

**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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**11890. Clearly Erroneous Transactions**

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**11892. Clearly Erroneous Transactions in Exchange-Listed Securities**

**(a) Procedures for Reviewing Transactions**

(1) An Executive Vice President of FINRA's Market Regulation Department or Transparency Services Department, or any officer designated by such Executive Vice President (FINRA officer), may, on his or her own motion, review any over-the-counter transaction involving an exchange-listed security occurring outside of Normal Market Hours (9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time) or eligible for review pursuant to paragraph (b)(1) of this Rule arising out of or reported through a trade reporting system owned or operated by FINRA or FINRA Regulation and authorized by the Commission, provided that the transaction meets the guidelines [thresholds] set forth in this Rule [paragraph (b), except as provided for in paragraphs (c) and (d) below]. A FINRA officer acting pursuant to this subparagraph may declare any such transaction null and void if the officer determines that (A) the transaction is clearly erroneous, or (B) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, consistent with the guidelines [thresholds] set forth in this Rule [paragraph (b), except as provided for in paragraphs (c) and (d) below]. Absent extraordinary circumstances, the officer

shall take action pursuant to this paragraph generally within 30 minutes after becoming aware of the transaction. When extraordinary circumstances exist, any such action of the officer must be taken no later than the start of trading on the day following the date of execution(s) under review.

(2) If a FINRA officer acting pursuant to this Rule declares any transaction null and void, each party involved in the transaction shall be notified as soon as practicable by FINRA, and the party aggrieved by the action may appeal such action in accordance with Rule 11894, unless the [officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest]decision is made by a FINRA officer under Supplementary Material .02 of this Rule regarding transactions that occurred outside of the applicable Price Bands disseminated pursuant to the LULD Plan, and further provided that rulings made by FINRA in conjunction with one or more other self-regulatory organizations are not appealable.

**(b) Clearly Erroneous Review [Thresholds]**

[Determinations of a clearly erroneous execution pursuant to paragraph (a)(1) will be made as follows:]

**(1) [Numerical Guidelines] Review of Transactions Occurring During Normal Market Hours**

If the execution time of the transaction(s) under review is during Normal Market Hours, the transaction will not be reviewable as clearly erroneous unless the transaction:

(A) is in an NMS Stock that is not subject to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or “LULD Plan”). In such case, the Numerical Guidelines set forth in paragraph (b)(2) of this Rule will be applicable to such NMS Stock;

(B) was executed at a time when Price Bands under the LULD Plan were not available, or is the result of a member’s technology or systems issue that results in the transaction occurring outside of the applicable LULD Price Bands pursuant to Supplementary Material .02 of this Rule, or is executed after the primary listing market for the security declares a regulatory trading halt, suspension, or pause pursuant to paragraph (e) of this Rule. A transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the subject transaction to buy (sell) is greater than (less than) the Reference Price, described in paragraph (c) of this Rule, by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (“Percentage Parameters”); or

(C) involved, in the case of (i) a corporate action or new issue or (ii) a security that enters a Trading Pause pursuant to the LULD Plan and resumes trading without an auction, a Reference Price that is determined to be erroneous by a FINRA officer because it clearly deviated from the theoretical value of the security. In such circumstances, FINRA may use a different Reference Price pursuant to paragraph (c)(2) of this Rule. A

transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the subject transaction to buy (sell) is greater than (less than) the new Reference Price, described in paragraph (c)(2) of this Rule, by an amount that equals or exceeds the Numerical Guidelines or Percentage Parameters, as applicable depending on whether the security is subject to the LULD Plan.

**(2) Review of Transactions Occurring Outside of Normal Market**

**Hours or Eligible for Review Pursuant to Paragraph (b)(1)(A)**

(A) Subject to the additional factors described in paragraph (b)(2)(C) of this Rule, a transaction executed outside of Normal Market Hours, or eligible for review pursuant to paragraph (b)(1)(A) of this Rule, [Subject to the provisions of paragraph (b)(3) below, a transaction] shall be found to be clearly erroneous if the price of the transaction is away from the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. [The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for: (A) Multi-Stock Events involving twenty or more securities, as described in paragraph (b)(2) below and (B) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest.]

