

**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**

**7610A. Securities Transaction Credit**

FINRA members that trade securities listed on the NYSE ("Tape A"), Amex and regional exchanges ("Tape B"), or Nasdaq ("Tape C") in over-the-counter transactions reported to the FINRA/Nasdaq Trade Reporting Facility may receive from the FINRA/Nasdaq Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the FINRA/Nasdaq Trade Reporting Facility that the FINRA/Nasdaq Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. A FINRA member may earn credits from any of three pools maintained by the FINRA/Nasdaq Trade Reporting Facility, each of which represents the revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the FINRA/Nasdaq Trade Reporting Facility for each of Tape A, Tape B, and Tape C transactions. A FINRA member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the

FINRA/Nasdaq Trade Reporting Facility by the member in each of Tape A, Tape B, and Tape C for each calendar quarter. Credits will be paid on a quarterly basis.

Retail Participants, as that term is defined in Supplementary Material .01 to Rule 7620A, may also receive from the FINRA/Nasdaq Trade Reporting Facility transaction credits based on transactions attributed to them. Retail Participants shall be entitled to receive such credits on the same basis as are FINRA members, as described in the immediately preceding paragraph. If a participant is approved as or ceases to be a Retail Participant after the first day of a calendar quarter, then the approval or cessation shall be deemed to be effective as of the first day of the next calendar quarter.

The percentage of attributable revenue shared with a particular member or Retail Participant, as applicable, will be determined as follows:

**Tape A**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>	<b><u>Percent of attributable revenue shared (Retail Participants)</u></b>
Greater than or equal to 2%	98%	<u>98%</u>
Less than 2% but greater than or equal to 1%	95%	<u>95%</u>
Less than 1% but greater than or equal to 0.50%	75%	<u>75%</u>
Less than 0.50% but greater than or equal to 0.10%	20%	<u>75%</u>

Less than 0.10%	0%	<u>75%</u>
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**Tape B**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>	<b><u>Percent of attributable revenue shared (Retail Participants)</u></b>
Greater than or equal to 2%	98%	<u>98%</u>
Less than 2% but greater than or equal to 1%	90%	<u>90%</u>
Less than 1% but greater than or equal to 0.35%	70%	<u>70%</u>
Less than 0.35% but greater than or equal to 0.10%	10%	<u>70%</u>
Less than 0.10%	0%	<u>70%</u>

**Tape C**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>	<b><u>Percent of attributable revenue shared (Retail Participants)</u></b>
Greater than or equal to 2%	98%	<u>98%</u>

Less than 2% but greater than or equal to 1%	95%	<u>95%</u>
Less than 1% but greater than or equal to 0.50%	75%	<u>75%</u>
Less than 0.50% but greater than or equal to 0.10%	20%	<u>75%</u>
Less than 0.10%	0%	<u>75%</u>

For purposes of this Rule, "Market Share" means a percentage calculated by dividing the total number of shares represented by trades reported by a FINRA member to the FINRA/Nasdaq Trade Reporting Facility during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share is calculated separately for each tape.

For avoidance of doubt, if a FINRA member reports trades to both the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago during a given calendar quarter, "Market Share" shall be calculated by dividing the total number of shares represented by trades reported by the member to both the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago during that calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter.

**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 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.

**I. 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.

**II. Non-Comparison/Accept (Non-Match/Compare) 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 the extent that a participant's activity on the FINRA/Nasdaq Trade Reporting Facility qualifies it for more than one special pricing program during a given month, then the participant will automatically receive the benefit of the lowest fee applicable to such activity.

[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**

<b>in Paragraphs 1 – 4 Below)]</b>		
<b>[Tape]</b>	<b>[Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap]</b>	<b>[Daily Average Number of Retail Participant Media/Executing Party Trades During the Month Needed to Qualify for Cap]</b>
[A]	[5,000]	[2,500]
[B]	[5,000]	[2,500]
[C]	[5,000]	[2,500]
<b>1. Media/Executing Party Trade Report Fees and Cap</b>		
<b>Monthly Charge</b>	<b>Maximum Monthly Charge if Capped</b>	
(\$0.015) x (Number of Media/Executing Party Reports During the Month)	(\$0.013) x 5,000 x (Number of Trading Days During the Month)	
<b>Monthly Charge for Retail Participants</b>	<b>Maximum Monthly Charge for Retail Participants if Capped</b>	
(\$0.018) x (Number of Retail Participant Media/Executing	[( \$0.018) x 2,500 x (Number of Trading Days During the Month)] <u>See II.C below for</u>	

