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Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 014
Amendment No. (req. for Amendments *)

Proposed Rule Change by NASDAQ Stock Market

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

A Proposal to Establish the Market Quality Program.

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 proposed rule change.

First Name * Jurij

Last Name * Trypupenko

Title * Associate General Counsel

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Telephone * (301) 978-8132

Fax (301) 978-8472

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 officer.

Date 01/18/2012

By Edward S. Knight

(Name *)

Executive Vice President and General Counsel

(Title *)

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.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required) 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 (required) Add Remove View	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 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 Add Remove View 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 Add Remove View	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 Add Remove View	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 Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to add new Rule 5950 (Market Quality Program) to enable market makers that voluntarily commit to and do in fact enhance the market quality (quoted spread and liquidity) of certain securities listed on the Exchange to qualify for a fee credit pursuant to the Exchange's Market Quality Program; and to exempt the Market Quality Program from Rule 2460 (Payment for Market Making). NASDAQ believes this voluntary program will benefit investors, issuers or companies, and market participants by significantly enhancing the quality of trading in listed securities.

The Market Quality Program set forth in Rule 5950 would be effective for a one year pilot period beginning from the date of implementation of the program. During the pilot, NASDAQ will periodically provide information to the Commission about market quality in respect of the Market Quality Program.

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

(b) Not applicable.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on November 30, 2011. No other action by the Exchange will be necessary with respect to the rule change.

Questions and comments on the proposed rule change may be directed to Jurij Trypupenko, Associate General Counsel, NASDAQ OMX, at (301) 978-8132.

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

a. Purpose

The purpose of the filing is to propose new Rule 5950 to enable Market Makers[3] that enhance the market quality of certain securities listed on the Exchange (known as "targeted securities") and thereby qualify for a fee credit pursuant to the Market Quality Program ("MQP" or "Program"); and to exempt the Program from Rule 2460.

Rule 5950 would be effective for a one year pilot period. The pilot period would commence when the Market Quality Program is implemented by the Exchange and a Company[4] and one or more related Market Makers are accepted into the program in respect of a security listed pursuant to the Program ("MQP Security"). The pilot program

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3 The term "Market Maker" is defined in Rule 5005(a)(24) as a dealer that, with respect to a security, holds itself out (by entering quotations in the NASDAQ Market Center) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such. Proposed Rule 5950(e)(5).

4 The term "Company" is defined in Rule 5005(a)(6) as the issuer of a security listed or applying to list on NASDAQ. For purposes of the Rule 5000 Series, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership. Proposed Rule 5950(e)(5).

would end one year after implementation.[5] During the pilot, the Exchange will periodically provide information to the Commission about market quality in respect of the MQP.

Background

The proposed Market Quality Program is a voluntary program designed to promote market quality in MQP Securities.[6] A Company that lists an eligible MQP

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5 The Exchange believes that, based on discussions with the Financial Industry Regulatory Authority ("FINRA"), subsequent to the Exchange filing this MQP proposal FINRA will file an immediately effective rule change proposal indicating that FINRA Rule 5250 will not prohibit FINRA members from participating in the MQP. The Exchange notes that FINRA Rule 5250 does not preclude the Exchange from any action, but precludes FINRA members (not all Exchange members are FINRA members) from directly or indirectly accepting payment or consideration from an issuer of a security for acting as a market maker. See Securities Exchange Act Release Nos. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009)(SR-FINRA-2009-036)(order approving proposal to adopt NASD Rule 2460 without substantive change into the Consolidated FINRA Rulebook as Rule 5250); and 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997)(SR-NASD-97-29)(order approving adoption of NASD Rule 2460). Being mindful of the concern in the 1997 order about investor confidence and market integrity, the Exchange designed the MQP Program to be highly transparent, with: clear public notification requirements; with clear entry, continuation, and termination requirements; with clear market maker accountability standards; and, perhaps most importantly, with clear market quality (liquidity) enhancement standards that benefit investors and market participants.

The Exchange has a provision in its Rule 2460 that is, in respect of Exchange members, largely similar to FINRA Rule 5250. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006)(File No. 10-131)(order approving registration of The NASDAQ Stock Market LLC as a national securities exchange and adopting Rule 2460). The Exchange proposes to modify Rule 2460 so that it is not applicable to the MQP.

6 The Exchange notes that MQP Securities do not encompass derivatives on such securities.

Security[7] on NASDAQ will pay a listing fee as set forth in proposed Rule 5950 ("MQP Fee") in addition to the standard (non-MQP) NASDAQ listing fee applicable to such MQP Security as set forth in the Rule 5000 Series (consisting of Rules 5000-5999).[8] Subject to the conditions set forth in proposed Rule 5950, an MQP Fee will be credited in whole or in part to the appropriate Market Maker or Market Makers that make a market in MQP Securities pursuant to the Program ("MQP Market Makers"). The goal of the MQP is to incentivize Exchange members acting as MQP Market Makers to enhance the market quality of such MQP Securities.[9]

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7 The term "MQP Security" is defined in proposed Rule 5950(e)(1) as a security that meets all of the requirements to be listed on NASDAQ as an Exchange Traded Fund, Linked Security, or Trust Issued Receipt pursuant to Rules 5705, 5710, or 5720, respectively, or other relevant NASDAQ rules.

8 The Rule 5000 Series contains rules related to the qualification, listing and delisting of Companies on the NASDAQ Stock Market. The Rule 5100 Series discusses NASDAQ's general regulatory authority. The Rule 5200 Series sets forth the procedures and prerequisites for gaining a listing on the NASDAQ Stock Market, as well as the disclosure obligations of listed Companies. The Rule 5300, 5400, and 5500 Series contain the specific quantitative listing requirements for listing on the Global Select, Global Market, and Capital Market, respectively. The corporate governance requirements applicable to all Companies are contained in the Rule 5600 Series. Special listing requirements for securities other than common or preferred stock and warrants are contained in the Rule 5700 Series. The consequences of a failure to meet NASDAQ's listing standards are contained in the Rule 5800 Series. Finally, Company listing fees are described in the Rule 5900 Series.

9 The enhanced market quality (e.g. liquidity) would, as discussed below, emanate from market quality standards for MQP Market Makers that include, for example, on a daily basis posting a market in an MQP Security that is no wider on the offer side and the bid side than 2% away from NBBO. Proposed Rule 5950(c)(2)(B).

Other markets have considered various ways to increase liquidity in low volume securities. NYSE Euronext, for example, has advocated that a market-wide pilot program with wider spread increments for less liquid securities could be a

The Need for the MQP

The Exchange believes that the MQP will be beneficial to the financial markets; to market participants including traders and investors; and to the economy in general. First, the Exchange proposes the MQP to encourage narrow spreads and liquid markets in situations that generally have not been, or may not be, conducive to naturally having such markets. The securities that comprise these markets may include less actively traded or less well known Exchange Traded Fund ("ETF") products that are made up of securities of less well known or start-up companies as components.[10] Second, in rewarding Market Makers that are willing to "go the extra mile" to develop liquid markets for MQP Securities,[11] the MQP would clearly benefit traders and investors by encouraging more quote competition, narrower spreads and greater liquidity. Third, the MQP will lower transaction costs and enhance liquidity in both ETFs and their components, making those

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worthwhile experiment. NYSE Euronext has also recognized that the creation of a program in which small companies could enter into agreements directly with broker-dealers or through exchanges to provide direct payments to a broker-dealer who agrees to make a market in the issuer's security is an idea that may warrant further review by FINRA and the Commission. See Testimony of Joseph Mecane, Executive Vice President, NYSE Euronext, Before the House Committee on Government Reform and Oversight, November 15, 2011.

10 These small companies and their securities (whether components of listed products like ETFs or direct listings) have been widely recognized as essential to job growth and creation and, by extension, to the health of the economy. Being included in a successful ETF can provide the stocks of these companies with enhanced liquidity and exposure, enabling them to attract investors and access capital markets to fund investment and growth.

11 By imposing quality quoting requirements to enhance the quality of the market for MQP Securities, the MQP will directly impact one of the ways that Market Makers manage risk in lower tier or less liquid securities (e.g. the width of bid and offer pricing).

securities more attractive to a broader range of investors. In so doing, the MQP will help companies access capital to invest and grow. And fourth, the MQP may attract smaller, less developed companies and investment opportunities to a regulated and transparent market and thereby serve the dual function of providing access to on-Exchange listing while expanding investment and trading opportunities to market participants and investors.

There is support for paid for market making (also known as "PFMM") at the highest governmental levels. Congressman Patrick McHenry, the Chairman of the House Committee on Governmental Reform and Oversight, for example, recently noted that agreements between issuers and market makers to pay for market making activity "…would allow small companies to produce an orderly, liquid market for their stocks. Research has shown that these agreements, already permitted overseas, have led to a positive influence on liquidity for small public companies."[12]

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[12] See Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011. For a discussion of issues regarding capital formation in the U.S., see letters between Mary Shapiro, Chairman of the SEC, and Congressman Darrel E. Issa, Chairman of the House Committee on Oversight and Governmental Reform, dated March 22, 2011, April 6, 2011, and April 29, 2011.

The Exchange believes that by establishing specific market quality requirements in the MQP to expand quote competition and liquidity in targeted securities such as ETFs, the Program will be conducive to capital formation - not only in the targeted securities or ETFs (e.g higher trading volume and/or creation of additional share units) but also in the individual components that make up the targeted securities (e.g. higher share trading volume). Securities that trade in active, liquid markets are less likely to suffer from mispricing (that is, a discount in pricing because of a lack of liquidity) that can diminish a company's ability to raise capital for further investment and growth.

In a similar vein, Robert Greifeld, Chief Executive Officer of NASDAQ, recently noted that unlike the United States, "[t]he U.K., Canada and Sweden all have exchange markets that serve as "incubators" for smaller companies.[13] The Exchange believes that the MQP proposal will, by encouraging liquid markets, enable the Exchange to similarly serve as an "incubator," and to continue being an innovator in expanding markets to benefit market participants, traders, and investors.[14] The MQP would reward Market Makers for committing capital to securities and meeting rigorous market quality benchmarks established by the Program.[15] This approach has worked very successfully in overseas markets, including the NASDAQ OMX Nordic First North market (known as "First North").

The practice of paid for market making to increase the liquidity of less liquid securities was examined by Johannes A. Skjeltorp and Bernt Arne Odegaard in a working

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13 See Robert Greifeld, CEO, NASDAQ OMX Group, Sarbox and Immigration Reform for Jobs, Wall Street Journal, October 4, 2011. For a discussion of capital formation issues in the U.S., see letters between Mary Shapiro, Chairman of the SEC and Congressman Darrel E. Issa, Chairman of the House Committee on Oversight and Governmental Reform, dated March 22, 2011, April 6, 2011, and April 29, 2011.

14 See Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141)(notice of filing and immediate effectiveness establishing the Investor Support Program to attract retail order flow to the Exchange). See also Securities Exchange Act Release No. 64437 (May 6, 2011), 76 FR 27710 (May 12, 2011)(NASDAQ-2010-059)(approval order creating a listing market, The BX Venture Market, that will have strict qualitative listing requirements and quantitative standards that would attract smaller, growth companies).

15 See Testimony of Edward S. Knight, General Counsel and Executive Vice President, NASDAQ OMX Group, Before the Senate Committee on Banking, Housing, and Urban Affairs, December 1, 2011.

paper from June 2011.[16] Skjeltorp and Odegaard examined paid for market making on the Oslo Stock Exchange, which uses a market making model that is similar to that of NASDAQ's First North market,[17] and noted that they "… find a significant reduction in liquidity risk and cost of capital for firms that hire a market maker. Firms that prior to hiring a market maker … [have] a high loading on a liquidity risk factor, experience a significant reduction in liquidity risk to a level similar to that of the larger and more liquid stocks on the exchange."

About six years prior to the Skjeltorp and Odegaard article, Amber Anand, Carsten Tanggaard, and Daniel G. Weaver studied liquidity provision through paid for market making on the Stockholm Stock Exchange ("SSE"), currently named NASDAQ OMX Stockholm AB.[18] The researchers examined the success of fifty previously illiquid firms that were listed on the SSE and enjoyed, along with investors, the benefits of paid for market making. The researchers examined the impact of the paid market maker program and found that firms experienced "...a decreased cost of capital and significant

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16 See Why do Firms Pay for Market Making in Their Own Stock? by Johannes A. Skjeltorp, Norges Bank, and Bernt Arne Odegaard, University of Stavanger and Norges Bank, June 2011. See also Why Designate Market Makers? Affirmative Obligations and Market Quality by Hendrik Bessembinder, Jia Hao, and Michael Lemmon, June 2011. This study suggests that future flash crashes can be avoided and social welfare enhanced by designating market makers and engaging paid for market making; and observing the positive attributes of direct payments from listed firms to designated market makers on the Stockholm Stock Exchange and Euronext Paris.

