

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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4700. Nasdaq Market Center — Execution Services**Rule 4780. Retail Price Improvement Program****(a) Definitions.**

(1) Retail Member Organization. A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by Nasdaq under this Rule to submit Retail Orders.

(2) Retail Order. A “Retail Order” is an agency or riskless principal order that originates from a natural person and is submitted to Nasdaq by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Order is an Immediate or Cancel (“IOC”) Order and shall operate in accordance with paragraph (f) below. A Retail Order may be an odd lot, round lot, or mixed lot.

(3) Retail Price Improvement Order. A “Retail Price Improvement Order”, “RPI Order”, or collectively “RPI Interest” consists of non-displayed liquidity on Nasdaq that is priced better than the Protected NBBO by at least \$0.001 and that is identified as such. The System will monitor whether RPI buy or sell interest, adjusted by any offset and subject to the ceiling or floor price, is eligible to interact with incoming Retail Orders. An RPI Order remains non-displayed in its entirety (the buy or sell interest, the offset, and the ceiling or floor). An RPI Order may also be entered in increments of \$0.001 with an explicit limit price. Any Member is permitted, but not required, to submit RPI Orders. An RPI Order may be an odd lot, round lot or mixed lot.

(4) Other Price Improving Contra-Side Interest. For purposes of Rule 4780, “Other Price Improving Contra-Side Interest” shall refer to booked, non-displayed orders that are priced more aggressively than the NBBO.

(b) Retail Member Organization Qualifications and Application.

(1) To qualify as a Retail Member Organization, a Member must conduct a retail business or handle retail orders on behalf of another broker-dealer.

(2) To become a Retail Member Organization, a Member must submit:

(A) an application form;

(B) supporting documentation, which may include sample marketing literature, website screenshots, other publicly disclosed materials describing the Member's retail order flow, and any other documentation and information requested by Nasdaq in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition; and

(C) an attestation, in a form prescribed by Nasdaq, that any order submitted as a Retail Order will qualify as such under this Rule.

(3) After an applicant submits the application form, supporting documentation, and attestation, Nasdaq shall notify the applicant of its decision in writing.

(4) A disapproved applicant may: (A) request an appeal of such disapproval by Nasdaq as provided in paragraph (d) below; and/or (B) reapply for Retail Member Organization status 90 days after the disapproval notice is issued by Nasdaq.

(5) A Retail Member Organization may voluntarily withdraw from such status at any time by giving written notice to Nasdaq.

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to: (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If a Retail Member Organization represents Retail Orders from another broker-dealer customer, the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to Nasdaq, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether its broker-dealer customer's Retail Order flow meets the applicable requirements.

(c) Failure of RMO to Abide by Retail Order Requirements.

(1) If a Retail Member Organization designates orders submitted to Nasdaq as Retail Orders and Nasdaq determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of this Rule, Nasdaq may disqualify a Member from its status as a Retail Member Organization.

(2) Disqualification Determinations. Nasdaq shall determine if and when a Member is disqualified from its status as a Retail Member Organization. When disqualification determinations are made, Nasdaq shall provide a written disqualification notice to the Member.

(3) Appeal and/or Reapplication for Retail Member Organization Status. A Retail Member Organization that is disqualified under this paragraph (c) may: (A) appeal such disqualification as provided in paragraph (d) below; and/or (B) reapply for Retail

Member Organization status 90 days after the date of the disqualification notice from Nasdaq.

(d) Appeal of Disapproval or Disqualification.

(1) If a Member disputes Nasdaq's decision to disapprove it under paragraph (b) above or disqualify it under paragraph (c) above, the Member ("appellant") may request, within five business days after notice of the decision is issued by Nasdaq, that the Retail Price Improvement Panel ("RPI Panel") review the decision to determine if it was correct.

(2) The RPI Panel shall consist of Nasdaq's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two officers of Nasdaq designated by the Chief Executive Officer of Nasdaq.

(3) The RPI Panel shall review the facts and render a decision within the time frame prescribed by Nasdaq.

(4) The RPI Panel may overturn or modify an action taken by Nasdaq under this Rule. A determination by the RPI Panel shall constitute final action by Nasdaq.

(e) Retail Liquidity Identifier. An identifier shall be disseminated through proprietary data feeds and through the appropriate Securities Information Processor when RPI interest priced at least \$0.001 better than Nasdaq's Protected Bid or Protected Offer for a particular security is available in the System ("Retail Liquidity Identifier"). The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest.

(f) Retail Order Designation. A Retail Member Organization can designate how a Retail Order will interact with available contra-side interest as follows:

(1) Type 1. A Type 1-designated Retail Order will interact with available contra-side RPI Orders and Other Price Improving Contra-Side Interest but will not interact with other available contra-side interest in the System that is not offering price improvement or route to other markets. The portion of a Type 1-designated Retail Order that does not execute against contra-side RPI Orders or other price improving liquidity will be immediately and automatically cancelled.

(2) Type 2. A Type 2-designated Retail Order will interact first with available contra-side RPI Orders and other price improving liquidity and then any attempts to execute against other displayed and non-displayed interest. A Type 2-designated Retail Order can either be submitted with or without instructions to route per Rule 4780. The portion of a Type 2-designated Retail Order that does not fully execute will be immediately and automatically cancelled.

(g) Priority and Order Allocation.

RPI Orders in the same security shall be ranked and allocated according to price then time of entry into the Systems. Executions shall occur in price/time priority in accordance with Rule 4757. Any remaining unexecuted RPI interest will remain

available to interact with other incoming Retail Orders. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with paragraph (f) above.

Examples of priority and order allocation are as follows:

Protected NBBO for security ABC is \$10.00 — \$10.05

Member 1 enters a RPI Order to buy ABC at \$10.015 for 500

Member 2 then enters a RPI Order to buy ABC at \$10.02 for 500

Member 3 then enters a RPI Order to buy ABC at \$10.035 for 500

An incoming Retail Order to sell ABC for 1,000 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 500 at \$10.02, because it is the next best priced bid. Member 1 is not filled because the entire size of the Retail Order to sell 1,000 is depleted. The Retail Order executes against RPI Orders in price/time priority.

However, assume the same facts above, except that Member 2's RPI Order to buy ABC at \$10.020 is for 100. The incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.035, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the same facts as above, except that Member 3's order was not a RPI Order to buy ABC at \$10.035, but rather, a Non-Displayed Order to buy ABC at \$10.03. The result would be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 executes first against Member 3's bid for 500 at \$10.03, because it is the best priced bid, then against Member 2's bid for 100 at \$10.02, because it is the next best priced bid. Member 1 then receives an execution for 400 of its bid for 500 at \$10.015, at which point the entire size of the Retail Order to sell 1,000 is depleted.

(h) Rule Pilot Program. This rule shall operate for a pilot period of twelve months from the date of implementation, which shall occur no later than 90 days after Commission approval of Rule 4780. The Program shall expire on (Date will be determined upon adoption of Rule 4780). During the pilot period, the Program will be limited to securities whose Bid Price on Nasdaq is greater than or equal to \$1.00 per share.

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