

Required fields are shown with yellow backgrounds and asterisks.

Filing by The Nasdaq Stock Market LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

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

Description

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

A proposal to amend the Exchanges Pricing Schedule at Equity 7 Section 114(f)

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 *	Jonathan	Last Name *	Cayne
Title *	Principal Associate General Counsel		
E-mail *	jonathan.cayne@nasdaq.com		
Telephone *	(301) 978-8493	Fax	

Signature

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

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

(Title *)

Date	04/30/2021	EVP and Chief Legal Officer
By	John Zecca	
	(Name *)	



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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 Pricing Schedule at Equity 7, Section 114(f) (“Pricing Schedule”), as described further below.

Changes to the fee schedule pursuant to this proposal are effective upon filing. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on May 3, 2021.

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 November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

Jonathan F. Cayne
Principal Associate General Counsel

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Nasdaq, Inc.
(301) 978-8493

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 amend the Exchange's Pricing Schedule at Equity 7, Section 114(f) applicable to the Designated Liquidity Provider ("DLP")³ Program. The Exchange proposes to amend the rebates applicable for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting market quality metrics ("MQMs"). Specifically, the Exchange proposes to (1) add Proxy Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5750 and Managed Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5760 to the list of securities that may be designated as a Qualified Security, as long as it has at least one DLP; (2) amend Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to the specific fees and rebates provided under Equity 7, Section 114(f)(5), as well as to address secondary DLPs; (3) change the current schedule under Equity 7, Section 114(f)(5) from three tiers to five tiers for both standard rebates ("Standard Rebate") and enhanced rebates ("Enhanced Rebate"), as well as address secondary DLPs; and (4) change the existing

³ Equity 7, Section 114(f)(2) defines a "Designated Liquidity Provider" or "DLP" as a registered Nasdaq market maker for a Qualified Security (defined below) that has committed to maintain minimum performance standards. A DLP will 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 in a security, or modify a previously established limit, upon prior written notice to members.

Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B), as well as add a new tier to the schedule.

Description of the Changes

The proposal amends the rebates applicable for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting MQMs. The Exchange believes that these changes will encourage DLPs to maintain better market quality in Nasdaq-listed securities, and, in particular, in lower volume securities where transaction-based compensation (i.e., rebates) may not be sufficient. The Exchange currently offers a DLP Program, which applies to transactions in a Qualified Security⁴ by one of its DLPs associated with its DLP Program MPID.

Add Proxy Portfolio Shares and Managed Portfolio Shares to List that may be Designated as a Qualified Security

The Exchange proposes to amend Equity 7, Section 114(f)(1)(A) to add Proxy Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5750 and Managed Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5760 to the list of securities that may be designated as a Qualified Security, as long as it has at least one DLP. Nasdaq Rule 5750 (Proxy Portfolio Shares) and Nasdaq Rule 5760 (Managed Portfolio Shares) were recently adopted and should be added to the existing list that already includes: Nasdaq Rule 5705 - Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares; Nasdaq Rule 5710 - Securities Linked to the Performance of Indexes and Commodities (Including Currencies); Nasdaq Rule 5720 - Trust Issued Receipts; Nasdaq Rule 5735 - Managed Fund Shares; and Nasdaq Rule 5745 - Exchange-Traded Managed

⁴ Equity 7, Section 114(f)(1) says 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; and (b) it has at least one DLP.

Fund Shares (“NextShares”). Both Proxy Portfolio Shares and Managed Portfolio Shares are semi-transparent exchange-traded funds (“ETFs”) that also need support from a market quality perspective just like traditional ETFs. Since many of these products are new and incubating, the Exchange believes the DLP changes will be beneficial to these ETFs as well.

Amend Monthly Performance Criteria for Fees and Rebates and Address Secondary DLPs

The Exchange also proposes to amend Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to the specific fees and rebates provided under Equity 7, Section 114(f)(5). Currently, to qualify for the basic rebate, which is being renamed the “Primary DLP Rebate,” under Equity 7, Section 114(f)(4), a DLP must be at the national best bid (best offer) (“NBBO”) at least 20% of the time on average in the assigned exchange-traded product (“ETP”). As amended, a DLP instead will need to meet four of the following five MQMs as measured by Nasdaq to qualify for the Standard Rebate and all five of the MQMs as measured by Nasdaq to qualify for the Enhanced Rebate: (1) time at the NBBO; (2) time within ‘X’ basis points of NBBO; (3) notional depth; (4) average spread; and (5) auction quality requirements.

Nasdaq is proposing these changes to the DLP Program to modernize it so that it becomes a program that is more market quality focused rather than transaction-based. The new MQMs are intended to encourage DLPs to uphold better quality markets in Nasdaq-listed ETPs and also ensure a scalable business model to support new and incubating ETPs than often trade less on a daily basis.

Additionally, the Exchange proposes to amend Equity 7, Section 114(f)(4) to address secondary DLPs. If there are two DLP assignments for a Nasdaq-listed ETP, the

DLP with the most recent inception date will be deemed the second DLP. The second DLP will qualify for rebates in ETPs if it meets two of the five MQMs noted above. The Exchange believes that by allowing two DLPs (approved at Nasdaq's discretion) will work to further support the market quality in lower average daily volume ("ADV") ETPs and increase resiliency in market quality performance.

