

**EXHIBIT 5**

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

**7018. NASDAQ OMX BX Equities System Order Execution and Routing**

(a) – (c) No change.

(d) Excess Order Fee

(1) To deter members from inefficient order entry practices that place excessive burdens on the systems of the Exchange and other members and that may negatively impact the usefulness of market data, the Exchange imposes an Excess Order Fee on market participant identifiers (“MPIDs”) with an “Order Entry Ratio” of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis.

(2) For each MPID, the Order Entry Ratio is the ratio of (i) the MPID’s Weighted Order Total to (ii) the greater of one (1) or the number of displayed, non-marketable orders sent to the Exchange through the MPID that execute in full or in part. The Weighted Order Total is the number of displayed, non-marketable orders sent to the Exchange through the MPID, as adjusted by a “Weighting Factor.” The applicable Weighting Factor is applied to each order based on its price in comparison to the national best bid or best offer (“NBBO”) at the time of order entry:

<u>Order’s Price versus NBBO at Entry</u>	<u>Weighting Factor</u>
<u>Less than 0.20% away</u>	<u>0x</u>
<u>0.20% to 0.99% away</u>	<u>1x</u>
<u>1.00% to 1.99% away</u>	<u>2x</u>
<u>2.00% or more away</u>	<u>3x</u>

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the “executed” orders component of the Order Entry Ratio if they execute in full or part. The following example illustrates the calculation of the Order Entry Ratio:

- A member enters 15,000,000 displayed, liquidity-providing orders:
  - 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
  - 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders, 90,000 are executed.

- The Weighted Order Total is  $(10,000,000 \times 0) + (5,000,000 \times 2) = 10,000,000$ . The Order Entry Ratio is  $10,000,000 / 90,000 = 111$

(3) If an MPID has an Order Entry Ratio of more than 100, the Order Entry Fee will be calculated by determining the MPID's Excess Weighted Orders. Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the MPID having an Order Entry Ratio of 100 from (ii) the MPID's actual Weighted Order Total.

In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since  $9,000,000 / 90,000 = 100$ . Accordingly, the Excess Weighted Orders would be  $10,000,000 - 9,000,000 = 1,000,000$ .

The Excess Order Fee charged to the member will then be determined by multiplying the Applicable Rate by the number of Excess Weighted Orders. The Applicable Rate is determined based on the MPID's Order Entry Ratio.

<u>Order Entry Ratio</u>	<u>Applicable Rate</u>
<u>101 – 1,000</u>	<u>\$0.005</u>
<u>More than 1,000</u>	<u>\$0.01</u>

In the example above, the Applicable Rate would be \$0.005, based on the MPID's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be  $1,000,000 \times \$0.005 = \$5,000$ .

(4) Notwithstanding the foregoing, MPIDs with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee.