

Exhibit 5

Text of the Proposed Rule Change

Underlining indicates additions; [brackets] indicate deletions

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**Rule 210. Liability for Payment of Fees**

(a) A Member that does not pay any dues, fees, assessments, charges, fines or other amounts due to the Exchange within thirty (30) days after they have become payable shall be reported to the President, who may, after giving reasonable notice to the Member of such arrearages, suspend the Member's trading privileges until payment is made. Should payment not be made within six (6) months after payment is due, the Membership may be disposed of by the Exchange in accordance with Rule [310(b)] 307(b).

(b) no change

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**Rule 312. Limitation on Affiliation between the Exchange and Members**

[(a)] Without prior SEC approval, the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated shall not, directly or indirectly through one or more intermediaries, acquire or maintain an ownership interest in a Member or non-member owner. In addition, a Member or non-member owner shall not be or become an affiliate of the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated. Nothing in this rule shall prohibit a Member or non-member owner from acquiring or holding any equity interest in ISE Holdings, Inc. that is permitted by the Certificate of Incorporation of ISE Holdings, Inc[, or Maple Merger Sub LLC that is permitted by the Limited Liability Company Agreement of Maple Merger Sub LLC]. In addition, nothing in this Rule shall prohibit any Member from being or becoming an affiliate of the Exchange, or any facility of the Exchange, or an affiliate of any affiliate of the Exchange or any facility of the Exchange solely by reason of any officer, director or partner of such Member being or becoming an Exchange Director (as defined in the Constitution) pursuant to the Constitution.

[(b)] For so long as the Exchange is affiliated with Direct Edge ECN LLC or Direct Edge ECN LLC is a facility of the Exchange, each of the Exchange and Direct Edge ECN LLC shall undertake as follows:

(1) FINRA, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 of the Act with the responsibility for examining Direct Edge ECN LLC for compliance with applicable financial

responsibility rules.

(2) The Exchange shall (a) enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization (“SRO”) to relieve the Exchange of regulatory responsibilities for Direct Edge ECN LLC with respect to rules that are common rules between the Exchange and the SRO, and (b) enter into a regulatory services contract with a non-affiliated SRO to perform regulatory responsibilities for Direct Edge ECN LLC for unique Exchange rules.

(3) The regulatory services contract in paragraph 2(b) shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively, “Exceptions”) in which Direct Edge ECN LLC is identified as a participant that has potentially violated Exchange or SEC rules, and shall require that the non-affiliated SRO provide a report to the Exchange quantifying Exceptions on not less than a quarterly basis.

(4) The Exchange, on behalf of Direct Edge Holdings LLC, shall establish and maintain procedures and internal controls reasonably designed to ensure that Direct Edge ECN LLC does not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of its affiliation with the Exchange until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.

(5) In the event that Direct Edge ECN LLC acts as an introducing broker for subscribers of Direct Edge ECN LLC who are not members of the Exchange, then Direct Edge ECN LLC’s role as introducing broker is limited to its role as introducing broker to Direct Edge ECN LLC.

(6) Direct Edge ECN LLC will not engage in any business other than operating as an ECN and other than acting as an introducing broker as described above.

(7) The affiliation of Direct Edge ECN LLC is subject to this paragraph (b) and is granted on a temporary basis, for not longer than one year from December 22, 2008.

(c) For so long as (i) ISE Holdings, Inc. or other affiliate of the Exchange maintains an ownership interest in Ballista Securities LLC; and (ii) Ballista Securities LLC remains a Member of the Exchange, the Exchange shall undertake as follows:

(1) FINRA, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 of the Act with the responsibility for examining Ballista Securities LLC for compliance with applicable financial responsibility rules.

(2) The Exchange shall (a) enter into a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated SRO to relieve the Exchange of regulatory responsibilities for Ballista Securities LLC with respect to rules that are common rules between the Exchange and the SRO, and (b) enter into a regulatory services contract with a non-affiliated SRO to perform certain regulatory responsibilities for Ballista Securities LLC for unique Exchange rules.

(3) The regulatory services contract in paragraph 2(b) shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all Exceptions in which Ballista Securities LLC is identified as a participant that has potentially violated Exchange or SEC rules, and shall require that the nonaffiliated SRO provide a report to the Exchange quantifying Exceptions on not less than a quarterly basis.

(4) The Exchange and Ballista Securities LLC, shall establish and maintain procedures and internal controls reasonably designed to ensure that Ballista Securities LLC and its affiliates do not have access to nonpublic information relating to the Exchange, obtained as a result of ISE Holdings' ownership interest in Ballista Securities LLC, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.