17 The Exchange believes that the Skjeltorp and Odegaard article is therefore directly applicable to the First North paid for market making experience.

18 See Paying for Market Quality, Working Paper F-2006-06 by Amber Anand, Carsten Tanggaard, and Daniel G. Weaver: November 2005, Aarhus School of Business.

improvements in market quality and price discovery."[19] The market makers were known as liquidity providers and the firms could set maximum spread widths for their stocks, as is currently done. Anand, Tanggaard, and Weaver found that following the beginning of paid for market making services, spreads narrowed by a statistically significant amount and depth increased at the inside and in the aggregate for four price levels away from the inside. The researchers found that accompanying the increase in depth was a significant increase in average trade size, suggesting that traders did not find it necessary to break up their orders to accommodate low market depth; and found an increase in trading activity, suggesting that liquidity providers were actively trading with public customers.

More recently, Eric Noll, Executive Vice President, NASDAQ OMX Group, described the positive impact of paid for market making in the First North market, stating that NASDAQ OMX has had "great success" in increasing liquidity in stocks on First North, a European venue for smaller companies that has a program enabling companies to compensate market makers.[20] Mr. Noll noted that in just five years, First North market has grown to 141 listings with a total capitalization of 2.8 billion Euros; and that 22 of the First North companies have graduated to the main market since 2006.[21]

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[19] At the time of the study, SSE was owned by OMX AB. SSE merged into NASDAQ OMX in 2005 and retained its identity within the new corporate structure. The SSE paid for market making system matured into the current First North market.

[20] See Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011.

[21] See Testimony of Eric Noll, Executive Vice President, NASDAQ OMX Group, Before the House Committee on Government Reform and Oversight, November 15, 2011.

Paid for Market Making on the First North Market

The Exchange believes that commensurate with the previously-discussed studies regarding paid for market making,[22] it is instructive to examine the paid for market making experience on the First North market.

By way of background, the First North market is an alternative listing market to the NASDAQ OMX Nordic Main Market ("Main Market"). [23] Both First North and Main Market are subject to and regulated by European Union ("EU") directives[24] and exchange rules, and are supervised and regulated by one or more Financial Services Authorities ("FSAs").[25] While the Main Market is intended for listing companies that are well established, First North is (not unlike the beneficiaries of the MQP) intended for listing small, young or growth companies while providing an infrastructure and trading and settlement systems that are similar to that of the Main Market. First North offers new or small public companies the benefits of listing on a public market and the potential for

22 See supra notes 16, 17, and 18.

23 NASDAQ OMX Nordic, which has securities exchanges and clearing operations in the Nordic countries Sweden, Denmark, Iceland, and Finland and Baltic countries Latvia and Estonia, operates First North and the Main Market. For additional information, see http://www.nasdaqomxnordic.com/about_us?languageId=1.

24 For example, the Markets in Financial Instruments Directive ("MiFID"). It should be noted that certain parts of the EU legislation, for example the Transparency Directive, only apply to companies admitted to trading on the Main Market.

25 A Financial Services Authority is the regulator of financial services and securities exchanges in an EU country (including the Nordics) and as such is similar to the Commission in respect of involvement in market regulation and oversight.

good markets through a paid for market making system, and is often the first step towards listing on the Main Market.[26]

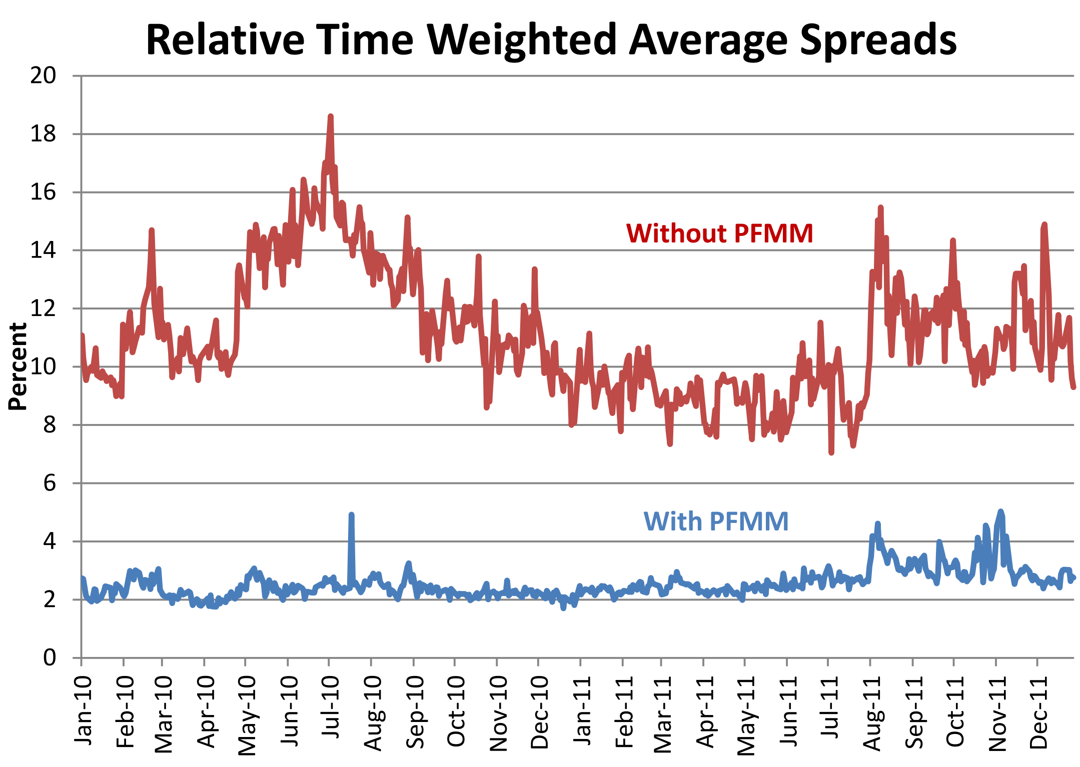
The First North paid for market making system is based on a standard exchange-supplied contract between a listing firm and a designated market maker (DMM) that sets forth market obligations for the market maker. The Exchange sets forth obligations for the MQP Market Makers (as well as Companies) in proposed Rule 5950 in the belief that this provides the greatest amount of transparency, and accountability, for all that wish to participate in the MQP.

The paid for market making model on NASDAQ's First North has operated since 2002 and has been demonstrably successful to the benefit of issuers and investors, without material regulatory issues. One of the definitive market quality attributes associated with expansion of liquidity through paid for market making is the significant narrowing of bid/ask spreads. This phenomenon is directly and immediately beneficial for all market participants including investors and listing companies (which may also benefit from accompanying volume increase). As depicted in the chart below, in 2010

[26] The First North and Main Market have increasingly higher listing standards, similarly to the tiered NASDAQ listings markets. See Rule 5300, 5400, and 5500 Series regarding the Global Select, Global Market, and Capital Market, respectively. In a similarly tiered fashion, between First North and Main Market is an intermediary market known as First North Premiere (a segment of First North) that is designed to help companies seeking higher investor visibility and/or preparation for Main Market listing.

and 2011 the Relative Time Weighted Average Spread ("RTWAS")[27] at First North was significantly better for securities with PFMM than for those without the benefit of PFMM.

The substantial positive advantage that market participants receive from PFMM is clearly demonstrated in the chart below, showing that non-PFMM security spreads were: a) often more than four times wider than PFMM security spreads; and b) a majority of the time more than three times wider than PFMM spreads. Moreover, the spreads for stock with PFMM were more stable through time.



[27] RTWAS is the bid/ask spread relative to the stock price calculated at every NBBO change, then averaged with weights for how long each NBBO condition lasted.

A comparison of Relative Time Weighted Average Spread on First North shows the significant, consistent impact of PFMM in narrowing spreads.[28] This directly benefits investors in PFMM securities by lowering their transaction costs.[29]

In terms of regulation, the First North PFMM experience has not raised concerns. Based on Exchange discussions with the Office of General Counsel at NASDAQ OMX Nordic in respect of the First North market, the Exchange is not aware of regulatory oversight issues (e.g. Swedish FSA or Danish FSA) in respect of paid for market making on First North.[30]

The Exchange believes that the MQP will, like paid for market making on First North, achieve positive results.[31]

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28 The Exchange believes that the volatility reflected on the RTWAS chart after August 2011 is due in large part to economic events in the EU.

29 The Exchange believes that just as First North's positive PFMM experience is successful in its own right, so it is equally positive within the wider European liquidity enhancement (paid for market making) experience. See, for example, How Do Designated Market Makers Create Value for Small-Caps? by Albert J. Menkveld and Ting Wang, August 1, 2011. This analysis of the 2001 Euronext system roll-out to the Amsterdam market, where small-caps had the opportunity to hire a DMM who guaranteed a minimum liquidity supply in their stock, found an improvement in liquidity level and a reduction in liquidity risk.

30 Moreover, the Exchange notes that while spreads widened for stocks on all markets around the world during the height of the financial crisis in September and October 2008, First North stocks with PFMM experienced less spread widening than comparable stocks without PFMM.

31 The Exchange believes that even though First North market lists equities while the proposed MQP market would emphasize listing ETF products, this does not detract from, and indeed enhances, the comparability of the First North PFMM experience to MQP. See infra note 34 (discussing the potential benefit of the unique trust structure of ETFs).

The Proposal

The Exchange believes that this proposal would help raise investor and issuer confidence in the fairness of their transactions and the markets in general by enhancing market maker quote competition in securities on the Exchange, narrowing spreads, increasing shares available at the inside, reducing transaction costs, supporting the quality of price discovery, promoting market transparency and improving investor protection.[32]

As noted, the proposal would enhance the market quality of targeted securities, particularly Exchange Traded Funds. The Exchange believes that ETFs offer great value to retail and institutional investment communities, as reflected in their popularity as investment vehicles both in the U.S. and abroad.[33] ETFs offer transparency, liquidity, diversification, cost efficiency and investment flexibility to gain broad market exposure

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32 The Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010)(Concept Release on Equity Market Structure).

To that end, the Exchange has recently put into place initiatives designed to expand the liquidity of certain targeted securities on transparent and displayed markets on the Exchange. See, for example, Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141)(notice of filing and immediate effectiveness of proposal to establish Investor Support Program in respect of retail or natural order flow).

33 The Exchange notes that foreign (non-U.S.) ETFs, particularly those that are derivative-based, may have certain negative characteristics that are not present in U.S. ETFs. In some cases, under the European UCITS (Europe's equivalent of the Investment Company Act of 1940) structure, individual firms are permitted to fulfill multiple roles within the construct of the product's trading and or creation/redemption process (e.g. the Sponsor/Issuer of a European ETF could be the same entity as the market maker, distributor, intraday Net Asset Value ("NAV") calculation agent, custodian bank and counterparty to any underlying asset). Under the Investment Act of 1940, this is not permitted.

or to express a directional view as a core or satellite component to one's investment portfolio; and do so while offering investment exposure to all asset classes - many of which would otherwise be inaccessible.[34] Moreover, ETFs, particularly those that are equity based, also benefit listed companies. By being included in a single, diversified security, companies gain access to a greater audience of investors who may not have bought the individual stock.[35] This means that the markets are deeper and more liquid, benefiting not only investors but the economy as a whole.[36] This proposal will allow

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[34] It has been noted that since the prices of ETFs are generally linked back to the underlying securities, there is less opportunity for manipulation. See Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011. To that end, the Exchange notes that by definition an ETF will have an insulating wall between market maker and product, namely a trust structure - which is not present with other products such as equity securities - that establishes the daily NAV for an ETF. NAV reflects the per-share value of an ETF, which is based upon the performance of a fund's underlying components and methodology.

[35] At the same time purchasers of ETFs that find success because of increased market quality, especially where these ETFs are smaller or niche ETFs with less components, may choose to invest directly in the components. And whether ETFs are small or large, many companies are eager to be included in them. See, for example, Testimony of Eric Noll, Executive Vice President and Head of Transaction Services NASDAQ OMX, Before the Securities Subcommittee of the Senate Banking Committee October 19, 2011 ("I can tell you from personal experience that the companies that make up QQQ [(the NASDAQ-100 technology ETF)] consider it a real achievement, and certainly NASDAQ is proud of the excellence QQQ represents.").

[36] See Testimony of Eric Noll, Executive Vice President, NASDAQ OMX Group, Before the House Committee on Government Reform and Oversight, November 15, 2011.

ETFs that may not otherwise see much trading or volume[37] to be listed and traded on the Exchange in more liquid markets.[38]

Preliminarily, the Exchange is proposing to modify NASDAQ Rule 2460, which prohibits direct or indirect payment by an issuer to a market maker, to indicate that Rule 2460 is not applicable to the MQP.[39] Specifically, the Exchange is proposing new IM-2460-1 (Market Quality Program)[40] to state that Rule 2460 is not applicable to a member that is accepted into the Market Quality Program pursuant to Rule 5950 or to a person

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37 There are a record 242 funds on the "ETF Deathwatch" list maintained by Ron Rowland, president of Capital Cities Asset Management. All the funds on this list have limped along for at least three months with less than $5 million in assets or fewer than $100,000 worth of shares changing hands daily. The list now includes 17% of the industry's approximately 1,400 ETFs and exchange-traded notes, as measured by number of funds.

