

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
(Marked to show changes from NASD IM-2210-2; NASD IM-2210-2 to be Deleted in
its Entirety from the Transitional Rulebook)**

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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**[IM-2210-2]2211. Communications with the Public About Variable Life Insurance
and Variable Annuities**

The standards governing communications with the public are set forth in Rule 2210. In addition to those standards, the following guidelines must be considered in preparing [advertisements and sales literature]retail communications and correspondence, as defined in Rule 2210, about variable life insurance and variable annuities. [The guidelines are applicable to advertisements and sales literature as defined in Rule 2210, as well as individualized communications such as personalized letters and computer generated illustrations, whether printed or made available on-screen.]

(a) General Considerations

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, [all] retail communications and correspondence must clearly describe

the product as either a variable life insurance policy or a variable annuity, as applicable. Member firms may use proprietary names in addition to this description. In cases where the proprietary name includes a description of the type of security being offered, there is no requirement to include a generalized description. For example, if the material includes a name such as the "XYZ Variable Life Insurance Policy," it is not necessary to include a statement indicating that the security is a variable life insurance policy. Considering the significant differences between mutual funds and variable products, the presentation must not represent or imply that the product being offered or its underlying account is a mutual fund.

(2) through (3) No Change.

(b) Specific Considerations

(1) Fund Performance Predating Inclusion in the Variable Product

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, retail communications and correspondence may contain the fund's historical performance that predates its inclusion in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product. However, retail communications and correspondence may not include the performance of an existing fund for the purposes of promoting investment in a similar, but new, investment option (i.e., clone fund or model fund) available in a variable contract. The presentation of historical performance must conform to applicable

[NASD]FINRA and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

(2) Product Comparisons

A comparison of investment products may be used provided the comparison complies with applicable requirements set forth under Rule 2210. Particular attention must be paid to the specific standards regarding "comparisons" set forth in Rule 2210(d)(2)[(B)].

(3) Use of Rankings

A ranking which reflects the relative performance of the separate account or the underlying investment option may be included in [advertisements and sales literature]retail communications provided its use is consistent with the standards contained in [IM-2210-3]Rule 2212.

(4) Discussions Regarding Insurance and Investment Features of Variable Life Insurance

Retail [C]communications and correspondence on behalf of single premium variable life insurance may emphasize the investment features of the product provided an adequate explanation of the life insurance features is given. [Sales material]Such communications for other types of variable life insurance must provide a balanced discussion of these features.

(5) Hypothetical Illustrations of Rates of Return in Variable Life Insurance [Sales Literature and Personalized Illustrations]Retail Communications and Correspondence

(A) No Change.

(B) In [sales literature]retail communications and correspondence which include[s] hypothetical illustrations, member firms may provide a personalized illustration which reflects factors relating to the individual customer's circumstances. A personalized illustration may not contain a rate of return greater than 12% and must follow all of the standards set forth in subparagraph (A), above.

(C) No Change.

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Amendments to FINRA Rules

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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, 2111, 2122, 2150, 2210, 2211, 2212, 2261, 2268, 2269, 2320(g), 3110, 3220, 3270, 3280, 4120, 4130, 4210, 4311, 4330, 4360, 4510 Series, 4530, 5160, 5210, 5220, 5230, 5310, 5340, 8110, 8120, 8210, 8310, 8311, 8312, 8320, 8330 and 9552; NASD Rules [IM-2210-2,] 2340, 2510, 3050 and 3140.

(d) No Change.

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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.
- Schedule A. Sec. 1(b) of the FINRA By-Laws — Failure to make accurate payment of Trading Activity Fee.
- Rule 1250 — Failure to comply with the continuing education requirements.

