

**EXHIBIT 5**

*Proposed new text is underlined; deleted language in brackets.*

**NASDAQ PHLX Rules****Rules of the Exchange**

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**Options Rules**

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**Rule 1017. Openings In Options**

(a) Definitions. The Exchange conducts an electronic opening for all option series traded on Phlx using its trading system ("system").

- (i) The Opening Process is described herein in section (d).
- (ii) The Opening Price is described herein in sections (i) and (k).
- (iii) Potential Opening Price is described herein in section (h).
- (iv) The ABBO is the Away Best Bid or Offer.
- (v) The market for the underlying security is either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the membership on the Exchange's web site.
- (vi) A Phlx Electronic Market Maker is a Specialist, Streaming Quote Trader ("SQT") or Remote SQT ("RSQT") who is required to submit continuous two-sided electronic quotations pursuant to Rule 1014(b)(ii)(D).]

(i) The ABBO is the Away Best Bid or Offer.

(ii) The "market for the underlying security" is either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the membership on the Exchange's web site.

(iii) The Opening Price is described herein in sections (i) and (k).

(iv) The Opening Process is described herein in section (d).

(v) A Phlx Electronic Market Maker is a Specialist, Streaming Quote Trader ("SQT") or Remote SQT ("RSQT") who is required to submit continuous two-sided electronic quotations pursuant to Rule 1014(b)(ii)(D).

(vi) Potential Opening Price is described herein in section (h).

(vii) The Pre-Market BBO is the highest bid and the lowest offer among Valid Width Quotes.

(viii) A Quality Opening Market is a bid/ask differential applicable to the best bid and offer from all Valid Width Quotes defined in a table to be determined by the Exchange and published on the Exchange's web site. The calculation of Quality Opening Market is based on the best bid and offer of Valid Width Quotes. The differential between the best bid and offer are compared to reach this determination. The allowable differential, as determined by the Exchange, takes into account the type of security (for example, Penny Pilot versus non-Penny Pilot issue), volatility, option premium, and liquidity. The Quality Opening Market differential is intended to ensure the price at which the Exchange opens reflects current market conditions.

(ix) A Valid Width Quote is a two-sided electronic quotation submitted by a Phlx Electronic Market Maker that consists of a bid/ask differential that is compliant with Rule 1014(c)(i)(A)(1)(a).

(x) A Zero Bid Market is where the best bid for an options series is zero.

(b) Eligible interest during the Opening Process includes Valid Width Quotes, Opening Sweeps and orders. [Phlx Electronic Market Makers may submit quotes, Opening Sweeps and orders but q]Quotes other than Valid Width Quotes will not be included in the Opening Process. Non-SQT Registered Options Traders ("ROTs") may submit orders. All-or-none interest that can be satisfied is considered for execution and in determining the Opening Price throughout the Opening Process.

(i) No change.

(ii) The system will aggregate the size of all eligible interest for a particular participant category at a particular price level for trade allocation purposes pursuant to Rule 1014.

(c) No change.

(d) Phlx Electronic Market Maker Valid Width Quotes and Opening Sweeps received starting at 9:25 AM are included in the Opening Process. Orders entered at any time before an option series opens are included in the Opening Process.

(i) The Opening Process for an option series will be conducted pursuant to paragraphs (f) - (k) below on or after 9:30 AM if: the ABBO, if any, is not crossed; and the system has received, within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's web site) of the opening trade or quote on the market for the underlying security in the case of equity options or, in the case of index options, within two minutes of the receipt of the [O]opening [P]price in the underlying index (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's web site), or within two minutes of market opening for the underlying currency in the case of U.S. dollar-settled FCO (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's web site) [either] any of the following:

(A) – (C) No change.

(ii) For all options, [T]the underlying security, including indexes, must be open on the primary market for a certain time period [for all options ]as determined by the Exchange for the Opening Process to commence. The time period shall be no less than 100 milliseconds and no more than 5 seconds.

(iii) No change.

(iv) A Phlx Electronic Market Maker other than a Specialist that submits a quote pursuant to this Rule 1017 in any option series when the Specialist's quote has not been submitted shall be required to submit continuous, two-sided quotes in such option series until such time as the Specialist submits his/her quote, after which the Phlx Electronic Market Maker that submitted such quote shall be obligated to submit quotations pursuant to Rule 1014(b)(ii)(D).

(v) The Opening Process will stop and an option series will not open if the ABBO becomes crossed or when a [the requisite number of ]Valid Width Quote(s) pursuant to Rule 1017(d)(i) [are]is no longer present. Once each of these conditions no longer exist, the Opening Process in the affected option series will start again pursuant to paragraphs (f) - (k) below.

(e) No change.

(f) Opening with a PBBO (No Trade). If there are no opening quotes or orders that lock or cross each other and no routable orders locking or crossing the ABBO, the system will open with an opening quote by disseminating the Exchange's best bid and offer among quotes and orders ("PBBO") that exist in the system at that time, unless all three of the following[ three] conditions exist: (i) a Zero Bid Market; (ii) no ABBO; and (iii) no Quality Opening Market. If all of these conditions exist, the Exchange will calculate an Opening Quote Range pursuant to paragraph (j) and conduct the Price Discovery Mechanism pursuant to paragraph (k) below.

