| OMB APPROVAL |
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| OMB Number: 3235-0045<br>Estimated average burden<br>hours per response............38 |

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * 27

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

File No.* SR - 2020 - * 008

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 *).

A proposal to amend Rule 5702 to allow the listing of non-convertible bonds issued by certain companies not listed on Nasdaq, NYSE American or NYSE and to remove language that is no longer applicable

**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 * Arnold Last Name * Golub

Title * Deputy General Counsel

E-mail * arnold.golub@nasdaq.com

Telephone * (301) 978-8075 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.

(Title *)

Date 02/14/2020

EVP & Chief Legal Counsel

By John Zecca

(Name *)

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.

john.zecca@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 *** <br> 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 *** <br> 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 *** <br> 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** <br> Add Remove View <br> 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** <br> Add Remove View <br> 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** <br> 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** <br> 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** <br> 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 ("Nasdaq" or "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 ("SEC" or "Commission") a proposal to amend Rule 5702 to allow the listing of non-convertible bonds issued by certain companies not listed on Nasdaq, NYSE American or NYSE and to remove language that is no longer applicable.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).[3]

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 set forth below. Proposed new language is underlined; deleted text is in brackets.

* * * * *

**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) <u>the security must be characterized by one of the following conditions:</u>

<u>(A)</u> 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")[.]<u>;</u>

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

2 17 CFR 240.19b-4.

3 17 CFR 240.19b-4(f)(6)(iii).

(B) an issuer of equity securities listed on Nasdaq, NYSE American or NYSE directly or indirectly owns a majority interest in, or is under common control with, the issuer of the non-convertible bond;

(C) an issuer of equity securities listed on Nasdaq, NYSE American or NYSE has guaranteed the non-convertible bond;

(D) a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the non-convertible bond that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or

(E) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned:

(i) an investment grade rating to an immediately senior issue; or

(ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

[*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) – (c) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the "Board") on September 25, 2019. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Arnold Golub
Deputy General Counsel
Nasdaq, Inc.
(301) 978-8075

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

a. Purpose

In November 2018, the Commission approved amendments to the Exchange's rules that permit the Exchange to list and trade non-convertible corporate debt securities (referred to herein as "bonds" or "non-convertible bonds") on the Nasdaq Bond Exchange.[4] Under the Exchange's listing rules, a non-convertible bond is eligible for initial listing on the Exchange only if it has a principal amount outstanding or market value of at least $5 million and its issuer concurrently lists at least one class of an equity security on Nasdaq, the New York Stock Exchange ("NYSE"), or NYSE American.[5] In order to remain listed, a non-convertible bond must maintain a market value or principal amount outstanding of at least $400,000 and the issuer must continue to be able to meet its obligations on the listed non-convertible bonds.[6] A company that has non-convertible bonds listed on the Nasdaq Bond Exchange also must make prompt public disclosure of

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4 See Securities Exchange Act Release No. 84575 (November 13, 2018), 83 FR 58309 (November 19, 2018) (approving SR-NASDAQ-2018-070, as modified by Amendment Nos. 1-3) ("Approval Order").

5 Rule 5702(a).

6 Rule 5702(b).

material information that would reasonably be expected to affect the value of its listed bonds or influence investors' decisions regarding such bonds.[7]

While Rule 5702(a)(2) allows Nasdaq to list the non-convertible bonds of an issuer that concurrently lists at least one class of an equity security on Nasdaq, NYSE or NYSE American, the Exchange noted in its proposal for the Nasdaq Bond Exchange that upon the effective date of its proposal the Exchange would be capable of listing and trading non-convertible bonds only of issuers that list equity securities on Nasdaq.[8] The Exchange stated that it expected to be ready to list and trade bonds of issuers with equity securities listed on NYSE or NYSE American by the second quarter of 2019.[9]

On May 13, 2019, Nasdaq announced that it was prepared to list and trade bonds of issuers with equity securities listed on NYSE or NYSE American[10] and Nasdaq began accepting applications to list those bonds on May 20, 2019. Given that issuers whose equity securities are listed on NYSE American and NYSE can now list non-convertible bonds on the Nasdaq Bond Exchange, Nasdaq proposes to remove language in the rule describing how it intended to announce the launch of that capability.

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7 Rule 5702(c). Companies must provide notice of such disclosure to Nasdaq's MarketWatch Department. This obligation to disclose material information includes material information about the company's equity securities to the extent the information would reasonably be expected to affect the value of, or influence investors' decisions to invest in, the listed bonds, even if those equity securities are listed on another national securities exchange.

