

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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NASD RULES

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2000. BUSINESS CONDUCT

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2300. TRANSACTIONS WITH CUSTOMERS

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2320. Best Execution and Interpositioning

(a) through (e) No Change.

(f) (1) Except as provided in subparagraph (3) below, in any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security [(as defined in the Rule 6600 Series)], a member or person associated with a member shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) through (3) No Change.

(4) Definitions

For purposes of this paragraph (f):

(A) through (B) No Change.

(C) “Non-exchange-listed security” means any equity security that is not traded on any national securities exchange. The term “non-exchange-

listed security” shall not include “restricted securities,” as defined by Securities Act Rule 144(a)(3).

(5) No Change.

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**3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS,
EMPLOYEES, AND OTHERS’ EMPLOYEES**

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3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(a) No Change.

(b) Marking of Customer Order Tickets

A person associated with a member shall indicate on the memorandum for each transaction in a non-exchange-listed security, as that term is defined in [the] Rule [6600 Series] 2320, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this paragraph shall not apply if the member can establish and has documented that:

(1) through (2) No Change.

(c) through (j) No Change.

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FINRA RULES

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4000. FINANCIAL AND OPERATIONAL RULES

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4500. BOOKS, RECORDS AND REPORTS

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4560. Short-Interest Reporting

(a) Each member shall maintain a record of total “short” positions in all customer and proprietary firm accounts in [OTC Equity Securities and] all equity securities (other than Restricted Equity Securities as defined in Rule 6420) [listed on a national securities exchange] and shall regularly report such information to FINRA in such a manner as may be prescribed by FINRA. Reports shall be made as of the close of the settlement date designated by FINRA. Reports shall be received by FINRA no later than the second business day after the reporting settlement date designated by FINRA.

(b) For purposes of this Rule:

(1) No Change.

(2) the term "customer" includes a broker-dealer_;[; and]

[(3) the term “OTC Equity Securities” shall mean any equity security that is not listed on a national securities exchange.]

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6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

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6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

6410. General

This Rule 6400 Series sets forth [recording and reporting] quotation and trading requirements for [certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and the trade reporting requirements applicable to members' transactions in equity securities for which real-time trade reporting is not otherwise required (hereinafter referred to as] "OTC Equity Securities" as that term is defined in Rule 6420 [)].

Members shall use the OTC Reporting Facility for trade reporting in OTC Equity Securities and Restricted Equity Securities in compliance with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

6420. Definitions

(a) through (b) No Change.

[(c) "Non-exchange-listed security" means any equity security that is not traded on any national securities exchange. The term "non-exchange-listed security" shall not include "restricted securities," as defined by Securities Act Rule 144(a)(3), nor any securities designated in the PORTAL Market, the Rule 6630 Series.]

[(d)](c) "OTC Equity Security" means any [non-exchange-listed] equity security [and certain exchange-listed securities] that is not an "NMS stock" as that term is defined in Rule 600(b)(47) of Regulation NMS; provided, however, that the term "OTC Equity Security" shall not include any Restricted Equity Security [that do not otherwise qualify for real-time trade reporting].

(e) through (f) redesignated as (d) through (e)

[(g)](f) “Quotation” shall mean any bid or offer at a specified price with respect to [a non-exchange-listed security] an OTC Equity Security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-exchange-listed security.

[(h)](g) “Quotation medium” means any inter-dealer quotation system [(except for the PORTAL Market)] or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any [non-exchange-listed security] OTC Equity Security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(h) “Restricted Equity Security” means any equity security that meets the definition of “restricted security” as contained in Securities Act Rule 144(a)(3).

(i) through (j) No Change.

(k) “OTC Reporting Facility” means the service provided by FINRA that accommodates reporting for trades in OTC Equity Securities executed other than on or through an exchange and for trades in Restricted Equity Securities effected under Securities Act Rule 144A and dissemination of last sale reports[in OTC Equity Securities]. Regarding those OTC Equity Securities and Restricted Equity Securities that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation, the OTC Reporting Facility comparison function will not be available. However, the OTC Reporting Facility will support the entry and dissemination, as applicable, of last sale data on such securities.

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6440. Compliance with the Information Requirements of SEC Rule 15c2-11

(a) through (d) No Change.

(e) For purposes of this Rule, the term “non-exchange-listed security” means any equity security, other than a Restricted Equity Security, that is not traded on any national securities exchange.

••• Supplementary Material: -----

01. No Change.

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6600. OTC Reporting Facility

6610. General

Members are required to [that] report transactions (other than transactions executed on or through an exchange) in OTC Equity Securities, including secondary market transactions in [and] Direct Participation Program securities, and Restricted Equity Securities to the OTC Reporting Facility in compliance [must comply] with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

6620. Reporting Transactions in OTC Equity Securities

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6622. Transaction Reporting

(a) When and How Transactions are Reported

(1) through (3) No Change.

(4) Transaction Reporting for Restricted Equity Securities

(A) Last sale reports of transactions in Restricted Equity Securities effected under Securities Act Rule 144A and executed between midnight and

8:00 p.m. Eastern Time shall be reported on the same business day as the transaction.

