

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 24	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 051	Amendment No. (req. for Amendments *)
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Filing by The Nasdaq Stock Market LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend General 9, Section 18, Payments for Market Making.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * Angela.Dunn@Nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 06/14/2021
By John A. Zecca

EVP and Chief Legal Officer

john.zecca@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend General 9, Section 18, Payments for Market Making.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn
Principal Associate General Counsel
Nasdaq, Inc.
215-496-5692

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange proposes to amend General 9, Section 18, Payments for Market Making to align General 9, Section 18 with FINRA Rule 5250, Payments for Market

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Making. Specifically, the Exchange proposes to replace General 9, Section 18 with rule text incorporating FINRA Rule 5250 by reference.³ The Exchange also proposes to incorporate by reference the definition “affiliate” and the related definitions within FINRA Rule 5121 for purposes of FINRA Rule 5250.

By way of background, General 9, Section 18 and FINRA Rule 5250 explicitly prohibit any payment by issuers or issuers’ affiliates and promoters, directly or indirectly, to a member or person associated with a member for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. The respective rules are intended, among other things, to prohibit members from receiving compensation or other payments from an issuer for quoting or making a market in the issuer’s securities and to assure that members act in an independent capacity when publishing a quotation or making a market in an issuer’s securities.

Today, there are several differences between current General 9, Section 18 and FINRA Rule 5250. The Exchange’s proposal to replace General 9, Section 18 with an incorporation by reference to FINRA Rule 5250 will align Nasdaq’s rule to FINRA’s rule. The Exchange explains the differences below.

First, by incorporating FINRA Rule 5250, the Exchange would incorporate FINRA’s rule which states that members are not precluded from accepting “any payment expressly provided for under the rules of a national securities exchange that are effective

³ The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act in requesting to incorporate FINRA Rule 5250 and the definition of “affiliate” and the related definitions within FINRA Rule 5121 to the extent General 9, Section 18 is affected solely by virtue of a change to FINRA Rule 5250 or to such definitions within FINRA Rule 5121. The Exchange’s proposed rule change will not become operative unless and until the Commission grants this exemption request.

after being filed with, or filed with and approved by, the SEC pursuant to the requirements of the Exchange Act.” General 9, Section 18 currently does not include this exception. FINRA previously amended Rule 5250⁴ to account for cases where a market maker payment is provided for under the rules of an exchange that are effective after being filed with, or filed with and approved by, the Commission pursuant to the requirements of the Act. FINRA noted in its 2013 Rule Change that comity should be afforded to such exchange rulemaking and the payment should not be prohibited under Rule 5250.⁵ The 2013 Rule Change cited to Nasdaq’s Market Quality Program as an example of such exchange rulemaking.⁶ Incorporating this exception from FINRA’s rule would ensure consistent regulation of joint members of the Exchange and FINRA.

Second, by incorporating FINRA Rule 5250, the Exchange would also incorporate the defined term “affiliate,” and the related definitions within FINRA Rule 5121(f),⁷ which differ from the definition of “affiliate” under current General 9, Section 18(c)(1). FINRA Rule 5250 incorporates the definition of “affiliate” within FINRA Rule 5121(f)(1) which provides, “The term “affiliate” means an entity that controls, is

⁴ See Securities Exchange Act Release No. 69398 (April 18, 2013), 78 FR 24261 (April 24, 2013) (SR-FINRA-2013-020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FINRA Rule 5250 (Payments for Market Making) (“2013 Rule Change”).

⁵ Id.

⁶ See 2013 Rule Change (citing to Securities Exchange Act Release No. 69195). See also Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR-NASDAQ-2012-137) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, To Establish the Market Quality Program).

