

Required fields are shown with yellow backgrounds and asterisks.

Filing by **NASDAQ Stock Market**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input checked="" type="checkbox"/> 19b-4(f)(2)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(5)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
Section 806(e)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

Proposal to amend Exchange fees at Rule 7014(f) to (i) change the criteria required to received the rebates provided by the Lead Market Maker (LMM) program, (ii) change the rebates offered by the LMM program, and (iii) rename the program the Designated Liquidity Provider (DLP) program.

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 * <input type="text" value="Sean"/>	Last Name * <input type="text" value="Bennett"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="Sean.Bennett@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8499"/>	Fax <input type="text"/>

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 <input type="text" value="09/16/2016"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 *

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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

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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

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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

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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

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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

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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 the Exchange’s fees at Rule 7014(f) to: (i) change the criteria required to receive the rebates provided by the Lead Market Maker (“LMM”) Program; (ii) change the rebates offered by the LMM Program; and (iii) rename the program the Designated Liquidity Provider (“DLP”) Program, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 3, 2016, the first trading day of the month.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on August 15, 2016. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8499

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

a. Purpose

The purpose of the proposed rule change is to: (i) change the criteria required to receive the rebates provided by the LMM Program; (ii) change the rebates offered by the LMM Program; and (iii) rename the program the Designated Liquidity Provider Program.

The LMM Program is designed to provide incentives to market makers to make markets in certain exchange-traded products ("ETPs"). To achieve this goal, Nasdaq provides credits to a designated LMM for execution of a Qualified Security. Under Rule 7014(f)(1), a Qualified Security is defined as an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares), 5710 (Securities Linked to the Performance of Indexes and Commodities, Including Currencies), 5720 (Trust Issued Receipts), 5735 (Managed Fund Shares), or 5745 (NextShares), and it must have at least one LMM.

An LMM is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. An LMM is selected by Nasdaq based on several factors including, but not limited to, experience with making markets in exchange-traded funds and index-linked securities, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq

may limit the number of LMMs in a security, or modify a previously established limit, upon prior written notice to members.

Rule 7014(f)(4) sets forth the criteria required, and the rebates and reduced fees provided, by the LMM Program. Currently, there are three tiers based on the amount of time an LMM is at the national best bid and offer (“NBBO”). Specifically, if an LMM is above 15% to 20% at the NBBO, it qualifies for: (i) a Displayed Liquidity Rebate (for executions \$1 per share and above) of \$0.0040 per executed share; (ii) a Displayed Liquidity Rebate (for executions less than \$1 per share) of \$0.0000 per executed share; and (iii) a maximum fee of \$0.0005 per executed share for participation in the Halt, Opening, and Closing Crosses.³ If an LMM is above 20% to 50% at the NBBO, it qualifies for: (i) a Displayed Liquidity Rebate (for executions \$1 per share and above) of \$0.0043 per executed share; (ii) a Displayed Liquidity Rebate (for executions less than \$1 per share) of \$0.0000 per executed share; and (iii) a maximum fee of \$0.0000 per executed share for participation in the Halt, Opening, and Closing Crosses. Last, if an LMM is above 50% at the NBBO, it qualifies for: (i) a Displayed Liquidity Rebate (for executions \$1 per share and above) of \$0.0046 per executed share; (ii) a Displayed Liquidity Rebate (for executions less than \$1 per share) of \$0.0000 per executed share; and (iii) a maximum fee of \$0.0000 per executed share for participation in the Halt, Opening, and Closing Crosses.

³ A member participating in the Halt Cross would otherwise be assessed a fee of \$0.0010 per share executed (see Rule 7018(f)). A member participating in the Opening Cross would otherwise be assessed a fee of no less than \$0.0008 per share executed (see Rule 7018(e)). A member participating in the Closing Cross would otherwise be assessed a fee of no less than \$0.0008 per share executed (see Rule 7018(d)).

The Exchange is proposing to amend the rebates and criteria under the program to also take into consideration certain characteristics of the individual ETP.

First Change

The purpose of the first change is to amend the criteria required to receive the rebates provided by the LMM Program to better align the behavior required to qualify for rebates with the nature of the rebates provided. Specifically, in lieu of the current criteria, the Exchange is proposing to require all LMMs, which will be renamed DLPs as part of this filing and will be noted as such when discussed below,⁴ to be at the NBBO at least 20% of the time in the assigned ETP in any given month in order to qualify for a Basic Rebate. In order to receive New Product Support Initiatives, discussed below, a DLP must be at the NBBO at least 20% of the time in the assigned ETP in any given month, the ETP itself must have a three month average daily volume (“ADV”)⁵ of less than 500,000, and the ETP must be less than 36 months old. Thus, not only must the DLP contribute to market quality in the ETP by quoting at the NBBO, but the ETP itself must have relatively low volume. Last, to be eligible for new Additional Tape C ETP Incentives, discussed below, the average time the DLP is at the NBBO for each assigned ETP must average at least 20%, and the average liquidity provided by the DLP for each

⁴ As discussed in detail below, the Exchange is proposing to rename the LMM program as the Designated Liquidity Provider program. As a consequence, LMMs will be renamed DLPs. For purposes of this filing, the use of the term DLP is synonymous with the term LMM.

⁵ The Exchange is defining average daily volume, for purposes of the DLP Program, to mean the total consolidated volume reported to all consolidated transaction reporting plans, for each individual security, by all exchanges and trade reporting facilities during a month divided by the number of trading days during the month. If a security is not listed for a full month, the number of trading days will only include the days in which the security is listed.

assigned ETP must average at least 5% of the liquidity provided on Nasdaq in the respective ETP.⁶

Second Change

The purpose of the second change is to modify the incentives provided by the program. As discussed above, the Exchange currently provides rebates and reduced fees if an LMM meets the minimum criteria of a tier. In lieu of the current incentives, the Exchange is adopting three new incentives that it believes are more targeted to improving market quality in ETPs.