8 See Approval Order at footnote 11

9 See id.

10 See Nasdaq Data News #2019-3, available at http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2019-3.

In addition, Nasdaq also proposes to modify Rule 5702(a) to expand the types of non-convertible bonds eligible to be listed on the Nasdaq Bond Exchange. At present, only an issuer with a class of equity security that is listed on Nasdaq, NYSE American or NYSE (collectively referred to herein as a "listed company") can list non-convertible bonds on the Nasdaq Bond Exchange. Nasdaq proposes to expand the categories of debt that can be listed to also allow listing of non-convertible bonds of affiliates of a listed company where: a listed company directly or indirectly owns a majority interest in, or is under common control with, the issuer of the non-convertible bond; or a listed company has guaranteed the non-convertible bond. In addition, for un-affiliated companies, Nasdaq proposes to allow listing of non-convertible bonds where a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the non-convertible bond that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue of the same company, or (ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue of the same company.

Nasdaq believes that non-convertible bonds satisfying these conditions, which are the same as the requirements for listing debt on NYSE American[11] and convertible debt

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11 See Section 104 of the NYSE American Company Guide. In addition, NYSE has similar listing conditions, although the NYSE rule does not permit listing of debt securities where the issuer has equity securities listed on Nasdaq or NYSE American, is directly or indirectly owned by, or is under common control with, an issuer listed on Nasdaq or NYSE American, or where an issuer listed on Nasdaq or NYSE American has guaranteed the debt security. See Section 102.03 of the NYSE Listed Company Manual.

securities on Nasdaq,[12] are appropriate for listing on the Nasdaq Bond Exchange. The current requirement that the issuer of a non-convertible bond security have a class of equity listed on Nasdaq, NYSE or NYSE American is designed so that "only companies capable of meeting their financial obligations are eligible to have their non-convertible bonds listed on Nasdaq."[13] Nasdaq notes that listed companies raise debt capital through a variety of structures designed to satisfy tax or regulatory obligations, including by the issuance of non-convertible bonds through entities they directly or indirectly own a majority interest in, or entities with which they are under common control. In these cases, it is appropriate to rely on the relationship with the listed company as evidence that the issuer of the non-convertible bond is capable of meeting its financial obligations because the issuer is a subsidiary or affiliate of the listed company. Similarly, in other cases, where the issuer of the non-convertible bond is not a subsidiary or affiliate of a listed company, a listed company may nonetheless guarantee the debt and in these cases the guarantee by the listed company serves to ensure that if the company cannot, then its guarantor is capable of meeting the financial obligations on the non-convertible bond. In each case, Nasdaq notes that debt is a senior security to the listed equity, so that it is appropriate to list that more senior security.

Nasdaq also believes that there are other indications that the issuer of a non-convertible bond is capable of meeting its financial obligations, besides the ties to a listed company described above. Specifically, in the case of these un-affiliated issuers, Nasdaq

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12 See Nasdaq Listing Rule 5515(b)(4). While convertible debt can be converted into common stock, the debt characteristics of convertible debt securities are the same as non-convertible bonds.

13 Approval Order at 58313.

believes that it is appropriate to list bonds with a current rating from an NRSRO that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO because this is another third-party evaluation of the issuers ability to make interest payments and repay the loan upon maturity. Similarly, if a more junior issue of the same company, or an issue of the same company at the same priority in liquidation (a "pari passu issue") has a rating no lower than an S&P Corporation "B" rating or an equivalent rating by another NRSRO, than it is appropriate to presume that the company will also be capable of meeting its obligations on the non-convertible bonds to be listed because those bonds would be repaid in the same priority (if a pari passu issue) or sooner (if the other issue is more junior) as the "B" rated issue. Finally, if no NRSRO has assigned a rating to the issue to be listed, Nasdaq believes it is appropriate to consider the rating assigned to the next most senior issue of the same company. If that rating is an investment grade rating, which is higher than the "B" rating standard just described, then that also provides assurance that the company will be capable of meeting its financial obligations on the non-convertible bond to be listed.[14] In assigning ratings, an NRSRO considers the ability of the issuer to make timely payments of interest and ultimate payment of principal to the related securities.[15]

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14 See S&P Global "Understanding Ratings" available at https://www.spglobal.com/ratings/en/about/understanding-ratings, which identifies ratings of "BBB" or higher as investment grade, at least two levels higher than "B" ratings.