⁷ FINRA Rule 5250 refers to FINRA Rule 5121 for the definition of “affiliate.” FINRA defines the term “affiliate” and the terms used with the definition “affiliate”

controlled by or is under common control with a member.” The term affiliate refers to “entity” which is defined within FINRA Rule 5121(f)(7) which provides,

For purposes of the definitions of affiliate, conflict of interest and control under this Rule, the term “entity”: (A) includes a company, corporation, partnership, trust, sole proprietorship, association or organized group of persons; and (B) excludes the following: (i) an investment company registered under the Investment Company Act; (ii) a “separate account” as defined in Section 2(a)(37) of the Investment Company Act; (iii) a “real estate investment trust” as defined in Section 856 of the Internal Revenue Code; or (iv) a “direct participation program” as defined in Rule 2310.

Finally, the term affiliate refers to “control” which is defined within FINRA Rule 5121(f)(6) which provides,

The term control means: (i) beneficial ownership of 10 percent or more of the outstanding common equity of an entity, including any right to receive such securities within 60 days of the member's participation in the public offering; (ii) the right to 10 percent or more of the distributable profits or losses of an entity that is a partnership, including any right to receive an interest in such distributable profits or losses within 60 days of the member's participation in the public offering; (iii) beneficial ownership of 10 percent or more of the outstanding preferred equity of an entity, including any right to receive such preferred equity within 60 days of the member's participation in the public offering; or (iv) the power to direct or cause the direction of the management or policies of an entity. (B) The term “common control” means the same natural person or entity controls two or more entities.

In contrast, General 9, Section 18(c)(1) defines affiliate as follows,

(A) The term “affiliate” shall mean a company which controls, is controlled by, or is under common control with a member; (B) The term affiliate is presumed to include, but is not limited to, the following for purposes of subparagraph (A), above: (i) a company will be presumed to control a member if the company beneficially owns 10 percent or more of the outstanding voting securities of a member which is a corporation, or beneficially owns a partnership interest in 10 percent or more of the distributable profits or losses of a member which is a partnership; (ii) a member will be presumed to control a company if the member and persons associated with the member beneficially own 10 percent or more of the outstanding voting securities of a company which is a corporation, or beneficially own a partnership interest in 10 percent or more of the distributable profits or losses of a company which is a partnership; (iii) a

company will be presumed to be under common control with a member if:

- a. The same natural person or company controls both the member and company by beneficially owning 10 percent or more of the outstanding voting securities of a member or company which is a corporation, or by beneficially owning a partnership interest in 10 percent or more of the distributable profits or losses of a member or company which is a partnership; or
- b. A person having the power to direct or cause the direction of the management or policies of the member or the company also has the power to direct or cause the direction of the management or policies of the other entity in question.

Incorporating FINRA's rule would ensure a consistent definition of "affiliate" and, therefore, consistent regulation of joint members of the Exchange and FINRA.

Third, by incorporating FINRA Rule 5250, the Exchange would remove General 9, Section 18(c)(1)(C). General 9, Section 18(c)(1)(C) provides,

The provisions of subparagraphs (A) and (B) hereof notwithstanding, none of the following shall be presumed to be an affiliate of a member for purposes of this Rule: (i) an investment company registered with the Commission pursuant to the Investment Company Act of 1940, as amended; (ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended; (iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code; (iv) a "direct participation program" as defined in Equity 10, Section 1; and (v) a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

Unlike General 9, Section 18, FINRA Rule 5121(f)(7) does not by rule exclude a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories from the definition of "entity." Incorporating FINRA's rule, including the applicable definition in FINRA Rule 5121, would ensure consistent definition of "affiliate" and consistent regulation of joint members of the Exchange and FINRA.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange's proposal to replace General 9, Section 18 with rule text incorporating by reference FINRA Rule 5250, including the applicable provisions of FINRA Rule 5121 as referenced in FINRA Rule 5250, is consistent with the Act. The Exchange's proposal will align Nasdaq's rule to FINRA's rule and remove differences as between the two rules.