First, the Exchange is proposing to provide Basic Rebates to DLPs that qualify under the proposed “Basic Rebates” criteria of being at the NBBO at least 20% of the time on average in any given month in a particular ETP. The Basic Rebates are available for each of a DLP’s assigned ETPs that it qualified for under the performance criteria. The Basic Rebates vary based on the level of ADV the ETP has in a given month. Specifically, a DLP will receive: (i) a rebate of \$0.0047 per executed share of displayed liquidity in an ETP that has ADV less than 500,000 during the month; (ii) a rebate of \$0.0042 per executed share of displayed liquidity in an ETP that has ADV between 500,000 and 5 million during the month; and (iii) a rebate of \$0.0036 per executed share of displayed liquidity in an ETP that has ADV greater than 5 million during the month.

⁶ For example, assume a DLP has 20 assignments. If a DLP quotes at the NBBO 50% of the time in 10 of the ETPs and in the remaining 10 ETPs quotes at the NBBO 40% of the time, the average for the purposes of this calculation will be 45%. Nasdaq will calculate the liquidity provided by the DLP as a percent of liquidity provided in each assigned ETP on Nasdaq. Nasdaq will then average these percentages across symbols. For example, if the DLP is 10% of the added liquidity in 10 of the ETPs and 4% of the added liquidity in the remaining 10 ETPs the average for this calculation will be 7%. In this instance the DLP will have met the criteria on average for the additional incentive, even though it failed to meet the criteria for all 20 ETPs individually.

Thus, the new rebate schedule takes into consideration the nature of the market in the individual ETP, with the Exchange providing the greatest incentive to DLPs to participate in the program in ETPs that have the lowest volumes.

Second, the Exchange is proposing New Product Support Incentives to incentivize DLPs to support trading in newly-launched ETPs.⁷ The New Product Support Incentives are provided in lieu of the Basic Rebates. Like the Basic Rebates, the New Product Support Initiatives are only available in the assigned ETPs that the DLP qualifies for under the New Product Support Incentives performance criteria. The proposed incentives are based on the length of time since the ETP was launched,⁸ providing declining levels of rebate as the ETP matures. In particular, the Exchange is proposing to offer to all DLPs that qualify under the New Product Support Incentives criteria a rebate of \$0.0070 per executed share of displayed liquidity in the ETP in a newly-launched ETP with ADV less than 500,000 up to 12 months from the ETP's product inception date, a rebate of \$0.0065 per executed share of displayed liquidity in the ETP for the period 12 to 24 months from the product inception date, and a rebate of \$0.0055 per executed share of displayed liquidity in the ETP for the period 24 to 36 months from the product inception date. For purposes of calculating the number of months under the rule, the first partial month an ETP is launched will count as one month.

⁷ Because the New Product Support Incentives implicates Rule 102 of Regulation M, the Commission is separately considering a limited, conditional exemption for issuers whose securities are subject to the New Product Support Initiative.

⁸ The Exchange considers an ETP's launch date to be the inception date of the ETP. For example, if an ETP launched on August 17, 2016, then the ETP is considered a new product with a fund inception date of August 17, 2016. Nasdaq will offer an enhanced rebate of (\$0.0070) on the ETP up through July 2017 (assuming the ADV threshold requirement of the New Product Support Incentives was not breached).

Third, the Exchange is proposing Additional Tape C ETP incentives. Specifically, the Exchange is proposing to offer DLPs that qualify under the Additional Tape C ETP Incentive criteria three tiers of rebates for each displayed share that adds liquidity in Tape C ETPs that meet the criteria of Rule 7014(f)(1)(A).⁹ These rebates are provided in addition to other rebates or fees provided under Rules 7018 and 7014, including the proposed Basic Rebates or New Product Support Incentives. Eligibility for each tier is based on the number of ETPs the DLP is assigned under the program. Specifically, an eligible DLP that has at least 10 ETPs assigned to them during a given month will receive a rebate of \$0.0003 per share executed in a Tape C ETP. An eligible DLP that has at least 25 assigned ETPs will receive a rebate of \$0.0004 per share executed in a Tape C ETP in lieu of the \$0.0003 per share executed rebate. An eligible DLP that has at least 50 assigned ETPs will receive a rebate of \$0.0005 per share executed in a Tape C ETP in lieu of the \$0.0003 and \$0.0004 per share executed rebates. Thus, the Exchange is providing incentive to members to participate as DLPs in a significant number of ETPs.

The Exchange is also providing a DLP that qualifies under the Additional Tape C ETP Incentive criteria yet has fewer than 10 ETPs assigned to them the ability to qualify for a \$0.0001 per share executed rebate in Tape C ETPs that meet the criteria of Rule 7014(f)(1)(A) if it increases the number of ETPs for which it is a DLP by 100%. A DLP is only eligible for the first 100% increase and will not receive additional \$0.0001 per share executed rebates for subsequent 100% increases to the number of assigned ETPs. For example, if an existing DLP has three assigned ETPs and thereafter is approved as a

⁹ Rule 7014(f)(1)(A) sets forth the ETPs that may be included in the program.

DLP for three additional ETPs, the DLP would receive an additional \$0.0001 per share executed rebate for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of Rule 7014(f)(1)(A). A new DLP will be considered a 100% increase and also receive the one-time \$0.0001 per share executed rebate in Tape C ETPs that meets the criteria of Rule 7014(f)(1)(A) in the DLP Program upon receiving their first ETP assignment. Thus, a newly-approved DLP will receive the additional \$0.0001 per share executed rebate in Tape C ETPs as described above when it is initially assigned an ETP under the DLP Program if the total number of ETPs assigned is less than ten, but the newly-approved DLP would not be eligible for additional \$0.0001 per share executed rebates for subsequent 100% increases to the number of assigned ETPs.

