the offer and sale of that class of debt securities under the Securities Act of 1933, as amended (the "1933 Act");⁶
- (b) The issuer of the debt securities or the issuer's parent, if the issuer is a wholly-owned subsidiary, has at least one class of common or preferred equity securities registered under Section 12(b)⁷ of the Exchange Act and listed on *any* registered national securities exchange;
- (c) The transfer agent for the debt securities is registered under Section 17A⁸ of the Exchange Act;⁹
- (d) The trust indenture for the debt security is qualified under the Trust Indenture Act of 1939;¹⁰
- (e) The NYSE has complied with the undertakings (see below) set forth in its exemptive application to distinguish between debt securities registered under Section 12(b) of the Exchange Act and listed on the NYSE and debt securities trading pursuant to this requested exemptive relief; and
- (f) The NYSE will delist a class of debt securities that were listed on the NYSE as of November 16, 2006 only if the issuer of such class of debt securities does not object to the delisting of those securities.

⁶ 15 U.S.C. 77a.

⁷ 15 U.S.C. 78l(b).

⁸ 15 U.S.C. 78qA.

⁹ If the Commission grants exemptive relief from Section 12(a), members, brokers and dealers would be able to trade on the NYSE eligible debt securities that have not been registered under Section 12(b), which prescribes the procedures for an issuer's registration of a security and the information required to be submitted. Similarly, the Exchange would no longer need to comply with the provisions of Section 12(d) regarding the certification of listing and registration of debt securities.

¹⁰ 15 U.S.C. 77aaa - 77bbbb.

In connection with the 2006 Exemption, the Exchange undertook that it would take or had taken a number of specified steps. The Exchange undertakes that it will continue to provide this same information in connection with this request. Specifically, the NYSE will continue to:

- (a) Provide definitions of “listed” debt securities and “traded” debt securities on NYSE Bonds and on the NYSE’s website;
- (b) Identify on NYSE Bonds and on the NYSE’s website whether a particular debt security is “listed” or “traded”;¹¹
- (c) The NYSE will directly provide members and member organizations notification prior to the date that trading of the debt securities commences on NYSE Bonds to clarify the distinction between “listed” debt securities and “traded” debt securities and to provide notification that eligible debt securities will be traded on NYSE Bonds;
- (d) Issue a press release upon approval of this exemption request stating that “listed” debt securities would trade alongside “traded” debt securities on NYSE Bonds; and
- (e) Obtain corporate action information from IDS for debt securities covered by this request.

With respect to undertaking (e), IDS, an affiliate of the Exchange, is a bond issue tracking service that provides the NYSE a customized on-line reference for corporate actions relevant to bonds. The tracking system provides information and data electronically to the NYSE, and provides:

- Notification of calls (redemptions) of traded bonds,
- Notification of tender offers for traded bonds,
- Notice of defaults in payment of interest on traded bonds,
- Notice of consent solicitations for traded bonds, and
- Notice of corporate actions for traded bonds (includes tender offers, issuer name changes, CUSIP number changes).

The tracking system does not provide notification of changes in trustees, obligors or transfer agents with respect to traded debt securities. NYSE receives this information electronically from IDS on a daily basis. IDS independently obtains, researches and organizes the information. The NYSE does not itself verify the information provided by IDS.

NYSE currently has rules that set forth the requirements for trading unlisted debt securities on NYSE Bonds.¹² Rule 1400 provides:

¹¹ The NYSE will distinguish debt securities “listed” on NYSE Bonds from those “traded” on NYSE Bonds in the following manner: (1) The Exchange will uniquely identify “listed” and “traded” debt securities on the NYSE Bonds Bond Directory located on the NYSE’s website; (2) The Exchange will also make such information available on the NYSE Bonds Security Master File on a daily basis through ICE Data Services (“IDS”); and (3) The Exchange will publish a Trader Update to notify members and member organizations each time a debt security becomes available to trade on NYSE Bonds.

¹² See NYSE Rules 1400 and 1401.

