

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; there are no proposed deletions.

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7023. NASDAQ Depth-of-Book Data

(a) – (f) No change.

IM-7023-1. U.S. Non-Display Information

(a) Devices (or servers) used in the transportation, dissemination or aggregation of data (distribution) are not necessarily fee liable, but the Distributor should be able to identify such Devices that exist within the market data infrastructure and identify how many Devices are used for distribution separate and apart from the Devices that are used for the reasons listed in the examples below.

(b) Unit of Count

For purposes of counting Non-Display Devices, Distributors are required to report the greater of (i) the number of Subscribers that can modify the application in real-time, or (ii) the number of Devices (usually servers) that receive and benefit from the information.

(1) “Subscriber” is defined as a device or computer terminal or an automated service which is entitled to receive Information. Nasdaq may also use the terms “Interrogation Device” or “Device” or “Access”.

If the Distributor is unable to count the physical number of Subscribers or the number of Devices, then the Distributor may submit usage reports for (i) the number of IP addresses, or (ii) the number of hosts that have access to Nasdaq U.S. Information.

(2) Distributors should have a quantifiable and auditable procedure in place to count and exclude all Devices that are non-fee liable. For clarification purposes, the following are considered Devices and should be reported unless otherwise excluded:

(A) Blade server (a type of server);

(B) Rack server; or

(C) FPGA may not necessarily be a server, but if an FPGA is run on a server that server may be fee liable.

(3) Nasdaq does not recognize the following terms to determine whether a device is fee liable for Non-Display purposes:

(A) Cores. Nasdaq understands that Devices may utilize multiple cores or processors to

handle market data and trading. If two or more cores sit on the same physical device then Nasdaq would require the Distributor to report one Subscriber.

(B) GPU, Xeon Phi cards, memory or chassis linked to a server utilizing these hardware devices that is already counted.

(C) Virtual machines run on the same Device (whether one or multiple cores) would be reported as one Subscriber.

(e) Non-Display Examples

Examples of fee-liable Non-Display use include, but are not limited to, what is described below. Nasdaq provides these examples to help Distributors understand how Non-Display may be applied.

(1) Automated trading

(A) All automated trading programs, applications, and scripts. Nasdaq recognizes that many programs including, but not limited to workbook software and applications and third party software and applications with auto-quoting/pegging (e.g. Microsoft Excel, GoogleDocs, Numbers for Mac or other third party software) may be utilized to implement an automated trade, and such use would be considered Non-Display. Other similar use cases would also require payment of the Non-Display license.

(B) Orders that are created or delivered via an automated order handling logic.

(C) Automated conditional orders, or complex order chain building whereby an algorithm responds to certain pre-set conditions.

(D) Automated order/quote generation and/or order/quote pegging.

(E) Price referencing for use in algorithmic trading.

(F) Price referencing for use in smart order routing.

(2) Program trading and high frequency trading

(A) The use of automated programs to trade instruments.

(3) Order Verification

(A) An Order Verification program that calculates estimated costs.

(B) An Order Verification program that provides warning/informational messages such as an order at a defined percentage threshold away from the quote.

(4) Automated surveillance programs

(5) Risk management that encompasses auto stop loss/position exiting functions

(A) Risk management, the process of identification and analysis of investment decision making, occurs whenever a person, bank, or other such interested party analyzes and attempts to determine their potential gain or loss and takes the appropriate action depending on their investment objectives.

(B) Automatic order cancellation, or automatic error discovery.

(6) Clearing and settlement activities

(7) Account maintenance (e.g. controlling margin for a customer account)

(8) Hot disaster recovery

(d) For avoidance of doubt, Non-Display is fee liable regardless of whether the Order Management System, Execution Management System, or trading infrastructure is:

(1) Hosted by a vendor or sub vendor;

(2) Located in the cloud;

(3) Installed locally within your own data center;

(4) Enterprise; or

(5) Locally on an individual's desktop or device.

Note: the Non-Display fee structure and reporting requirements may vary depending upon the Nasdaq U.S. Information, but the Non-Display Policy and Unit of Count are consistent across all Nasdaq U.S. Information products.

(e) Non-Display Exclusions

(1) Non-Display does not include any use of Nasdaq U.S. Information that merely enables and in actuality results in output of such use or distribution of the Nasdaq U.S. Information solely in a display. Examples include, but are not limited to:

(A) If an application is updating a portfolio and exposes such Information on the display, this use is not considered Non-Display.

(B) For example, calculating VWAPs or other derived information for use in a Display is not considered Non-Display.

(C) If an application is updating a risk management officer on a trader's position and exposing that information on a display, this is not considered Non-Display (provided there are no automated risk management/position exiting functions).

(D) Authorization and entitlement.

(E) Transportation and cold disaster recovery servers – Distributor needs to identify and

show that servers used in this process are only used for transportation of market data or trades, and are not utilized for any other fee-liable purpose identified above. Further, disaster recovery servers utilized in a cold environment are non-fee liable, but hot disaster recovery servers are fee-liable because they are typically optimized for load balancing.

(F) Devices (or servers) used in the transportation, dissemination or aggregation of data (distribution) are not considered Non-Display. The Distributor should be able to identify such Devices that exist within the market data infrastructure and identify how many Devices are used for distribution separate and apart from the Devices that are used for the reasons listed above.

(f) Reporting Examples of Non-Display

(1) Below are some reporting examples of Non-Display:

(A) The Device only displays data with no Non-Display – report one Display Subscriber.

(B) The Device supports both Non-Display and Display – report one Non-Display Subscriber and one Display Subscriber.

(C) The Device supports Display but also Non-Display on a separate server – report one Non-Display Subscriber and one Display Subscriber. Only count the separate Non-Display server once, not with every use of Display.

(D) The Device supports Display but also Non-Display use where the Nasdaq Information for the Non-Display solely originates from another third party distributor – report one Display Subscriber.

(E) The Device supports Display but automated trading is built into the Display – report one Non-Display Subscriber and one Display Subscriber.

(F) The Device supports Display with automated trading functions on a third party software that the Display connects to via an API, DDE or similar solution – report one Non-Display Subscriber and one Display Subscriber.

Note: if a Distributor receives the Information via Direct Access, they do not need to report both a Non-Display Subscriber and a Display Subscriber. They only need to report the Non-Display Subscriber. However, if the Display is on a separate device, remote desktop or similar service then both Non-Display and Display are fee liable.

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7026. Distribution Models

(a) – (c) No change.

IM-7026-1. U.S. Non-Display Information

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-Display Information.

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7037. Nasdaq FilterView Service

The Nasdaq FilterView service shall allow a Distributor to receive a sub-set of an existing real-time data feed distributed by Nasdaq. FilterView service shall be available for a subscription fee of \$500 per month per sub-set of data, in addition to the fees associated with the relevant underlying data feed. There shall be no incremental user charges for distributors related to use of the FilterView service.

IM-7037-1. U.S. Non-Display Information

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-Display Information.

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7039. NASDAQ Last Sale and NASDAQ Last Sale Plus Data Feeds

(a) – (d) No change.

IM-7039-1. U.S. Non-Display Information

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-Display Information.

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7047. Nasdaq Basic

(a) – (d) No change.

IM-7047-1. U.S. Non-Display Information

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-Display Information.

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7057. NASDAQ MatchView Feed

(a) – (b) No change.

IM-7057-1. U.S. Non-Display Information.

For information regarding U.S. non-display policies, refer to IM-7023-1. U.S. Non-

Display Information.

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