OMB APPROVAL

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Page 1 of 23			SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4					File No. SR - 2009 - 055 Amendment No.		
Proposed Rule Change by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934										
Initial		Amendment	Withdrawal	Section 19(b)(2)	Section 19	9(b)(3)(A) ule	Section 1	9(b)(3)(B)	
Pilot		ension of Time Period Commission Action	Date Expires			19b-4(f)(1) 19b-4(f)(2) 19b-4(f)(3)	19b-4(f)(4) 19b-4(f)(5) 19b-4(f)(6)			
Exhibit 2 Sent As Paper Document Exhibit 3 Sent As Paper Document										
Description Provide a brief description of the proposed rule change (limit 250 characters). Proposed Rule Change to Adopt FINRA Rules 5210 (Publication of Transactions and Quotations) and 5220 (Offers at Stated Prices) into the Consolidated Rulebook										
Contact Information Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change. First Name Racquel L. Last Name Russell										
Title	t anno	Assistant General Cou	ıneal	Last Name (Nusseii						
E-mail		racquel.russell@finra.org								
Teleph		(202) 728-8363	Fax (202) 728-826	4						
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.										
Date 08/18/2009										
By Patrice Gliniecki Senior Vice President and Deputy					and Deputy Ge	eneral Counsel				
(Name)										
				(Title)						
this form	n. A diç	the button at right will digit gital signature is as legally b once signed, this form canno	inding as a physical		Patrio	ce Gliniecki,				

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 For complete Form 19b-4 instructions please refer to the EFFS website. The self-regulatory organization must provide all required information, presented in a Form 19b-4 Information clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the Remove proposal is consistent with the Act and applicable rules and regulations under the Act. The Notice section of this Form 19b-4 must comply with the guidelines for **Exhibit 1 - Notice of Proposed Rule Change** publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register Add Remove (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3) Copies of notices, written comments, transcripts, other communications. If such Exhibit 2 - Notices, Written Comments. documents cannot be filed electronically in accordance with Instruction F, they shall **Transcripts, Other Communications** be filed in accordance with Instruction G. Add Remove View Exhibit Sent As Paper Document Exhibit 3 - Form, Report, or Questionnaire Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is Add Remove View referred to by the proposed rule change. Exhibit Sent As Paper Document The full text shall be marked, in any convenient manner, to indicate additions to and **Exhibit 4 - Marked Copies** deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which Add Remove View it has been working. The self-regulatory organization may choose to attach as Exhibit 5 proposed **Exhibit 5 - Proposed Rule Text** changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be Add Remove View considered part of the proposed rule change. If the self-regulatory organization is amending only part of the text of a lengthy **Partial Amendment** proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if View the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. <u>Text of Proposed Rule Change</u>

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), ¹ Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to adopt NASD Rule 3310 (Publication of Transactions and Quotations), NASD Rule 3320 (Offers at Stated Prices), IM-3310 (Manipulative and Deceptive Quotations) and IM-3320 (Firmness of Quotations) as FINRA rules in the consolidated FINRA rulebook without material changes. The proposed rule change would combine NASD Rule 3310 and IM-3310 into FINRA Rule 5210 and would combine NASD Rule 3320 and IM-3320 into FINRA Rule 5220 in the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

- (b) Upon Commission approval and implementation by FINRA of the proposed rule change, the corresponding NASD rules will be eliminated from the current FINRA rulebook.
 - (c) Not applicable.

2. <u>Procedures of the Self-Regulatory Organization</u>

At its meeting on April 16, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

¹ 15 U.S.C. 78s(b)(1).

3. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change</u>

(a) Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"), FINRA is proposing to adopt NASD Rule 3310 (Publication of Transactions and Quotations), NASD Rule 3320 (Offers at Stated Prices), IM-3310 (Manipulative and Deceptive Quotations) and IM-3320 (Firmness of Quotations) with minor changes as FINRA rules in the Consolidated FINRA Rulebook.

Proposed FINRA Rule 5210

NASD Rule 3310 prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security. The rule also prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.

The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

IM-3310 provides that it would be inconsistent with NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade),³ 3310 (Publications of Transactions and Quotations), and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)⁴ for a member to: (1) publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale, or (2) to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

NASD Rule 3310 was adopted on June 6, 1939, and there have been no subsequent amendments to the rule. IM-3310 was adopted in 1960 and also has not been amended since adoption. More recently, FINRA reminded members that directly enter (or that permit customers or non-members to enter) orders into trading systems that they are required to take steps to ensure that such orders are free of errors and are representative of bona fide transaction and quotation activity consistent with their obligations under NASD Rule 3310 and IM-3310.⁵ Therefore, members have been

NASD Rule 2110 has been transferred into the Consolidated FINRA Rulebook as FINRA Rule 2010.

