

**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**0100. GENERAL STANDARDS**

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**0150. Application of Rules to Exempted Securities Except Municipal Securities**

(a) through (b) No Change.

(c) Unless otherwise indicated within a particular Rule, the following FINRA and NASD rules are applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons:

FINRA Rules 2010, 2020, 2060, 2150, 2261, 2268, 2269, 2320(g), 3220, 3270, 4120, 4130, 4210, 4311, 4360, 4510 Series, 4530, 5160, 5210, 5220, 5230, 5340, 8110, 8120, 8210, 8310, 8311, 8312, 8320, 8330 and 9552; NASD Rules 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2510, 3010, [3020, ]3040, 3050, [3110, IM-3110, ]3140.

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**2000. DUTIES AND CONFLICTS**

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**2100. TRANSACTIONS WITH CUSTOMERS**

**2110. Recommendations**

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#### **2114. Recommendations to Customers in OTC Equity Securities**

Preliminary Note: The requirements of this Rule are in addition to other existing member obligations under FINRA rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under FINRA rules and the federal securities laws.

(a) through (d) No Change.

##### **(e) Exemptions**

(1) The requirements of this Rule shall not apply to:

(A) No Change.

(B) Transactions with or for an account that qualifies as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)] or with a customer that is a "qualified institutional buyer" under Securities Act Rule 144A or "qualified purchaser" under Section 2(a)(51) of the Investment Company Act;

(C) through (E) No Change.

(2) No Change.

#### **2120. Commissions, Mark Ups and Charges**

#### **2124. Net Transactions with Customers**

(a) through (d) No Change.

(e) For purposes of this Rule:

(1) "institutional customer" shall mean a customer whose account qualifies as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)]; and

(2) No Change.

(f) Members must retain and preserve all documentation relating to consent obtained pursuant to this Rule in accordance with [NASD] Rule 4511[3110(a)].

**2130. Approval Procedures for Day-Trading Accounts**

(a) through (c) No Change.

(d) Any record or written statement prepared or obtained by a member pursuant to this Rule shall be preserved in accordance with [NASD] Rule 4511[3110(a)].

(e) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) "Day-trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

(2) "Non-institutional customer" means a customer that does not qualify as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)].

**••• Supplementary Material: -----**

**.01** through **.03** No Change.

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**2200. COMMUNICATIONS AND DISCLOSURES**

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**2260. Disclosures**

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**2264. Margin Disclosure Statement**

(a) through (c) No Change.

(d) For purposes of this Rule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)].

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**2270. Day-Trading Risk Disclosure Statement**

(a) through (b) No Change.

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

(1) "Day-trading strategy" shall have the meaning provided in Rule 2130(e).

(2) "Non-institutional customer" means a customer that does not qualify as an "institutional account" under [NASD] Rule 4512(c)[3110(c)(4)].

(3) "Promoting a day-trading strategy" shall have the meaning provided in Rule 2130.01.

**••• Supplementary Material: -----**

**.01** through **.02** No Change.

**2300. SPECIAL PRODUCTS**

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**2330. Members' Responsibilities Regarding Deferred Variable Annuities**

(a) through (c) No Change.

**(d) Supervisory Procedures**

In addition to the general supervisory and recordkeeping requirements of NASD Rules 3010, 3012, [and ]3110, and Rule 3130, and 4510 Series, a member must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in this Rule. The member also must (1) implement surveillance procedures to determine if any of the member's associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of this Rule, other applicable FINRA rules, or the federal securities laws ("inappropriate exchanges") and (2) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges.

(e) No Change.

**••• Supplementary Material: -----**

**.01 through .07** No Change.

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**2360. Options**

(a) No Change.

**(b) Requirements**

(1) through (16) No Change.

**(17) Maintenance of Records**

(A) In addition to the requirements of [NASD] Rules 2268, 5340 and Rule 4510 Series[3110], every member shall maintain and keep

current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The central file shall be located at the principal place of business of the member or such other principal office as shall be designated by the member. At a minimum, the central file shall include:

(i) through (v) No Change.

(B) No Change.