(g) No change.

(h) Potential Opening Price. To calculate the Potential Opening Price, the system will take into consideration all Valid Width Quotes[, Opening Sweeps] and orders (including Opening Sweeps), except all-or-none interest that cannot be satisfied, for the option series and identify the price at which the maximum number of contracts can trade ("maximum quantity criterion"). In addition, paragraphs (i)(iii) and (j)(5) - (7) below contain additional provisions related to Potential Opening Price.

(A) and (B) No change.

(C) The Potential Opening Price calculation is bounded [limited] by the better away market price that may not be satisfied with the Exchange routable interest.

(i) Opening with Trade. (A) The Exchange will open the option series for trading with a trade on Exchange interest only at the [at the following] Opening Price, if any of these conditions occur:

(i) – (iii) No change.

(B) If there is more than one Potential Opening Price which meets the conditions set forth in (A) above where:

(1) no contracts would be left unexecuted and

(2) any value used for the mid-point calculation (which is described in subparagraph (g) above) [that]would cross[es] either:

(a) the Pre-Market BBO, or

(b) the ABBO,

then, for the purposes of calculating the midpoint the Exchange will use the better of the Pre-Market BBO or ABBO as a boundary price and will open the option series for trading with an execution at the resulting Potential Opening Price. If these conditions are not met, an Opening Quote Range will be calculated pursuant to paragraph (j) below and thereafter, the Price Discovery Mechanism in paragraph (k) below will commence. [use the best price which the Potential Opening Price crosses as a boundary price for the purposes of the mid-point calculation.]

(j) The system will calculate an Opening Quote Range ("OQR") for a particular option series that will be utilized in the Price Discovery Mechanism described below, if the Exchange has not opened subject to any of the provisions above.

- (1) Except as provided in [sub-]paragraphs (3) and (4) below, to determine the minimum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be subtracted from the highest quote bid among Valid Width Quotes on the Exchange and on the away market(s), if any.
- (2) Except as provided in [sub-]paragraphs (3) and (4) below, to determine the maximum value for the OQR, an amount, as defined in a table to be determined by the Exchange, will be added to the lowest quote offer among Valid Width Quotes on the Exchange and on the away market(s), if any.
- (3) If one or more away markets are [have] disseminating[ed] a BBO that is not [opening quotes that are not] crossed (the Opening Process will stop and an options series will not open if the ABBO becomes crossed pursuant to (d)(v)) and there are Valid Width Quotes on the Exchange that are executable against [cross] each other or the ABBO[that cross away market quotes]:
  - (a) The minimum value for the OQR will be the highest away bid[quote bid among quotes on away market(s)].
  - (b) The maximum value for the OQR will be the lowest away offer [quote offer among quotes on away market(s)].
- (4) If there are [opening quotes ]Valid Width Quotes on the Exchange that are executable against [cross] each other, and there is no away market disseminating a BBO in the affected option series:
  - (a) and (b) No change.
- (5) If there is more than one Potential Opening Price possible where no contracts would be left unexecuted, any price used for the mid-point calculation (which is described in subparagraph (h) above) that is wider than the [through the ]OQR will be restricted to the OQR price on that side of the market for the purposes of the[is] mid-point calculation.
- (6) If there is more than one Potential Opening Price possible where no contracts would be left unexecuted [and any price used for the mid-point calculation (which is described in subparagraph (h) above) ]pursuant to paragraph (h)(C) above [an away market price] when contracts will be routed, the system will use the away market price as the Potential Opening Price.
- (7) If the Exchange determines that non-routable interest can execute the maximum number of contracts [be maximum executable] against Exchange interest, after routable interest has been determined by the system to satisfy the away market, then the Potential Opening Price is the price at which the maximum number of contracts can execute[volume], excluding the [volume]interest which will be routed to an away market, which may be executed on the Exchange as described

in paragraph (h) above. The system will consider routable Customer interest in price/time priority to satisfy the away market.

(k) Price Discovery Mechanism. If the Exchange has not opened pursuant to paragraphs (f) or (i) above, after the OQR calculation in paragraph (j), the Exchange will conduct the following Price Discovery Mechanism.

