

EXHIBIT 5

Exhibit 5 shows 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 Rule 3070; NASD Rule 3070 to be Deleted in
its Entirety from the Transitional Rulebook)**

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4500. BOOKS, RECORDS AND REPORTS

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[3070]4530. Reporting Requirements

(a) Each member shall promptly report to FINRA, [the Association whenever such member or person associated with the member] but in any event not later than 30 calendar days, after the member knows or should have known of the existence of any of the following:

(1) the member or an associated person of the member:

(A) has been found to have violated any securities-, insurance-, commodities-, financial- or investment-related [provision of any securities] laws, rules, [or] regulations[, any rule] or standards of conduct of any domestic or foreign [governmental agency,] regulatory body, self-regulatory organization[, or [financial] business or professional organization[, or engaged in conduct which is inconsistent with just and equitable principles of trade; and the member knows or should have known that any of the aforementioned events have occurred];

[(2)] (B) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

[(3)] (C) is named as a defendant or respondent in any proceeding brought by a domestic or foreign regulatory body or self-regulatory [body] organization alleging the violation of any provision of the Exchange Act, or of any other federal, [or] state or foreign securities, insurance[,] or commodities statute, or of any rule or regulation thereunder, or of any provision of the [B]by-laws, rules or similar governing instruments of any securities, insurance or commodities domestic or foreign regulatory body or self-regulatory organization;

[(4)] (D) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry domestic or foreign regulatory body or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

[(5)] (E) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to

commit any of these offenses, or substantially equivalent activity in a domestic, military[,] or foreign court;

[(6)] (F) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company [which] that was suspended, expelled or had its registration denied or revoked by any domestic or foreign [agency] regulatory body, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution [which] that was convicted of or pleaded no contest to, any felony or misdemeanor in a domestic or foreign court;

[(7)] (G) is a defendant or respondent in any securities- or commodities-related civil litigation or arbitration, is a defendant or respondent in any financial-related insurance civil litigation or arbitration, or is the subject of any claim for damages by a customer, broker or dealer that is financial or transactional in nature, [which] and such civil litigation, arbitration or claim for damages has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when the member is the defendant or respondent or is the subject of any claim for damages by a customer, broker or dealer, then the reporting to [the Association] FINRA shall be required only when such judgment, award[,] or settlement is for an amount exceeding \$25,000; or

[(8)] is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding \$15,000. However, when the

claim for damages is against a member, then the reporting to the Association shall be required only when such claim is settled for an amount exceeding \$25,000;]

[(9)] (H) is, or is involved [associated] in the sale of any [business or] financial [activity] instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a “statutory disqualification” as that term is defined in the Exchange Act[, and the member knows or should have known of the association]. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification; or

[(10)] (2) an associated person of the member is the subject of any disciplinary action taken by the member [against any person associated with the member] involving suspension, termination, the withholding of [commissions] compensation or of any other remuneration in excess of \$2,500, [or] the imposition of fines in excess of \$2,500[,] or is otherwise disciplined in any manner [which] that would have a significant limitation on the individual’s activities on a temporary or permanent basis.

(b) Each member shall promptly report to FINRA, but in any event not later than 30 calendar days, after the member has concluded or reasonably should have concluded that an associated person of the member or the member itself has violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or self-regulatory organization.

[(b)] (c) Each person associated with a member shall promptly report to the member the existence of any of the [conditions] events set forth in paragraph (a)(1) of this Rule. [Each member shall report to the Association not later than 10 business days after the member knows or should have known of the existence of any of the conditions set forth in paragraph (a) of this rule.]

[(c)] (d) Each member shall report to [the Association] FINRA statistical and summary information regarding customer complaints in such detail as [the Association] FINRA shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. For the purposes of this paragraph, “customer” includes any person other than a broker or dealer with whom the member has engaged, or has sought to engage, in securities activities, and “complaint” includes any written grievance by a customer involving the member or person associated with [a] the member.

