

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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Text of Proposed New FINRA Rule

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5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

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5300. HANDLING OF CUSTOMER ORDERS

5320. Prohibition Against Trading Ahead of Customer Orders

(a) Except as provided herein, a member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

(b) A member must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and NASD Rule 2320. A member also must ensure that this methodology is consistently applied.

••• 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 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 No-Knowledge Exception

(a) With respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS, if a member implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent one trading unit from obtaining knowledge of customer orders held at a separate trading unit, those other trading units

trading in a proprietary capacity may continue to trade at prices that would satisfy the customer orders held by the separate trading unit. A member that structures its order handling practices in NMS stocks to permit its market-making desk to trade at prices that would satisfy customer orders held at a separate trading unit must (1) assign and use a unique market participant identifier (MPID) for the market-making desk; and (2) disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the member and the circumstances under which the member may trade proprietarily at its market-making desk at prices that would satisfy the customer order.

(b) With respect to OTC equity securities, as defined in Rule 6420, if a member implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent a non-market making trading unit from obtaining knowledge of customer orders held at a separate trading unit, the non-market making trading unit trading in a proprietary capacity may continue to trade at prices that would satisfy the customer orders held by the separate trading unit.

.03 Riskless Principal Exception. The obligations under this Rule shall not apply to a member's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer) (the "facilitated order"), provided that the member:

(a) submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to FINRA (or another self-regulatory organization if not required under FINRA rules); and

(b) the member has written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable FINRA rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

Members must have supervisory systems in place that produce records that enable the member and FINRA to reconstruct accurately, readily, and in a time-sequenced manner all orders on which a member relies in claiming this exception.

.04 ISO Exception. A member shall be exempt from the obligation to execute a customer order in a manner consistent with this Rule with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b)(30)(ii) of SEC Regulation NMS (“ISO”) where the customer order is received after the member routed the ISO. Where a member routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the member also shall be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer’s order.

.05 Odd Lot and Bona Fide Error Transaction Exceptions. The obligations under this Rule shall not apply to a member’s proprietary trade that is (1) to offset a customer order that is in an amount less than a normal unit of trading; or (2) to correct a bona fide error. Members are required to demonstrate and document the basis upon which a transaction meets the bona fide error exception.

.06 Minimum Price Improvement Standards. The minimum amount of price improvement necessary for a member to execute an order on a proprietary basis when holding an unexecuted limit order in that same security, and not be required to execute the held limit order is as follows:

(a) For customer limit orders priced greater than or equal to \$1.00, the minimum amount of price improvement required is \$0.01 for NMS stocks and the lesser of \$0.01 or one-half (1/2) of the current inside spread for OTC equity securities;

(b) For customer limit orders priced greater than or equal to \$.01 and less than \$1.00, the minimum amount of price improvement required is the lesser of \$0.01 or one-half (1/2) of the current inside spread;

(c) For customer limit orders priced less than \$.01 but greater than or equal to \$0.001, the minimum amount of price improvement required is the lesser of \$0.001 or one-half (1/2) of the current inside spread;

(d) For customer limit orders priced less than \$.001 but greater than or equal to \$0.0001, the minimum amount of price improvement required is the lesser of \$0.0001 or one-half (1/2) of the current inside spread;

(e) For customer limit orders priced less than \$.0001 but greater than or equal to \$0.00001, the minimum amount of price improvement required is the lesser of \$0.00001 or one-half (1/2) of the current inside spread;

(f) For customer limit orders priced less than \$.00001, the minimum amount of price improvement required is the lesser of \$0.000001 or one-half (1/2) of the current inside spread; and

(g) For customer limit orders priced outside the best inside market, the minimum amount of price improvement required must either meet the requirements set forth above or the member must trade at a price at or inside the best inside market for the security.

For purposes of determining the minimum price improvement standards for customer limit orders in OTC equity securities priced below \$1.00 where there is no published current inside spread, members may calculate a current inside spread by contacting and obtaining priced quotations from at least two unaffiliated dealers and using the highest bid and lowest offer obtained in calculating the current inside spread. Where there is only a one-sided quote in an OTC equity security priced below \$1.00, members may calculate the current inside spread by contacting and obtaining priced quotations from at least two unaffiliated dealers and using the best price obtained on the other side of the quote. Members must document the name of each dealer contacted and the quotations received for purposes of determining the current inside spread.

In addition, if the minimum price improvement standards above would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under this Rule, even if those better-priced limit orders would not be directly triggered under the minimum price-improvement standards above.

.07 Order Handling Procedures. A member must make every effort to execute a marketable customer order that it receives fully and promptly. A member that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the member on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the

member and that is consistent with the terms of the orders. In the event that a member is holding multiple orders on both sides of the market that have not been executed, the member must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of this Rule and with the terms of the orders. A member can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

.08 Trading Outside Normal Market Hours. Members generally may limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4 p.m. Eastern Time. However, if the customer and member agree to the processing of the customer's order outside normal market hours, the protections of this Rule shall apply to that customer's order(s) at all times the customer order is executable by the member.

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**Text of NASD Rules and Interpretive Material
to be Deleted in their
Entirety from the Transitional Rulebook**

NASD Rules

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[IM-2110-2. Trading Ahead of Customer Limit Order]

Entire text deleted.

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[2111. Trading Ahead of Customer Market Orders]

Entire text deleted.

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