

**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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**4626. Limitation of Liability**

(a) Except as provided for in paragraph (b) below, Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Any losses, damages, or other claims, related to a failure of the Nasdaq Market Center to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the Nasdaq Market Center shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the Nasdaq Market Center.

(b) Nasdaq, subject to the express limits set forth below, may compensate users of the Nasdaq Market Center for losses directly resulting from the systems' actual failure to correctly process an order, Quote/Order, message, or other data, provided the Nasdaq Market Center has acknowledged receipt of the order, Quote/Order, message, or data.

(1) For the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq's [liability] payment shall not exceed the larger of \$500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

(2) Notwithstanding subsection (b)(1) above, for the aggregate of all claims made by all market participants during a single calendar month:

A) related to a systems malfunction or error of the Nasdaq Market Center concerning locked/crossed market (Rule 610 of Regulation NMS), trade through protection (Rule 611 of Regulation NMS), market maker quoting (Rule 4613), order protection (Rule 4613), or firm quote compliance (Rule 4613) functions of the market participant to the extent that such functions are that are electronically enforced by the Nasdaq trading system, and

B) where Nasdaq determines in its sole discretion that such systems malfunction or error was caused exclusively by Nasdaq and no outside factors contributed to the systems malfunction or error,

Nasdaq's payment during a single calendar month shall not exceed the larger of \$3,000,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.

(3) In no event shall Nasdaq's total payment during a single calendar month pursuant to this rule exceed \$3,000,000.

~~(2)~~**4** In the event all of the claims arising out of the use of the Nasdaq Market Center cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising during a single calendar month.

~~(3)~~**5** All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than 12:00 P.M. ET on the next business day following the day on which the use of the Nasdaq Market Center gave rise to such claims. Nothing in this rule shall obligate Nasdaq to seek recovery under any applicable insurance policy.

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