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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2018 - * 070
Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐
Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to adopt listing and trading requirements and fees for non-convertible corporate bonds.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Brett
Last Name * Kitt
Title * Senior Associate General Counsel
E-mail * Brett.Kitt@nasdaq.com
Telephone * (301) 978-8132
Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 08/27/2018
By Edward S. Knight
(Name *)

(Title *)
Executive Vice President and General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

edward.knight@nasdaq.com

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC ("Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("Commission") a proposal to adopt listing and trading requirements and fees for non-convertible corporate bonds.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on August 13, 2018. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Brett Kitt
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

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

a. Purpose

Nasdaq is amending its rules to permit the initial and continued listing of and trading of non-convertible corporate debt securities (referred to herein as "bonds" or

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

"non-convertible bonds") on Nasdaq and to establish fees for listing those bonds. While Nasdaq rules currently provide for the initial and continued listing of convertible bonds, Nasdaq believes that there may be a demand from certain types of investors for Exchange-listed non-convertible bonds. Nasdaq also believes that this proposal will improve the public market for non-convertible bonds by promoting the fair and orderly operation of that market and by increasing the transparency of that market for securities that are listed pursuant to this proposal. Nasdaq is therefore amending the relevant listing and trading rules accordingly.

Listing Rules

First, Nasdaq proposes to adopt Rule 5702 to permit the initial listing of non-convertible bonds. For non-convertible bonds, Nasdaq proposes to require a minimum principal amount outstanding or market value of at least $5 million, instead of the minimum $10 million principal amount outstanding required for convertible debt under Rule 5515(b). Nasdaq notes that this requirement is the same as the initial listing requirement for bonds on the New York Stock Exchange LLC ("NYSE") and NYSE American LLC ("NYSE American"), which both require that the debt issue have an aggregate market value or principal amount of no less than $5 million.[3]

In addition to Rule 5702(a)(1), Nasdaq also proposes to require satisfaction of the condition set forth in Rule 5702(a)(2) for non-convertible bonds to be eligible for listing on the Exchange. This condition is that the issuer of the bond must have one class of

3 See Section 102.03 of the NYSE Listed Company Manual and Section 104 of the NYSE American Company Guide.

equity security that is listed on Nasdaq, NYSE, or NYSE American. This condition is similar to one that NYSE and NYSE American impose.[4]

Nasdaq also proposes to add continued listing requirements under Rule 5702(b). Proposed Rule 5702(b)(1) would require, for continued listing, that a non-convertible bond issuance maintain a market value or principal amount outstanding of at least $400,000.[5] Proposed Rule 5702(b)(2) would also require an issuer to meet its obligations on the listed non-convertible bonds, and Nasdaq proposes to amend Rule 5810(c)(1) to provide that a determination by the Exchange's Listings Qualifications Department that the issuer has failed to meet its obligations on the bonds would result in their immediate suspension and the commencement of delisting proceedings. Nasdaq notes that these proposed continued listing standards for non-convertible bonds are the same as the listing requirements for bonds imposed by NYSE American.[6]

In addition to these quantitative requirements for listing non-convertible bonds, the issuer of listed bonds would also have to comply with other requirements that are generally applicable to companies listed on Nasdaq pursuant to Rule 5250. Specifically, Rule 5250(a) allows Nasdaq to request additional information, either public or non-

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4 See Section 104 of the NYSE American Company Guide; Section 102.03 of the NYSE Listed Company Manual.

5 The Exchange proposes to amend Rule 5810(c)(3) to provide that a failure to meet the continued listing requirements under Rule 5702(b)(1) for a period of 30 consecutive business days will constitute a deficiency; in the event of a deficiency, the Exchange's Listings Qualifications Department will promptly notify the deficient issuer and the issuer shall have a period of 180 calendar days from such notification to regain compliance. Compliance will be deemed to be regained by meeting the applicable standard for a minimum of 10 consecutive business days, unless the Listing Qualifications Department exercises its discretion to extend this 10 day period as set forth in Rule 5810(c)(3)(G).

6 See Section 1003(b)(iv) of the NYSE American Company Guide.

public, deemed necessary to make a determination regarding a company's continued listing. Rule 5250(b) requires issuers to make public disclosure of material information, disclosure of notification of deficiency, and disclosure of third party director and nominee compensation. Rule 5250(c) requires companies to file all required periodic financial reports. Rule 5250(d) requires the distribution of annual and interim reports. Rule 5250(e) sets forth various corporate events resulting in material changes that trigger the requirement for the issuer to submit certain forms to Nasdaq.[7] Rule 5250(f) requires the issuers to pay all applicable fees set forth in the Rule 5900 series.

In addition to the Exchange's rules that would apply to an issuer of non-convertible bonds that list on Nasdaq,[8] the issuers of those bonds would have to register

[7] The Exchange proposes to amend Rule 5250(e)(3) to require issuers of non-convertible bonds to provide at least 10 calendar days advance notice to the Exchange of certain corporate actions, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol), by filing the appropriate form as Nasdaq shall designate.

[8] Nasdaq notes that currently, the Rule 5600 Series generally would apply to securities listed in this proposal. However, subsequent to this proposal, but prior to listing non-convertible bonds of issuers that have equity securities listed on NYSE or NYSE American, Nasdaq plans to submit a proposal to amend Rule 5615(a)(6) to state that the Rule 5600 Series does not generally apply to companies listing only preferred or debt securities on the Exchange. Under this proposal, companies listing only non-convertible bonds would be exempt from the Rules relating to Independent Directors (Rule 5605(b)), Audit Committee Requirements (Rule 5605(c)), Compensation Committee Requirements (Rule 5605(d)), Independent Director Oversight of Director Nominations (Rule 5605(e)), Code of Conduct (Rule 5610), Meetings of Shareholders (Rule 5620), Review of Related Party Transactions (Rule 5630), Shareholder Approval (Rule 5635), and Voting Rights (Rule 5640). However, Rule 5615(a)(6) would state that such companies still must comply with Rule 5625, pursuant to which an issuer would provide Nasdaq with prompt notification after an executive officer of the company becomes aware of any noncompliance by the company with the requirements of the Rule 5600 Series. In addition, this amended Rule would require issuers of listed non-convertible bonds to comply with Rule 5605(c), which sets forth the requirements of the company's audit committee, including its charter, composition, responsibilities and authority, to the extent required by

those securities pursuant to Section 12(a) of the Act.[9] Among other things, the issuer is required to disclose information about the organization, financial structure, information about the nature of the business, certain information about the directors, officers and underwriters, material contracts, and balance sheets. As part of this proposal, Nasdaq is requiring that the issuer must currently list one class of an equity security on either Nasdaq,[10] NYSE, or NYSE American,[11] and so issuers may already disclose this

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Exchange Act Rule 10A-3. The Rule thereby would apply the requirements of Rule 10A-3 to the issuer's audit committee. The Rule also would impose on the issuer the obligation to promptly notify Nasdaq after an executive officer of the issuer becomes aware of any noncompliance by the issuer with the requirements of the Rule 5600 series, such as noncompliance with the audit committee provisions that are required by Rule 10A-3 and set forth in Rule 5605(c). Nasdaq also notes that NYSE and NYSE American have adopted similar exemptions for both companies that list only preferred and debt securities. See Section 303A of the NYSE Listed Company Manual; see also Section 801(g) of the NYSE American Company Guide. Finally, Nasdaq notes that the foregoing proposal would not apply to issuers of non-convertible bonds that have equity securities listed on Nasdaq.

9 Specifically, Section 12(a) requires that, in order for an exchange member, broker or dealer to effect a transaction in a security on a national securities exchange, a registration must be effective "as to such security for such exchange." See 15 U.S.C. 78(l)(a).

10 For purposes of the listing requirement that the non-convertible bond issuer also list a class of equity securities on Nasdaq, the issuer may list an equity security on the Nasdaq Capital Market, the Nasdaq Global Market, or the Nasdaq Global Select Market.

11 The Exchange notes that upon the effective date of the proposal, it only expects to be capable of listing and trading non-convertible bonds of issuers that currently list equity securities on Nasdaq. The Exchange expects 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. The Exchange will issue a trader alert at least seven days in advance of accepting applications to list and trade bonds of issuers with equity securities listed on NYSE or NYSE American.

The Exchange proposes to include language to this effect in the rule text, which it will then propose to remove after the Exchange begins listing and trading noninformation in connection with the listing of those securities. However, Section 12(a) also requires issuers to disclose information that is more specific to the security to be listed and traded on the Exchange, such as the terms, position, rights, and privileges of the different classes of securities outstanding, and the terms on which the issuer's securities are to be, and during the preceding three years have been, offered to the public or otherwise. Given this requirement, Nasdaq's proposal may increase the amount of information about non-convertible bonds that will be disclosed by the issuer than would otherwise be the case.

Nasdaq proposes to amend Rule 5515(b)(4) to change references from the American Stock Exchange to NYSE American to reflect the name change of that exchange.[12]

Nasdaq also proposes to amend the definition of a "substitution listing event" in Rule 5005 to include an additional event related to the listing of bonds. Specifically, Rule 5005(a)(40) will include a change in the obligor of a listed debt security as a "substitution listing event." A Substitution Listing Event triggers certain reporting requirements to the Exchange.[13] Nasdaq is proposing to make this change to both convertible and non-convertible bonds, as both types of securities could potentially be subject to a change in the obligor of that bond, which Nasdaq believes should qualify as a substitution listing event.

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convertible bonds of issuers with equity securities listed on NYSE and NYSE American.

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

[13] See Rule 5250(e)(4).

Nasdaq proposes to add fees in connection with listing non-convertible bonds. Specifically, Nasdaq proposes to add Rule 5935 to impose a non-refundable application fee of $5,000 to list a class of non-convertible bonds pursuant to Rule 5702. Nasdaq proposes to waive this application fee if, in connection with a company's application to list non-convertible bonds on Nasdaq, the company will be switching the listing market for such bonds from NYSE or NYSE American to Nasdaq. Nasdaq notes that NYSE American imposes an initial listing fee of $100 per $1 million principal amount (or fraction thereof) for listed bonds, with a minimum fee of $5,000 and a maximum fee of $10,000,[14] while NYSE imposes an initial listing fee of $25,000 on all listed bonds of NYSE equity issuers.[15]

Nasdaq also proposes to add an annual fee in connection with listing non-convertible bonds. Nasdaq proposes to add Rule 5935(b) to state that the issuer of each class of non-convertible bonds listed pursuant to Rule 5702 shall pay to Nasdaq an annual fee of $5,000. Moreover, the proposed Rule states that a company that switches its listing market for its non-convertible bonds from the New York Stock Exchange or NYSE American to Nasdaq will not be liable for the annual fee until January 1 of the calendar year following the effective date of the non-convertible bonds listing on Nasdaq. Nasdaq notes that NYSE American assesses an annual listing fee of $5,000 for listed bonds and debentures of companies whose equity securities are not listed on NYSE American,[16]

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14 See NYSE American Company Guide Section 140.

15 See NYSE Listed Company Manual Section 902.08.

16 See NYSE American Company Guide Section 141.

while NYSE assesses an annual listing fee of $25,000 for listed bonds of NYSE equity issuers and affiliated companies.[17]

Nasdaq also proposes to clarify rule text relating to the listing fees for convertible bonds. Specifically, Rule 5920(a)(2) specifies a fee of $1,000 or $50 per million dollars face amount of bonds outstanding, whichever is higher. Nasdaq proposes to clarify that this is an entry fee, and that it applies to convertible bonds only. Nasdaq is not charging an entry fee for non-convertible bonds, as it believes that the proposed application fee will allow the Exchange to adequately recoup the expenses incurred by the Exchange in processing an issuer’s application to list those securities.

Nasdaq believes that this proposal will improve the public debt market by increasing transparency for non-convertible bonds that are listed pursuant to this proposal and the orderliness of the market for those securities. For example, Rule 5250(b)(1) requires listed companies to, except in unusual circumstances, 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.[18] Nasdaq-listed companies must notify Nasdaq’s MarketWatch Department 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 A.M. to 8:00 pm. E.T. As set forth in IM-5250-1, such events may include: (1) financial-related disclosures, including quarterly or yearly

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17 See Section 902.08 of the NYSE Listed Company Manual.

18 Nasdaq will determine compliance with the listing requirements for non-convertible bonds based upon information it receives directly from issuers as well as data that it obtains from third party data providers.

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.

Nasdaq’s MarketWatch Department monitors real time trading in all Nasdaq securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact a company in order to ascertain the cause of the unusual market activity.

For non-convertible bonds that are listed under this proposal, the issuer will be required to comply with these disclosure requirements and to update Nasdaq accordingly on any material information that would reasonably be expected to affect the value of their bonds or influence investors’ decisions. Depending on the nature of the event and the company’s views regarding the business advisability of disclosing the information, the MarketWatch Department may work with the company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated effect of the information on the price of the Company's bonds, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. For non-convertible bonds that are listed on Nasdaq pursuant to this proposal, a trading halt will be initiated by the Exchange, pursuant to proposed Rule 4000B(i). In these ways, Nasdaq believes that the proposal will increase transparency for bonds that are listed pursuant to this proposal and the orderliness of the market for those bonds.[19]

Nasdaq also believes that this proposal will benefit market participants by making non-convertible bonds more accessible to certain kinds of investors. For example, in the European Union, certain investors, such as so-called UCITS investment funds,[20] may generally only hold 10% of assets in securities that are not listed on an exchange or other regulated market meeting certain standards.

Trading Rules

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19 Nasdaq notes that it also proposes to amend Rule 5250(e)(3) to require an issuer to provide at least 10 calendar days advance notice to Nasdaq of certain corporate actions relating to non-convertible bonds listed on the Nasdaq Bond Exchange, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol), by filing the appropriate form as designated by Nasdaq. These disclosures will aid the Listings Qualification Department in assessing an issuer's compliance with the continuing listing standards set forth in proposed Rule 5702.

20 UCITS (Undertakings for Collective Investment in Transferable Securities) is a harmonized regime throughout Europe for the management and sale of mutual funds. A UCITS fund is essentially a mutual fund based in the European Union that meets these requirements and is therefore exempt from national regulation in individual European countries. Under UCITS III, a UCITS fund can invest in transferable securities, such as listed and publicly traded equities and bonds, deposits and money market instruments, other mutual funds, and financial derivative instruments, subject to diversification requirements.

