

**EXHIBIT 5**

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**Nasdaq PHLX Rules**

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**Nasdaq PSX Rules**

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**Rule 7400A[3400]. Order Audit Trail System****Rule 7410A[3401]. Definitions**

For purposes of the Rule 7400A[3400] Series:

(a) Terms shall have the same meaning as those defined in the Exchange By-Laws and rules, unless otherwise specified.

(b[a]) “Bunched Order” shall mean two or more orders that are aggregated prior to execution.

(c[b]) “Customer” shall mean a person other than a broker or dealer.

(d[c]) “Nasdaq PSX” or “PSX” shall mean the service provided by the Exchange that[, among other things,] provides for the automated execution and reporting of transactions in securities.

(e[d]) “Electronic Communication Network” shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in rule 600 of SEC Regulation NMS.

(f[e]) “Electronic Order” shall mean an order captured by a member organization in an electronic order-routing or execution system.

(g[f]) “Index Arbitrage Trade” shall have the same meaning as the term “Index Arbitrage”[mean an arbitrage trading strategy involving the purchase or sale of a “basket” or group of securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined] in New York Stock Exchange [r]Rule 7410[132B].

(h[g]) “Intermarket sweep order” shall have the same meaning as contained in Rule 600 of SEC Regulation NMS.

(i[h]) “Manual Order” shall mean an order that is captured by a member organization other than in an electronic order-routing or execution system.

(j[i]) “Order” shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Exchange or The Nasdaq Stock Market that is received by a member organization from another person for handling or execution, or that is originated by a department of a member organization for execution by the same or another broker or dealer that is a FINRA member or an Exchange member organization, other than any such instruction to effect (1) a proprietary transaction originated by a trading desk in the ordinary course of a member organization’s market making activities in an Exchange- or Nasdaq-listed equity security or (2) effect a bona fide hedge transaction involving an Exchange- or Nasdaq-listed equity security originated by a trading desk in the ordinary course of the member organization’s options market making activities.

(k[j]) “Order Audit Trail System” shall mean the automated system owned and operated by FINRA that is designed to capture order information in equity securities listed on the Exchange and The Nasdaq Stock Market reported by member organizations for integration with trade and quotation information to provide FINRA with an accurate time sequenced record of orders and transactions.

(l[k]) “Program Trade” shall have the same meaning as the term “Program Trading” in New York Stock Exchange Rule 7410[mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange rule 132B].

(m[l]) “Reporting Agent” shall mean a third party that enters into any agreement with a member organization pursuant to which the Reporting Agent agrees to fulfill such member organization’s obligations under Rule 7450A[3405].

(n[m]) “Reporting Member Organization” shall mean a member organization that receives or originates an order and has an obligation to record and report information under Rules 7440A[3404] and 7450A[3405]. A member organization shall not be considered a Reporting Member Organization in connection with an order, if the following conditions are met:

(1) the member organization engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to[ a single receiving Reporting Member Organization;];

(A) a single receiving Reporting Member Organization; or

(B) two receiving Reporting Member Organizations, provided:

(i) orders are routed by the member to each receiving Reporting Member Organization on a predetermined schedule approved by FINRA; and

(ii) orders are routed to two receiving Reporting Member Organizations pursuant to the schedule for a time period not to exceed one year; and

- (2) the member organization does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member Organization;
- (3) the receiving Reporting Member Organization records and reports all information required under Rules 7440A[3404] and 7450A[3405] with respect to the order; and
- (4) the member organization has a written agreement with the receiving Reporting Member Organization specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 7440A[3404] and 7450A[3405].

(o[n]) “Proprietary Trading Firm” shall mean an Exchange member organization that trades its own capital and that does not have “customers,” as that term is defined in paragraph (c) of this Rule, and that is not a FINRA member. The funds used by a Proprietary Trading firm must be exclusively firm funds and all trading must be in the firm’s accounts. Traders must be owners of, employees of, or contractors to the firm.

**Rule 7420A[3402]. Applicability**

(a) Unless otherwise indicated, the requirements of the Rule 7400A[3400] Series are in addition to the requirements contained elsewhere in the Rules of the Exchange.

(b) Unless otherwise indicated, the requirements of the Rule 7400A[3400] Series shall apply to all Exchange member organizations and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Rule 7400A[3400] Series shall apply to all executed or unexecuted orders for equity securities listed on the Exchange or on The Nasdaq Stock Market.

**Rule 7430A[3403]. Synchronization of Member Organization Business Clocks**

[Each member organization shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the rules of the Exchange, with reference to a time source as designated by the Exchange, and shall maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by the Exchange.]

(a) Exchange member organizations shall comply with FINRA Rule 4590 as if such Rule were part of the Exchange’s rules.