Amend Rebate Tiers to include Standard and New Enhanced Rebates and Update Schedule from Three to Five Tiers, and Address Secondary DLPs

Currently, the Exchange provides rebates in Equity 7, Section 114(f)(5)(A) that are in lieu of other rebates or fees provided under Equity 7, Sections 118 and 114. The Exchange proposes to change the current schedule of three tiers⁵ to an updated schedule with five tiers.

The proposed amended schedule contains five tiers based on monthly ADV and includes both a Standard Rebate and an Enhanced Rebate. Tier 1 will apply to ETPs with monthly ADV greater than 1 million in the prior month with a Standard Rebate of \$0.0034 per executed share and with an Enhanced Rebate of \$0.0036 per executed share. Tier 2 will apply to ETPs with monthly ADV between 250,000 and 1 million in the prior month with a Standard Rebate of \$0.0040 per executed share and with an Enhanced Rebate of \$0.0042 per executed share. Tier 3 will apply to ETPs with monthly ADV between 150,000 and 250,000 in the prior month with a Standard Rebate of \$200 per month and with an Enhanced Rebate of \$350 per month. Tier 4 will apply to ETPs with

⁵ The current three tiers are: (1) \$0.0070 per executed share for ETPs with monthly ADV less than 500,000 in the prior month; (2) \$0.0042 per executed share for ETPs with monthly ADV between 500,000 and 5 million in the prior month; and (3) \$0.0036 per executed share for ETPs with monthly ADV greater than 5 million in the prior month. Enhanced Rebates are not addressed in the current schedule.

monthly ADV between 50,000 and 150,000 in the prior month with a Standard Rebate of \$225 per month and with an Enhanced Rebate of \$450 per month. Tier 5 will apply to ETPs with monthly ADV between 50,000 and 150,000 in the prior month with a Standard Rebate of \$300 per month and with an Enhanced Rebate of \$500 per month.

Currently, the Exchange's DLP Program incentivizes DLPs with a transaction-style rebate with one market quality requirement (time at inside > 20%). While this does benefit some ETPs, it may not be satisfactory for lower volume ETPs, which are often new and incubating products that need a different support model from the Nasdaq. The Exchange believes the change will better position these ETPs for success and benefit the issuers and market makers by offering a fixed rebate for meeting more market quality requirements in lower volume ETPs.

Nasdaq believes allowing a hybrid-style rebate program (transaction and fixed rebate), the Exchange can better support the market makers' business model. The Exchange believes that the amended DLP Program and market quality requirements will serve to better align the Exchange incentives with a more scalable and reliable model for DLPs, as well as increase market quality performance in Nasdaq-listed ETPs.

The Exchange also proposes that if there is more than one DLP to an assigned ETP, then an ETP receives \$150 per month or an extra \$0.0003 per executed share, depending upon the tier. The Exchange believes that by allowing two DLPs (approved at Nasdaq's discretion) will work to further support the market quality in lower ADV ETPs and increase resiliency in market quality performance.

Change Existing Additional Tape C ETP Incentives and Add New Tier

In addition, the Exchange proposes to change the existing Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B), as well as add a new tier. The rebates are

provided to an eligible member for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of Equity 7, Section 114(f)(1)(A) and will only apply to the market participant identifier (“MPID”) where a member is a DLP.

The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 1 (applicable to members with a minimum monthly average of 10 assigned ETPs as a DLP) to decrease from \$0.0003 per executed share to \$0.0002 per executed share. The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 2 (applicable to members with a minimum monthly average of 25 assigned ETPs as a DLP) to decrease from \$0.0004 per executed share to \$0.0003 per executed share. The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 3 (applicable to members with a minimum monthly average of 50 assigned ETPs as a DLP) to decrease from \$0.0005 per executed share to \$0.0004 per executed share. Finally, the Exchange proposes to add a Tier 4 that will have an Incremental Tape C ETP Rebate of \$0.0005 per executed share applicable to members with a minimum monthly average of 100 assigned ETPs as a DLP. This will replace the existing language at the end of the rule,⁶ which the Exchange believes was not an effective part of the DLP Program and that the revised fees will be more and impactful to ETF issuers and market makers. The Exchange is updating the Tape C ETP rebate to better reflect the growing number of ETP listings on Nasdaq. The Exchange is proposing to eliminate the existing language at the end of Equity 7, Section 114(f)(5)(B) that follows the Additional Tape C ETP Incentives schedule because the

⁶ The rule language currently says “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%.”