Aligning General 9, Section 18 to FINRA Rule 5250 would ensure consistent regulation of joint members of the Exchange and FINRA.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments do not impose an undue burden on competition as the proposal will align the Exchange's General 9, Section 18 to FINRA Rule 5250 and ensure consistent regulation of joint members of the Exchange and FINRA.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not Applicable.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹⁰ of the Act and Rule 19b-4(f)(6) thereunder¹¹ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that this proposal does not significantly affect the protection of investors or the public interest. The Exchange's proposal to replace the rule text of General 9, Section 18 with rule text which incorporates by reference FINRA Rule 5250, including the applicable provisions of FINRA Rule 5121 as referenced in FINRA Rule 5250, would align Nasdaq's General 9, Section 18 to FINRA 5250. The Exchange believes that this proposal does not impose any significant burden on competition as the proposal would ensure consistent regulation of joint members of the Exchange and FINRA. The Exchange's proposed rule change will not become operative unless and until the Commission grants the Exchange's exemption request.¹²

Furthermore, Rule 19b-4(f)(6)(iii)¹³ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² See note 3 above.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed amendments are based on to FINRA Rule 5250.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2021-051)

June __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend General 9, Section 18, Payments for Market Making

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 14, 2021, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend General 9, Section 18, Payments for Market Making.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend General 9, Section 18, Payments for Market Making to align General 9, Section 18 with FINRA Rule 5250, Payments for Market Making. Specifically, the Exchange proposes to replace General 9, Section 18 with rule text incorporating FINRA Rule 5250 by reference.³ The Exchange also proposes to incorporate by reference the definition “affiliate” and the related definitions within FINRA Rule 5121 for purposes of FINRA Rule 5250.

By way of background, General 9, Section 18 and FINRA Rule 5250 explicitly prohibit any payment by issuers or issuers’ affiliates and promoters, directly or indirectly, to a member or person associated with a member for publishing a quotation, acting as a market maker, or submitting an application in connection therewith. The respective rules

³ The Exchange will separately request an exemption from the rule filing requirements of Section 19(b) of the Act in requesting to incorporate FINRA Rule 5250 and the definition of “affiliate” and the related definitions within FINRA Rule 5121 to the extent General 9, Section 18 is affected solely by virtue of a change to FINRA Rule 5250 or to such definitions within FINRA Rule 5121. The Exchange’s proposed rule change will not become operative unless and until the Commission grants this exemption request.

are intended, among other things, to prohibit members from receiving compensation or other payments from an issuer for quoting or making a market in the issuer's securities and to assure that members act in an independent capacity when publishing a quotation or making a market in an issuer's securities.

Today, there are several differences between current General 9, Section 18 and FINRA Rule 5250. The Exchange's proposal to replace General 9, Section 18 with an incorporation by reference to FINRA Rule 5250 will align Nasdaq's rule to FINRA's rule. The Exchange explains the differences below.

First, by incorporating FINRA Rule 5250, the Exchange would incorporate FINRA's rule which states that members are not precluded from accepting "any payment expressly provided for under the rules of a national securities exchange that are effective after being filed with, or filed with and approved by, the SEC pursuant to the requirements of the Exchange Act." General 9, Section 18 currently does not include this exception. FINRA previously amended Rule 5250⁴ to account for cases where a market maker payment is provided for under the rules of an exchange that are effective after being filed with, or filed with and approved by, the Commission pursuant to the requirements of the Act. FINRA noted in its 2013 Rule Change that comity should be afforded to such exchange rulemaking and the payment should not be prohibited under Rule 5250.⁵ The 2013 Rule Change cited to Nasdaq's Market Quality Program as an

⁴ See Securities Exchange Act Release No. 69398 (April 18, 2013), 78 FR 24261 (April 24, 2013) (SR-FINRA-2013-020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FINRA Rule 5250 (Payments for Market Making) ("2013 Rule Change").

⁵ Id.

example of such exchange rulemaking.⁶ Incorporating this exception from FINRA's rule would ensure consistent regulation of joint members of the Exchange and FINRA.