**(18) Discretionary Accounts**

**(A) Authorization and Approval**

(i) No Change.

(ii) Each firm shall designate specific Registered Options Principals as described below to review discretionary accounts. A Registered Options Principal other than the Registered Options Principal or Limited Principal—General Securities Sales Supervisor who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options Principal or Limited Principal—General Securities Sales Supervisor accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate

supervisory review by a Registered Options Principal who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in [NASD] Rule 4512(c) [3110(c)(4)], pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) No Change.

(B) through (C) No Change.

(19) through (24) No Change.

(c) No Change.

**••• Supplementary Material: -----**

**.01 through .03** No Change.

**2370. Security Futures**

(a) No Change.

**(b) Requirements**

(1) through (16) No Change.

**(17) Maintenance of Records**

(A) In addition to the requirements of [NASD] Rules 4511, and 4513 [3110], every member shall maintain and keep current a separate central log, index, or other file for all security futures-related complaints, through which these complaints can easily be identified and retrieved. The central file shall be located at the principal place of business of the member or such other principal office as shall be designated by the member. At a minimum, the central file shall include:

(i) through (v) No Change.

(B) No Change.

**(18) Discretionary Accounts**

**(A) Authorization and Approval**

(i) No Change.

(ii) When analyzing an account to determine if it should be approved for security futures trading, each firm shall designate specific principals qualified to supervise security futures activities to review discretionary accounts. A principal other than the principal who accepted the account shall have a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. Every discretionary



order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by a principal qualified to supervise security futures activities who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of security futures contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in [NASD] Rule 4512(c) [3110(c)(4)], pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) No Change.

(B) through (C) No Change.

(19) through (25) No Change.

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**5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES**

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**5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION**

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**5120. Offerings of Members' Securities**

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**5122. Private Placements of Securities Issued by Members**

(a) through (b) No Change.

**(c) Exemptions**

The following Member Private Offerings are exempt from the requirements of this Rule:

(1) offerings sold solely to:

(A) institutional accounts, as defined in [NASD] Rule 4512(c)

[3110(c)(4)];

(B) through (F) No Change.

(2) through (14) No Change.

(d) through (e) No Change.

**••• Supplementary Material: -----**

**.01** No Change.

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**5300. HANDLING OF CUSTOMER ORDERS**

**5320. Prohibition Against Trading Ahead of Customer Orders**

(a) through (b) No Change.

**••• Supplementary Material: -----**

**.01 Large Orders and Institutional Account Exceptions.** With respect to orders for customer accounts that meet the definition of an "institutional account" as defined in [NASD] Rule 4512(c)[3110], or for orders of 10,000 shares or more (unless such orders are less than \$100,000 in value), a member is permitted to trade a security on the same side of the market for its own account at a price that would satisfy such customer order, provided that the member has provided clear and comprehensive written disclosure to such customer at account opening and annually thereafter that:

(a) discloses that the member may trade proprietarily at prices that would satisfy the customer order, and

(b) provides the customer with a meaningful opportunity to opt in to the Rule 5320 protections with respect to all or any portion of its order.

If the customer does not opt in to the Rule 5320 protections with respect to all or any portion of its order, the member may reasonably conclude that such customer has consented to the member trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.

In lieu of providing written disclosure to customers at account opening and annually thereafter, a member may provide clear and comprehensive oral disclosure to and obtain consent from the customer on an order-by-order basis, provided that the member documents who provided such consent and such consent evidences the customer's understanding of the terms and conditions of the order.

**.02 through .08** No Change.

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**6600. OTC REPORTING FACILITY**

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**6630. Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities**

(a) No Change.

(b) The following are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

(1) through (2) No Change.

(3) [NASD ]Rule 4510 Series[3110].

(c) The following are applicable to members and persons associated with members regardless of whether the member participates in transactions in PORTAL securities:

(1) No Change.

(2) NASD Rules 2210, [3020, ]3040, 3050, 3140 and FINRA Rules 3220, 3270, 4120, 4360, and 5260.

(d) No Change.