15 See, e.g., Exhibit 2, Principles of Credit Ratings, to S&P Global Form NRSRO, available at https://www.standardandpoors.com/en_US/delegate/getPDF?articleId=2193671&type=COMMENTS&subType=REGULATORY.

Nasdaq will surveil non-convertible bonds listed under the new requirements in the same manner that it surveils other non-convertible bonds.[16] An issuer listing non-convertible bonds under the proposed requirements will be subject to the existing continued listing requirement of Listing Rule 5702(b)(2) that it must be able to meet its obligations on the listed non-convertible bonds. These issuers are also subject to the requirement in Listing Rule 5702(c) to make prompt public disclosure of material information that would reasonably be expected to affect the value of its listed bonds or influence investors' decisions regarding such bonds, which will allow Nasdaq to timely review for events that may cause the issuer to be unable to meet its obligations on the listed non-convertible bonds. Thus, for example, an issuer would have to disclose if a non-convertible bond that was previously guaranteed is no longer guaranteed, or if the issuer or guarantor declares bankruptcy. An issuer would also have to disclose if its common stock is delisted, and Nasdaq would consider whether it is appropriate to continue the listing of the non-convertible bond of an issuer that was majority-owned, under common control, or guaranteed by a listed company, which has since been delisted. Nasdaq also would consider any changes in the rating assigned to the bond or other issues of the same company that were used to qualify the listed bond.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular,

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16 See Approval Order at 58313.

17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(5).

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.

Specifically, the Exchange notes that the proposed change to eliminate language from the rule that no longer is applicable will enhance the transparency of Nasdaq's listing rules and reduce confusion.

In addition, the proposed rule change will allow the listing of non-convertible bonds issued by other companies capable of meeting their financial obligations on those bonds. The proposed new alternative conditions are designed to protect investors and the public interest by ensuring that the bond is issued or guaranteed by an entity listed on Nasdaq, NYSE American or NYSE; is issued by an entity under direct, indirect or common control with an issuer listed on Nasdaq, NYSE American or NYSE; that the issue to be listed (or an issue that is at the same priority or junior to the issue to be listed) is assigned a minimum "B" rating or its equivalent by an NRSRO; or that the next most senior issue to the issue to be listed is assigned an investment grade rating. These conditions are appropriate indicia that the issuer, or a guarantor, can meet its obligations on the debt. Moreover, these are the same additional conditions as for listing bonds on NYSE American and for listing convertible debt on Nasdaq and are similar to the conditions for listing bonds on NYSE.[19] As such, the Commission has previously considered these criteria and approved listing requirements that rely upon them to provide assurance that an issuer is capable of meeting its financial obligations. In addition, investors are already familiar with the availability of bonds with these characteristics on

19 See Section 104 of the NYSE American Company Guide, Nasdaq Listing Rule 5515(b)(4) and Section 102.03 of the NYSE Listed Company Manual.

listing exchanges. Finally, once listed, Nasdaq will be able to surveil for changes to these conditions that may implicate the ability of the issuer to meet its obligations on the listed non-convertible bonds.

3. 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 enhance competition among exchanges by allowing Nasdaq to list all of the same categories of debt securities as can currently be listed on NYSE American. In addition, the proposed rule change may enhance competition among issuers by allowing more issuers to list their non-convertible bonds on Nasdaq, provided they meet the requirements of the proposed rule.

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

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[20] of the Act and Rule 19b-4(f)(6) thereunder[21] in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not

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20 15 U.S.C. 78s(b)(3)(A)(iii).

21 17 CFR 240.19b-4(f)(6).

become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposed rule change does not significantly affect the protection of investors or the public interest; and does not impose any significant burden on competition because the proposed additional criteria for listing are appropriate indicia that the issuer, or a guarantor, can meet its obligations on the debt. Moreover, these are the same additional conditions as for listing bonds on NYSE American and for listing convertible debt on Nasdaq and are similar to the conditions for listing bonds on NYSE. As such, the Commission has previously considered these criteria and approved listing requirements that rely upon them to provide assurance that an issuer is capable of meeting its financial obligations. In addition, investors are already familiar with the availability of bonds with these characteristics on listing exchanges. Once listed, the non-convertible bonds satisfying these criteria will be subject to the existing continued listing and disclosure requirements, and Nasdaq will surveil them in the same way as other non-convertible bonds.