<b>Reference Price: Circumstance or Product</b>	<b>Normal Market Hours [(9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time)] <u>Numerical Guidelines for Transactions Eligible for Review Pursuant to Paragraph (b)(1)(A)</u> (Subject transaction's % difference from the Reference Price):</b>	<b>Outside Normal Market Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):</b>
Greater than \$0.00 up to and including \$25.00	10%	20%
Greater than \$25.00 up to and including \$50.00	5%	10%
Greater than \$50.00	3%	6%
Multi-Stock Event – Events involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less	10%	10%

<p>Multi-Stock Event – Events involving twenty or more securities whose executions occurred within a period of five minutes or less</p>	<p>30%, subject to the terms of paragraph (b)(2)(B) of this <u>Rule</u>[below]</p>	<p>30%, subject to the terms of paragraph (b)(2)(B) of <u>this Rule</u>[below]</p>
<p>Leveraged ETF/ETN securities</p>	<p><u>N/A</u> [Normal Market Hours Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)]</p>	<p>Normal Market Hours Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)</p>

**(B[2]) Multi-Stock Events Involving Twenty or More Securities**

[During] Multi-Stock Events involving twenty or more securities may be reviewable as clearly erroneous if they occur outside of Normal Market Hours or are eligible for review pursuant to paragraph (b)(1)(A) of this Rule. During Multi-Stock Events, the number of affected transactions may be such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. In such circumstances, FINRA may use a Reference Price other than the consolidated last sale. To ensure consistent application across the markets when this paragraph is invoked, FINRA will promptly coordinate with other self-regulatory organizations to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of this paragraph, as well as select one or more

specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. FINRA will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by FINRA and the other self-regulatory organizations consistent with this paragraph.

**(C[3]) Additional Factors**

Except in the context of a Multi-Stock Event involving five or more securities, a FINRA officer may also consider additional factors to determine whether a transaction is clearly erroneous, [including but not limited to,] provided the execution occurred outside of Normal Market Hours or is eligible for review pursuant to paragraph (b)(1)(A) of this Rule. Such additional factors include but are not limited to: system malfunctions or disruptions; volume and volatility for the security; derivative securities products that correspond to greater than 100% in the direction of a tracking index; news released for the security; whether trading in the security was recently halted/resumed; whether the security is an IPO; whether the security was subject to a stock-split, reorganization, or other corporate action; overall market conditions; Opening and Late Session executions; validity of the consolidated tapes' trades and quotes; consideration of primary market indications; and executions inconsistent with the trading pattern in the stock. Each additional factor shall be

considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

**(c) Reference Price**

The Reference Price referred to in paragraphs (b)(1) and (b)(2) of this Rule will be equal to the consolidated last sale immediately prior to the execution(s) under review except for:

(1) in the case of Multi-Stock Events involving twenty or more securities, as described in paragraph (b)(2)(B) of this Rule;

(2) in the case of an erroneous Reference Price, as described in paragraph (b)(1)(C) of this Rule. In the case of paragraph (b)(1)(C)(i), FINRA would consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and for an OTC up-listing, the price of the security as provided in the prior day's FINRA Trade Dissemination Service final closing report. In the case of paragraph (b)(1)(C)(ii), the Reference Price will be the last effective Price Band that was in a limit state before the Trading Pause; or

(3) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors



and the public interest, provided that such circumstances occurred outside of Normal Market Hours, or are eligible for review pursuant to paragraph (b)(1)(A) of this Rule.

**(d) Multi-day Events**

A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions (the “Event”). A FINRA officer, acting on his or her own motion, shall take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, a FINRA officer shall take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. Notwithstanding the foregoing, no action can be taken pursuant to this paragraph with respect to any transactions that have reached settlement date or that result from an initial public offering of a security. To the extent transactions related to an Event occur on one or more other self-regulatory organization, FINRA will promptly coordinate with such other self-regulatory organization(s) to ensure consistent treatment of the transactions related to the Event, if practicable. Any action taken in connection with this paragraph will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in this Rule. FINRA will notify each member involved in a transaction subject to this paragraph as soon as practicable of a determination to declare such transaction null and void, and the party aggrieved by the action may appeal such action in accordance with Rule 11894.

