

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
(NASD Rules 2420, IM-2420-1 and IM-2420-2 to be Deleted in
their Entirety from the Transitional Rulebook)**

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0100. GENERAL STANDARDS

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**0190. Effective Date of Revocation, Cancellation, Expulsion, Suspension or
Resignation**

(a) A member shall be considered as a non-member of FINRA from the effective date of any order or notice from FINRA or the SEC issuing a revocation, cancellation, expulsion or suspension of its membership. In the case of suspension, a member shall be automatically reinstated to membership in FINRA at the termination of the suspension period.

(b) A member shall be considered as a non-member of FINRA from the date of acceptance by FINRA of any resignation of such member.

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2000. DUTIES AND CONFLICTS

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2040. Payments to Unregistered Persons

(a) General

No member or associated person shall, directly or indirectly, pay any compensation, fees, concessions, discounts, commissions or other allowances to:

(1) any person that is not registered as a broker-dealer under Section 15(a) of the Exchange Act but, by reason of receipt of any such payments and the activities related thereto, is required to be so registered under applicable federal securities laws and SEA rules and regulations; or

(2) any appropriately registered associated person unless such payment complies with all applicable federal securities laws, FINRA rules and SEA rules and regulations.

(b) Retiring Representatives

(1) A member may pay continuing commissions to a retiring registered representative of the member, after he or she ceases to be associated with such member, that are derived from accounts held for continuing customers of the retiring registered representative regardless of whether customer funds or securities are added to the accounts during the period of retirement, provided that:

(A) a bona fide contract between the member and the retiring registered representative providing for the payments was entered into in good faith while the person was a registered representative of the member and such contract, among other things, prohibits the retiring registered

representative from soliciting new business, opening new accounts, or servicing the accounts generating the continuing commission payments; and

(B) the arrangement complies with applicable federal securities laws, SEA rules and regulations.

(2) The term “retiring registered representative,” as used in this Rule shall mean an individual who retires from a member (including as a result of a total disability) and leaves the securities industry. In the case of death of the retiring registered representative, the retiring registered representative’s beneficiary designated in the written contract or the retiring registered representative’s estate if no beneficiary is so designated may be the beneficiary of the respective member’s agreement with the deceased representative.

(c) Nonregistered Foreign Finders

A member may pay to a nonregistered foreign person (the “finder”) transaction-related compensation based upon the business of customers the finder directs to the member if the following conditions are met:

(1) the member has assured itself that the finder who will receive the compensation is not required to register in the United States as a broker-dealer nor is subject to a disqualification as defined in Article III, Section 4 of FINRA’s By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(2) the finder is a foreign national (not a U.S. citizen) or foreign entity domiciled abroad;

(3) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

(4) customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act, that discloses what compensation is being paid to finders;

(5) customers provide written acknowledgment to the member of the existence of the compensation arrangement and such acknowledgment is retained and made available for inspection by FINRA;

(6) records reflecting payments to finders are maintained on the member's books, and actual agreements between the member and the finder are available for inspection by FINRA; and

(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

••• Supplementary Material: -----

.01 Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act. For purposes of Rule 2040, FINRA expects members to determine that their proposed activities would not require the recipient of the payments to register as a broker-dealer and to reasonably support such determination. Members that are uncertain as to whether an unregistered person may be required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member can derive support for their determination by, among other things, (1) reasonably relying on previously published releases, no-action letters or interpretations from the Commission or Commission staff that apply to their facts and circumstances; (2) seeking a no-action

letter from the Commission staff; or (3) obtaining a legal opinion from independent, reputable U.S. licensed counsel knowledgeable in the area. The member's determination must be reasonable under the circumstances and should be reviewed periodically if payments to the unregistered person are ongoing in nature. In addition, a member must maintain books and records that reflect the member's determination.

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Amendment to FINRA Rule

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8000. INVESTIGATIONS AND SANCTIONS

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8300. Sanctions

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8311. Effect of a Suspension, Revocation, Cancellation, [or] Bar or Other Disqualification

(a) [If FINRA or the SEC issues an order that imposes] If a person is subject to a suspension, revocation, [or]cancellation of [the]registration, bar from association with a member (each a "sanction") or other disqualification of a person associated with a member or bars a person from further association with any member], a member shall not allow such person to [remain] be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. [If FINRA or the SEC suspends a person associated with a member, the] A member also shall not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary,

[or any] commission, profit, or any other remuneration [that results directly or indirectly from any securities transaction,] that the person [associated with a member] might [have earned]accrue during the period of [suspension]the sanction or disqualification.

