

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90832; File No. SR-NASDAQ-2020-097)

December 30, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive Certain Fees Related to Non-Convertible Bonds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 2020, 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 waive certain fees related to non-convertible bonds listed in conjunction with their voluntary delisting from a regulated foreign exchange.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

The Exchange proposes to amend Rule 5935 of the Nasdaq Listing Rules to waive the application and annual fees to list a class of non-convertible bonds on Nasdaq pursuant to Rule 5702 in conjunction with the company voluntarily delisting that bond from a regulated foreign exchange. The proposed waiver is identical to a waiver currently applied under Rule 5935 in connection with the listing of non-convertible bonds transferred from the New York Stock Exchange or NYSE American.<sup>3</sup> In adopting this waiver in relation to non-convertible bonds whose listing was being transferred from the New York Stock Exchange or NYSE American, the Exchange noted that less work is required to process a listing application for a security that is already listed on another exchange than it is to process an application for listing a new security.<sup>4</sup> Similarly, less work is required to process a listing application for a security that is already listed on a foreign exchange because the issuer is familiar with being on a regulated exchange. Additionally, the Exchange noted that issuers that have already paid their annual fees to NYSE or NYSE American would be disincentivized to switch to the Exchange without a waiver.<sup>5</sup> The Exchange also noted that the proposed waivers were consistent with the approach it has taken with certain listing and annual fees for issuers of equity securities who transfer their listings to

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<sup>3</sup> See Securities Exchange Act Release No. 84001 (August 30, 2018); 83 FR 45289 (September 6, 2018) (SR-NASDAQ-2018-070).

<sup>4</sup> Id. at 45295.

<sup>5</sup> Id. at 45296.

the Exchange from another national securities exchange.<sup>6</sup> The Exchange competes with foreign regulated exchanges for the listing of debt securities in the same way it competes with other national securities exchanges and the costs of initial listing and the potential duplication of fee payments in the first part year of listing on the Exchange represent a similar impediment to the Exchange successfully competing with foreign regulated exchanges for the transfer of the listing of those securities. As such, the Exchange believes it is appropriate to apply waivers in relation to issuers voluntarily delisting their securities from a regulated foreign exchange in connection with listing them on the Exchange for trading non-convertible bonds. The proposed rule change would not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> 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 investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>6</sup> Id. at 45295. See also Securities Exchange Act Release No. 70418 (September 16, 2013), 78 FR 57909 (September 20, 2013) (SR–NASDAQ-2013-115).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

### The Proposed Change is Reasonable

The Exchange operates in a highly competitive marketplace when seeking to obtain listings of non-convertible debt securities. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings. Given this competitive environment, the Exchange believes that the proposal to waive the application and annual fees for non-convertible bonds listing in conjunction with their voluntary delisting from a foreign regulated exchange is reasonable because the cost of paying listing fees to both the Exchange and the predecessor foreign regulated exchange imposes a financial burden and acts as a disincentive to transferring. Additionally, the Exchange has implemented similar waivers for companies that switch their listing markets for its non-convertible bonds from the New York Stock Exchange or NYSE America.<sup>10</sup> Moreover, similar waivers exist on other exchanges.<sup>11</sup>

### The Proposal is an Equitable Allocation of Fees

The Exchange believes that the waiver of the application and annual fees for listing non-convertible bonds listings in conjunction with their voluntary delisting from a foreign regulated exchange is not inequitable as it expects it will be available to a small number of issuers and is

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<sup>10</sup> See Rule 5935.

<sup>11</sup> See Securities Exchange Act Release No. 88408 (March 18, 2020), 85 FR 16705 (March 24, 2020) (NYSE-2020-16).

being implemented solely to relieve these issuers of the burden of duplicative payments to two exchanges.

#### The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory, because the proposed waivers are solely intended to avoid duplication of costs for issuers transferring their listings from foreign regulated exchanges and does not provide them with any benefit that would place them in a more favorable position than other listed companies. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

#### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

#### Intramarket Competition

The Exchange does not believe that its proposals will place any applicant at a competitive disadvantage. To the contrary, the proposed waiver will ensure that applicants who transfer their listings from a foreign exchange are not placed at a disadvantage versus other applicants. The proposed waivers will be available to all similarly situated applicants on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange. Moreover, applicants are free to list on other venues to the extent they believe that the waiver is not attractive.

#### Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to

modify their own fees in response, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change imposes any burden on intermarket competition.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f) of Rule 19b-4 thereunder. 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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-097 on the subject line.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-097. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-097 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.<sup>13</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).