Party Reports During the Month)	<u>applicable capped charges.</u>
<b>2. Non-Media/Executing Party Trade Report Fees and Cap</b>	
<b>Monthly Charge</b>	<b>Maximum Monthly Charge if Capped</b>
(\$0.015) x (Number of Non-Media/Executing Party Reports During the Month)	(\$0.013) x 5,000 for Tape A, B or C x (Number of Trading Days During the Month)
<b>Monthly Charge for Retail Participants</b>	<b>Maximum Monthly Charge for Retail Participants if Capped</b>
(\$0.018) x (Number of Retail Participant Non-Media/Executing Party Reports During the Month)	[((\$0.018) x 2,500 for Tape A, B or C x (Number of Trading Days During the Month)] <u>See II.C below for applicable capped charges.</u>
<b>3. Media/Contra Party Trade Report Fees and Cap</b>	
<b>Monthly Charge</b>	<b>Maximum Monthly Charge if Capped</b>
(\$0.013) x (Number of Media/Contra Party Reports During the Month)	(\$0.013) x 5,000 for Tape A, B or C x (Number of Trading Days During the Month)
<b>Monthly Charge for Retail Participants</b>	<b>Maximum Monthly Charge for Retail Participants if Capped</b>



<p><u>(Either (\$0.013) or (the applicable discounted rate set forth in paragraph C below)) x (Number of Retail Participant Media/Contra Party Reports During the Month)</u></p>	<p>[((\$0.013) x 2,500 for Tape A, B or C x (Number of Trading Days During the Month)]</p> <p><u>See II.B and II.C below to determine applicable capped charges.</u></p>
<p><b>4. Non-Media/Contra Party Fees and Cap</b></p>	
<p><b>Monthly Charge</b></p>	<p><b>Maximum Monthly Charge if Capped</b></p>
<p>(\$0.013) x (Number of Non-Media/Contra Party Reports During the Month)</p>	<p>(\$0.013) x 5,000 for Tape A, B or C x (Number of Trading Days During the Month)</p>
<p><b>Monthly Charge for Retail Participants</b></p>	<p><b>Maximum Monthly Charge for Retail Participants if Capped</b></p>
<p><u>(Either (\$0.013) or (the applicable discounted rate set forth in paragraph C below)) x (Number of Non-Media/Contra Party Reports During the Month)</u></p>	<p>[((\$0.013) x 2,500 for Tape A, B or C x (Number of Trading Days During the Month)]</p> <p><u>See II.B and II.C below to determine applicable capped charges.</u></p>
<p><b><u>A. Cap Qualifying Activity (Requisite Daily Average Media/Executing Party Trade Reporting Activity for a Non-Retail Participant to</u></b></p>	

**Qualify for Fee Caps in Paragraphs 1 – 4 Above)**

To qualify for the caps (set forth in paragraphs 1 - 4 above) on the charges that non-Retail Participants incur to report trades to the FINRA/Nasdaq Trade Reporting Facility during a month, a non-Retail Participant must achieve Cap Qualifying Activity during that month, as set forth below in this paragraph. A participant will qualify for caps on a per Tape basis.

For example, if in a given month, a non-Retail 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 non-Retail 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.

<b><u>Tape</u></b>	<b><u>Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap</u></b>
<u>A</u>	<u>5,000</u>
<u>B</u>	<u>5,000</u>
<u>C</u>	<u>5,000</u>

**B. Retail Participant Contra Party Activity Fee Discounts and Cap**

A Retail Participant shall be entitled to the following special tiered pricing on its Contra Party activity to the extent that it achieves, during a given month, a qualifying volume of average daily Contra Party executions in a particular Tape (Media, Non-Media, or both). Within each Tape, qualifying Retail Participants will receive a volume-based discount on their monthly uncapped Contra Party activity charges relative to the standard rate. Monthly fees for a Retail Participant's qualifying Contra Party activity for each Tape will be capped at a maximum monthly amount that is specific to the applicable Tier, as set forth below.

**Example 1:** If in a given month with 20 trading days, a Retail Participant achieves an average daily execution volume on the FINRA/Nasdaq Trade Reporting Facility of 150,000 Media/Contra Party trades in Tape A, 20,000 Media/Contra Party Trades in Tape B, and 400,000 Media/Contra Party Trades in Tape C, then the Retail Participant would be entitled to receive the special Media/Contra Party pricing set forth in paragraph 3 above with respect to its activity in Tape A (Tier 2), Tape B (Tier 1) and Tape C (Tier 4). As to Tape A, the Retail Participant would pay the uncapped discounted monthly charges applicable to Tier 2 ( $(\$0.0072) \times$  (the number of Media/Contra Party trades in Tape A during the month (150,000))  $\times$  (20 trading days) = \$21,600. As to Tape B, the Retail Participant would pay the uncapped discounted monthly charges applicable to Tier 1 its activity, which would be \$4,800 ( $(\$0.012) \times$  (the number of Media/Contra Party trades in

Tape B during the month (20,000) x (20 trading days)). As to Tape C, the Retail Participant would pay the lesser of the uncapped discounted monthly charges applicable to Tier 4 ((\$.005) x (the number of Media/Contra Party trades in Tape C during the month (400,000)) x (20 trading days) = \$40,000) or the Tier 4 cap (\$32,000), which would be \$32,000. Assuming that these Contra media transactions comprised all of the Retail Participant's activity on the FINRA/Nasdaq Trade Reporting Facility, then the Retail Participant's total fees for such activity would be \$58,400.

