

more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

(Authority: 5 U.S.C. 552b.)

Dated: February 17, 2022.

**Vanessa A. Countryman,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94270; File No. SR-OCC-2021-803]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Concerning The Options Clearing Corporation's Cash and Investment Management

February 17, 2022.

#### I. Introduction

On December 23, 2021, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-OCC-2021-803 (“Advance Notice”) pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”) <sup>1</sup> and Rule 19b-4(n)(1)(i) <sup>2</sup> under the Securities Exchange Act of 1934 (“Exchange Act”) <sup>3</sup> to (i) adopt OCC’s policy

regarding cash and related investments to its rules, and (ii) amend OCC’s Rules governing the use of Clearing Fund contributions to ensure access in the event of the failure of an investment counterparty with whom OCC has invested cash collateral. <sup>4</sup> The Advance Notice was published for public comment in the **Federal Register** on January 12, 2022, <sup>5</sup> and the Commission has received no comments regarding the substance of the changes proposed in the Advance Notice. <sup>6</sup> The Commission is hereby providing notice of no objection to the Advance Notice.

#### II. Background <sup>7</sup>

OCC is proposing to adopt a policy governing OCC’s cash and investment practices (the “Cash and Investment Management Policy” or “Policy”) and amend its rules regarding access to Clearing Fund contributions to address the failure of an investment counterparty to return Clearing Member cash collateral, which would also allow OCC to use such collateral to access its revolving credit facility.

##### A. Policy Regarding Cash and Related Investments

OCC’s current rules include provisions governing the management and investment of OCC’s own funds and cash deposited by Clearing Members. Pursuant to its rules, OCC’s Board of Directors (“Board”) may invest funds in excess of the amount needed as working

capital in Government securities or such other securities or financial instruments. <sup>8</sup> Further, OCC’s Rules allow for the investment of cash deposited in respect of a Clearing Member’s margin requirements or Clearing Fund contributions by OCC for its account in Government securities. <sup>9</sup> OCC proposes to add its Cash and Investment Management Policy to its current investment related rules. <sup>10</sup>

The proposed Cash and Investment Management Policy (i) outlines the safeguarding standards for cash and related investments managed by OCC to minimize credit and liquidity risk, and (2) provides guidelines for investments permitted by OCC’s rules as described above. With regard to safeguarding cash, the Policy would allow OCC to hold OCC Cash <sup>11</sup> and Clearing Member Cash <sup>12</sup> in demand deposit accounts with commercial banks or in accounts at a Federal Reserve Bank. Consistent with OCC’s current rules, the Policy would require OCC to move all margin and Clearing Fund cash related to a suspended Clearing Member into a liquidating settlement account for use in meeting the obligations of the Clearing Member. <sup>13</sup> The Policy would also require that OCC employ a bank account structure that segregates customer funds per applicable regulatory

<sup>8</sup> See By-Law Art. IX, Sec. 1.

<sup>9</sup> See OCC Rule 604(a); Rule 1006(c).

<sup>10</sup> See Notice of Filing, 87 FRat 1815.

<sup>11</sup> Under the proposed Policy, OCC Cash would include working capital related to future operating costs, inclusive of financial resources held to meet liquidity and resiliency requirements, proceeds from lines of credit, if any, maintained to support OCC’s working capital, and investments made with OCC Cash. OCC Cash would also include OCC’s Minimum Corporate Contribution. See Securities Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (Jun. 3, 2021) (File No. SR-OCC-2021-003) (establishing a persistent minimum level of OCC’s own capital that it would contribute to default losses or liquidity shortfalls prior to allocating a default loss to the Clearing Fund contributions of non-defaulting Clearing Members). OCC Cash would not include cash held in respect of OCC’s pension plan, post-retirement welfare plan, or other deferred compensation plans.

<sup>12</sup> Under the proposed Policy, Clearing Member Cash would include cash collateral deposited as margin or Clearing Fund contributions, cash held in liquidating settlement accounts for suspended Clearing Members pursuant to OCC’s Rule 1104, and investments made with Clearing Member Cash. Clearing Member Cash would also include proceeds from OCC’s syndicated credit facility and liquidity facilities. See Securities Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (Jun. 3, 2020) (File No. SR-OCC-2020-804) (discussing OCC’s revolving credit facility); Securities Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444 (Jun. 16, 2020) (File No. SR-OCC-2020-803) (discussing OCC’s non-bank liquidity facility).