Exchange believes it was not an effective part of the DLP Program, and that the amended fees will be more and impactful to ETF issuers and market makers.

b. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,⁷ in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposals are Reasonable

The Exchange's proposals are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' ... As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b) (5).

otherwise, in the execution of order flow from broker dealers'"⁹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹⁰

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that allowing two DLPs (approved at Nasdaq's discretion)

⁹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

is reasonable because it will further support the market quality in lower ADV ETPs and increase resiliency in market quality performance. The Exchange also believes that it is reasonable to expand the list of securities that may be designated as a “Qualified Security” to include Proxy Portfolio Shares under Nasdaq Rule 5750 and Managed Portfolio Shares under Nasdaq Rule 5760, as long as they have at least one DLP. Semi-transparent ETFs also need support from a market quality perspective just like traditional ETFs. Since many of these products are new and incubating, the Exchange believes the DLP changes will be beneficial to these ETFs as well.

The Proposal is an Equitable Allocation of Rebates

The Exchange believes its proposals will allocate its rebates fairly among its market participants. The Exchange believes that it is reasonable to amend the Exchange’s Pricing Schedule applicable to the DLP Program because it will encourage DLPs to uphold better quality markets in Nasdaq-listed ETPs through being more market quality focused rather than transaction-based.

Currently, the Exchange’s DLP Program incentivizes DLPs with a transaction-style rebate with one market quality requirement (time at inside > 20%). Although this does benefit some ETPs, it may not be satisfactory for lower volume ETPs, which are often new and incubating products that need a different support model from the Exchange. The Exchange believes that amending the DLP Program as proposed is an equitable allocation of rebates and will better position these lower volume ETPs for success and will benefit issuers and market makers by offering a fixed rebate for meeting more market quality requirements in lower volume ETPs.

The Exchange believes that its proposal to change the current schedule under

Equity 7, Section 114(f)(5) from three tiers to five tiers¹¹ is an equitable allocation of rebates. The proposed five tiers are based on monthly ADV and includes both a Standard Rebate and an Enhanced Rebate. Tier 1 will apply to ETPs with monthly ADV greater than 1 million in the prior month with a Standard Rebate of \$0.0034 per executed share and with an Enhanced Rebate of \$0.0036 per executed share. Tier 2 will apply to ETPs with monthly ADV between 250,000 and 1 million in the prior month with a Standard Rebate of \$0.0040 per executed share and with an Enhanced Rebate of \$0.0042 per executed share. Tier 3 will apply to ETPs with monthly ADV between 150,000 and 250,000 in the prior month with a Standard Rebate of \$200 per month and with an Enhanced Rebate of \$350 per month. Tier 4 will apply to ETPs with monthly ADV between 50,000 and 150,000 in the prior month with a Standard Rebate of \$225 per month and with an Enhanced Rebate of \$450 per month. Tier 5 will apply to ETPs with monthly ADV between 50,000 and 150,000 in the prior month with a Standard Rebate of \$300 per month and with an Enhanced Rebate of \$500 per month. The Exchange believes that by allowing for a fixed payment in lower ADV products, it provides for a more reliable business model for DLPs while adding on quote and market quality requirements and reflects an equitable allocation of rebates.

Additionally, allowing a hybrid style rebate program (transaction-based and a fixed rebate), the Exchange can better support the market makers' business model. The Exchange believes that the DLP Program, as amended, will better align incentives with a more scalable and reliable model for DLPs and increase market quality performance in Nasdaq- listed ETPs and is an equitable allocation of rebates.

¹¹ See supra note 5.

The Exchange believes that its proposal to change the existing Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B), as well as add a new tier, is an equitable allocation of rebates. ETP listings is a highly competitive market in which ETP issuers and DLPs can opt to not participate or transfer listings. The additional tier reflects the growing number of ETPs listed on Nasdaq. The rebates are provided to an eligible member for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of Equity 7, Section 114(f)(1)(A) and will only apply to the MPID where a member is a DLP.

The Exchange's proposal to amend the Incremental Tape C ETP Rebates are also an equitable allocation of rebates. This is intended to encourage DLPs to promote better market quality and liquidity in all Nasdaq-listed ETPs. The Exchange believe the increased rebates will incentivize DLPs to register to support additional ETPs, especially lower ADV products. Specifically, this applies to (1) Tier 1 (applicable to members with a minimum monthly average of 10 assigned ETPs as a DLP) to decrease from \$0.0003 per executed share to \$0.0002 per executed share; (2) Tier 2 (applicable to members with a minimum monthly average of 25 assigned ETPs as a DLP) to decrease from \$0.0004 per executed share to \$0.0003 per executed share; (3) Tier 3 (applicable to members with a minimum monthly average of 50 assigned ETPs as a DLP) to decrease from \$0.0005 per executed share to \$0.0004 per executed share; and (4) Tier 4 that will have an Incremental Tape C ETP Rebate of \$0.0005 per executed share applicable to members with a minimum monthly average of 100 assigned ETPs as a DLP. The Exchange is updating the Tape C ETP rebate to better reflect the growing number of ETP listings on Nasdaq. The Exchange is proposing to eliminate the existing language at the end of

Equity 7, Section 114(f)(5)(B) that follows the Additional Tape C ETP Incentives schedule because the Exchange believes it was not an effective part of the DLP Program, and that the amended fees will be more and impactful to ETF issuers and market makers.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

The Proposals are not Unfairly Discriminatory

The Exchange believes that its proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded rebate cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange believes that its proposals to amend the MQMs and rebates are not unfairly discriminatory because these rebates are available to all qualifying members. Moreover, these proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by allowing a hybrid-style rebate program (transaction and fixed rebate), the Exchange can better support the market makers' business model. The Exchange believes that the amended DLP Program and market

quality requirements will serve to better align the Exchange incentives with a more scalable and reliable model for DLPs, as well as increase market quality performance in Nasdaq-listed ETPs.