(b) For purposes of this Rule, references to “the FINRA By-Laws or other FINRA rules” shall be construed as references to “the Exchange Rules”.

**Rule 7440A[3404]. Recording of Order Information**

(a) With respect to orders for securities listed on Nasdaq, Exchange member organizations and persons associated with a member organization shall comply with FINRA Rule 7440 as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Rule 7440A are being performed by FINRA on behalf of the Exchange.

(b) With respect to orders for securities listed on the Exchange, Exchange members and persons associated with a member shall comply with FINRA Rule 7440 as if such Rule applied to orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange.

(c) For purposes of this Rule:

(1) references to FINRA Rules 7420 through 7460 shall be construed as references to Rules 7420A through 7460A;

(2) references to FINRA Rules 5320, 7440, and 7450 shall be construed as references to Rules 765, 7440A, and 7450A, respectively.

(d) Exchange member organizations shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to PSX. An order identifier shall not be required for orders that are manually transmitted.

[With respect to orders for securities listed on The Nasdaq Stock Market or the Exchange, member organizations and persons associated with a member organization shall comply with the following Rule:

(a) Procedures

(1) Subject to the terms and conditions contained in Rules 3402 through 3406, each Reporting Member Organization shall:

(A) immediately following receipt or origination of an order, record each item of information described in paragraph (b) of this Rule that applies to such order, and record any additional information described in paragraph (b) of this Rule that applies to such order immediately after such information is received or becomes available; and

(B) immediately following the transmission of an order to another broker or dealer that is a FINRA member or an Exchange member organization, or from one department to another within the same member organization, record each

item of information described in paragraph (c) of this Rule that applies with respect to such transmission; and

- (C) immediately following the modification, cancellation, or execution of an order, record each item of information described in paragraph (d) of this Rule that applies with respect to such modification, cancellation, or execution.
- (2) Each required record of the time of an event shall be expressed in terms of hours, minutes, and seconds.
- (3) Each Reporting Member Organization shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by the Exchange from time to time.
- (4) Maintaining and Preserving Records
  - (A) Each Reporting Member Organization shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC rule 17a-4(b).
  - (B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on “micrographic media” as defined in SEC rule 17a-4(f)(1)(i) or by means of “electronic storage media” as defined in SEC rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC rule 17a-4(f) and be maintained and preserved for the required time in that form.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

- (1) an order identifier meeting such parameters as may be prescribed by the Exchange assigned to the order by the Reporting Member Organization that uniquely identifies the order for the date it was received;
- (2) the identification symbol assigned by the Exchange to the security to which the order applies;
- (3) the market participant symbol assigned by the Exchange to the Reporting Member Organization;
- (4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;

- (5) where the order is originated by a Reporting Member Organization, the identification of the department of the member organization that originates the order;
- (6) where the Reporting Member Organization is a party to an agreement described in Rule 3405(c), the identification of the Reporting Agent;
- (7) the number of shares to which the order applies;
- (8) the designation of the order as a buy or sell order;
- (9) the designation of the order as a short sale order;
- (10) the designation of the order as a market order, limit order, stop order or stop limit order;
- (11) any limit or stop price prescribed in the order;
- (12) the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;
- (13) the time limit during which the order is in force;
- (14) any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to rule 604(b) of SEC Regulation NMS;
- (15) special handling requests, specified by the Exchange for purposes of this Rule;
- (16) the date and time the order is originated or received by a Reporting Member Organization;
- (17) an identification of the order as related to a Program Trade or an Index Arbitrage Trade;
- (18) the type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by the Exchange, for which the order is submitted; and
- (19) if the member is relying on the exception provided in FINRA Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

- (1) When a Reporting Member Organization transmits an order to a department within the member organization, the Reporting Member Organization shall record:
  - (A) the order identifier assigned to the order by the Reporting Member Organization,
  - (B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
  - (C) the date the order was first originated or received by the Reporting Member Organization,
  - (D) an identification of the department and nature of the department to which the order was transmitted,
  - (E) the date and time the order was received by that department,
  - (F) the number of shares to which the transmission applies, and
  - (G) any special handling requests.
- (2) When a member organization electronically transmits an order to another broker or dealer that is a FINRA member or an Exchange member organization, other than an order transmitted electronically for execution on an Electronic Communications Network:
  - (A) the transmitting Reporting Member Organization shall record:
    - (i) the order identifier assigned to the order by the Reporting Member Organization and the routed order identifier, if different, which the transmitting Reporting Member Organization also must provide to the receiving broker or dealer,
    - (ii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
    - (iii) the market participant symbol assigned by the Exchange to the broker or dealer to which the order is transmitted,
    - (iv) the date the order was first originated or received by the Reporting Member Organization,