[(d)] (e) Nothing contained in this Rule shall eliminate, reduce[,] or otherwise abrogate the responsibilities of a member or person associated with a member to promptly [file with full disclosure,] disclose required [amendments to] information on the Forms BD, [Forms] U[-]4 [and] or U[-]5, as applicable, [or] to make any other required filings[, and] or to respond to [NASD] FINRA with respect to any customer complaint, examination[, or] inquiry. In addition, members are required to comply with the reporting obligations under paragraphs (a), (b) and (d) of this Rule, regardless of whether the information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD or U4. However, a member need not report an event

otherwise required to be reported under paragraphs (a) or (b) of this Rule if the member discloses the event on the Form U5, consistent with the requirements of that form.

[(e) Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from paragraphs (a), (b) and (c) of this Rule.]

(f) Each member shall promptly file with [NASD] FINRA copies of:

(1) any indictment, information or other criminal complaint or plea agreement for conduct reportable under paragraph (a)[(5)](1)(E) of this Rule;

(2) any complaint in which a member is named as a defendant or respondent in any securities- or commodities-related private civil litigation, or is named as a defendant or respondent in any financial-related insurance private civil litigation;

(3) any securities- or commodities-related arbitration claim, or financial-related insurance arbitration claim, filed against a member in any forum other than the [NASD] FINRA Dispute Resolution forum;

(4) any indictment, information or other criminal complaint, any plea agreement, or any private civil complaint or arbitration claim against a person associated with a member that is reportable under question 14 on Form U[-]4, irrespective of any dollar thresholds Form U[-]4 imposes for notification, unless, in the case of an arbitration claim, the claim has been filed in the [NASD] FINRA Dispute Resolution forum.

(g) Members shall not be required to comply separately with paragraph (f) in the event that any of the documents required by paragraph (f) have been the subject of a

request by [NASD] FINRA's Registration and Disclosure staff, provided that the member produces those requested documents to the Registration and Disclosure staff not later than 30 days after receipt of such request. This paragraph does not supersede any [NASD] FINRA rule or policy that requires production of documents specified in paragraph (f) sooner than 30 days after receipt of a request by the Registration and Disclosure staff.

• • • Supplementary Material: -----

.01 Reporting of Firms' Conclusions of Violations. For purposes of paragraph (b) of this Rule, with respect to violative conduct by an associated person, the reporting obligation under paragraph (b) must be read in conjunction with the reporting obligation under paragraph (a)(2) of this Rule. If a member has concluded that an associated person has engaged in violative conduct and imposes the discipline set forth under paragraph (a)(2) of this Rule, then the member is required to report the event under paragraph (a)(2), and it need not report the event under paragraph (b). In addition, for purposes of paragraph (b) of this Rule, FINRA does not expect a member to report an isolated violation by the member or an associated person of the member that can be reasonably viewed as a ministerial violation of the applicable rules that did not result in customer harm and was remedied promptly upon discovery.

.02 Firms' Conclusions of Violations versus External Findings. Members should be aware that paragraph (b) of this Rule is limited to situations where the member has concluded or reasonably should have concluded on its own that violative conduct has occurred. Paragraph (a)(1)(A) of this Rule is limited to situations where there has been a

finding of violative conduct by an external body, such as a court, domestic or foreign regulatory body, self-regulatory organization or business or professional organization.

.03 Meaning of “Found.” The term “found” as used in paragraph (a)(1)(A) of this Rule includes among other formal findings, adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include informal agreements, deficiency letters, examination reports, memoranda of understanding, cautionary actions, admonishments and similar informal resolutions of matters. For example, a Letter of Acceptance, Waiver and Consent or an Offer of Settlement is considered an adverse final action. The term “found” also includes any formal finding, regardless of whether the finding will be appealed. The term “found” does not include a violation of a self-regulatory organization rule that has been designated as “minor” pursuant to a plan approved by the SEC, if the sanction imposed consists of a fine of \$2,500 or less, and if the sanctioned person does not contest the fine.

.04 Meaning of “Regulatory Body.” For the purposes of this Rule, the term “regulatory body” refers to governmental regulatory bodies and authorized non-governmental regulatory bodies, such as the Financial Services Authority.

.05 Reporting of Individual and Related Events. With respect to a reportable event under paragraphs (a) or (b) of this Rule, members should not report the same event under more than one paragraph or subparagraph. Members should report the event under the most appropriate paragraph or subparagraph. However, members should be aware that they may be required to report related events under more than one paragraph or subparagraph. For instance, if a member is named as a respondent in a proceeding brought by a self-regulatory organization alleging the violation of the self-regulatory

organization's rules, the member would be required to report that event under paragraph (a)(1)(C) of this Rule. In addition, if the member subsequently is found to have violated the self-regulatory organization's rules, the member would be required to report that finding under paragraph (a)(1)(A) of this Rule.