In conjunction with its proposal to adopt rules to list non-convertible bonds on Nasdaq, the Exchange also proposes rules that will provide for the trading of such listed bonds. The Exchange notes that its proposed non-convertible bond trading system – to be known as the "Nasdaq Bond Exchange" – will offer Members,[21] at its inception, certain core trading functionality that will be competitive with NYSE Bonds. However, the Exchange will reserve more sophisticated and elaborate functionality until such time as the Exchange observes that a sufficient demand exists for it.[22]

In many respects, the proposed trading system and the proposed rules that govern it are a pared down version of the NYSE Bonds system and NYSE Rule 86. That is, like NYSE Bonds, the Nasdaq Bond Exchange will be an electronic system for receiving, processing, executing, and reporting bids, offers and executions in bonds. Like NYSE Bonds, the Nasdaq Bond Exchange will display, match, and execute buy and sell orders on a price/time basis. The Exchange, like NYSE and NYSE American, will also accept good-for-day limit orders and fill-or-kill orders, and it will trade bonds of issuers that have at least one class of equity securities listed on Nasdaq and NYSE or NYSE American.[23] However, at its inception, the Nasdaq Bond Exchange will not have – as does NYSE Bonds – market makers, sponsored access, auctions, price collars, or certain

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

22 The Nasdaq Bond Exchange will only trade non-convertible bonds that are listed on Nasdaq.

23 As noted earlier, at the launch date of the Nasdaq Bond Exchange, the Exchange expects that the system will be only capable of trading bonds of issuers that currently list equity securities on Nasdaq. The Exchange expects 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. See n.11, supra.

order types (e.g., reserve orders, minimum quantity orders, good-til-cancelled orders, and timed orders). The Nasdaq Bond Exchange also will have only one trading session each day as opposed to NYSE Bonds, which has three sessions. Again, the Exchange may add such features and functionalities to the Nasdaq Bond Exchange in the future to the extent that it determines that a demand exists for them. The Exchange observes that users of NYSE Bonds do not appear to avail themselves of many of these features and functionalities, such that the Exchange does not believe that including them in the Nasdaq Bond Exchange is necessary for it to compete with NYSE Bonds.

Order Types

The proposed rules designate the types of orders that could be entered into the Nasdaq Bond Exchange. Initially, Users[24] of the Nasdaq Bond Exchange will be allowed to enter good-for-day limit orders ("Nasdaq Bond Exchange Good for Day Limit Orders"), which are orders to buy or sell a stated quantity of units of bonds at a specified price or at a better price that, if not executed or cancelled, will expire at the end of the trading session on the day on which they are entered. Users will also be able to enter a Nasdaq Bond Exchange Fill-or-Kill All-Or-None Order ("Nasdaq Bond Exchange FOK-AON Order"), which is an order that is to be executed immediately in its entirety against one or more contra parties at the best price available, or if it is not executed immediately in its entirety, it is cancelled. All orders on the Nasdaq Bond Exchange will be displayed and will be anonymous. The Exchange will file a proposed rule change with the

24 Proposed Rule 4000B defines a "User" as any Nasdaq Member that has elected, pursuant to the process described below, to receive access to the Nasdaq Bond Exchange.

Commission and notify its members if and when additional order types become available for use.

Trading Units

The minimum unit of trading in the Nasdaq Bond Exchange is one bond unless the issuer otherwise specifies a larger minimum unit of trading in the bond indenture agreement. The Nasdaq Bond Exchange will accept and display bids and offers in bonds priced to three decimal places, as per market standard.

Order Entry and Execution

To post an order in a particular bond on the Nasdaq Bond Exchange, a User will be required to enter certain basic information including: CUSIP number, order quantity, order type (i.e., Nasdaq Bond Exchange Good for Day Limit Order); price (up to three decimals); and whether the order is buy or sell.

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

The Nasdaq Bond Exchange will provide an exception to its normal price/time system to allow Users to avoid internalizing orders. Users may be interested in self-match prevention in order to run multiple strategies at once that may sit on opposite sides of the book. Pursuant to the proposed Rule 4000B(h)(1)(C), which the Exchange adapts from Nasdaq Rule 4757(a)(4), Nasdaq will permit Users to direct that orders entered into the Nasdaq Bond Exchange will not execute against orders entered under the same MPID. In addition, the proposed Rule provides that Users using the FIX order entry protocol (discussed below) may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent orders with such modifier from executing against each other. In such a case, the proposed Rule states that a User may elect from the following options: (i) regardless of the size of the interacting orders, cancelling the oldest order in full; or (ii) regardless of the size of the interacting orders, cancelling the most recent of the orders in full. The foregoing options may be applied to all orders entered through a specific order entry port.

An order designated for execution in the Bond Trading Session may be cancelled at any time as long as the order had not been executed.

The Exchange will charge no fees for posting orders or executing trades on the Nasdaq Bond Exchange. If the Exchange decides to charge any such fees in the future, then the Exchange will submit a rule filing proposal to that effect to the Commission.

Clearing

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

Bond Trading Session

The Nasdaq Bond Exchange would have one trading session per trading day from 8:30 a.m. until 4:00 p.m. E.T. (the "Bond Trading Session"). There will be no pre-market or post-market session. Instead, the Nasdaq Bond Exchange will immediately start processing orders as they are entered upon opening. Orders submitted outside of the Bond Trading Session will not be accepted.

Clearly Erroneous Executions

Bond trades on the Nasdaq Bond Exchange would be made subject to Exchange Rule 11890, which governs the process for addressing clearly erroneous trades. Within the context of bond trading on the Nasdaq Bond Exchange, a "clearly erroneous execution" will be one where there is an obvious error in any term, such as price, unit of trading, or identification of the bond."[25] A User that receives an erroneous execution may request the Exchange review the transaction or the President of the Exchange, a senior level employee thereof, or a designated officer (a "Senior Official") may review an execution on their own initiative. A request for review of an execution must include certain information, including in pertinent part, information concerning the time of the transaction, security symbol, number of bonds, price, and factual basis for believing that the trade is clearly erroneous.[26] The request for review would have to be submitted within 30 minutes of the trade in question.[27] The other party (or parties) to the trade will

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[25] See proposed Rule 4000B(b)(2)(C).

[26] See Rule 11890(a)(2).

[27] See id.

be notified of the request for review.[28] Thereafter, an Exchange official would review the transaction and would make a determination as to whether it was clearly erroneous.[29] The reviewer could make this determination with or without supporting documentation from any party to the transaction.[30] Pursuant to proposed Rule 11890(a)(2)(C)(4), determinations of a clearly erroneous execution will be made on a case-by-case basis, considering factors that include, but are not limited to, the following: (i) execution price; (ii) volume and volatility of a bond; (iii) news released for the issuer or the bond and/or the related equity security; (iv) trading halts; (v) corporate actions; (vi) general market conditions; (vii) the rating of the bond; (viii) interest and/or coupon rate; (ix) maturity date; (x) yield curves; (xi) prior print, if available within a reasonable time frame; (xii) executions inconsistent with the trading pattern of a bond; (xiii) current day's trading high/low; (xiv) recent day's and week's trading high/low; (xv) executions outside the 52 week high/low; (xvi) effect of a single large order creating several prints at various prices; and (xvii) quotes and executions of other market centers.[31]

If the reviewer determines that the execution was not clearly erroneous, then no corrective action will be taken in relation to the transaction. If the reviewer determines that the transaction were clearly erroneous, the transaction will be deemed null and

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28 See id.

29 See id.

30 See id.

31 The criteria to be used to determine clearly erroneous executions of non-convertible bonds, which are set forth in proposed Rule 11890(a)(2)(C)(4), are in lieu of the criteria presently used to determine clearly erroneous executions of equity securities, which are set forth in Rule 11890(a)(2)(C)(1)-(C)(3).

void.[32] If one party does not agree with the determination, then that party may request further review or an appeal to the Nasdaq Review Council pursuant to the procedures set forth in Rule 11890(c). Depending on the outcome of the appeal, the transaction would either remain unchanged or be deemed null and void. [33]

Nasdaq Bond Exchange System Disruption or Malfunction or Equipment Changeover

Rule 11890(b) further provides that, in the event of any system disruption, malfunction, or equipment changeover in the Nasdaq Bond Exchange trading facility, a Senior Official may, without the need for a request for review, review transactions affected by a system disruption, malfunction, or equipment changeover and decide if any transactions are erroneous.[34] In such situations, the Senior Official could declare the transaction to be unchanged or null and void, appropriate.[35] The Rule also provides that, absent extraordinary circumstances, any such action of the Senior Official shall be taken within 30 minutes of detection of the system disruption, malfunction, or equipment changeover, or an erroneous transaction resulting from such system problem.[36] If an

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32 See Rule 11890(a)(2)(B).

33 The Exchange notes that, pursuant to Article VI of the By-Laws of the Nasdaq Stock Market, LLC, at least 20 percent of the Nasdaq Review Council must consist of representatives of Members of the Exchange. Although the By-Laws do not specify any specific categories of Members that must be represented on the Review Council, the Exchange expects that the existing Member representatives will adequately represent the interests of Users in appeals of clearly erroneous determinations. If it becomes apparent to the Exchange that roster of the Nasdaq Review Council does not adequately represent the interests of Users, then it will, at the appropriate time, consider nominating one or more Users to the Council.

34 See Rule 11890(b)(i).

35 See id.

36 See id.

erroneous transaction occurred as a result of a system disruption, system malfunction, or equipment changeover, each party to the erroneous transaction will be notified of the situation and the specific action as soon as practicable.[37] Thereafter, the User aggrieved by the action could appeal such action.[38]

Halting and Suspending Bond Trading on the Exchange

Proposed Rule 4000B(i)(1) provides that the Exchange may halt or suspend trading in non-convertible bonds listed on the Nasdaq Bond Exchange when: (1) in the 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, for regulatory purposes; (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, in which case the Exchange shall cease trading the non-convertible bond, effective not less than 10 days before the date when such de-listing becomes effective, pursuant to a de-listing application that the Exchange submits to the Commission on Form 25 and consistent with SEC Rule 12d2-2[39] and the Act.

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37 See id.

38 See id.

39 See 17 CFR 240.12d2-2.

Pursuant to proposed Rule 4000B(i)(2), when bond trading is halted under any of the circumstance described above, a halt message at the beginning and end of the halt will be disseminated to all Nasdaq Bond Market Users. This trading halt will be referred to as a "Bond Halt."[40] Upon commencement of a Bond Halt, all pending orders in the Nasdaq Bond Exchange will be cancelled.[41] The Nasdaq Bond Exchange will resume accepting orders and trading once the Exchange declares an end to a Bond Halt.[42]

Dissemination of Trading Information

The Exchange proposes to publicly disseminate a real-time bond data feed, which will be referred to as “Nasdaq Corporates Totalview.”[43] The Nasdaq Corporates Totalview data feed would reflect all orders in time sequence in the Nasdaq Bond Exchange order "book." Because the Nasdaq Bond Exchange will be a purely order-driven system, the Exchange would not disseminate any information on a particular bond if there are no orders posted in the "book" for such bond. In addition to the Nasdaq Bond Exchange order "book," the data feed also would include the last sale price as executions occur. The Nasdaq Corporates Totalview data feed will be available on a standalone basis free of charge to market participants, third-party data vendors, and other interested parties who request access and agree to the Exchange's terms. If the Exchange decides to

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40 See Rule 4000B(i)(2).

41 See Id.

42 See Id.

43 Pursuant to FINRA Rule 6730(e)(2), transactions on the Nasdaq Bond Exchange need not be reported to FINRA’s Trade Reporting and Compliance Engine because only bonds listed on Nasdaq, a national securities exchange, may be traded on the Bond Exchange, and because bond transaction information will be disseminated publicly.

establish fees for the Nasdaq Corporates Totalview product at a later date, it will submit a separate rule filing.

Access to the Nasdaq Bond Exchange System

Only Members of the Exchange that have entered into a written service agreement with the Exchange (i.e., the "Nasdaq U.S. Services Agreement") and that elect to receive access to the Nasdaq Bond Exchange on their Member application form, will be duly authorized Users that may receive such access. Existing Members of the Exchange will not be required to amend their Nasdaq U.S. Services Agreements to become Users and obtain access to the Nasdaq Bond Exchange; instead, existing Members simply will be required to complete a form, attached hereto as Exhibit 3, that indicates their interest in becoming Users and obtaining access.

Users of the Nasdaq Bond Exchange will gain access to the system via direct or indirect electronic linkages utilizing the Financial Information Exchange or "FIX" protocol. The FIX protocol is already used and widely accepted by Nasdaq market participants and will be used by the Nasdaq Bond Exchange Users for order entry, modification and cancellation, and message transmittal for all non-convertible bonds traded through the Nasdaq Bond Exchange. All of the communications protocols will be publicly available to allow Users and service bureaus to develop their own front-end software. Users will have the ability to establish connectivity to the Nasdaq Bond Exchange directly or through third-party connectivity providers, including a range of extranets and service bureaus, as set forth in General 8 of the Nasdaq Rules.[44] The

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44 The Exchange notes that Users that already purchase FIX port connectivity to the Nasdaq Stock Exchange will need to obtain one or more additional FIX ports to connect to the Nasdaq Bond Exchange.

Exchange will not charge any fees for FIX port connectivity to the Nasdaq Bond Exchange or for connectivity to the Bond Exchange's disaster recovery system.[45]

Reports and Recordkeeping

Users of the Nasdaq Bond Exchange would have to comply with all relevant rules of the Exchange and the Commission in relation to reports and recordkeeping of transactions on the Nasdaq Bond Exchange, including Rules 17a-3 and 17a-4 under the Act.[46]

Regulation

The Exchange will leverage its existing infrastructure to operate a national securities exchange in compliance with Section 6 of the Exchange Act, and Section 6(b)(7) in particular,[47] to regulate its non-convertible bonds trading business and to enforce compliance with its Rules. Nasdaq's existing disciplinary rules and processes, set forth in its Rule 8000 and 9000 Series, will govern the discipline of Members that participate in corporate bond trading, just as it does for equities regulation, and Nasdaq will perform bond listing regulation as well as real-time surveillance of bond trading as it does today for equities.

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[45] Separately from port connectivity, the Exchange notes that Users will need to establish physical connections to the Nasdaq Bond Exchange, as set forth in General 8 of the Nasdaq Rules. To the extent that a User already purchases physical connectivity to the Nasdaq Stock Exchange, that purchase will also provide for the User to connect to the Nasdaq Bond Exchange, such that the User will incur no additional fee for the new connection. New Users that do not already purchase physical connectivity to Nasdaq will need to do so, pursuant to General 8 of the Nasdaq Rules.

[46] 17 CFR 240.17a-3 and 240.17a-4.

[47] 15 U.S.C. 78f(b)(7).