- (v) the date and time the order is transmitted,
  - (vi) the number of shares to which the transmission applies, and
  - (vii) whether the order is an intermarket sweep order; and
- (B) the receiving broker or dealer shall record, in addition to all other information items in Rule 3404(b) that apply with respect to such order:
- (i) the routed order identifier assigned to the order by the member organization that transmits the order and
  - (ii) the market participant symbol assigned by the Exchange to the member organization that transmits the order.
- (3) When a member organization electronically transmits an order for execution on an Electronic Communications Network:
- (A) the transmitting Reporting Member Organization shall record:
- (i) the fact that the order was transmitted to an Electronic Communications Network,
  - (ii) the order identifier assigned to the order by the Reporting Member Organization and the routed order identifier, if different, which the transmitting Reporting Member Organization also must provide to the receiving Electronic Communications Network,
  - (iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
  - (iv) the market participant symbol assigned by the Exchange to the Electronic Communications Network to which the order is transmitted,
  - (v) the date the order was first originated or received by the Reporting Member Organization,
  - (vi) the date and time the order is transmitted,
  - (vii) the number of shares to which the transmission applies, and
  - (viii) whether the order is an intermarket sweep order; and
- (B) the receiving Electronic Communications Network shall record:



- (i) the fact that the order was received by an Electronic Communications Network,
  - (ii) the routed order identifier assigned to the order by the member organization that transmits the order,
  - (iii) the market participant symbol assigned by FINRA to the transmitting Reporting Member Organization, and
  - (iv) other information items in Rule 3404(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).
- (4) When a member organization manually transmits an order to another broker that is a FINRA member or an Exchange member organization, other than to an Electronic Communications Network:
- (A) the transmitting Reporting Member Organization shall record:
    - (i) the fact that the order was transmitted manually,
    - (ii) the order identifier assigned to the order by the Reporting Member Organization,
    - (iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
    - (iv) the market participant symbol assigned by the Exchange to the broker or dealer to which the order is transmitted,
    - (v) the date the order was first originated or received by the Reporting Member Organization,
    - (vi) the date and time the order is transmitted,
    - (vii) the number of shares to which the transmission applies,
    - (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization, and
    - (ix) whether the order is an intermarket sweep order; and
  - (B) the receiving broker or dealer shall record, in addition to all other information items in Rule 3404(b) that apply with respect to such order:

- (i) the fact that the order was received manually and
- (ii) the market participant symbol assigned by the Exchange to the member organization that transmits the order.

(5) When a member organization manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member Organization shall record:

- (i) the fact that the order was transmitted manually,
- (ii) the order identifier assigned to the order by the Reporting Member Organization,
- (iii) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
- (iv) the market participant symbol assigned by the Exchange to the Electronic Communications Network to which the order is transmitted,
- (v) the date the order was first originated or received by the Reporting Member Organization,
- (vi) the date and time the order is transmitted,
- (vii) the number of shares to which the transmission applies,
- (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization, and
- (ix) whether the order is an intermarket sweep order; and

(B) the receiving Electronic Communications Network shall record:

- (i) the fact that the order was received manually,
- (ii) the market participant symbol assigned by the Exchange to the transmitting Reporting Member Organization, and
- (iii) other information items in Rule 3404(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

- (6) When a member organization transmits an order to a person that is not a FINRA member or an Exchange member organization, including but not limited to a national securities exchange, the Reporting Member Organization shall record:
- (A) the fact that the order was transmitted to a non-member,
  - (B) the order identifier assigned to the order by the Reporting Member Organization,
  - (C) the market participant symbol assigned by FINRA to the Reporting Member Organization,
  - (D) the date the order was first originated or received by the Reporting Member Organization,
  - (E) the date and time the order is transmitted,
  - (F) the number of shares to which the transmission applies,
  - (G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member Organization,
  - (H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable,
  - (I) identification of the non-member where the trade was transmitted, and
  - (J) whether the order is an intermarket sweep order.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

- (1) When a Reporting Member Organization modifies or receives a modification to the terms of the order, the Reporting Member Organization shall record, in addition to all other applicable information items (including a new order identifier) that would apply as if the modified order were originated or received at the time of the modification:
- (A) the order identifier assigned to the order by the Reporting Member Organization prior to the modification,
  - (B) the date and time the modification was originated or received, and

- (C) the date the order was first originated or received by the Reporting Member Organization,
- (2) When the Reporting Member Organization cancels or receives a cancellation of an order, in whole or part, the Reporting Member Organization shall record:
- (A) the order identifier assigned to the order by the Reporting Member Organization,
  - (B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
  - (C) the date the order was first originated or received by the Reporting Member Organization,
  - (D) the date and time the cancellation was originated or received,
  - (E) if the open balance of an order is canceled after a partial execution, the number of shares canceled, and
  - (F) whether the order was canceled on the instruction of a customer or the Reporting Member Organization.
- (3) When a Reporting Member Organization executes an order, in whole or in part, the Reporting Member Organization shall record:
- (A) the order identifier assigned to the order by the Reporting Member Organization,
  - (B) the market participant symbol assigned by the Exchange to the Reporting Member Organization,
  - (C) the date the order was first originated or received by the Reporting Member Organization,
  - (D) the Reporting Member Organization's number assigned for purposes of identifying transaction data in PSX, the Nasdaq Market Center, ADF, Trade Reporting Facility or other system or service as may be designated by the Exchange,
  - (E) the designation of the order as fully or partially executed,
  - (F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining,
  - (G) the identification number of the terminal where the order was executed,