(B) Last sale reports of transactions in Restricted Equity Securities effected under Securities Act Rule 144A executed between 8:00 p.m. and midnight Eastern Time shall be reported the following business day (T+1) by 8:00 p.m. Eastern Time and be designated “as/of” trades to denote their execution on a prior day.

[(4) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in OTC Equity Securities for which electronic submission to the OTC Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the OTC Reporting Facility, whether on trade date or on a subsequent date on an “as/of” basis (T+N), shall not be reported on Form T.]

(5) through (8) No Change.

(9) To identify late pre-opening and after-hours trades in OTC Equity Securities reported late, FINRA will convert the .T modifier to .ST for any report submitted to the OTC Reporting Facility more than 90 seconds after execution.

(10) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in OTC Equity Securities or Restricted Equity Securities for which electronic submission to the OTC Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be

reported to the OTC Reporting Facility, whether on trade date or on a subsequent date on an “as/of” basis (T+N), shall not be reported on Form T.

(b) No Change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) Symbol of the OTC Equity Security or Restricted Equity Security;

(2) through (5) No Change.

(d) Procedures for Reporting Price, Volume, Capacity and Identification of Other Members

Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in OTC Equity Securities and Restricted Equity Securities in the following manner:

(1) through (4) No Change.

(e) Reporting Requirements For Certain Transactions and Transfers of Securities

(1) The following shall not be reported to the OTC Reporting Facility:

(A) [T]transactions that are part of a primary distribution by an issuer or a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;

(B) [T]transactions made in reliance on Section 4(2) of the Securities Act; [and]

(C) transactions reported on or through an exchange; and

(D) transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

(2) No Change.

(f) Reporting Cancelled Trades

(1) No Change.

(2) Deadlines for Reporting Cancelled Trades in OTC Equity Securities

(A) through (G) No Change.

(3) Deadlines for Reporting Cancelled Trades in Restricted Equity

Securities

(A) For trades previously submitted to the OTC Reporting Facility and cancelled before 8:00 p.m. Eastern Time on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation by 8:00 p.m.

(B) For trades cancelled at or after 8:00 p.m. Eastern Time on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 8:00 p.m.

(C) For any trade cancelled on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation

(i) by 8:00 p.m. on the date of cancellation if the trade is cancelled before 8:00 p.m., or

(ii) by 8:00 p.m. on the following business day if the trade is cancelled at or after 8:00 p.m.

(g) No Change.

6623. Timely Transaction Reporting

FINRA emphasizes the obligations of members to report securities transactions within the required time period [90 seconds after execution]. All reportable transactions not reported within the required time period [90 seconds after execution] shall be [reported as] marked late, and FINRA routinely monitors members' compliance with the [90-second] reporting requirements. If FINRA finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions submitted after the required time period [after 90 seconds] without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2010. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the marketplace, and FINRA will view noncompliance as a rule violation.

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[6630. REPORTING TRANSACTIONS IN PORTAL[®] SECURITIES]

[6631. Definitions]

[For purposes of the Rule 6630 Series, unless the context otherwise requires:]

[(a) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.]

[(b) “PORTAL[®]” or “PORTAL Market” means Nasdaq’s market for designated foreign and domestic securities that are eligible for resale under Securities Act Rule 144A.]

[(c) “PORTAL equity security” means a PORTAL security that represents an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or non-exercisable, callable or non-callable, redeemable or non-redeemable).]

[(d) “PORTAL debt security” means PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations, but shall not include mortgage or asset-backed securities, collateralized mortgage obligations, money market instruments, or municipal and municipal-derivative securities.]

[(e) “PORTAL Market system” or “PORTAL system” means any computer system(s) designated by FINRA to accept trade reports on transactions in PORTAL equity and/or debt securities, or to display transaction, quotation, or other information on PORTAL securities.]

[(f) “PORTAL security” means a security that is currently designated by The Nasdaq Stock Market LLC for inclusion in the PORTAL Market.]

[(g) “PORTAL transaction report” means a report of a transaction in a PORTAL security submitted by a member through a designated PORTAL system.]

[(h) “Restricted security” means a security that meets the definition of that term contained in Securities Act Rule 144(a)(3). A PORTAL security continues to be a restricted security even though it is eligible to be resold pursuant to the provisions of Securities Act Rule 144, including Securities Act Rule 144(k), but has not been so resold.]

[(i) “SEC” means the United States Securities and Exchange Commission.]

[(j) “Securities Act Rule 144A” means Rule 144A adopted under the Securities Act.]

[(k) “Securities Act” means the Securities Act of 1933, as amended from time to time.]

[(l) “Time of execution” means the time when all of the terms of a transaction in a PORTAL security have been agreed to that are sufficient to calculate the dollar price of the transaction and a determination has been made that the transaction is in compliance with Securities Act Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act.]

[(m) “Transaction” or “trade” means the purchase or sale of a PORTAL security.]

[(n) “United States” or “U.S.” means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.]