In particular, MarketWatch will perform real-time surveillance of the Nasdaq Bond Exchange for the purpose of maintaining a fair and orderly market at all times. As it does with Nasdaq's equities trading, MarketWatch will monitor trading on the Nasdaq Bond Exchange market on a real-time basis to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation. In addition, Nasdaq Regulation will oversee the process for determining and implementing trade halts and identifying and responding to unusual market conditions.

System Information

The Nasdaq Bond Exchange will operate out of the same data center in Carteret, New Jersey as does the Nasdaq Stock Market and other exchanges owned by Nasdaq, Inc., but it will use equipment that is separate from the equipment used by those exchanges. In addition, the Nasdaq Bond Exchange will have a backup data center that will be geographically diverse from the Carteret data center and that will be designed to resume operations of the Nasdaq Bond Exchange, in the event of a system failure, in accordance with the requirements of Regulation Systems Compliance and Integrity.[48] The Nasdaq Bond Exchange will use Nasdaq's flexible INET technology, which is easily scalable to higher volumes through the addition of more equipment in the data center. The Nasdaq Bond Exchange will be protected from unauthorized access through the same robust firewall protection already in use at Nasdaq, Inc.'s data centers.

Applicability of Section 11(a) and (b) of the Act

48 See 17 CFR 242.1001, .1004.

Section 11(a) of the Act[49] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion, unless an exception applies. This general prohibition would not impact trading on the Nasdaq Bond Exchange because Rule 11a1-4(T) under the Act[50] deems transactions in bonds on a national securities exchange for a member's own account to be consistent with Section 11(a). Similarly, Section 11(b) of the Act[51] and Rule 11b-1 thereunder,[52] which pertain to specialists and market-makers, would not be implicated because there will be no specialists or market makers on the Nasdaq Bond Exchange.

b. Statutory Basis

Nasdaq believes that its proposal is consistent with Section 6(b) of the Act[53] in general, and furthers the objectives of Sections 6(b)(4), (b)(5), and (b)(7) of the Act,[54] in particular. As discussed below, Nasdaq believes the proposal is consistent with Section 6(b)(4) of the Act[55] in that it provides for the equitable allocation of reasonable dues,

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49 15 U.S.C. 78k(a).

50 17 CFR 240.11a1-4(T).

51 15 U.S.C. 78k(b).

52 17 CFR 240.11b-1.

53 15 U.S.C. 78f(b).

54 15 U.S.C. 78f(b)(4), (5), and (7).

55 15 U.S.C. 78f(b)(4).

fees, and other charges, and that it is consistent with Section 6(b)(5) of the Act[56] 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 are not designed to permit unfair discrimination. Finally, the Exchange believes that the proposal is consistent with Section 6(b)(7) of the Act[57] in that it provides a fair procedure of discipline for those listing and trading non-convertible bonds on Nasdaq.

Listing Rules

The Exchange believes that its proposal to list non-convertible bonds will improve the quality of the public market for bonds by improving the transparency and the orderliness of the market. As discussed above, an issuer that lists bonds pursuant to this proposal will be required to disclose any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions, except in unusual circumstances.[58] Through this requirement, Nasdaq will be able to evaluate such disclosure to determine if, among other things, a Bond Halt should be declared for that

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[56] 15 U.S.C. 78f(b)(5).

[57] 15 U.S.C. 78f(b) (7).

[58] As noted above, Nasdaq proposes to amend Rule 5250(e)(3) to require an issuer to provide at least 10 calendar days advance notice to Nasdaq of certain corporate actions relating to non-convertible bonds listed on the Nasdaq Bond Exchange, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol), by filing the appropriate form as designated by Nasdaq. This proposal is consistent with the Act because it aid the Listings Qualification Department in assessing an issuer's compliance with the continuing listing standards set forth in proposed Rule 5702.

security.[59] This proposal, in connection with Nasdaq's proposal to trade such bonds, would also increase the amount of bond-specific information that would disclosed by issuers in fulfillment of the requirements of Section 12 of the Act.

Nasdaq also believes that its proposed listing standards are consistent with the Act. Nasdaq notes that its proposed initial listing standards, set forth in Rule 5702(a) – which require a minimum principal amount outstanding of the non-convertible bond or a market value of at least $5 million and the issuer of the non-convertible bond also having a class of equity listed on Nasdaq, NYSE, or NYSE American – are similar to the initial listing requirements for bonds listed on NYSE and NYSE American. Similarly, the continued listing requirement under Rule 5702(b)(1) that a non-convertible bond maintain a market value or principal amount of bonds outstanding of at least $400,000 is similar to the listing requirement for bonds imposed by NYSE American. Nasdaq notes that, pursuant to Rule 5702(b)(2), an issuer would also be required to meet its obligations on the listed non-convertible bonds, and that Nasdaq would initiate proceedings immediately under Rule 5810 (Notification of Deficiency by the Listing Qualifications Department) if the issuer were unable to meet its obligations on its non-convertible bonds. Nasdaq believes that it is consistent with the Act to immediately institute immediate de-listing proceedings in this instance, rather than to first afford the issuer a time period during which it may regain compliance (i.e., the 180 calendar day period it proposes to provide when a bond

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59 Nasdaq is limiting this proposal to an issuer that is currently listing one class of an equity security on either Nasdaq, NYSE, or NYSE American. While the issuer may be required to make similar disclosures in connection with its listed equity security, Nasdaq may not receive such disclosures if the listing venue for that equity security is NYSE or NYSE American. As such, this proposal provides the Exchange with additional information related to listed companies that it may otherwise not possess.

fails to meet the quantitative requirements under Rule 5702(b)(1)) because a violation of a covenant, a default on interest payments, or another failure of an issuer to meet its obligations under a bond indenture, constitutes a breach of an issuer's legal obligations to bondholders, and signals that a bond is not appropriate for continued listing on the Exchange.

Nasdaq also believes that the change to the definition of a "substitution listing event" to include a change in the obligor of a listed non-convertible bond is consistent with the Act. Nasdaq is proposing to make this change to both convertible and non-convertible bonds, as both types of securities could potentially be subject to a change in the obligor of that bond, which Nasdaq believes should qualify as a substitution listing event.

Likewise, it is consistent with the Act to amend Rule 5515(b)(4) to change existing references from the American Stock Exchange to NYSE American to ensure that our Rules regarding convertible debt are current and accurate with respect to the names of the exchanges they reference.

Nasdaq believes that the proposed rule change is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. The proposed $5,000 application fee and $5,000 annual fee will be equally applicable to any issuer seeking to list non-convertible bonds on Nasdaq, other than for those issuers that propose to switch their listings from NYSE or NYSE American to Nasdaq. Nasdaq's proposal to waive the application fee and the first year's annual fee for issuers that switch their listings to Nasdaq from NYSE or NYSE American is reasonable and equitable because such fees will otherwise serve as disincentives for issuers to switch their listings, particularly if they have already paid their annual fees to NYSE or NYSE American for the year in which a switch would otherwise occur.[60] The waiver of the application fee is also equitable because it is Nasdaq's experience 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. The application and annual fees are also reasonable and equitable because they will support Nasdaq's regulatory program to review and qualify debt issuances for listing.

The proposed application and annual fees are competitive with the initial and annual fees that are currently assessed by NYSE and NYSE American for the listing of bonds.[61]

Nasdaq also notes that the proposed $5,000 initial listing fee is the same as the application fee it charges for convertible bonds. However, Nasdaq will not charge an

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60 Nasdaq notes that it presently waives entry fees for listing equity securities that transfer to Nasdaq from another national security exchange. See Rule 5910(a)(7)(i) (Nasdaq Global and Global Select Markets); Rule 5920(a)(7)(i) (Nasdaq Capital Market); Rule 5940(a)(5)(i)(Exchange Traded Products). It also waives a portion of the annual fee for securities whose listings transfer from a national securities exchange to Nasdaq on an exclusive basis. See IM-5900-4. Nasdaq's rationale for employing waivers in those instances is similar to that which Nasdaq asserts for its corporate bond listing programs. See, e.g., Securities Exchange Act Release No. 34-70418 (Sept. 16, 2013), 78 FR 57909 (Sept. 20, 2013) (SR-NASDAQ-2013-115).

61 NYSE American charges an initial listing fee for bonds of $100 per $1 million principal amount (or fraction thereof) with a minimum fee of $5,000 and a maximum fee of $10,000. NYSE American also charges an annual fee of $5,000 for listed bonds and debentures of companies whose equity securities are not listed on NYSE American. See NYSE American Listed Company Guide Sections 140 and 141. Meanwhile, NYSE charges an initial listing fee of $25,000 and an annual fee of $25,000 for listed debt of NYSE equity issuers and an initial listing fee of $45,000 and an annual listing fee of $45,000 for listed debt of non-NYSE equity issuers. See Section 902.08 of the NYSE Listed Company Manual.

entry fee (as it does for convertible bonds under the proposed amendment to Rule 5920(a)(2)) because Nasdaq believes that the proposed application fee will allow the Exchange to adequately recoup its expenses incurred in processing an issuer's application to list those bonds. Nasdaq proposes a flat $5,000 annual fee for non-convertible bonds in lieu of the variable annual fee that Nasdaq charges to issuers of convertible bonds ($500 or $25 per million dollars face amount of debentures outstanding, whichever is greater, pursuant to Rule 5920(c)(B)(2)) because the Exchange believes that issuers will prefer the simplicity and predictability of a flat fee. Moreover, the Exchange expects to list large issuances of non-convertible bonds, in which cases the annual fees for such bonds will be comparable to, if not lower than, the annual fees that Nasdaq charges for convertible bonds.

These proposed listing fees for non-convertible bonds are lower than Nasdaq's initial and annual fees for equity securities, which range from $50,000 - $75,000 for initial listing of equity securities, and from $32,000 - $45,000 for annual listing of equity securities.[62] Nasdaq competes for the listing of securities, including bonds, with NYSE and NYSE American, and the differential between its proposed listing fees for non-convertible bonds and its current listing fees for equity securities is similar to the differential for listing debt and equity securities on NYSE American.[63]

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62 See Rule 5920(a)-(c).

63 See, e.g. NYSE American Listed Company Guide Sections 140 and 141 (NYSE American charges an initial listing fee for common stock that ranges from $50,000 - $75,000 and an annual fee of between $40,000 and $50,000).

Nasdaq also believes that the proposed listing rules are consistent with Section 6(b)(5) of the Act[64] in that they serve the interests of the public and investors by facilitating competition in the market for listing corporate non-convertible bonds. The proposed listing rules also are similar to those of NYSE and NYSE American, which the Commission has recognized as being equitable and adequately protective of the public interest. Furthermore, the Exchange believes that the proposed listing fees are equitable for the reasons set forth above. Meanwhile, the proposed waivers of application and first year annual fees for listings of non-convertible bonds that switch to Nasdaq from NYSE or NYSE American are not unfairly discriminatory because, in absence of such waivers, issuers that have already paid such fees to list their bonds on another exchange would have a significant disincentive to switch their listing to Nasdaq as they would be required to pay twice for similar listing services. The proposed waiver of the application fee for bonds that switch to Nasdaq from another exchange is fair because it reflects the fact that less work is required by Nasdaq to process such applications than is required to process applications for newly-listed securities. Finally, as is discussed above, Nasdaq already employs similar fee waivers for listings of equity securities and exchange traded products.[65]

Finally, Nasdaq notes that it will apply the surveillance and enforcement infrastructure that it utilizes for listings on its other markets to ensure that issuers comply with initial and continuing listing requirements for non-convertible corporate bonds and

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64 15 U.S.C. 78f(b)(5).

65 See n.60, supra.

that the Exchange will take fair and appropriate action under the Nasdaq Rule 5800 Series to address violations of those listing Rules.

Trading Rules

Nasdaq's proposal to establish the Nasdaq Bond Exchange system to trade non-convertible corporate bonds listed on Nasdaq is also consistent with the Act. Nasdaq has designed the Nasdaq Bond Exchange to operate in accordance with the Act, the applicable rules of the Commission and of the Exchange, and the high standards that Nasdaq believes to be in evidence at all of Nasdaq, Inc.'s exchanges. The proposal will offer Users opportunities to trade non-convertible bonds through a fair, open, and well-regulated market. The proposal will promote the interests of the public and investors by providing for the entry into the marketplace of a new exchange venue for trading non-convertible corporate bonds. Such bonds presently are tradeable, other than on an over-the-counter basis, only on NYSE and NYSE American. The Nasdaq Bond Exchange will introduce competition into this space, and that competition will spur innovation, which in turn will benefit issuers, traders, and investors alike.

The Nasdaq Bond Exchange is also designed to be a free, open, and fair marketplace. All Nasdaq Members will be eligible to become Users simply by electing to receive access. Moreover, Nasdaq proposes simple and straightforward rules to govern the operation of the Bond Exchange, including a familiar price-time allocation methodology, two basic order types, a single Bond Trading Session with no after-hours trading, and market data feed that will be disseminated, for free, to any member of the public that requests it and agrees to the Exchange's terms and conditions of use. At the same time, the proposal will also include provisions that are endemic to orderly and well-regulated markets, including authority to impose trading halts and suspensions, in appropriate circumstances, and to unwind clearly erroneous trades pursuant to established procedures under Nasdaq Rule 11890 and bond-specific criteria adapted from NYSE Rule 86.

Nasdaq will also leverage the conduct rules, surveillance technology, and enforcement infrastructure that it utilizes with respect to its other markets to ensure that the Nasdaq Bond Exchange operates in a fair and orderly fashion and that Nasdaq prevents, detects, and addresses fraudulent and manipulative acts and practices. For example, Nasdaq's MarketWatch Department will surveil the market and employ its SMARTS technology to detect suspicious or non-compliant behavior. Nasdaq's existing disciplinary rules, as set forth in the Nasdaq Rule 8000 and 9000 Series, will apply to Users of the Nasdaq Bond Exchange, and Nasdaq's Regulation Department will, pursuant to these disciplinary rules, investigate and take fair and appropriate enforcement action to address violations of rules relevant to trading on the Nasdaq Bond Exchange or the conduct of Users.

Moreover, the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. Nasdaq will charge no fees to trade non-convertible bonds on the Nasdaq Bond Exchange, to obtain the FIX ports that are necessary to connect to the Nasdaq Bond Market, or to receive the Nasdaq Corporates Totalview data feed product. Additionally, to the extent that a User already purchases physical connectivity to Nasdaq pursuant to General 8, Sections 1 and 2 of the Nasdaq Rules, such a User could utilize its existing connectivity to connect to the Bond Exchange without any incurring additional fees to do so.