38 In that this proposal is designed to provide market quality support to smaller, less frequently traded segments of securities (ETFs), subsection (d) of proposed Rule 5950 indicates that an MQP Security will no longer be eligible to remain in the MQP if the security sustains an average NASDAQ daily trading volume ("ATV") of two million shares or more for three consecutive months. Subsection (d) also provides other reasons for termination of the MQP: a Company withdraws from the MQP, is no longer eligible to be in the MQP, or ceases to make MQP payments to NASDAQ; an MQP Security is delisted or is no longer eligible for the MQP; an MQP Security does not have at least one MQP Market Maker for more than one quarter; or an MQP Security does not, for two consecutive quarters, have at least one MQP Market Maker that is eligible for MQP Fee Credit. Any MQP payments remaining upon termination of the MQP in respect of an MQP Security will be distributed on a pro rata basis to the MQP Market Makers that made a market in the MQP Security, or if none then to the Company. Proposed Rule 5950(d).

39 FINRA, with whom the Exchange has an agreement regarding provision of certain regulatory services, has a similar provision in FINRA Rule 5250. As discussed, the Exchange believes that FINRA will file with the Commission an immediately effective rule change proposal that effectively exempts the MQP from FINRA Rule 5250.

40 IM reflects interpretive material to an Exchange rule.

that is associated with such member for their conduct in connection with that program. The Exchange believes that this proposed limited clarification is proper in that it allows the MQP to go forward on a pilot basis without denigrating the basic premise of Rule 2460. The Exchange notes that paid for market making has been used in overseas markets for a considerable time to increase the liquidity of less active securities.

Securities Eligible for the MQP

The MQP is available to Companies that choose to list certain MQP Securities on the Exchange. To be eligible for listing, MQP Securities must meet the requirements to be listed on NASDAQ as an ETF,[41] Linked Security ("LS"),[42] or Trust Issued Receipt ("TIR")[43] pursuant to Rules 5705, 5710 and 5720, respectively, or other relevant NASDAQ rules.[44] The MQP Security must meet all NASDAQ requirements for continued listing during the period of time that the MQP Security is in the MQP.[45]

Application and Withdrawal

The first step for a Company (issuer) wishing to participate in the MQP by listing a security on the Exchange, and for a NASDAQ member wishing to participate in the

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41 The term "Exchange Traded Fund" includes Portfolio Depository Receipts and Index Fund Shares, which are defined in Rule 5705. Proposed Rule 5950(e)(2).

42 The term "Linked Security" is defined in Rule 5710, and includes Equity Index-Linked Securities Commodity-Linked Securities. Proposed Rule 5950(e)(3).

43 The term "Trust Issued Receipt" is defined in 5720. Proposed Rule 5950(e)(4).

44 The Exchange believes that the Companies most likely to list on the MQP, and pay the requisite MQP listing fees, will be ETF family sponsors

45 Proposed Rule 5950(b)(2) and (3).

MQP as an MQP Market Maker, is to submit an MQP application to the Exchange.[46] Once the Exchange determines that the Company and the MQP Market Maker are eligible to be in the MQP according to the parameters of the proposed rule, the Exchange will indicate acceptance to the Company and the MQP Market Maker. NASDAQ will provide notification on its website regarding such acceptance into the MQP and any applicable MQP restrictions.[47] In particular, the Program allows the Exchange to restrict the number of MQP Market Makers in an MQP Security to no less than one MQP Market Maker and the number of MQP Securities that a Company may have in the MQP. In determining restrictions to the number of MQP Market Makers per MQP Security or the number of MQP Securities in the MQP, NASDAQ may consider information that it believes will be of assistance to it, such as whether a restriction, if any, is in the best interests of NASDAQ, the Company and the goals of the MQP, and investors.[48]

Moreover, to further enhance the transparency of the Program, proposed Rule 5950(a)(1)(D) indicates that NASDAQ will provide notification of the MQP Market Makers in each MQP Security on the NASDAQ website.

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46 See Proposed Rule 5950(a). Thus for a Company to be liable for payment of MQP Fees pursuant to the Program, and for an MQP Market Maker to be eligible to receive an MQP Fee Credit for his market making activities, the Exchange must have accepted the application of each of these parties in respect of an MQP Security, and, the parties must each have fulfilled their obligations pursuant to the MQP. Proposed Rule 5950 (b)(1) and (c)(1).

47 Proposed Rule 5950(a)(1)(D).

48 Proposed Rule 5950 (a)(1)(A)-(C). Factors that may be considered by the Exchange are set forth in subsection (a)(1)(C)(i). NASDAQ will provide notification on its website of any restriction or change to a restriction, to the number of MQP Market Makers per MQP Security, or the number of MQP Securities in the MQP.

A Company and an MQP Market Maker may choose to voluntarily withdraw from the Program. After a Company is in the MQP for six consecutive months, it may withdraw from the MQP on a quarterly basis. The Company must notify NASDAQ in writing not less than one month prior to withdrawing from the MQP. NASDAQ may determine, however, to allow a Company to withdraw from the MQP earlier.[49] After an MQP Market Maker is in the MQP for not less than one quarter, he may withdraw from the MQP on a quarterly basis. Similarly to the notification that must be made by the Company, the MQP Market Maker must notify NASDAQ in writing one month prior to withdrawing from the MQP. The Exchange may delay the withdrawal for up to one month if the MQP Market Maker seeking withdrawal from the MQP is the only, or last, Market Maker in an MQP Security.[50]

After a Company is in the MQP for one year, the MQP and all obligations applicable to a Company pursuant to this rule will automatically continue on an annual basis unless terminated by a Company or NASDAQ, after providing written notification to the other party not less than one month prior to termination.[51]

<u>MQP Fees From Companies</u>

A Company seeking to participate in the MQP must pay a $50,000 basic MQP Fee to NASDAQ. The annual fee must be paid to NASDAQ in equal installments on a

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[49] In making this determination, the Exchange may take into account the volume and price action in the MQP Security; the liquidity, size quoted, quality of the market in the MQP Security; and any other relevant factors. Proposed Rule 5950 (a)(2).

[50] Proposed Rule 5950(a)(2)-(3).

[51] Proposed Rule 5950(a)(4).

quarterly basis before the start of the quarter to be covered by such fee. The basic MQP Fee will be allocated as follows: 50% will fund the Quote Share Payment that is based on Qualified Quotes and 50% will fund the Trade Share Payment[52] that is based on Qualified Trades.[53]

A Company may also choose to pay a supplemental annual MQP Fee. The basic MQP Fee and supplemental MQP Fee when combined will not exceed $100,000 per year. The supplemental MQP Fee is discretionary and the amount of such fee, if any, will be determined by the Company. A Company may indicate in what proportions the

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52 The Exchange believes that allocation of MQP Fees to Quote Share Payments and Trade Share Payments properly reflects the efforts of MQP Market Makers to improve the quality, depth, and/or liquidity of these securities (e.g. from initial quotation to final trade and execution). The Exchange believes that the combination of quote and trade payments in the Program is more effective in measuring the participation of an MQP Market Maker and the resulting liquidity that is added to the marketplace. A traditional per share incentive plan (e.g. a make-take pricing model) often is not attractive to market makers in respect of low volume securities because of the risk associated with the liquidity characteristics of the security coupled with the low volume and reduced revenue opportunity; from the perspective of market makers the costs may outweigh the benefit of liquidity provision. Additionally, by including a component dedicated to quote quality, the program provides an incentive to narrow spreads even when there are few or no trades occurring. As such, the Exchange believes that as MQP Market Makers increase the overall quality of the market it is important to compensate them for both their quote and trade participation in targeted securities.

53 A Qualified Quote represents attributable, displayed added liquidity (either quotes or orders) in an MQP Security that is at least one round lot and visible on the NASDAQ Market Center as defined in Rule 4751. Furthermore, a quote or order entered by an MQP Market Maker in an MQP Security can be a Qualified Quote only if it is posted within 2% of the NBBO. A Qualified Trade in an MQP Security represents a liquidity-providing execution of a Qualified Quote on the NASDAQ Market Center. Proposed Rule 5950(c)(3)(A).

supplemental MQP Fee will be allocated to the Quote Share Payment and/or Trade Share Payment.[54]

The MQP Fee will be paid to the Exchange on a quarterly basis for the following quarter, and will be credited to one or more MQP Market Makers that qualify for such credit for an MQP Security pursuant to this rule. The qualification of an MQP Market Maker to receive an MQP Fee Credit for a particular quarter pursuant to subsection (c) of this rule will, to the extent practicable, be determined prior to any MQP Fee payment being made for that quarter by a Company. In the event that there is not at least one qualified MQP Market Maker pursuant to this rule, however, a Company will not be liable to pay an MQP Fee to the Exchange.[55]

In each instance, an MQP Fee will supplement the standard (non-MQP) NASDAQ listing fee applicable to the MQP Security and will not substitute or have any effect on such standard listing fee.[56]

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[54] Proposed Rule 5950(b)(4)(B).

[55] Moreover, if a Company makes a quarterly MQP Fee payment to the Exchange for a particular quarter and the Exchange determines that no MQP Market Maker qualifies to receive a Fee Credit for that quarter ("unused quarterly payment"), the Exchange will, as instructed by the Company: (i) Return such unused quarterly payment to the Company; or (ii) Apply such unused quarterly payment to a subsequent quarterly payment by the Company, if the Company owes not less than one subsequent quarterly payment and instructs the Exchange to apply such unused quarterly payment to the subsequent quarterly payment. Proposed Rule 5950(b)(6).

[56] Proposed Rule 5950(b)(5).

MQP Fees will be credited on a pro rata basis to MQP Market Makers that make liquid markets in MQP Securities according the parameters set forth in the MQP, as described below.

MQP Fees to Market Makers

When making a market in an MQP Security, an MQP Market Maker must, in addition to fulfilling the market making obligations per Rule 4613,[57] meet or exceed several market quality requirements on a monthly basis to be eligible for an MQP Fee Credit. The MQP Market Maker must maintain one or more displayed, attributable quotes[58] or orders at the NBBO (at the prevailing inside market) for at least 25% of each trading day and with at least 500 shares (total in one or more quotes or orders) of the MQP Security. Also, for a minimum of 90% of the normal trading hours, the MQP

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57 Rule 4613 states that market making obligations applicable to NASDAQ members that are registered as Market Makers include, among other things, quotation requirements and obligations as follows: For each security in which a member is registered as a Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two- Sided Obligation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

58 These are quotes that are attributable to members and not hidden quotes.

Market Maker must maintain at least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ market that are priced no wider on the offer side and the bid side than 2% away from NBBO. For example, in an MQP Security where the NBBO is \$25.00 x \$25.01, the MQP Market Maker must post bids for an aggregate of 2,500 shares between \$24.50 and \$25.00 and must post offers for an aggregate of 2,500 shares between \$25.01 and \$25.51 a minimum of 90% of normal trading hours.[59]

MQP Fees will be calculated monthly and credited quarterly to MQP Market Makers. Each MQP Fee will be comprised of a Quote Share Payment[60] that is based on Qualified Quotes and on a Trade Share Payment that is based on Qualified Trades.[61] Trade Share Payments will be based upon Qualified Trades executed on NASDAQ; and Quote Share Payments will be based upon the average time and size of Qualified Quotes of an MQP Security quoted at NBBO.[62]

MQP Fees comprised of Trade Share Payments and Quote Share Payments will be credited to MQP Market Makers on a pro-rata basis.[63] For example, as it relates to the Trade Payment (which is based on shares executed) - if there were 1000 shares executed

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59 Proposed Rule 5950(c)(2).

60 A Quote Share Payment will be based in equal proportions on (a) average quoted size at NBBO, and (b) average time spent quoting at NBBO (unless an alternate proportion is chosen by a Company that has paid a supplemental MQP Fee). MQP Market Makers will receive a share of each pool proportional with their average time and size at the inside relative to other MQP Market Makers. Proposed Rule 5950 (c)(3)(B)(ii).

61 See supra notes 52 and 53.

62 Proposed Rule 5950(c)(3)(B).

63 Proposed Rule 5950(c)(3)(B).

from Qualified Quotes for the given quarter by two MQP Market Makers, where the first Market Maker was responsible for executing 800 shares and the second Market Maker was responsible for executing 200 shares, then the MQP Trade Payment would be distributed as follows: 80% to the first Market Maker and 20% to the second Market Maker.