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES**

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**7200. TRADE REPORTING FACILITIES**

**7200A. FINRA/NASDAQ TRADE REPORTING FACILITY**

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**7230A. Trade Report Input**

(a) through (g) No Change.

**(h) Inclusion of Transaction Fees in Clearing Reports Submitted to the FINRA/Nasdaq Trade Reporting Facility**

FINRA members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, effected otherwise than on an exchange through the submission of a clearing report to the FINRA/Nasdaq Trade Reporting Facility. Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the transaction fee, the report submitted to the FINRA/Nasdaq Trade Reporting Facility shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. Prior to submitting any such report, both members and their respective clearing firms, as applicable, must have executed an agreement, as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the FINRA/Nasdaq Trade Reporting Facility, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 6380A(h), and submitted the executed agreement(s) to the FINRA/Nasdaq Trade Reporting Facility. Such agreement(s) are considered member records for purposes of [NASD] Rule 4511[3110(a)] and must be made and preserved by both members in conformity with applicable FINRA rules. Nothing in this paragraph shall relieve a member from its obligations under FINRA rules and the federal securities laws, including but not limited to, Rule 2232 and SEA Rule 10b-10.

**Example:**

SELL 100 shares to another member at 10 plus a transaction fee of .01 per share;  
REPORT 100 shares at 10 (the per share price exclusive of the transaction fee) to the  
FINRA/Nasdaq Trade Reporting Facility for publication and also report 10.01 (the per  
share price inclusive of the transaction fee) for purposes of clearance and settlement  
through the National Securities Clearing Corporation.

(i) No Change.

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**7300. OTC REPORTING FACILITY**

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**7330. Trade Report Input**

(a) through (h) No Change.

**(i) Inclusion of Transaction Fees in Clearing Reports Submitted to the OTC  
Reporting Facility**

FINRA members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction reported to the OTC Reporting Facility through the submission of a clearing report to the OTC Reporting Facility. Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the transaction fee, the report submitted to the OTC Reporting Facility shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. Prior to submitting any such report, both members and their respective clearing firms, as applicable, must have executed an

agreement, as specified by FINRA, permitting the facilitation of the transfer of the transaction fee through the OTC Reporting Facility, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 6622(h), and submitted the executed agreement(s) to the OTC Reporting Facility. Such agreement(s) are considered member records for purposes of [NASD] Rule 4511[3110(a)] and must be made and preserved by both members in conformity with applicable FINRA rules. Nothing in this paragraph shall relieve a member from its obligations under FINRA rules and the federal securities laws, including but not limited to, Rule 2232 and SEA Rule 10b-10.

Example:

SELL 100 shares to another member at 10 plus a transaction fee of .01 per share;  
REPORT 100 shares at 10 (the per share price exclusive of the transaction fee) to the OTC Reporting Facility for publication and also report 10.01 (the per share price inclusive of the transaction fee) for purposes of clearance and settlement through the National Securities Clearing Corporation.

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**9000. CODE OF PROCEDURE**

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**9200. DISCIPLINARY PROCEEDINGS**

**9210. Complaint and Answer**

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**9217. Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)**

Any member of FINRA that is also a member of the New York Stock Exchange LLC ("NYSE") ("Dual Member") (including any persons affiliated with such member) may be subject to a fine under Rule 9216(b) with respect to any rule or By-Law provision listed in this Rule that applies to such member or person. However, any Dual Member that was not also a member of NASD as of July 30, 2007 and that does not engage in any activities that otherwise would require it to be a FINRA member (and its affiliated persons that are not otherwise subject to NASD rules) shall only be subject to a fine under Rule 9216(b) with respect to the following rules or By-Law provisions listed in this Rule: any FINRA By-Law or Schedule to the By-Laws, FINRA rule, SEA rule, or NYSE rule.

Any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under Rule 9216(b) with respect to any rule or By-Laws provision listed in this Rule, with the exception of the NYSE rules.

- Article IV of the FINRA By-Laws — Failure to timely submit amendments to Form BD.
- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U4.
- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U5.
- Rule 1250 — Failure to comply with the Firm Element of the continuing education requirements.
- Rule 2220 — Options Communications.