Furthermore, Rule 19b-4(f)(6)(iii)[22] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

[22] 17 CFR 240.19b-4(f)(6)(iii).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that issuers who can currently list securities on NYSE American and NYSE can immediately begin to list those securities on Nasdaq. Nasdaq notes that waiving the operative delay to allow these securities to list on Nasdaq immediately will allow investors to immediately benefit from Nasdaq's real time surveillance of the non-convertible bonds and enhanced transparency as compared with the bonds remaining unlisted. All of the protections available to the investors in non-convertible bonds listed under the current rule would apply equally to securities listed under the proposed criteria.

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

The proposed rule change would adopt the same requirements as currently existing for listing debt on NYSE American[23] and convertible debt securities on Nasdaq.[24] In addition, NYSE has similar listing conditions, although the NYSE rule does

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23 See Section 104 of the NYSE American Company Guide; Securities Exchange Act Release No. 36594 (December 14, 1995), 60 FR 66330 (December 21, 1995) (approving SR-Amex-95-29).

24 See Listing Rule 5515(b)(4).

not permit listing of debt securities where the issuer has equity securities listed on Nasdaq or NYSE American, is directly or indirectly owned by, or is under common control with, an issuer listed on Nasdaq or NYSE American, or where an issuer listed on Nasdaq or NYSE American has guaranteed the debt security.[25]

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 Change for publication in the Federal Register.

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25 See Section 102.03 of the NYSE Listed Company Manual; Securities Exchange Act Release No. 34019 (May 5, 1994), 59 FR 24765 (May 12, 1995) (approving SR-NYSE-93-49).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-NASDAQ-2020-008)

February __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 5702

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 February 14, 2020, 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 amend Rule 5702 to allow the listing of non-convertible bonds issued by certain companies not listed on Nasdaq, NYSE American or NYSE and to remove language that is no longer applicable.

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

**5702. Debt Securities (Other than Convertible Debt)**

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

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

2 17 CFR 240.19b-4.

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

(2) the security must be characterized by one of the following conditions:

(A) 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")[.];

(B) an issuer of equity securities listed on Nasdaq, NYSE American or NYSE directly or indirectly owns a majority interest in, or is under common control with, the issuer of the non-convertible bond;

(C) an issuer of equity securities listed on Nasdaq, NYSE American or NYSE has guaranteed the non-convertible bond;

(D) a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the non-convertible bond that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or

(E) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned:

(i) an investment grade rating to an immediately senior issue; or

(ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

[*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) – (c) No change.

* * * * *

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

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

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

1. Purpose

In November 2018, the Commission approved amendments to the Exchange's rules that permit the Exchange to list and trade non-convertible corporate debt securities (referred to herein as "bonds" or "non-convertible bonds") on the Nasdaq Bond Exchange.[3] Under the Exchange's listing rules, a non-convertible bond is eligible for initial listing on the Exchange only if it has a principal amount outstanding or market value of at least $5 million and its issuer concurrently lists at least one class of an equity security on Nasdaq, the New York Stock Exchange ("NYSE"), or NYSE American.[4] In order to remain listed, a non-convertible bond must maintain a market value or principal amount outstanding of at least $400,000 and the issuer must continue to be able to meet its obligations on the listed non-convertible bonds.[5] A company that has non-convertible bonds listed on the Nasdaq Bond Exchange also must make prompt public disclosure of material information that would reasonably be expected to affect the value of its listed bonds or influence investors' decisions regarding such bonds.[6]

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3 See Securities Exchange Act Release No. 84575 (November 13, 2018), 83 FR 58309 (November 19, 2018) (approving SR-NASDAQ-2018-070, as modified by Amendment Nos. 1-3) ("Approval Order").

4 Rule 5702(a).

5 Rule 5702(b).

6 Rule 5702(c). Companies must provide notice of such disclosure to Nasdaq's MarketWatch Department. This obligation to disclose material information includes material information about the company's equity securities to the extent

While Rule 5702(a)(2) allows Nasdaq to list the non-convertible bonds of an issuer that concurrently lists at least one class of an equity security on Nasdaq, NYSE or NYSE American, the Exchange noted in its proposal for the Nasdaq Bond Exchange that upon the effective date of its proposal the Exchange would be capable of listing and trading non-convertible bonds only of issuers that list equity securities on Nasdaq.[7] The Exchange stated that it expected to be ready to list and trade bonds of issuers with equity securities listed on NYSE or NYSE American by the second quarter of 2019.[8]

On May 13, 2019, Nasdaq announced that it was prepared to list and trade bonds of issuers with equity securities listed on NYSE or NYSE American[9] and Nasdaq began accepting applications to list those bonds on May 20, 2019. Given that issuers whose equity securities are listed on NYSE American and NYSE can now list non-convertible bonds on the Nasdaq Bond Exchange, Nasdaq proposes to remove language in the rule describing how it intended to announce the launch of that capability.