Third Change

The purpose of the third change is to change the name of the program. The Lead Market Maker Program had previously been named the Designated Liquidity Provider Program. In 2015, the Exchange changed the name of the program to the Lead Market Maker program and, accordingly, changed references to “Designated Liquidity Providers” and “DLPs” to “Lead Market Makers” and “LMMs,” respectively.¹⁰ At the time, the Exchange noted that the term Lead Market Maker was more descriptive of who was eligible for the program (i.e., market makers), as opposed to a Designated Liquidity Provider, which could lead a market participant to believe that any market participant was eligible to qualify for the program. After receiving industry feedback, the Exchange now believes that the name Designated Liquidity Provider is, in fact, not confusing to market participants. Moreover, the Exchange notes that the rule explicitly defines an LMM (now

¹⁰ See Securities Exchange Act Release No. 75389 (July 8, 2015), 80 FR 41133 (July 14, 2015) (SR-NASDAQ-2015-071).

DLP) as a “registered Nasdaq market maker.”¹¹ Consequently, Nasdaq is changing the name of the program back to the “Designated Liquidity Provider Program.” As was the case when the Exchange renamed the program in 2015, the proposed change in the program’s name and terminology does not impact the operation of the program.¹²

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹¹ See Rule 7014(f)(2).

¹² Supra note 10.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

First Change

The Exchange believes that amending the criteria required for a DLP to be eligible for the rebates by better aligning the behavior required to qualify for rebates with the nature of the rebates provided is reasonable because the Exchange must from time to time assess the effectiveness of the incentives it provides to market participants in return for the beneficial behavior required to receive the incentive. In this case, the Exchange is amending the program to include more targeted incentives and is applying not only the current NBBO-based criteria, but also other measures of beneficial market participation and ETP market quality. Specifically, the Exchange is applying an average daily volume standard to determine if an ETP qualifies for the New Product Support Incentives, which ties the availability of the incentive to a certain relatively low level of ADV thus ensuring that the ETP's market quality needs improvement. As used in the DLP Program, ADV is, for each individual security, the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month divided by the number of trading days during the month.

The Exchange is also applying a measure of average liquidity provided in the DLP's assigned ETPs to qualify for the Additional Tape C ETP Incentives, which requires the DLP to, on average, provide at least 5% of the liquidity provided on Nasdaq in their assigned ETPs. The Exchange believes that the proposed ETP liquidity criteria of the Additional Tape C ETP Incentive tier ensures that the DLP is providing an adequate level of liquidity in an ETP in addition to quoting at the NBBO in all of its assigned ETPs at an average at least 20% of the time in each ETP.

The Exchange believes that the proposed eligibility criteria are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same criteria to all DLPs. The Exchange also believes that the proposed eligibility criteria are an equitable allocation and are not unfairly discriminatory among Exchange members because any member may become a market maker and take the steps necessary to also become a DLP, including meeting the proposed minimum criteria under Rule 7014(f)(4). The DLP Program is limited to Exchange market makers because of their unique role in the markets, including their obligation to provide liquidity in the securities in which they are registered.¹⁵ Thus, the DLP Program is a further extension of the market maker's role in providing liquidity in specific securities, to the benefit of all market participants.

Second Change

The Exchange believes that the proposed new rebates are reasonable because they are better designed to provide incentives to DLPs to improve the market in ETPs that are in need of improved market quality. With respect to the Basic Rebates, the Exchange is providing three tiers of rebates, ranging from \$0.0036 to \$0.0047 per executed share of displayed liquidity in the ETP. The current Displayed Liquidity Rebate (for executions \$1 per share and above) ranges from \$0.0040 to \$0.0046 per share executed. Thus, the levels of the rebates currently offered and proposed are comparable.

The Exchange believes that the proposed rebates provided under the New Product Support Incentives are reasonable because they provide significant incentive in return for critical support of new ETPs. Generally, new ETPs launch with low volume, yet improve significantly over time. Low volume leads to less liquid markets for participants seeking

¹⁵ See Rule 4613 for a description of Exchange market maker obligations.

to transact in these newly-listed securities. Consequently, the Exchange is proposing to provide incentives that decrease over time, beginning with a rebate to qualifying DLPs of \$0.0070 during the first twelve months post ETP launch, \$0.0065 during the second twelve-month period, and \$0.0055 for the third twelve-month period. The Exchange believes that these graduated rebates will provide adequate incentive to DLPs to support trading in new ETPs until they have reached a level of maturity where such support is not needed.

The Exchange believes that the proposed Additional Tape C ETP rebates are reasonable because they provide additional incentive to DLPs to register in ETPs. Increasing the number of DLPs that any given ETP has will improve market quality in the ETP, since DLPs have performance requirements designed to improve market quality in the assigned ETP. The rebates are tied to the number of ETPs a DLP that meets the proposed eligibility criteria under Rule 7014(f)(4) is assigned, increasing in conjunction with the number of assigned ETPs. Moreover, the Exchange is providing a one-time \$0.0001 per executed share rebate in Tape C ETPs to both existing and newly-approved DLPs that have less than ten ETPs assigned, but increase the number of ETPs assigned by 100%. The Exchange believes that this one-time rebate may provide incentive to DLPs to increase the number of ETPs assigned significantly, and also incentivize market makers who are not DLPs to participate in the program thereby promoting greater participation in the program to the benefit of all market participants transacting in the DLP Program ETPs.