The Quote Share Payment, which is based on the average time and size of Qualified Quotes at NBBO, will be distributed on a pro-rata basis. Half of the Quote Share Payment will be based on MQP Market Maker monthly average time at the NBBO and half will be based on the MQP Market Maker monthly average size at the NBBO.[64] For example, as it relates to the average time at the NBBO portion of the Quote Share Payment - if there were two MQP Market Makers, one with 30% monthly time at NBBO and one with 40% monthly time at NBBO, then the time at NBBO portion would be shared as 30%/70%=42.86% and 40%/70%=57.14%, respectively. Similarly, as it relates to the average size at NBBO portion of the Quote Share Payment - if there were two MQP Market Makers, one with a monthly average of 300 shares quoted at NBBO and one with a monthly average of 400 shares quoted at NBBO, then the size at NBBO portion would be 300/700=42.86% and 400/700=57.14%, respectively.

Finally, to give the Exchange and the Commission an opportunity to evaluate the impact of the MQP on the quality of markets in MQP Securities, the Exchange is proposing that the MQP will be effective for a one year pilot period. During the pilot

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64 MQP Market Makers will receive a share of each pool proportional with their average time and size at the inside relative to other MQP Market Makers. Proposed Rule 5950(c)(3)(B)(ii).

period, the Exchange will submit monthly reports to the Commission about market quality in respect of the Market Quality Program. The reports will endeavor to compare, to the extent practicable, securities before and after they are in the MQP and will include information regarding the MQP such as: 1) Rule 605 metrics;[65] 2) volume metrics; 3) number of MQP Market Makers in target securities; 4) spread size; and 5) availability of shares at the NBBO.

The first report will be submitted within sixty days after the MQP becomes operative.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of targeted securities (ETFs) on the Exchange during all trading sessions, and to detect and deter violations of Exchange rules and applicable federal securities laws. Trading of the targeted MQP Securities through the Exchange will be subject to FINRA's surveillance procedures for derivative products including ETFs.[66] The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliates of the ISG;[67] and from listed MQP Companies and public and non-public data sources such as, for example, Bloomberg.

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65 17 CFR 242.605.

66 FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

67 For a list of the current members and affiliate members of ISG, see www.isgportal.com.

The Exchange believes that increasing, and maintaining, the market quality and liquidity in exchange-listed MQP Securities that are executed on a regulated exchange, namely NASDAQ, would help raise investors' confidence in the fairness of their transactions and benefit MQP Companies. The MQP would be conducive to enhancing quote competition, improving NASDAQ liquidity, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The proposed MQP is designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and to protect investors and the public.[68] The Exchange believes that the proposed MQP pilot establishing specific and transparent market making requirements that enhance the market quality and of securities will have a positive long-term effect on the market and its integrity and investors.

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[69] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[70] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers or Companies and other persons using any facility or system which NASDAQ operates or controls, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

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68 15 U.S.C. 78f(b).

69 15 U.S.C. 78f.

70 15 U.S.C. 78f(b)(4) and (5).

The goal of the MQP - to incentivize members to make high-quality, liquid markets - supports the primary goal of the Act to promote the development of a resilient and efficient national market system. Congress instructed the Commission to pursue this goal by emphasizing multiple policies, including the promotion of price discovery, order interaction and competition among orders and markets. The MQP promotes all of these policies; it will enhance quote competition, improve NASDAQ liquidity, support the quality of price discovery, promote market transparency and increase competition for listings and trade executions. Maintaining and increasing liquidity in exchange-listed securities executed on a registered exchange will help raise investors' confidence in the fairness of the market and their transactions. Improving liquidity in this manner is particularly important with respect to exchange traded funds and low-volume securities, as noted by the Joint CFTC/SEC Advisory Commission on Emerging Regulatory Issues.[71]

Each aspect of the MQP adheres to and supports the Act. First, the Program promotes the equitable allocation of fees and dues among issuers. The MQP is completely voluntary in that it will provide an additional means by which issuers may relate to the Exchange without modifying the existing listing options. Issuers can supplement the standard listing fees (which have already been determined to be consistent with the Act) with that of the MQP (which are consistent with the Act as well).

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[71] See Recommendations Regarding Regulatory Responses To The Market Events Of May 6, 2010, February 18, 2011 (Recommendation that the SEC evaluate whether incentives or regulations can be developed to encourage persons who engage in market making strategies to regularly provide buy and sell quotations that are "reasonably related to the market."). Available at http://www.sec.gov/spotlight/sec-cftcjointcommittee/021811-report.pdf.

While the MQP will result in higher fees for issuers that choose to participate, the issuers receive significant benefits for participating, including committed Market Makers, greater liquidity, and lower transaction costs for their investors. Additionally, issuers will have the ability to withdraw from the Program after an initial commitment in the event they determine that participation is not beneficial. In that case, the withdrawing issuers will automatically revert to the already-approved fee schedule applicable to the market tier in which their shares are listed.

The MQP also represents an equitable allocation of fees and dues among Market Makers. Again, the MQP is completely voluntary with respect to Market Maker participation in that it will provide an additional means by which members may qualify for an enhanced rebate, without eliminating any of the existing means of qualifying for the rebate level in question. NASDAQ and other exchanges use multiple fee arrangements to incentivize Market Makers to maintain high quality markets or to improve the quality of executions, including various payment for order flow arrangements, liquidity provider credits, and NASDAQ's Investor Support Program (set forth in NASDAQ Rule 7014). Market Makers that choose to undertake increased burdens will be rewarded with increased rebates; those that do not undertake such burdens will receive no added benefit. As with issuers, Market Makers that choose to participate in the MQP will be permitted to withdraw from it after an initial commitment if they determine that the burdens imposed by the MQP outweigh the benefits provided.

Additionally, the MQP establishes an equitable allocation of fees among Market Makers that choose to participate and fulfill the obligations imposed by the rule. If one Market Maker fulfills those obligations, the MQP Fee will be distributed to that Market

Maker; if multiple Market Makers satisfy the standard, the MQP Fee will be distributed pro rata among them. If no Market Maker satisfies the obligations of the MQP, the MQP Fee will, as instructed by the issuer or Company, either return the unpaid Fee to the issuer or apply the Fee to a subsequent quarterly payment of the issuer. All fees paid by issuers choosing to participate in the MQP, both initial and supplemental MQP Fees, will be available for distribution to eligible NASDAQ Market Makers. In other words, all of the benefit of the MQP Fees will flow to high-performing Market Makers rather than to NASDAQ, provided that at least one Market Maker fulfills the obligations under the proposed rule.

The MQP is designed to avoid unfair discrimination among Market Makers and issuers. The proposed rule contains objective, measurable standards that NASDAQ will apply with care. These standards, both for issuers and for Market Makers, will be applied equally to ensure that similarly situated parties are treated similarly. This is equally true for inclusion of issuers and Market Makers, withdrawal of issuers and Market Makers, and termination of eligibility for the MQP. The standards are carefully constructed to protect the rights of all parties wishing to participate in the Program by providing notice of requirements and a description of the selection process. NASDAQ will apply these standards with the same care and experience with which it applies the many similar rules and standards in NASDAQ's rule manuals.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and program offerings to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that all aspects of the proposed rule change reflect this competitive environment because the MQP is designed to increase the credits provided to members that enhance NASDAQ's market quality.

Finally, NASDAQ notes that the proposed paid for market making system has been used successfully for years on NASDAQ OMX Nordic's First North market. The First North paid for market making system has been quite beneficial to market participants including investors and listing companies (issuers) that have experienced market quality and liquidity with narrowed spreads. The Exchange believes that the proposed MQP will similarly enjoy positive results to the benefit of investors in MQP Securities and Companies related to them and the financial markets as a whole.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

Not applicable.

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

Not applicable.

9. Exhibits

1. Completed 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-2012-014)

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by The NASDAQ Stock Market LLC to Establish the Market Quality Program

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 January 18, 2012, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. 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

NASDAQ is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to add new Rule 5950 (Market Quality Program) to enable market makers that voluntarily commit to and do in fact enhance the market quality (quoted spread and liquidity) of certain securities listed on the Exchange to qualify for a fee credit pursuant to the Exchange's Market Quality Program; and to exempt the Market Quality Program from Rule 2460 (Payment for Market Making). NASDAQ believes this voluntary program

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

will benefit investors, issuers or companies, and market participants by significantly enhancing the quality of trading in listed securities.

The Market Quality Program set forth in Rule 5950 would be effective for a one year pilot period beginning from the date of implementation of the program. During the pilot, NASDAQ will periodically provide information to the Commission about market quality in respect of the Market Quality Program.

The text of the proposed rule change is available from NASDAQ's website at http://nasdaq.cchwallstreet.com/Filings/, at NASDAQ's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, NASDAQ 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. NASDAQ 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 purpose of the filing is to propose new Rule 5950 to enable Market Makers[3] that enhance the market quality of certain securities listed on the Exchange (known as

[3] The term "Market Maker" is defined in Rule 5005(a)(24) as a dealer that, with respect to a security, holds itself out (by entering quotations in the NASDAQ Market Center) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such. Proposed Rule 5950(e)(5).

"targeted securities") and thereby qualify for a fee credit pursuant to the Market Quality Program ("MQP" or "Program"); and to exempt the Program from Rule 2460.

Rule 5950 would be effective for a one year pilot period. The pilot period would commence when the Market Quality Program is implemented by the Exchange and a Company[4] and one or more related Market Makers are accepted into the program in respect of a security listed pursuant to the Program ("MQP Security"). The pilot program would end one year after implementation.[5] During the pilot, the Exchange will

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4 The term "Company" is defined in Rule 5005(a)(6) as the issuer of a security listed or applying to list on NASDAQ. For purposes of the Rule 5000 Series, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership. Proposed Rule 5950(e)(5).

5 The Exchange believes that, based on discussions with the Financial Industry Regulatory Authority ("FINRA"), subsequent to the Exchange filing this MQP proposal FINRA will file an immediately effective rule change proposal indicating that FINRA Rule 5250 will not prohibit FINRA members from participating in the MQP. The Exchange notes that FINRA Rule 5250 does not preclude the Exchange from any action, but precludes FINRA members (not all Exchange members are FINRA members) from directly or indirectly accepting payment or consideration from an issuer of a security for acting as a market maker. <u>See</u> Securities Exchange Act Release Nos. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009)(SR-FINRA-2009-036)(order approving proposal to adopt NASD Rule 2460 without substantive change into the Consolidated FINRA Rulebook as Rule 5250); and 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997)(SR-NASD-97-29)(order approving adoption of NASD Rule 2460). Being mindful of the concern in the 1997 order about investor confidence and market integrity, the Exchange designed the MQP Program to be highly transparent, with: clear public notification requirements; with clear entry, continuation, and termination requirements; with clear market maker accountability standards; and, perhaps most importantly, with clear market quality (liquidity) enhancement standards that benefit investors and market participants.

The Exchange has a provision in its Rule 2460 that is, in respect of Exchange members, largely similar to FINRA Rule 5250. <u>See</u> Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006)(File No. 10-131)(order approving registration of The NASDAQ Stock Market LLC as a national securities exchange and adopting Rule 2460). The Exchange proposes to modify Rule 2460 so that it is not applicable to the MQP.

periodically provide information to the Commission about market quality in respect of the MQP.

Background

The proposed Market Quality Program is a voluntary program designed to promote market quality in MQP Securities.[6] A Company that lists an eligible MQP Security[7] on NASDAQ will pay a listing fee as set forth in proposed Rule 5950 ("MQP Fee") in addition to the standard (non-MQP) NASDAQ listing fee applicable to such MQP Security as set forth in the Rule 5000 Series (consisting of Rules 5000-5999).[8] Subject to the conditions set forth in proposed Rule 5950, an MQP Fee will be credited in whole or in part to the appropriate Market Maker or Market Makers that make a market in MQP Securities pursuant to the Program ("MQP Market Makers"). The goal of the

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[6] The Exchange notes that MQP Securities do not encompass derivatives on such securities.

[7] The term "MQP Security" is defined in proposed Rule 5950(e)(1) as a security that meets all of the requirements to be listed on NASDAQ as an Exchange Traded Fund, Linked Security, or Trust Issued Receipt pursuant to Rules 5705, 5710, or 5720, respectively, or other relevant NASDAQ rules.

[8] The Rule 5000 Series contains rules related to the qualification, listing and delisting of Companies on the NASDAQ Stock Market. The Rule 5100 Series discusses NASDAQ's general regulatory authority. The Rule 5200 Series sets forth the procedures and prerequisites for gaining a listing on the NASDAQ Stock Market, as well as the disclosure obligations of listed Companies. The Rule 5300, 5400, and 5500 Series contain the specific quantitative listing requirements for listing on the Global Select, Global Market, and Capital Market, respectively. The corporate governance requirements applicable to all Companies are contained in the Rule 5600 Series. Special listing requirements for securities other than common or preferred stock and warrants are contained in the Rule 5700 Series. The consequences of a failure to meet NASDAQ's listing standards are contained in the Rule 5800 Series. Finally, Company listing fees are described in the Rule 5900 Series.

