

Exhibit 5 – Text of Proposed Rule Change

Proposed new language is underlined; proposed deletions are in brackets.

Rule 14.412. Shareholder Approval

This IEX Rule sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with: (1) the acquisition of the stock or assets of another company; (2) a change of control; (3) equity-based compensation of officers, directors, employees, or consultants; and (4) [private placements] transactions other than public offerings. General provisions relating to shareholder approval are set forth in IEX Rule 14.412(e), and the financial viability exception to the shareholder approval requirement is set forth in IEX Rule 14.412(f). Exchange-listed Companies and their representatives are encouraged to use the interpretative letter process described in IEX Rule 14.401(c).

(a) – (c) No change.

••• *Supplementary Material* •••

.01 Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

No change.

(d) [Private Placements]Transactions other than Public Offerings

[Shareholder approval is required prior to the issuance of securities in connection with a transaction other than a public offering involving:

- (1) the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or Substantial Shareholders of the Company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or
- (2) the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.]

(1) For purposes of Rule 14.412(d):

(A) “Minimum Price” means a price that is the lower of: (i) the closing price (as reflected on iextrading.com) immediately preceding the signing of a binding agreement; or (ii) the average closing price of the common stock (as reflected on iextrading.com) for the five trading days immediately preceding the signing of a binding agreement.

(B) “20% Issuance” means a transaction, other than a public offering as defined in Supplementary Material .03, involving the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which alone or together with sales by officers, directors or Substantial Shareholders of the Company, equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.

(2) Shareholder approval is required prior to a 20% Issuance at a price that is less than the Minimum Price.

••• Supplementary Material •••

.02 Interpretative Material Regarding the Use of Share Caps to Comply with Rule 14.412

No change.

.03 Definition of a Public Offering

IEX Rule 14.412(d) provides that shareholder approval is required for [the issuance of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock] a 20% Issuance at a price that is less than the Minimum Price. Under this IEX Rule, however, shareholder approval is not required for a “public offering.”

Companies are encouraged to consult with IEX Regulation in order to determine if a particular offering is a “public offering” for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Securities and Exchange Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Securities and Exchange Commission and which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public

offering for purposes of the shareholder approval rules. However, the Exchange staff will not treat an offering as a “public offering” for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.

When determining whether an offering is a “public offering” for purposes of these rules, IEX Regulation will consider all relevant factors, including but not limited to:

- (a) the type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the Company);
- (b) the manner in which the offering is marketed (including the number of investors offered securities, how those investors were chosen, and the breadth of the marketing effort);
- (c) the extent of the offering’s distribution (including the number and identity of the investors who participate in the offering and whether any prior relationship existed between the Company and those investors);
- (d) the offering price (including the extent of any discount to the market price of the securities offered); and
- (e) the extent to which the Company controls the offering and its distribution.

(e) – (f) No change.

••• Supplementary Material •••

.04 Interpretive Material Regarding Future Priced Securities and Other Securities with Variable Conversion Terms

Summary

No change.

How the Rules Apply

Shareholder Approval

IEX Rule 14.412(d) [provides, in part:] requires shareholder approval prior to a 20% Issuance at a price that is less than the Minimum Price. [Each Company shall require shareholder approval prior to the issuance of securities in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the issuer of

common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or Substantial Shareholders of the Company equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.]

(The Exchange may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the Company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.)

When the Exchange staff is unable to determine the number of shares to be issued in a transaction, it looks to the maximum potential issuance of shares to determine whether there will be an issuance of 20 percent or more of the common stock outstanding. In the case of Future Priced Securities, the actual conversion price is dependent on the market price at the time of conversion and so the number of shares that will be issued is uncertain until the conversion occurs. Accordingly, staff will look to the maximum potential issuance of common shares at the time the Future Priced Security is issued. Typically, with a Future Priced Security, the maximum potential issuance will exceed 20 percent of the common stock outstanding because the Future Priced Security could, potentially, be converted into common stock based on a share price of one cent per share, or less. Further, for purposes of this calculation, the lowest possible conversion price is below the [book or market value]Minimum Price of the stock for purposes of Rule 14.412(d) at the time of issuance of the Future Priced Security. Therefore, shareholder approval must be obtained prior to the issuance of the Future Priced Security. Companies should also be cautioned that obtaining shareholder ratification of the transaction after the issuance of a Future Priced Security does not satisfy the shareholder approval requirements.

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20% or more of the common stock or voting power outstanding before the issuance of the Future Priced Security (See Supplementary Material .02 to IEX Rule 14.412, Interpretative Material Regarding the Use of Share Caps to Comply with IEX Rule 14.412), or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the [greater of book or market value of the common stock]Minimum Price prior to the issuance of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still

required under IEX Rule 14.412(b) if the issuance will result in a change of control.

Additionally, discounted issuances of common stock to officers, directors, employees or consultants require shareholder approval pursuant to IEX Rule 14.412(c).

Voting Rights

IEX Rule 14.413 provides:

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.

Supplementary Material .01 to IEX Rule 14.413 also provides rules relating to voting rights of the Exchange Companies.

Under the voting rights rules, a Company cannot create a new class of security that votes at a higher rate than an existing class of securities or take any other action that has the effect of restricting or reducing the voting rights of an existing class of securities. The voting rights rules are typically implicated when the holders of the Future Priced Security are entitled to vote on an as-converted basis or when the holders of the Future Priced Security are entitled to representation on the Board of Directors. The percentage of the overall vote attributable to the Future Priced Security holders and the Future Priced Security holders' representation on the board of directors must not exceed their relative contribution to the Company based on the [Company's overall book or market value]Minimum Price at the time of the issuance of the Future Priced Security. Staff will consider whether a voting rights violation exists by comparing the Future Priced Security holders' voting rights to their relative contribution to the Company based on the [Company's overall book or market value]Minimum Price at the time of the issuance of the Future Priced Security. If the voting power or the board percentage exceeds that percentage interest, a violation exists because a new class of securities has been created that votes at a higher rate than an already existing class. Future Priced Securities that vote on an as-converted basis also raise voting rights concerns because of the possibility that, due to a decline in the price of the underlying common stock, the Future Priced Security holder will have voting rights disproportionate to its investment in the Company.

It is important to note that compliance with the shareholder approval rules prior to the issuance of a Future Priced Security does not affect whether the transaction is in violation of the voting rights rule. Furthermore, Shareholders can not otherwise agree to permit a voting rights violation by the Company. Because a violation of the voting rights requirement can

result in delisting of the Company's securities from the Exchange, careful attention must be given to this issue to prevent a violation of the rule.

The Bid Price Requirement

No change.

Listing of Additional Shares

No change.

Public Interest Concerns

No change.

Business Combinations with non-IEX Entities Resulting in a Change of Control

No change.