(5) The ownership interest of ISE Holdings, Inc. in Ballista Securities LLC is subject to this paragraph (c) and is granted on a temporary basis, for not longer than one year from September 1, 2009.]

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#### **Rule 604. Continuing Education for Registered Persons**

(a) no change

(b) In-house Delivery of Regulatory Element: Members will be permitted to administer the Regulatory Element of the Continuing Education program to their registered persons by instituting a firm program acceptable to the Exchange. The following procedures are required:

(1) – (5) no change

(6) Administration. All appointments will be scheduled in advance using the procedures and software specified by the Exchange, its agent or designated vendor to communicate with the Proctor system and [the NASD's] FINRA's CRD System. The Member/proctor will conduct each session in accordance with the administrative and appointment scheduling procedures required by the Exchange or its designated vendor. A sign-in log will be maintained at the delivery facility. Logs will contain the date of each session, the name and social security number of the individual taking the session, that required identification was checked, the sign-in time, the sign-out time, and the name of the individual proctoring the session. Such logs are required to be retained pursuant to Securities Exchange Act of 1934 Rules 17a-3 and 17a-4. No material will be permitted to be utilized for the session nor may any session-related material be removed. Delivery sites will be made available for inspection by the SROs. Before commencing in-firm delivery of the Regulatory Element continuing education, Members are required to file with their Designated Examining Authority ("DEA"), a letter of attestation (as specified below) signed by a senior officer or partner, attesting to the establishment of required procedures addressing senior officer or partner in-charge, supervision, site, technology, proctors, and administrative requirements.

Letter of Attestation for In-Firm Delivery of Regulatory Element Continuing Education

[[Name of senior officer or partner]] (Name of senior officer or partner) has established procedures for delivering Regulatory Element continuing education on its premises. I have determined that these procedures are reasonably designed to comply with SRO requirements pertaining to in-firm delivery of Regulatory Element continuing education, including that such procedures have been implemented to comply with senior officer or partner in-charge, supervision, site, technology, proctors, and administrative requirements.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title [[Must be signed by a Principal Executive Officer (or Executive Representative) of the firm]] (Must be signed by a Principal Executive Officer (or Executive Representative) of the firm)

\_\_\_\_\_  
Date.

(7) – (8) no change

(c) no change

\* \* \* \* \*

**Rule 704. Collection and Dissemination of Quotations**

(a) Each market maker shall communicate to the Exchange its bid and offers in accordance with the requirements of Rule [11Ac1-1] 602 of Regulation NMS under the Exchange Act and the Rules of the Exchange.

(b) The Exchange will disseminate to quotation vendors the highest bid and the lowest offer, and the aggregate quotation size associated therewith that is available to Public Customer Orders, in accordance with the requirements of Rule [11Ac1-1] 602 of Regulation NMS under the Exchange Act.

(c) no change

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**Rule 713. Priority of Quotes and Orders**

(a) *Definitions.* As provided in Rule 100(a)(4) and (a)(29), a “bid” is a quotation or limit order to buy options contracts and an “offer” is a quotation or limit order to sell options contracts. “Quotations,” which are defined in Rule [100(a)(35)] 100(a)(42), may only be entered on the Exchange by market makers in the options classes to which they are appointed under Rule 802. Limit orders may be entered by market makers in certain circumstances as provided in the Rules and Electronic Access Members (either as agent or as principal). “Priority Customer Orders” and “Professional Orders” are defined in Rule 100(a)(37B) and (37C).

(b) – (f) no change

***Supplementary Material to Rule 713***

.01 – .02 no change

.03 Preferred Orders. An Electronic Access Member may designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”).

(a) – (c) no change

(d) Preferred Competitive Market Makers are subject to enhanced quoting requirements as provided in Rule 804(e)(2)(iii).

.04 no change

\* \* \* \* \*

### **Rule 715. Types of Orders**

(a) – (f) no change

(g) Reserve Orders. A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion.

1. – 4. no change

5. The initial non-displayed portion of a Reserve Order rests on the order book and is ranked based on the specified limit price and time of order entry. Thereafter, non-displayed portions, if any, always obtain the same time stamp as that of the new displayed portion in subparagraph 4 above. The non-displayed portion of any Reserve Order is available for execution only after all displayed interest has been executed. The non-displayed portion of any Reserve Order will trade in accordance with Rule 713(c) and (d) for Priority Customer Orders, and Rule 713(e) and Supplementary Material .01, for Professional Orders.

(h) – (m) no change.