MQP is to incentivize Exchange members acting as MQP Market Makers to enhance the market quality of such MQP Securities.[9]

The Need for the MQP

The Exchange believes that the MQP will be beneficial to the financial markets; to market participants including traders and investors; and to the economy in general. First, the Exchange proposes the MQP to encourage narrow spreads and liquid markets in situations that generally have not been, or may not be, conducive to naturally having such markets. The securities that comprise these markets may include less actively traded or less well known Exchange Traded Fund ("ETF") products that are made up of securities of less well known or start-up companies as components.[10] Second, in rewarding Market Makers that are willing to "go the extra mile" to develop liquid markets for MQP

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9 The enhanced market quality (e.g. liquidity) would, as discussed below, emanate from market quality standards for MQP Market Makers that include, for example, on a daily basis posting a market in an MQP Security that is no wider on the offer side and the bid side than 2% away from NBBO. Proposed Rule 5950(c)(2)(B).

Other markets have considered various ways to increase liquidity in low volume securities. NYSE Euronext, for example, has advocated that a market-wide pilot program with wider spread increments for less liquid securities could be a worthwhile experiment. NYSE Euronext has also recognized that the creation of a program in which small companies could enter into agreements directly with broker-dealers or through exchanges to provide direct payments to a broker-dealer who agrees to make a market in the issuer's security is an idea that may warrant further review by FINRA and the Commission. See Testimony of Joseph Mecane, Executive Vice President, NYSE Euronext, Before the House Committee on Government Reform and Oversight, November 15, 2011.

10 These small companies and their securities (whether components of listed products like ETFs or direct listings) have been widely recognized as essential to job growth and creation and, by extension, to the health of the economy. Being included in a successful ETF can provide the stocks of these companies with enhanced liquidity and exposure, enabling them to attract investors and access capital markets to fund investment and growth.

Securities,[11] the MQP would clearly benefit traders and investors by encouraging more quote competition, narrower spreads and greater liquidity. Third, the MQP will lower transaction costs and enhance liquidity in both ETFs and their components, making those securities more attractive to a broader range of investors. In so doing, the MQP will help companies access capital to invest and grow. And fourth, the MQP may attract smaller, less developed companies and investment opportunities to a regulated and transparent market and thereby serve the dual function of providing access to on-Exchange listing while expanding investment and trading opportunities to market participants and investors.

There is support for paid for market making (also known as "PFMM") at the highest governmental levels. Congressman Patrick McHenry, the Chairman of the House Committee on Governmental Reform and Oversight, for example, recently noted that agreements between issuers and market makers to pay for market making activity "…would allow small companies to produce an orderly, liquid market for their stocks. Research has shown that these agreements, already permitted overseas, have led to a positive influence on liquidity for small public companies."[12]

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11 By imposing quality quoting requirements to enhance the quality of the market for MQP Securities, the MQP will directly impact one of the ways that Market Makers manage risk in lower tier or less liquid securities (e.g. the width of bid and offer pricing).

12 See Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011. For a discussion of issues regarding capital formation in the U.S., see letters between Mary Shapiro, Chairman of the SEC, and Congressman Darrel E. Issa, Chairman of the House Committee on Oversight and Governmental Reform, dated March 22, 2011, April 6, 2011, and April 29, 2011.

In a similar vein, Robert Greifeld, Chief Executive Officer of NASDAQ, recently noted that unlike the United States, “[t]he U.K., Canada and Sweden all have exchange markets that serve as "incubators" for smaller companies.[13] The Exchange believes that the MQP proposal will, by encouraging liquid markets, enable the Exchange to similarly serve as an “incubator,” and to continue being an innovator in expanding markets to benefit market participants, traders, and investors.[14] The MQP would reward Market Makers for committing capital to securities and meeting rigorous market quality benchmarks established by the Program.[15] This approach has worked very successfully

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The Exchange believes that by establishing specific market quality requirements in the MQP to expand quote competition and liquidity in targeted securities such as ETFs, the Program will be conducive to capital formation - not only in the targeted securities or ETFs (e.g higher trading volume and/or creation of additional share units) but also in the individual components that make up the targeted securities (e.g. higher share trading volume). Securities that trade in active, liquid markets are less likely to suffer from mispricing (that is, a discount in pricing because of a lack of liquidity) that can diminish a company’s ability to raise capital for further investment and growth.

13 See Robert Greifeld, CEO, NASDAQ OMX Group, Sarbox and Immigration Reform for Jobs, Wall Street Journal, October 4, 2011. For a discussion of capital formation issues in the U.S., see letters between Mary Shapiro, Chairman of the SEC and Congressman Darrel E. Issa, Chairman of the House Committee on Oversight and Governmental Reform, dated March 22, 2011, April 6, 2011, and April 29, 2011.

14 See Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141)(notice of filing and immediate effectiveness establishing the Investor Support Program to attract retail order flow to the Exchange). See also Securities Exchange Act Release No. 64437 (May 6, 2011), 76 FR 27710 (May 12, 2011)(NASDAQ-2010-059)(approval order creating a listing market, The BX Venture Market, that will have strict qualitative listing requirements and quantitative standards that would attract smaller, growth companies).

15 See Testimony of Edward S. Knight, General Counsel and Executive Vice President, NASDAQ OMX Group, Before the Senate Committee on Banking, Housing, and Urban Affairs, December 1, 2011.

in overseas markets, including the NASDAQ OMX Nordic First North market (known as "First North").

The practice of paid for market making to increase the liquidity of less liquid securities was examined by Johannes A. Skjeltorp and Bernt Arne Odegaard in a working paper from June 2011.[16] Skjeltorp and Odegaard examined paid for market making on the Oslo Stock Exchange, which uses a market making model that is similar to that of NASDAQ's First North market,[17] and noted that they "… find a significant reduction in liquidity risk and cost of capital for firms that hire a market maker. Firms that prior to hiring a market maker … [have] a high loading on a liquidity risk factor, experience a significant reduction in liquidity risk to a level similar to that of the larger and more liquid stocks on the exchange."

About six years prior to the Skjeltorp and Odegaard article, Amber Anand, Carsten Tanggaard, and Daniel G. Weaver studied liquidity provision through paid for market making on the Stockholm Stock Exchange ("SSE"), currently named NASDAQ

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16 See Why do Firms Pay for Market Making in Their Own Stock? by Johannes A. Skjeltorp, Norges Bank, and Bernt Arne Odegaard, University of Stavanger and Norges Bank, June 2011. See also Why Designate Market Makers? Affirmative Obligations and Market Quality by Hendrik Bessembinder, Jia Hao, and Michael Lemmon, June 2011. This study suggests that future flash crashes can be avoided and social welfare enhanced by designating market makers and engaging paid for market making; and observing the positive attributes of direct payments from listed firms to designated market makers on the Stockholm Stock Exchange and Euronext Paris.

17 The Exchange believes that the Skjeltorp and Odegaard article is therefore directly applicable to the First North paid for market making experience.

OMX Stockholm AB.[18] The researchers examined the success of fifty previously illiquid firms that were listed on the SSE and enjoyed, along with investors, the benefits of paid for market making. The researchers examined the impact of the paid market maker program and found that firms experienced "...a decreased cost of capital and significant improvements in market quality and price discovery."[19] The market makers were known as liquidity providers and the firms could set maximum spread widths for their stocks, as is currently done. Anand, Tanggaard, and Weaver found that following the beginning of paid for market making services, spreads narrowed by a statistically significant amount and depth increased at the inside and in the aggregate for four price levels away from the inside. The researchers found that accompanying the increase in depth was a significant increase in average trade size, suggesting that traders did not find it necessary to break up their orders to accommodate low market depth; and found an increase in trading activity, suggesting that liquidity providers were actively trading with public customers.

More recently, Eric Noll, Executive Vice President, NASDAQ OMX Group, described the positive impact of paid for market making in the First North market, stating that NASDAQ OMX has had "great success" in increasing liquidity in stocks on First North, a European venue for smaller companies that has a program enabling companies

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18 See Paying for Market Quality, Working Paper F-2006-06 by Amber Anand, Carsten Tanggaard, and Daniel G. Weaver: November 2005, Aarhus School of Business.

19 At the time of the study, SSE was owned by OMX AB. SSE merged into NASDAQ OMX in 2005 and retained its identity within the new corporate structure. The SSE paid for market making system matured into the current First North market.

to compensate market makers.[20] Mr. Noll noted that in just five years, First North market has grown to 141 listings with a total capitalization of 2.8 billion Euros; and that 22 of the First North companies have graduated to the main market since 2006.[21]

Paid for Market Making on the First North Market

The Exchange believes that commensurate with the previously-discussed studies regarding paid for market making,[22] it is instructive to examine the paid for market making experience on the First North market.

By way of background, the First North market is an alternative listing market to the NASDAQ OMX Nordic Main Market ("Main Market").[23] Both First North and Main Market are subject to and regulated by European Union ("EU") directives[24] and exchange rules, and are supervised and regulated by one or more Financial Services

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20 See Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011.

21 See Testimony of Eric Noll, Executive Vice President, NASDAQ OMX Group, Before the House Committee on Government Reform and Oversight, November 15, 2011.

22 See supra notes 16, 17, and 18.

23 NASDAQ OMX Nordic, which has securities exchanges and clearing operations in the Nordic countries Sweden, Denmark, Iceland, and Finland and Baltic countries Latvia and Estonia, operates First North and the Main Market. For additional information, see http://www.nasdaqomxnordic.com/about_us?languageId=1.

24 For example, the Markets in Financial Instruments Directive ("MiFID"). It should be noted that certain parts of the EU legislation, for example the Transparency Directive, only apply to companies admitted to trading on the Main Market.

Authorities ("FSAs").[25] While the Main Market is intended for listing companies that are well established, First North is (not unlike the beneficiaries of the MQP) intended for listing small, young or growth companies while providing an infrastructure and trading and settlement systems that are similar to that of the Main Market. First North offers new or small public companies the benefits of listing on a public market and the potential for good markets through a paid for market making system, and is often the first step towards listing on the Main Market.[26]

The First North paid for market making system is based on a standard exchange-supplied contract between a listing firm and a designated market maker (DMM) that sets forth market obligations for the market maker. The Exchange sets forth obligations for the MQP Market Makers (as well as Companies) in proposed Rule 5950 in the belief that this provides the greatest amount of transparency, and accountability, for all that wish to participate in the MQP.

The paid for market making model on NASDAQ's First North has operated since 2002 and has been demonstrably successful to the benefit of issuers and investors, without material regulatory issues. One of the definitive market quality attributes associated with expansion of liquidity through paid for market making is the significant

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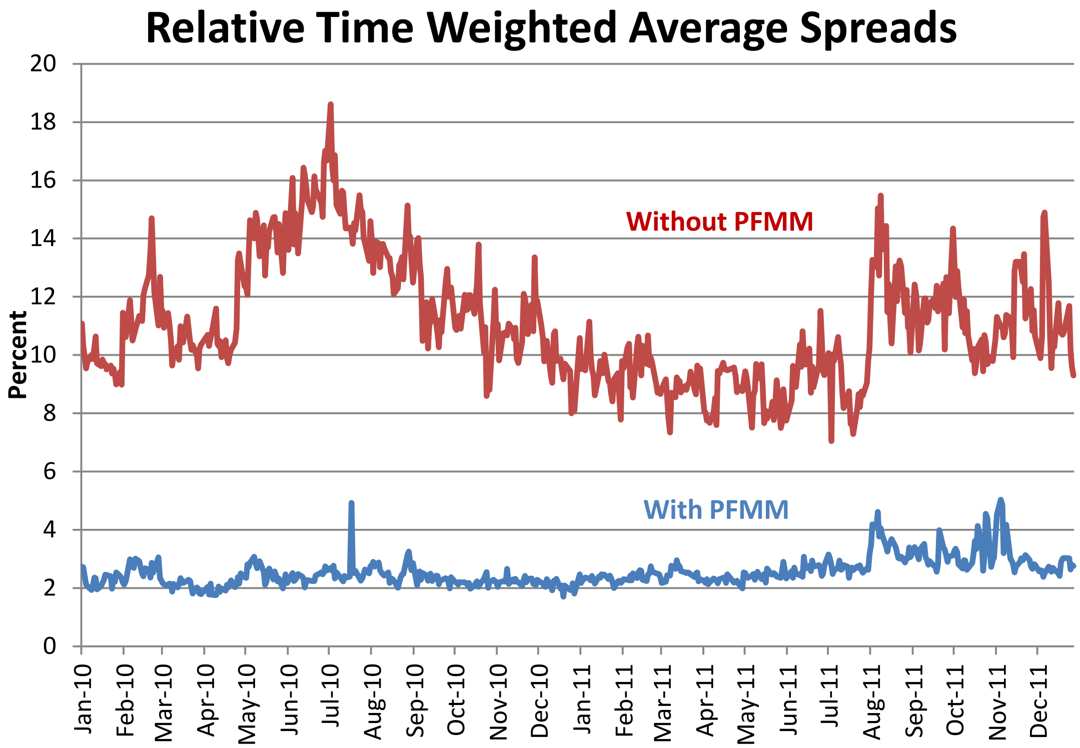
[25] A Financial Services Authority is the regulator of financial services and securities exchanges in an EU country (including the Nordics) and as such is similar to the Commission in respect of involvement in market regulation and oversight.