“The term Debt Securities includes only securities that, if they were to be listed on the NYSE, would be listed under Sections 102.03 or 103.05 of the NYSE’s Listed Company Manual; provided, however, that such securities shall not include any security that is defined as an "equity security" under Section 3(a)(11) of the Exchange Act.

For the avoidance of doubt, note that the term Debt Securities does not include a security that, if listed on the NYSE, would have been listed under Section 703.19 of the NYSE’s Listed Company Manual or any equity-linked debt securities listed under Rule 5P. The references in this Rule to Sections 102.03, 103.05, and 703.19 of the NYSE’s Listed Company Manual are to those sections as in effect on January 31, 2005.”

Rule 1401 specifies that only Debt Securities with an outstanding market value or principal amount of at least \$5 million will be permitted to be traded by NYSE members and member organizations. Rule 1401 also specifies that trading in Debt Securities will be suspended if (a) the outstanding aggregate market value or principal amount of the Debt Securities has fallen to less than \$1,000,000, or (b) the Debt Securities either 1) no longer qualify for a statutory exemption from the registration requirements of Section 12(b) of the Exchange Act, or 2) may no longer be traded by NYSE members or member organizations on an unregistered basis pursuant to the 2006 Exemption.

In order to ensure that Debt Securities have at least \$5,000,000 in aggregate market value or principal amount at the time trading commences, as required under Rule 1401(1), the NYSE, as it currently does, will review two existing corporate bond issue databases (IDS and FactSet) that provide issue size information for the preponderance of corporate bonds.

To monitor the \$1,000,000 suspension threshold, as required under Rule 1401(2), the NYSE will generally utilize, as it currently does, IDS’ tracking system to monitor partial redemptions and tender offers. The most prevalent reason for outstanding principal amounts to fall below \$1 million is when an issuer commences a partial redemption of the bonds resulting in a smaller amount of bonds outstanding and by extension, a drop in the aggregate market value or principal amount to below the \$1,000,000 threshold.

The NYSE intends to provide an opportunity for NYSE members and member organizations to trade all eligible debt securities. Once eligible debt securities are identified, the NYSE will notify NYSE members and member organizations that such debt securities are eligible to be traded on NYSE Bonds through Trader Updates and postings on the NYSE website. Debt securities that would be ineligible for trading include convertible debt securities, debt securities that were listed under Section 703.19 of the NYSE’s Listed Company Manual, debt issued by listed company subsidiaries that are not wholly-owned, and foreign government debt.

Discussion

The NYSE believes that increased exchange trading of debt securities will have substantial benefits to market participants in the form of greater transparency around pricing and issuer information. The regulatory structure around trading of debt securities, however, has not sufficiently incentivized trading on a regulated national securities exchange. Presently, all equity and debt securities that are not “exempted securities” or are not otherwise exempt from Exchange Act registration must be registered by the issuer under the Exchange Act before a member, broker or dealer may trade that class of securities on a national securities exchange. By contrast, brokers or dealers who trade debt securities in the over-the-counter, or OTC, market may trade debt securities regardless of whether the issuer registered that class of debt under the Exchange Act. In fact, debt securities traded OTC need not even be issued by reporting companies.

The Commission has taken a number of steps over the years to address its view “that this disparate regulatory treatment may have negatively and unnecessarily affected the structure and development of the debt markets.”¹³ In 1994, the Commission adopted Exchange Act Rule 3a12-11 to “reduce regulatory distinctions between exchange-traded debt securities required to be registered under Section 12 of the Exchange Act and bonds traded over-the-counter for which such registration is not required.”¹⁴

The Commission has also sought to increase the level of transparency in the public debt markets. In this regard, the National Association of Securities Dealers, Inc. (“NASD”), now the Financial Industry Regulatory Authority, Inc. (“FINRA”), introduced TRACE (Trade Reporting and Compliance Engine) to bring transparency to the bond market by providing comprehensive, real-time access to bond price information. Introduced in 2002, TRACE captures and disseminates consolidated information on secondary market transactions in publicly traded TRACE-eligible securities – representing all OTC market activity in these bonds.