The Exchange believes that all of the proposed rebates are an equitable allocation and are not unfairly discriminatory because the Exchange will provide the same rebate to

all similarly situated DLPs. The Exchange believes that limiting securities eligible for the program to ETPs that are new or have relatively low volumes is an equitable allocation and is not unfairly discriminatory because these securities are the most in need of improved market quality. Moreover, the New Product Support Incentives are reduced over time as the ETP matures and the market in the ETP improves, eventually ending 36 months after the ETPs inception date. Thus, the New Product Support Incentives are of limited duration, with the ETPs eligible for New Product Support Incentives treated like other ETPs of the DLP Program once they reach the 36 month from product inception limit of these incentives. The Exchange also believes that the proposed rebates are an equitable allocation and are not unfairly discriminatory among Exchange members because, as noted above, any member may become an Exchange market maker and take the steps necessary to also become a DLP, including meeting the proposed minimum criteria under Rule 7014(f)(4). As noted above, the DLP Program is limited to Exchange market makers because of their unique role in the markets, including their obligation to provide liquidity in the securities that they are registered in. Thus, the DLP Program is a further extension of the market maker's role in providing liquidity in specific securities.

Third Change

The Exchange believes that the proposed change in the name of the program and its terminology further perfects the mechanism of a free and open market and a national market system, and, in general, promotes public interest because it reverts the program to its long-standing former name and terminology. As noted, the Exchange is making the change in response to industry feedback, which noted a preference for the prior name and terminology, and did not believe that it would be confusing. In support of this last point,

the Exchange notes that the rule clearly indicates that it applies to only registered Nasdaq market makers. Thus, the Exchange believes that reverting the name of the program and its terminology is consistent with further perfecting the mechanism of a free and open market and a national market system.

4. 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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange is proposing to modify the incentives provided to market makers for participation in the DLP program in an effort to improve the program by providing more targeted incentives to improve market quality in ETPs that are in need of such improvement the most. The Exchange uses incentives, such as the rebates of the DLP program, to incentivize market participants to improve the market. The Exchange must, from time to time, assess the effectiveness of incentives and adjust them when they are not as effective as the Exchange believes they could be. Moreover, the Exchange is

ultimately limited in the amount of rebates it may offer. The proposed new criteria and incentives are reflective of such an analysis.

The Exchange notes that participation in the DLP program is entirely voluntary and, to the extent that registered market makers determine that the rebates are not in line with the level of market-improving behavior the Exchange requires, a DLP may elect to deregister as such with no penalty. The Exchange notes that it is raising the minimum criteria required for a DLP to receive a rebate under the program, and thus there is a risk that a DLP may not qualify for any of the incentives under the amended program if it provides the same level market participation.

The Exchange does not believe that the change places an unnecessary burden on competition because the increase in the minimum criteria is relatively small and the level of rebate a DLP may receive is significantly higher in lower volume ETPs under the Basic Rebates. In sum, if the changes proposed herein are unattractive to market makers, it is likely that the Exchange will lose participation in the DLP program as a result. As noted above, the Exchange is continuing to limit eligibility for the program to Exchange market makers. The Exchange believes that Exchange market makers are best positioned to provide market improvement in DLP Program ETPs in light of their unique function in the markets. Moreover, any Exchange member may elect to take the steps necessary to become an Exchange market maker and therefore become eligible for the program if they choose. Thus, the Exchange does not believe that the proposal represents a burden on competition among Exchange members, or that the proposal will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁶ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

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

Not applicable.

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

Not applicable.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2016-130)

September __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq's Fees at Rule 7014(f)

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 September 16, 2016, 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 the Exchange's fees at Rule 7014(f) to: (i) change the criteria required to receive the rebates provided by the Lead Market Maker ("LMM") Program; (ii) change the rebates offered by the LMM Program; and (iii) rename the program the Designated Liquidity Provider ("DLP") Program, as described further below. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 3, 2016.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

The purpose of the proposed rule change is to: (i) change the criteria required to receive the rebates provided by the LMM Program; (ii) change the rebates offered by the LMM Program; and (iii) rename the program the Designated Liquidity Provider Program.

The LMM Program is designed to provide incentives to market makers to make markets in certain exchange-traded products ("ETPs"). To achieve this goal, Nasdaq provides credits to a designated LMM for execution of a Qualified Security. Under Rule 7014(f)(1), a Qualified Security is defined as an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares), 5710 (Securities Linked to the Performance of Indexes and Commodities, Including Currencies), 5720 (Trust Issued Receipts), 5735 (Managed Fund Shares), or 5745 (NextShares), and it must have at least one LMM.

An LMM is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. An LMM is selected by Nasdaq based on several factors including, but not limited to, experience with making markets in exchange-traded funds and index-linked securities, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of LMMs in a security, or modify a previously established limit, upon prior written notice to members.

Rule 7014(f)(4) sets forth the criteria required, and the rebates and reduced fees provided, by the LMM Program. Currently, there are three tiers based on the amount of time an LMM is at the national best bid and offer (“NBBO”). Specifically, if an LMM is above 15% to 20% at the NBBO, it qualifies for: (i) a Displayed Liquidity Rebate (for executions \$1 per share and above) of \$0.0040 per executed share; (ii) a Displayed Liquidity Rebate (for executions less than \$1 per share) of \$0.0000 per executed share; and (iii) a maximum fee of \$0.0005 per executed share for participation in the Halt, Opening, and Closing Crosses.³ If an LMM is above 20% to 50% at the NBBO, it qualifies for: (i) a Displayed Liquidity Rebate (for executions \$1 per share and above) of \$0.0043 per executed share; (ii) a Displayed Liquidity Rebate (for executions less than \$1 per share) of \$0.0000 per executed share; and (iii) a maximum fee of \$0.0000 per executed share for participation in the Halt, Opening, and Closing Crosses. Last, if an

³ A member participating in the Halt Cross would otherwise be assessed a fee of \$0.0010 per share executed (see Rule 7018(f)). A member participating in the Opening Cross would otherwise be assessed a fee of no less than \$0.0008 per share executed (see Rule 7018(e)). A member participating in the Closing Cross would otherwise be assessed a fee of no less than \$0.0008 per share executed (see Rule 7018(d)).