[26] The First North and Main Market have increasingly higher listing standards, similarly to the tiered NASDAQ listings markets. See Rule 5300, 5400, and 5500 Series regarding the Global Select, Global Market, and Capital Market, respectively. In a similarly tiered fashion, between First North and Main Market is an intermediary market known as First North Premiere (a segment of First North) that is designed to help companies seeking higher investor visibility and/or preparation for Main Market listing.

narrowing of bid/ask spreads. This phenomenon is directly and immediately beneficial for all market participants including investors and listing companies (which may also benefit from accompanying volume increase). As depicted in the chart below, in 2010 and 2011 the Relative Time Weighted Average Spread ("RTWAS")[27] at First North was significantly better for securities with PFMM than for those without the benefit of PFMM.

The substantial positive advantage that market participants receive from PFMM is clearly demonstrated in the chart below, showing that non-PFMM security spreads were: a) often more than four times wider than PFMM security spreads; and b) a majority of the time more than three times wider than PFMM spreads. Moreover, the spreads for stock with PFMM were more stable through time.

[27] RTWAS is the bid/ask spread relative to the stock price calculated at every NBBO change, then averaged with weights for how long each NBBO condition lasted.



A comparison of Relative Time Weighted Average Spread on First North shows the significant, consistent impact of PFMM in narrowing spreads.[28] This directly benefits investors in PFMM securities by lowering their transaction costs.[29]

In terms of regulation, the First North PFMM experience has not raised concerns. Based on Exchange discussions with the Office of General Counsel at NASDAQ OMX Nordic in respect of the First North market, the Exchange is not aware of regulatory

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28 The Exchange believes that the volatility reflected on the RTWAS chart after August 2011 is due in large part to economic events in the EU.

29 The Exchange believes that just as First North's positive PFMM experience is successful in its own right, so it is equally positive within the wider European liquidity enhancement (paid for market making) experience. See, for example, How Do Designated Market Makers Create Value for Small-Caps? by Albert J. Menkveld and Ting Wang, August 1, 2011. This analysis of the 2001 Euronext system roll-out to the Amsterdam market, where small-caps had the opportunity to hire a DMM who guaranteed a minimum liquidity supply in their stock, found an improvement in liquidity level and a reduction in liquidity risk.

oversight issues (e.g. Swedish FSA or Danish FSA) in respect of paid for market making on First North.[30]

The Exchange believes that the MQP will, like paid for market making on First North, achieve positive results.[31]

The Proposal

The Exchange believes that this proposal would help raise investor and issuer confidence in the fairness of their transactions and the markets in general by enhancing market maker quote competition in securities on the Exchange, narrowing spreads, increasing shares available at the inside, reducing transaction costs, supporting the quality of price discovery, promoting market transparency and improving investor protection.[32]

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30 Moreover, the Exchange notes that while spreads widened for stocks on all markets around the world during the height of the financial crisis in September and October 2008, First North stocks with PFMM experienced less spread widening than comparable stocks without PFMM.

31 The Exchange believes that even though First North market lists equities while the proposed MQP market would emphasize listing ETF products, this does not detract from, and indeed enhances, the comparability of the First North PFMM experience to MQP. See infra note 34 (discussing the potential benefit of the unique trust structure of ETFs).

32 The Commission has recognized the strong policy preference under the Act in favor of price transparency and displayed markets. See Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010)(Concept Release on Equity Market Structure).

To that end, the Exchange has recently put into place initiatives designed to expand the liquidity of certain targeted securities on transparent and displayed markets on the Exchange. See, for example, Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2010)(NASDAQ-2010-141)(notice of filing and immediate effectiveness of proposal to establish Investor Support Program in respect of retail or natural order flow).

As noted, the proposal would enhance the market quality of targeted securities, particularly Exchange Traded Funds. The Exchange believes that ETFs offer great value to retail and institutional investment communities, as reflected in their popularity as investment vehicles both in the U.S. and abroad.[33] ETFs offer transparency, liquidity, diversification, cost efficiency and investment flexibility to gain broad market exposure or to express a directional view as a core or satellite component to one's investment portfolio; and do so while offering investment exposure to all asset classes - many of which would otherwise be inaccessible.[34] Moreover, ETFs, particularly those that are equity based, also benefit listed companies. By being included in a single, diversified security, companies gain access to a greater audience of investors who may not have bought the individual stock.[35] This means that the markets are deeper and more liquid,

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[33] The Exchange notes that foreign (non-U.S.) ETFs, particularly those that are derivative-based, may have certain negative characteristics that are not present in U.S. ETFs. In some cases, under the European UCITS (Europe's equivalent of the Investment Company Act of 1940) structure, individual firms are permitted to fulfill multiple roles within the construct of the product's trading and or creation/redemption process (e.g. the Sponsor/Issuer of a European ETF could be the same entity as the market maker, distributor, intraday Net Asset Value ("NAV") calculation agent, custodian bank and counterparty to any underlying asset). Under the Investment Act of 1940, this is not permitted.

[34] It has been noted that since the prices of ETFs are generally linked back to the underlying securities, there is less opportunity for manipulation. See Payments to Market Makers May Improve Trading in Smaller Stocks, by Nina Mehta, Bloomberg, November 15, 2011. To that end, the Exchange notes that by definition an ETF will have an insulating wall between market maker and product, namely a trust structure - which is not present with other products such as equity securities - that establishes the daily NAV for an ETF. NAV reflects the per-share value of an ETF, which is based upon the performance of a fund's underlying components and methodology.

[35] At the same time purchasers of ETFs that find success because of increased market quality, especially where these ETFs are smaller or niche ETFs with less components, may choose to invest directly in the components. And whether ETFs

benefiting not only investors but the economy as a whole.[36] This proposal will allow ETFs that may not otherwise see much trading or volume[37] to be listed and traded on the Exchange in more liquid markets.[38]

Preliminarily, the Exchange is proposing to modify NASDAQ Rule 2460, which prohibits direct or indirect payment by an issuer to a market maker, to indicate that Rule

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are small or large, many companies are eager to be included in them. See, for example, Testimony of Eric Noll, Executive Vice President and Head of Transaction Services NASDAQ OMX, Before the Securities Subcommittee of the Senate Banking Committee October 19, 2011 ("I can tell you from personal experience that the companies that make up QQQ [(the NASDAQ-100 technology ETF)] consider it a real achievement, and certainly NASDAQ is proud of the excellence QQQ represents.").

[36] See Testimony of Eric Noll, Executive Vice President, NASDAQ OMX Group, Before the House Committee on Government Reform and Oversight, November 15, 2011.

[37] There are a record 242 funds on the "ETF Deathwatch" list maintained by Ron Rowland, president of Capital Cities Asset Management. All the funds on this list have limped along for at least three months with less than $5 million in assets or fewer than $100,000 worth of shares changing hands daily. The list now includes 17% of the industry's approximately 1,400 ETFs and exchange-traded notes, as measured by number of funds.

[38] In that this proposal is designed to provide market quality support to smaller, less frequently traded segments of securities (ETFs), subsection (d) of proposed Rule 5950 indicates that an MQP Security will no longer be eligible to remain in the MQP if the security sustains an average NASDAQ daily trading volume ("ATV") of two million shares or more for three consecutive months. Subsection (d) also provides other reasons for termination of the MQP: a Company withdraws from the MQP, is no longer eligible to be in the MQP, or ceases to make MQP payments to NASDAQ; an MQP Security is delisted or is no longer eligible for the MQP; an MQP Security does not have at least one MQP Market Maker for more than one quarter; or an MQP Security does not, for two consecutive quarters, have at least one MQP Market Maker that is eligible for MQP Fee Credit. Any MQP payments remaining upon termination of the MQP in respect of an MQP Security will be distributed on a pro rata basis to the MQP Market Makers that made a market in the MQP Security, or if none then to the Company. Proposed Rule 5950(d).

2460 is not applicable to the MQP.[39] Specifically, the Exchange is proposing new IM-2460-1 (Market Quality Program)[40] to state that Rule 2460 is not applicable to a member that is accepted into the Market Quality Program pursuant to Rule 5950 or to a person that is associated with such member for their conduct in connection with that program. The Exchange believes that this proposed limited clarification is proper in that it allows the MQP to go forward on a pilot basis without denigrating the basic premise of Rule 2460. The Exchange notes that paid for market making has been used in overseas markets for a considerable time to increase the liquidity of less active securities.

Securities Eligible for the MQP

The MQP is available to Companies that choose to list certain MQP Securities on the Exchange. To be eligible for listing, MQP Securities must meet the requirements to be listed on NASDAQ as an ETF,[41] Linked Security ("LS"),[42] or Trust Issued Receipt ("TIR")[43] pursuant to Rules 5705, 5710 and 5720, respectively, or other relevant

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39 FINRA, with whom the Exchange has an agreement regarding provision of certain regulatory services, has a similar provision in FINRA Rule 5250. As discussed, the Exchange believes that FINRA will file with the Commission an immediately effective rule change proposal that effectively exempts the MQP from FINRA Rule 5250.

40 IM reflects interpretive material to an Exchange rule.

41 The term "Exchange Traded Fund" includes Portfolio Depository Receipts and Index Fund Shares, which are defined in Rule 5705. Proposed Rule 5950(e)(2).

42 The term "Linked Security" is defined in Rule 5710, and includes Equity Index-Linked Securities Commodity-Linked Securities. Proposed Rule 5950(e)(3).

43 The term "Trust Issued Receipt" is defined in 5720. Proposed Rule 5950(e)(4).

NASDAQ rules.[44] The MQP Security must meet all NASDAQ requirements for continued listing during the period of time that the MQP Security is in the MQP.[45]

Application and Withdrawal

The first step for a Company (issuer) wishing to participate in the MQP by listing a security on the Exchange, and for a NASDAQ member wishing to participate in the MQP as an MQP Market Maker, is to submit an MQP application to the Exchange.[46] Once the Exchange determines that the Company and the MQP Market Maker are eligible to be in the MQP according to the parameters of the proposed rule, the Exchange will indicate acceptance to the Company and the MQP Market Maker. NASDAQ will provide notification on its website regarding such acceptance into the MQP and any applicable MQP restrictions.[47] In particular, the Program allows the Exchange to restrict the number of MQP Market Makers in an MQP Security to no less than one MQP Market Maker and the number of MQP Securities that a Company may have in the MQP. In determining restrictions to the number of MQP Market Makers per MQP Security or the number of MQP Securities in the MQP, NASDAQ may consider information that it

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44 The Exchange believes that the Companies most likely to list on the MQP, and pay the requisite MQP listing fees, will be ETF family sponsors.

45 Proposed Rule 5950(b)(2) and (3).

46 See Proposed Rule 5950(a). Thus for a Company to be liable for payment of MQP Fees pursuant to the Program, and for an MQP Market Maker to be eligible to receive an MQP Fee Credit for his market making activities, the Exchange must have accepted the application of each of these parties in respect of an MQP Security, and, the parties must each have fulfilled their obligations pursuant to the MQP. Proposed Rule 5950 (b)(1) and (c)(1).

47 Proposed Rule 5950(a)(1)(D).

believes will be of assistance to it, such as whether a restriction, if any, is in the best interests of NASDAQ, the Company and the goals of the MQP, and investors.[48]

Moreover, to further enhance the transparency of the Program, proposed Rule 5950(a)(1)(D) indicates that NASDAQ will provide notification of the MQP Market Makers in each MQP Security on the NASDAQ website.

A Company and an MQP Market Maker may choose to voluntarily withdraw from the Program. After a Company is in the MQP for six consecutive months, it may withdraw from the MQP on a quarterly basis. The Company must notify NASDAQ in writing not less than one month prior to withdrawing from the MQP. NASDAQ may determine, however, to allow a Company to withdraw from the MQP earlier.[49] After an MQP Market Maker is in the MQP for not less than one quarter, he may withdraw from the MQP on a quarterly basis. Similarly to the notification that must be made by the Company, the MQP Market Maker must notify NASDAQ in writing one month prior to withdrawing from the MQP. The Exchange may delay the withdrawal for up to one month if the MQP Market Maker seeking withdrawal from the MQP is the only, or last, Market Maker in an MQP Security.[50]

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48 Proposed Rule 5950 (a)(1)(A)-(C). Factors that may be considered by the Exchange are set forth in subsection (a)(1)(C)(i). NASDAQ will provide notification on its website of any restriction or change to a restriction, to the number of MQP Market Makers per MQP Security, or the number of MQP Securities in the MQP.

