

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 053

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<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)(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
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to amend the Exchanges schedule of rebates 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 * Katie Last Name * Hopkins

Title * Associate General Counsel

E-mail * katie.hopkins@nasdaq.com

Telephone * (301) 232-4067 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/01/2023


(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

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

 Date: 2023.12.01 10:49:52 -05'00'

Required fields are shown with yellow backgrounds and astericks.

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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SR-NASDAQ-2023-053 19b-4.docx

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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SR-NASDAQ-2023-053 Exhibit 1.docx

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

Add Remove View

SR-NASDAQ-2023-053 Exhibit 5.docx

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 schedule of rebates at Equity 7, Section 114(f), as described further below.

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”). 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:

Katie Hopkins
Associate General Counsel
Nasdaq, Inc.
301-232-4067

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 schedule of credits at Equity 7, Section 114(f) applicable to the Designated Liquidity Provider (“DLP”)³ Program. Specifically, the Exchange proposes to amend the Additional Tape C ETP Incentives at Equity 7, Section 114(f).

Currently, the Additional Tape C ETP Incentives in Equity 7, Section 114(f)(5)(B) 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 only apply to the MPID where a member is a DLP. In addition, Equity 7, Section 114(f)(4) provides monthly performance criteria related to Additional Tape C ETP Incentives, which requires that 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 average at least 5% of the liquidity provided on the Exchange in the respective ETP.

As set forth in in Equity 7, Section 114(f)(5)(B), the Exchange provides an Incremental Tape C ETP Rebate for Tier 1 (applicable to members with a minimum monthly average of 10 assigned ETPs as a DLP) of \$0.0002 per executed share. The Exchange provides an Incremental Tape C ETP Rebate for Tier 2 (applicable to members

³ Equity 7, Section 114(f)(2) defines a “Designated Liquidity Provider” or “DLP” as 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.

with a minimum monthly average of 25 assigned ETPs as a DLP) of \$0.0003 per executed share. The Exchange provides an Incremental Tape C ETP Rebate for Tier 3 (applicable to members with a minimum monthly average of 50 assigned ETPs as a DLP) of \$0.0004 per executed share. Finally, the Exchange provides an Incremental Tape C ETP Rebate for Tier 4 (applicable to members with a minimum monthly average of 100 assigned ETPs as a DLP) of \$0.0005 per executed share.

The Exchange proposes to limit the category of DLPs that may qualify for the Additional Tape C ETP Incentives to Primary DLPs. Under the proposed rule change, Secondary DLPs⁴ would not be eligible for Additional Tape C ETP Incentives.

In order to effectuate this proposed modification, the Exchange proposes to modify Equity 7, Section 114(f)(4) to indicate that the Additional Tape C ETP Incentives are for Primary DLPs and relatedly, update the performance criteria related to such rebates by adding “Primary” where DLP is referenced. In addition, the Exchange proposes to modify Equity 7, Section 114(f)(5) to specify, in both the introductory language as well as in Section 114(f)(5)(B), that the DLP must be a Primary DLP to qualify for the Additional Tape C ETP Incentives.

The Exchange believes it is appropriate to update the Tape C ETP Incentives to apply solely to Primary DLPs because Primary DLPs bear the majority of the responsibility for providing high quality markets in the ETPs, whereas Secondary DLPs provide additional support. In return for serving as Primary DLPs, the Exchange believes

⁴ Equity 7, Section 114(f)(4) provides that, if there are two DLP assignments for a Nasdaq-listed ETP, the Secondary DLP will be determined by using the factors in Section 114(f)(2). Such factors include 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.

it is appropriate to compensate Primary DLPs with incentives reserved for Primary DLPs. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives, including by maximizing the net impact of such incentives on the Exchange, market quality, and participants.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also notes that its ETP listing business operates in a highly competitive market in which market participants, which include both DLPs and ETP issuers, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity incentive programs, or any other factor at a particular venue to be insufficient or excessive. The DLP Program, including the proposed rule change, reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as DLPs on the Exchange.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to limit the category of DLPs that may qualify for the Additional Tape C ETP Incentives