(n) Add Liquidity [Only] Order. An Add Liquidity O[nly o]rder is a limit order that is to be executed in whole or in part on the Exchange (i) only after being displayed on the Exchange's limit order book; and (ii) without routing any portion of the order to another market center. Members may specify whether an Add Liquidity O[nly o]rder shall be cancelled or re-priced to the minimum price variation above the national best bid price (for sell orders) or below the national best offer price (for buy orders) if, at the time of entry, the order (i) is executable on the Exchange; or (ii) the order is not executable on the Exchange, but would lock or cross the national best bid or offer. If at the time of entry, an Add Liquidity O[nly o]rder would lock or cross one or more non-displayed orders on the Exchange, the Add Liquidity O[nly o]rder shall be cancelled or re-priced to the minimum price variation above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders). An Add Liquidity O[nly o]rder will only be re-priced

once and will be executed at the re-priced price. An Add Liquidity Order will be ranked in the Exchange's limit order book in accordance with Rule 713.

(o) Opening Only Order. An Opening Only order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled.

(p) Good-Till-Date Order. A Good-Till-Date Order is a limit order to buy or sell which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series.

(q) Minimum Quantity Order. A Minimum Quantity Order is an order that is initially available for partial execution only for a specified number of contracts or greater. A member may specify whether any subsequent executions of the order must also be for the specified number of contracts or greater, or if the balance may be executed as a regular order. If all executions are to be for the specified number of contracts or greater and the balance of the order after one or more partial execution(s) is less than the minimum, such balance is treated as all-or-none.

### **Supplementary Material to Rule 715**

.01 no change

[.02 The following order types only are available for options traded on the new trading platform:

(a) Opening Only Order. An Opening Only order is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled.

(b) Good-Till-Date Order. A Good-Till-Date Order is a limit order to buy or sell which, if not executed, will be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series.

(c) Minimum Quantity Order. A Minimum Quantity Order is an order that is initially available for partial execution only for a specified number of contracts or greater. A member may specify whether any subsequent executions of the order must also be for the specified number of contracts or greater, or if the balance may be executed as a regular order. If all executions are to be for the specified number of contracts or greater and the balance of the order after one or more partial execution[s] is less than the minimum, such balance is treated as all-or-none.]

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**Rule 718. [Accommodation Liquidations (Cabinet Trades)]  
Reserved**

[Cabinet trading under the following terms and conditions shall be available in each series of options contracts open for trading on the Exchange:

(a) Trading shall be conducted in accordance with other Exchange Rules except as otherwise provided herein.

(b) Limit orders valued at a price of \$1 per options contract must be placed on the Exchange using the Cabinet Trading Mechanism.

(c) Opening transactions at a value of \$1 per options contract may be placed on the Exchange using the Cabinet Trading Mechanism only to the extent that the order book in Cabinet Trades contains unexecuted contract closing orders with which the opening orders immediately may be matched.

(d) Orders in Cabinet Trades may be placed for Public Customer, Broker-Dealer and Market Maker accounts, with priority based upon the sequence in which such orders are placed on the Exchange.

(e) Primary Market Makers shall not be subject to the requirements of Rule 803 for orders placed pursuant to this Rule.

***Supplementary Material to Rule 718***

.01 Cabinet Trading, as provided in ISE Rule 718, is not available for options traded on the new trading platform.]

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**Rule 722. Complex Orders**

(a) – (b) no change.

***Supplementary Material to Rule 722***

.01 - .02 no change.

.03 *Market Maker Quotes*. [For options traded on the Optimise platform, m]Market makers may enter quotes for complex order strategies on the complex order book in their appointed options classes. Market Maker quotes for complex order strategies are executed in the same manner as orders as provided in

paragraph (b)(3)(i) above, but will not be automatically executed against bids and offers on the Exchange for the individual legs as provided in paragraph (b)(3)(ii) nor can they be marked for price improvement as provided in paragraph (b)(3)(iii). Market makers are not required to enter quotes on the complex order book. Quotes for complex orders are not subject to any quotation requirements that are applicable to market maker quotes in the regular market for individual options series or classes, nor is any volume executed in complex orders taken into consideration when determining whether market makers are meeting quotation obligations applicable to market maker quotes in the regular market for individual options series.

.04 *Automated Spread Quotation Adjustments.* [For options traded on the Optimise platform, a]A market maker may establish parameters by which the Exchange will automatically remove a market maker's quotations in all complex order strategies in an options class if the market maker trades on the complex order book, in the aggregate across all series of an options class during a specified time period: (i) a specified number of contracts (established by the market maker), within a time frame specified by the market maker, (ii) a specified percentage of the total size of the market maker's quotes in the class, (iii) a specified absolute value of the net between contracts bought and contracts sold in the class, or (iv) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased.

