



8011-01p

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-80437; File No. SR-NASDAQ-2017-035]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Rule 7014(f) to Amend the Designated Liquidity Provider Program

April 12, 2017

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 March 31, 2017, 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 transaction fees at Rule 7014(f) to amend the Designated Liquidity Provider ("DLP") Program ("Program").

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on April 3, 2017.

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

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 DLP Program in Rule 7014(f) to eliminate the rebates that are paid pursuant to the New Product Support Incentives ("NPSI"). With the elimination of the NPSI, the Exchange also proposes to amend one of the "Basic Rebates" to increase that rebate from \$0.0047 per executed share to \$0.0070 per executed share. Nasdaq also proposes to amend the manner in which the average daily volume ("ADV") of an exchange-traded product ("ETP") is calculated for purposes of determining a DLP's eligibility for the Basic Rebate.

The DLP Program is designed to provide incentives to market makers to make markets in certain ETPs. To achieve this goal, Nasdaq provides credits to a DLP when executing a Qualified Security. As set forth in the Rule, a DLP is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards.³ A

³ The Rule also provides that 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

Qualified Security is defined as an exchange-traded product listed on Nasdaq pursuant to Nasdaq Rules 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares), 5710 (Securities Linked to the Performance of Indexes and Commodities, Including Currencies), 5720 (Trust Issued Receipts), 5735 (Managed Fund Shares), or 5745 (NextShares), and it must have at least one DLP.

Currently, a DLP may be eligible for three different kinds of rebates under the Program. First, a DLP will qualify for a “Basic Rebate” for adding shares of displayed liquidity in the ETP if the DLP is at the National Best Bid and Offer (“NBBO”) at least 20% of the time on average in any given month in a particular assigned ETP. The Basic Rebates vary based on the ETP’s ADV in a given month. Specifically, a DLP will receive: (i) a rebate of \$0.0047 per executed share of displayed liquidity in an ETP that has less than 500,000 ADV during the month; (ii) a rebate of \$0.0042 per executed share of displayed liquidity in an ETP that has between 500,000 and 5 million ADV during the month; and (iii) a rebate of \$0.0036 per executed share of displayed liquidity in an ETP that has greater than 5 million ADV during the month. The Basic Rebate will be paid in lieu of other rebates or fees provided under Rules 7018 and 7014.

The second rebate is the NPSI rebate. Like the Basic Rebate, the NPSI rebate will be paid in lieu of other rebates or fees provided under Rules 7018 and 7014, including the Basic Rebate. A DLP will qualify for the NPSI rebate for adding shares of displayed liquidity in the ETP if the DLP is at the NBBO at least 20% of the time in the assigned ETP in any given month. The ETP itself must have a three month ADV of less than 500,000, and the ETP must be less than 36 months old. Assuming the ETP meets the NPSI volume criteria, a rebate of \$0.0070 per executed share of displayed liquidity will be paid to DLPs that are assigned to ETPs that are 0-12

a previously established limit, upon prior written notice to members. See Rule 7014(f)(2).

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

The third rebate is the Additional Tape C ETP Incentives. This rebate will be paid in addition to other rebates or fees provided under Rules 7018 and 7014, including the Basic Rebate and the NPSI. In order to qualify for the Additional Tape C rebate, the DLP must add displayed liquidity in a Tape C ETP that is listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, 5720, 5735, or 5745.⁴ The average time the DLP is at the NBBO for each assigned ETP must average at least 20%, and the average liquidity provided by the DLP for each assigned ETP must average at least 5% of the liquidity provided on Nasdaq in the respective ETP. The amount of the rebate varies according to the minimum monthly average number of ETPs to which a DLP is assigned. A DLP that has a minimum monthly average number of 10 assigned ETPs will receive a rebate of \$0.0003 per executed share; a DLP that has a minimum monthly average number of 25 assigned ETPs will receive a rebate of \$0.0004 per executed share; and a DLP that has a minimum monthly average number of 50 assigned ETPs will receive a rebate of \$0.0005 per executed share.⁵

⁴ Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

⁵ Additionally, 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%.

Currently, only an ETP with a product inception date of 36 months or less is eligible for the NPSI Rebate. Nasdaq has determined that eliminating the time-based eligibility requirement may increase the number of ETPs that may be eligible for a rebate under the DLP Program, and would therefore incentivize the DLPs that are assigned to those ETPs to qualify for a rebate by, among other things, meeting the applicable quoting requirements. This is consistent with the purpose of the DLP Program and may improve the market quality of additional Nasdaq-listed ETPs.

