

**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

**2090A. Know Your Customer**

Nasdaq members shall comply with FINRA Rule 2090 as if such rule were part of Nasdaq's rules.

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**[2310] 2111A. [Recommendations to Customers (]Suitability[]]**

(a) Nasdaq members and associated persons of a member shall comply with [NASD Rule 2310] FINRA Rule 2111 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule[,];

(1) References to Rules 2111 and 4512 [3110] shall be construed as references to Nasdaq Rules 2111A and 4512A, respectively [3110];

(2) References to "FINRA's rules" shall be construed as references to "Nasdaq Rules"; and

(3) References to IM-2210-6 shall be disregarded, and no comparable Nasdaq Rule shall apply to activities of Nasdaq Members in connection with investment analysis tools.

**[IM-2310-1. Reserved]****[IM-2310-2. Fair Dealing with Customers**

(a) Nasdaq members and associated persons of a member shall comply with NASD Interpretive Material 2310-2 (Except NASD IM-2310-2(e)(1) and (2)) as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) References to "the Association's Rules" or "Association Rules" shall be construed as references to "the Nasdaq Rules",

(2) References to interpretations and actions of NASD District Business Conduct Committees and the NASD Board of Governors shall be construed to reflect the policy of Nasdaq with respect to the application of Rule 2310, and

(3) References to the "Association" shall be construed as references to "Nasdaq".]

**[IM-2310-3. Suitability Obligations to Institutional Customers**

(a) Nasdaq members and associated persons of a member shall comply with NASD Interpretive Material 2310-3 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule, references to the "Association" shall be construed as references to "Nasdaq".]

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**[2320] 5310A. Best Execution and Interpositioning**

(a) Nasdaq Members shall comply with FINRA Rule 5310 as if such Rule were part of Nasdaq's Rules.

(b) For purposes of this Rule:

(1) References to NASD Rule 2440 and IM-2440 shall be disregarded;

(2) References to FINRA members shall be construed as references to Nasdaq members; and

(3) References to FINRA shall be construed as references to Nasdaq.

[In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member has used "reasonable diligence" are:

(1) The character of the market for the security, e.g., price, volatility, relative liquidity, and pressure on available communications;

(2) the size and type of transaction;

(3) The number of primary markets checked;

(4) Accessibility of the quotation; and

(5) The terms and conditions of the order which result in the transactions, as communicated to the member and persons associated with the member.

(b) In any transaction for or with a customer, no member or person associated with a member shall interject a third party between the member and the best available market except in cases where the member can demonstrate that to his or her knowledge at the time of the transaction the total cost or proceeds of the transaction, as confirmed to the member acting for or with the customer, was better than the prevailing market for the security. A member's obligations to his or

her customer are generally not fulfilled when he or she channels transactions through another broker/dealer or some person in a similar position, unless he or she can show that by so doing he or she reduced the costs of the transactions to the customer.

(c) When a member cannot execute directly with a market maker but must employ a broker's broker or some other means in order to insure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the retail firm. Examples of acceptable circumstances are where a customer's order is "crossed" with another retail firm which has a corresponding order on the other side, or where the identity of the retail firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer.

(d) Failure to maintain or adequately staff an order room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business operate to relieve a member of his or her obligations. However, the channeling of customers' orders through a broker's broker or third party pursuant to established correspondent relationships under which executions are confirmed directly to the member acting as agent for the customer, such as where the third party gives up the name of the retail firm, are not prohibited if the cost of such service is not borne by the customer.

(e) A member through whom a retail order is channeled, as described above, and who knowingly is a party to an arrangement whereby the initiating member has not fulfilled his or her obligations under this Rule, will also be deemed to have violated this Rule.

(f) The obligations described in paragraphs (a) through (e) above exist not only where the member acts as agent for the account of his or her customer but also where retail transactions are executed as principal and contemporaneously offset.]

### **[IM-2320. Interpretive Guidance with Respect to Best Execution Requirements**

Rule 2320(a) requires, among other things, that a member or person associated with a member comply with Rule 2320(a) when customer orders are routed to it from another broker/dealer for execution. This Interpretive Material addresses certain interpretive questions concerning the applicability of the best execution rule.

For the purposes of Rule 2320, the term "market" or "markets" is to be construed broadly and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security. This expansive interpretation is meant to both inform broker/dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best execution obligations and to promote fair competition among broker/dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a firm's best execution obligations.

A member's duty to provide best execution in any transaction "for or with a customer of another broker/dealer" does not apply in instances when another broker/dealer is simply executing a customer order against the member's quote. Stated in another manner, the duty to provide best execution to customer orders received from other broker/dealers arises only when an order is routed from the broker/dealer to the member for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in which the member is acting solely as the buyer or seller in connection with orders presented by a broker/dealer against the member's quote, as opposed to those circumstances in which the member is accepting order flow from another broker/dealer for the purpose of facilitating the handling and execution of such orders.]

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**[3060] 3220A. Influencing or Rewarding Employees of Others**

Nasdaq Members and persons associated with a member shall comply with [NASD Rule 3060] FINRA Rule 3220 as if such Rule were part of Nasdaq's Rules.

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**[3090] 2070A. Transactions Involving Nasdaq Employees**

(a) When a member has actual notice that a Nasdaq employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to Nasdaq.

(b) No member shall directly or indirectly make any loan of money or securities to any Nasdaq employee. Provided, however, that this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

(c) Notwithstanding the annual dollar limitation set forth in Nasdaq Rule [3060] 3220A, no member shall directly or indirectly give, or permit to be given, anything of more than nominal value to any Nasdaq employee who has responsibility for a regulatory matter that involves the member. For purposes of this subsection, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.