<sup>13</sup> See OCC Rule 1104.

<sup>4</sup> See Notice of Filing *infra* note 5, at 87 FR 1814.

<sup>5</sup> Securities Exchange Act Release No. 93915 (Jan. 6, 2022), 87 FR 1814 (Jan. 12, 2022) (File No. SR-OCC-2021-803) (“Notice of Filing”). On December 23, 2021, OCC also filed a related proposed rule change (SR-OCC-2021-014) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder (“Proposed Rule Change”). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. In the Proposed Rule Change, which was published in the **Federal Register** on January 12, 2022, OCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 93916 (Jan. 6, 2022), 87 FR 1819 (Jan. 12, 2022) (File No. SR-OCC-2021-014). The comment period for the related Proposed Rule Change filing closed on February 2, 2022.

<sup>6</sup> A comment letter addressed market conduct generally; however, additional discussion is unnecessary because the substance of the letter does not bear on the basis for the Commission’s decision not to object to the proposal. Comments on the Advance Notice are available at <https://www.sec.gov/comments/sr-occ-2021-803/srocc2021803.htm>. Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

<sup>7</sup> 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>.

<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> 15 U.S.C. 78a *et seq.*

requirements<sup>14</sup> and OCC's By-Laws and Rules.<sup>15</sup>

With regard to investments, the Policy would provide that OCC's investment strategy is to preserve principal and maintain adequate liquidity. OCC outlines its specific investment in internal procedures, but will publish its investment strategy in its Qualitative Disclosures posted to OCC's public website.<sup>16</sup> Under the proposed Policy, OCC will invest only with counterparties that meet the financial and operational standards outlined in OCC's procedures concerning its banking relationships.<sup>17</sup>

The Policy would affirm OCC's current practice of not investing Clearing Fund cash, which is instead maintained in accounts at a Federal Reserve Bank or a commercial bank. The Policy would also limit the investment of margin cash to instruments that provide liquidity to OCC by the following business day. In contrast, the Policy would not limit the investment of OCC cash in excess of 110 percent of its Target Capital Requirement<sup>18</sup> to overnight transactions. Further, the Policy would require procedures to ensure that end-of-day margin cash balances remain above the aggregate level of any Required Cash Deposits to support OCC's management of liquidity risk.<sup>19</sup> Under the Policy, interest or gain received on investments will belong to

<sup>14</sup> See 17 CFR 39.15 (requiring a derivatives clearing organization to comply with the segregation requirements section 4d of the Commodity Exchange Act).

<sup>15</sup> See OCC By-Laws Art. VI, Sec. 3(f) (providing for maintenance of segregated futures accounts).

<sup>16</sup> OCC's Qualitative Disclosures are available at <https://www.theocc.com/Risk-Management/PFMI-Disclosures>.

<sup>17</sup> Additionally, OCC's Third-Party Risk Management Framework describes the basis for evaluating financial institutions based on financial resources and operational capacity, such as whether a relationship is structured to allow prompt access to assets and whether a custodian is a supervised and regulated institution that adheres to generally accepted accounting practices, maintains safekeeping procedures, and has controls that fully protect these assets. See Securities Exchange Act Release No. 90797 (Dec. 23, 2021), 85 FR 86592, 86593 (Dec. 30, 2021) (File No. SR-OCC-2020-014).

<sup>18</sup> OCC's Target Capital Requirement is the amount of shareholders' equity recommended by OCC management and approved by the Board to ensure compliance under both the Commission and Commodity Futures Trading Commission rules and to keep such additional amount the Board may approve for capital expenditures. See OCC Rule 101(T)(1).

<sup>19</sup> Under its Liquidity Risk Management Framework, OCC may require a Clearing Member Group to post cash collateral to supplement OCC's Available Liquidity Resources when stressed liquidity demands for that Clearing Member Group are above established thresholds or until the settlement demand is met. See Exchange Act Release No. 89014 (Jun. 4, 2020), 85 FR 35446, 35449 (Jun. 10, 2020) (File No. SR-OCC-2020-003).