.05 *Preferencing.* For options allocated pursuant to (b)(3)(i)(B), a market maker with a quote at the best price on the complex order book that is designated as a "Preferred Market Maker" by the Electronic Access Member entering the complex order will receive an enhanced allocation (after all [p]Priority [c]Customer [o]Orders on the complex order book at the same price have been executed in full) that is equal to the greater of:

(i) the proportion of the total size at the best price represented by the size of its quote, or

(ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price.

Preferred Market Makers on the complex order book must satisfy their quotation obligations in the options class in the regular market, including the requirements in Rule 804(e)(2)(iii) applicable to Competitive Market Makers that receive Preferred Orders.

**Rule 723. Price Improvement Mechanism for Crossing Transactions**

(a) – (c) no change.

(d) Execution. At the end of the exposure period the Agency Order will be executed in full at the best prices available, taking into consideration orders and quotes in the Exchange market, Improvement Orders, Customer Participation Orders (see Supplementary Material .06 below) and the Counter-Side Order. The Agency Order will receive executions at multiple price levels if there is insufficient size to execute the entire order at the best price.

(1) – (5) no change.

[(6) When a market order or marketable limit order on the same side of the market as the Agency Order ends the exposure period, it will execute against any unexecuted interest in the Price Improvement Mechanism after the Agency Order is executed in full, so that the market order or marketable limit order receives an opportunity for price improvement. The execution will be handled as provided in subparagraphs (1), (2) and (3) of this paragraph (d). Subparagraph (4) of this paragraph (d) will not apply.]

***Supplementary Material to Rule 723***

.01 - .04 no change

.05 Paragraphs (c)(5), and (d)(5) [and (d)(6)] will be effective for a Pilot Period expiring on July 18, 2013. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which the exposure period is terminated by unrelated orders. Any data which is submitted to the Commission will be provided on a confidential basis.

.06 - .08 no change

.09 [For options traded on the Optimise platform, paragraph (d)(6) of Rule 723 will not apply.] Counter-Side Orders and Improvement Orders entered into the Price Improvement Mechanism only will execute against the Agency Order, and any unexecuted interest will be automatically cancelled.

.10 no change.

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**Rule 802. Appointment of Market Makers**

(a) – (e) no change

***Supplementary Material to Rule 802***

.01 no change

.02 A Member that is approved to act in the capacity of a Competitive Market Maker with respect to one or more CMM Rights may voluntarily be appointed to act as an “Alternative Primary Market Maker,” so long as the Exchange has determined that such Member has the appropriate systems and procedures in place to undertake the responsibilities of a Primary Market Maker.

(a) The Exchange may appoint an Alternative Primary Market Maker to an options class only in the event that no Primary Market Makers [or Second Market Primary Market Makers] seek allocation of the security.

(b) If no Primary Market Makers [or Second Market Primary Market Makers] seek allocation of an options class, all eligible Competitive Market Makers will be given notice and an opportunity to seek allocation of the security as an Alternative Primary Market Maker. Such allocations will be made by the Allocation Committee according to the guidelines contained in Rule 802.

(c) An Alternative Primary Market Maker shall have all of the responsibilities and privileges of a Primary Market Maker under the Rules with respect to all appointed options classes.

(d) [Options classes allocated to Alternative Primary Market Makers may be traded in the Second Market as provided in Chapter 9 of the Rules.

(e)] If an Alternative Primary Market Maker ceases trading of an options class, the class will be reallocated by the Exchange to a Primary Market Maker or another Alternative Primary Market Maker, as appropriate.

.03 no change.

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**Rule 804. Market Maker Quotations**

(a) – (f) no change

[(g) *Automated Quotation Adjustments.* A market maker may establish parameters by which the Exchange will automatically restate:

(1) the prices of a market maker's quotations in all series of an options class, at prices specified by the market maker, if the market maker trades, in the aggregate, a specified number of contracts (established by the market maker), within an Exchange-established time frame, in that class;

(2) the price of a market maker's quotations in an options series if the number of contracts that the market maker is willing to buy or sell at a specified price is exhausted; and

(3) the size of a market maker's quotation in an options series to the minimum number of contracts determined by the Exchange on a class by class basis, which minimum shall be at least one contract.]