- (A) First, the system will broadcast an Imbalance Message for the affected series (which includes the symbol, side of the imbalance (unmatched contracts), size of matched contracts, size of the imbalance, and Potential Opening [p]Price bounded by [of the affected series which must be within] the Pre-Market BBO) to participants, and begin an "Imbalance Timer," not to exceed three seconds. The Imbalance Timer will be for the same number of seconds for all options traded on the Exchange. Each Imbalance Message is subject to an Imbalance Timer.
- (B) Any new interest received by the system will update the Potential Opening Price. If during or at the end of the Imbalance Timer, the Opening Price is at or within the OQR, the Imbalance Timer will end and the system will [execute at]open with a trade at the Opening Price if the executions consist of Exchange interest only without trading through the ABBO and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price. If no new interest comes in during the Imbalance Timer and the Potential Opening Price is at or within OQR and does not trade through the ABBO, the Exchange will open with a trade at the end of the Imbalance Timer at the Potential Opening Price.
- (C) Next, provided the option series has not opened pursuant to (k)(B) above, the system will:
- (1) send a second Imbalance Message with a Potential Opening Price that is bounded by the OQR ([without trading ]and would not trade through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price) and includes away market volume in the size of the imbalance to participants; and concurrently
  - (2) initiate a Route Timer, not to exceed one second. The Route Timer operates as a pause before an order is routed to an away market. If during the Route Timer, interest is received by the system which would allow the Opening Price to be within OQR without trading through [other]away markets and without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price, the system will open with trades and the Route Timer will simultaneously end. The system will monitor quotes received during the Route Timer period and make ongoing corresponding changes to the permitted OQR and Potential Opening Price to reflect them.

(3) If no trade occurred pursuant to (2) above, [W]when the Route Timer expires, if the Potential Opening Price is within OQR (and would not trade [without trading] through the limit price(s) of interest within OQR that is unable to be fully executed at the Opening Price), the system will determine if the total number of contracts displayed at better prices than the Exchange's Potential Opening Price on away markets ("better priced away contracts") would satisfy the number of marketable contracts available on the Exchange. The Exchange will open the option series by routing and/or trading on the Exchange, pursuant to (i)-(iii) below.

(i) If the total number of better priced away contracts [displayed at better prices than the Exchange's Potential Opening Price on away markets ("better priced away contracts")] would satisfy the number of marketable contracts available on the Exchange on either the buy or sell side, the system will route all marketable contracts on the Exchange to such better priced away markets as an Intermarket Sweep Order ("ISO") designated as an Immediate-or-Cancel ("IOC") order(s), and determine an opening Phlx Best Bid/Offer ("PBBO") that reflects the interest remaining on the Exchange. The system will price any contracts routed to away[to other] markets at the Exchange's Opening Price; or

(ii) If the total number of better priced away contracts would not satisfy the number of marketable contracts the Exchange has, the system will determine how many contracts it has available at the Exchange Opening Price. If the total number of better priced away contracts plus the number of contracts available at the Exchange Opening Price would satisfy the number of marketable contracts on the Exchange on either the buy or sell side, the system will contemporaneously route, based on price/time priority of routable interest, a number of contracts that will satisfy interest at [other] away markets at prices better than the [Phlx ]Opening Price and trade available contracts on the Exchange at the Exchange Opening Price. The system will price any contracts routed to [other ]away markets at the better of the Exchange Opening Price or the order's limit price pursuant to this sub-paragraph [at the Exchange Opening Price]; or

(iii) If the total number of better priced away contracts plus the number of contracts available at the Exchange Opening Price plus the contracts available at [other]away markets at the Exchange Opening Price would satisfy the number of marketable contracts the Exchange has on either the buy or sell side, the system will contemporaneously route, based on price/time priority of routable interest, a number of contracts that will satisfy interest at [other]away markets at prices better than the Exchange Opening Price (pricing any contracts routed to [other]away markets at the better of the Exchange Opening Price or the order's limit price), trade available contracts on the Exchange at the Exchange Opening Price, and route a

number of contracts that will satisfy interest at [other]away markets at prices equal to the Exchange Opening Price.

- (4) The system may send up to two additional Imbalance Messages (which may occur while the Route Timer is operating) bounded by OQR and reflecting away market interest in the volume. After the Route Timer has expired, the processes in [sub]paragraph (3) will repeat (except no new Route Timer will be initiated).

(5) Forced Opening. After all additional Imbalance Messages have occurred pursuant to paragraph (4) above, the system will open the series by executing as many contracts as possible by routing to [other]away markets at prices better than the Exchange Opening Price for their disseminated size, trading available contracts on the Exchange at the Exchange Opening Price bounded by OQR (without trading through the limit price(s) of interest within OQR which is unable to be fully executed at the Opening Price), and routing contracts to [other]away markets at prices equal to the Exchange Opening Price at their disseminated size. In this situation, the system will price any contracts routed to [other]away markets at the better of the Exchange Opening Price or the order's limit price. Any unexecuted contracts from the imbalance not traded or routed will be cancelled back to the entering participant if they remain unexecuted and priced through the Opening Price, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. All other interest will be eligible for trading after opening.

- (6) No change.

(D) The system will: (1) re-price Do Not Route orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to a price that is one minimum trading increment inferior to the ABBO, and (2) disseminate the re-priced DNR Order as part of the new PBBO.

- (E) During the opening of the option series, where there is an execution possible, [T]the system will give priority to market orders first, [in time priority,] then to resting limit orders and quotes. The allocation provisions of Rule 1014(g)(vii) will apply.

- (F) Upon opening of an [When the] option series[ opens], regardless of an execution, the system disseminates the price and size of the Exchange's best bid and offer (PBBO).

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