OCC except as otherwise provided for in OCC's rules.<sup>20</sup>

### B. Access to Clearing Fund Contributions

OCC's current Rules define the conditions under which OCC may use Clearing Fund assets to make good losses or expenses suffered by OCC or by the Clearing Fund with regard to borrowings made by OCC.<sup>21</sup> OCC's rules also define the conditions under which OCC may borrow Clearing Fund assets.<sup>22</sup> OCC's Rules address OCC's authority to access Clearing Fund assets related to the failure of a bank or clearing organization to perform its obligations to OCC, but not the failure of an investment counterparty. OCC proposes a series of changes to its Rules, described below, to broaden OCC's authority to access Clearing Fund assets to address the potential failure of an investment counterparty to meet its obligations to OCC. Such changes would also align with modifications to OCC's revolving credit facility.<sup>23</sup>

OCC proposes to amend its Rules 1006(a) and (c) to add "investment counterparty" to the list of counterparties whose failure to perform any obligation to OCC when due because of its bankruptcy, insolvency, receivership, suspension of operations, or any similar event that causes OCC to sustain a loss. OCC also proposes to amend its Rule 1006(f) to authorize OCC to take possession of cash or securities deposited by Clearing Members as contributions to the Clearing Fund and securities in which OCC has invested Clearing Fund cash contributions if OCC reasonably believes it necessary to borrow to meet its liquidity needs for same day settlement as a result of the failure of an investment counterparty. The proposed changes to Rules 1006(a), (c), and (f) would limit access, however, to failures with respect to cash invested under OCC's Rules 604(a) and 1002(c), which deal with margin cash and Clearing Fund cash contributions, respectively.

OCC is also proposing to restate and reorganize Rule 1006(f), which currently

<sup>20</sup> See e.g., Securities Exchange Act Release No. 82502 (Jan. 12, 2018), 82 FR 2825, 2826 (Jan. 19, 2018) (File No. SR-OCC-2017-009) (stating that OCC would pass interest income earned on Clearing Fund cash deposited at a Federal Reserve Bank through to its Clearing Members).

<sup>21</sup> See OCC Rule 1006(a) and (c).

<sup>22</sup> See OCC Rule 1006(f).

<sup>23</sup> See Notice of Filing, 87 Fed. Reg at 1817. In anticipation of the proposed changes, OCC modified the permitted uses set forth in the credit agreement, implemented on June 21, 2021, to align with the proposed changes to OCC Rule 1006. *Id.* OCC provided a summary of the terms and conditions for the 2021 credit agreement in a confidential Exhibit 3 to the Advance Notice. *Id.*

consists of a single paragraph, into four subparagraphs with the following headings: (1) Conditions; (2) Uses; (3) Term; Clearing Fund Charge; and (4) Substitution Requests. To eliminate a potential inconsistency with Rule 1006(c), OCC would revise the condition triggering OCC's access to the Clearing Fund from failure "to achieve daily settlement" to failure "to perform any obligation to the Corporation when due." The proposed changes to 1006(f) also include the removal of a gendered pronoun and other administrative changes.

### III. Discussion and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.<sup>24</sup>

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.<sup>25</sup> Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):<sup>26</sup>

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.<sup>27</sup>

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the "Clearing Agency Rules").<sup>28</sup> The Clearing Agency Rules require,

<sup>24</sup> See 12 U.S.C. 5461(b).

<sup>25</sup> 12 U.S.C. 5464(a)(2).

<sup>26</sup> 12 U.S.C. 5464(b).

<sup>27</sup> 12 U.S.C. 5464(c).

<sup>28</sup> 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7-08-11). See also Covered Clearing Agency Standards, 81 FR 70786. OCC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5).

among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.<sup>29</sup> As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,<sup>30</sup> and in the Clearing Agency Rules, in particular Rules 17Ad–22(e)(13) and (16).<sup>31</sup>

#### *A. Consistency With Section 805(b) of the Clearing Supervision Act*

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.<sup>32</sup>

The Commission believes that the addition of the Cash and Investment Management Policy to OCC's rules is consistent with the promotion of robust risk management. As described above, the Policy would build on OCC's current rules for managing cash and investments. The Policy includes standards for safeguarding OCC Cash and Clearing Fund Cash through the application of OCC's counterparty standards. Further, the Policy includes limitations on the tenure of investments to support OCC's liquidity risk management practices. The Commission believes that adding the Policy to OCC's rules will support OCC's management of risk with regard to the safeguarding of funds and investments.