The Exchange believes that its amended Pricing Schedule is not unfairly discriminatory because if successful, it stands to improve the quality of the Nasdaq market, to the benefit of all market participants. The Exchange has limited resources with which to apply to incentives, and it must allocate those limited resources in a manner that prioritizes areas of greatest need and potential effect. Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

Finally, the Exchange believes that its proposed amendment to its DLP Program is not unfairly discriminatory because the changes to the rebates and tiers, including the additional tiers, will apply to all members.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. To the contrary, the proposed changes will provide opportunities for DLPs to receive new and amended rebates based on their market-improving behavior.

Moreover, members are free to trade on other venues to the extent they believe that the rebates provided are too low or the qualification criteria are not attractive. As

one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes.

As noted above, the proposal to amend the Exchange's DLP Program (for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting MQMs without regard to transactions executed) will help to encourage DLPs to maintain better market quality in Nasdaq-listed securities, and, in particular, in lower volume securities where transaction-based compensation (i.e., rebates) may not be sufficient. It is not intended to provide a competitive advantage to any particular DLP. The Exchange believes the change will better position lower volume ETPs, which are often new and incubating products that need a different support model from the Nasdaq, for success and benefit the Issuers and market makers by offering a fixed rebate for meeting more market quality requirements in lower volume ETPs. The Exchange also believes that by allowing two DLPs (approved at Nasdaq's discretion) will work to further support the market quality in lower ADV ETPs and increase resiliency in market quality performance.

Meanwhile, the proposed changes to the MQMs will encourage more members to try to attain these rebates by increasing their market-improving behavior. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed amended rebates are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes.

Intermarket Competition

In terms of intermarket 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 rebates and 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 rebates and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which rebate or fee changes in this market may impose any burden on competition is extremely limited.

The proposed new and amended rebates are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 50% of industry volume.

The Exchange's proposals are pro-competitive in that the Exchange intends for them to preserve and enhance its incentive programs, as well as to increase liquidity adding activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes 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,¹² 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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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-2021-034)

April __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule at Equity 7, Section 114(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 April 30, 2021, 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 Pricing Schedule at Equity 7, Section 114(f) ("Pricing Schedule"), as described further below.

Changes to the fee schedule pursuant to this proposal are effective upon filing. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on May 3, 2021.

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 <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

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Equity 7, Section 114(f) applicable to the Designated Liquidity Provider ("DLP")³ Program. The Exchange proposes to amend the rebates applicable for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting market quality metrics ("MQMs"). Specifically, the Exchange proposes to (1) add Proxy Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5750 and Managed Portfolio

³ Equity 7, Section 114(f)(2) defines a "Designated Liquidity Provider" or "DLP" as a registered Nasdaq market maker for a Qualified Security (defined below) that has committed to maintain minimum performance standards. A DLP will 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 in a security, or modify a previously established limit, upon prior written notice to members.

Shares listed on Nasdaq pursuant to Nasdaq Rule 5760 to the list of securities that may be designated as a Qualified Security, as long as it has at least one DLP; (2) amend Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to the specific fees and rebates provided under Equity 7, Section 114(f)(5), as well as to address secondary DLPs; (3) change the current schedule under Equity 7, Section 114(f)(5) from three tiers to five tiers for both standard rebates (“Standard Rebate”) and enhanced rebates (“Enhanced Rebate”), as well as address secondary DLPs; and (4) change the existing Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B), as well as add a new tier to the schedule.

Description of the Changes

The proposal amends the rebates applicable for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting MQMs. The Exchange believes that these changes will encourage DLPs to maintain better market quality in Nasdaq-listed securities, and, in particular, in lower volume securities where transaction-based compensation (i.e., rebates) may not be sufficient. The Exchange currently offers a DLP Program, which applies to transactions in a Qualified Security⁴ by one of its DLPs associated with its DLP Program MPID.

Add Proxy Portfolio Shares and Managed Portfolio Shares to List that may be Designated as a Qualified Security

The Exchange proposes to amend Equity 7, Section 114(f)(1)(A) to add Proxy Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5750 and Managed Portfolio Shares listed on Nasdaq pursuant to Nasdaq Rule 5760 to the list of securities that may be

⁴ Equity 7, Section 114(f)(1) says 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; and (b) it has at least one DLP.

designated as a Qualified Security, as long as it has at least one DLP. Nasdaq Rule 5750 (Proxy Portfolio Shares) and Nasdaq Rule 5760 (Managed Portfolio Shares) were recently adopted and should be added to the existing list that already includes: Nasdaq Rule 5705 - Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares; Nasdaq Rule 5710 - Securities Linked to the Performance of Indexes and Commodities (Including Currencies); Nasdaq Rule 5720 - Trust Issued Receipts; Nasdaq Rule 5735 - Managed Fund Shares; and Nasdaq Rule 5745 - Exchange-Traded Managed Fund Shares (“NextShares”). Both Proxy Portfolio Shares and Managed Portfolio Shares are semi-transparent exchange-traded funds (“ETFs”) that also need support from a market quality perspective just like traditional ETFs. Since many of these products are new and incubating, the Exchange believes the DLP changes will be beneficial to these ETFs as well.

