

EXHIBIT 5

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

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,
AND FACILITY CHARGES**

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**7600. DATA PRODUCTS AND CHARGES FOR TRADE REPORTING
FACILITY SERVICES**

**7600A. DATA PRODUCTS AND CHARGES FOR FINRA/NASDAQ TRADE
REPORTING FACILITY SERVICES**

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7620A. FINRA/Nasdaq Trade Reporting Facility Reporting Fees

The following charges shall be paid by participants and, in certain instances, Retail Participants for use of the FINRA/Nasdaq Trade Reporting Facility. In the case of trades where the same market participant is on both sides of a trade report, applicable fees assessed on a "per side" basis will be assessed once, rather than twice, and the market participant will be assessed applicable Trade Report Fees [Non-Comparison/Accept (Non-Match/Compare) Charges] as the Executing Party side only. For avoidance of doubt, if a market participant reports trades to both the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago during a given month, then the participant's aggregate reporting volume on both FINRA/Nasdaq Trade Reporting Facilities will be considered for the purpose of determining whether and to what extent the following charges or caps apply to the participant during that month.

Participation Fee

\$350 per month per participant*

\$0 per month for Retail Participants

* A participant will be charged only one Participation Fee regardless of whether it participates in one or both FINRA/Nasdaq Trade Reporting Facilities.

Non-Comparison/Accept (Non-Match/Compare) [Charges:] Trade Report Fees and Caps on Trade Report Fees

A participant shall pay the following fees for reporting non-comparison/accept (non-match/compare) trades to the FINRA/Nasdaq Trade Reporting Facility, on a per trade report basis, unless the participant qualifies for a cap on such fees during a given month, as set forth below, in which case the participant will pay fees for each trade it reports during the month up to the amount of the cap.

To qualify for the caps (set forth in paragraphs 1-4 below) on the charges that participants incur to report trades to the FINRA/Nasdaq Trade Reporting Facility during a month, a participant must achieve Cap Qualifying Activity during that month, as set forth below. A participant will qualify for caps on a per Tape basis. For example, if in a given month, a participant averages 6,000 Media/Executing Party trade reports per day in Tape A, 5,000 average daily Media/Executing Party trade reports in Tape B, and 1,000 average daily Media/Executing Party trade reports in Tape C, then the participant will qualify for caps on the fees it pays during that month for reporting Media/Executing Party, Media/Non-Executing Party,

Media/Contra Party, and Non-Media/Contra Party trades in Tapes A and B, but the participant will not qualify for such caps with respect to trade reports in Tape C.

Cap Qualifying Activity

(Requisite Daily Average Media/Executing Party Trade Reporting Activity for a Participant to Qualify for Fee Caps in Paragraphs 1 – 4 Below)

| Tape | Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap | <u>Daily Average Number of Retail Participant Media/Executing Party Trades During the Month Needed to Qualify for Cap</u> |
|-------------|--|--|
| A | [2500]5,000 | 2,500 |
| B | [2500]5,000 | 2,500 |
| C | [2500]5,000 | 2,500 |

1. Media/Executing Party Trade Report Fees and Cap

| Monthly Charge | Maximum Monthly Charge if Capped |
|---|---|
| (\$0.01[8]5) x (Number of Media/Executing Party Reports | (\$0.01[8]3) x [(Required Daily Average Number of Media/EP Trades for Tape A, B |

| | |
|--|---|
| During the Month) | or C)] <u>5,000</u> x (Number of Trading Days During the Month) |
| <u>Monthly Charge for Retail Participants</u> | <u>Maximum Monthly Charge for Retail Participants if Capped</u> |
| <u>\$0.018 x (Number of Retail Participant Media/Executing Party Reports During the Month)</u> | <u>(\$0.018) x 2,500 x (Number of Trading Days During the Month)</u> |
| <u>2. Non-Media/Executing Party Trade Report Fees and Cap</u> | |
| Monthly Charge | Maximum Monthly Charge if Capped |
| (\$0.01[8] <u>5</u>) x (Number of Non-Media/Executing Party Reports During the Month) | (\$0.01[8] <u>3</u>) x [<u>2500</u>] <u>5,000</u> for Tape A, B or C x (Number of Trading Days During the Month) |
| <u>Monthly Charge for Retail Participants</u> | <u>Maximum Monthly Charge for Retail Participants if Capped</u> |
| <u>\$0.018 x (Number of Retail Participant Non-Media/Executing Party Reports During the Month)</u> | <u>(\$0.018) x 2,500 for Tape A, B or C x (Number of Trading Days During the Month)</u> |
| <u>3. Media/Contra Party Trade Report Fees and Cap</u> | |
| Monthly Charge | Maximum Monthly Charge if Capped |

| | |
|---|---|
| <p>$(\\$0.013) \times (\text{Number of Media/Contra Party Reports During the Month})$</p> | <p>$(\\$0.013) \times [2500]5,000$ for Tape A, B or C x (Number of Trading Days During the Month)</p> |
| <p><u>Monthly Charge for Retail Participants</u></p> | <p><u>Maximum Monthly Charge for Retail Participants if Capped</u></p> |
| <p>$\\$0.013 \times (\text{Number of Retail Participant Media/Contra Party Reports During the Month})$</p> | <p>$(\\$0.013) \times 2,500$ for Tape A, B or C x <u>(Number of Trading Days During the Month)</u></p> |
| <p>[Media/Contra Cap]</p> | |
| <p>[Participants making markets in alternative trading systems registered pursuant to Regulation ATS will qualify for a fee cap applied to all trades under Rule 7620A if they meet the following criteria on a monthly basis:]</p> <ul style="list-style-type: none"> [• Participant's percentage of contra media trades must represent at least 35% of their total FINRA/Nasdaq Trade Reporting Facility volume.] [• Participant must be contra to a minimum of 1,000,000 trades in Tape A, 500,000 trades in Tape C and 250,000 trades in Tape B.] [• Participant must complete an attestation form stating that they maintain a two-sided quote in each symbol traded on an alternative trading system registered pursuant to Regulation ATS and display a quotation size of at least one normal unit of trading (specific for each security) thereon. Participants will be audited by Nasdaq, Inc. periodically.] | |
| <p>[Maximum Monthly Charge if</p> | <p>[\$5,000 per Tape (A, B or C)]</p> |