The Commission’s 2006 Exemption was another step to “serve the public interest by minimizing unnecessary regulatory disparity and promoting competition.”¹⁵ Pursuant to the 2006 Exemption, the Exchange currently lists on its NYSE Bonds platform more than 1,000 CUSIPs, representing a notional value of about \$464 billion, and trades more than 7,000 CUSIPs, representing a notional value of about \$840 billion. The Exchange believes that its present request will further increase exchange trading of debt securities to the benefit of investors and other market participants.

NYSE Bonds

¹³ See 2006 Exemption, supra note 4, at 67658.

¹⁴ 17 CFR 240.3a12–11. The Commission, among other things, exempted debt securities listed on a national securities exchange from Sections 14(a), 14(b) and 14(c) of the Exchange Act. 15 U.S.C. 78n(a), (b) and (c).

¹⁵ See 2006 Exemption, supra note 4, at 67659.

NYSE Bonds is an electronic order-driven matching system¹⁶ for fixed income securities to which Exchange members and member organizations subscribe and through which they enter and match customer bond orders on a strict price and time priority basis. The system provides member subscribers with access to the order book in each bond which displays orders and in the time sequence received. Completed, locked-in trades are submitted to the clearing corporation (i.e., Depository Trust Clearing Corporation) with calculated accrued interest. NYSE Bonds centralizes bond trading and publishes a real-time bond data feed to NYSE Bonds customers and subscribers that reflects all orders in time sequence on the NYSE Bonds order book. NYSE Bonds is an order-driven system and, therefore, the Exchange does not disseminate any information on a particular bond if there are no orders entered on the order book for such bond.

NYSE Bonds primarily serves the “small-lot” corporate bond market. Small-lot bond buyers and sellers are primarily individuals, bank trust accounts, and small institutions. In addition, bond dealers use NYSE Bonds to offset so-called “tail-end” bond positions acquired in the course of large-lot trading. NYSE Bonds is the only system that provides the public with real-time disclosure of quotations and trade prices, exclusive of mark-ups/mark-downs, commissions, or other charges.

Growth in electronic trading of corporate bonds has been noteworthy. It has been decades in the making, but electronic trading in corporate bonds has made notable inroads in a market known for its low-tech ways. In November 2023, 45% of US investment-grade bond volume was traded electronically.¹⁷ During that month, the average daily notional volume traded grew 13% year over year to \$43 billion, with \$18.8 billion of corporate bonds trading electronically, representing an 18% growth from November of 2022.¹⁸ The vast majority of those electronic transactions occur on Alternative Trading Systems (“ATs”), which are permitted to trade any corporate bond that is currently available to trade in the secondary market. This universe of bonds represents approximately 62,000 CUSIPs with a notional value of over \$10 trillion. The current regulatory landscape not only puts NYSE Bonds at a competitive disadvantage to the ATs, it also puts investors at a disadvantage given that NYSE Bonds is the only regulated platform for corporate bonds that offers firm prices that are live and executable versus subject pricing on ATs which can create a false sense of liquidity in the market. ATs typically offer dealers on their platforms a “last look” to an otherwise firm price, which allows the dealer to review the posted price prior to any execution. The “last look” allows the dealer to reject the order if the price is no longer advantageous. On the contrary, all prices on NYSE Bonds are live and executable and are matched based on price/time priority automatically by the matching engine.

¹⁶ See supra note 5.

¹⁷ See Kevin McPartland, *Is the Corporate Bond E-Trading Drought Over?*, Greenwich Associates (2023).

¹⁸ *Id.*

In addition, the Exchange believes that investors in debt securities are adversely impacted by the competitive constraints on exchanges trading debt securities. In contrast to OTC markets trading debt securities, the Exchange's bond market disseminates *both* last sale prices as they occur on the Exchange *exclusive of any mark-ups, mark-downs, or other charges*, and bid and ask quotations. This market data is available through some 400,000 market data displays providing subscribers – primarily securities firms and financial institutions – with direct *instantaneous* access to this information, throughout each trading day. The Exchange is not aware of any comparable level of transparency – trade prices, quotations, and speed of availability for corporate bond prices – that exists currently elsewhere. This transparency is absent when a bond delists from, or is not traded on, the Exchange.¹⁹