- Rule 2360(b)(3) and (b)(4) — Failure to comply with options position and exercise limits.
- Rule 2360(b)(23) — Failure to comply with contrary exercise advice procedures.
- Rule 4311(b) — Failure to obtain approval of carrying agreement.
- Rule 4510 Series — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with FINRA rules.
- Rule 4521(d) — Failure to submit reports of cash and margin account balances.
- Rule 4530 — Failure to timely file reports.
- Rule 4560 — Failure to timely file reports of short positions on Form NS-1.
- Rules 6282, 6380A, 6550, 6622, 6730, 7130, 7160, 7230A, and 7260A — Transaction reporting in equity and debt securities.
- Rules 7440 and 7450 — Failure to submit data in accordance with the Order Audit Trail System ("OATS").
- Rules 8211 and 8213 — Failure to submit trading data as requested.
- Rule 11870 — Failure to abide by Customer Account Transfer Contracts.
- NASD Rules 2210, 2211, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8 — Communications with the public.
- NASD Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.

[• NASD Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD rules.]

- Failure to provide or update contact information as required by FINRA or NASD rules.

- SEA Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.

- SEA Rule 17a-10 — Failure to timely file Schedule I.

- Rule 602(b)(5) of SEC Regulation NMS — Failure to properly update published quotations in certain Electronic Communication Networks ("ECNs").

- Rule 604 of SEC Regulation NMS — Failure to properly display limit orders.

- MSRB Rule A-14 — Failure to timely pay annual fee.

- MSRB Rule G-12 — Failure to abide by uniform practice rules.

- MSRB Rule G-14 — Failure to submit reports.

- MSRB Rule G-32[6] — Failure to timely submit reports.

- MSRB Rule G-37 — Failure to timely submit reports for political contributions.

- MSRB Rule G-38 — Failure to timely submit reports detailing consultant activities.

- NYSE Rules 312(a), (b) & (c), 313, 345.12, 345.17, and 351 — Reporting rule violations.

- NYSE Rules 312(i), 342(c), and 342.10 — Failure to obtain approval rule violations.

- NYSE Rules 342(b), (d) & 342.13, 311(b)(5), and 344 — Failure of a member organization to have individuals responsible and qualified for the positions of Financial Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst.

- NYSE Rule 343 — Requirements relating to member organization office sharing arrangements.

- NYSE Rule 345(a) — Failure of a member organization to have individuals responsible and qualified for the positions of Securities Lending Supervisor and Securities Trader Supervisor.

- NYSE Rules 345.11, [410, 440, ]and 472(c) — Record retention rule violations.

- NYSE Rule 401A — Failure to acknowledge customer complaint within 15 business days.

- NYSE Rule 407 — Requirements for transactions of employees of the Exchange, members or member organizations.

- NYSE Rule 407A — Reporting and notification requirements for members.

- NYSE Rule 408(a) — Requirement that written authorization be obtained for discretionary power in a customer's account.

- NYSE Rule 416A — Failure to promptly provide or promptly update required membership profile information through the Electronic Filing Platform ("EFP"), or failure to electronically certify that required membership profile information is complete and accurate.

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## **9500. OTHER PROCEEDINGS**

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**9550. Expedited Proceedings**

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**9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series**

(a) through (g) No Change.

**(h) Transmission of Documents**

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, FINRA staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B), [or] (C) or (b)(2). A document that meets such criteria shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) No Change.

(i) through (s) No Change.

**9600. PROCEDURES FOR EXEMPTIONS**

**9610. Application**

**(a) Where to File**

A member seeking exemptive relief as permitted under NASD Rules 1021, 1050, 1070, 2210, 2320, 2340, 3010(b)(2), [3020, ]or 3150, or Rules 2114, 2310, 2359, 2360,

4210, 4311, 4320, 4360, 5110, 5121, 5122, 5130, 7470, 8211, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of FINRA.

(b) through (c) No Change.

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**NYSE Rules**

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**[Rule 440. Books and Records]**

[Reserved. ]

**[••• Supplementary Material: -----]**

[.10 Reserved.]

[.20 Reserved.]

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