[6632. Limitations on Transactions in PORTAL Securities]

[(a) No member shall sell a PORTAL security unless:]

[(1) the sale is to:]

[(A) an investor or member that the member reasonably believes is a “qualified institutional buyer” in a transaction exempt from registration under the Securities Act by reason of compliance with Securities Act Rule 144A;]

[(B) an investor or member in a transaction that is exempt from registration under the Securities Act by reason of compliance with an applicable exemption under the Securities Act other than Securities Act Rule 144A; or]

[(C) a member acting as an agent in a transaction that the member acting as agent determines is in compliance with subparagraphs (A) or (B) hereof, and the selling member determines is exempt from registration under the Securities Act by reason of compliance with Securities Act Rule 144A or an applicable exemption under the Securities Act other than Securities Act Rule 144A; and]

[(2) the member maintains in its files information demonstrating that the transaction is in compliance with Securities Act Rule 144A or with any other applicable exemption from registration under the Securities Act.]

[6633. Reporting Debt and Equity Transactions in PORTAL Securities]

[(a) Subject to Rule 6622(e)(1), transactions in a PORTAL equity security shall be reported to the OTC Reporting Facility in accordance with this Rule. Each PORTAL transaction report on a PORTAL equity security shall:]

[(1) include the information required by Rule 6622(c), including the time of execution;]

[(2) be submitted to the OTC Reporting Facility no later than 6:30 p.m. Eastern Time (or the end of the OTC Reporting Facility reporting session that is in effect at that time); and]

[(3) be submitted by the party as required by Rule 6622(b) and comply with the procedures under Rule 6622(d).]

[(b) Transactions in PORTAL debt securities shall be reported to the Trade Reporting And Compliance Engine Service in accordance with the Rule 6700 Series.]

[(c) The reporting requirements of this Rule shall apply to transactions in reliance on Securities Act Rule 144 and sales to or purchases from a non-U.S. securities market.]

[(d) Members that submit PORTAL transaction reports shall be subject to any fees imposed by the particular PORTAL system through which the PORTAL transaction report is submitted, as set forth in the Rule 7700 Series.]

[6634. Arbitration]

[The facilities of FINRA Dispute Resolution and the procedures of the Code of Arbitration Procedure shall be available to PORTAL participants to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.]

6630[5]. Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities

(a) The following are specifically applicable to transactions and business activities relating to [PORTAL] securities that, prior to October 26, 2009, had been designated by The Nasdaq Stock Market LLC for inclusion in the PORTAL Market (“PORTAL securities”):

- (1) NASD Rules 2230, 2260, 2270, 2310, 2440, 3370, and FINRA Rules 0130, 0140, 2010, 2020, 2262, 2269, 8210;
- (2) the Rule 8100 and 8300 Series; and
- (3) NASD IM-2310-2, IM-2420-1, IM-2440-1, IM-2440-2, IM-3310, and IM-3320.

(b) The following are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

(1) NASD Rule 2320, except for paragraph (f), which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;

(2) FINRA Rule 2150, and NASD Rule 2330, except for paragraph (d); and

(3) NASD Rule 3110.

(c) The following are applicable to members and persons associated with members regardless of whether the member participates in transactions in PORTAL securities:

(1) NASD Rule 0120 and FINRA Rules 0110, 0120, 0160.

(2) NASD Rules 2210, 3020, 3030, 3040, 3050, 3130, 3140 and FINRA Rules 3220, and 5260.

(d) The following are not applicable to transactions and business activities relating to PORTAL securities:

(1) NASD Rules 2450, 2520, 2730, 2740, 2750, 2830, 3210, and FINRA Rules 2310, 2320, 2360, 4560, 5110, 5130.

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7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES

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7300. OTC Reporting Facility

7310. Definitions

(a) through (f) No Change.

(g) The term “Reportable Security” shall mean all OTC Equity Securities and Restricted Equity Securities as defined in Rule 6420 and all Direct Participation Programs as defined in Rule 6642.

(h) through (i) No Change.

(j) The term “System” shall mean the OTC Reporting Facility[for purposes of trades in OTC Equity Securities as defined in Rule 6420 and Direct Participation Programs as defined in Rule 6642].

(k) No Change.

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7330. Trade Report Input

(a) No Change.

(b) When and How Trade Reports are Submitted

Participants shall transmit trade reports to the System for Reportable System [t]Transactions [in Reportable Securities] within [90 seconds after execution] the time period required in Rule 6622, or, in the case of trades in OTC Equity Securities, shall use the Browse function to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

(c) through (h) No Change.

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7400. Order Audit Trail System

7410. Definitions

For purposes of the Rule 7400 Series:

(a) through (k) No Change.

(l) “OTC equity security” shall have the same meaning as defined in Rule 6420, except that [mean any equity security that:]

[(1) is not listed on a national securities exchange; or]

[(2) is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.]

[F]for purposes of the Rule 7400 Series, the term OTC equity security shall not include direct participation programs, as defined in Rule 6642.

(m) through (o) No Change.

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