Amend Monthly Performance Criteria for Fees and Rebates and Address Secondary DLPs

The Exchange also proposes to amend Equity 7, Section 114(f)(4) to revise the monthly performance criteria related to the specific fees and rebates provided under Equity 7, Section 114(f)(5). Currently, to qualify for the basic rebate, which is being renamed the “Primary DLP Rebate,” under Equity 7, Section 114(f)(4), a DLP must be at the national best bid (best offer) (“NBBO”) at least 20% of the time on average in the assigned exchange-traded product (“ETP”). As amended, a DLP instead will need to meet four of the following five MQMs as measured by Nasdaq to qualify for the Standard Rebate and all five of the MQMs as measured by Nasdaq to qualify for the Enhanced Rebate: (1) time at the NBBO; (2) time within ‘X’ basis points of NBBO; (3) notional depth; (4) average spread; and (5) auction quality requirements.

Nasdaq is proposing these changes to the DLP Program to modernize it so that it becomes a program that is more market quality focused rather than transaction-based. The new MQMs are intended to encourage DLPs to uphold better quality markets in Nasdaq-listed ETPs and also ensure a scalable business model to support new and incubating ETPs than often trade less on a daily basis.

Additionally, the Exchange proposes to amend Equity 7, Section 114(f)(4) to address secondary DLPs. If there are two DLP assignments for a Nasdaq-listed ETP, the DLP with the most recent inception date will be deemed the second DLP. The second DLP will qualify for rebates in ETPs if it meets two of the five MQMs noted above. The Exchange believes that by allowing two DLPs (approved at Nasdaq's discretion) will work to further support the market quality in lower average daily volume ("ADV") ETPs and increase resiliency in market quality performance.

Amend Rebate Tiers to include Standard and New Enhanced Rebates and Update Schedule from Three to Five Tiers, and Address Secondary DLPs

Currently, the Exchange provides rebates in Equity 7, Section 114(f)(5)(A) that are in lieu of other rebates or fees provided under Equity 7, Sections 118 and 114. The Exchange proposes to change the current schedule of three tiers⁵ to an updated schedule with five tiers.

The proposed amended schedule contains five tiers based on monthly ADV and includes both a Standard Rebate and an Enhanced Rebate. Tier 1 will apply to ETPs with

⁵ The current three tiers are: (1) \$0.0070 per executed share for ETPs with monthly ADV less than 500,000 in the prior month; (2) \$0.0042 per executed share for ETPs with monthly ADV between 500,000 and 5 million in the prior month; and (3) \$0.0036 per executed share for ETPs with monthly ADV greater than 5 million in the prior month. Enhanced Rebates are not addressed in the current schedule.

monthly ADV greater than 1 million in the prior month with a Standard Rebate of \$0.0034 per executed share and with an Enhanced Rebate of \$0.0036 per executed share. Tier 2 will apply to ETPs with monthly ADV between 250,000 and 1 million in the prior month with a Standard Rebate of \$0.0040 per executed share and with an Enhanced Rebate of \$0.0042 per executed share. Tier 3 will apply to ETPs with monthly ADV between 150,000 and 250,000 in the prior month with a Standard Rebate of \$200 per month and with an Enhanced Rebate of \$350 per month. Tier 4 will apply to ETPs with monthly ADV between 50,000 and 150,000 in the prior month with a Standard Rebate of \$225 per month and with an Enhanced Rebate of \$450 per month. Tier 5 will apply to ETPs with monthly ADV between 50,000 and 150,000 in the prior month with a Standard Rebate of \$300 per month and with an Enhanced Rebate of \$500 per month.

Currently, the Exchange's DLP Program incentivizes DLPs with a transaction-style rebate with one market quality requirement (time at inside > 20%). While this does benefit some ETPs, it may not be satisfactory for lower volume ETPs, which are often new and incubating products that need a different support model from the Nasdaq. The Exchange believes the change will better position these ETPs for success and benefit the issuers and market makers by offering a fixed rebate for meeting more market quality requirements in lower volume ETPs.

Nasdaq believes allowing a hybrid-style rebate program (transaction and fixed rebate), the Exchange can better support the market makers' business model. The Exchange believes that the amended DLP Program and market quality requirements will serve to better align the Exchange incentives with a more scalable and reliable model for DLPs, as well as increase market quality performance in Nasdaq-listed ETPs.

