

Exhibit 5  
Text of the Proposed Rule Change  
Underlining indicates additions; [brackets] indicate deletions.

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**Rule 717. Limitations on Orders**

(a) – (g) No change.

***Supplementary Material to Rule 717***

.01 - .05 No change.

.06 The exposure requirement of paragraph (d) and (e) of Rule 717 applies to the entry of orders with knowledge that there is a pre-existing unexecuted agency, proprietary, or solicited order on the Exchange[; provided, however, that a market maker's quotations and orders on the order book may be made available to persons performing the function of an Electronic Access Member or its affiliated persons, in accordance with Rule 810(b)(1) and (2)]. Members may demonstrate that orders were entered without knowledge by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered [or that order entry by such Member meets the requirements of Rule 810(b)(1) and (2)]. Such information barriers must be fully documented and provided to the Exchange upon request.

[In accordance with the requirements of Rule 810(b)(1) and (2), orders from the same member's Electronic Access Member unit and its affiliated Primary Market Maker and/or Competitive Market Maker unit(s) may interact within one second without being a violation of the order exposure requirement of paragraph (d) and (e) of Rule 717 when the firm can demonstrate that the customer order that it routed was marketable, the EAM was not handling the affiliated market maker quote/order and the affiliated market maker quote/order was in existence at the time the customer order(s) were entered into the ISE's system.]

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**[Rule 810. Limitations on Dealings**

(a) *General Rule.* A market maker on the Exchange may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an Information Barrier between the market making activities and the Other Business Activities. “Other Business Activities” means:

(1) conducting an investment or banking or public securities business;

(2) making markets in the stocks underlying the options in which it makes markets; or

(3) handling listed options orders as agent on behalf of Public Customers or broker-dealers;

(4) conducting non-market making proprietary listed options trading activities.

(b) *Information Barrier.* For the purposes of this rule, an Information Barrier is an organizational structure in which:

(1) The market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted, in a manner that effectively impedes the free flow of communications between DTRs and persons conducting the Other Business Activities. However, upon request and not on his own initiative, a DTR performing the function of a market maker may furnish to a person performing the function of an Electronic Access Member or other persons at the same firm or an affiliated firm (“affiliated persons”), the same sort of market information that the DTR would make available in the normal course of its market making activity to any other person. The DTR must provide such information to affiliated persons in the same manner that he would make such information available to a non-affiliated person.

(2) There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier. These procedures, at a minimum, must provide that:

(i) the DTR performing the function of a market maker does not take advantage of knowledge of pending transactions, order flow information, corporate information or recommendations arising from the Other Business Activities; and

(ii) all information pertaining to the market maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Information Barrier; provided, however, that a market maker's quotations and orders on the order book in option classes may be made available to persons performing the function of an Electronic Access Member or its affiliated persons that handle listed options orders as agent on behalf of Public Customers or broker-dealers.

(3) Persons on one side of the barrier may not exercise influence or control over persons on the other side of the barrier, provided that:

(i) the market making function and the Other Business Activities may be under common management as long as any general management oversight does not conflict with or compromise the market maker's responsibilities under the Rules of the Exchange; and

(ii) the same person or persons (the "Supervisor") may be responsible for the supervision of the market making and Electronic Access Member functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliated firms. While the Supervisor may establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor may not:

(A) actually perform the function either of market maker or Electronic Access Member;

(B) provide to any person performing the function of an Electronic Access Member any information relating to market making activity beyond the information that a DTR performing the function of a Primary Market Maker may provide under paragraph (b)(1) and (2), above; nor

(C) provide a DTR performing the function of market maker with specific information regarding the firm's pending transactions or order flow arising out of its Electronic Access Member activities.

(c) *Documenting and Reporting of Information Barrier Procedures.* A Member implementing an Information Barrier pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b) of this Rule, and the compliance and audit procedures it

proposes to implement to ensure that the Information Barrier is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to its transactions;

(4) A commitment to take appropriate remedial action against any person violating this Rule or the Member's internal compliance and audit procedures adopted pursuant to paragraph (c)(1) of this Rule, and that it recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as a market maker, in the event of such a violation;

(5) Whether the Member or an affiliate intends to clear its proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the Member's Information Barrier, which procedures, at a minimum, must be the same as those used by the Member or the affiliate to clear for unaffiliated third parties; and

(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of Rules 10b-5 and 14e-3 under the Exchange Act or one or more other provisions of the Exchange Act, the rules thereunder or the Rules of the Exchange, and that the Exchange intends to review carefully any such trading of which it becomes aware to determine whether a violation has occurred.

(b) *Exchange Approval of Information Barrier Procedures.* The written statement required by paragraph (c) of this Rule must detail the internal controls that the Member will implement to satisfy each of the conditions stated in that Rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the Member are acceptable under this Rule, the Exchange shall so inform the Member, in writing. Absent the Exchange finding a Member's Information Barrier procedures acceptable, a market maker may not conduct Other Business Activities.

(c) *Clearing Arrangements.* Paragraph (c)(5) permits a Member or an affiliate of the Member to clear the Member's market maker transactions if it

establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier. In this regard:

(1) The procedures must provide that any information pertaining to market maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity.

(2) Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any market maker to meet market making or other obligations under the Exchange's Rules.

(f) *Exceptions to the Information Barrier Requirement.*

(1) A market maker shall be exempt from paragraph (a)(3) of this Rule to the extent the market maker complies with the following conditions:

(A) such Member handles orders as agent only for the account of entities that are affiliated with the Member and solely in options classes to which the Member is not appointed as a market maker pursuant to Rule 802 or in which the Member is prohibited from acting as a market maker pursuant to regulatory requirements; or

(B) such market maker handles orders as agent solely with respect to a Directed Order Program, as defined in Supplementary Material .01 below.

(2) A market maker shall be exempt from paragraph (a)(4) of this Rule to the extent the Member, or a broker-dealer with which such Member is affiliated:

(A) engages solely in proprietary trading and does not, under any circumstances, maintain customer accounts or solicit or accept orders or funds from or on behalf of Public Customers or broker-dealers; and

(B) does not participate in any Directed Order Programs, as defined in Supplementary Material .01 below, or utilize any other order types which call for the participation of, or interaction with, Public Customers or broker-dealers.

***Supplemental Material to Rule 810***

.01 For purposes of paragraph (f)(1)(B) and (f)(2)(B) of Rule 810 only, a Directed Order Program means rules of an options exchange that (1) permit an options market maker to handle orders directed to it anonymously through an exchange system; (2) require the market maker to accept directed orders from all sources eligible to direct orders using such exchange system; and (3) require the options market maker to execute such directed orders on such exchange under specified order handling procedures. A Directed Order Program shall not include any rules of an exchange that permit a market maker to accept orders directly, without being routed through an exchange system, from customers or another broker-dealer, nor any rules or system that allows a market maker to handle orders on a disclosed or discretionary basis.] Reserved.

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