<b><u>Tier</u></b>	<b><u>Daily Average Number of Executions During the Month Needed to Qualify for Tier</u></b>	<b><u>Discounted Rate (Relative to Standard Rate) to be Used to Calculate Monthly Charge, If Uncapped</u></b>	<b><u>Maximum Monthly Charge, If Capped</u></b>
<b><u>Tape A</u></b>			
<u>1</u>	<u>50,000-100,000</u>	<u>\$0.0120</u>	<u>n/a</u>
<u>2</u>	<u>100,001-200,000</u>	<u>\$0.0072</u>	<u>n/a</u>
<u>3</u>	<u>200,001-300,000</u>	<u>\$0.0052</u>	<u>n/a</u>
<u>4</u>	<u>≥300,000</u>	<u>\$0.0050</u>	<u>\$32,000</u>

<b><u>Tape B</u></b>			
<u>1</u>	<u>15,000-30,000</u>	<u>\$0.0120</u>	<u>n/a</u>
<u>2</u>	<u>30,001-60,000</u>	<u>\$0.0072</u>	<u>n/a</u>
<u>3</u>	<u>60,001-100,000</u>	<u>\$0.0052</u>	<u>n/a</u>
<u>4</u>	<u>&gt;100,000</u>	<u>\$0.0050</u>	<u>\$11,000</u>
<b><u>Tape C</u></b>			
<u>1</u>	<u>50,000-100,000</u>	<u>\$0.0120</u>	<u>n/a</u>
<u>2</u>	<u>100,001-200,000</u>	<u>\$0.0072</u>	<u>n/a</u>
<u>3</u>	<u>200,001-300,000</u>	<u>\$0.0052</u>	<u>n/a</u>
<u>4</u>	<u>&gt;300,000</u>	<u>\$0.0050</u>	<u>\$32,000</u>
<p><b><u>C. Retail Participant Combined Cap</u></b></p> <p><u>To qualify for the caps below on the combined charges that Retail Participants incur to report both Executing Party and Contra Party trades to the FINRA/Nasdaq Trade Reporting Facility during a month, a Retail Participant must achieve a qualifying amount of average daily Media/Executing Party trade reports during the three month period immediately prior to the assessment date, as set forth below. This cap qualifying activity will be assessed based upon the Retail Participant's aggregate average daily Media/Executing Party across Tapes A, B, and C.</u></p>			

**Example 2:** Assume that, in addition to the Contra Party activity described in Example 1 in paragraph B above, a Retail Participant also achieves 1,500 Media/Executing Party trade reports per day in Tape A, 500 average daily Media/Executing Party trade reports in Tape B, and 100 average daily Media/Executing Party trade reports in Tape C, during the prior three months. Under this scenario, the Retail Participant will qualify for the Tier 2 Retail Participant Combined Cap of \$25,000, as set forth below.

In this scenario, the Retail Participant would not pay the \$58,400 fee in Example 1 above to cover its Contra Party Activity. Instead, the Retail Participant would only pay the \$25,000 capped fee, which would cover both its Executing Party and its Contra Party activity on the FINRA/Nasdaq Trade Reporting Facility during the month. As stated above, where a Retail Participant’s activity on the FINRA/Nasdaq Trade Reporting Facility qualifies for more than one special pricing program under this schedule, then it will receive the benefit of the lowest applicable fee.

<u>Tier</u>	<u>Daily Average Number of Media/Executing Party Trades (In All Three Tapes During Immediately Preceding Three Month Period)</u>	<u>Maximum Monthly Charge, If Capped, For All Executing Party/Contra Party Activity</u>
<u>1</u>	<u>1,000-2,000</u>	<u>\$50,000</u>

<u>2</u>	<u>2,001- 4,000</u>	<u>\$25,000</u>
<u>3</u>	<u>&gt;4,000</u>	<u>\$15,000</u>

**[5]D. ATS Market Maker Media/Contra Party Cap**

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:

- 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 number of trades during the month in a particular Tape to qualify for a cap on trades in that Tape.  
The minimum number of monthly trades for each Tape are as follows:  
[of] 1,000,000 trades in Tape A, 500,000 trades in Tape C [or]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.

<b>Maximum Monthly Charge if Capped</b>	\$10,000 per Tape (A, B or C)
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**[6]E. 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.

### **III. Comparison/Accept Fees**

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



<b><u>IV.</u> Other Fees:</b>	
Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7230A(h)	\$0.03/side
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. An order from a "natural person" can include orders on behalf of accounts that are held in a corporate legal form, such as an Individual Retirement Account, Corporation, or a Limited Liability Corporation that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual.

**.02** No Change.

**.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. If a participant is approved as a

Retail Participant on or prior to the twenty-second day of a month, then the approval shall

be deemed to be effective as of the first day of that month, whereas an approval that

occurs after the twenty-second day of the month will be deemed effective as of the first

day of the following month. If a participant notifies Nasdaq, Inc. that it ceases to qualify

as a Retail Participant during a month, then such notification will be deemed effective as

of the first day of the following month.

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