LMM is above 50% at the NBBO, it qualifies for: (i) a Displayed Liquidity Rebate (for executions \$1 per share and above) of \$0.0046 per executed share; (ii) a Displayed Liquidity Rebate (for executions less than \$1 per share) of \$0.0000 per executed share; and (iii) a maximum fee of \$0.0000 per executed share for participation in the Halt, Opening, and Closing Crosses.

The Exchange is proposing to amend the rebates and criteria under the program to also take into consideration certain characteristics of the individual ETP.

First Change

The purpose of the first change is to amend the criteria required to receive the rebates provided by the LMM Program to better align the behavior required to qualify for rebates with the nature of the rebates provided. Specifically, in lieu of the current criteria, the Exchange is proposing to require all LMMs, which will be renamed DLPs as part of this filing and will be noted as such when discussed below,⁴ to be at the NBBO at least 20% of the time in the assigned ETP in any given month in order to qualify for a Basic Rebate. In order to receive New Product Support Initiatives, discussed below, a DLP must be at the NBBO at least 20% of the time in the assigned ETP in any given month, the ETP itself must have a three month average daily volume (“ADV”)⁵ of less

⁴ As discussed in detail below, the Exchange is proposing to rename the LMM program as the Designated Liquidity Provider program. As a consequence, LMMs will be renamed DLPs. For purposes of this filing, the use of the term DLP is synonymous with the term LMM.

⁵ The Exchange is defining average daily volume, for purposes of the DLP Program, to mean the total consolidated volume reported to all consolidated transaction reporting plans, for each individual security, by all exchanges and trade reporting facilities during a month divided by the number of trading days during the month. If a security is not listed for a full month, the number of trading days will only include the days in which the security is listed.

than 500,000, and the ETP must be less than 36 months old. Thus, not only must the DLP contribute to market quality in the ETP by quoting at the NBBO, but the ETP itself must have relatively low volume. Last, to be eligible for new Additional Tape C ETP Incentives, discussed below, the average time the DLP is at the NBBO for each assigned ETP must average at least 20%, and the average liquidity provided by the DLP for each assigned ETP must average at least 5% of the liquidity provided on Nasdaq in the respective ETP.⁶

Second Change

The purpose of the second change is to modify the incentives provided by the program. As discussed above, the Exchange currently provides rebates and reduced fees if an LMM meets the minimum criteria of a tier. In lieu of the current incentives, the Exchange is adopting three new incentives that it believes are more targeted to improving market quality in ETPs.

First, the Exchange is proposing to provide Basic Rebates to DLPs that qualify under the proposed “Basic Rebates” criteria of being at the NBBO at least 20% of the time on average in any given month in a particular ETP. The Basic Rebates are available for each of a DLP’s assigned ETPs that it qualified for under the performance criteria.

The Basic Rebates vary based on the level of ADV the ETP has in a given month.

⁶ For example, assume a DLP has 20 assignments. If a DLP quotes at the NBBO 50% of the time in 10 of the ETPs and in the remaining 10 ETPs quotes at the NBBO 40% of the time, the average for the purposes of this calculation will be 45%. Nasdaq will calculate the liquidity provided by the DLP as a percent of liquidity provided in each assigned ETP on Nasdaq. Nasdaq will then average these percentages across symbols. For example, if the DLP is 10% of the added liquidity in 10 of the ETPs and 4% of the added liquidity in the remaining 10 ETPs the average for this calculation will be 7%. In this instance the DLP will have met the criteria on average for the additional incentive, even though it failed to meet the criteria for all 20 ETPs individually.

Specifically, a DLP will receive: (i) a rebate of \$0.0047 per executed share of displayed liquidity in an ETP that has ADV less than 500,000 during the month; (ii) a rebate of \$0.0042 per executed share of displayed liquidity in an ETP that has ADV between 500,000 and 5 million during the month; and (iii) a rebate of \$0.0036 per executed share of displayed liquidity in an ETP that has ADV greater than 5 million during the month. Thus, the new rebate schedule takes into consideration the nature of the market in the individual ETP, with the Exchange providing the greatest incentive to DLPs to participate in the program in ETPs that have the lowest volumes.

Second, the Exchange is proposing New Product Support Incentives to incentivize DLPs to support trading in newly-launched ETPs.⁷ The New Product Support Incentives are provided in lieu of the Basic Rebates. Like the Basic Rebates, the New Product Support Initiatives are only available in the assigned ETPs that the DLP qualifies for under the New Product Support Incentives performance criteria. The proposed incentives are based on the length of time since the ETP was launched,⁸ providing declining levels of rebate as the ETP matures. In particular, the Exchange is proposing to offer to all DLPs that qualify under the New Product Support Incentives criteria a rebate of \$0.0070 per executed share of displayed liquidity in the ETP in a newly-launched ETP with ADV less than 500,000 up to 12 months from the ETP's product inception date, a rebate of

⁷ Because the New Product Support Incentives implicates Rule 102 of Regulation M, the Commission is separately considering a limited, conditional exemption for issuers whose securities are subject to the New Product Support Initiative.

⁸ The Exchange considers an ETP's launch date to be the inception date of the ETP. For example, if an ETP launched on August 17, 2016, then the ETP is considered a new product with a fund inception date of August 17, 2016. Nasdaq will offer an enhanced rebate of (\$0.0070) on the ETP up through July 2017 (assuming the ADV threshold requirement of the New Product Support Incentives was not breached).

\$0.0065 per executed share of displayed liquidity in the ETP for the period 12 to 24 months from the product inception date, and a rebate of \$0.0055 per executed share of displayed liquidity in the ETP for the period 24 to 36 months from the product inception date. For purposes of calculating the number of months under the rule, the first partial month an ETP is launched will count as one month.