In addition, Nasdaq also proposes to modify Rule 5702(a) to expand the types of non-convertible bonds eligible to be listed on the Nasdaq Bond Exchange. At present, only an issuer with a class of equity security that is listed on Nasdaq, NYSE American or NYSE (collectively referred to herein as a "listed company") can list non-convertible bonds on the Nasdaq Bond Exchange. Nasdaq proposes to expand the categories of debt

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the information would reasonably be expected to affect the value of, or influence investors' decisions to invest in, the listed bonds, even if those equity securities are listed on another national securities exchange.

7 See Approval Order at footnote 11

8 See id.

9 See Nasdaq Data News #2019-3, available at http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2019-3.

that can be listed to also allow listing of non-convertible bonds of affiliates of a listed company where: a listed company directly or indirectly owns a majority interest in, or is under common control with, the issuer of the non-convertible bond; or a listed company has guaranteed the non-convertible bond. In addition, for un-affiliated companies, Nasdaq proposes to allow listing of non-convertible bonds where a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the non-convertible bond that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue of the same company, or (ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue of the same company.

Nasdaq believes that non-convertible bonds satisfying these conditions, which are the same as the requirements for listing debt on NYSE American[10] and convertible debt securities on Nasdaq,[11] are appropriate for listing on the Nasdaq Bond Exchange. The current requirement that the issuer of a non-convertible bond security have a class of equity listed on Nasdaq, NYSE or NYSE American is designed so that "only companies

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10 See Section 104 of the NYSE American Company Guide. In addition, NYSE has similar listing conditions, although the NYSE rule does not permit listing of debt securities where the issuer has equity securities listed on Nasdaq or NYSE American, is directly or indirectly owned by, or is under common control with, an issuer listed on Nasdaq or NYSE American, or where an issuer listed on Nasdaq or NYSE American has guaranteed the debt security. See Section 102.03 of the NYSE Listed Company Manual.

11 See Nasdaq Listing Rule 5515(b)(4). While convertible debt can be converted into common stock, the debt characteristics of convertible debt securities are the same as non-convertible bonds.

capable of meeting their financial obligations are eligible to have their non-convertible bonds listed on Nasdaq."[12] Nasdaq notes that listed companies raise debt capital through a variety of structures designed to satisfy tax or regulatory obligations, including by the issuance of non-convertible bonds through entities they directly or indirectly own a majority interest in, or entities with which they are under common control. In these cases, it is appropriate to rely on the relationship with the listed company as evidence that the issuer of the non-convertible bond is capable of meeting its financial obligations because the issuer is a subsidiary or affiliate of the listed company. Similarly, in other cases, where the issuer of the non-convertible bond is not a subsidiary or affiliate of a listed company, a listed company may nonetheless guarantee the debt and in these cases the guarantee by the listed company serves to ensure that if the company cannot, then its guarantor is capable of meeting the financial obligations on the non-convertible bond. In each case, Nasdaq notes that debt is a senior security to the listed equity, so that it is appropriate to list that more senior security.

Nasdaq also believes that there are other indications that the issuer of a non-convertible bond is capable of meeting its financial obligations, besides the ties to a listed company described above. Specifically, in the case of these un-affiliated issuers, Nasdaq believes that it is appropriate to list bonds with a current rating from an NRSRO that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO because this is another third-party evaluation of the issuers ability to make interest payments and repay the loan upon maturity. Similarly, if a more junior issue of the same company, or an issue of the same company at the same priority in liquidation (a "pari

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12 Approval Order at 58313.