(g) *Automated Quotation Adjustments.* A market maker may establish parameters by which the Exchange will automatically remove a market maker's quotations in all series of an options class if the market maker trades, in the aggregate across all series of an options class during a specified time period: (i) a specified number of contracts (established by the market maker), within a time frame specified by the market maker, (ii) a specified percentage of the total size of the market maker's quotes in the class, (iii) a specified absolute value of the net between contracts bought and contracts sold in the class, or (iv) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased.

(h) no change

***[Supplementary Material to Rule 804***

.01 Automated Quotation Adjustments. For options traded on new trading platform, a market maker may establish parameters by which the Exchange will automatically remove a market maker's quotations in all series of an options class if the market maker trades, in the aggregate across all series of an options class during a specified time period: (i) a specified number of contracts (established by the market maker), within a time frame specified by the market maker, (ii) a specified percentage of the total size of the market maker's quotes in the class, (iii) a specified absolute value of the net between contracts bought and contracts sold in the class, or (iv) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased.]

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### **Rule 1503. Failure to Obtain Reinstatement**

If a Member suspended under the provisions of this Chapter fails or is unable to apply for reinstatement in accordance with Rule 1502, or fails to obtain reinstatement as therein provided, his or its Membership shall be disposed of by the Exchange in accordance with Rule [307(a)(2)] 307(b), unless such Member sells or leases such Membership.

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### **Rule 1615. Disciplinary Functions**

The Exchange may contract with another SRO to perform some or all of the Exchange's disciplinary functions. In that event, the Exchange shall specify to what extent the Rules in this Chapter shall govern Exchange disciplinary actions and to what extent the rules of the other SRO shall govern such actions. Notwithstanding the fact that the Exchange may contract with another SRO to perform some or all of the Exchange's disciplinary functions, the Exchange shall retain ultimate legal responsibility for and control of such functions.

#### ***Supplemental Material to Rule 1615***

.01 The Exchange has entered into a contract with [NASD Regulation] FINRA to provide professional hearing officers and to act as an agent of the Exchange with respect to the disciplinary procedures contained in this Chapter. All of the Rules in this Chapter shall govern Exchange disciplinary actions. Under Rule 1606(a), the professional hearing officer is designated as the Chairman of the Panel. Under Rule 1606(e), the Panel Chairman has the sole responsibility to determine the time and place of all meetings of the Panel, and make all determinations with regard to procedural or evidentiary matters, as well as prescribe the time within which all documents, exhibits, briefs, stipulations, notices or other written materials must be filed where such is not specified in the Rules. In the course of discharging his responsibilities hereunder, the professional hearing officer shall apply the standards contained in [the NASD] FINRA's Code of Procedure, and policies, practices and interpretations thereof, so long as the Rules in this Chapter are not in conflict.

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## **CHAPTER 18**

### **Arbitration**

## **Rule 1800. Arbitration**

(a) *General.* [The 10000 Series of the NASD Manual (“NASD Code of Arbitration”)] The Rule 12000 Series and Rule 13000 Series of the FINRA Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes) (the “FINRA Code of Arbitration”), as the same may be in effect from time to time, shall govern Exchange arbitrations except as may be specified in this Rule 1800. Definitions in the [NASD] FINRA Code of Arbitration shall have the same meaning as that prescribed therein, and procedures contained in the [NASD] FINRA Code of Arbitration shall have the same application as toward Exchange arbitrations.

(b) *Jurisdiction.* Any dispute, claim, or controversy arising out of or in connection with the business of any Member of the Exchange, or arising out of the employment or termination of employment of associated person(s) with any Member may be arbitrated under this Rule 1800 except that (1) a dispute, claim, or controversy alleging employment discrimination (including a sexual harassment claim) in violation of a statute may only be arbitrated if the parties have agreed to arbitrate it after the dispute arose; and (2) any type of dispute, claim, or controversy that is not permitted to be arbitrated under the [NASD] FINRA Code of Arbitration, such as class action claims, shall not be eligible for arbitration under this Rule 1800.

(c) *Predispute Arbitration Agreements.* The requirements of [NASD Rule IM-3110(f)] FINRA Rule 2268 shall apply to predispute arbitration agreements between Members and their customers.

(d) *Referrals.* If any matter comes to the attention of an arbitrator during and in connection with the arbitrator’s participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange’s Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Exchange for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to Rule [10330] 12904 or Rule 13904 (as applicable) of the [NASD] FINRA Code of Arbitration.

(e) – (f) no change

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## **Rule 2114. Doing Business with the Public**

An Equity EAM that does business with the public must also be a member of [the NASD] FINRA.

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