49 In making this determination, the Exchange may take into account the volume and price action in the MQP Security; the liquidity, size quoted, quality of the market in the MQP Security; and any other relevant factors. Proposed Rule 5950 (a)(2).

50 Proposed Rule 5950(a)(2)-(3).

After a Company is in the MQP for one year, the MQP and all obligations applicable to a Company pursuant to this rule will automatically continue on an annual basis unless terminated by a Company or NASDAQ, after providing written notification to the other party not less than one month prior to termination.[51]

<u>MQP Fees From Companies</u>

A Company seeking to participate in the MQP must pay a $50,000 basic MQP Fee to NASDAQ. The annual fee must be paid to NASDAQ in equal installments on a quarterly basis before the start of the quarter to be covered by such fee. The basic MQP Fee will be allocated as follows: 50% will fund the Quote Share Payment that is based on Qualified Quotes and 50% will fund the Trade Share Payment[52] that is based on Qualified Trades.[53]

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[51] Proposed Rule 5950(a)(4).

[52] The Exchange believes that allocation of MQP Fees to Quote Share Payments and Trade Share Payments properly reflects the efforts of MQP Market Makers to improve the quality, depth, and/or liquidity of these securities (e.g. from initial quotation to final trade and execution). The Exchange believes that the combination of quote and trade payments in the Program is more effective in measuring the participation of an MQP Market Maker and the resulting liquidity that is added to the marketplace. A traditional per share incentive plan (e.g. a make-take pricing model) often is not attractive to market makers in respect of low volume securities because of the risk associated with the liquidity characteristics of the security coupled with the low volume and reduced revenue opportunity; from the perspective of market makers the costs may outweigh the benefit of liquidity provision. Additionally, by including a component dedicated to quote quality, the program provides an incentive to narrow spreads even when there are few or no trades occurring. As such, the Exchange believes that as MQP Market Makers increase the overall quality of the market it is important to compensate them for both their quote and trade participation in targeted securities.

[53] A Qualified Quote represents attributable, displayed added liquidity (either quotes or orders) in an MQP Security that is at least one round lot and visible on the NASDAQ Market Center as defined in Rule 4751. Furthermore, a quote or order entered by an MQP Market Maker in an MQP Security can be a Qualified Quote

A Company may also choose to pay a supplemental annual MQP Fee. The basic MQP Fee and supplemental MQP Fee when combined will not exceed $100,000 per year. The supplemental MQP Fee is discretionary and the amount of such fee, if any, will be determined by the Company. A Company may indicate in what proportions the supplemental MQP Fee will be allocated to the Quote Share Payment and/or Trade Share Payment.[54]

The MQP Fee will be paid to the Exchange on a quarterly basis for the following quarter, and will be credited to one or more MQP Market Makers that qualify for such credit for an MQP Security pursuant to this rule. The qualification of an MQP Market Maker to receive an MQP Fee Credit for a particular quarter pursuant to subsection (c) of this rule will, to the extent practicable, be determined prior to any MQP Fee payment being made for that quarter by a Company. In the event that there is not at least one qualified MQP Market Maker pursuant to this rule, however, a Company will not be liable to pay an MQP Fee to the Exchange.[55]

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only if it is posted within 2% of the NBBO. A Qualified Trade in an MQP Security represents a liquidity-providing execution of a Qualified Quote on the NASDAQ Market Center. Proposed Rule 5950(c)(3)(A).

54 Proposed Rule 5950(b)(4)(B).

55 Moreover, if a Company makes a quarterly MQP Fee payment to the Exchange for a particular quarter and the Exchange determines that no MQP Market Maker qualifies to receive a Fee Credit for that quarter ("unused quarterly payment"), the Exchange will, as instructed by the Company: (i) Return such unused quarterly payment to the Company; or (ii) Apply such unused quarterly payment to a subsequent quarterly payment by the Company, if the Company owes not less than one subsequent quarterly payment and instructs the Exchange to apply such unused quarterly payment to the subsequent quarterly payment. Proposed Rule 5950(b)(6).

In each instance, an MQP Fee will supplement the standard (non-MQP) NASDAQ listing fee applicable to the MQP Security and will not substitute or have any effect on such standard listing fee.[56]

MQP Fees will be credited on a pro rata basis to MQP Market Makers that make liquid markets in MQP Securities according the parameters set forth in the MQP, as described below.

MQP Fees to Market Makers

When making a market in an MQP Security, an MQP Market Maker must, in addition to fulfilling the market making obligations per Rule 4613,[57] meet or exceed several market quality requirements on a monthly basis to be eligible for an MQP Fee Credit. The MQP Market Maker must maintain one or more displayed, attributable

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56 Proposed Rule 5950(b)(5).

57 Rule 4613 states that market making obligations applicable to NASDAQ members that are registered as Market Makers include, among other things, quotation requirements and obligations as follows: For each security in which a member is registered as a Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two- Sided Obligation. Unless otherwise designated, a "normal unit of trading" shall be 100 shares. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

quotes[58] or orders at the NBBO (at the prevailing inside market) for at least 25% of each trading day and with at least 500 shares (total in one or more quotes or orders) of the MQP Security. Also, for a minimum of 90% of the normal trading hours, the MQP Market Maker must maintain at least 2,500 shares of attributable, displayed posted liquidity on the NASDAQ market that are priced no wider on the offer side and the bid side than 2% away from NBBO. For example, in an MQP Security where the NBBO is $25.00 x $25.01, the MQP Market Maker must post bids for an aggregate of 2,500 shares between $24.50 and $25.00 and must post offers for an aggregate of 2,500 shares between $25.01 and $25.51 a minimum of 90% of normal trading hours.[59]

MQP Fees will be calculated monthly and credited quarterly to MQP Market Makers. Each MQP Fee will be comprised of a Quote Share Payment[60] that is based on Qualified Quotes and on a Trade Share Payment that is based on Qualified Trades.[61] Trade Share Payments will be based upon Qualified Trades executed on NASDAQ; and Quote Share Payments will be based upon the average time and size of Qualified Quotes of an MQP Security quoted at NBBO.[62]

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58 These are quotes that are attributable to members and not hidden quotes.

59 Proposed Rule 5950(c)(2).

60 A Quote Share Payment will be based in equal proportions on (a) average quoted size at NBBO, and (b) average time spent quoting at NBBO (unless an alternate proportion is chosen by a Company that has paid a supplemental MQP Fee). MQP Market Makers will receive a share of each pool proportional with their average time and size at the inside relative to other MQP Market Makers. Proposed Rule 5950 (c)(3)(B)(ii).

61 See supra notes 52 and 53.

62 Proposed Rule 5950(c)(3)(B).

MQP Fees comprised of Trade Share Payments and Quote Share Payments will be credited to MQP Market Makers on a pro-rata basis.[63] For example, as it relates to the Trade Payment (which is based on shares executed) - if there were 1000 shares executed from Qualified Quotes for the given quarter by two MQP Market Makers, where the first Market Maker was responsible for executing 800 shares and the second Market Maker was responsible for executing 200 shares, then the MQP Trade Payment would be distributed as follows: 80% to the first Market Maker and 20% to the second Market Maker.

The Quote Share Payment, which is based on the average time and size of Qualified Quotes at NBBO, will be distributed on a pro-rata basis. Half of the Quote Share Payment will be based on MQP Market Maker monthly average time at the NBBO and half will be based on the MQP Market Maker monthly average size at the NBBO.[64] For example, as it relates to the average time at the NBBO portion of the Quote Share Payment - if there were two MQP Market Makers, one with 30% monthly time at NBBO and one with 40% monthly time at NBBO, then the time at NBBO portion would be shared as 30%/70%=42.86% and 40%/70%=57.14%, respectively. Similarly, as it relates to the average size at NBBO portion of the Quote Share Payment - if there were two MQP Market Makers, one with a monthly average of 300 shares quoted at NBBO and one with a monthly average of 400 shares quoted at NBBO, then the size at NBBO portion would be 300/700=42.86% and 400/700=57.14%, respectively.

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[63] Proposed Rule 5950(c)(3)(B).

[64] MQP Market Makers will receive a share of each pool proportional with their average time and size at the inside relative to other MQP Market Makers. Proposed Rule 5950(c)(3)(B)(ii).

Finally, to give the Exchange and the Commission an opportunity to evaluate the impact of the MQP on the quality of markets in MQP Securities, the Exchange is proposing that the MQP will be effective for a one year pilot period. During the pilot period, the Exchange will submit monthly reports to the Commission about market quality in respect of the Market Quality Program. The reports will endeavor to compare, to the extent practicable, securities before and after they are in the MQP and will include information regarding the MQP such as: 1) Rule 605 metrics;[65] 2) volume metrics; 3) number of MQP Market Makers in target securities; 4) spread size; and 5) availability of shares at the NBBO.

The first report will be submitted within sixty days after the MQP becomes operative.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of targeted securities (ETFs) on the Exchange during all trading sessions, and to detect and deter violations of Exchange rules and applicable federal securities laws. Trading of the targeted MQP Securities through the Exchange will be subject to FINRA's surveillance procedures for derivative products including ETFs.[66] The Exchange may obtain information via the Intermarket Surveillance Group ("ISG")

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65 17 CFR 242.605.

66 FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

from other exchanges that are members or affiliates of the ISG;[67] and from listed MQP Companies and public and non-public data sources such as, for example, Bloomberg.

The Exchange believes that increasing, and maintaining, the market quality and liquidity in exchange-listed MQP Securities that are executed on a regulated exchange, namely NASDAQ, would help raise investors' confidence in the fairness of their transactions and benefit MQP Companies. The MQP would be conducive to enhancing quote competition, improving NASDAQ liquidity, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The proposed MQP is designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and to protect investors and the public.[68] The Exchange believes that the proposed MQP pilot establishing specific and transparent market making requirements that enhance the market quality and of securities will have a positive long-term effect on the market and its integrity and investors.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[69] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[70] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers or Companies and other persons using any

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67 For a list of the current members and affiliate members of ISG, see www.isgportal.com.

68 15 U.S.C. 78f(b).

69 15 U.S.C. 78f.

70 15 U.S.C. 78f(b)(4) and (5).

facility or system which NASDAQ operates or controls, and it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The goal of the MQP - to incentivize members to make high-quality, liquid markets - supports the primary goal of the Act to promote the development of a resilient and efficient national market system. Congress instructed the Commission to pursue this goal by emphasizing multiple policies, including the promotion of price discovery, order interaction and competition among orders and markets. The MQP promotes all of these policies; it will enhance quote competition, improve NASDAQ liquidity, support the quality of price discovery, promote market transparency and increase competition for listings and trade executions. Maintaining and increasing liquidity in exchange-listed securities executed on a registered exchange will help raise investors' confidence in the fairness of the market and their transactions. Improving liquidity in this manner is particularly important with respect to exchange traded funds and low-volume securities, as noted by the Joint CFTC/SEC Advisory Commission on Emerging Regulatory Issues.[71]

Each aspect of the MQP adheres to and supports the Act. First, the Program promotes the equitable allocation of fees and dues among issuers. The MQP is completely voluntary in that it will provide an additional means by which issuers may

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[71] See Recommendations Regarding Regulatory Responses To The Market Events Of May 6, 2010, February 18, 2011 (Recommendation that the SEC evaluate whether incentives or regulations can be developed to encourage persons who engage in market making strategies to regularly provide buy and sell quotations that are "reasonably related to the market."). Available at http://www.sec.gov/spotlight/sec-cftcjointcommittee/021811-report.pdf.

relate to the Exchange without modifying the existing listing options. Issuers can supplement the standard listing fees (which have already been determined to be consistent with the Act) with that of the MQP (which are consistent with the Act as well). While the MQP will result in higher fees for issuers that choose to participate, the issuers receive significant benefits for participating, including committed Market Makers, greater liquidity, and lower transaction costs for their investors. Additionally, issuers will have the ability to withdraw from the Program after an initial commitment in the event they determine that participation is not beneficial. In that case, the withdrawing issuers will automatically revert to the already-approved fee schedule applicable to the market tier in which their shares are listed.

The MQP also represents an equitable allocation of fees and dues among Market Makers. Again, the MQP is completely voluntary with respect to Market Maker participation in that it will provide an additional means by which members may qualify for an enhanced rebate, without eliminating any of the existing means of qualifying for the rebate level in question. NASDAQ and other exchanges use multiple fee arrangements to incentivize Market Makers to maintain high quality markets or to improve the quality of executions, including various payment for order flow arrangements, liquidity provider credits, and NASDAQ’s Investor Support Program (set forth in NASDAQ Rule 7014). Market Makers that choose to undertake increased burdens will be rewarded with increased rebates; those that do not undertake such burdens will receive no added benefit. As with issuers, Market Makers that choose to participate in the MQP will be permitted to withdraw from it after an initial commitment if they determine that the burdens imposed by the MQP outweigh the benefits provided.