Once the time-based eligibility requirement is removed from the NPSI, the requirements for qualifying for the Basic Rebate tier for ETPs with an ADV of less than 500,000 are virtually identical to the requirements of qualifying for the NPSI rebate. Specifically, both the NPSI and the lowest level of the Basic Rebate tier have a volume requirement of less than 500,000 ADV, and both rebates require the DLP to be at the NBBO at least 20% of the time on average in the assigned ETP. Given the similarities between the NPSI and the lowest tier of the Basic Rebate, and in the interest of simplifying the operation of the Program, the Exchange has therefore determined to eliminate the NPSI rebate in its entirety.⁶

Currently, a DLP will receive a Basic Rebate of \$0.0047 per executed share for an ETP with a monthly ADV of less than 500,000 if the DLP is at the NBBO at least 20% of the time on average in the assigned ETP. The Exchange is also proposing to amend this tier to increase the rebate from \$0.0047 per executed share to \$0.0070 per executed share so that DLPs that are currently receiving the NPSI rebate will continue to receive the same rebate going forward.

Nasdaq believes that it is appropriate to increase the Basic Rebate for an ETP with a monthly ADV of less than 500,000 to \$0.0070 per executed share, because DLPs that currently

⁶ In eliminating the NPSI rebate, the Additional Tape C ETP Incentives rebate will be re-numbered as Rule 7014(f)(5)(B).

receive an NPSI rebate of \$0.0070 per executed share will continue to receive the same rebate even with the elimination of the NPSI rebate. Nasdaq believes that the proposed \$0.0070 per executed share rebate is proportionate to the requirements for the Basic Rebate while acting as a sufficient incentive to DLPs in lower-volume ETPs to increase their quoting and trading activity in those securities. Nasdaq believes it is appropriate to raise the Basic Rebate for an ETP with a monthly ADV of less than 500,000, and not for other Basic Rebate tiers, because DLPs need significantly more incentives to quote and trade lower-volume ETPs than higher-volume ETPs.

Finally, Nasdaq is changing the measurement used to calculate an ETP's ADV for purposes of determining a DLP's eligibility for the Basic Rebate. Currently, a DLP will qualify for the Basic Rebate if the ETP's ADV meets the applicable volume threshold, as measured in the same month in which the rebate is being paid. Nasdaq proposes to determine a DLP's eligibility for the Basic Rebate by using the ETP's ADV in the month prior to which the rebate is being paid. Nasdaq believes that adopting a prior month ADV measurement provides greater transparency and certainty to a DLP in determining the Basic Rebate than the current month measurement. Nasdaq is proposing to apply this change to all tiers of the Basic Rebate, as it believes that the basis for this change applies equally to DLPs in all of the Basic Rebate tiers. Nasdaq does not believe that DLPs will significantly alter their trading activity as a result of this change, since the relevant measurement is the ADV of the ETP to which the DLP is assigned, not the ADV of the DLP.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in

⁷ 15 U.S.C. 78f(b).

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 believes that it is reasonable to eliminate the NPSI rebate and to correspondingly increase the amount of the Basic Rebate tier for an ETP with a monthly ADV of less than 500,000. Once the time-based eligibility requirement is removed from the NPSI, the requirements for qualifying for the Basic Rebate tier for ETPs with an ADV of less than 500,000 are virtually identical to the requirements of qualifying for the NPSI rebate. Given the similarities between the NPSI and the lowest tier of the Basic Rebate, and in the interest of simplifying the operation of the Program, the Exchange believes it is reasonable to eliminate the NPSI Rebate in its entirety and concurrently re-number the Additional Tape C ETP Incentives rebate. By eliminating the NPSI rebate and raising the amount of the Basic Rebate for ETPs with an ADV of less than 500,000 to \$0.0070 per executed share, Nasdaq will increase the number of ETPs that may be eligible for this rebate, while ensuring that DLPs that currently receive an NPSI rebate of \$0.0070 per executed share will continue to have the same opportunity to receive that rebate amount even with the elimination of the NPSI rebate. Increasing the number of ETPs that may be eligible for the \$0.0070 rebate will incentivize the DLPs that are assigned to those ETPs to qualify for the rebate by, among other things, meeting the applicable quoting requirements. This is consistent with the purpose of the DLP Program and may improve the market quality of additional Nasdaq-listed ETPs. Even with the NPSI's time-based requirement removed, Nasdaq believes that the proposed \$0.0070 per executed share rebate is

⁸ 15 U.S.C. 78f(b)(4) and (5).

proportionate to the requirements for the Basic Rebate while acting as a sufficient incentive to DLPs in lower-volume ETPs to increase their quoting and trading activity in those securities.