Finally, Nasdaq notes that it has designed the Nasdaq Bond Exchange system to facilitate transactions in corporate bonds in a manner that is similar to, and competitive with, the existing NYSE Bonds trading system. The Commission has already deemed the design of NYSE Bonds to be consistent with the Act.[66] Indeed, much of the language in proposed Rule 4000B, which will govern the Nasdaq Bond Exchange, is adapted from NYSE Rule 86, which governs NYSE Bonds. That is, like NYSE Bonds, the Nasdaq Bond Exchange will be an electronic system for receiving, processing, executing, and reporting bids, offers and executions in bonds. Like NYSE Bonds, the Nasdaq Bond Exchange will display, match and execute buy and sell orders on a price/time basis. The Exchange, like NYSE, will also accept good-for-day limit orders and kill-or-fill orders, and it will trade bonds of issuers that have at least one class of equity securities listed on Nasdaq, NYSE, or NYSE American.[67]

To the extent that the Nasdaq Bond Exchange will differ from NYSE Bonds, these differences will render the Nasdaq Bond Exchange simpler than NYSE Bonds. At its inception, the Nasdaq Bond Exchange will not have – as does NYSE Bonds – market makers, sponsored access, auctions, price collars, or certain order types (e.g., reserve orders, minimum quantity orders, good-til-cancelled orders, and timed orders). The Nasdaq Bond Exchange also will have only one trading session each day as opposed to NYSE Bonds, which has three sessions. Although the Nasdaq Bond Exchange will

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66 See Securities Exchange Act Release No. 34–55496 (Mar. 20, 2007), 72 FR 14631 (Mar. 28, 2007).

67 See n.11, supra.

initially lack these features of NYSE Bonds, Nasdaq believes that the platform nevertheless will have the features it needs to compete effectively with NYSE Bonds. The Exchange observes that Users of NYSE Bonds do not appear to avail themselves of many of its features and functionalities, such that the Exchange does not believe that the Nasdaq Bond Exchange needs these features and functionalities to compete with NYSE Bonds. In any event, the Exchange is committed to adding new features to the Nasdaq Bond Exchange in the future to the extent that Nasdaq determines that a demand exists for those features and that adding them will help the Nasdaq Bond Exchange compete successfully in the marketplace.

4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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. Rather, the proposed rule change will promote competition among exchanges by allowing Nasdaq to list and trade non-convertible bonds, which can currently be listed only on NYSE and NYSE American. The proposals will have the pro-competitive effect of spurring further initiative and innovation among market centers and market participants.

Nasdaq notes that its proposed listing standards are consistent with the standards for initial and continued listing of bonds on NYSE and NYSE American. If issuers are unsatisfied with Nasdaq's listing program or the fees charged for that program, these issuers can choose to list on these other markets.

Likewise, the Exchange notes that its proposed system for trading non-convertible bonds listed on Nasdaq – the Nasdaq Bond Exchange – will be competitive with NYSE Bonds. Although initially, the Nasdaq Bond Exchange will have more limited functionality than does NYSE Bonds, including with respect to order types, auctions, the number of trading sessions, and the use of market makers, the Exchange believes that the Nasdaq Bond Exchange will be competitive with NYSE Bonds because the Exchange has incorporated into the Nasdaq Bond Exchange those features of NYSE Bonds that its Users actually want and need when trading bonds and it excluded those they do not actually utilize. That said, the Exchange will add additional functionality and features to the Nasdaq Bond Exchange as demand warrants it to do so and to the extent that the Exchange deems it necessary to remain competitive with NYSE Bonds.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed initial listing requirements are substantially similar to Section 102.03 of the NYSE Listed Company Manual and Section 104 of the NYSE American Company Guide. The proposed continued listing requirements are substantially similar to Section 1003(b)(iv) of the NYSE American Company Guide. The proposed trading rules are similar to NYSE Rule 86, except that they do not provide for market makers, sponsored access, auctions, price collars, multiple intraday trading sessions, and certain order types (e.g., reserve orders, minimum quantity orders, good-til-cancelled orders, and timed orders).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

3. Bond Exchange User Application Form.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-NASDAQ-2018-070)

August __, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to List and Trade Corporate Non-Convertible Bonds on Nasdaq

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 August 27, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 adopt listing and trading requirements and fees for non-convertible corporate bonds.

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.

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

Nasdaq is amending its rules to permit the initial and continued listing of and trading of non-convertible corporate debt securities (referred to herein as "bonds" or "non-convertible bonds") on Nasdaq and to establish fees for listing those bonds. While Nasdaq rules currently provide for the initial and continued listing of convertible bonds, Nasdaq believes that there may be a demand from certain types of investors for Exchange-listed non-convertible bonds. Nasdaq also believes that this proposal will improve the public market for non-convertible bonds by promoting the fair and orderly operation of that market and by increasing the transparency of that market for securities that are listed pursuant to this proposal. Nasdaq is therefore amending the relevant listing and trading rules accordingly.

Listing Rules

First, Nasdaq proposes to adopt Rule 5702 to permit the initial listing of non-convertible bonds. For non-convertible bonds, Nasdaq proposes to require a minimum principal amount outstanding or market value of at least $5 million, instead of the minimum $10 million principal amount outstanding required for convertible debt under

Rule 5515(b). Nasdaq notes that this requirement is the same as the initial listing requirement for bonds on the New York Stock Exchange LLC ("NYSE") and NYSE American LLC ("NYSE American"), which both require that the debt issue have an aggregate market value or principal amount of no less than $5 million.[3]

In addition to Rule 5702(a)(1), Nasdaq also proposes to require satisfaction of the condition set forth in Rule 5702(a)(2) for non-convertible bonds to be eligible for listing on the Exchange. This condition is that the issuer of the bond must have one class of equity security that is listed on Nasdaq, NYSE, or NYSE American. This condition is similar to one that NYSE and NYSE American impose.[4]

Nasdaq also proposes to add continued listing requirements under Rule 5702(b). Proposed Rule 5702(b)(1) would require, for continued listing, that a non-convertible bond issuance maintain a market value or principal amount outstanding of at least $400,000.[5] Proposed Rule 5702(b)(2) would also require an issuer to meet its obligations on the listed non-convertible bonds, and Nasdaq proposes to amend Rule 5810(c)(1) to provide that a determination by the Exchange's Listings Qualifications Department that

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3 See Section 102.03 of the NYSE Listed Company Manual and Section 104 of the NYSE American Company Guide.

4 See Section 104 of the NYSE American Company Guide; Section 102.03 of the NYSE Listed Company Manual.

5 The Exchange proposes to amend Rule 5810(c)(3) to provide that a failure to meet the continued listing requirements under Rule 5702(b)(1) for a period of 30 consecutive business days will constitute a deficiency; in the event of a deficiency, the Exchange's Listings Qualifications Department will promptly notify the deficient issuer and the issuer shall have a period of 180 calendar days from such notification to regain compliance. Compliance will be deemed to be regained by meeting the applicable standard for a minimum of 10 consecutive business days, unless the Listing Qualifications Department exercises its discretion to extend this 10 day period as set forth in Rule 5810(c)(3)(G).

the issuer has failed to meet its obligations on the bonds would result in their immediate suspension and the commencement of delisting proceedings. Nasdaq notes that these proposed continued listing standards for non-convertible bonds are the same as the listing requirements for bonds imposed by NYSE American.[6]

In addition to these quantitative requirements for listing non-convertible bonds, the issuer of listed bonds would also have to comply with other requirements that are generally applicable to companies listed on Nasdaq pursuant to Rule 5250. Specifically, Rule 5250(a) allows Nasdaq to request additional information, either public or non-public, deemed necessary to make a determination regarding a company's continued listing. Rule 5250(b) requires issuers to make public disclosure of material information, disclosure of notification of deficiency, and disclosure of third party director and nominee compensation. Rule 5250(c) requires companies to file all required periodic financial reports. Rule 5250(d) requires the distribution of annual and interim reports. Rule 5250(e) sets forth various corporate events resulting in material changes that trigger the requirement for the issuer to submit certain forms to Nasdaq.[7] Rule 5250(f) requires the issuers to pay all applicable fees set forth in the Rule 5900 series.

In addition to the Exchange's rules that would apply to an issuer of non-convertible bonds that list on Nasdaq,[8] the issuers of those bonds would have to register

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6 See Section 1003(b)(iv) of the NYSE American Company Guide.

7 The Exchange proposes to amend Rule 5250(e)(3) to require issuers of non-convertible bonds to provide at least 10 calendar days advance notice to the Exchange of certain corporate actions, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol), by filing the appropriate form as Nasdaq shall designate.

8 Nasdaq notes that currently, the Rule 5600 Series generally would apply to securities listed in this proposal. However, subsequent to this proposal, but prior

those securities pursuant to Section 12(a) of the Act.[9] Among other things, the issuer is required to disclose information about the organization, financial structure, information about the nature of the business, certain information about the directors, officers and underwriters, material contracts, and balance sheets. As part of this proposal, Nasdaq is requiring that the issuer must currently list one class of an equity security on either

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to listing non-convertible bonds of issuers that have equity securities listed on NYSE or NYSE American, Nasdaq plans to submit a proposal to amend Rule 5615(a)(6) to state that the Rule 5600 Series does not generally apply to companies listing only preferred or debt securities on the Exchange. Under this proposal, companies listing only non-convertible bonds would be exempt from the Rules relating to Independent Directors (Rule 5605(b)), Audit Committee Requirements (Rule 5605(c)), Compensation Committee Requirements (Rule 5605(d)), Independent Director Oversight of Director Nominations (Rule 5605(e)), Code of Conduct (Rule 5610), Meetings of Shareholders (Rule 5620), Review of Related Party Transactions (Rule 5630), Shareholder Approval (Rule 5635), and Voting Rights (Rule 5640). However, Rule 5615(a)(6) would state that such companies still must comply with Rule 5625, pursuant to which an issuer would provide Nasdaq with prompt notification after an executive officer of the company becomes aware of any noncompliance by the company with the requirements of the Rule 5600 Series. In addition, this amended Rule would require issuers of listed non-convertible bonds to comply with Rule 5605(c), which sets forth the requirements of the company's audit committee, including its charter, composition, responsibilities and authority, to the extent required by Exchange Act Rule 10A-3. The Rule thereby would apply the requirements of Rule 10A-3 to the issuer's audit committee. The Rule also would impose on the issuer the obligation to promptly notify Nasdaq after an executive officer of the issuer becomes aware of any noncompliance by the issuer with the requirements of the Rule 5600 series, such as noncompliance with the audit committee provisions that are required by Rule 10A-3 and set forth in Rule 5605(c). Nasdaq also notes that NYSE and NYSE American have adopted similar exemptions for both companies that list only preferred and debt securities. See Section 303A of the NYSE Listed Company Manual; see also Section 801(g) of the NYSE American Company Guide. Finally, Nasdaq notes that the foregoing proposal would not apply to issuers of non-convertible bonds that have equity securities listed on Nasdaq.

9 Specifically, Section 12(a) requires that, in order for an exchange member, broker or dealer to effect a transaction in a security on a national securities exchange, a registration must be effective "as to such security for such exchange." See 15 U.S.C. 78(l)(a).

Nasdaq,[10] NYSE, or NYSE American,[11] and so issuers may already disclose this information in connection with the listing of those securities. However, Section 12(a) also requires issuers to disclose information that is more specific to the security to be listed and traded on the Exchange, such as the terms, position, rights, and privileges of the different classes of securities outstanding, and the terms on which the issuer's securities are to be, and during the preceding three years have been, offered to the public or otherwise. Given this requirement, Nasdaq's proposal may increase the amount of information about non-convertible bonds that will be disclosed by the issuer than would otherwise be the case.

Nasdaq proposes to amend Rule 5515(b)(4) to change references from the American Stock Exchange to NYSE American to reflect the name change of that exchange.[12]

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10 For purposes of the listing requirement that the non-convertible bond issuer also list a class of equity securities on Nasdaq, the issuer may list an equity security on the Nasdaq Capital Market, the Nasdaq Global Market, or the Nasdaq Global Select Market.

11 The Exchange notes that upon the effective date of the proposal, it only expects to be capable of listing and trading non-convertible bonds of issuers that currently list equity securities on Nasdaq. The Exchange expects 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. The Exchange will issue a trader alert at least seven days in advance of accepting applications to list and trade bonds of issuers with equity securities listed on NYSE or NYSE American.

The Exchange proposes to include language to this effect in the rule text, which it will then propose to remove after the Exchange begins listing and trading non-convertible bonds of issuers with equity securities listed on NYSE and NYSE American.

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

Nasdaq also proposes to amend the definition of a “substitution listing event” in Rule 5005 to include an additional event related to the listing of bonds. Specifically, Rule 5005(a)(40) will include a change in the obligor of a listed debt security as a “substitution listing event.” A Substitution Listing Event triggers certain reporting requirements to the Exchange.[13] Nasdaq is proposing to make this change to both convertible and non-convertible bonds, as both types of securities could potentially be subject to a change in the obligor of that bond, which Nasdaq believes should qualify as a substitution listing event.

Nasdaq proposes to add fees in connection with listing non-convertible bonds. Specifically, Nasdaq proposes to add Rule 5935 to impose a non-refundable application fee of $5,000 to list a class of non-convertible bonds pursuant to Rule 5702. Nasdaq proposes to waive this application fee if, in connection with a company’s application to list non-convertible bonds on Nasdaq, the company will be switching the listing market for such bonds from NYSE or NYSE American to Nasdaq. Nasdaq notes that NYSE American imposes an initial listing fee of $100 per $1 million principal amount (or fraction thereof) for listed bonds, with a minimum fee of $5,000 and a maximum fee of $10,000,[14] while NYSE imposes an initial listing fee of $25,000 on all listed bonds of NYSE equity issuers.[15]

Nasdaq also proposes to add an annual fee in connection with listing non-convertible bonds. Nasdaq proposes to add Rule 5935(b) to state that the issuer of each

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13 See Rule 5250(e)(4).

14 See NYSE American Company Guide Section 140.

15 See NYSE Listed Company Manual Section 902.08.

class of non-convertible bonds listed pursuant to Rule 5702 shall pay to Nasdaq an annual fee of $5,000. Moreover, the proposed Rule states that a company that switches its listing market for its non-convertible bonds from the New York Stock Exchange or NYSE American to Nasdaq will not be liable for the annual fee until January 1 of the calendar year following the effective date of the non-convertible bonds listing on Nasdaq. Nasdaq notes that NYSE American assesses an annual listing fee of $5,000 for listed bonds and debentures of companies whose equity securities are not listed on NYSE American,[16] while NYSE assesses an annual listing fee of $25,000 for listed bonds of NYSE equity issuers and affiliated companies.[17]

Nasdaq also proposes to clarify rule text relating to the listing fees for convertible bonds. Specifically, Rule 5920(a)(2) specifies a fee of $1,000 or $50 per million dollars face amount of bonds outstanding, whichever is higher. Nasdaq proposes to clarify that this is an entry fee, and that it applies to convertible bonds only. Nasdaq is not charging an entry fee for non-convertible bonds, as it believes that the proposed application fee will allow the Exchange to adequately recoup the expenses incurred by the Exchange in processing an issuer's application to list those securities.