Additionally, the MQP establishes an equitable allocation of fees among Market Makers that choose to participate and fulfill the obligations imposed by the rule. If one Market Maker fulfills those obligations, the MQP Fee will be distributed to that Market Maker; if multiple Market Makers satisfy the standard, the MQP Fee will be distributed pro rata among them. If no Market Maker satisfies the obligations of the MQP, the MQP Fee will, as instructed by the issuer or Company, either return the unpaid Fee to the issuer or apply the Fee to a subsequent quarterly payment of the issuer. All fees paid by issuers choosing to participate in the MQP, both initial and supplemental MQP Fees, will be available for distribution to eligible NASDAQ Market Makers. In other words, all of the benefit of the MQP Fees will flow to high-performing Market Makers rather than to NASDAQ, provided that at least one Market Maker fulfills the obligations under the proposed rule.

The MQP is designed to avoid unfair discrimination among Market Makers and issuers. The proposed rule contains objective, measurable standards that NASDAQ will apply with care. These standards, both for issuers and for Market Makers, will be applied equally to ensure that similarly situated parties are treated similarly. This is equally true for inclusion of issuers and Market Makers, withdrawal of issuers and Market Makers, and termination of eligibility for the MQP. The standards are carefully constructed to protect the rights of all parties wishing to participate in the Program by providing notice of requirements and a description of the selection process. NASDAQ will apply these standards with the same care and experience with which it applies the many similar rules and standards in NASDAQ’s rule manuals.

NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and program offerings to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that all aspects of the proposed rule change reflect this competitive environment because the MQP is designed to increase the credits provided to members that enhance NASDAQ's market quality.

Finally, NASDAQ notes that the proposed paid for market making system has been used successfully for years on NASDAQ OMX Nordic's First North market. The First North paid for market making system has been quite beneficial to market participants including investors and listing companies (issuers) that have experienced market quality and liquidity with narrowed spreads. The Exchange believes that the proposed MQP will similarly enjoy positive results to the benefit of investors in MQP Securities and Companies related to them and the financial markets as a whole.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2012-014 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2012-014. 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 inspection and copying in the Commission's Public Reference Room. 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-2012-014 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.[72]

Kevin M. O'Neill
Deputy Secretary

[72] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new text is underlined. Deleted text is [bracketed].

NASDAQ Market Rules

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5950. Market Quality Program

Preamble. The Market Quality Program ("MQP" or “Program”) is a voluntary program designed to promote market quality in certain securities listed on Nasdaq (“MQP Securities”). A Company that lists an eligible MQP Security on Nasdaq will pay a listing fee as set forth in this rule (“MQP Fee”) in addition to the standard (non-MQP) Nasdaq listing fee applicable to such MQP Security as set forth in the Rule 5000 Series (consisting of Rules 5000-5999). An MQP Fee will be used for the purpose of incentivizing one or more Market Makers in the MQP Security (“MQP Market Maker”) to enhance the market quality of the security. Subject to the conditions set forth in this rule, an MQP Fee will be credited in whole or in part to the appropriate Market Maker(s) that makes a market in MQP Securities pursuant to the Program.

(a) Application and Withdrawal.

(1) A Company wishing to participate in the MQP, and an MQP Market Maker wishing to participate in the MQP, must each submit an application in the form prescribed by Nasdaq (“MQP application”).

(A) Nasdaq may restrict the number of MQP Market Makers in an MQP Security to no less than one MQP Market Maker.

(B) Nasdaq may restrict the number of MQP Securities that a Company has in the MQP.

(C) In determining restrictions to the number of MQP Market Makers per MQP Security or the number of MQP Securities in the MQP, Nasdaq may consider information that it believes will be of assistance to it, such as whether a restriction, if any, is in the best interest of Nasdaq, the Company and the goals of the MQP, and investors.

(i)Factors that may be considered include, but are not limited to, any one or more of the following: the liquidity characteristics of the MQP Security; the projected initial and continuing market quality needs of the MQP Security; the previous market making performance of the MQP Market Maker; and the market making performance of the MQP Market Maker in respect of the MQP Security (e.g. quoting, trading, and volume).

(D) Nasdaq will provide notification on its website of any restriction or change in a restriction to the number of MQP Market Makers per MQP Security or the number of MQP Securities in the MQP. Nasdaq will similarly provide notification of the MQP Market Makers in an MQP Security.

(2) After a Company is in the MQP for six consecutive months, it may voluntarily withdraw from the MQP on a quarterly basis. The Company must notify Nasdaq in writing not less than one month prior to withdrawing from the MQP. Notwithstanding, Nasdaq may determine to allow a Company to withdraw from the MQP earlier. In making this determination, Nasdaq may take into account the volume and price action in the MQP Security; the liquidity, size quoted, and quality of the market in the MQP Security; and any other relevant factors.

(3) After an MQP Market Maker is in the MQP for not less than one quarter, he may withdraw from the MQP on a quarterly basis. The MQP Market Maker must notify Nasdaq in writing one month prior to withdrawing from the MQP. Notwithstanding, if the MQP Market Maker seeking withdrawal from the MQP is the only, or last, Market Maker in an MQP Security, Nasdaq may delay the withdrawal for up to one month so that it may replace the Market Maker in such security.

(4) After a Company is in the MQP for one year, the MQP and all obligations applicable to a Company pursuant to this rule will automatically continue on an annual basis unless terminated by a Company or Nasdaq, after providing written notification to the other party not less than one month prior to termination.

(b) Company Participation and Fee Liability. For a Company to be eligible to participate in the MQP Program, the following conditions must be satisfied:

(1) Nasdaq must have accepted the MQP application of the Company in respect of an MQP Security, and in addition must have accepted the MQP application of at least one MQP Market Maker in the same security; and

(2) The MQP Security meets all of the requirements to be, or is, listed on Nasdaq as an Exchange Traded Fund ("ETF"), Linked Security ("LS"), or Trust Issued Receipt ("TIR").

(3) The MQP Security must meet all Nasdaq requirements for continued listing during the period of time that the MQP Security is in the MQP.

(4) MQP Fees Paid by the Company.

(A) A Company participating in the MQP must pay a $50,000 basic MQP Fee to Nasdaq. The annual MQP Fee must be paid to Nasdaq in equal installments on a quarterly basis before the start of the quarter covered by such fee.

(i) The basic MQP Fee will be allocated as follows: 50% will fund the Quote Share Payment and 50% will fund the Trade Share Payment, as defined in this rule.

(B) A Company participating in the MQP may also pay a supplemental annual MQP Fee. The basic MQP Fee and supplemental MQP Fee when combined will not exceed $100,000 per year.

(i) The supplemental MQP Fee is discretionary and the amount of such fee, if any, will be determined by the Company.

(ii) A Company may indicate in what proportions the supplemental MQP Fee will be allocated to the Quote Share Payment and/or Trade Share Payment.

(5) The MQP Fee will supplement the standard (non-MQP) Nasdaq listing fee applicable to the MQP Security and does not substitute or have any effect on such standard listing fee.

(6) The annual MQP Fee will be paid to the Exchange on a quarterly basis for the following quarter, and will be credited to one or more MQP Market Makers that qualify for such credit for an MQP Security pursuant to this rule.

(A) In the event that there is not at least one qualified MQP Market Maker pursuant to this rule for a particular quarter, a Company will not be liable to pay an MQP Fee to the Exchange for that quarter.

(B) The qualification of an MQP Market Maker(s) to receive an MQP Fee Credit for a particular quarter pursuant to subsection (c) of this rule will, to the extent practicable, be determined prior to any MQP Fee payment being made for that quarter by a Company. In the event that a Company makes a quarterly MQP Fee payment to the Exchange for a particular quarter and the Exchange determines that no MQP Market Maker qualifies to receive a credit for that quarter ("unused quarterly payment"), the Exchange will, as instructed by the Company:

(i) Return such unused quarterly payment to the Company; or

(ii) Apply such unused quarterly payment to a subsequent quarterly payment by the Company, if the Company owes not less than one subsequent quarterly payment and instructs the Exchange to apply such unused quarterly payment to the subsequent quarterly payment.

(c) MQP Market Maker Participation and MQP Fee Credit. For a Market Maker to be eligible to participate in the MQP and receive a periodic MQP Fee credit, the following conditions must be satisfied.

(1) Nasdaq must have accepted the MQP application of an MQP Market Maker in respect of an MQP Security, and in addition must have accepted the application of the Company in respect of the same security. Nasdaq may also accept the MQP applications of other MQP Market Makers in respect of the same MQP Security; and

(2) When making a market in an MQP Security, an MQP Market Maker must, in addition to applicable market maker obligations pursuant to Rule 4613, meet or exceed the following conditions on a monthly basis:

(A) Must maintain one or more displayed, attributable quotes or orders at the NBBO for at least 25% of each trading day with at least 500 shares (total in one or more quotes and orders) of the MQP Security; and

(B) For a minimum of 90% of the normal trading hours, must maintain at least 2,500 shares of attributable, displayed posted liquidity on the Nasdaq market that are priced no wider on the offer side and the bid side than 2% away from NBBO. For example, in an MQP Security where the NBBO is $25.00 x $25.01, the MQP Market Maker must post bids for an aggregate of 2,500 shares between $24.50 and $25.00 and must post offers for an aggregate of 2,500 shares between $25.01 and $25.51 a minimum of 90% of normal trading hours.

(3) MQP Fees will be credited on a quarterly basis to an eligible MQP Market Maker as follows:

(A) MQP Fees will be calculated monthly and credited quarterly on a pro rata basis to MQP Market Makers. Each MQP Fee will be comprised of a Quote Share Payment that is based on Qualified Quotes and on a Trade Share Payment that is based on Qualified Trades.

(i) A Qualified Quote represents attributable, displayed added liquidity (either quotes or orders) in an MQP Security that is at least one round lot and visible on the Nasdaq Market Center. Further, a quote or order entered by an MQP Market Maker in an MQP Security is only a Qualified Quote if it is posted within 2% of the NBBO.

(ii) A Qualified Trade in an MQP Security represents a liquidity-providing execution of a Qualified Quote on the Nasdaq Market Center.

(B) MQP Fees comprised of Trade Share Payments and Quote Share Payments will be credited to MQP Market Makers on a pro-rata basis.

(i) Trade Share Payments will be based upon Qualified Trades in an MQP Security executed on Nasdaq.

(ii) Quote Share Payments will be based in equal proportions on (a) average quoted size at NBBO, and (b) average time spent quoting at NBBO (unless an alternate proportion is chosen by a Company that has paid a supplemental MQP Fee). MQP Market Makers will receive a share of each pool proportional with their average time and size at the inside relative to other MQP Market Makers.

(d) Termination of MQP. The MQP will terminate in respect of an MQP Security under the following circumstances:

(1) An MQP Security sustains an average Nasdaq daily trading volume (“ATV”) of two million shares or more for three consecutive months;

(2) A Company withdraws from the MQP, is no longer eligible to be in the MQP pursuant to this rule, or ceases to make MQP payments to Nasdaq;

(3) An MQP Security is delisted or is no longer eligible for the MQP; or

(4) An MQP Security does not have at least one MQP Market Maker for more than one quarter.

(5) An MQP Security does not, for two consecutive quarters, have at least one MQP Market Maker that is eligible for MQP Fee Credit.

(6) MQP credits remaining upon termination of the MQP in respect of an MQP Security will be distributed on a pro rata basis to the MQP Market Makers that made a market in the MQP Security, or if none then to the Company.

(e) Definitions. For purposes of this Rule, the terms set forth below shall have the following meanings:

(1) The term “MQP Security” means a security that meets all of the requirements to be listed on Nasdaq as an Exchange Traded Fund, Linked Security, or Trust Issued Receipt pursuant to Rules 5705, 5710, or 5720, respectively, or other relevant Nasdaq rules.

(2) The term “Exchange Traded Fund” includes Portfolio Depository Receipts and Index Fund Shares, which are defined in Rule 5705.

(3) The term “Linked Security” shall have the meaning given in Rule 5710.

(4) The term “Trust Issued Receipt” shall have the meaning given in Rule 5720.

(5) The terms "Company" and "Market Maker" shall have the meanings given in Rule 5005(a)(6) and 5005(a)(24), respectively.

(6) The terms "Nasdaq Market Center" and "odd-lot" shall each have the meaning given to it in Rule 4751.

(f) The MQP would be effective for a one year pilot period that would commence when the Program is implemented by Exchange acceptance of a Company and relevant MQP Market Maker into the Program and would end one year after implementation.

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2460. Payments for Market Making

(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) No Change.

IM-2460-1. Market Quality Program

This Rule 2460 is not applicable to a member that is accepted into the Market Quality Program pursuant to Rule 5950 or to a person that is associated with such member for their conduct in connection with that program.

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