

**EXHIBIT 5**

*New text is underlined; deleted text is in brackets.*

**Rules of NASDAQ OMX BX****7000. Charges for Membership, Services, and Equipment****7001. Membership Fees**

(a) Each Exchange member will be assessed a membership fee of \$3,000 per year and a trading rights fee of \$500 per month. The membership fee will be imposed on all persons that are Exchange members as of a date determined by the Exchange in December of each year, and the trading rights fee will be assessed on all persons that are Exchange members as of a date determined by the Exchange in each month. The fees are not refundable in the event that a person ceases to be an Exchange member following the date on which the fees are assessed. [The trading rights fee will be waived for the first month during which the NASDAQ OMX BX Equities Market commences operations and each month prior to that time, and the annual membership fee will be waived for all of 2008 and will be reduced in a pro rata fashion with respect to any months during which the trading rights fee is waived. Thus, if the NASDAQ OMX BX Equities Market commences operations on January 12, 2009, the trading rights fee would be waived for January 2009 and the membership fee for 2009 would be \$2750.] The membership fee and the trading rights fee will be waived for BX Members, approved pursuant to Exchange Rules, who solely conduct an options business.

(b) Applicants for membership in the Exchange will be assessed a non-refundable application fee of \$2,000. [The fee will be waived for applicants for membership that apply before the NASDAQ OMX BX Equities Market commences operations.] The application fee will be waived for BX Members, approved pursuant to Exchange Rules, who solely conduct an options business.

\* \* \* \* \*

**7030. Other Services**

(a) Reserved

(b) Other Requests for Data

The Exchange may impose and collect compensatory charges for data the Exchange supplied upon request, where there is no provision elsewhere in this Rule 7000 Series for charges for such service or sale.

(c) Reserved

## (d) Testing Facility

(1) Subscribers that conduct tests of their Exchange access protocols connection or market data vendor feeds through the Exchange's Testing Facility (Testing Facility) shall pay \$300 per port, per month. This fee will be waived for BX Options testing.

(2) (A) An "Active Connection" commences when the user begins to send and/or receive a transaction to and from the Testing Facility and continues until the earlier of disconnection or the commencement of an Idle Connection.

(B) An "Idle Connection" commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber's connection to the Testing Facility is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A "Period of Inactivity" is an uninterrupted period of time of specified length when the connection is open but the Testing Facility is not receiving from or sending to subscriber any transactions. The length of the Period of Inactivity shall be such period of time between 10 minutes and 60 minutes in length as the Exchange may specify from time to time by giving notice to users of the Testing Facility.

(3) The foregoing fees shall not apply to testing occasioned by:

(A) new or enhanced services and/or software provided by the Exchange;

(B) modifications to software and/or services initiated by the Exchange in response to a contingency; or

(C) testing by a subscriber of an Exchange service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Exchange service.

\* \* \* \* \*

**7035. Annual Administrative Fee**

The Annual Administrative Fee shall be assessed to market data distributors that receive any proprietary Exchange data feed product. Each such distributor shall, on an annual basis, be assessed the higher of the applicable Annual Administrative Fees:

|   |         |
|---|---------|
| Delayed distributor   | \$500   |
| Real-Time distributor (includes delayed fee, if applicable) | \$1,000 |

The Exchange may waive the foregoing fee for colleges and universities for devices used by students and professors in performing university or college research or classroom-related

activities. The Annual Administrative Fee will be waived for BX Members, approved pursuant to Exchange Rules, who solely conduct an options business.

\* \* \* \* \*