

**EXHIBIT 5**

The text of the proposed rule change is below. Proposed new language is underlined; deletions are bracketed.

**4758. Order Routing**

(a) – (c) No change.

(d) Cancellation of Orders and Error Account

(1) The Exchange or Nasdaq Execution Services may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, Nasdaq Execution Services, or a routing destination. The Exchange or Nasdaq Execution Services shall provide notice of the cancellation to affected members as soon as practicable.

(2) Nasdaq Execution Services shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at Nasdaq Execution Services, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (“error positions”).

(A) For purposes of this Rule 4758(d), an error position shall not include any position that results from an order submitted by a member to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.

(B) Except as provided in Rule 4758(d)(2)(C), Nasdaq Execution Services shall not (i) accept any positions in its error account from an account of a member, or (ii) permit any member to transfer any positions from the member’s account to Nasdaq Execution Services’s error account.

(C) If a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, Nasdaq Execution Services may assume that member’s side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

(3) In connection with a particular technical or systems issue, Nasdaq Execution Services or the Exchange shall either (i) assign all resulting error positions to members in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.

(A) Nasdaq Execution Services or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if Nasdaq Execution Services or the

Exchange:

(i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (d)(1) above.

(B) If Nasdaq Execution Services or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members in accordance with subparagraph (A) above, or if Nasdaq Execution Services or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (d)(1) above, then Nasdaq Execution Services shall liquidate the error positions as soon as practicable. Nasdaq Execution Services shall:

(i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and

(ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and Nasdaq Execution Services/the Exchange associated with the liquidation of the error positions.

(4) Nasdaq Execution Services and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to members or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.