

EXHIBIT 5

Proposed new language is underlined. Proposed deletions are enclosed in brackets.

NASDAQ OMX PHLX Rules

* * * * *

Options Rules**Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies (Rules 1000—1095)**

* * * * *

Rule 1064. Crossing, Facilitation and Solicited Orders

(a) Crossing. Except as provided in paragraph (e) below, an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders, provided that he proceeds in the following manner:

(i) – (iii) No change.

(iv) A Floor Broker crossing a public customer order with an order that is not a public customer order, when providing for a reasonable opportunity for the trading crowd to participate in the transaction, shall disclose the public customer order that is subject to crossing prior to the execution of the order.

(b) *Facilitation Orders.* Except as provided in paragraph (e) below, a Floor Broker holding an options order for a public customer and a contraside order may cross such orders in accordance with paragraph (a) above or may execute such orders as a facilitation cross in the following manner:

(i) – (iii) No change.

Once a Floor Broker has announced an order as subject to facilitation and has established a bid (or offer) in between the market for the option(s) to be facilitated, the order cannot be broken up by a subsequent superior bid or offer for just one component to the facilitated order.

(c) *Solicited Orders.* Except as provided in paragraph (e) below, for the purpose of this Rule, a solicitation occurs whenever an order, other than a cross, is presented for execution in the trading crowd resulting from an away-from-the-crowd expression of interests to trade by one broker dealer to another.

(i) – (iii) No change.

The members of the trading crowd shall have priority over the solicited party order.

(d) *Anticipatory Hedging.* No member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until (i) or (ii) occur:

(i) the terms and conditions of the order and any changes in the terms of the order of which the member, member organization or person associated with a member or member organization has knowledge are disclosed to the trading crowd, or

(ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Rule, an order to buy or sell a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

(iii) Furthermore, Rule 1064(d) does not prohibit a member or member organization from buying or selling a stock, security futures or futures position following receipt of an option order, including a complex order, but prior to announcing such order to the trading crowd, provided that:

(A) the option order is in a class designated as eligible for "tied hedge" transactions (as described below) as determined by the Exchange and is within the designated tied hedge eligibility size parameters, which parameters shall be determined by the Exchange and may not be smaller than 500 contracts per order (there shall be no aggregation of multiple orders to satisfy the size parameter);

(B) such member or member organization shall create an electronic record that it is engaging in a tied hedge transaction in a form and manner prescribed by the Exchange;

(C) such hedging position is:

(1) comprised of a position designated as eligible for a tied hedge transaction as determined by the Exchange and may include the same underlying stock applicable to the option order, a security future overlying the same stock applicable to the option order or, in reference to an index, ETF or HOLDR option, a related instrument. A "related instrument" means, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A "related instrument" means, in reference to an ETF or HOLDR option, a futures contract on any economically equivalent index applicable to the ETF or HOLDR underlying the option order;

- (2) brought without undue delay to the trading crowd and announced concurrently with the option order;
 - (3) offered to the trading crowd in its entirety; and
 - (4) offered, at the execution price received by the member or member organization introducing the option, to any in-crowd market participant who has established parity or priority for the related options;
 - (D) the hedging position does not exceed the option order on a delta basis;
 - (E) all tied hedge transactions (regardless of whether the option order is a simple or complex order) are treated the same as complex orders for purposes of the Exchange's open outcry allocation and reporting procedures. Tied hedge transactions are subject to the existing NBBO trade-through requirements for options and stock, as applicable, and may qualify for various exceptions; however, when the option order is a simple order the execution of the option leg of a tied hedge transaction does not qualify it for any NBBO trade-through exception for a Complex Trade;
 - (F) in-crowd market participants that participate in the option transaction must also participate in the hedging position and may not prevent the option transaction from occurring by giving a competing bid or offer for one component of such order; and
 - (G) prior to entering tied hedge orders on behalf of customers, the member or member organization must deliver to the customer a written notification informing the customer that his order may be executed using the Exchange's tied hedge procedures. The written notification must disclose the terms and conditions contained in this Commentary and be in a form approved by the Exchange. A combination option and hedging position offered in reliance on this Commentary .04 shall be referred to as a "tied hedge" order.
 - (H) if at the time a tied hedge transaction is executed, market conditions in any non-Phlx market(s) prevent the execution of the non-options leg(s) at the price(s) agreed upon, the trade representing the options leg(s) of the tied hedge transaction may be cancelled at the request of any member that is a party to the trade.
 - (I) All such orders are not deemed executed until entered into and executed by the Options Floor Broker Management System ("FBMS"); bids and offers can be withdrawn pursuant to Rule 1000(g).
- (e) *Floor Qualified Contingent Cross.* A Floor Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified

contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order or orders totaling an equal number of contracts.