Nasdaq believes it is reasonable to change the measurement used to calculate an ETP's ADV for purposes of determining a DLP's eligibility for the Basic Rebate. Nasdaq believes that adopting a prior month ADV measurement provides greater transparency and certainty to a DLP in determining the Basic Rebate than the current month measurement. Nasdaq is proposing to apply this change to all tiers of the Basic Rebate, as it believes that the basis for this change applies equally to DLPs in all of the Basic Rebate tiers.

Nasdaq believes that eliminating the NPSI rebate, and increasing the amount of the Basic Rebate tier for an ETP with a monthly ADV of less than 500,000, is equitable and not unfairly discriminatory. In eliminating the NPSI Rebate and raising the amount of the Basic Rebate for ETPs with an ADV of less than 500,000 to \$0.0070 per executed share, all DLPs that currently qualify [sic] NPSI Rebate will continue to have the opportunity to qualify for the same \$0.0070 rebate that they currently receive. By raising the amount of the Basic Rebate for ETPs with an ADV of less than 500,000 to \$0.0070 per executed share, DLPs that are assigned to such ETPs that are not currently receiving the \$0.0070 per executed share rebate will now be eligible to receive this rebate. This will incentivize the DLPs that are assigned to such ETPs to qualify for this rebate by, among other things, meeting the applicable quoting requirements. Moreover, Nasdaq believes it is appropriate to raise the Basic Rebate for an ETP with a monthly ADV of less than 500,000, and not for other Basic Rebate tiers, because DLPs need significantly more incentives to quote and trade lower-volume ETPs than higher-volume ETPs. For these reasons, Nasdaq believes it is reasonable to raise the Basic Rebate for low-volume ETPs in this manner even though the NPSI's time-based requirement will no longer apply.

Nasdaq believes that changing the measurement used to calculate an ETP's ADV for purposes of determining a DLP's eligibility for the Basic Rebate is equitable and not unfairly discriminatory. Nasdaq is proposing to apply this change to all tiers of the Basic Rebate, as it believes that the basis for this change (providing greater transparency and certainty to a DLP in determining the rebate amount) applies equally to DLPs in all of the Basic Rebate tiers. Nasdaq does not believe that DLPs will significantly alter their trading activity as a result of this change, since the relevant measurement is the ADV of the ETP to which the DLP is assigned, not the ADV of the DLP. In addition, this standard will apply to all DLPs that would otherwise qualify for the Basic Rebate.

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

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

Here, increasing the Basic Rebate for ETPs with an ADV of less than 500,000 to \$0.0070 per executed share, eliminating the NPSI rebate, and changing the measurement of an ETP's

ADV for purposes of the Basic Rebate do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. With these proposed changes, all similarly-situated members are equally capable of qualifying for the proposed Basic Rebate for ETPs with an ADV of less than 500,000 if they choose to meet the requirements of the Program and the Basic Rebate, and the same rebate will be paid to all members that qualify for it. In addition, members will continue to have opportunities to qualify for the Tape C Rebate under the Program.

Nasdaq believes that raising the Basic Rebate for an ETP with a monthly ADV of less than 500,000, and not for other Basic Rebate tiers, does not constitute a burden on competition not necessary or appropriate, because DLPs need significantly more incentives to quote and trade lower-volume ETPs than higher-volume ETPs. Eliminating the NPSI Rebate and increasing the proposed Basic Rebate for ETPs with an ADV of less than 500,000 to \$0.0070 per executed share will expand the scope of ETPs, and the DLPs that are assigned to them, that are eligible for this rebate, while helping ensure that DLPs that currently qualify for the \$0.0070 rebate under the NPSI will continue to qualify for this amount. This change will therefore incentivize the DLPs that are assigned to ETPs with an ADV of less than 500,000, and which do not currently qualify for the NPSI Rebate, to qualify for the rebate by, among other things, meeting the applicable quoting requirements, which may improve the market quality of additional Nasdaq-listed ETPs. Given the competitive nature of the market for listing and trading ETPs, these changes which [sic] may encourage other market venues to make similar changes to improve their market quality. Thus, the Exchange does not believe that the proposed changes will impose any burden on competition, but may rather promote competition.

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.⁹ 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 proposal 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 No. SR-NASDAQ-2017-035 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.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File No. SR-NASDAQ-2017-035. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also 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 No. SR-NASDAQ-2017-035 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.¹⁰

Eduardo A. Aleman
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

