

**EXHIBIT 5**

Exhibit 5 shows 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 Rules**

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**2000. DUTIES AND CONFLICTS**

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**2090. Know Your Customer**

Every member shall use due diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.

**••• Supplementary Material: -----**

**.01 Essential Facts.** For purposes of this Rule, facts “essential” to “knowing the customer” are those required to (a) effectively service the customer’s account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.

**2100. TRANSACTIONS WITH CUSTOMERS**

**2110. Recommendations**

**2111. Suitability**

(a) A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile, including, but not limited to,

the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

(b) A member or associated person fulfills the customer-specific suitability obligation for an institutional account, as defined in NASD Rule 3110(c)(4), if (1) the member or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (2) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the member's or associated person's recommendations. Where an institutional customer has delegated decision making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

**••• Supplementary Material: -----**

**.01 General Principles.** Implicit in all member and associated person relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of FINRA's rules, with particular emphasis on the requirement to deal fairly with the public. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.

**.02 Recommended Strategies.** The phrase "investment strategy involving a security or securities" used in this Rule is to be interpreted broadly. However, the following communications are excluded from the coverage of Rule 2111 as long as they do not include

(standing alone or in combination with other communications) a recommendation of a particular security or securities:

(a) General financial and investment information, including (i) basic investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment, (ii) historic differences in the return of asset classes (e.g., equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimating future retirement income needs, and (v) assessment of a customer's investment profile;

(b) Descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan;

(c) Asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor's assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with NASD IM-2210-6 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an "investment analysis tool" covered by NASD IM-2210-6; and

(d) Interactive investment materials that incorporate the above.

**.03 Components of Suitability Obligations.** Rule 2111 is composed of three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.

(a) The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for at least *some* investors. In general, what constitutes adequate due diligence will vary depending on, among other things, the complexity of and risks associated with the security or

investment strategy and the member's or associated person's familiarity with the security or investment strategy.

(b) The customer-specific obligation requires that a member or associated person have reasonable grounds to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a).

(c) Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.

**.04 Customer's Financial Ability.** Rule 2111 prohibits a member or associated person from recommending a transaction or investment strategy involving a security or securities or the continuing purchase of a security or securities or use of an investment strategy involving a security or securities if such recommendation is inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

**.05 Institutional Investor.** With respect to having to indicate affirmatively that it is exercising independent judgment in evaluating the member's or associated person's recommendations, an institutional customer may indicate that it is exercising independent judgment on a trade-by-trade basis, on an asset-class-by-asset-class basis, or in terms of all potential transactions for its account.

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**Text of NASD, Incorporated NYSE Rules and NYSE Rule Interpretations to be Deleted In Their Entirety from the Transitional Rulebook**

**NASD Rules**

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**[2310. Recommendations to Customers (Suitability)]**

Entire text deleted.

**[IM-2310-1. Possible Application of SEC Rules 15g-1 through 15g-9]**

Entire text deleted.

**[IM-2310-2. Fair Dealing with Customers]**

Entire text deleted.

**[IM-2310-3. Suitability Obligations to Institutional Customers]**

Entire text deleted.

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**Incorporated NYSE Rules**

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**[Rule 405. Diligence as to Accounts]**

Entire text deleted.

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**NYSE RULE INTERPRETATION**

**[Rule 405 Diligence as to Accounts]**

Entire text deleted.

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