Third, the Exchange is proposing Additional Tape C ETP incentives. Specifically, the Exchange is proposing to offer DLPs that qualify under the Additional Tape C ETP Incentive criteria three tiers of rebates for each displayed share that adds liquidity in Tape C ETPs that meet the criteria of Rule 7014(f)(1)(A).⁹ These rebates are provided in addition to other rebates or fees provided under Rules 7018 and 7014, including the proposed Basic Rebates or New Product Support Incentives. Eligibility for each tier is based on the number of ETPs the DLP is assigned under the program. Specifically, an eligible DLP that has at least 10 ETPs assigned to them during a given month will receive a rebate of \$0.0003 per share executed in a Tape C ETP. An eligible DLP that has at least 25 assigned ETPs will receive a rebate of \$0.0004 per share executed in a Tape C ETP in lieu of the \$0.0003 per share executed rebate. An eligible DLP that has at least 50 assigned ETPs will receive a rebate of \$0.0005 per share executed in a Tape C ETP in lieu of the \$0.0003 and \$0.0004 per share executed rebates. Thus, the Exchange is providing incentive to members to participate as DLPs in a significant number of ETPs.

The Exchange is also providing a DLP that qualifies under the Additional Tape C ETP Incentive criteria yet has fewer than 10 ETPs assigned to them the ability to qualify

⁹ Rule 7014(f)(1)(A) sets forth the ETPs that may be included in the program.

for a \$0.0001 per share executed rebate in Tape C ETPs that meet the criteria of Rule 7014(f)(1)(A) if it increases the number of ETPs for which it is a DLP by 100%. A DLP is only eligible for the first 100% increase and will not receive additional \$0.0001 per share executed rebates for subsequent 100% increases to the number of assigned ETPs. For example, if an existing DLP has three assigned ETPs and thereafter is approved as a DLP for three additional ETPs, the DLP would receive an additional \$0.0001 per share executed rebate for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of Rule 7014(f)(1)(A). A new DLP will be considered a 100% increase and also receive the one-time \$0.0001 per share executed rebate in Tape C ETPs that meets the criteria of Rule 7014(f)(1)(A) in the DLP Program upon receiving their first ETP assignment. Thus, a newly-approved DLP will receive the additional \$0.0001 per share executed rebate in Tape C ETPs as described above when it is initially assigned an ETP under the DLP Program if the total number of ETPs assigned is less than ten, but the newly-approved DLP would not be eligible for additional \$0.0001 per share executed rebates for subsequent 100% increases to the number of assigned ETPs.

Third Change

The purpose of the third change is to change the name of the program. The Lead Market Maker Program had previously been named the Designated Liquidity Provider Program. In 2015, the Exchange changed the name of the program to the Lead Market Maker program and, accordingly, changed references to “Designated Liquidity Providers” and “DLPs” to “Lead Market Makers” and “LMMs,” respectively.¹⁰ At the time, the Exchange noted that the term Lead Market Maker was more descriptive of who

¹⁰ See Securities Exchange Act Release No. 75389 (July 8, 2015), 80 FR 41133 (July 14, 2015) (SR-NASDAQ-2015-071).

was eligible for the program (i.e., market makers), as opposed to a Designated Liquidity Provider, which could lead a market participant to believe that any market participant was eligible to qualify for the program. After receiving industry feedback, the Exchange now believes that the name Designated Liquidity Provider is, in fact, not confusing to market participants. Moreover, the Exchange notes that the rule explicitly defines an LMM (now DLP) as a “registered Nasdaq market maker.”¹¹ Consequently, Nasdaq is changing the name of the program back to the “Designated Liquidity Provider Program.” As was the case when the Exchange renamed the program in 2015, the proposed change in the program’s name and terminology does not impact the operation of the program.¹²

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is 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

¹¹ See Rule 7014(f)(2).

¹² Supra note 10.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First Change

The Exchange believes that amending the criteria required for a DLP to be eligible for the rebates by better aligning the behavior required to qualify for rebates with the nature of the rebates provided is reasonable because the Exchange must from time to time assess the effectiveness of the incentives it provides to market participants in return for the beneficial behavior required to receive the incentive. In this case, the Exchange is amending the program to include more targeted incentives and is applying not only the current NBBO-based criteria, but also other measures of beneficial market participation and ETP market quality. Specifically, the Exchange is applying an average daily volume standard to determine if an ETP qualifies for the New Product Support Incentives, which ties the availability of the incentive to a certain relatively low level of ADV thus ensuring that the ETP's market quality needs improvement. As used in the DLP Program, ADV is, for each individual security, the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month divided by the number of trading days during the month.

The Exchange is also applying a measure of average liquidity provided in the DLP's assigned ETPs to qualify for the Additional Tape C ETP Incentives, which requires the DLP to, on average, provide at least 5% of the liquidity provided on Nasdaq in their assigned ETPs. The Exchange believes that the proposed ETP liquidity criteria of the Additional Tape C ETP Incentive tier ensures that the DLP is providing an adequate

level of liquidity in an ETP in addition to quoting at the NBBO in all of its assigned ETPs at an average at least 20% of the time in each ETP.

The Exchange believes that the proposed eligibility criteria are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same criteria to all DLPs. The Exchange also believes that the proposed eligibility criteria are an equitable allocation and are not unfairly discriminatory among Exchange members because any member may become a market maker and take the steps necessary to also become a DLP, including meeting the proposed minimum criteria under Rule 7014(f)(4). The DLP Program is limited to Exchange market makers because of their unique role in the markets, including their obligation to provide liquidity in the securities in which they are registered.¹⁵ Thus, the DLP Program is a further extension of the market maker's role in providing liquidity in specific securities, to the benefit of all market participants.