The Exchange also proposes that if there is more than one DLP to an assigned ETP, then an ETP receives \$150 per month or an extra \$0.0003 per executed share, depending upon the tier. The Exchange believes that by allowing two DLPs (approved at Nasdaq's discretion) will work to further support the market quality in lower ADV ETPs and increase resiliency in market quality performance.

Change Existing Additional Tape C ETP Incentives and Add New Tier

In addition, the Exchange proposes to change the existing Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B), as well as add a new tier. The rebates are provided to an eligible member for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of Equity 7, Section 114(f)(1)(A) and will only apply to the market participant identifier ("MPID") where a member is a DLP.

The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 1 (applicable to members with a minimum monthly average of 10 assigned ETPs as a DLP) to decrease from \$0.0003 per executed share to \$0.0002 per executed share. The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 2 (applicable to members with a minimum monthly average of 25 assigned ETPs as a DLP) to decrease from \$0.0004 per executed share to \$0.0003 per executed share. The Exchange proposes to amend the Incremental Tape C ETP Rebate for Tier 3 (applicable to members with a minimum monthly average of 50 assigned ETPs as a DLP) to decrease from \$0.0005 per executed share to \$0.0004 per executed share. Finally, the Exchange proposes to add a Tier 4 that will have an Incremental Tape C ETP Rebate of \$0.0005 per executed share applicable to members with a minimum monthly average of 100 assigned ETPs as a DLP.

This will replace the existing language at the end of the rule,⁶ which the Exchange believes was not an effective part of the DLP Program and that the revised fees will be more and impactful to ETF issuers and market makers. The Exchange is updating the Tape C ETP rebate to better reflect the growing number of ETP listings on Nasdaq. The Exchange is proposing to eliminate the existing language at the end of Equity 7, Section 114(f)(5)(B) that follows the Additional Tape C ETP Incentives schedule because the Exchange believes it was not an effective part of the DLP Program, and that the amended fees will be more and impactful to ETF issuers and market makers.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,⁷ in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposals are also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposals are Reasonable

The Exchange's proposals are reasonable in several respects. As a threshold

⁶ The rule language currently says "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%."

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b) (5).

matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market.

The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows:

“[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”⁹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁰

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market

⁹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposals represent reasonable attempts by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that allowing two DLPs (approved at Nasdaq's discretion) is reasonable because it will further support the market quality in lower ADV ETPs and increase resiliency in market quality performance. The Exchange also believes that it is reasonable to expand the list of securities that may be designated as a "Qualified Security" to include Proxy Portfolio Shares under Nasdaq Rule 5750 and Managed Portfolio Shares under Nasdaq Rule 5760, as long as they have at least one DLP. Semi-transparent ETFs also need support from a market quality perspective just like traditional ETFs. Since many of these products are new and incubating, the Exchange believes the DLP changes will be beneficial to these ETFs as well.

The Proposal is an Equitable Allocation of Rebates

The Exchange believes its proposals will allocate its rebates fairly among its market participants. The Exchange believes that it is reasonable to amend the Exchange's Pricing Schedule applicable to the DLP Program because it will encourage DLPs to uphold better quality markets in Nasdaq-listed ETPs through being more market quality focused rather than transaction-based.

Currently, the Exchange's DLP Program incentivizes DLPs with a transaction-style rebate with one market quality requirement (time at inside > 20%). Although this does benefit some ETPs, it may not be satisfactory for lower volume ETPs, which are often new and incubating products that need a different support model from the Exchange. The Exchange believes that amending the DLP Program as proposed is an equitable allocation of rebates and will better position these lower volume ETPs for success and will benefit issuers and market makers by offering a fixed rebate for meeting more market quality requirements in lower volume ETPs.

The Exchange believes that its proposal to change the current schedule under Equity 7, Section 114(f)(5) from three tiers to five tiers¹¹ is an equitable allocation of rebates. The proposed five tiers are based on monthly ADV and includes both a Standard Rebate and an Enhanced Rebate. Tier 1 will apply to ETPs with monthly ADV greater than 1 million in the prior month with a Standard Rebate of \$0.0034 per executed share and with an Enhanced Rebate of \$0.0036 per executed share. Tier 2 will apply to ETPs with monthly ADV between 250,000 and 1 million in the prior month with a Standard Rebate of \$0.0040 per executed share and with an Enhanced Rebate of \$0.0042 per executed share. Tier 3 will apply to ETPs with monthly ADV between 150,000 and 250,000 in the prior month with a Standard Rebate of \$200 per month and with an Enhanced Rebate of \$350 per month. Tier 4 will apply to ETPs with monthly ADV between 50,000 and 150,000 in the prior month with a Standard Rebate of \$225 per month and with an Enhanced Rebate of \$450 per month. Tier 5 will apply to ETPs with monthly ADV between 50,000 and 150,000 in the prior month with a Standard Rebate of

¹¹ See supra note 5.

\$300 per month and with an Enhanced Rebate of \$500 per month. The Exchange believes that by allowing for a fixed payment in lower ADV products, it provides for a more reliable business model for DLPs while adding on quote and market quality requirements and reflects an equitable allocation of rebates.