The Commission also believes that the proposed changes to broaden OCC's authority to access Clearing Fund contributions are consistent with the promotion of safety and soundness. Ensuring that OCC has the authority to access Clearing Fund contributions to

contain losses and shortfalls would reduce the likelihood that OCC would have insufficient financial resources to address such losses and shortfalls, which in turn would enhance the safety and soundness of OCC. Further, the Commission believes that, to the extent the proposed changes are consistent with promoting OCC's safety and soundness, they are also consistent with supporting the stability of the broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.<sup>33</sup> As noted above, the Commission believes that the proposed changes would support OCC's ability to continue providing services to the options markets by addressing losses and shortfalls arising out of the default of a Clearing Member. OCC's continued operations would, in turn, help support the stability of the financial system by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market.

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.<sup>34</sup>

#### *B. Consistency With Rule 17Ad–22(e)(13) Under the Exchange Act*

Rule 17Ad–22(e)(13) under the Exchange Act requires, among other things, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority to take timely action to contain losses and liquidity demands and continue to meet its obligations.<sup>35</sup>

As the Commission has observed previously, OCC relies on the resources in its Clearing Fund to manage the potential losses arising out of the default of a Clearing Member under extreme but plausible market conditions.<sup>36</sup> Similarly, OCC relies on such resources to manage potential liquidity shortfalls arising out of the default of a Clearing Member under extreme but plausible market conditions.<sup>37</sup> In the event of a

Clearing Member default, OCC's inability to access the defaulter's cash collateral due to the failure of an investment counterparty could inhibit OCC's ability to contain losses and liquidity demands unless it has access to the Clearing Fund contributions of non-defaulting Clearing Members. Further, the Commission believes that the proposed changes to restate and reorganize Rule 1006(f) would provide clarity to such authority. As described above, the proposed changes would increase OCC's authority to access Clearing Fund contributions to address losses or shortfalls arising out of the failure of an investment counterparty to perform with regard to investments of margin cash or Clearing Fund cash and such changes would align with the terms of OCC's revolving credit agreement.

The Commission believes, therefore, that the proposed changes to broaden OCC's authority to access to Clearing Fund contributions are consistent with Rule 17Ad–22(e)(13) under the Exchange Act.<sup>38</sup>

#### *C. Consistency With Rule 17Ad–22(e)(16) Under the Exchange Act*

Rule 17Ad–22(e)(16) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to safeguard its own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.<sup>39</sup> In adopting Rule 17Ad–22(e)(16), the Commission provided guidance for consideration by covered clearing agencies.<sup>40</sup> Such guidance included the consideration of whether a covered clearing agency's investment strategy is consistent with its overall risk management strategy and fully disclosed to participants.<sup>41</sup>

The Commission believes that the proposed Cash and Investment Management Policy would support and enhance OCC's current rules regarding the investment of its and its participants' cash assets. As described above, the Policy outlines safeguarding standards, such as allowing OCC Cash and Clearing Member Cash to be

<sup>33</sup> See Financial Stability Oversight Council ("FSOC") 2012 Annual Report, Appendix A, <https://home.treasury.gov/system/files/261/here.pdf> (last visited Feb. 17, 2022).

<sup>34</sup> 12 U.S.C. 5464(b).

<sup>35</sup> 17 CFR 240.17Ad–22(e)(13).

<sup>36</sup> See Securities Exchange Act Release No. 87717 (Dec. 11, 2019), 84 FR 68985, 68987 (Dec. 17, 2019) (File No. SR–OCC–2019–009).

<sup>37</sup> See Securities Exchange Act Release No. 89014 (Jun. 4, 2020), 85 FR 35446, 35450 (Jun. 10, 2020)

(File No. SR–OCC–2020–003) (stating that cash contributions to the Clearing fund serve as an important source of liquidity and that non-cash contributions provide a source of collateral necessary for OCC to access sources of liquidity).

<sup>38</sup> 17 CFR 240.17Ad–22(e)(13).

<sup>39</sup> 17 CFR 240.17Ad–22(e)(16).

<sup>40</sup> Covered Clearing Agency Standards, 81 FR at 70837.