**(e[d]) Transactions Occurring During Trading Halts**

In the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause, a FINRA officer, acting on his or her own motion, shall declare as null and void any transaction in a security that occurs after the primary listing market for such security declares a regulatory trading halt, suspension or pause with respect to such security and before such regulatory trading halt, suspension or pause with respect to such security has officially ended according to the primary listing market. In addition, in the event a regulatory trading halt, suspension or pause is declared, then prematurely lifted in error and is then re-instituted, a FINRA officer also shall declare as null and void transactions that occur before the official, final end of the regulatory halt, suspension or pause according to the primary listing market. Any action taken in connection with this paragraph shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of normal market hours on the trading day following the date of the execution(s) under review. Any action taken in connection with this paragraph will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in this Rule. FINRA will notify each member involved in a transaction subject to this paragraph as soon as practicable of a determination to declare such transaction(s) null and void, and the party aggrieved by the action may appeal such action in accordance with Rule 11894.

••• **Supplementary Material:** -----

**.01** No Change.

[.02 The amendments set forth in File Nos. SR-FINRA-2010-032 and SR-FINRA-2014-021, and the provisions of Supplementary Material .03 of this Rule shall be in effect during a pilot period that expires at the close of business on October 20, 2022. If the pilot period is not extended or approved as permanent, the version of this Rule prior to SR-FINRA-2010-032 shall be in effect, and the amendments set forth in File No. SR-FINRA-2014-021 and the provisions of Supplementary Material .03 of this Rule shall be null and void.]

[.03 Securities Subject to Limit Up-Limit Down Plan. For purposes of this Supplementary Material .03, the phrase "Limit Up-Limit Down Plan" or "Plan" shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of SEC Regulation NMS.]

[(a) The provisions of Rule 11892 paragraphs (a) through (d) and Supplementary Material .01 above shall govern all over-the-counter transactions in exchange-listed securities reported to a FINRA system, such as a FINRA TRF or ADF, including transactions in securities subject to the Plan, other than as set forth below.]

**[(b)].02 Transactions Occurring Outside of LULD Plan Price Bands**

(a) If as a result of a member's technology or systems issue any transaction reported to a FINRA system, such as a FINRA TRF or ADF, occurs outside of the applicable [p]Price [b]Bands disseminated pursuant to the LULD Plan, a FINRA officer, acting on his or her own motion or at the request of a member, shall review and deem such transaction clearly erroneous, subject to the certification requirement of paragraph [(c)](b) of this Supplementary Material[below]. Absent extraordinary circumstances, any such action of the FINRA officer shall be taken in a timely fashion, generally within

thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the FINRA officer must be taken by no later than the start of normal market hours on the trading day following the date on which the execution(s) under review occurred. Each member involved in the transaction shall be notified as soon as practicable by FINRA, and a member aggrieved by the action may appeal such action in accordance with Rule 11894. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of [p]Price [b]Bands, FINRA will make the determination of whether to deem transactions clearly erroneous based on Rule 11892(b)(1)(B) [paragraphs (a) through (d) and Supplementary Material .01 above].

(b[c]) A member requesting review of a transaction pursuant to [the above] paragraph (a) of this Supplementary Material must certify, in the manner and form prescribed by FINRA, that the subject transaction(s) occurring outside of the applicable price bands disseminated pursuant to the Plan is the result of the member's bona fide technological or systems issue.

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**11894. Review by the Uniform Practice Code (“UPC”) Committee**

(a) A member or person associated with a member may appeal a determination to declare a transaction null and void made by a FINRA officer under Rule 11892 to the UPC Committee, unless a decision is made by a FINRA officer under Rule 11892.02 regarding transactions that occurred outside of the applicable Price Bands disseminated pursuant to the LULD Plan, and further provided that rulings made by FINRA in conjunction with one or more other self-regulatory organizations are not appealable. A member or person associated with a member may appeal a determination to declare a

transaction null and void made by a FINRA officer under Rule [11892 or] 11893 to the UPC Committee, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by FINRA within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the UPC Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades which the person making the appeal is a party. Once a party has appealed a determination to the UPC Committee, the determination shall be reviewed and a decision rendered, unless (1) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered, or (2) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph. Upon consideration of the record, and after such hearings as it may in its discretion order, the UPC Committee, pursuant to the standards set forth in this Rule, shall affirm, modify, reverse, or remand the determination.

(b) through (e) No Change.

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