Additionally, allowing a hybrid style rebate program (transaction-based and a fixed rebate), the Exchange can better support the market makers' business model. The Exchange believes that the DLP Program, as amended, will better align incentives with a more scalable and reliable model for DLPs and increase market quality performance in Nasdaq-listed ETPs and is an equitable allocation of rebates.

The Exchange believes that its proposal to change the existing Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B), as well as add a new tier, is an equitable allocation of rebates. ETP listings is a highly competitive market in which ETP issuers and DLPs can opt to not participate or transfer listings. The additional tier reflects the growing number of ETPs listed on Nasdaq. The rebates are provided to an eligible member for each displayed share that adds liquidity in a Tape C ETP that meets the criteria of Equity 7, Section 114(f)(1)(A) and will only apply to the MPID where a member is a DLP.

The Exchange's proposal to amend the Incremental Tape C ETP Rebates are also an equitable allocation of rebates. This is intended to encourage DLPs to promote better market quality and liquidity in all Nasdaq-listed ETPs. The Exchange believe the increased rebates will incentivize DLPs to register to support additional ETPs, especially lower ADV products. Specifically, this applies to (1) Tier 1 (applicable to members with a minimum monthly average of 10 assigned ETPs as a DLP) to decrease from \$0.0003

per executed share to \$0.0002 per executed share; (2) Tier 2 (applicable to members with a minimum monthly average of 25 assigned ETPs as a DLP) to decrease from \$0.0004 per executed share to \$0.0003 per executed share; (3) Tier 3 (applicable to members with a minimum monthly average of 50 assigned ETPs as a DLP) to decrease from \$0.0005 per executed share to \$0.0004 per executed share; and (4) Tier 4 that will have an Incremental Tape C ETP Rebate of \$0.0005 per executed share applicable to members with a minimum monthly average of 100 assigned ETPs as a DLP. The Exchange is updating the Tape C ETP rebate to better reflect the growing number of ETP listings on Nasdaq. The Exchange is proposing to eliminate the existing language at the end of Equity 7, Section 114(f)(5)(B) that follows the Additional Tape C ETP Incentives schedule because the Exchange believes it was not an effective part of the DLP Program, and that the amended fees will be more and impactful to ETF issuers and market makers.

The Exchange notes that those market participants that are dissatisfied with the proposals are free to shift their order flow to competing venues that offer more generous pricing or less stringent qualifying criteria.

The Proposals are not Unfairly Discriminatory

The Exchange believes that its proposals are not unfairly discriminatory. As an initial matter, the Exchange believes that nothing about its tiered pricing model is inherently unfair; instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded rebate cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model

that the Exchange and its competitors have long employed with the assent of the Commission. It is fair because it incentivizes customer activity that increases liquidity, enhances price discovery, and improves the overall quality of the equity markets.

The Exchange believes that its proposals to amend the MQMs and rebates are not unfairly discriminatory because these rebates are available to all qualifying members. Moreover, these proposals stand to improve the overall market quality of the Exchange, to the benefit of all market participants, by allowing a hybrid-style rebate program (transaction and fixed rebate), the Exchange can better support the market makers' business model. The Exchange believes that the amended DLP Program and market quality requirements will serve to better align the Exchange incentives with a more scalable and reliable model for DLPs, as well as increase market quality performance in Nasdaq-listed ETPs.

The Exchange believes that its amended Pricing Schedule is not unfairly discriminatory because if successful, it stands to improve the quality of the Nasdaq market, to the benefit of all market participants. The Exchange has limited resources with which to apply to incentives, and it must allocate those limited resources in a manner that prioritizes areas of greatest need and potential effect. Any participant that is dissatisfied with the proposals is free to shift their order flow to competing venues that provide more generous pricing or less stringent qualifying criteria.

Finally, the Exchange believes that its proposed amendment to its DLP Program is not unfairly discriminatory because the changes to the rebates and tiers, including the additional tiers, will apply to all members.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage. To the contrary, the proposed changes will provide opportunities for DLPs to receive new and amended rebates based on their market-improving behavior.

Moreover, members are free to trade on other venues to the extent they believe that the rebates provided are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes.

As noted above, the proposal to amend the Exchange's DLP Program (for DLPs in Nasdaq-listed securities with monthly incentives that are directly tied to meeting MQMs without regard to transactions executed) will help to encourage DLPs to maintain better market quality in Nasdaq-listed securities, and, in particular, in lower volume securities where transaction-based compensation (i.e., rebates) may not be sufficient. It is not intended to provide a competitive advantage to any particular DLP. The Exchange believes the change will better position lower volume ETPs, which are often new and incubating products that need a different support model from the Nasdaq, for success and benefit the Issuers and market makers by offering a fixed rebate for meeting more market quality requirements in lower volume ETPs. The Exchange also believes that by

allowing two DLPs (approved at Nasdaq's discretion) will work to further support the market quality in lower ADV ETPs and increase resiliency in market quality performance.

Meanwhile, the proposed changes to the MQMs will encourage more members to try to attain these rebates by increasing their market-improving behavior. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposed amended rebates are too low or the qualification criteria are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes.

