

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102490; File No. S7-2024-07]

February 26, 2025

Order Under Section 36 of the Securities Exchange Act of 1934 (the “Exchange Act”) Granting the New York Stock Exchange LLC’s Application to Amend a Conditional Exemption from Section 12(a) of the Exchange Act

I. Introduction

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 a conditional exemption from Section 12(a) of the Exchange Act that the Commission granted to the NYSE on November 16, 2006 (the “2006 Exemption”)¹ pursuant to Section 36² of 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)⁵ of the Exchange Act 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, has at least one class of common or preferred equity securities that is: (i) registered under Section 12(b) of

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)] (“2006 Exemption”).

² 15 U.S.C. 78mm. Section 36(a)(1) of the Exchange Act authorizes the Commission to exempt, conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any Exchange Act provision or any rule or regulation thereunder 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.

⁵ 15 U.S.C. 78l(a).

the Exchange Act; and (ii) listed on the NYSE.⁶ The NYSE’s application seeks to amend the 2006 Exemption by revising part (ii) of this condition so that debt securities not registered under the Exchange Act would 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* national securities exchange,⁷ not only the NYSE. All other terms of the 2006 Exemption would remain the same.

On October 29, 2024, the Commission approved publication of a notice of the application submitted by the NYSE (the “Notice”).⁸ The Commission received one comment letter on the Notice, which was supportive of the NYSE’s application and is discussed below.⁹ This order grants the NYSE’s application to amend the 2006 Exemption, subject to the conditions set forth below. This order supersedes the 2006 Exemption.

II. 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 security¹⁰) on a national securities exchange unless a registration is effective as to such security for such exchange.” Section 12(b)¹¹ of the Exchange Act describes how an

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), available at <https://www.sec.gov/files/rules/exorders/s70605/s70605-16.pdf>; 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)].

⁷ A “national securities exchange” is a securities exchange that has registered with the Commission under Section 6 of the Exchange Act. 15 U.S.C. 78f.

⁸ 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, Release No. 34-101468 (Oct. 29, 2024) [89 FR 87668 (Nov. 4, 2024)] (“NYSE Application”).

⁹ See *infra* note 26.

¹⁰ See Section 3(a)(12) of the Exchange Act [15 U.S.C. 78c(a)(12)] (defining “exempted security”).

¹¹ 15 U.S.C. 78l(b).

issuer may register a security on a national securities exchange. Accordingly, unless the equity or debt security is an “exempted security”¹² or otherwise exempt from Exchange Act registration (for example, as the result of an exemption pursuant to Section 36 of the Exchange Act), the security must be registered by the issuer under the Exchange Act before a member, broker, or dealer may trade that security on a national securities exchange.

However, brokers or dealers (collectively “broker-dealers”)¹³ who trade debt securities other than on a national securities exchange—*e.g.*, over-the-counter (“OTC”)—may trade debt securities regardless of whether the issuer registered those securities under the Exchange Act. This is the case because although 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 securities exchange. In particular, Section 12(g)¹⁴ of the Exchange Act, the only Exchange Act provision other than Section 12(a) to impose an affirmative Exchange Act registration requirement on issuers, requires the registration of equity securities but not debt securities.¹⁵

As the Commission has stated in the past, this disparate regulatory treatment between debt securities traded on an exchange versus those traded in the OTC market may have

¹² See *supra* note 10.

¹³ “Broker” is generally defined in section 3(a)(4)(A) of the Exchange Act as any person engaged in the business of effecting transactions in securities for the account of others. 15 U.S.C. 78c(a)(4)(A). “Dealer,” in turn, is generally defined in section 3(a)(5)(A) of the Exchange Act as any person engaged in the business of buying and selling securities for such person’s own account through a broker or otherwise. 15 U.S.C. 78c(a)(5)(A). The term “broker-dealer” is used to encompass all brokers, all dealers, and firms that are both brokers and dealers.

¹⁴ 15 U.S.C. 78l(g).

¹⁵ 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.

unnecessarily and unintentionally affected the structure and development of the public debt markets.¹⁶ The Commission has taken certain 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 3a12-11.¹⁷ 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,¹⁸ and exempts exchange-traded debt from certain proxy and information statement requirements under sections 14(a), (b), and (c) of the Exchange Act.¹⁹

As another example, in 2001, the Commission approved the Financial Industry Regulatory Authority's ("FINRA") (formerly the National Association of Securities Dealers, Inc. ("NASD")), rules for the Transaction Reporting and Compliance Engine ("TRACE") to, among other things, improve price transparency in the corporate bond market.²⁰ FINRA has subsequently increased transparency in the corporate bond market through TRACE by requiring more contemporaneous reporting. In 2005, FINRA shortened the deadline for reporting most transactions to TRACE to 15 minutes,²¹ and, in 2015, FINRA required such transactions to be reported as soon as practicable but no later than within 15 minutes.²² In

¹⁶ See 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)].