Second Change

The Exchange believes that the proposed new rebates are reasonable because they are better designed to provide incentives to DLPs to improve the market in ETPs that are in need of improved market quality. With respect to the Basic Rebates, the Exchange is providing three tiers of rebates, ranging from \$0.0036 to \$0.0047 per executed share of displayed liquidity in the ETP. The current Displayed Liquidity Rebate (for executions \$1 per share and above) ranges from \$0.0040 to \$0.0046 per share executed. Thus, the levels of the rebates currently offered and proposed are comparable.

The Exchange believes that the proposed rebates provided under the New Product Support Incentives are reasonable because they provide significant incentive in return for

¹⁵ See Rule 4613 for a description of Exchange market maker obligations.

critical support of new ETPs. Generally, new ETPs launch with low volume, yet improve significantly over time. Low volume leads to less liquid markets for participants seeking to transact in these newly-listed securities. Consequently, the Exchange is proposing to provide incentives that decrease over time, beginning with a rebate to qualifying DLPs of \$0.0070 during the first twelve months post ETP launch, \$0.0065 during the second twelve-month period, and \$0.0055 for the third twelve-month period. The Exchange believes that these graduated rebates will provide adequate incentive to DLPs to support trading in new ETPs until they have reached a level of maturity where such support is not needed.

The Exchange believes that the proposed Additional Tape C ETP rebates are reasonable because they provide additional incentive to DLPs to register in ETPs. Increasing the number of DLPs that any given ETP has will improve market quality in the ETP, since DLPs have performance requirements designed to improve market quality in the assigned ETP. The rebates are tied to the number of ETPs a DLP that meets the proposed eligibility criteria under Rule 7014(f)(4) is assigned, increasing in conjunction with the number of assigned ETPs. Moreover, the Exchange is providing a one-time \$0.0001 per executed share rebate in Tape C ETPs to both existing and newly-approved DLPs that have less than ten ETPs assigned, but increase the number of ETPs assigned by 100%. The Exchange believes that this one-time rebate may provide incentive to DLPs to increase the number of ETPs assigned significantly, and also incentivize market makers who are not DLPs to participate in the program thereby promoting greater participation in the program to the benefit of all market participants transacting in the DLP Program ETPs.

The Exchange believes that all of the proposed rebates are an equitable allocation and are not unfairly discriminatory because the Exchange will provide the same rebate to all similarly situated DLPs. The Exchange believes that limiting securities eligible for the program to ETPs that are new or have relatively low volumes is an equitable allocation and is not unfairly discriminatory because these securities are the most in need of improved market quality. Moreover, the New Product Support Incentives are reduced over time as the ETP matures and the market in the ETP improves, eventually ending 36 months after the ETPs inception date. Thus, the New Product Support Incentives are of limited duration, with the ETPs eligible for New Product Support Incentives treated like other ETPs of the DLP Program once they reach the 36 month from product inception limit of these incentives. The Exchange also believes that the proposed rebates are an equitable allocation and are not unfairly discriminatory among Exchange members because, as noted above, any member may become an Exchange market maker and take the steps necessary to also become a DLP, including meeting the proposed minimum criteria under Rule 7014(f)(4). As noted above, the DLP Program is limited to Exchange market makers because of their unique role in the markets, including their obligation to provide liquidity in the securities that they are registered in. Thus, the DLP Program is a further extension of the market maker's role in providing liquidity in specific securities.

Third Change

The Exchange believes that the proposed change in the name of the program and its terminology further perfects the mechanism of a free and open market and a national market system, and, in general, promotes public interest because it reverts the program to its long-standing former name and terminology. As noted, the Exchange is making the

change in response to industry feedback, which noted a preference for the prior name and terminology, and did not believe that it would be confusing. In support of this last point, the Exchange notes that the rule clearly indicates that it applies to only registered Nasdaq market makers. Thus, the Exchange believes that reverting the name of the program and its terminology is consistent with further perfecting the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange is proposing to modify the incentives provided to market makers for participation in the DLP program in an effort to improve the program by providing more targeted incentives to improve market quality in ETPs that are in need of such improvement the most. The Exchange uses incentives, such as the rebates of the DLP program, to incentivize market participants to improve the market. The Exchange

must, from time to time, assess the effectiveness of incentives and adjust them when they are not as effective as the Exchange believes they could be. Moreover, the Exchange is ultimately limited in the amount of rebates it may offer. The proposed new criteria and incentives are reflective of such an analysis.

The Exchange notes that participation in the DLP program is entirely voluntary and, to the extent that registered market makers determine that the rebates are not in line with the level of market-improving behavior the Exchange requires, a DLP may elect to deregister as such with no penalty. The Exchange notes that it is raising the minimum criteria required for a DLP to receive a rebate under the program, and thus there is a risk that a DLP may not qualify for any of the incentives under the amended program if it provides the same level market participation.

The Exchange does not believe that the change places an unnecessary burden on competition because the increase in the minimum criteria is relatively small and the level of rebate a DLP may receive is significantly higher in lower volume ETPs under the Basic Rebates. In sum, if the changes proposed herein are unattractive to market makers, it is likely that the Exchange will lose participation in the DLP program as a result. As noted above, the Exchange is continuing to limit eligibility for the program to Exchange market makers. The Exchange believes that Exchange market makers are best positioned to provide market improvement in DLP Program ETPs in light of their unique function in the markets. Moreover, any Exchange member may elect to take the steps necessary to become an Exchange market maker and therefore become eligible for the program if they choose. Thus, the Exchange does not believe that the proposal represents a burden on competition among Exchange members, or that the proposal will impair the ability of

members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁶

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

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

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-130 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2016-130. 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-2016-130 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.¹⁷

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The NASDAQ Stock Market Rules

* * * * *

**7014. Market Quality Incentive Programs
Small Cap Incentive Program**

(a) – (e) No change.