Intermarket Competition

In terms of intermarket 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 rebates and 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 rebates and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which rebate or fee changes in this market may impose any burden on competition is extremely limited.

The proposed new and amended rebates are reflective of this competition because, even as one of the largest U.S. equities exchanges by volume, the Exchange has less than

20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. This is in addition to free flow of order flow to and among off-exchange venues which comprises upwards of 50% of industry volume.

The Exchange's proposals are pro-competitive in that the Exchange intends for them to preserve and enhance its incentive programs, as well as to increase liquidity adding activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes 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.¹²

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-037 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2021-037. 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-2021-037 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market LLC Rules

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Equity 7 Pricing Schedule

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Section 114. Market Quality Incentive Programs

(a) – (e) No Change.

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. 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.

(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, 5750 or 5760;

(B) it has at least one Designated Liquidity Provider.

(2) A "Designated Liquidity Provider" or "DLP" is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. A DLP 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 in a security, or modify a previously established limit, upon prior written notice to members.

(3) If a DLP does not meet the performance measurements under paragraph (4) of this section for a given month, fees and credits will revert to the normal schedule under Sections 118(a) and 114. If a DLP does not meet the stated performance measurements for 3 out of the past 4 months, the DLP is subject to forfeit of DLP status for that Qualified Security, at Nasdaq's discretion. A DLP 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) below:

<p>[Basic]<u>Primary DLP</u> Rebates</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.] DLPs will need to meet 4 of the 5 below Market Quality Metrics as measured by Nasdaq to qualify for the Standard Rebate, and all 5 of the below Market Quality Metrics as measured by Nasdaq to qualify for the Enhanced Rebate. These Market Quality Metrics include the following:</u></p> <ol style="list-style-type: none"> <u>1. Time at the national best bid (best offer) ("NBBO")</u> <u>2. Time within 'X' basis points of NBBO</u> <u>3. Notional Depth</u> <u>4. Average Spread</u> <u>5. Auction Quality Requirements</u>
<p><u>Secondary DLP</u></p>	<ul style="list-style-type: none"> <u>• If there are 2 DLP assignments for a Nasdaq listed ETP, the DLP with the most recent inception date is the 2nd DLP.</u> <u>• The second DLP qualifies for rebates in ETPs if it meets any 2 of the 5 Market Quality Metrics.</u>
<p>Additional Tape C ETP Incentives</p>	<p>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.</p>

(5) A DLP that satisfies the [performance criteria]Market Quality Metrics above, will be eligible to receive the rebates provided in paragraph (A) below in each of its assigned ETPs for which it qualified, and the rebates provided in paragraph (B) in any Tape C ETP that meets the criteria of paragraph (1)(A) above. The rebates in paragraph (A) below are in lieu of other rebates or fees provided under Equity 7, Sections 118 and 114. The rebates in paragraph (B) below will be in addition to other rebates or fees provided under Equity 7, Sections 118 and 114, including those in paragraph (A).

(A) [Basic]Primary DLP 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]:

[ETP with monthly ADV less than 500,000 in the prior month	ETP with monthly ADV between 500,000 and 5 million in the prior month	ETP with monthly ADV greater than 5 million in the prior month
\$0.0070 per executed share	\$0.0042 per executed share	\$0.0036 per executed share]

<u>TIERS</u>	<u>ADV</u>	<u>STANDARD REBATE</u>	<u>ENHANCED REBATE</u>
<u>Tier 1</u>	<u>ETP with monthly ADV greater than 1 million in the prior month</u>	<u>\$0.0034 per executed share</u>	<u>\$0.0036 per executed share</u>
<u>Tier 2</u>	<u>ETP with monthly ADV between 250,000 and 1 million in the prior month</u>	<u>\$0.0040 per executed share</u>	<u>\$0.0042 per executed share</u>
<u>Tier 3</u>	<u>ETP with monthly ADV between 150,000 and 250,000 in the prior month</u>	<u>\$200 per month</u>	<u>\$350 per month</u>
<u>Tier 4</u>	<u>ETP with monthly ADV between 50,000 and 150,000 in the prior month</u>	<u>\$225 per month</u>	<u>\$450 per month</u>
<u>Tier 5</u>	<u>ETP with monthly ADV greater than 50,000 in the prior month</u>	<u>\$300 per month</u>	<u>\$500 per month</u>

If there is a Secondary DLP assigned to an ETP, then the following rebate schedule is applied:

- Tiers 1 - 2: an additional \$0.0003 per executed share.
- Tiers 3 - 5: an additional \$150 per month.

(B) 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:

	Tier 1	Tier 2	Tier 3	Tier 4
Minimum Monthly Average Number of Assigned ETPs as a DLP	10	25	50	<u>100</u>
Incremental Tape C ETP Rebate	\$0.000 <u>2</u> [3] per executed share	\$0.000 <u>3</u> [4] per executed share	\$0.000 <u>4</u> [5] per executed share	<u>\$0.0005</u> per <u>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%.]

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