

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,
AND FACILITY CHARGES**

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7400. ORDER AUDIT TRAIL SYSTEM

7410. Definitions

For purposes of the Rule 7400 Series:

(a) through (c) No Change.

[(d) “Nasdaq Market Center” shall mean the service provided by Nasdaq that, among other things, provides for the reporting of transactions in Nasdaq securities.]

(e) through (i) redesignated as (d) through (h)

(i) “NMS stock” shall have the same meaning as contained in Rule 600(b)(47) of SEC Regulation NMS.

(j) “Order” shall mean any oral, written, or electronic instruction to effect a transaction in an NMS stock [equity security listed on the Nasdaq Stock Market] or an OTC equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.

(k) “Order Audit Trail System” shall mean the automated system owned and operated by FINRA that is designed to capture order information in NMS stocks [equity

securities listed on the Nasdaq Stock Market] and OTC equity securities reported by members for integration with trade and quotation information to provide FINRA with an accurate time sequenced record of orders and transactions.

(l) through (n) No Change.

(o) “Reporting Member” shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 7440 and 7450.

(1) A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) through (4) redesignated as (A) through (D)

(2) A member shall not be considered a Reporting Member in connection with an order if:

(A) the member was approved as a member pursuant to NASD IM-1013-1 or NASD IM-1013-2;

(B) the member operates consistent with NASD IM-1013-1 or NASD IM-1013-2, including limiting its business operations to “permitted floor activities,” as that term is defined in NASD IM-1013-1 and NASD IM-1013-2; and

(C) the order was received by the member through systems operated and regulated by the New York Stock Exchange or NYSE Amex.

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7470. Exemption to the Order Recording and Data Transmission Requirements

(a) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and

conditions, a member from the recording and order data transmission requirements of Rules 7440 and 7450, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(1) through (2) No Change.

(3) the member does not conduct any market making activities in NMS stocks [Nasdaq Stock Market equity securities] or OTC equity securities;

(4) through (5) No Change.

(b) through (c) No Change.

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