passu issue") has a rating no lower than an S&P Corporation "B" rating or an equivalent rating by another NRSRO, than it is appropriate to presume that the company will also be capable of meeting its obligations on the non-convertible bonds to be listed because those bonds would be repaid in the same priority (if a pari passu issue) or sooner (if the other issue is more junior) as the "B" rated issue. Finally, if no NRSRO has assigned a rating to the issue to be listed, Nasdaq believes it is appropriate to consider the rating assigned to the next most senior issue of the same company. If that rating is an investment grade rating, which is higher than the "B" rating standard just described, then that also provides assurance that the company will be capable of meeting its financial obligations on the non-convertible bond to be listed.[13] In assigning ratings, an NRSRO considers the ability of the issuer to make timely payments of interest and ultimate payment of principal to the related securities.[14]

Nasdaq will surveil non-convertible bonds listed under the new requirements in the same manner that it surveils other non-convertible bonds.[15] An issuer listing non-convertible bonds under the proposed requirements will be subject to the existing continued listing requirement of Listing Rule 5702(b)(2) that it must be able to meet its obligations on the listed non-convertible bonds. These issuers are also subject to the

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13 See S&P Global "Understanding Ratings" available at https://www.spglobal.com/ratings/en/about/understanding-ratings, which identifies ratings of "BBB" or higher as investment grade, at least two levels higher than "B" ratings.

14 See, e.g., Exhibit 2, Principles of Credit Ratings, to S&P Global Form NRSRO, available at https://www.standardandpoors.com/en_US/delegate/getPDF?articleId=2193671&type=COMMENTS&subType=REGULATORY.

15 See Approval Order at 58313.

requirement in Listing Rule 5702(c) to make prompt public disclosure of material information that would reasonably be expected to affect the value of its listed bonds or influence investors' decisions regarding such bonds, which will allow Nasdaq to timely review for events that may cause the issuer to be unable to meet its obligations on the listed non-convertible bonds. Thus, for example, an issuer would have to disclose if a non-convertible bond that was previously guaranteed is no longer guaranteed, or if the issuer or guarantor declares bankruptcy. An issuer would also have to disclose if its common stock is delisted, and Nasdaq would consider whether it is appropriate to continue the listing of the non-convertible bond of an issuer that was majority-owned, under common control, or guaranteed by a listed company, which has since been delisted. Nasdaq also would consider any changes in the rating assigned to the bond or other issues of the same company that were used to qualify the listed bond.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange notes that the proposed change to eliminate language from the rule that no longer is applicable will enhance the transparency of Nasdaq's listing rules and reduce confusion.

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16 15 U.S.C. 78f(b).

17 15 U.S.C. 78f(b)(5).

In addition, the proposed rule change will allow the listing of non-convertible bonds issued by other companies capable of meeting their financial obligations on those bonds. The proposed new alternative conditions are designed to protect investors and the public interest by ensuring that the bond is issued or guaranteed by an entity listed on Nasdaq, NYSE American or NYSE; is issued by an entity under direct, indirect or common control with an issuer listed on Nasdaq, NYSE American or NYSE; that the issue to be listed (or an issue that is at the same priority or junior to the issue to be listed) is assigned a minimum "B" rating or its equivalent by an NRSRO; or that the next most senior issue to the issue to be listed is assigned an investment grade rating. These conditions are appropriate indicia that the issuer, or a guarantor, can meet its obligations on the debt. Moreover, these are the same additional conditions as for listing bonds on NYSE American and for listing convertible debt on Nasdaq and are similar to the conditions for listing bonds on NYSE.[18] As such, the Commission has previously considered these criteria and approved listing requirements that rely upon them to provide assurance that an issuer is capable of meeting its financial obligations. In addition, investors are already familiar with the availability of bonds with these characteristics on listing exchanges. Finally, once listed, Nasdaq will be able to surveil for changes to these conditions that may implicate the ability of the issuer to meet its obligations on the listed non-convertible bonds.

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

[18] See Section 104 of the NYSE American Company Guide, Nasdaq Listing Rule 5515(b)(4) and Section 102.03 of the NYSE Listed Company Manual.

Act. Rather, the proposed rule change will enhance competition among exchanges by allowing Nasdaq to list all of the same categories of debt securities as can currently be listed on NYSE American. In addition, the proposed rule change may enhance competition among issuers by allowing more issuers to list their non-convertible bonds on Nasdaq, provided they meet the requirements of the proposed rule.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and subparagraph (f)(6) of Rule 19b-4 thereunder.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

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19 15 U.S.C. 78s(b)(3)(A)(iii).

20 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-008 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-2020-008. 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-2020-008 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.[21]

J. Matthew DeLesDernier
Assistant Secretary

[21] 17 CFR 200.30-3(a)(12).