Nasdaq believes that this proposal will improve the public debt market by increasing transparency for non-convertible bonds that are listed pursuant to this proposal and the orderliness of the market for those securities. For example, Rule 5250(b)(1) requires listed companies to, except in unusual circumstances, disclose promptly to the public through any Regulation FD compliant method (or combination of methods) any

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16 See NYSE American Company Guide Section 141.

17 See Section 902.08 of the NYSE Listed Company Manual.

material information that would reasonably be expected to affect the value of their securities or influence investors' decisions.[18] Nasdaq-listed companies must notify Nasdaq's MarketWatch Department 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 A.M. to 8:00 pm. E.T. As set forth in IM-5250-1, such events may 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.

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

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[18] Nasdaq will determine compliance with the listing requirements for non-convertible bonds based upon information it receives directly from issuers as well as data that it obtains from third party data providers.

price and volume movements, the MarketWatch Department may contact a company in order to ascertain the cause of the unusual market activity.

For non-convertible bonds that are listed under this proposal, the issuer will be required to comply with these disclosure requirements and to update Nasdaq accordingly on any material information that would reasonably be expected to affect the value of their bonds or influence investors' decisions. Depending on the nature of the event and the company's views regarding the business advisability of disclosing the information, the MarketWatch Department may work with the company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated effect of the information on the price of the Company's bonds, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. For non-convertible bonds that are listed on Nasdaq pursuant to this proposal, a trading halt will be initiated by the Exchange, pursuant to proposed Rule 4000B(i). In these ways, Nasdaq believes that the proposal will increase transparency for bonds that are listed pursuant to this proposal and the orderliness of the market for those bonds.[19]

Nasdaq also believes that this proposal will benefit market participants by making non-convertible bonds more accessible to certain kinds of investors. For example, in the

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[19] Nasdaq notes that it also proposes to amend Rule 5250(e)(3) to require an issuer to provide at least 10 calendar days advance notice to Nasdaq of certain corporate actions relating to non-convertible bonds listed on the Nasdaq Bond Exchange, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol), by filing the appropriate form as designated by Nasdaq. These disclosures will aid the Listings Qualification Department in assessing an issuer's compliance with the continuing listing standards set forth in proposed Rule 5702.

European Union, certain investors, such as so-called UCITS investment funds,[20] may generally only hold 10% of assets in securities that are not listed on an exchange or other regulated market meeting certain standards.

Trading Rules

In conjunction with its proposal to adopt rules to list non-convertible bonds on Nasdaq, the Exchange also proposes rules that will provide for the trading of such listed bonds. The Exchange notes that its proposed non-convertible bond trading system – to be known as the "Nasdaq Bond Exchange" – will offer Members,[21] at its inception, certain core trading functionality that will be competitive with NYSE Bonds. However, the Exchange will reserve more sophisticated and elaborate functionality until such time as the Exchange observes that a sufficient demand exists for it.[22]

In many respects, the proposed trading system and the proposed rules that govern it are a pared down version of the NYSE Bonds system and NYSE Rule 86. That is, like NYSE Bonds, the Nasdaq Bond Exchange will be an electronic system for receiving, processing, executing, and reporting bids, offers and executions in bonds. Like NYSE Bonds, the Nasdaq Bond Exchange will display, match, and execute buy and sell orders

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20 UCITS (Undertakings for Collective Investment in Transferable Securities) is a harmonized regime throughout Europe for the management and sale of mutual funds. A UCITS fund is essentially a mutual fund based in the European Union that meets these requirements and is therefore exempt from national regulation in individual European countries. Under UCITS III, a UCITS fund can invest in transferable securities, such as listed and publicly traded equities and bonds, deposits and money market instruments, other mutual funds, and financial derivative instruments, subject to diversification requirements.

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

22 The Nasdaq Bond Exchange will only trade non-convertible bonds that are listed on Nasdaq.

on a price/time basis. The Exchange, like NYSE and NYSE American, will also accept good-for-day limit orders and fill-or-kill orders, and it will trade bonds of issuers that have at least one class of equity securities listed on Nasdaq and NYSE or NYSE American.[23] However, at its inception, the Nasdaq Bond Exchange will not have – as does NYSE Bonds – market makers, sponsored access, auctions, price collars, or certain order types (e.g., reserve orders, minimum quantity orders, good-til-cancelled orders, and timed orders). The Nasdaq Bond Exchange also will have only one trading session each day as opposed to NYSE Bonds, which has three sessions. Again, the Exchange may add such features and functionalities to the Nasdaq Bond Exchange in the future to the extent that it determines that a demand exists for them. The Exchange observes that users of NYSE Bonds do not appear to avail themselves of many of these features and functionalities, such that the Exchange does not believe that including them in the Nasdaq Bond Exchange is necessary for it to compete with NYSE Bonds.

Order Types

The proposed rules designate the types of orders that could be entered into the Nasdaq Bond Exchange. Initially, Users[24] of the Nasdaq Bond Exchange will be allowed to enter good-for-day limit orders ("Nasdaq Bond Exchange Good for Day Limit Orders"), which are orders to buy or sell a stated quantity of units of bonds at a specified

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23 As noted earlier, at the launch date of the Nasdaq Bond Exchange, the Exchange expects that the system will be only capable of trading bonds of issuers that currently list equity securities on Nasdaq. The Exchange expects 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. See n.11, supra.

24 Proposed Rule 4000B defines a “User” as any Nasdaq Member that has elected, pursuant to the process described below, to receive access to the Nasdaq Bond Exchange.

price or at a better price that, if not executed or cancelled, will expire at the end of the trading session on the day on which they are entered. Users will also be able to enter a Nasdaq Bond Exchange Fill-or-Kill All-Or-None Order ("Nasdaq Bond Exchange FOK-AON Order"), which is an order that is to be executed immediately in its entirety against one or more contra parties at the best price available, or if it is not executed immediately in its entirety, it is cancelled. All orders on the Nasdaq Bond Exchange will be displayed and will be anonymous. The Exchange will file a proposed rule change with the Commission and notify its members if and when additional order types become available for use.

Trading Units

The minimum unit of trading in the Nasdaq Bond Exchange is one bond unless the issuer otherwise specifies a larger minimum unit of trading in the bond indenture agreement. The Nasdaq Bond Exchange will accept and display bids and offers in bonds priced to three decimal places, as per market standard.

Order Entry and Execution

To post an order in a particular bond on the Nasdaq Bond Exchange, a User will be required to enter certain basic information including: CUSIP number, order quantity, order type (i.e., Nasdaq Bond Exchange Good for Day Limit Order); price (up to three decimals); and whether the order is buy or sell.

The Nasdaq Bond Exchange will be an electronic order-driven matching system. Nasdaq Bond Exchange orders submitted by Users will be displayed, matched, and executed on a price/time priority basis. Orders that are marketable at the time of entry will be matched and executed. An order will be marketable when it entered the Nasdaq

Bond Exchange system if contra side interest is available at that price or a better price. Nasdaq Bond Exchange Good for Day Limit Orders that are not marketable at the time of entry would post to the Nasdaq Bond Exchange order "book."

The Nasdaq Bond Exchange will provide an exception to its normal price/time system to allow Users to avoid internalizing orders. Users may be interested in self-match prevention in order to run multiple strategies at once that may sit on opposite sides of the book. Pursuant to the proposed Rule 4000B(h)(1)(C), which the Exchange adapts from Nasdaq Rule 4757(a)(4), Nasdaq will permit Users to direct that orders entered into the Nasdaq Bond Exchange will not execute against orders entered under the same MPID. In addition, the proposed Rule provides that Users using the FIX order entry protocol (discussed below) may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent orders with such modifier from executing against each other. In such a case, the proposed Rule states that a User may elect from the following options: (i) regardless of the size of the interacting orders, cancelling the oldest order in full; or (ii) regardless of the size of the interacting orders, cancelling the most recent of the orders in full. The foregoing options may be applied to all orders entered through a specific order entry port.

An order designated for execution in the Bond Trading Session may be cancelled at any time as long as the order had not been executed.

The Exchange will charge no fees for posting orders or executing trades on the Nasdaq Bond Exchange. If the Exchange decides to charge any such fees in the future, then the Exchange will submit a rule filing proposal to that effect to the Commission.

Clearing

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

Bond Trading Session

The Nasdaq Bond Exchange would have one trading session per trading day from 8:30 a.m. until 4:00 p.m. E.T. (the "Bond Trading Session"). There will be no pre-market or post-market session. Instead, the Nasdaq Bond Exchange will immediately start processing orders as they are entered upon opening. Orders submitted outside of the Bond Trading Session will not be accepted.

Clearly Erroneous Executions

Bond trades on the Nasdaq Bond Exchange would be made subject to Exchange Rule 11890, which governs the process for addressing clearly erroneous trades. Within the context of bond trading on the Nasdaq Bond Exchange, a "clearly erroneous execution" will be one where there is an obvious error in any term, such as price, unit of trading, or identification of the bond."[25] A User that receives an erroneous execution may request the Exchange review the transaction or the President of the Exchange, a senior level employee thereof, or a designated officer (a "Senior Official") may review an execution on their own initiative. A request for review of an execution must include

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[25] See proposed Rule 4000B(b)(2)(C).

certain information, including in pertinent part, information concerning the time of the transaction, security symbol, number of bonds, price, and factual basis for believing that the trade is clearly erroneous.[26] The request for review would have to be submitted within 30 minutes of the trade in question.[27] The other party (or parties) to the trade will be notified of the request for review.[28] Thereafter, an Exchange official would review the transaction and would make a determination as to whether it was clearly erroneous.[29] The reviewer could make this determination with or without supporting documentation from any party to the transaction.[30] Pursuant to proposed Rule 11890(a)(2)(C)(4), determinations of a clearly erroneous execution will be made on a case-by-case basis, considering factors that include, but are not limited to, the following: (i) execution price; (ii) volume and volatility of a bond; (iii) news released for the issuer or the bond and/or the related equity security; (iv) trading halts; (v) corporate actions; (vi) general market conditions; (vii) the rating of the bond; (viii) interest and/or coupon rate; (ix) maturity date; (x) yield curves; (xi) prior print, if available within a reasonable time frame; (xii) executions inconsistent with the trading pattern of a bond; (xiii) current day's trading high/low; (xiv) recent day's and week's trading high/low; (xv) executions outside the 52

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26 See Rule 11890(a)(2).

27 See id.

28 See id.

29 See id.

30 See id.

week high/low; (xvi) effect of a single large order creating several prints at various prices; and (xvii) quotes and executions of other market centers.[31]

If the reviewer determines that the execution was not clearly erroneous, then no corrective action will be taken in relation to the transaction. If the reviewer determines that the transaction were clearly erroneous, the transaction will be deemed null and void.[32] If one party does not agree with the determination, then that party may request further review or an appeal to the Nasdaq Review Council pursuant to the procedures set forth in Rule 11890(c). Depending on the outcome of the appeal, the transaction would either remain unchanged or be deemed null and void. [33]

Nasdaq Bond Exchange System Disruption or Malfunction or Equipment Changeover

Rule 11890(b) further provides that, in the event of any system disruption, malfunction, or equipment changeover in the Nasdaq Bond Exchange trading facility, a Senior Official may, without the need for a request for review, review transactions affected by a system disruption, malfunction, or equipment changeover and decide if any

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[31] The criteria to be used to determine clearly erroneous executions of non-convertible bonds, which are set forth in proposed Rule 11890(a)(2)(C)(4), are in lieu of the criteria presently used to determine clearly erroneous executions of equity securities, which are set forth in Rule 11890(a)(2)(C)(1)-(C)(3).

[32] See Rule 11890(a)(2)(B).

[33] The Exchange notes that, pursuant to Article VI of the By-Laws of the Nasdaq Stock Market, LLC, at least 20 percent of the Nasdaq Review Council must consist of representatives of Members of the Exchange. Although the By-Laws do not specify any specific categories of Members that must be represented on the Review Council, the Exchange expects that the existing Member representatives will adequately represent the interests of Users in appeals of clearly erroneous determinations. If it becomes apparent to the Exchange that roster of the Nasdaq Review Council does not adequately represent the interests of Users, then it will, at the appropriate time, consider nominating one or more Users to the Council.

transactions are erroneous.[34] In such situations, the Senior Official could declare the transaction to be unchanged or null and void, appropriate.[35] The Rule also provides that, absent extraordinary circumstances, any such action of the Senior Official shall be taken within 30 minutes of detection of the system disruption, malfunction, or equipment changeover, or an erroneous transaction resulting from such system problem.[36] If an erroneous transaction occurred as a result of a system disruption, system malfunction, or equipment changeover, each party to the erroneous transaction will be notified of the situation and the specific action as soon as practicable.[37] Thereafter, the User aggrieved by the action could appeal such action.[38]

Halting and Suspending Bond Trading on the Exchange

Proposed Rule 4000B(i)(1) provides that the Exchange may halt or suspend trading in non-convertible bonds listed on the Nasdaq Bond Exchange when: (1) in the 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, for regulatory purposes; (3) news reports have a material impact on a non-

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34 See Rule 11890(b)(i).

35 See id.

36 See id.

37 See id.

38 See id.

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, in which case the Exchange shall cease trading the non-convertible bond, effective not less than 10 days before the date when such de-listing becomes effective, pursuant to a de-listing application that the Exchange submits to the Commission on Form 25 and consistent with SEC Rule 12d2-2[39] and the Act.

Pursuant to proposed Rule 4000B(i)(2), when bond trading is halted under any of the circumstance described above, a halt message at the beginning and end of the halt will be disseminated to all Nasdaq Bond Market Users. This trading halt will be referred to as a "Bond Halt."[40] Upon commencement of a Bond Halt, all pending orders in the Nasdaq Bond Exchange will be cancelled.[41] The Nasdaq Bond Exchange will resume accepting orders and trading once the Exchange declares an end to a Bond Halt.[42]

Dissemination of Trading Information

The Exchange proposes to publicly disseminate a real-time bond data feed, which will be referred to as “Nasdaq Corporates Totalview.”[43] The Nasdaq Corporates Totalview data feed would reflect all orders in time sequence in the Nasdaq Bond

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39 See 17 CFR 240.12d2-2.