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

to Primary DLPs. The Exchange believes it is appropriate to update the Tape C ETP Incentives to apply solely to Primary DLPs because Primary DLPs bear the majority of the responsibility for providing high quality markets in the ETPs, whereas the Secondary DLPs provide additional support. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. In return for serving as Primary DLPs, the Exchange believes it is appropriate to compensate Primary DLPs with incentives reserved exclusively for Primary DLPs. The Exchange believes that the proposed revisions to the Additional Tape C ETP Incentives are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same criteria for the Additional Tape C ETP Incentives to all Primary DLPs. The Exchange also believes that amending the DLP Program as proposed is an equitable allocation of rebates and is not unfairly discriminatory because it will allocate its rebates fairly among its market participants (i.e., the Exchange will offer more rebates to Primary DLPs that are responsible for providing high quality markets in the ETPs).

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. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem rebates or 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 and fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the Exchange is proposing to limit the category of DLPs that may qualify for the Additional Tape C ETP Incentives in the DLP Program to Primary DLPs in an effort to exclusively reward Primary DLPs with such incentives. The proposal is reflective of the greater responsibility borne by Primary DLPs.

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 proposal is 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 does not believe that the proposed change places an unnecessary burden on competition and, 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. 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,⁷ 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.

⁷ 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-2023-053)

December __, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 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 December 1, 2023, 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 schedule of rebates at Equity 7, Section 114(f), as described further below.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 schedule of credits at Equity 7, Section 114(f) applicable to the Designated Liquidity Provider (“DLP”)³ Program. Specifically, the Exchange proposes to amend the Additional Tape C ETP Incentives at Equity 7, Section 114(f).

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assigned ETP averages at least 20%, and the average liquidity provided by the DLP for each assigned ETP average at least 5% of the liquidity provided on the Exchange in the respective ETP.

As set forth in in Equity 7, Section 114(f)(5)(B), the Exchange provides an Incremental Tape C ETP Rebate for Tier 1 (applicable to members with a minimum monthly average of 10 assigned ETPs as a DLP) of \$0.0002 per executed share. The Exchange provides an Incremental Tape C ETP Rebate for Tier 2 (applicable to members with a minimum monthly average of 25 assigned ETPs as a DLP) of \$0.0003 per executed share. The Exchange provides an Incremental Tape C ETP Rebate for Tier 3 (applicable to members with a minimum monthly average of 50 assigned ETPs as a DLP) of \$0.0004 per executed share. Finally, the Exchange provides an Incremental Tape C ETP Rebate for Tier 4 (applicable to members with a minimum monthly average of 100 assigned ETPs as a DLP) of \$0.0005 per executed share.

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In order to effectuate this proposed modification, the Exchange proposes to modify Equity 7, Section 114(f)(4) to indicate that the Additional Tape C ETP Incentives are for Primary DLPs and relatedly, update the performance criteria related to such rebates by adding “Primary” where DLP is referenced. In addition, the Exchange

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The Exchange believes it is appropriate to update the Tape C ETP Incentives to apply solely to Primary DLPs because Primary DLPs bear the majority of the responsibility for providing high quality markets in the ETPs, whereas Secondary DLPs provide additional support. In return for serving as Primary DLPs, the Exchange believes it is appropriate to compensate Primary DLPs with incentives reserved for Primary DLPs. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives, including by maximizing the net impact of such incentives on the Exchange, market quality, and participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also notes that its ETP listing business operates in a highly competitive market in which market participants, which include both DLPs and ETP issuers, can readily transfer their listings or opt not to participate, respectively, if they deem fee