NASD Rule 2120 has been transferred into the Consolidated FINRA Rulebook as FINRA Rule 2020.

See Notice to Members 04-66 (NASD Reminds Member Firms of Their Obligations to Ensure the Accuracy and Integrity of Information Entered into Order-Routing and Execution Systems) (September 2004).

reminded that they must have in place a supervisory system and written supervisory procedures reasonably designed to ensure that orders are not entered in error or in a manner inconsistent with FINRA rules, including NASD Rule 3310 and IM-3310.

FINRA is proposing to adopt the requirements set forth in NASD Rule 3310 and IM-3310 as FINRA Rule 5210 with minor changes to update the content and cross-references. Specifically, FINRA is proposing minor changes to delete the exception for nominal quotations that are clearly identified as such because, under current practice, nominal quotations are not published and a modifier does not exist to identify nominal quotations. In addition, FINRA is proposing to incorporate the substance of IM-3310 as Supplementary Material to FINRA Rule 5210 with minor changes to simplify and update the cross-references within the rule.

Proposed FINRA Rule 5220

NASD Rule 3320 provides that no member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell. NASD Rule 3320 was adopted on June 6, 1939. There have been no subsequent amendments to the rule.

today and will be filed with the SEC. <u>See</u> Securities Exchange Act Release No. 58176 (July 16, 2008); 73 FR 42845 (July 23, 2008).

As stated in SR–FINRA-2008–021, with the exception of the Arbitration Code, the Consolidated FINRA Rulebook will no longer contain Interpretive Materials ("IMs"); rather, the IMs either will become stand alone rules or will be integrated into existing rule text or moved to a "Supplementary Material" section at the end of a rule. (In some instances, an IM also may be eliminated as outdated or otherwise unnecessary.) The "Supplementary Material" will set forth the same type of legally binding guidance and additional information that IMs provide

As adopted in 1965, related IM-3320 restricts "backing away" from quotations, which disrupts the normal operation of the over-the-counter market. IM-3320 provides that it shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a member "backs away" from its quotation.

In addition, the interpretive material provides that, in order to ensure the integrity of quotations, every member has an obligation to correctly identify the nature of its quotations when they are supplied to others. Further, each member furnishing quotations must ensure that it is adequately staffed to respond to inquiries during the normal business hours of such member. IM-3320 recognizes that members change inter-dealer quotations constantly in the course of trading, but further states that, under normal circumstances where the member is making a firm trading market in any security, it is expected at least to buy or sell a normal unit of trading in the quoted stock at its then prevailing quotations unless clearly designated as "not firm" or "firm for less than a normal unit of trading" when supplied by the member. In addition, IM-3320 recognizes that a member's quote may not be firm at times where contemporaneous transactions or substantial changes in inventory might require dealers to quote a "subject market" temporarily.

FINRA proposes to adopt NASD Rule 3320, without change, into the Consolidated FINRA Rulebook as FINRA Rule 5220 and to incorporate the substance of IM-3320, with minor changes, as Supplementary Material to FINRA Rule 5220. The minor changes to IM-3320 will: (1) update terminology (e.g., references to "wire quotations" and the "National Quotation Bureau Sheets") to reflect technological advancements and current practice since the rule's enactment, and (2) update the "subject

market" language to make it consistent with the language used in the SEC's Firm Quote Rule (Rule 602 of Regulation NMS), specifically that, if at the time an order for the purchase or sale of the quoted security is presented the member is in the process of effecting a transaction and immediately after the completion of such transaction communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size.

As noted in Item 2 of this filing, FINRA will announce the implementation date of the proposed rule change in a <u>Regulatory Notice</u> to be published no later than 90 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that adopting the proposed rules as part of the Consolidated FINRA Rulebook will continue to enhance market quality by providing for increased reliability and usefulness of quotation information. FINRA notes that the proposed rules have been in operation for numerous decades and believes that they have since proven effective in achieving the statutory mandates.

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⁷ 15 U.S.C. 780–3(b)(6).

4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. <u>Self-Regulatory Organization's Statement on Comments on the Proposed</u> <u>Rule Change Received from Members, Participants, or Others</u>

Written comments were neither solicited nor received.

Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁸

7. <u>Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)</u>

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

³ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2009-055)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rules 5210 (Publication of Transactions and Quotations) and 5220 (Offers at Stated Prices) into the Consolidated Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. <u>Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change</u>

FINRA is proposing to adopt NASD Rule 3310 (Publication of Transactions and Quotations), NASD Rule 3320 (Offers at Stated Prices), IM-3310 (Manipulative and Deceptive Quotations) and IM-3320 (Firmness of Quotations) as FINRA rules in the consolidated FINRA rulebook without material changes. The proposed rule change would combine NASD Rule 3310 and IM-3310 into FINRA Rule 5210 and would combine NASD Rule 3320 and IM-3320 into FINRA Rule 5220 in the consolidated FINRA rulebook.