Second, by incorporating FINRA Rule 5250, the Exchange would also incorporate the defined term "affiliate," and the related definitions within FINRA Rule 5121(f),⁷ which differ from the definition of "affiliate" under current General 9, Section 18(c)(1). FINRA Rule 5250 incorporates the definition of "affiliate" within FINRA Rule 5121(f)(1) which provides, "The term "affiliate" means an entity that controls, is controlled by or is under common control with a member." The term affiliate refers to "entity" which is defined within FINRA Rule 5121(f)(7) which provides,

For purposes of the definitions of affiliate, conflict of interest and control under this Rule, the term "entity": (A) includes a company, corporation, partnership, trust, sole proprietorship, association or organized group of persons; and (B) excludes the following: (i) an investment company registered under the Investment Company Act; (ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act; (iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code; or (iv) a "direct participation program" as defined in Rule 2310.

⁶ See 2013 Rule Change (citing to Securities Exchange Act Release No. 69195). See also Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR-NASDAQ-2012-137) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, To Establish the Market Quality Program).

⁷ FINRA Rule 5250 refers to FINRA Rule 5121 for the definition of "affiliate." FINRA defines the term "affiliate" and the terms used with the definition "affiliate"

Finally, the term affiliate refers to “control” which is defined within FINRA Rule 5121(f)(6) which provides,

The term control means: (i) beneficial ownership of 10 percent or more of the outstanding common equity of an entity, including any right to receive such securities within 60 days of the member's participation in the public offering; (ii) the right to 10 percent or more of the distributable profits or losses of an entity that is a partnership, including any right to receive an interest in such distributable profits or losses within 60 days of the member's participation in the public offering; (iii) beneficial ownership of 10 percent or more of the outstanding preferred equity of an entity, including any right to receive such preferred equity within 60 days of the member's participation in the public offering; or (iv) the power to direct or cause the direction of the management or policies of an entity. (B) The term “common control” means the same natural person or entity controls two or more entities.

In contrast, General 9, Section 18(c)(1) defines affiliate as follows,

(A) The term “affiliate” shall mean a company which controls, is controlled by, or is under common control with a member; (B) The term affiliate is presumed to include, but is not limited to, the following for purposes of subparagraph (A), above: (i) a company will be presumed to control a member if the company beneficially owns 10 percent or more of the outstanding voting securities of a member which is a corporation, or beneficially owns a partnership interest in 10 percent or more of the

distributable profits or losses of a member which is a partnership; (ii) a member will be presumed to control a company if the member and persons associated with the member beneficially own 10 percent or more of the outstanding voting securities of a company which is a corporation, or beneficially own a partnership interest in 10 percent or more of the distributable profits or losses of a company which is a partnership; (iii) a company will be presumed to be under common control with a member if:

- a. The same natural person or company controls both the member and company by beneficially owning 10 percent or more of the outstanding voting securities of a member or company which is a corporation, or by beneficially owning a partnership interest in 10 percent or more of the distributable profits or losses of a member or company which is a partnership; or
- b. A person having the power to direct or cause the direction of the management or policies of the member or the company also has the power to direct or cause the direction of the management or policies of the other entity in question.

Incorporating FINRA's rule would ensure a consistent definition of "affiliate" and, therefore, consistent regulation of joint members of the Exchange and FINRA.

Third, by incorporating FINRA Rule 5250, the Exchange would remove General 9, Section 18(c)(1)(C). General 9, Section 18(c)(1)(C) provides,

The provisions of subparagraphs (A) and (B) hereof notwithstanding, none of the following shall be presumed to be an affiliate of a member for purposes of this Rule: (i) an investment company registered with the

Commission pursuant to the Investment Company Act of 1940, as amended; (ii) a “separate account” as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended; (iii) a “real estate investment trust” as defined in Section 856 of the Internal Revenue Code; (iv) a “direct participation program” as defined in Equity 10, Section 1; and (v) a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