Bond Issue Information

The Exchange believes that increasing the universe of unregistered debt securities that may be traded on the Exchange will have significant benefits to market participants. First, the Exchange's proposal will not result in any loss of debt security or issuer information to investors for the following reasons: The Exchange is only requesting exemptive relief with respect to the trading by Exchange members and member organization of debt securities issued by companies listed on a national securities exchange and their wholly-owned subsidiaries. All such issuers are already subject to the requirements of Section 13 of the Exchange Act, and thus information about an issuer will be available to investors, even in the absence of an Exchange Act registration requirement for the debt securities of these issuers or their wholly-owned subsidiaries.

Only debt securities that are registered under the 1933 Act would be eligible to be traded by NYSE members and member organizations on NYSE Bonds. Additionally, under Section 15(d) of the Exchange Act, issuers not required to register their debt securities under Section 12 of the Exchange Act are subject to Section 13 reporting requirements for the fiscal year following the effective date of a registration statement filed under the 1933 Act.²⁰ Issuers must continue to file such reports so long as they have a class of securities with at least 300 "holders of record" as defined under Exchange Act Rule 12g5-1.²¹ Therefore, with respect to eligible debt securities that have been issued by the wholly-owned subsidiary of a listed company, that wholly-owned

¹⁹ One instance in which this transparency may be lost is when a company with both listed equity and debt is merged or reorganizes with another company. The successor may list its stock on the Exchange but leave its debt in a now wholly-owned subsidiary, which may seek to delist its debt to avoid separate Section 13 reporting requirements. Once delisted from the Exchange, the debt is traded only OTC, and the Exchange believes that investors lose the benefit of the transparency provided by the *real time reporting of quotations and trades* on the Exchange.

²⁰ 15 U.S.C. §78o(d) (2000).

²¹ 17 C.F.R. 240.12g5-1.

subsidiary may or may not itself be currently subject to the requirements of Section 15(d) or Section 13 of the Exchange Act.

The 1933 Act registration statements themselves supply much of the relevant information needed by the bond markets and investors. Indeed, for the most part, the Exchange Act registration Form 8-A simply incorporates by reference the information found in the 1933 Act registration statement. The 1933 Act registration statement also contains a much more detailed and relevant description of the debt issue than is required by Rule 12b-3 of the Exchange Act.²² The description contained in the term sheet of the registration statement provides the information necessary to *trade* that issue – whether on an exchange or OTC. The issue description contained in the Form 8-A registration statement does not provide the information needed to trade bonds.

Most of the other disclosure items required in connection with debt securities arise with respect to Forms 8-K, 10-Q and 10-K. These forms would continue to be filed by eligible listed companies and, where required by Sections 15(d) or 13 under the Exchange Act, by eligible wholly-owned subsidiaries, regardless of whether the debt securities are registered under the Exchange Act. Item 2.04 of Form 8-K requires disclosure of any triggering event, such as a default, that accelerates or increases a direct financial obligation. Item 3.03 of Form 8-K requires disclosure of any material modification to the rights of security holders. Item 601(b)(4) of Regulation S-K (required to be included in 10-Ks and 10-Qs) discusses the definition of the rights of debt holders. Part II - Item 3(a) of Form 10-Q requires that, to the extent that the registrant has not previously disclosed such information on Form 8-K, the registrant must provide information regarding defaults in the payment of principal, interest, sinking fund, etc., “with respect to *any* indebtedness of the registrant or any of its *significant subsidiaries* exceeding 5 percent of the total assets of the registrant and its consolidated subsidiaries...” (emphasis added). Thus, the Form 10-Q requires disclosure of defaults in the payment of principal, interest, sinking fund, etc. for any bonds of the registrant, irrespective of whether such bonds are exchange-listed or not.

If, as described above, a wholly-owned subsidiary ceases to provide Exchange Act reports itself, much of the information that had been provided by the wholly-owned subsidiary will be provided instead by the wholly-owned subsidiary’s listed parent company in its own Exchange Act reports. The listed parent company, however, will not be required to list and describe the debt securities issued by the wholly-owned subsidiary on the cover page of its own annual report on Form 10-K or to include as an exhibit to its own Forms 10-K or 10-Q the exhibits that would have been required to be filed by the wholly-owned subsidiary pursuant to Item 601(b)(4) of Regulation S-K (relating to creation of a new class of securities or indebtedness or the modification of existing rights of security holders).

