

**EXHIBIT 5**

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are [in brackets].

\* \* \* \* \*

**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 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) Notwithstanding subsections (b)(1) and (2) above, for the aggregate of all claims alleged by all market participants related to errors in the Nasdaq Halt and Imbalance Cross Process in connection with the initial public offering of Facebook, Inc. (the “Cross”), including any delay in delivery of confirmations of orders in Facebook, Inc. stock on May 18, 2012, the total amount of Nasdaq’s payment shall not exceed \$62 million. Eligibility of claims for payment shall be determined in accordance with the following procedures:

(A) All claims for compensation under this subsection shall arise solely from realized or unrealized direct trading losses arising from the following specific Cross orders:

- (i) SELL Cross orders that were submitted between 11:11 a.m. ET and 11:30 a.m. ET on May 18, 2012, that were priced at \$42.00 or less, and that did not execute.
- (ii) SELL Cross orders that were submitted between 11:11 a.m. ET and 11:30 a.m. ET on May 18, 2012, that were priced at \$42.00 or less, and that executed at a price below \$42.00.
- (iii) BUY Cross orders priced at exactly \$42.00 and that were executed in the Cross but not immediately confirmed.
- (iv) BUY Cross orders priced above \$42.00 and that were executed in the Cross but not immediately confirmed, but only to the extent entered with respect to a customer that was permitted by the member to cancel its order prior to 1:50 p.m. and for which a request to cancel the order was submitted to Nasdaq by the member, also prior to 1:50 p.m.

For purposes of this rule, unless stated otherwise, the term “customer” shall be construed to include any unaffiliated entity upon whose behalf an order is entered, including any unaffiliated broker or dealer.

(B) In determining trading losses under this subsection, the measure of loss for the Cross orders described in paragraphs (b)(3)(A)(i), (iii), and (iv) will be the lesser of (i) the differential between the expected execution price of the orders in the Cross process that established an opening print of \$42.00 and the actual execution price received; or (ii) the differential between the expected execution price of the orders in the Cross process that established an opening print of \$42.00 and a benchmark price of \$40.527, which constitutes the volume-weighted average price of Facebook, Inc. stock on May 18, 2012, between 1:50 p.m. ET and 2:35 p.m. ET. The measure of loss for the Cross orders described in paragraph (b)(3)(A)(ii) will be the differential between the expected execution price of the orders in the Cross process that established an opening print of \$42.00 and the actual execution price received. In addition, with respect to claims arising under subparagraph (b)(3)(A)(iv), the amount of loss will be reduced by 30%. Each member’s direct trading losses calculated in accordance with paragraphs (b)(3)(A) and (B) shall be referred to herein as the “Member’s Share.”

(C) Alleged losses arising in any form or that in any way result from any other causes, including but not limited to the following, shall not be considered losses subject to

potential accommodation for purposes of this subsection (b)(3): orders received after the commencement of continuous regular trading in Facebook, Inc.; individual member firm technology issues or system failures, or member firm operational issues or operational failures; other than actions described in paragraph (b)(3)(A) and (B), affirmative trading actions taken by member firms; alleged or speculative lost trading opportunities or alleged or speculative lost business profits of any description; non-marketable Cross orders for which, based on their price, there was no reasonable expectation that orders had been executed; and a member firm's failure to adequately and appropriately mitigate losses or adjust trading positions.

(D) All claims pursuant to this subsection must be submitted in writing not later than 7 days after this provision's formal approval by the United States Securities and Exchange Commission, and shall be processed and evaluated by the Financial Industry Regulatory Authority ("FINRA") applying the accommodation standards set forth in this Rule. FINRA may request such supplemental information as FINRA deems necessary to assist FINRA's evaluation of claims.

(E) FINRA shall provide to the Nasdaq Board of Directors and the Board of Directors of The NASDAQ OMX Group, Inc. an analysis of the total value of eligible claims submitted under this subsection (b)(3). Nasdaq will thereafter file with the Securities and Exchange Commission a rule proposal setting forth the amount of eligible claims under the standards set forth in this Rule and the amount proposed to be paid to members by Nasdaq. In no event shall Nasdaq make any payments on claims pursuant to this subsection (b)(3) until the rule proposal setting forth the amount of eligible claims becomes effective and final. All payments shall be made in cash.

(F) All payments to members under this subsection will be contingent upon the submission to Nasdaq, not later than 7 days after the effective date of the rule proposal described in paragraph (b)(3)(E), of an attestation detailing:

(i) the amount of compensation, accommodation, or other economic benefit provided or to be provided by the member to its customers (other than customers that were brokers or dealers trading for their own account) in respect of trading in Facebook Inc. on May 18, 2012 ("Customer Compensation"), and

(ii) the extent to which the losses reflected in the Member's Share were incurred by the member trading for its own account or for the account of a customer that was a broker or dealer trading for its own account ("Covered Proprietary Losses").

Failure to provide the required attestation within the specified time limit will void the member's eligibility to receive an accommodation pursuant to this subsection. Each member shall be required to maintain books and records that detail the nature and amount Customer Compensation and Covered Proprietary Losses.

(G) Accommodation payments under this subsection will be made in two tranches of priority:

(i) First, if the member has provided Customer Compensation, the member will receive an amount equal to the lesser of the Member's Share or the amount of Customer Compensation;

(ii) Second, the member will receive an amount with respect to Covered Proprietary Losses; provided, however, that the sum of payments to a member hereunder shall not exceed the Member's Share.

In the event that the amounts calculated under tranche (i) exceed \$62 million, accommodation will be prorated among members eligible to receive accommodation under tranche (i) based on the size of the amounts payable under tranche (i). In the event that tranche (i) is paid in full and the amounts calculated under tranche (ii) exceed the funds remaining from the \$62 million accommodation pool, such funds will be prorated among members eligible to receive accommodation under tranche (ii) based on the size of the amounts payable under tranche (ii). If a member's eligibility to receive funds is voided for any reason under this rule, and the funds payable to other members must be prorated hereunder, the funds available to pay other members will be increased accordingly.

(H) All payments to members under this subsection will be contingent upon the execution and delivery to Nasdaq of a release by the member of all claims by it or its affiliates against Nasdaq or its affiliates for losses that arise out of, are associated with, or relate in any way to the Facebook, Inc. IPO Cross or to any actions or omissions related in any way to that Cross, including but not limited to the execution or confirmation of orders in Facebook, Inc. on May 18, 2012. Failure to provide the required release within 14 days after the effective date of the rule proposal described in paragraph (b)(3)(E) will void the member's eligibility to receive an accommodation pursuant to this subsection.

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

[(4)] (5) 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.

[(5)] (6) With the exception of claims submitted under subsection (b)(3) above, [A]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. Nothing in this rule shall waive Nasdaq's limitations on, or immunities from, liability as set forth in its Rules or agreements, or that otherwise apply as a matter of law.

\* \* \* \* \*