- Rules 2210, 2211, 2212, 2213, 2215, and 2216 — Communications with the public.
- Rule 2220 — Options Communications.
- Rule 2251(a) — Failure to timely forward proxy and other issuer-related materials.
- Rule 2266 — Failure to provide written notification of availability of SIPC information at account opening or annually thereafter.
- Rule 2360(b)(3) and (b)(4) — Failure to comply with options position and exercise limits.
- Rule 2360(b)(5) — Failure to report options positions.
- Rule 2360(b)(23) — Failure to comply with contrary exercise advice procedures.
- Rule 3110 — Failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217.
- Rule 3160(a)(1), (3), (4) and (5) — Standards of conduct for conducting broker-dealer services on or off the premises of a financial institution pursuant to a networking arrangement, but excluding the networking agreement requirements.
- Rule 3170 — Failure to timely file reports pursuant to the Taping Rule.
- Rule 4311(b) — Failure to obtain approval of carrying agreement.
- Rule 4360(b) — Failure to maintain adequate fidelity bond coverage.
- Rule 4370(a), (b), (c), (e) and (f) — Requirements to create, maintain and update a written business continuity plan and disclosure of such to customers.

- 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 4517 — Failure to report, review or update executive representative designation and contact information.
- Rule 4521(d) — Failure to submit reports of cash and margin account balances.
- Rule 4524 — Failure to timely file or filing of incomplete reports or information.
- Rule 4530 — Failure to timely file reports.
- Rule 4560 — Failure to timely file reports of short positions on Form NS-1.
- Rule 5110(b) — Failure to timely file or filing of incomplete documents or information.
- Rule 5121(a) — Failure to prominently disclose conflict of interest.
- Rule 5121(b)(2) — Failure to give timely notification of termination or settlement of public offering, or failure to file net capital computation.
- Rule 5122(b)(2) — Failure to timely file private placement documents.
- Rule 5190 — Failure to give timely notification of participation in offerings.
- Rules 6282, 6380A, 6380B, 6550, 6622, 6730, 7130, 7160, 7230A, 7230B, 7260A, 7260B, 7330, and 7360 — Transaction reporting in equity and debt securities.
- Rules 6181 and 6623 — Failure to timely report transactions in NMS, OTC and restricted equity securities.
- Rules 6182 and 6624 — Failure to accurately mark short sale transactions in NMS and OTC equity securities.

- Rule 6250 — Failure to comply with quote and order access requirements for FINRA's Alternative Display Facility.
- Rule 6760 — Failure to give timely or complete notification concerning offerings of TRACE-Eligible Securities.
- Rule 7430 — Failure to synchronize business clocks used for recording date and time as required by applicable FINRA By-laws and rules.
- 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 1021(d) — Failure to timely register.
- [• NASD IM-2210-2 — Communications with the public.]
- Failure to provide or update contact information as required by FINRA or NASD rules.
- SEA Rules 17a-3(a) and 17a-4 — Record retention rule violations.
- SEA Rule 10b-10 — Confirmation of Transactions.
- 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 200(g) of SEC Regulation SHO — Failure to accurately mark sell orders of equity securities.
- 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.

- Rule 605(a)(1) and (3) of SEC Regulation NMS — Failure to timely report or provide complete order execution information.
- Rule 606 of SEC Regulation NMS — Failure to timely disclose or provide complete order routing information.
- MSRB Rule A-12(c) and (f) — Failure to timely pay annual fee and failure to designate and update electronic mail contact information for communications with MSRB.
- MSRB Rules G-2 and G-3 (b)(ii)(D) and (c)(ii)(D) — Failure to timely register.
- MSRB Rule G-3(i) — Failure to comply with the continuing education requirements.
- MSRB Rule G-6 — Failure to maintain adequate fidelity bond coverage.
- MSRB Rules G-8 and G-9 — Record retention rule violations.
- MSRB Rule G-10(a) — Failure to deliver investor brochure to customers promptly.
- MSRB Rule G-12 — Failure to abide by uniform practice rules.
- MSRB Rule G-14 — Failure to submit reports.
- MSRB Rule G-21 — Advertising.
- MSRB Rule G-27(c) — Failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217.
- MSRB Rule G-32 — Failure to timely submit reports.
- MSRB Rule G-37 — Failure to timely submit reports for political contributions.
- NYSE Rules 312(a), (b) and (c), 313, 345.12, and 345.17— Reporting rule violations.

- NYSE Rule 312(i) — Failure to obtain approval rule violations.
- NYSE Rules 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 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 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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