However, a member may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits an associated person from conducting specified activities (such as a suspension from acting in a principal capacity) or a disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member.

(b) Notwithstanding paragraph (a) of this Rule, a member may pay to a person that is subject to a sanction or disqualification described in paragraph (a) of this Rule, any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment.

••• Supplementary Material:

.01 Remuneration Accrued Prior to Effective Date of Sanction or Disqualification.

Notwithstanding this Rule, a member may pay or credit to a person that is subject of a sanction or disqualification salary, commission, profit or any other remuneration that the member can evidence accrued to the person prior to the effective date of such sanction or disqualification; provided, however, the member may not pay any salary, commission, profit or any other remuneration that accrued to the person that relates to or results from the activity giving rise to the sanction or disqualification, and any such payment or credit must comply with applicable federal securities laws.

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**Text of NASD Rule and NYSE Rule Interpretation
to Remain in the Transitional Rulebook**

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NASD Rules

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1060. Persons Exempt from Registration

(a) No Change.

[(b) Member firms, and persons associated with a member, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member firms if the following conditions are met:]

[(1) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the “finder”) is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article III, Section 4 of the Association's By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;]

[(2) the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;]

[(3) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;]

[(4) customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;]

[(5) customers provide written acknowledgment to the member firm of the existence of the compensation arrangement and that such acknowledgment is retained and made available for inspection by the Association;]

[(6) records reflecting payments to finders are maintained on the member firm's books and actual agreements between the member firm and persons compensated are available for inspection by the Association; and]

[(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.]

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NYSE Rule Interpretation

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Rule 345 Employees — Registration, Approval, Records

(a) No Change.

/01 through /03 No Change.

[(a) (i) COMPENSATION]

[/01 Compensation to Non-Registered Persons]

[Rule 345(a) precludes member organizations from paying to non-registered persons compensation based upon the business of customers they direct to member organizations if:]

[a) the compensation is formulated as a direct percentage of the commissions or income generated, or]

[b) payment is on other than an isolated basis, or]

[c) the customers have the use of the facilities of such person for the transmission of orders or messages directly to the member organization, or]

[d) such person has formal discretionary authority to place orders or instructions with the member organizations, or]

[e) such person regularly engages in activity which may be reasonably expected to result in the procurement of new customer or orders.]

The interpretation does not preclude normal clearing and introductory arrangements between member organizations or between member organizations and non-member broker/dealers.

Please refer to /03 below for interpretation with respect to transaction-related compensation arrangements with non-registered foreign persons acting as finders.

[/02 Compensation Paid for Advisory Solicitations]

[A member organization, registered with the SEC as an investment adviser, may enter into any arrangement that fully complies with Rule 206(4)-3 ("Cash Payments for Client Solicitations") of the Investment Advisers Act of 1940. Such arrangements will not be deemed contrary to the registration requirements of Rule 345 (see also Rule 10 "Definition of Registered Representative"). Member organizations are advised to check on the applicability of any state registration requirements for member organizations and associated persons.]

[/03 Compensation to Non-registered Foreign Persons Acting as Finders]

[Member organizations may pay to non-registered foreign persons transaction-related compensation based upon the business of customers they direct to member organizations if the following conditions are met:]

[a) the member organization has assured itself that the non-registered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker-dealer and has further assured itself that the compensation arrangement does not violate applicable foreign law;]

[b) the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;]

[c) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;]

[d) customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;]

[e) customers provide written acknowledgement to the member organization of the existence of the compensation arrangement and that such acknowledgement is retained and made available for inspection by the Exchange;]

[f) records reflecting payments to finders are maintained on the member organization's books and actual agreements between the member organization and persons compensated are available for inspection by the Exchange; and]

[g) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.]

(b) No Change.

.11 through .18 No Change.

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**Text of NASD Rules, NASD Interpretative Materials, and NYSE Rules to be Deleted
in their Entirety from the Transitional Rulebook**

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NASD Rules

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[2410. Net Prices to Persons Not in Investment Banking or Securities Business]

Entire text deleted.

[2420. Dealing with Non-Members]

Entire text deleted.

[IM-2420-1. Transactions Between Members and Non-Members]

Entire text deleted.

[IM-2420-2. Continuing Commissions Policy]

Entire text deleted.

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NYSE Rule

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[NYSE Rule 353. Rebates and Compensation]

Entire text deleted.

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