- (1) Floor Qualified Contingent Cross Orders are immediately executed upon entry into the System by an Options Floor Broker provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the NBBO.
 - (a) Floor Qualified Contingent Cross Orders shall be submitted into the System by Floor Brokers on the Floor via the Floor Broker Management System.
 - (b) Floor Qualified Contingent Cross Orders will be automatically rejected if they cannot be executed.
 - (c) Floor Qualified Contingent Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 1034.
- (2) Options Floor Brokers shall not enter Floor Qualified Contingent Cross Orders for their own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion. Options Floor Brokers must maintain books and records demonstrating that each Floor Qualified Contingent Cross Order was not entered for a prohibited account. Any Floor Qualified Contingent Cross Order that does not have a corresponding record required by this subsection shall be deemed to have been entered for a prohibited account in violation of this Rule.
- (3) The term "qualified contingent trade" shall have the same meaning set forth in Rule 1080(o)(3).

••• *Commentary:* -----

.01 A violation of this Rule may be considered conduct inconsistent with just and equitable principles of trade.

.02 No change.

[.03 A Floor Broker crossing a public customer order with an order that is not a public customer order, when providing for a reasonable opportunity for the trading crowd to participate in the transaction, shall disclose the public customer order that is subject to crossing prior to the execution of the order.

.04 Rule 1064(d) does not prohibit a member or member organization from buying or selling a stock, security futures or futures position following receipt of an option order, including a

complex order, but prior to announcing such order to the trading crowd, provided that:

- (a) the option order is in a class designated as eligible for "tied hedge" transactions (as described below) as determined by the Exchange and is within the designated tied hedge eligibility size parameters, which parameters shall be determined by the Exchange and may not be smaller than 500 contracts per order (there shall be no aggregation of multiple orders to satisfy the size parameter);
- (b) such member or member organization shall create an electronic record that it is engaging in a tied hedge transaction in a form and manner prescribed by the Exchange;
- (c) such hedging position is:
 - (i) comprised of a position designated as eligible for a tied hedge transaction as determined by the Exchange and may include the same underlying stock applicable to the option order, a security future overlying the same stock applicable to the option order or, in reference to an index, ETF or HOLDR option, a related instrument. A "related instrument" means, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A "related instrument" means, in reference to an ETF or HOLDR option, a futures contract on any economically equivalent index applicable to the ETF or HOLDR underlying the option order;
 - (ii) brought without undue delay to the trading crowd and announced concurrently with the option order;
 - (iii) offered to the trading crowd in its entirety; and
 - (iv) offered, at the execution price received by the member or member organization introducing the option, to any in-crowd market participant who has established parity or priority for the related options;
- (d) the hedging position does not exceed the option order on a delta basis;
- (e) all tied hedge transactions (regardless of whether the option order is a simple or complex order) are treated the same as complex orders for purposes of the Exchange's open outcry allocation and reporting procedures. Tied hedge transactions are subject to the existing NBBO trade-through requirements for options and stock, as applicable, and may qualify for various exceptions; however, when the option order is a simple order the execution of the option leg of a tied hedge transaction does not qualify it for any NBBO trade-through exception for a Complex Trade;

- (f) in-crowd market participants that participate in the option transaction must also participate in the hedging position and may not prevent the option transaction from occurring by giving a competing bid or offer for one component of such order; and
- (g) prior to entering tied hedge orders on behalf of customers, the member or member organization must deliver to the customer a written notification informing the customer that his order may be executed using the Exchange's tied hedge procedures. The written notification must disclose the terms and conditions contained in this Commentary and be in a form approved by the Exchange. A combination option and hedging position offered in reliance on this Commentary .04 shall be referred to as a "tied hedge" order.
- (h) if at the time a tied hedge transaction is executed, market conditions in any non-Phlx market(s) prevent the execution of the non-options leg(s) at the price(s) agreed upon, the trade representing the options leg(s) of the tied hedge transaction may be cancelled at the request of any member that is a party to the trade.

All such orders are not deemed executed until entered into and executed by the Options Floor Broker Management System ("FBMS"); bids and offers can be withdrawn pursuant to Rule 1000(g).]

* * * * *