- (H) the date and time of execution;
- (I) the execution price,
- (J) the capacity in which the member organization executed the transaction (e.g., agency, principal or riskless principal), and
- (K) the national securities exchange or facility operated by a registered securities association where the trade was reported.

(e) Exchange member organizations shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to PSX. An order identifier shall not be required for orders that are manually transmitted.]

**Rule 7450A[3405]. Order Data Transmission Requirements**

(a) [Securities Listed on Nasdaq.]

Except as provided in paragraph (b), with respect to orders for securities listed on The Nasdaq Stock Market, Exchange member organizations and persons associated with a member organization shall comply with FINRA Rule 7450 as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Exchange Rule 7450A are being performed by FINRA on behalf of the Exchange[subsections (d), (e), and (f) of this Rule at all times].

(b) [Proprietary Trading Firms.]

Proprietary Trading Firms and their associated persons shall be required to comply with FINRA Rule 7450[subsections (d), (e), and (f) of this] as if such Rule were part of the Exchange's rules only when they receive a request from the Exchange's Regulation Department to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Proprietary Trading Firms and their associated persons under any other Rule of the 7400A[3400] Series, including but not limited to, Rule 7440A[3404].

(c) [Securities Listed on the Exchange.]

With respect to orders for securities listed on the Exchange, Exchange member organizations and their associated persons shall be required to comply with FINRA Rule 7450 as if such Rule applied to[subsections (d), (e), and (f) of this Rule for] orders for securities listed on the Exchange and such Rule were part of the Rules of the Exchange, but only when they receive a request from the Exchange's Regulation Department to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Exchange member

organizations and their associated persons under any other Rule of the 7400A[3400] Series, including but not limited to, Rule 7440A[3404].

(d) For purposes of this Rule, references to Rule 7440 shall be construed as references to Rule 7440A.[General Requirement

All applicable order information required to be recorded under Rule 3404 shall be transmitted to FINRA's Order Audit Trail System by each Reporting Member Organization or by a Reporting Agent pursuant to an agreement described by paragraph (c) of this Rule.

(e) Method of Transmitting Data

- (1) Order information shall be transmitted in electronic form, as may be prescribed by the Exchange from time to time, to a receiving location designated by the Exchange.
- (2) Each Reporting Member Organization shall transmit to the Order Audit Trail System a report containing each applicable item of order information identified in Rule 3404(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member organization or to another broker or dealer that is a FINRA member or an Exchange member organization, modified, canceled, or executed. Each report shall be transmitted on the day such event occurred; provided, however, that if any item of information identified in Rule 3404(b), (c), and (d) is not available on such day, then the report shall be transmitted on the day that all such items of information become available. Order information reports may be aggregated into one or more transmissions, during such business hours as may be prescribed by the Exchange.

(f) Reporting Agent Agreements

- (1) Any Reporting Member Organization may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such Reporting Member Organization under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.
- (2) All written documents evidencing an agreement described in paragraph (1) shall be maintained by each party to the agreement.
- (3) Each Reporting Member Organization remains primarily responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.]

**Rule 7460A[3406]. Violation of Order Audit Trail System Rules**

Failure of a member organization or person associated with a member organization to comply with any of the requirements of [the ]Rule 7410A through Rule 7460A[3400 Series] may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 707.

**Rule 7470A. Reserved[3407. Exemption to the Order Recording and Data Transmission Requirements**

(a) The Exchange, for good cause shown after taking into consideration all relevant factors, may exempt subject to specified terms and conditions, a member organization from the recording and order data transmission requirements of Rules 3404 and 3405, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member organization meets the following criteria:

- (1) the member organization and current control affiliates and associated persons of the member organization have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;
- (2) the member organization has annual revenues of less than \$2 million;
- (3) the member organization does not conduct any market making activities in equity securities listed on the Exchange;
- (4) the member organization does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and
- (5) the member organization does not conduct clearing or carrying activities for other firms.

(b) An exemption provided pursuant to this Rule shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this Rule, a member organization meeting the criteria set forth in paragraph (a) above may request a subsequent exemption, which will be considered at the time of the request consistent with the protection of investors and the public interest.

(c) This Rule shall be in effect until July 10, 2011.]

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