40 See Rule 4000B(i)(2).

41 See Id.

42 See Id.

43 Pursuant to FINRA Rule 6730(e)(2), transactions on the Nasdaq Bond Exchange need not be reported to FINRA’s Trade Reporting and Compliance Engine because only bonds listed on Nasdaq, a national securities exchange, may be traded on the Bond Exchange, and because bond transaction information will be disseminated publicly.

Exchange order "book." Because the Nasdaq Bond Exchange will be a purely order-driven system, the Exchange would not disseminate any information on a particular bond if there are no orders posted in the "book" for such bond. In addition to the Nasdaq Bond Exchange order "book," the data feed also would include the last sale price as executions occur. The Nasdaq Corporates Totalview data feed will be available on a standalone basis free of charge to market participants, third-party data vendors, and other interested parties who request access and agree to the Exchange's terms. If the Exchange decides to establish fees for the Nasdaq Corporates Totalview product at a later date, it will submit a separate rule filing.

Access to the Nasdaq Bond Exchange System

Only Members of the Exchange that have entered into a written service agreement with the Exchange (i.e., the "Nasdaq U.S. Services Agreement") and that elect to receive access to the Nasdaq Bond Exchange on their Member application form, will be duly authorized Users that may receive such access. Existing Members of the Exchange will not be required to amend their Nasdaq U.S. Services Agreements to become Users and obtain access to the Nasdaq Bond Exchange; instead, existing Members simply will be required to complete a form, attached hereto as Exhibit 3, that indicates their interest in becoming Users and obtaining access.

Users of the Nasdaq Bond Exchange will gain access to the system via direct or indirect electronic linkages utilizing the Financial Information Exchange or “FIX” protocol. The FIX protocol is already used and widely accepted by Nasdaq market participants and will be used by the Nasdaq Bond Exchange Users for order entry, modification and cancellation, and message transmittal for all non-convertible bonds traded through the Nasdaq Bond Exchange. All of the communications protocols will be publicly available to allow Users and service bureaus to develop their own front-end software. Users will have the ability to establish connectivity to the Nasdaq Bond Exchange directly or through third-party connectivity providers, including a range of extranets and service bureaus, as set forth in General 8 of the Nasdaq Rules.[44] The Exchange will not charge any fees for FIX port connectivity to the Nasdaq Bond Exchange or for connectivity to the Bond Exchange's disaster recovery system.[45]

Reports and Recordkeeping

Users of the Nasdaq Bond Exchange would have to comply with all relevant rules of the Exchange and the Commission in relation to reports and recordkeeping of transactions on the Nasdaq Bond Exchange, including Rules 17a-3 and 17a-4 under the Act.[46]

Regulation

The Exchange will leverage its existing infrastructure to operate a national securities exchange in compliance with Section 6 of the Exchange Act, and Section

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44 The Exchange notes that Users that already purchase FIX port connectivity to the Nasdaq Stock Exchange will need to obtain one or more additional FIX ports to connect to the Nasdaq Bond Exchange.

45 Separately from port connectivity, the Exchange notes that Users will need to establish physical connections to the Nasdaq Bond Exchange, as set forth in General 8 of the Nasdaq Rules. To the extent that a User already purchases physical connectivity to the Nasdaq Stock Exchange, that purchase will also provide for the User to connect to the Nasdaq Bond Exchange, such that the User will incur no additional fee for the new connection. New Users that do not already purchase physical connectivity to Nasdaq will need to do so, pursuant to General 8 of the Nasdaq Rules.

46 17 CFR 240.17a-3 and 240.17a-4.

6(b)(7) in particular,[47] to regulate its non-convertible bonds trading business and to enforce compliance with its Rules. Nasdaq's existing disciplinary rules and processes, set forth in its Rule 8000 and 9000 Series, will govern the discipline of Members that participate in corporate bond trading, just as it does for equities regulation, and Nasdaq will perform bond listing regulation as well as real-time surveillance of bond trading as it does today for equities.

In particular, MarketWatch will perform real-time surveillance of the Nasdaq Bond Exchange for the purpose of maintaining a fair and orderly market at all times. As it does with Nasdaq's equities trading, MarketWatch will monitor trading on the Nasdaq Bond Exchange market on a real-time basis to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation. In addition, Nasdaq Regulation will oversee the process for determining and implementing trade halts and identifying and responding to unusual market conditions.

System Information

The Nasdaq Bond Exchange will operate out of the same data center in Carteret, New Jersey as does the Nasdaq Stock Market and other exchanges owned by Nasdaq, Inc., but it will use equipment that is separate from the equipment used by those exchanges. In addition, the Nasdaq Bond Exchange will have a backup data center that will be geographically diverse from the Carteret data center and that will be designed to resume operations of the Nasdaq Bond Exchange, in the event of a system failure, in accordance with the requirements of Regulation Systems Compliance and Integrity.[48]

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[47] 15 U.S.C. 78f(b)(7).

[48] See 17 CFR 242.1001, .1004.

The Nasdaq Bond Exchange will use Nasdaq's flexible INET technology, which is easily scalable to higher volumes through the addition of more equipment in the data center. The Nasdaq Bond Exchange will be protected from unauthorized access through the same robust firewall protection already in use at Nasdaq, Inc.'s data centers.

Applicability of Section 11(a) and (b) of the Act

Section 11(a) of the Act[49] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion, unless an exception applies. This general prohibition would not impact trading on the Nasdaq Bond Exchange because Rule 11a1-4(T) under the Act[50] deems transactions in bonds on a national securities exchange for a member's own account to be consistent with Section 11(a). Similarly, Section 11(b) of the Act[51] and Rule 11b-1 thereunder,[52] which pertain to specialists and market-makers, would not be implicated because there will be no specialists or market makers on the Nasdaq Bond Exchange.

2. Statutory Basis

Nasdaq believes that its proposal is consistent with Section 6(b) of the Act[53] in general, and furthers the objectives of Sections 6(b)(4), (b)(5), and (b)(7) of the Act,[54] in

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49 15 U.S.C. 78k(a).

50 17 CFR 240.11a1-4(T).

51 15 U.S.C. 78k(b).

52 17 CFR 240.11b-1.

53 15 U.S.C. 78f(b).

particular. As discussed below, Nasdaq believes the proposal is consistent with Section 6(b)(4) of the Act[55] in that it provides for the equitable allocation of reasonable dues, fees, and other charges, and that it is consistent with Section 6(b)(5) of the Act[56] 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 are not designed to permit unfair discrimination. Finally, the Exchange believes that the proposal is consistent with Section 6(b)(7) of the Act[57] in that it provides a fair procedure of discipline for those listing and trading non-convertible bonds on Nasdaq.

Listing Rules

The Exchange believes that its proposal to list non-convertible bonds will improve the quality of the public market for bonds by improving the transparency and the orderliness of the market. As discussed above, an issuer that lists bonds pursuant to this proposal will be required to disclose any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions, except in unusual circumstances.[58] Through this requirement, Nasdaq will be able to evaluate such

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54 15 U.S.C. 78f(b)(4), (5), and (7).

55 15 U.S.C. 78f(b)(4).

56 15 U.S.C. 78f(b)(5).

57 15 U.S.C. 78f(b) (7).

58 As noted above, Nasdaq proposes to amend Rule 5250(e)(3) to require an issuer to provide at least 10 calendar days advance notice to Nasdaq of certain corporate actions relating to non-convertible bonds listed on the Nasdaq Bond Exchange, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol), by filing the appropriate form as designated by Nasdaq. This proposal is consistent with the

disclosure to determine if, among other things, a Bond Halt should be declared for that security.[59] This proposal, in connection with Nasdaq's proposal to trade such bonds, would also increase the amount of bond-specific information that would disclosed by issuers in fulfillment of the requirements of Section 12 of the Act.

Nasdaq also believes that its proposed listing standards are consistent with the Act. Nasdaq notes that its proposed initial listing standards, set forth in Rule 5702(a) – which require a minimum principal amount outstanding of the non-convertible bond or a market value of at least $5 million and the issuer of the non-convertible bond also having a class of equity listed on Nasdaq, NYSE, or NYSE American – are similar to the initial listing requirements for bonds listed on NYSE and NYSE American. Similarly, the continued listing requirement under Rule 5702(b)(1) that a non-convertible bond maintain a market value or principal amount of bonds outstanding of at least $400,000 is similar to the listing requirement for bonds imposed by NYSE American. Nasdaq notes that, pursuant to Rule 5702(b)(2), an issuer would also be required to meet its obligations on the listed non-convertible bonds, and that Nasdaq would initiate proceedings immediately under Rule 5810 (Notification of Deficiency by the Listing Qualifications Department) if the issuer were unable to meet its obligations on its non-convertible bonds. Nasdaq believes that it is consistent with the Act to immediately institute immediate de-listing proceedings

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Act because it aid the Listings Qualification Department in assessing an issuer's compliance with the continuing listing standards set forth in proposed Rule 5702.

59 Nasdaq is limiting this proposal to an issuer that is currently listing one class of an equity security on either Nasdaq, NYSE, or NYSE American. While the issuer may be required to make similar disclosures in connection with its listed equity security, Nasdaq may not receive such disclosures if the listing venue for that equity security is NYSE or NYSE American. As such, this proposal provides the Exchange with additional information related to listed companies that it may otherwise not possess.

in this instance, rather than to first afford the issuer a time period during which it may regain compliance (i.e., the 180 calendar day period it proposes to provide when a bond fails to meet the quantitative requirements under Rule 5702(b)(1)) because a violation of a covenant, a default on interest payments, or another failure of an issuer to meet its obligations under a bond indenture, constitutes a breach of an issuer's legal obligations to bondholders, and signals that a bond is not appropriate for continued listing on the Exchange.

Nasdaq also believes that the change to the definition of a "substitution listing event" to include a change in the obligor of a listed non-convertible bond is consistent with the Act. Nasdaq is proposing to make this change to both convertible and non-convertible bonds, as both types of securities could potentially be subject to a change in the obligor of that bond, which Nasdaq believes should qualify as a substitution listing event.

Likewise, it is consistent with the Act to amend Rule 5515(b)(4) to change existing references from the American Stock Exchange to NYSE American to ensure that our Rules regarding convertible debt are current and accurate with respect to the names of the exchanges they reference.

Nasdaq believes that the proposed rule change is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. The proposed $5,000 application fee and $5,000 annual fee will be equally applicable to any issuer seeking to list non-convertible bonds on Nasdaq, other than for those issuers that propose to switch their listings from NYSE or NYSE American to Nasdaq. Nasdaq's proposal to waive the application fee and the first year's annual fee for issuers that switch their listings to Nasdaq from NYSE or NYSE American is reasonable and equitable because such fees will otherwise serve as disincentives for issuers to switch their listings, particularly if they have already paid their annual fees to NYSE or NYSE American for the year in which a switch would otherwise occur. [60] The waiver of the application fee is also equitable because it is Nasdaq's experience 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. The application and annual fees are also reasonable and equitable because they will support Nasdaq's regulatory program to review and qualify debt issuances for listing.

The proposed application and annual fees are competitive with the initial and annual fees that are currently assessed by NYSE and NYSE American for the listing of bonds.[61]

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[60] Nasdaq notes that it presently waives entry fees for listing equity securities that transfer to Nasdaq from another national security exchange. See Rule 5910(a)(7)(i) (Nasdaq Global and Global Select Markets); Rule 5920(a)(7)(i) (Nasdaq Capital Market); Rule 5940(a)(5)(i)(Exchange Traded Products). It also waives a portion of the annual fee for securities whose listings transfer from a national securities exchange to Nasdaq on an exclusive basis. See IM-5900-4. Nasdaq's rationale for employing waivers in those instances is similar to that which Nasdaq asserts for its corporate bond listing programs. See, e.g., Securities Exchange Act Release No. 34-70418 (Sept. 16, 2013), 78 FR 57909 (Sept. 20, 2013) (SR-NASDAQ-2013-115).

[61] NYSE American charges an initial listing fee for bonds of $100 per $1 million principal amount (or fraction thereof) with a minimum fee of $5,000 and a maximum fee of $10,000. NYSE American also charges an annual fee of $5,000 for listed bonds and debentures of companies whose equity securities are not listed on NYSE American. See NYSE American Listed Company Guide Sections 140 and 141. Meanwhile, NYSE charges an initial listing fee of $25,000 and an annual fee of $25,000 for listed debt of NYSE equity issuers and an initial listing fee of $45,000 and an annual listing fee of $45,000 for listed debt of non-NYSE equity issuers. See Section 902.08 of the NYSE Listed Company Manual.

Nasdaq also notes that the proposed $5,000 initial listing fee is the same as the application fee it charges for convertible bonds. However, Nasdaq will not charge an entry fee (as it does for convertible bonds under the proposed amendment to Rule 5920(a)(2)) because Nasdaq believes that the proposed application fee will allow the Exchange to adequately recoup its expenses incurred in processing an issuer's application to list those bonds. Nasdaq proposes a flat $5,000 annual fee for non-convertible bonds in lieu of the variable annual fee that Nasdaq charges to issuers of convertible bonds ($500 or $25 per million dollars face amount of debentures outstanding, whichever is greater, pursuant to Rule 5920(c)(B)(2)) because the Exchange believes that issuers will prefer the simplicity and predictability of a flat fee. Moreover, the Exchange expects to list large issuances of non-convertible bonds, in which cases the annual fees for such bonds will be comparable to, if not lower than, the annual fees that Nasdaq charges for convertible bonds.

These proposed listing fees for non-convertible bonds are lower than Nasdaq's initial and annual fees for equity securities, which range from $50,000 - $75,000 for initial listing of equity securities, and from $32,000 - $45,000 for annual listing of equity securities.[62] Nasdaq competes for the listing of securities, including bonds, with NYSE and NYSE American, and the differential between its proposed listing fees for non-convertible bonds and its current listing fees for equity securities is similar to the differential for listing debt and equity securities on NYSE American.[63]

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62 See Rule 5920(a)-(c).

63 See, e.g. NYSE American Listed Company Guide Sections 140 and 141 (NYSE American charges an initial listing fee for common stock that ranges from $50,000 - $75,000 and an annual fee of between $40,000 and $50,000).