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

levels, liquidity incentive programs, or any other factor at a particular venue to be insufficient or excessive. The DLP Program, including the proposed rule change, reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as DLPs on the Exchange.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to limit the category of DLPs that may qualify for the Additional Tape C ETP Incentives to Primary DLPs. The Exchange believes it is appropriate to update the Tape C ETP Incentives to apply solely to Primary DLPs because Primary DLPs bear the majority of the responsibility for providing high quality markets in the ETPs, whereas the Secondary DLPs provide additional support. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. In return for serving as Primary DLPs, the Exchange believes it is appropriate to compensate Primary DLPs with incentives reserved exclusively for Primary DLPs. The Exchange believes that the proposed revisions to the Additional Tape C ETP Incentives are an equitable allocation and are not unfairly discriminatory because the Exchange will apply the same criteria for the Additional Tape C ETP Incentives to all Primary DLPs. The Exchange also believes that amending the DLP Program as proposed is an equitable allocation of rebates and is not unfairly discriminatory because it will allocate its rebates fairly among its market participants (i.e., the Exchange will offer more rebates to Primary DLPs that are responsible for providing high quality markets in the ETPs).

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. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem rebates or 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 and fee changes in this market may impose any burden on competition is extremely limited.

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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 does not believe that the proposed change places an unnecessary burden on competition and, 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. 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.⁷

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.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-053 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-2023-053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3

p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-053 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Sherry R. Haywood,

Assistant Secretary.

⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

THE NASDAQ STOCK MARKET LLC RULES

* * * * *

Equity Rules

* * * * *

Equity 7: Pricing Schedule

* * * * *

Section 114. Market Quality Incentive Programs

* * * * *

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.

For purposes of this paragraph:

(1) – (3) No change.

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

Primary DLP Rebates

Primary DLPs will need to meet 4 of 5 of the Standard Market Quality Metrics in the assigned ETP as measured by Nasdaq to qualify for the Standard Rebate, and all 5 Enhanced Market Quality Metrics in the assigned ETP as measured by Nasdaq

to qualify for the Enhanced Rebate. These Market Quality Metrics are measured on average in the assigned ETP during regular market hours, except for the Auction Quality Requirements that are measured each auction against the metrics:

1. Time at the national best bid (best offer) (“NBBO”) (Standard Rebate: 20%; Enhanced Rebate: 50%)
2. Time within 5 basis points of NBBO (Standard Rebate: 50%; Enhanced Rebate: 75%)
3. Notional Depth (Standard Rebate: \$100,000 (within 150 basis points of NBBO); Enhanced Rebate: \$100,000 (within 50 basis points of NBBO))
4. Average Spread (Standard Rebate: less than 125 basis points; Enhanced Rebate: less than 25 basis points)
5. Auction Quality Requirements (Standard Rebate: Auction Price must be within 350 basis points (Opening) and 100 basis points (Closing) of first reference price within 30 seconds prior to the market open (Opening) and within 120 seconds prior to the market close (Closing); Enhanced Rebate: Auction Price must be within 150 basis points (Opening) and 50 basis points (Closing) of first reference price within 30 seconds prior to the market open (Opening) and within 120 seconds prior to the market close (Closing))

Secondary DLP Rebates

- If there are 2 DLP assignments for a Nasdaq-listed ETP, the Secondary DLP will be determined by using the factors in Section 114(f)(2).
- The Secondary DLP qualifies for rebates in ETPs if it meets 2 of the Enhanced Market Quality Metrics, excluding the Auction Quality Requirements metric.

Additional Tape C ETP
Incentives for Primary DLPs

The average time the Primary DLP is at the NBBO for each assigned ETP averages at least 20%, and the average liquidity provided by the Primary DLP for each assigned ETP averages at least 5% of the liquidity provided on Nasdaq in the respective ETP.

(5) A DLP that satisfies the 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, provided the DLP is a Primary DLP. The rebates in paragraph (A) below are in lieu of or in addition to, as specified, 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) No change.

(B) Additional Tape C ETP Incentives for Primary DLPs

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 Primary DLP:

	Tier 1	Tier 2	Tier 3	Tier 4
Minimum Monthly Average Number of Assigned ETPs as a <u>Primary DLP</u>	10	25	50	100
Incremental Tape C ETP Rebate	\$0.0002 per executed share	\$0.0003 per executed share	\$0.0004 per executed share	\$0.0005 per executed share

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