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

¹⁸ 15 U.S.C. 78h(a).

¹⁹ 15 U.S.C. 78n(a), (b), and (c).

²⁰ See Release No. 34-43873 (Jan. 23, 2001) [66 FR 8131 (Jan. 29, 2001)] (Order Approving File No. SR-NASD-99-65).

²¹ See Release No. 34-49854 (June 14, 2004) [69 FR 35088 (June 23, 2004)] (Order Approving File No. SR-NASD-2004-057).

²² See Release No. 34-75782 (Aug. 28, 2015) [80 FR 53375 (Sept. 3, 2015)] (Order Approving File No. SR-FINRA

2024, the Commission approved a FINRA rule change to reduce the 15-minute reporting timeframe for transactions reported to FINRA’s TRACE system to one minute.²³

On November 16, 2006, the Commission granted the 2006 Exemption to permit the NYSE to trade debt securities not registered under the Exchange Act on the facility that is now known as NYSE Bonds, subject to certain conditions. The Commission stated that granting this exemption “will serve the public interest by minimizing unnecessary regulatory disparity and promoting competition” in the public debt markets.²⁴

The disparate regulatory treatment of debt securities traded on an exchange versus those traded in the OTC market may continue to impact competition between those markets. The NYSE noted in its application that “[t]he current regulatory landscape . . . puts NYSE Bonds at a competitive disadvantage to the [alternative trading systems],” as “[t]he vast majority” of electronic transactions in the corporate bonds markets occur on alternative trading systems.²⁵

III. Discussion and Amended Exemptive Relief

As noted above, the Commission received one comment letter on the Notice.²⁶ The commenter was supportive of the proposal and stated it believes “that allowing a greater proportion of debt securities to trade on NYSE [B]onds as contemplated by the application will

2015-025).

²³ See Release No. 34-101121 (Sept. 20, 2024) [89 FR 78930 (Sept. 26, 2024)] (Order Approving File No. SR–FINRA–2024–004). On Nov. 15, 2024, the American Securities Association (“ASA”) filed a petition for review of the Commission’s order with the United States Court of Appeals for the 11th Circuit. See *American Securities Association v. United States Securities and Exchange Commission*, No. 24-13750 (11th Cir., filed Nov. 15, 2024). On Feb. 13, 2025, ASA filed a motion to hold the case in abeyance to Aug. 13, 2025. See *American Securities Association v. United States Securities and Exchange Commission*, No. 24-13750 (11th Cir., filed Feb. 13, 2025). The court granted ASA’s motion on Feb. 18, 2025. See *American Securities Association v. United States Securities and Exchange Commission*, No. 24-13750 (11th Cir., Feb. 18, 2025) (order granting petitioner’s motion to hold the appeal in abeyance).

²⁴ See 2006 Exemption, *supra* note 1, at 67658.

²⁵ NYSE Application, *supra* note 8, at 6.

²⁶ Letter from Thomas M. Merritt, Virtu Financial, Inc. (Dec. 2, 2024), available at <https://www.sec.gov/comments/s7-2024-07/s7202407-544515-1559362.pdf>.

benefit investors and the marketplace, as long as the Commission’s approval of NYSE’s application does not result in the imposition of prohibitions or restrictions on those same debt securities being traded on other market centers.”²⁷ This order imposes no such prohibitions or restrictions.

Section 36(a)(1) of the Exchange Act grants the Commission the authority, with certain limitations not at issue here,²⁸ to “conditionally or unconditionally exempt any person, security, or transaction . . . 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.”²⁹ The amended exemptive relief is appropriate in the public interest and consistent with the protection of investors because it will minimize unnecessary regulatory disparity and promote competition and transparency in the public debt markets.

Presently, unlike on a national securities exchange, broker-dealers may trade debt securities in the OTC market (for example, on one or more alternative trading systems) regardless of whether the issuer registered that class of debt under the Exchange Act. The requested exemption is designed to minimize that disparate regulatory treatment and to promote competition between national securities exchanges and OTC markets that trade debt securities.

²⁷ *Id.*

²⁸ Sections 36(b) of the Exchange Act sets forth certain limitations to the Commission’s exemptive authority under Section 36(a). 15 U.S.C. 78mm(b) (“The Commission may not, under this section, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from section 15C or the rules or regulations issued thereunder or (for purposes of section 15C and the rules and regulations issued thereunder) from any definition in paragraph (42), (43), (44), or (45) of section 3(a).”). *See also* 15 U.S.C. 78mm(c) (setting forth additional limitations on the Commission’s exemptive authority not applicable here).

²⁹ 15 U.S.C. 78mm(a)(1).