Nasdaq also believes that the proposed listing rules are consistent with Section 6(b)(5) of the Act[64] in that they serve the interests of the public and investors by facilitating competition in the market for listing corporate non-convertible bonds. The proposed listing rules also are similar to those of NYSE and NYSE American, which the Commission has recognized as being equitable and adequately protective of the public interest. Furthermore, the Exchange believes that the proposed listing fees are equitable for the reasons set forth above. Meanwhile, the proposed waivers of application and first year annual fees for listings of non-convertible bonds that switch to Nasdaq from NYSE or NYSE American are not unfairly discriminatory because, in absence of such waivers, issuers that have already paid such fees to list their bonds on another exchange would have a significant disincentive to switch their listing to Nasdaq as they would be required to pay twice for similar listing services. The proposed waiver of the application fee for bonds that switch to Nasdaq from another exchange is fair because it reflects the fact that less work is required by Nasdaq to process such applications than is required to process applications for newly-listed securities. Finally, as is discussed above, Nasdaq already employs similar fee waivers for listings of equity securities and exchange traded products.[65]

Finally, Nasdaq notes that it will apply the surveillance and enforcement infrastructure that it utilizes for listings on its other markets to ensure that issuers comply with initial and continuing listing requirements for non-convertible corporate bonds and

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64 15 U.S.C. 78f(b)(5).

65 See n.60, supra.

that the Exchange will take fair and appropriate action under the Nasdaq Rule 5800 Series to address violations of those listing Rules.

Trading Rules

Nasdaq's proposal to establish the Nasdaq Bond Exchange system to trade non-convertible corporate bonds listed on Nasdaq is also consistent with the Act. Nasdaq has designed the Nasdaq Bond Exchange to operate in accordance with the Act, the applicable rules of the Commission and of the Exchange, and the high standards that Nasdaq believes to be in evidence at all of Nasdaq, Inc.'s exchanges. The proposal will offer Users opportunities to trade non-convertible bonds through a fair, open, and well-regulated market. The proposal will promote the interests of the public and investors by providing for the entry into the marketplace of a new exchange venue for trading non-convertible corporate bonds. Such bonds presently are tradeable, other than on an over-the-counter basis, only on NYSE and NYSE American. The Nasdaq Bond Exchange will introduce competition into this space, and that competition will spur innovation, which in turn will benefit issuers, traders, and investors alike.

The Nasdaq Bond Exchange is also designed to be a free, open, and fair marketplace. All Nasdaq Members will be eligible to become Users simply by electing to receive access. Moreover, Nasdaq proposes simple and straightforward rules to govern the operation of the Bond Exchange, including a familiar price-time allocation methodology, two basic order types, a single Bond Trading Session with no after-hours trading, and market data feed that will be disseminated, for free, to any member of the public that requests it and agrees to the Exchange's terms and conditions of use. At the same time, the proposal will also include provisions that are endemic to orderly and well-regulated markets, including authority to impose trading halts and suspensions, in appropriate circumstances, and to unwind clearly erroneous trades pursuant to established procedures under Nasdaq Rule 11890 and bond-specific criteria adapted from NYSE Rule 86.

Nasdaq will also leverage the conduct rules, surveillance technology, and enforcement infrastructure that it utilizes with respect to its other markets to ensure that the Nasdaq Bond Exchange operates in a fair and orderly fashion and that Nasdaq prevents, detects, and addresses fraudulent and manipulative acts and practices. For example, Nasdaq's MarketWatch Department will surveil the market and employ its SMARTS technology to detect suspicious or non-compliant behavior. Nasdaq's existing disciplinary rules, as set forth in the Nasdaq Rule 8000 and 9000 Series, will apply to Users of the Nasdaq Bond Exchange, and Nasdaq's Regulation Department will, pursuant to these disciplinary rules, investigate and take fair and appropriate enforcement action to address violations of rules relevant to trading on the Nasdaq Bond Exchange or the conduct of Users.

Moreover, the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. Nasdaq will charge no fees to trade non-convertible bonds on the Nasdaq Bond Exchange, to obtain the FIX ports that are necessary to connect to the Nasdaq Bond Market, or to receive the Nasdaq Corporates Totalview data feed product. Additionally, to the extent that a User already purchases physical connectivity to Nasdaq pursuant to General 8, Sections 1 and 2 of the Nasdaq Rules, such a User could utilize its existing connectivity to connect to the Bond Exchange without any incurring additional fees to do so.

Finally, Nasdaq notes that it has designed the Nasdaq Bond Exchange system to facilitate transactions in corporate bonds in a manner that is similar to, and competitive with, the existing NYSE Bonds trading system. The Commission has already deemed the design of NYSE Bonds to be consistent with the Act.[66] Indeed, much of the language in proposed Rule 4000B, which will govern the Nasdaq Bond Exchange, is adapted from NYSE Rule 86, which governs NYSE Bonds. That is, like NYSE Bonds, the Nasdaq Bond Exchange will be an electronic system for receiving, processing, executing, and reporting bids, offers and executions in bonds. Like NYSE Bonds, the Nasdaq Bond Exchange will display, match and execute buy and sell orders on a price/time basis. The Exchange, like NYSE, will also accept good-for-day limit orders and kill-or-fill orders, and it will trade bonds of issuers that have at least one class of equity securities listed on Nasdaq, NYSE, or NYSE American.[67]

To the extent that the Nasdaq Bond Exchange will differ from NYSE Bonds, these differences will render the Nasdaq Bond Exchange simpler than NYSE Bonds. At its inception, the Nasdaq Bond Exchange will not have – as does NYSE Bonds – market makers, sponsored access, auctions, price collars, or certain order types (e.g., reserve orders, minimum quantity orders, good-til-cancelled orders, and timed orders). The Nasdaq Bond Exchange also will have only one trading session each day as opposed to NYSE Bonds, which has three sessions. Although the Nasdaq Bond Exchange will

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66 See Securities Exchange Act Release No. 34–55496 (Mar. 20, 2007), 72 FR 14631 (Mar. 28, 2007).

67 See n.11, supra.

initially lack these features of NYSE Bonds, Nasdaq believes that the platform nevertheless will have the features it needs to compete effectively with NYSE Bonds. The Exchange observes that Users of NYSE Bonds do not appear to avail themselves of many of its features and functionalities, such that the Exchange does not believe that the Nasdaq Bond Exchange needs these features and functionalities to compete with NYSE Bonds. In any event, the Exchange is committed to adding new features to the Nasdaq Bond Exchange in the future to the extent that Nasdaq determines that a demand exists for those features and that adding them will help the Nasdaq Bond Exchange compete successfully in the marketplace.

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. Rather, the proposed rule change will promote competition among exchanges by allowing Nasdaq to list and trade non-convertible bonds, which can currently be listed only on NYSE and NYSE American. The proposals will have the pro-competitive effect of spurring further initiative and innovation among market centers and market participants.

Nasdaq notes that its proposed listing standards are consistent with the standards for initial and continued listing of bonds on NYSE and NYSE American. If issuers are unsatisfied with Nasdaq's listing program or the fees charged for that program, these issuers can choose to list on these other markets.

Likewise, the Exchange notes that its proposed system for trading non-convertible bonds listed on Nasdaq – the Nasdaq Bond Exchange – will be competitive with NYSE Bonds. Although initially, the Nasdaq Bond Exchange will have more limited functionality than does NYSE Bonds, including with respect to order types, auctions, the number of trading sessions, and the use of market makers, the Exchange believes that the Nasdaq Bond Exchange will be competitive with NYSE Bonds because the Exchange has incorporated into the Nasdaq Bond Exchange those features of NYSE Bonds that its Users actually want and need when trading bonds and it excluded those they do not actually utilize. That said, the Exchange will add additional functionality and features to the Nasdaq Bond Exchange as demand warrants it to do so and to the extent that the Exchange deems it necessary to remain competitive with NYSE Bonds.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2018-070 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2018-070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2018-070 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Eduardo A. Aleman
Assistant Secretary

[68] 17 CFR 200.30-3(a)(12).

EXHIBIT 3

Nasdaq

Nasdaq Bond Exchange

Approved Nasdaq Stock Market ("Nasdaq") members who have a fully executed Nasdaq U.S. Services Agreement on file with Nasdaq are eligible for access to the Nasdaq Bond Exchange. Members seeking access to this Exchange should fill out this form and submit it to Nasdaq Membership by email at the following address: membership@nasdaq.com.

Member Organization	
Member Name	CRD Number
Primary Contact	
Name	
Email Address	
Phone	

Authorized Officer Signature	
The undersigned understands and agrees that access to the Nasdaq Bond Exchange is contingent upon its continued membership on Nasdaq and with compliance with the rules of the Nasdaq Stock Market and the Nasdaq Bond Exchange. Without limiting the foregoing, the undersigned understands and agrees that its access to and use of the Nasdaq Bond Exchange is non-assignable or transferrable and that such access and use will be subject to the jurisdiction of Nasdaq.	
Authorized Officer Signature	Date
Email Address	Phone

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market Rules

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Marketplace Rules (4000-7000)

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4000B. Trading of Non-Convertible Bonds Listed on Nasdaq

(a) Unless otherwise specified, all orders in non-convertible bonds shall be received, processed, executed and reported by means of the Exchange's electronic system designated for such purpose. The Exchange system designated for this purpose shall be the "Nasdaq Bond Exchange."

(b) Applicability and Definitions.

(1) Applicability. The provisions in this Rule shall apply to (i) all transactions effected through the Nasdaq Bond Exchange; (ii) all bids and offers made through the Nasdaq Bond Exchange; (iii) the handling of orders and the conduct of accounts and other matters relating to bidding, offering and trading through the Nasdaq Bond Exchange; and (iv) any security that is traded on the Nasdaq Bond Exchange, which security, for purposes of this rule, shall be referred to as a "non-convertible bond."

(2) Definitions. As used in this rule and other rules in their application to the Nasdaq Bond Exchange, the following terms shall have the meanings specified below:

(A) The “Nasdaq Bond Exchange" shall refer to the Exchange's electronic system for receiving, processing, executing and reporting bids, offers and executions in non-convertible bonds.

(B) The Nasdaq Bond Exchange Order Types. The following types of orders may be entered on the Nasdaq Bond Exchange.

(i) A “Nasdaq Bond Exchange Good for Day Limit Order" is an order to buy or sell a stated quantity of units of non-convertible bonds at a specified price or at a better price which, if not executed or cancelled, will expire at the end of the Bond Trading Session on the day on which it was entered.

(ii) A “Nasdaq Bond Exchange Fill-or-Kill All-Or-None Order” (the “Nasdaq Bond Exchange FOK-AON Order") is a Nasdaq Bond Exchange market order that is to be executed immediately in its entirety against one or more contra parties at the best price available, or if it is not executed immediately in its entirety, it is cancelled.

(C) "Clearly Erroneous Execution" refers to an execution involving an obvious error in any term of an order participating in such execution, such as price, unit of trading, or identification of the non-convertible bond.

(D) "User" means any Member of Nasdaq that has elected to receive access to the Nasdaq Bond Exchange.

(E) "Bond Trading Session" is the time during which non-convertible bonds will be available for trading on the Nasdaq Bond Exchange each day the Exchange is open for business, unless otherwise determined by the Exchange.

(c) The minimum unit of trading in the Nasdaq Bond Exchange is one non-convertible bond unless the issuer otherwise specifies a larger minimum unit of trading in the indenture agreement.

(d) The Nasdaq Bond Exchange will accept bids and offers in non-convertible bonds priced to three decimal places.

(e) Securities to be Traded.

Only such non-convertible bonds as the Exchange may specify shall be traded on the Nasdaq Bond Exchange. Any security traded on the Nasdaq Bond Exchange must be listed on Nasdaq.

(f) Trading Session.

The Nasdaq Bond Exchange holds one Bond Trading Session, which commences at 8:30 a.m. E.T. and concludes at 4:00 p.m. E.T. Orders submitted outside of the Bond Trading Session will not be accepted.

(g) Display and Execution of Orders in Bond Trading Session.

(1) Buy and sell orders in the Nasdaq Bond Exchange shall be displayed, matched and executed in the Bond Trading Session in the following sequence:

(A) According to price, with the highest bid price and the lowest offer price receiving highest priority.

(B) Within each price, according to the time of the order entry in the Nasdaq Bond Exchange.

(C) Exception: Anti-Internalization - Users may direct that orders entered into the Nasdaq Bond Exchange not execute against orders entered under the same MPID.

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

(2) The terms of an order entered into the Nasdaq Bond Exchange may not be modified after entry. An order may be cancelled at any time provided the order has not been executed.

(3) Users shall be promptly notified of their orders' executions.

(h) Clearly Erroneous Executions. All matters related to clearly erroneous transactions executed on the Nasdaq Bond Exchange shall be initiated and adjudicated pursuant to Rule 11890.

(i) Halting or Suspending Trading on the Nasdaq Bond Exchange

(1) The Exchange may halt or suspend trading in non-convertible bonds listed on the Nasdaq Bond Exchange when:

(A) In the exercise of its regulatory function, the Exchange determines such action is necessary and appropriate to maintain a fair and orderly market, protect investors, or otherwise is in the public interest due to extraordinary circumstances or unusual market conditions; or

(B) A class of equity issued by the same issuer as the non-convertible bond has been halted or suspended by, or de-listed from, the Exchange or by or from its primary listing exchange (NYSE or NYSE American), or

(C) News reports have a material impact on the non-convertible bond, its issuer, or related stock of the issuer, or

(D) If the non-convertible bond is to be called for redemption or will mature or become subject to retirement, and thereafter will be subject to de-listing, then the Exchange shall cease trading the non-convertible bond, effective not less than 10 days before the date when such de-listing becomes effective, pursuant to a de-listing application that the Exchange submits to the Commission on Form 25 and consistent with Rule 12d2-2 and the Act.

(2) Bond Halts.

(A) In the event of a trading halt on the Nasdaq Bond Exchange (a "Bond Halt"), a halt message shall be disseminated by the Exchange to signal both the commencement and the end of the Bond Halt.

(B) Upon commencement of a Bond Halt, existing orders that are pending in the Nasdaq Bond Exchange shall be cancelled and new orders entered into the Nasdaq Bond Exchange during a Bond Halt will not be accepted.

(C) The Nasdaq Bond Exchange will begin accepting new orders and will resume trading upon the conclusion of a Bond Halt.

(j) Reports and Recordkeeping.

(1) The Nasdaq Bond Exchange Trading Reports and Records. Users of the Nasdaq Bond Exchange must comply with all relevant rules of the Exchange and the Securities and Exchange Commission in relation to reports and records of transactions on the Nasdaq Bond Exchange including, but not limited to, Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934.

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5005. Definitions

(a) The following is a list of definitions used throughout the Nasdaq Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1) – (40) No Change.