| | |
|---|--|
| Capped] | |
| <u>4. Non-Media/Contra Party Fees and Cap</u> | |
| Monthly Charge | Maximum Monthly Charge if Capped |
| (\$0.013) x (Number of Non-Media/Contra <u>Party</u> Reports During the Month) | (\$0.013) x [2500]5,000 for Tape A, B or C x (Number of Trading Days During the Month) |
| <u>Monthly Charge for Retail Participants</u> | <u>Maximum Monthly Charge for Retail Participants if Capped</u> |
| (\$0.013) x (Number of Non-Media/Contra Party Reports During the Month) | (\$0.013) x 2,500 for Tape A, B or C x (Number of Trading Days During the Month) |
| <u>5. ATS Market Maker Media/Contra Party Cap</u> | |
| <p><u>Participants making markets in alternative trading systems registered pursuant to Regulation ATS will qualify for a fee cap applied to all trades under Rule 7620A if they meet the following criteria on a monthly basis:</u></p> <ul style="list-style-type: none"> • <u>Participant's percentage of contra media trades must represent at least 35% of their total FINRA/Nasdaq Trade Reporting Facility volume.</u> • <u>Participant must be contra to a minimum of 1,000,000 trades in Tape A, 500,000 trades in Tape C or 250,000 trades in Tape B.</u> • <u>Participant must complete an attestation form stating that they maintain a two-</u> | |

sided quote in each symbol traded on an alternative trading system registered pursuant to Regulation ATS and display a quotation size of at least one normal unit of trading (specific for each security) thereon. Participants will be audited by Nasdaq, Inc. periodically.

Maximum Monthly Charge if

Capped

\$10,000 per Tape (A, B or C)

6. ATS Market Maker Combined Media Activity Cap

Participants making markets in alternative trading systems registered pursuant to Regulation ATS that are engaged in Executing Party and Contra Party activities will qualify for a fee cap applied to all trades under Rule 7620A if they meet the following criteria on a monthly basis:

- Participant averages at least 2,500 Media/Executing Party trade reports per Tape (A, B or C) per day during a month.
- Participant must complete an attestation form and re-certify every six months that they maintain a two-sided quote in each symbol traded on an alternative trading system registered pursuant to Regulation ATS and display a quotation size of at least one normal unit of trading (specific for each security) thereon. Participants will be audited by Nasdaq, Inc. periodically.

A participant that qualifies for the ATS Market Maker Combined Media Activity fee cap shall pay for that month, on a per Tape basis, the lesser of \$7,500 or the sum of all the participant's combined regular monthly Executing Party and Contra Party fees for that Tape during the month.

If the participant's average daily Media/Executing Party trade reporting levels reach at least 5,000 per Tape, then the participant shall be subject during that month, on a per Tape basis, to the regular Executing Party and Contra Party fees and/or any other fee caps that may be applicable to it.

Comparison/Accept Fees

\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)

[Standard] Other Fees:

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|---|--|
| Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7230A(h) | \$0.03/side |
| [Comparison/Accept] | [\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)] |
| Late Report—T+N | \$0.288/trade (charged to the Executing Party) |
| Query | \$0.50/query |
| Corrective Transaction Charge | \$0.25/Cancel, Error, Inhibit, or Kill[], paid by reporting side; \$0.25/Break, Decline transaction, paid by each party |

••• **Supplementary Material:** -----

.01 For purposes of this Rule, the terms below shall have the following meanings.

"Comparison/Accept" shall mean transactions that are subject to the ACT Comparison process.

"Non-Comparison/Accept (Non-Match/Compare)" shall mean transactions that are not subject to the ACT Comparison process and may be submitted as "Media" and "Non-Media," clearing and non-clearing, AGU, QSR, one-sided and "Internalized cross" trade reports.

"Internalized cross" shall mean cross trades where a single party is on both sides of a trade report.

"Executing Party (EP)" shall mean the member with the trade reporting obligation under FINRA rules.

"Contra Party or Contra (CP)" shall mean the member on the contra side of a trade report.

"Media" reports shall mean reports of transactions submitted for public dissemination.

"Non-Media" reports shall mean reports of transactions not submitted for public dissemination.

"Retail Participant" shall mean a participant in the FINRA/Nasdaq Trade Reporting Facility for which substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.

"Retail Order" shall mean an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

.02 Participants that qualify for the Media/Contra fee cap must contact Nasdaq Trading Services to complete the attestation forms required under this Rule.

.03 A participant that wishes to qualify as a Retail Participant and receive Retail Participant pricing under this Rule, must complete and submit to Nasdaq, Inc. an application form and a written attestation of its then-existing qualifications as a Retail Participant and its reasonable expectation that it will maintain such qualifications for a one year period following the date of attestation. A Retail Participant must also complete and submit a written attestation to Nasdaq, Inc. on an annual basis to retain its status as such. A Retail Participant must inform Nasdaq, Inc. promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant. Participants must contact Nasdaq, Inc. for the application and attestation forms. Retail Participants will be audited by Nasdaq, Inc. periodically.

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