

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) of the Exchange Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

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 Exchange Act. If the 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 Exchange 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 email to rule-comments@sec.gov. Please include File Number SR-FINRA-2022-012 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-FINRA-2022-012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2022-012 and should be submitted on or before June 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94941; File No. SR-NASDAQ-2022-015]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Exempt Non-Convertible Bonds Listed Under Rule 5702 From Certain Corporate Governance Requirements

May 18, 2022.

I. Introduction

On February 4, 2022, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to exempt non-convertible bonds listed under Rule 5702 from certain corporate governance requirements.³ The proposed rule change was published for

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 94265 (February 16, 2022), 87 FR 10265 (February 23, 2022) ("Notice").

comment in the **Federal Register** on February 23, 2022.⁴ On March 18, 2022, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ The Commission received no comment letters regarding the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

Generally, Nasdaq proposes to exempt issuers listing non-convertible bonds under Rule 5702 from certain corporate governance requirements.⁷ Specifically, Nasdaq proposes to amend Nasdaq Rule 5702⁸ to exempt these issuers from the requirements relating to Review of Related Party Transactions (Nasdaq Rule 5630),⁹ Shareholder Approval (Nasdaq Rule 5635),¹⁰ and Voting Rights (Nasdaq Rule 5640).¹¹ According to Nasdaq, it is appropriate to exempt these issuers from governance requirements because the interests of bond holders are protected contractually through the trust indenture, and therefore, "holders of non-convertible bonds do not expect to have governance rights the way equity investors may."¹²

⁴ *Id.*

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 94471 (March 18, 2022), 87 FR 16778 (March 24, 2022). The Commission designated May 24, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ Under proposed Rule 5702(d), if an issuer also lists its common stock, voting preferred stock, or their equivalent on Nasdaq, the corporate governance requirements under the Nasdaq 5600 Rule Series would apply. See Notice, *supra* note 3, n. 8.

⁸ Rule 5702 contains the initial and continued listing standards for non-convertible bonds, as well as disclosure requirements for companies that list non-convertible bonds.

⁹ Rule 5630 requires certain companies to conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis.

¹⁰ Rule 5635 sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with: (i) The acquisition of the stock or assets of another company; (ii) equity-based compensation of officers, directors, employees, or consultants; (iii) a change of control; and (iv) transactions other than public offerings.

¹¹ Rule 5640 states that voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.

¹² See Notice, *supra* note 3, at 10266.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

In addition, Nasdaq proposes to consolidate under Nasdaq Rule 5702 other exemptions currently applicable to such issuers pursuant to Nasdaq Rules 5605(f)(4), 5606(c), and 5616(a)(6)(A).¹³

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2022–015 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁴ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.¹⁶ Specifically, the Commission solicits comments on the sufficiency of the Exchange's

justification for exempting non-convertible bonds listed under Rule 5702 from certain corporate governance requirements enumerated above. As stated above, the Exchange justifies the proposed rule change on the assertion that "holders of non-convertible bonds do not expect to have governance rights the way equity investors may." Do commenters agree that holders of non-convertible bonds do not expect that Nasdaq Rules pertaining to Review of Related Party Transactions, Shareholder Approval, and Voting Rights to apply to their bond holdings? And even if there is no such expectations, would non-convertible bond holders benefit from any of these provisions?

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."¹⁷ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,¹⁸ and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.¹⁹

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of

views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,²⁰ any request for an opportunity to make an oral presentation.²¹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 14, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 28, 2022. Commission 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 email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2022–015 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–2022–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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

¹³ Rule 5615(a)(6)(A) exempts certain non-convertible bond issuers from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), Meetings of Shareholders (as set forth in Rule 5620(a)), and Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements Commission Rule 10A–3). Rules 5605(f)(4) and Rule 5606(c) exempts certain non-convertible bond issuers from the requirements related to Diverse Board Representation (as set forth in Rule 5605(f)) and Board Diversity Disclosure (as set forth in Rule 5606), respectively.

¹⁴ 15 U.S.C. 78s(b)(2)(B).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ 17 CFR 240.19b–4.

²¹ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–015, and should be submitted on or before June 14, 2022. Rebuttal comments should be submitted by June 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94938; File No. SR–OCC–2022–005]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by the Options Clearing Corporation Concerning Revisions to OCC’s Partial Tear-Up Rules

May 18, 2022.

I. Introduction

On March 22, 2022, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–OCC–2022–005 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b–4 ² thereunder to amend OCC’s rules regarding OCC’s payment obligations and the allocation of losses related to the use of Partial Tear-Up (defined below) as a recovery tool. ³ The Proposed Rule Change was published for public comment in the **Federal Register** on April 7, 2022. ⁴ The Commission received one comment regarding the Proposed Rule Change. ⁵ This order approves the Proposed Rule Change.

II. Background ⁶

As a covered clearing agency, OCC is required to establish policies and procedures reasonably designed to manage its credit exposures and liquidity risk. ⁷ However, a Clearing Member default may result in losses or shortfalls that exceed OCC’s routine risk management tools. To address such credit losses or liquidity shortfalls, OCC has established tools to re-establish a matched book and to allocate uncovered losses following the default of a Clearing Member. ⁸ One such tool, “Partial Tear-Up,” is a process designed to return OCC to a matched book by extinguishing positions that remain open after OCC has attempted one or more auctions. ⁹ OCC Rule 1111(e) sets forth the process for determining and terminating Partial Tear-Up positions.

When it initially proposed Rule 1111(e) in 2018, OCC noted that the Partial Tear-Up process would be initiated only if OCC determined that potential losses from remaining positions of the defaulting member would exceed OCC’s financial resources. ¹⁰ OCC further stated that, in order for OCC to maintain its ability to meet obligations to non-defaulting members, the process was designed to be initiated in advance of exhausting OCC’s financial resources. ¹¹ OCC also acknowledged that the process may be used to allocate losses if OCC’s resources are insufficient to pay the Partial Tear-Up Price. ¹² Rule 1111(e)(iii) currently provides that when the Partial Tear-Up process is used to allocate losses, each Clearing Member will receive a pro rata payment based on OCC’s remaining resources and an unsecured claim against OCC for the difference between the pro rata amount received and the Partial Tear-Up Price.

An unsecured claim issued pursuant to Rule 1111(e) provides a mechanism for OCC to compensate Clearing Members that receive a pro rata payment, when warranted by particular circumstances (e.g., when funds are subsequently recovered from a defaulted Clearing Member or the estate of the defaulted Clearing Member). However,

OCC Rules do not currently describe a specific payment obligation for these claims. OCC states that the Proposed Rule Change is intended to provide clarity regarding the nature of the claim issued following a Partial Tear-Up. More specifically, the revisions to Rule 1111(e) would add the following details about the claim: (i) A Clearing Member receiving a pro rata payment following a Partial Tear-Up will have a claim for the value of the difference between the pro rata amount received and the Partial Tear-Up Price; and (ii) such a claim shall be an unsecured claim on any recovery from a suspended or defaulted Clearing Member (or from the estate of a suspended or defaulted Clearing Member). OCC believes that clarifying the nature of the claim arising out of Rule 1111(e) would, in turn, clarify that such claims would not provide a basis for Clearing Members to trigger the close-out netting process under Article VI, Section 27 of OCC’s By-Laws. ¹³

In proposing to adopt Partial Tear-Up as a recovery tool, OCC proposed a mechanism for re-allocating losses for non-defaulting Clearing Members arising out of Partial Tear-Up. ¹⁴ OCC Rule 1111(g) currently provides OCC’s Board of Directors (the “Board”) with discretionary authority to levy a special charge against remaining non-defaulting Clearing Members for the purpose of re-allocating the losses, costs, and fees imposed on holders of torn-up positions. Currently, Rule 1111 does not impose any *ex ante* limit on the amount of any discretionary special charge that could be levied by the Board. Following the adoption of OCC Rule 1111, OCC received a letter from the Futures Industry Association (“FIA”) requesting that OCC limit the amount of the Rule 1111(g) Board-levied special charge to the amount of a Clearing Member’s required contribution to the Clearing Fund. ¹⁵ Upon consideration of this request, OCC proposes to amend Rule 1111(g) to cap the amount of the special charge levied under the rule to the amount of the Clearing Member’s required contribution to the Clearing Fund at the time of the special charge.

⁶ Capitalized terms used but not defined herein have the meanings specified in OCC’s Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

⁷ See generally, 17 CFR 240.17Ad–22(e)(4) and (e)(7).

⁸ Securities Exchange Act Release No. 83916 (Aug. 23, 2018), 83 FR 44076 (Aug. 29, 2018) (File No. SR–OCC–2017–020).

⁹ See *supra* note 8, 83 FR at 44079.

¹⁰ Securities Exchange Act Release No. 82351 (Dec. 19, 2017), 82 FR 61107, 61111 (Dec. 26, 2017) (File No. SR–OCC–2017–020).

¹¹ *Id.*

¹² *Id.*

¹³ OCC By-Laws Art. VI, Section 27(a)(i), regarding default or insolvency of OCC, requires OCC to notify various stakeholders if OCC fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member for a period of thirty days from the date that OCC receives notice from the Clearing Member of the past due obligation. See Notice of Filing *supra* note 4, 87 FR at 20495.

¹⁴ Securities Exchange Act Release No. 82351 (Dec. 19, 2017), 82 FR 61107, 61112 (Dec. 26, 2017) (File No. SR–OCC–2017–020).

¹⁵ The letter OCC received from the FIA has been provided as Exhibit 3A to File No. SR–OCC–2022–005.

²² 17 CFR 200.30–3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Notice of Filing *infra* note 4, 87 FR at 20495.

⁴ Securities Exchange Act Release No. 94583 (Apr. 1, 2022), 87 FR 20495 (Apr. 7, 2022) (File No. SR–OCC–2022–005) (“Notice of Filing”).

⁵ The comment on the Proposed Rule Change is available at <https://www.sec.gov/comments/sr-occ-2022-005/srocc2022005.htm>.