(41) "Substitution Listing Event" means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights. A Substitution Listing Event also includes the replacement of, or any significant modification to, the index, portfolio or Reference Asset underlying a security listed under the Rule 5700 Series (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider).

(42) No change.

* * * * *

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) – (d) No change.

(e) Nasdaq Notification Requirements

Various corporate events resulting in material changes will trigger the requirement for Companies to submit certain forms and applicable fees to Nasdaq as specified below.

All applicable forms can be found at *http://www.nasdaq.com/about/listing_information.stm#forms*.

(1) – (2) No change.

(3) Record Keeping Change

(A) The Company shall file on a form designated by Nasdaq notification of any change to its name, the par value or title of its security, its symbol, or a similar change, no later than 10 days after the change. The Company shall also pay the appropriate Record-Keeping Fee as referenced in the Rule 5900 Series.

(B) The Company shall also notify Nasdaq promptly in writing, absent any fees, of any change in the general character or nature of its business and any change in the address of its principal executive offices.

<u>(**C**) The Company shall provide at least ten (10) calendar days advance notice to Nasdaq of certain corporate actions relating to non-convertible bonds listed on the Nasdaq Bond Exchange, including redemptions (full or partial calls), tender offers, changes in par value, and changes in identifier (e.g., CUSIP number or symbol), by filing the appropriate form as designated by Nasdaq.</u>

(4) – (6) No change.

(f) No change.

IM-5250-1. No change.

IM-5250-2. No change.

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5515. Initial Listing Requirements for Rights, Warrants, and Convertible Debt
The following requirements apply to a Company listing convertible debt, rights or warrants on The Nasdaq Capital Market.

(a) No change.

(b) For initial listing, a convertible debt security must meet the requirements in (1) through (3), and one of the conditions in (4) must be satisfied:

(1) - **(4)** No change.

(A) the issuer of the debt must have an equity security that is listed on Nasdaq, [the American Stock Exchange]NYSE American or the New York Stock Exchange;

(B) an issuer whose equity security is listed on Nasdaq, [the American Stock Exchange]NYSE American or the New York Stock Exchange, directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security;

(C) - (D) No change.

(c) No change.

* * * * *

5702. Debt Securities (Other than Convertible Debt)

(a) For initial listing of a non-convertible bond, the following conditions must be satisfied:

(1) the principal amount outstanding or market value must be at least $5 million; and

(2) the issuer of the non-convertible bond must have one class of equity security that is listed on Nasdaq, NYSE American or the New York Stock Exchange (“NYSE”).

The Exchange anticipates that it will not be ready, prior to the Second Quarter of 2019, to list the non-convertible bonds of issuers whose equity securities are listed on NYSE American or NYSE. The Exchange will post a notification via a Trader Alert at least seven days prior to accepting applications from issuers to list such non-convertible bonds.

(b) A non-convertible bond must meet the following requirements for continued listing:

(1) the market value or principal amount of non-convertible bonds outstanding is at least $400,000; and

(2) the issuer must be able to meet its obligations on the listed non-convertible bonds.

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5800. Failure to Meet Listing Standards

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5810. Notification of Deficiency by the Listing Qualifications Department
When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company

of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) – (4) No change.

(a) – (b) No change.

IM-5810-1. Disclosure of Written Notice of Staff Determination
No change.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- a Company fails to timely solicit proxies;

- an Equity Investment Tracking Stock fails to comply with the additional continued listing requirements in Rule 5222(c) or a Staff Delisting Determination has been issued with respect to the security such Equity Investment Tracking Stock tracks;

- the common stock of the REIT in a Paired Share Unit listed under Rule 5226 becomes separately tradable from the common stock of the Parent; [or]

- <u>An issuer of non-convertible bonds listed on Nasdaq fails to meet its obligations on the securities, as set forth in Rule 5702(b)(2)</u>; or

- Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

No change.

(3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A) - ([E]F) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

(A) Bid Price

A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)([F]G).

(i) – (ii) No change.

(B) No change.

(C) Market Value of Listed Securities

A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)([F]G).

(D) Market Value of Publicly Held Shares

A failure to meet the continued listing requirement for Market Value of Publicly Held Shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 180 day compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)([F]G).

(E) No change.

(F) Market Value/Principal Amount Outstanding of Non-Convertible Bonds

A failure to meet the continued listing requirement for non-convertible bonds, as set forth in Rule 5702(b)(1) (requiring non-convertible bonds to have at least $400,000 in market value or principal amount outstanding) shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during this 180 calendar day compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(G).

([F]G) Staff Discretion Relating to the Price-based Requirements

If a Company fails to meet the Market Value of Listed Securities, Market Value of Publicly Held Shares, [or]Bid Price, or Market Value/Principal Amount Outstanding requirements, each of which is related to the Company's security price and collectively called the "Price-based Requirements," compliance is generally achieved by meeting the requirement for a minimum of ten consecutive business days. However, Staff may, in its discretion, require a Company to satisfy the applicable Price-based Requirement for a period in excess of ten consecutive business days, but generally no more than 20 consecutive business days, before determining that the Company has demonstrated an ability to maintain long-term compliance. In determining whether to require a Company to meet the applicable Price-based-requirement beyond ten business days, Staff may consider all relevant facts and circumstances, including without limitation:

(i) the margin of compliance (the amount by which a Company exceeds the applicable Price-based Requirement);

(ii) the trading volume (a lack of trading volume may indicate a lack of bona fide market interest in the security at the posted bid price);

(iii) the Market Maker montage (the number of Market Makers quoting at or above $1.00 or the minimum price necessary to satisfy another Price-based Requirement; and the size of their quotes); and

(iv) the trend of the [stock]security price (is it up or down).

(4) Public Reprimand Letter

No change.

(d) Additional Deficiencies

No change.

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5920. The Nasdaq Capital Market

(a) Entry Fee

(1) No change.

(2) A Company that submits an application to list any class of convertible debentures on the Nasdaq Capital Market[,] shall pay to Nasdaq a non-refundable application fee of $5,000 and [a]an entry fee of $1,000 or $50 per million dollars face amount of convertible debentures outstanding, whichever is higher.

(3) – (11) No change.

(b) – (e) No change.

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5935. Non-Convertible Bonds

(a) Application Fee

A Company that submits an application to list a class of non-convertible bonds pursuant to Rule 5702 shall pay to Nasdaq a non-refundable application fee of $5,000, except that the application fee shall be waived if, in connection with the application, the Company will be switching the listing market for its non-convertible bonds from the New York Stock Exchange or NYSE American to Nasdaq.

(b) Annual Fee

The issuer of each class of non-convertible bonds listed pursuant to Rule 5702 shall pay to Nasdaq an annual fee of $5,000, except that a Company that switches its listing market for its non-convertible bonds from the New York Stock Exchange or NYSE American to Nasdaq shall not be liable for an annual fee until January 1 of the calendar year following the effective date of the non-convertible bonds listing on Nasdaq.

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7015. Ports and other Services †

The charges under this rule are assessed by Nasdaq for connectivity to services and the following systems operated by Nasdaq or FINRA: the Nasdaq Market Center, FINRA Trade Reporting and Compliance Engine (TRACE), the FINRA/Nasdaq Trade Reporting Facility, FINRA's OTCBB Service, and the FINRA OTC Reporting Facility (ORF). The following fees are not applicable to The Nasdaq Options Market LLC. For related options fees for Ports and other Services refer to Chapter XV, Section 3 of the Options Rules.

(a) No change.

(b) Financial Information Exchange (FIX)

Ports	**Price**
FIX Trading Port (FIX, FIX Lite (FLITE), BRUT FIX, and SUMO FIX)	$575/port/month
FIX Trading Port for Nasdaq Bond Exchange	No charge
FIX Port for Services Other than Trading (FINRA/Nasdaq Trade Reporting Facilities Carteret and Chicago, ORF, and TRACE)	$500/port/month*
Disaster recovery port	
(1) FIX Trading Port	$25/port/month
(2) FIX Port for Services Other than Trading	No charge
(3) FIX Trading Port (Nasdaq Bond Exchange)	No charge

(c) – (j) No change.

†Fees are assessed in full month increments under this section, and thus are not prorated.

*This fee that is otherwise applicable to the FINRA/Nasdaq Trade Reporting Facility Chicago shall be waived until November 1, 2018.

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7050. [Reserved]The Nasdaq Corporates Totalview Data Feed

(a) The Nasdaq Corporates Totalview Data Feed is a proprietary data feed containing real-time best bid and offer information as well as last sale information, including sale price and trade size, for trades of non-convertible bonds listed on Nasdaq that are executed in the Nasdaq Bond Exchange. The data feed will be available free of charge.

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11890. Clearly Erroneous Transactions

The provisions of paragraphs (a)(2)(C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, and the provisions of paragraphs (g) through (i), shall be in effect during a pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. If the Plan is not either extended or approved as permanent, the prior versions of paragraphs (a)(2)(C), (c)(1), and (b) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.

(a) Authority to Review Transactions Pursuant to Complaint of Market Participant

(1) Definition.

For purposes of this rule, the terms of a transaction executed on Nasdaq are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by Nasdaq to be clearly erroneous will be removed from the consolidated tape. Executions as a result of a Halt Auction under Rule 4120(c)(10) are not eligible for a request for review as clearly erroneous under this Rule.

(2) Requests and Timing of Review.

A member that receives an execution on an order that was submitted erroneously to Nasdaq for its own or customer account may request that Nasdaq review the transaction under this rule. An official of Nasdaq shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Such requests for review shall be made in writing via electronic complaint or other means specified from time to time by Nasdaq as announced in a Notice to Members or Head Trader Alert. A request for review shall include information concerning the time of the transaction(s), security symbol(s), number of shares or other unit of trading, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. Upon receipt of a timely filed request that satisfies the [Numerical G]guidelines set forth in paragraph (a)(2)(C) the counterparty to the trade shall be notified by Nasdaq as soon as practicable, but generally within 30 minutes. A Nasdaq official may request additional supporting written information to aid in the resolution of the matter. If requested, each party to the transaction shall provide, within 30 minutes of the request, any supporting written information. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(A) Filing Time Periods

No change.

(B) Once a party has applied to Nasdaq for review and the transaction has been determined to be eligible for review, the transaction shall be reviewed and a determination rendered, unless (i) both parties (or the party in the case of a cross order entered into one of Nasdaq's crossing networks) to the transaction agree to withdraw the application for review prior to the time a decision is rendered by the Nasdaq official, or (ii) the complainant withdraws its application for review prior to the notification of counterparties. In the event that the Nasdaq official determines that the transaction in dispute is clearly erroneous, the official shall declare the transaction null and void. A determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of Regular Trading Hours (9:30:00 to 4:00:00) or, for the

Nasdaq Bond Exchange, later than the start of the Bond Trading Session (8:30:00 to 4:00:00, on the following trading day. The parties shall be promptly notified of the determination.

(C) Determinations of a clearly erroneous execution will be made as follows:

(1) - (3) No change.

(4) *Erroneous Trades on the Nasdaq Bond Exchange*. In lieu of paragraphs (C)(1)-(C)(3) above, when determining whether a trade in non-convertible bonds listed on the Nasdaq Bond Exchange is clearly erroneous, a Nasdaq official may consider any and all relevant factors of an execution on a case by case basis including, but not limited to, the following: (i) execution price; (ii) volume and volatility of a non-convertible bond; (iii) news released for the issuer or the non-convertible bond and/or the related equity security; (iv) trading halts; (v) corporate actions; (vi) general market conditions; (vii) the rating of the non-convertible bond; (viii) interest and/or coupon rate; (ix) maturity date; (x) yield curves; (xi) prior print, if available within a reasonable time frame; (xii) executions inconsistent with the trading pattern of a non-convertible bond; (xiii) current day's trading high/low; (xiv) recent day's and week's trading high/low; (xv) executions outside the 52 week high/low; (xvi) effect of a single large order creating several prints at various prices; and (xvii) quotes and executions of other market centers.

(b) Procedures for Reviewing Transactions on Nasdaq's Own Motion

(i) *System Disruption or Malfunctions.* In the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of Nasdaq in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the President of Nasdaq or any designated officer or senior level employee ("Senior Official") of Nasdaq, on his or her own motion, may review such transactions and declare such transactions arising out of the operation of such facilities during such period null and void. In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(1)-([3]4) of this Rule, but in extraordinary circumstances may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the Senior Official pursuant to this paragraph (i) shall be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. Each Member involved in the transaction shall be notified as soon as practicable by Nasdaq, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

(ii) *Senior Official Acting on Own Motion.* A Senior Official, acting on his or her own motion, may review potentially erroneous executions and declare trades null and void or shall decline to take any action in connection with the completed trade(s). In such events, the Senior Official will rely on the provisions of paragraph (a)(2)(C)(1)-([3]4) of this Rule. Absent extraordinary circumstances, any such action of the Senior Official shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. When such action is taken independently, each party involved in the transaction shall be notified as soon as practicable by Nasdaq, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c)(1) below.

(c) Review by the Nasdaq Review Council

(1) A member or person associated with any such member may appeal a determination made under paragraph (a) to the Nasdaq Review Council. A member or person associated with a member may appeal a determination made under paragraph (b) to the Nasdaq Review Council unless the Senior Official making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest, and further provided that with respect to rulings made by Nasdaq in conjunction with one or more additional market centers, the number of affected transactions is similarly such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest and, hence, are also non-appealable. An appeal must be made in writing, and must be received by Nasdaq within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the Nasdaq Review Council. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Nasdaq Review Council shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades to which the person making the appeal is a party.

Once a party has appealed a determination to the Nasdaq Review Council, the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Nasdaq Review Council, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties. The Nasdaq Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received between 3:00 ET and the close of trading in the Late Trading Session or the Bond Trading Session, as applicable, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review. Upon consideration of the record, and after such hearings as it may in its discretion order, the Nasdaq Review Council, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

(2) – (3) No change.

(d) – (h) No change.

(i) Trading Halts. In the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction in a security that occurs after the primary listing market for such security declares a regulatory trading halt, suspension or pause with respect to such security and before such regulatory trading halt, suspension or pause with respect to such security has officially ended according to the primary listing market. In addition, in the event a regulatory trading halt, suspension or pause is declared, then prematurely lifted in error and is then re-instituted, an Officer of the Exchange or senior level employee designee shall nullify transactions that occur before the official, final end of the halt, suspension or pause according to the primary listing market. Any action taken in connection with this paragraph shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of the Regular Market Session <u>(or the Bond Trading Session, as applicable)</u> on the trading day following the date of execution(s) under review. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each Member involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above.

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