Unlike General 9, Section 18, FINRA Rule 5121(f)(7) does not by rule exclude a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories from the definition of “entity.” Incorporating FINRA’s rule, including the applicable definition in FINRA Rule 5121, would ensure consistent definition of “affiliate” and consistent regulation of joint members of the Exchange and FINRA.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange’s proposal to replace General 9, Section

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

18 with rule text incorporating by reference FINRA Rule 5250, including the applicable provisions of FINRA Rule 5121 as referenced in FINRA Rule 5250, is consistent with the Act. The Exchange's proposal will align Nasdaq's rule to FINRA's rule and remove differences as between the two rules.

Aligning General 9, Section 18 to FINRA Rule 5250 would ensure consistent regulation of joint members of the Exchange and FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments do not impose an undue burden on competition as the proposal will align the Exchange's General 9, Section 18 to FINRA Rule 5250 and ensure consistent regulation of joint members of the Exchange and FINRA.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant

to Section 19(b)(3)(A)(iii) of the Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-051 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2021-051. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2021-051 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

The Nasdaq Stock Market LLC Rules

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General Equity and Options Rules

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General 9 Regulation

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Section 18. Payments for Market Making

(a) Nasdaq members, and persons associated with a member, shall comply with FINRA Rule 5250 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to Rule 5121 shall be construed as references to FINRA Rule 5121.

[(a) No member or person associated with a member shall accept any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.

(b) The provisions of paragraph (a) shall not preclude a member from accepting:

(1) payment for bona fide services, including, but not limited to, investment banking services (including underwriting compensation and fees); and

(2) reimbursement of any payment for registration imposed by the Securities and Exchange Commission or state regulatory authorities and for listing of an issue of securities imposed by a self-regulatory organization.

(c) For purposes of this Rule, the following terms shall have the stated meanings:

(1) "affiliate"

(A) The term "affiliate" shall mean a company which controls, is controlled by, or is under common control with a member;

(B) The term affiliate is presumed to include, but is not limited to, the following for purposes of subparagraph (A), above:

(i) a company will be presumed to control a member if the company beneficially owns 10 percent or more of the outstanding voting securities of a member which is a corporation, or beneficially owns a partnership interest in 10 percent or more of the distributable profits or losses of a member which is a partnership;

(ii) a member will be presumed to control a company if the member and persons associated with the member beneficially own 10 percent or more of the outstanding voting securities of a company which is a corporation, or beneficially own a partnership interest in 10 percent or more of the distributable profits or losses of a company which is a partnership;

(iii) a company will be presumed to be under common control with a member if:

a. The same natural person or company controls both the member and company by beneficially owning 10 percent or more of the outstanding voting securities of a member or company which is a corporation, or by beneficially owning a partnership interest in 10 percent or more of the distributable profits or losses of a member or company which is a partnership; or

b. A person having the power to direct or cause the direction of the management or policies of the member or the company also has the power to direct or cause the direction of the management or policies of the other entity in question.

(C) The provisions of subparagraphs (A) and (B) hereof notwithstanding, none of the following shall be presumed to be an affiliate of a member for purposes of this Rule:

(i) an investment company registered with the Commission pursuant to the Investment Company Act of 1940, as amended;

(ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended;

(iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code;

(iv) a "direct participation program" as defined in Equity 10, Section 1; and

(v) a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

(2) "promoter" means any person who founded or organized the business or enterprise of an issuer, is a director or employee of an issuer, acts or has acted as a

consultant, advisor, accountant or attorney to an issuer, is the beneficial owner of any of an issuer's securities that are considered "restricted securities" under Rule 144, or is the beneficial owner of five percent (5%) or more of the public float of any class of an issuer's securities, and any other person with a similar interest in promoting the entry of quotations or market making in an issuer's securities; and

(3) "quotation" shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a member in receiving bids or offers from others for a security, or an indication by a member that he wishes to advertise his general interest in buying or selling a particular security.]

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