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on FINRA's Web site at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

II. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis</u> for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

- A. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory</u>
 <u>Basis for, the Proposed Rule Change</u>
- 1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"), FINRA is proposing to adopt NASD Rule 3310 (Publication of Transactions and Quotations), NASD Rule 3320 (Offers at Stated Prices), IM-3310 (Manipulative and Deceptive Quotations) and IM-3320 (Firmness of Quotations) with minor changes as FINRA rules in the Consolidated FINRA Rulebook.

The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

Proposed FINRA Rule 5210

NASD Rule 3310 prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security. The rule also prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security.

IM-3310 provides that it would be inconsistent with NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade),⁴ 3310 (Publications of Transactions and Quotations), and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices)⁵ for a member to: (1) publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale, or (2) to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

NASD Rule 2110 has been transferred into the Consolidated FINRA Rulebook as FINRA Rule 2010.

NASD Rule 2120 has been transferred into the Consolidated FINRA Rulebook as FINRA Rule 2020.

NASD Rule 3310 was adopted on June 6, 1939, and there have been no subsequent amendments to the rule. IM-3310 was adopted in 1960 and also has not been amended since adoption. More recently, FINRA reminded members that directly enter (or that permit customers or non-members to enter) orders into trading systems that they are required to take steps to ensure that such orders are free of errors and are representative of bona fide transaction and quotation activity consistent with their obligations under NASD Rule 3310 and IM-3310.⁶ Therefore, members have been reminded that they must have in place a supervisory system and written supervisory procedures reasonably designed to ensure that orders are not entered in error or in a manner inconsistent with FINRA rules, including NASD Rule 3310 and IM-3310.

FINRA is proposing to adopt the requirements set forth in NASD Rule 3310 and IM-3310 as FINRA Rule 5210 with minor changes to update the content and cross-references. Specifically, FINRA is proposing minor changes to delete the exception for nominal quotations that are clearly identified as such because, under current practice, nominal quotations are not published and a modifier does not exist to identify nominal quotations. In addition, FINRA is proposing to incorporate the substance of IM-3310 as Supplementary Material to FINRA Rule 5210 with minor changes to simplify and update the cross-references within the rule.

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See <u>Notice to Members</u> 04-66 (NASD Reminds Member Firms of Their Obligations to Ensure the Accuracy and Integrity of Information Entered into Order-Routing and Execution Systems) (September 2004).

As stated in SR–FINRA-2008–021, with the exception of the Arbitration Code, the Consolidated FINRA Rulebook will no longer contain Interpretive Materials ("IMs"); rather, the IMs either will become stand alone rules or will be integrated into existing rule text or moved to a "Supplementary Material" section at the end of a rule. (In some instances, an IM also may be eliminated as outdated or otherwise unnecessary.) The "Supplementary Material" will set forth the same

Proposed FINRA Rule 5220

NASD Rule 3320 provides that no member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell. NASD Rule 3320 was adopted on June 6, 1939. There have been no subsequent amendments to the rule.

As adopted in 1965, related IM-3320 restricts "backing away" from quotations, which disrupts the normal operation of the over-the-counter market. IM-3320 provides that it shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a member "backs away" from its quotation.

In addition, the interpretive material provides that, in order to ensure the integrity of quotations, every member has an obligation to correctly identify the nature of its quotations when they are supplied to others. Further, each member furnishing quotations must ensure that it is adequately staffed to respond to inquiries during the normal business hours of such member. IM-3320 recognizes that members change inter-dealer quotations constantly in the course of trading, but further states that, under normal circumstances where the member is making a firm trading market in any security, it is expected at least to buy or sell a normal unit of trading in the quoted stock at its then prevailing quotations unless clearly designated as "not firm" or "firm for less than a normal unit of trading" when supplied by the member. In addition, IM-3320 recognizes that a member's quote may not be firm at times where contemporaneous transactions or

type of legally binding guidance and additional information that IMs provide today and will be filed with the SEC. <u>See</u> Securities Exchange Act Release No. 58176 (July 16, 2008); 73 FR 42845 (July 23, 2008).

substantial changes in inventory might require dealers to quote a "subject market" temporarily.

FINRA proposes to adopt NASD Rule 3320, without change, into the Consolidated FINRA Rulebook as FINRA Rule 5220 and to incorporate the substance of IM-3320, with minor changes, as Supplementary Material to FINRA Rule 5220. The minor changes to IM-3320 will: (1) update terminology (e.g., references to "wire quotations" and the "National Quotation Bureau Sheets") to reflect technological advancements and current practice since the rule's enactment, and (2) update the "subject market" language to make it consistent with the language used in the SEC's Firm Quote Rule (Rule 602 of Regulation NMS), specifically that, if at the time an order for the purchase or sale of the quoted security is presented the member is in the process of effecting a transaction and immediately after the completion of such transaction communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that adopting the proposed rules as part of the Consolidated

⁸ 15 U.S.C. 78<u>o</u>–3(b)(6).