.06 Calculation of Monetary Thresholds. For purposes of paragraph (a)(1)(G) of this Rule, when determining the dollar amount that would require a report, members must include any attorneys fees and interest in the total amount. In addition if the parties are subject to "joint and several" liability, the amount for each party must be aggregated and reported, if above the dollar thresholds under paragraph (a)(1)(G), as if each party is separately liable for the aggregated amount. For instance, if two parties have "joint and several" liability for \$40,000, the amount reported would be \$40,000 for each party.

.07 Former Associated Persons. For purposes of paragraphs (a), (b) and (d) of this Rule, members should report an event relating to a former associated person if the event occurred while the individual was associated with the member.

.08 Customer Complaints. Any written customer complaint reported under paragraph (a)(1)(B) of this Rule also must be reported pursuant to paragraph (d) of this Rule.

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**Text of Incorporated NYSE Rule
to Remain in the Transitional Rulebook**

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Rule 351. Reporting Requirements

(a) **Reserved.** [Each member not associated with a member organization and each member organization shall promptly report to the Exchange whenever such member

or member organization, or any member or registered or non-registered employee associated with such member or member organization:]

[(1) has violated any provision of any securities law or regulation, or any agreement with or rule or standards of conduct of any governmental agency, self-regulatory organization, or business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade or detrimental to the interests or welfare of the Exchange;]

[(2) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;]

[(3) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any provision of the Securities Exchange Act of 1934, or of any other Federal or state securities, insurance, or commodities statute, or of any rule or regulation thereunder, or of any agreement with, or of any provision of the constitution, rules or similar governing instruments of, any securities, insurance or commodities regulatory or self-regulatory organization;]

[(4) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member or member organization of any such self-regulatory organization;]

[(5) is arrested, arraigned, indicted or convicted of, or pleads guilty to, pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offenses, or substantially equivalent activity in a domestic, military or foreign court;]

[(6) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of, or pleaded no contest to, any felony or misdemeanor;]

[(7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when a member organization is the defendant or respondent, then the reporting to the Exchange shall be required only when such judgment, award or settlement is for an amount exceeding \$25,000;]

[(8) is the subject of any claim for damages by a customer, broker or dealer which is settled for an amount exceeding \$15,000. However, when the

claim for damages is against a member organization, then the reporting to the Exchange shall be required only when such claim is settled for an amount exceeding \$25,000;]

[(9) is, or learns that he is associated in any business or financial activity with any person who is, subject to a “statutory disqualification” as that term is defined in the Securities Exchange Act of 1934.]

[(10) is the subject of any disciplinary action taken by the member or member organization against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or any other significant limitation on activities.]

(b) **Reserved.** [Each member associated with a member organization and each registered or non-registered employee of a member or member organization shall promptly report the existence of any of the conditions set forth in paragraph (a) of this rule to the member or member organization with which such person is associated.]

(c) **Reserved.** [Each approved person shall promptly report to the member organization with which such approved person is associated, whenever such approved person becomes subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; and upon being so notified, or otherwise learning such fact, the member or member organization shall promptly so advise the Exchange in writing, giving the name of the person subject to the statutory disqualification and details concerning the disqualification.]

(d) **Reserved.** [At such intervals and in such detail as the Exchange shall specify, each member not associated with a member organization and each member organization

shall report to the Exchange statistical information regarding customer complaints relating to such matters as may be specified by the Exchange. For the purpose of this paragraph (d), “customer” includes any person other than a broker or dealer.]

(e) through (f) No Change.

••• **Supplementary Material:** -----

.10 Reserved. [Any report required pursuant to paragraphs (a), (b) or (d) of this Rule 351 shall be submitted to the Exchange on a form or forms prescribed by the Exchange.]

.11 through .12 No Change.

.13 Reserved. [The term “customer complaint” shall mean any written statement of a customer, or any person acting on behalf of a customer, other than a broker or dealer, alleging a grievance involving the activities of those persons under the control of a member organization.]

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