[Lead Market Maker (“LMM”)]Designated Liquidity Provider (“DLP”) Program

(f) The following fees and rebates discussed in this section shall apply to transactions in a Qualified Security by one of its Designated Liquidity Providers associated with its DLP Program MPID. These rebates and fees only apply for executions \$1 per share and above.[Lead Market Makers in lieu of fees and rebates provided under Rules 7018 and 7014. If the LMM qualifies for a lower fee under Rule 7018 than the fees outlined in the LMM Program the lower fee from Rule 7018 shall apply.] As used in the DLP Program, the term average daily volume (“ADV”) shall mean the total consolidated volume reported to all consolidated transaction reporting plans, for each individual security, by all exchanges and trade reporting facilities during a month divided by the number of trading days during the month. If a security is not listed for a full month the number of trading days will only include the days which the security is listed.

For purposes of this paragraph:

(1) A security may be designated as a “Qualified Security” if:

(A) it is an exchange-traded product listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, 5720, 5735, or 5745;

(B) it has at least one Designated Liquidity Provider[Lead Market Maker].

(2) A “Designated Liquidity Provider” or “DLP”[“Lead Market Maker” or “LMM”] is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. A DLP[LMM] shall be selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded products, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of DLPS[LMMs] in a security, or modify a previously established limit, upon prior written notice to members.

(3) If a DLP[LMM] does not meet the performance measurements under paragraph (4) of this rule for a given month, fees and credits will revert to the normal schedule under 7018(a) and 7014. If a DLP[LMM] does not meet the stated performance measurements for 3 out of the past 4 months, the DLP[LMM] is subject to forfeiture of DLP[LMM] status for that Qualified Security, at NASDAQ’s discretion. A DLP[LMM] must provide 5 days written notice if it wishes to withdraw its registration in a Qualified Security, unless it is also withdrawing as a market maker in the Qualified Security.

(4) Below are the monthly performance criteria related to the specific fees and rebates provided under paragraph (5)[defined] below:

<p><u>Basic Rebates</u></p>	<p><u>DLP must be at the national best bid (best offer) (“NBBO”) at least 20% of the time on average in the assigned ETP.</u></p>
<p><u>New Product Support Incentives</u></p>	<p><u>DLP must be at the NBBO at least 20% of the time on average in the assigned ETP, the ETP must have a three month ADV of less than 500,000 and the ETP must be less than 36 months old.</u></p>
<p><u>Additional Tape C ETP Incentives</u></p>	<p><u>The average time the DLP is at the NBBO for each assigned ETP averages at least 20%, and the average liquidity provided by the DLP for each assigned ETP averages at least 5% of the liquidity provided on Nasdaq in the respective ETP.</u></p>

(5) A DLP that satisfies the performance criteria above, will be eligible to receive the rebates provided in paragraphs (A) – (B) below in each of its assigned ETPs for which it qualified, and the rebates provided in paragraph (C) in any Tape C ETP that meets the criteria of paragraph (1)(A) above. The rebates in paragraphs (A) and (B) below are in lieu of other rebates or fees provided under Rules 7018 and 7014. The rebates in paragraph (C) below will be in addition to other rebates or fees provided under Rules 7018 and 7014, including those in paragraphs (A) or (B).

(A) Basic Rebates

If an ETP meets one of the below requirements, an eligible DLP will receive the rebate for which it qualifies for each displayed share that adds liquidity in the ETP:

<u>ETP with monthly ADV less than 500,000</u>	<u>ETP with monthly ADV between 500,000 and 5 million</u>	<u>ETP with monthly ADV greater than 5 million</u>
<u>\$0.0047 per executed share</u>	<u>\$0.0042 per executed share</u>	<u>\$0.0036 per executed share</u>

(B) New Product Support Incentives

If an ETP has ADV of less than 500,000 over the prior three months, an eligible DLP will receive the rebate for which it qualifies for each displayed share that adds liquidity in the ETP in lieu of the Basic Rebates outlined in 5(A) as long as the ETP is within the specified time periods listed below:

<u>0 to 12 Months from Product Inception Date</u>	<u>12 to 24 Months from Product Inception Date</u>	<u>24 to 36 Months from Product Inception Date</u>
<u>\$0.0070 per executed share</u>	<u>\$0.0065 per executed share</u>	<u>\$0.0055 per executed share</u>

(C) Additional Tape C ETP Incentives

The following rebates are provided to an eligible member for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of paragraph (1)(A) above. This Rebate will only apply to the MPID where a member is a DLP:

	<u>Tier 1</u>	<u>Tier 2</u>	<u>Tier 3</u>
<u>Minimum Monthly Average Number of Assigned ETPs as a DLP</u>	<u>10</u>	<u>25</u>	<u>50</u>
<u>Incremental Tape C ETP Rebate</u>	<u>\$0.0003 per executed share</u>	<u>\$0.0004 per executed share</u>	<u>\$0.0005 per executed share</u>

If a current DLP has less than 10 DLP assignments, but increases the number of ETPs for which it is a DLP by 100%, the DLP will receive an incremental additional Tape C ETP rebate of \$0.0001. A DLP receiving its first assignment will count as a 100% increase. This incremental rebate is only available for the first 100% increase and thus is not available for subsequent increases of 100%.

**[Performance
Criteria**

**Displayed
Liquidity Rebate
(for executions** **Displayed
Liquidity Rebate
(for executions** **Halt Cross,
Opening
Cross and**

		\$1 per share and above)	less than \$1 per share)	Closing Cross (maximum fee)
Percent of time at the national best bid (best offer) ("NBBO")	Above 15% to 20%	\$0.0040 per executed share	\$0.0000 per executed share	\$0.0005 per executed share
Percent of time at the NBBO	Above 20% to 50%	\$0.0043 per executed share	\$0.0000 per executed share	\$0.0000 per executed share
Percent of time at the NBBO	Above 50%	\$0.0046 per executed share	\$0.0000 per executed share	\$0.0000 per executed share]

NBBO Program

(g) – (j) No change.

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