FINRA Rulebook will continue to enhance market quality by providing for increased reliability and usefulness of quotation information. FINRA notes that the proposed rules have been in operation for numerous decades and believes that they have since proven effective in achieving the statutory mandates.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. <u>Self-Regulatory Organization's Statement on Comments on the Proposed</u> <u>Rule Change Received from Members, Participants, or Others</u>

Written comments were neither solicited nor received.

III. <u>Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action</u>

Within 35 days of the date of publication of this notice in the <u>Federal Register</u> or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to <u>rule-comments@sec.gov</u>. Please include File Number
 SR-FINRA-2009-055 on the subject line.

Paper Comments:

Send paper comments in triplicate to Florence E. Harmon, Deputy
 Secretary, Securities and Exchange Commission, 100 F Street, NE,
 Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

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should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-055 and should be submitted on or before [insert date 21 days from publication in the <u>Federal Register</u>].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. ⁹

Florence E. Harmon

Deputy Secretary

^{9 17} CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

Text of Proposed New FINRA Rules (Marked to Show Changes from NASD Rule 3310, IM-3310; NASD Rule 3320 and IM-3320; NASD Rule 3310, IM-3310, NASD Rule 3320 and IM-3320 to be Deleted in their Entirety from the Transitional Rulebook)

* * * * *

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

* * * * *

5200. QUOTATION AND TRADING OBLIGATIONS AND PRACTICES [3310]5210. Publication of Transactions and Quotations

No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security. [If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.]

• • • Supplementary Material: -----

[IM-3310. Manipulative and Deceptive Quotations]

[Rule 2110 provides that:]

[A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.]

[Rule 3310 provides that:]

[No member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.]

[Rule 2120 provides that:]

[No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.]

<u>.01 Manipulative and Deceptive Quotations.</u> It [would] <u>shall</u> be <u>deemed</u> inconsistent with [the above provisions] <u>Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices) and 5210 (<u>Publication of Transactions and Quotations</u>) for a member to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any</u>

securities transaction or of any purchase or sale of any security unless such member knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.

Similarly, it [would] <u>shall</u> be <u>deemed</u> inconsistent with [the above provisions] <u>Rules 2010, 2020 and 5210</u> for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

For the purposes of this [interpretation] <u>Rule</u>, the term "quotation" shall include any bid or offer or any formula, such as "bid wanted" or "offer wanted," designed to induce any person to make or submit any bid or offer.

[3320]5220. Offers at Stated Prices

No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

[IM-3320. Firmness of Quotations]

• • • Supplementary Material: -----

<u>.01 Firmness of Quotations.</u> Members and persons associated with members in the over-the-counter market make trading decisions and set prices for customers upon the basis of telephone and [wire] <u>electronic quotations, including</u> [as well as] quotations <u>displayed</u> in [the National Quotation Bureau sheets] <u>an inter-dealer quotation system</u>. In some instances a dealer's quotations, purportedly firm, are, in fact, so qualified upon

further inquiry as to constitute "backing away" by the quoting dealer. Further, dealers who [place] <u>publish</u> quotations in [the sheets] <u>inter-dealer quotation systems</u> have been found to be unwilling to make firm bids or offers upon inquiry in such a way as to pose a question as to the validity of the quotations originally [inserted] <u>published</u>. Such "backing away" from quotations disrupts the normal operation of the over-the-counter market.

Members, of course, change inter-dealer quotations constantly in the course of trading, but under normal circumstances where the member is making a "firm trading market" in any security, it is expected at least to buy or sell a normal unit of trading in the quoted stock at its then prevailing quotations unless clearly designated as not firm or firm for less than a normal unit of trading when supplied by the member. [It should be realized, however, that at times contemporaneous transactions or substantial changes in inventory might well require dealers to quote a "subject market" temporarily.] However, if at the time an order for the purchase or sale of the quoted security is presented, the member is in the process of effecting a transaction in such quoted security, and immediately after the completion of such transaction, communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size.

In order to [insure] <u>ensure</u> the integrity of quotations, every member has an obligation to correctly identify the nature of its quotations when they are supplied to others. In addition, each member furnishing quotations must [insure] <u>ensure</u> that it is adequately staffed to respond to inquiries during the normal business hours of such member.

It shall be deemed [conduct] inconsistent with [high standards of commercial honor and just and equitable principles of trade] Rules 2010 (Standards of Commercial Honor and Principles of Trade) and 5220 (Offers at Stated Prices) if a member fails to fulfill its obligations as outlined above.

For the purposes of this Rule, the term "inter-dealer quotation system" is as defined in NASD Rule 2320(g)(4)(A).

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