<sup>41</sup> *Id.*

<sup>29</sup> 17 CFR 240.17Ad–22.

<sup>30</sup> 12 U.S.C. 5464(b).

<sup>31</sup> 17 CFR 240.17Ad–22(e)(13) and 17 CFR 240.17Ad–22(e)(16).

<sup>32</sup> 12 U.S.C. 5464(b).

deposited only in a Federal Reserve Bank or in demand deposit accounts with institutions that meet the standards set out in OCC's current risk management strategy (e.g., OCC's Third Party Risk Management Framework) to minimize the risk of loss or delay in access to such funds. The Commission believes further that limiting the investment of cash to Government Securities, and specifically limiting the investment of Clearing Member Cash to instruments that provide liquidity to OCC by the following business day, is consistent with investing in assets with minimal credit, market and liquidity risks.<sup>42</sup>

The Commission believes, therefore, that the addition of the Cash and Investment Management Policy to OCC's rules is consistent with Rule 17Ad-22(e)(16) under the Exchange Act.<sup>43</sup>

#### IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission does not object to Advance Notice (SR-OCC-2021-803) and that OCC is authorized to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR-OCC-2021-014, whichever is later.

By the Commission.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-03824 Filed 2-22-22; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94265; File No. SR-NASDAQ-2022-015]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Exempt Non-Convertible Bonds Listed Under Rule 5702 From Certain Corporate Governance Requirements

February 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 4, 2022, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the

Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to exempt non-convertible bonds listed under Rule 5702 from certain corporate governance requirements. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in 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.<sup>3</sup> Under the Exchange's listing rules then adopted, a non-convertible bond was eligible for initial listing on the Exchange only if it had a principal amount outstanding or market value of at least \$5 million and its issuer had at least one class of an equity security listed on Nasdaq, the New York Stock Exchange ("NYSE"), or NYSE American.<sup>4</sup> In February 2020, Nasdaq

amended Listing Rule 5702 to allow the listing of non-convertible bonds issued by certain companies not listed on Nasdaq, NYSE American or NYSE (the "2020 Filing").<sup>5</sup>

In 2018, Nasdaq stated its plan to seek exemptions to certain requirements of the Nasdaq Rule 5600 Series, including requirements relating to Review of Related Party Transactions (Rule 5630), Shareholder Approval (Rule 5635), and Voting Rights (Rule 5640),<sup>6</sup> but later indicated that it would not pursue those exemptions because, at the time, the equity of the issuers listing non-convertible bonds under Rule 5702 was required to be listed on Nasdaq, NYSE American or NYSE and therefore were subject to those Rules or substantially similar rules of NYSE American or the NYSE.<sup>7</sup>

Given the change made in the 2020 Filing to allow the listing of non-convertible bonds by issuers that are not otherwise listed on a national securities exchange, Nasdaq now proposes to exempt non-convertible bonds from the requirements relating to Review of Related Party Transactions (Rule 5630), Shareholder Approval (Rule 5635), and Voting Rights (Rule 5640).<sup>8</sup>

<sup>5</sup> Specifically, the 2020 Filing expanded the categories of non-convertible bonds eligible to be listed under Rule 5702 to include 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, the 2020 Filing allowed 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.

<sup>6</sup> See Securities Exchange Act Release No. 84001 (August 30, 2018), 83 FR 45289 (September 6, 2018).

<sup>7</sup> See Securities and Exchange Act Release No. 86072 (June 10, 2019), 84 FR 27816 (June 14, 2020).

<sup>8</sup> To increase the clarity of the rule, Nasdaq proposes to include in the proposed Listing Rule 5702(d) other exemptions applicable to an issuer of a non-convertible bond, as provided by Listing Rule 5615(a)(6)(A), which states, in the relevant parts, that issuers "whose only securities listed on Nasdaq are . . . debt securities . . . are exempt 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), and Meetings of Shareholders (as set forth in Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements of SEC Rule 10A-3. Notwithstanding,

<sup>42</sup> The Policy would allow OCC to invest its own cash in longer-tenured instruments only where such cash is in excess of 110 percent of OCC's Target Capital Requirement.

<sup>43</sup> 17 CFR 240.17Ad-22(e)(16).

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

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

<sup>3</sup> 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").

<sup>4</sup> Rule 5702(a).