²² 17 C.F.R. 240.12b-3. Rule 12b-3 requires that wherever the title of securities is required to be stated one shall also indicate “the type and general character of the securities...” For funded debt, issuers are required to state the following: the rate of interest, the maturity date (or dates for serial issues), an indication if the payment of principal or interest is contingent, a brief indication of the priority of the issue, and, if the issue is convertible, a statement to that effect.

There are also a variety of databases providing bond information, including information regarding the listing and/or trading location of a bond. A few examples of these database services include Standard & Poor's Market Intelligence, the Mergent Bond Record, APEX, Bloomberg and the Commission's EDGAR internet service, among other services. In addition, the Exchange's own bond issue directory is available on the Exchange's web site and carries the description of each listed bond issue, including bonds currently exempt from Exchange Act registration requirements, such as Tennessee Valley Authority bonds.

Most notably, of course, OTC bond trading functions without the information obtained as a result of Exchange Act registration. OTC bond trading relies on the information disclosed in the 1933 Act registration statement and the indentures filed under the Trust Indenture Act, including amendments to the indenture affecting the rights of bondholders.

In addition to helping ensure that investors have access to current information about debt securities traded on the Exchange, the NYSE's present request will have additional benefits. First, the request will increase competition by allowing more exchanges to provide a trading venue for debt securities which will, in turn, likely increase trading volume and liquidity of debt securities. This will provide investors and market participants with greater pricing transparency for bonds traded on the Exchange. In granting an exemption pursuant to Section 36 of the Exchange Act, the Commission must consider whether the requested exemption is "necessary or appropriate in the public interest, and is consistent with the protection of investors."²³ For the reasons discussed herein, the Exchange believes its requested relief meets this standard. If granted, investors will have corporate information about the issuer of debt securities, there will be increased numbers of trading venues for debt securities, and the resulting growth in trading will provide market participants with greater pricing transparency.

Conclusion

The Exchange believes that its request to amend a single term of the 2006 Exemption to permit unregistered debt securities to be traded on NYSE Bonds if their issuer (or their issuer's parent) had a class of common or preferred equity listed on *any* registered national securities exchange will further the Commission's goals of improving transparency in the bond market while also providing sufficient safeguards for the investing public. In remarks at City Week, Chair Gensler outlined targeted initiatives to improve transparency, resiliency, integrity, and access in fixed-income markets.²⁴ "Together, through driving greater transparency, modernizing rule sets for electronified platforms, and enhancing financial resiliency, we can help investors and issuers in the bond markets get the same benefits as many other parts of our capital

²³ 15 U.S.C. 78a.

²⁴ See Gary Gensler, "'The Name's Bond:' Remarks at City Week" (April 26, 2022), available at <https://www.sec.gov/news/speech/gensler-names-bond-042622>.

markets,” said Gensler.²⁵ Pre-trade transparency in particular has been identified as a key area for improvement in the fixed income markets.

As noted above, the Commission has already shown its willingness to lessen the opaqueness in the bond market by providing exemptive relief to the Exchange pursuant to which the Exchange currently trades debt securities of issuers that are listed on NYSE and such issuers’ wholly-owned subsidiaries. By extending this exemption to allow Exchange members and member organizations to trade debt securities of issuers that are listed on any national securities exchange and such issuers’ wholly-owned subsidiaries would further remove unnecessary and anti-competitive barriers to exchange trading of debt securities. In addition, trading of such debt securities on NYSE Bonds would provide market participants trading such securities, as well as the owners of such securities, much greater levels of price transparency than is currently available. Accordingly, we urge the Commission to use its exemptive power to remove the requirement that debt securities of non-NYSE-listed equity issuers and their wholly-owned subsidiaries be registered under the Exchange Act in order to be traded on the Exchange.

Sincerely,

Hope M. Jarkowski

²⁵

Id.