The other conditions of the 2006 Exemption will remain in effect and continue to serve to protect investors by minimizing any reduction in information available as a result of the exemption we are granting. Further, the conditions are designed to ensure that investors continue to have access to comprehensive public information about an issuer, including the issuer's detailed disclosure in a registration statement filed under the Securities Act of 1933³⁰ and accompanying trust indenture qualified under the Trust Indenture Act of 1939,³¹ and substantially all of the public information that would be available if the securities were registered under Section 12 of the Exchange Act. To the extent that the amended exemptive relief encourages increased trading of debt securities on national securities exchanges, it also may promote greater price transparency with respect to such debt securities.³²

The Commission is granting the amended exemptive relief subject to the one additional undertaking that the Commission proposed in the Notice: the NYSE will monitor daily the 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. This undertaking will help protect investors by mitigating the risk that investors will trade an issuer's debt securities on NYSE Bonds without access to the information regarding the issuer that is required pursuant to the Exchange Act for listed equity securities. If the equity securities of an issuer are delisted, then

³⁰ 15 U.S.C. 77a *et seq.*

³¹ 15 U.S.C. 77aaa - 77bbbb.

³² See NYSE Application, *supra* note 8, at 7 ("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.").

the NYSE would have to ensure that the issuer's debt securities no longer trade on NYSE Bonds in order to satisfy the conditions of this exemption.³³

In granting this relief, the Commission expects that the NYSE will design, implement, and maintain all rules related to the relief in a manner that protects investors and the public interest and does not unfairly discriminate between customers, issuers, or broker-dealers.

Accordingly, IT IS ORDERED pursuant to Section 36 of the Exchange Act that, under the terms and conditions set forth below, an NYSE member or broker-dealer may, without violating Section 12(a) of the Exchange Act, effect a transaction on NYSE Bonds, and any successor bond trading facility, in a debt security that has not been registered under Section 12(b) of the Exchange Act. This exemption does not extend to any other section or provision of the Exchange Act.

For purposes of this order, the term "debt securities" is defined as set forth in NYSE Rule 1400, as in effect on February 26, 2025.³⁴ Rule 1400 states, in relevant part, that "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."³⁵ Rule 1400 further states that "[f]or the avoidance of doubt, note that the term Debt Securities does not include a security that, if listed on the NYSE,

³³ In addition to the new undertaking, the Commission is amending the 2006 Exemption by listing in our order several other undertakings with which the NYSE must comply. This is a non-substantive change, as the 2006 Exemption required the NYSE to comply with the same undertakings (set forth in paragraphs in (a), (b), (c), (d), and (e) of our order), but did not expressly list those undertakings in the order. Instead, the 2006 Exemption referred to the NYSE's application, which set forth those undertakings. The Commission is listing the undertakings in this order for the sake of clarity and ease of reference. The Commission also is making certain other changes to the wording of the order that do not have any substantive effect.

³⁴ NYSE R. 1400 (2025).

³⁵ *Id.*

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.”³⁶

For purposes of this order, the following conditions must be satisfied:

- (1) The issuer of the debt security has registered the offer and sale of such security under the Securities Act of 1933;
- (2) The issuer of the debt security, or the issuer's parent company if the issuer is a wholly-owned subsidiary,³⁷ has at least one class of common or preferred equity securities registered under Section 12(b) of the Exchange Act and listed on a national security exchange;
- (3) The transfer agent of the debt security is registered under Section 17A of the Exchange Act;³⁸
- (4) The trust indenture for the debt security is qualified under the Trust Indenture Act of 1939;
- (5) The NYSE has complied with the undertakings set forth below 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 order; and
- (6) The NYSE will delist a class of debt securities that was listed on the NYSE as of November 16, 2006 only if the issuer of that class of debt security does not object to the

³⁶ *Id.*

³⁷ The terms “parent” and “wholly-owned” have the same meanings as defined in Rule 1-02 of Regulation S-X [17 CFR 210.1-02].

³⁸ 15 U.S.C. 78q-1.

delisting of those securities.

With respect to item (2) above, the NYSE undertakes to monitor daily the 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.

With respect to the undertakings referred to in item (5) above, the NYSE will:

- (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";³⁹
- (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 IDS for debt securities covered by this request.

With respect to undertaking (e), IDS, an affiliate of the NYSE, is a bond issue tracking service that provides the NYSE a customized online reference for corporate actions relevant to bonds.

The tracking system provides information and data electronically to the NYSE, and provides:

³⁹ The NYSE will distinguish debt securities "listed" on NYSE Bonds from those "traded" on NYSE Bonds in the following manner: (1) the NYSE will uniquely identify "listed" and "traded" debt securities on the NYSE Bonds Bond Directory located on the NYSE's website; (2) the NYSE 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 NYSE will publish a Trader Update to notify members and member organizations each time a debt security becomes available to trade on NYSE Bonds.

- 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, and CUSIP number changes).

By the Commission.

Vanessa A. Countryman,
Secretary.