

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99950; File No. SR-NASDAQ-2024-017)

April 12, 2024

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 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2024, 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 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 list of exchange-traded products (“ETPs”) that may be designated as a “Qualified Security”³ under the Exchange’s Designated Liquidity Provider (“DLP”)⁴ Program at Equity 7, Section 114(f)(1)(A). Specifically, the Exchange proposes to add securities listed on Nasdaq pursuant to Nasdaq Rules 5711, 5713, and 5715 to the list of securities that may be designated as a Qualified Security, as long as it has at least one DLP.

The Exchange currently offers certain fees and rebates under the DLP Program, which applies to transactions in a Qualified Security by one of its DLPs associated with its DLP Program market participant identifier (“MPID”). The Exchange proposes to amend Equity 7, Section 114(f)(1)(A) to add securities listed on Nasdaq pursuant to Nasdaq Rules 5711,⁵ 5713 (Paired Class Shares), and 5715 (Selected Equity-linked Debt Securities) to the list of securities that may be designated as a Qualified Security, as long as it has at least one DLP. The Exchange

³ 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 5704, 5705, 5710, 5720, 5735, 5745, 5750 or 5760; and (b) it has at least one DLP.

⁴ 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 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.

⁵ Securities listed on Nasdaq pursuant to Nasdaq Rule 5711 include Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, and Currency Warrants.

proposes to add Nasdaq Rules 5711, 5713, and 5715 to the existing list that already includes: Nasdaq Rule 5704 (Exchange Traded Fund Shares), 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), Nasdaq Rule 5745 (Exchange-Traded Managed Fund Shares (“NextShares”)), Nasdaq Rule 5750 (Proxy Portfolio Shares), and Nasdaq Rule 5760 (Managed Portfolio Shares). The Exchange believes that the DLP Program encourages DLPs to maintain better market quality in Nasdaq-listed securities. The Exchange recently listed shares of the iShares Bitcoin Trust and the Valkyrie Bitcoin Fund under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares).⁶ Since these products are new and incubating, the Exchange believes the DLP Program will be beneficial to these ETPs. Currently, other than these two spot bitcoin ETPs, the Exchange does not have any additional products listed under Nasdaq Rule 5711, nor does it have any products currently listed under Rule 5713 or Rule 5715. Nonetheless, similar to the ETPs currently listed in Equity 7, Section 114(f)(1)(A), any future ETPs listed on Nasdaq pursuant to Nasdaq Rules 5711, 5713, and 5715 would benefit from support from a market quality perspective.

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 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

⁶ See Securities Exchange Act Release No. 34-99306 (January 10, 2024), 89 FR 3008 (January 17, 2024).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

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, which the Exchange believes will enhance market quality in qualified ETPs listed on the Exchange.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to expand the list of securities that may be designated as a Qualified Security to include securities listed on Nasdaq pursuant to Nasdaq Rules 5711, 5713, and 5715, as long as it has at least one DLP. The Exchange believes that its proposal to expand the list of securities that may be designated as a Qualified Security to include securities listed on Nasdaq pursuant to Nasdaq Rules 5711, 5713, and 5715, as long as it has at least one DLP, is reasonable because the DLP Program encourages better market quality and ETPs currently listed on Nasdaq pursuant to Nasdaq Rule 5711 as well as ETPs that may be listed on Nasdaq pursuant to Nasdaq Rules 5711, 5713, and 5715 in the future would benefit from support from a market quality perspective, like the other ETPs currently included in the list of securities that may be designated as a Qualified Security in Equity 7, Section 114(f)(1)(A). As noted above, the Exchange recently listed shares of the iShares Bitcoin Trust and the Valkyrie Bitcoin Fund under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares) and the Exchange believes the DLP Program will be beneficial to these new ETPs. The Exchange believes that the proposal is equitable and not unfairly

discriminatory because the expanded list of securities that may be designated as a Qualified Security under the DLP Program would allow for more ETPs to be designated as Qualified Securities and thereby allow more DLPs to receive incentives under the DLP Program. In addition, Nasdaq believes that the proposal stands to improve the quality of the Nasdaq market, to the benefit of all market participants.

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.

The Exchange uses incentives, such as the rebates of the DLP Program, to incentivize market participants to improve the market. In this instance, the Exchange is proposing to expand the list of securities that may be designated as a Qualified Security to include securities listed on Nasdaq pursuant to Nasdaq Rules 5711, 5713, and 5715, as long as it has at least one DLP, in an effort to support market quality and reward additional DLPs with incentives under the DLP Program.

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. 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.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.

⁹ 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-2024-017 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-2024-017. 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-2024-017 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.¹⁰

Vanessa A. Countryman,

Secretary.

¹⁰ 17 CFR 200.30-3(a)(12).