OMB APPROVAL	
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Estimated average burden hours per response	38

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 069
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(b)(3)(A)	Section 19(b)(3)(B)
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 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 impose an excess capacity usage fee on ADF Trading Centers that exceed their certified volume levels pursuant to a new FINRA ADF Capacity Management Plan.

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: Brant
Last Name: Brown
Title: Associate General Counsel
E-mail: brant.brown@finra.org
Telephone: (202) 728-6927
Fax: (202) 728-8264

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: 10/14/2009

By: Stephanie Dumont (Name)

Senior Vice President and Director of Capital Markets Policy (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for 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 (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)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	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 referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and 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 it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed 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 considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy 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 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. Text of Proposed Rule Change

(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") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to adopt a rule to impose an excess capacity usage fee on ADF Trading Centers that exceed their certified volume levels pursuant to a new FINRA Capacity Management Plan for the Alternative Display Facility ("ADF"). FINRA is also amending the ADF Certification Record to require ADF Trading Centers to comply with the ADF Capacity Management Plan ("Plan").[2] The proposed rule change also renumbers FINRA Rules 7550, 7560, and 7570 as 7560, 7570, and 7580, respectively.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 16, 2008, 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 effective date of the proposed rule change on its web site, which will be no later than 120 days from the date of SEC approval.

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[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the Plan is included as Exhibit 3a to this filing. A copy of the revised ADF Certification Record is included as Exhibit 3b.

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

(a) Purpose

In 2002, FINRA created the ADF to ensure that each broker-dealer, including alternative trading systems ("ATSs"), seeking to display its quotations in the over-the-counter ("OTC") market (rather than through an exchange platform) had an alternative venue through which to post its OTC quotations and report trades.[3] In order to display quotations on the ADF (i.e., become an "ADF Trading Center"), a broker-dealer must execute and comply with the ADF Certification Record.[4]

Recently, a variety of market forces, combined with the SEC's adoption of Regulation NMS in 2005,[5] have led to a dramatic increase in quote and trade volume in the National Market System. As a result of this increase in volume, self-regulatory organizations ("SROs") and trading centers generally have sought to adopt increasingly robust capacity management plans to ensure that they are capable of processing quote and trade data during volume peaks.

In addition, SROs have found it necessary to develop capacity management plans to mitigate the potential of being penalized for overrunning their volume projections submitted to the consolidated data plans. For example, the Consolidated Tape Association plan ("CTA Plan"), which serves as the consolidated data plan for securities

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3 See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (File No. SR-NASD-2002-97).

4 FINRA Rules 6220, 6250(a)(7).

5 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

listed on the New York Stock Exchange and American Stock Exchange ("CQS securities"), currently enforces a strict "pay-for-capacity" methodology that includes monetary penalties for capacity overruns.[6] Under this approach, SROs submit volume projections for the coming planning period and are held to those projections. SROs that overrun their projections are subject to penalties that increase incrementally based on the number of trading days within a calendar month that the SRO overran its submitted projections. In some cases, based on the number of trading days that projections have been exceeded, SROs are subject to mandatory commitments to buy additional capacity going forward.

FINRA is proposing to adopt the Plan for those FINRA members that opt to utilize the ADF for quoting and trade reporting. ADF Trading Centers would be required to agree to abide by the Plan as part of the ADF Certification Record that ADF Trading Centers are required to execute and comply with in order to quote on and report trades to the ADF.[7] FINRA is proposing to codify the excess capacity usage fees in the Plan as new FINRA Rule 7550.[8]

The Plan, which is substantially based upon the existing consolidated data plan methodologies, would require ADF Trading Centers to submit forward-looking volume

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6 See Consolidated Tape Association Plan (July 1, 2009 Composite), available at http://www.nyxdata.com/nysedata/CTA/tabid/227/Default.aspx.

7 If a firm is only reporting trades to the ADF and is not quoting on the ADF, the firm is not an "ADF Trading Center" and is not required to complete the ADF Certification Record.

8 The proposed rule change renumbers FINRA Rules 7550, 7560, and 7570 as Rules 7560, 7570, and 7580, respectively.

projections of capacity usage on at least a quarterly basis. ADF Trading Centers would submit volume projections to FINRA for quoting, trade reporting, and order reporting activity for both CQS securities and securities listed on the Nasdaq Stock Market ("Nasdaq securities"); thus, each ADF Trading Center would submit six separate volume projections. Based on these projections, FINRA would then certify each ADF Trading Center at a certain volume level. If, during a calendar month, an ADF Trading Center exceeds its certified volume level in any of the six categories of information, the ADF Trading Center could be charged an excess capacity usage fee, as described in more detail below.

The Plan notes that FINRA will seek to accommodate all reasonable capacity projection requests; however, the Plan is sufficiently flexible to avoid FINRA "overbuilding" capacity in response to unreasonably high and unsupported capacity projections of ADF Trading Centers. Thus, the Plan will explicitly reserve the right for FINRA to deem requests for significantly higher capacity usage as being unreasonable in light of the facts and circumstances of any given request for additional capacity. This is intended to prevent ADF Trading Centers from submitting unreasonably high volume projections in an effort to avoid incurring excess capacity usage fees because of volume overruns. Consequently, pursuant to the Plan, ADF Trading Centers must provide FINRA with supporting documentation for requests for an increase in capacity in excess of 25 percent of current capacity usage sufficient to demonstrate that the request is reasonable in light of the facts and circumstances. In such cases, FINRA staff, in its sole discretion, will determine whether the request for additional capacity is reasonably supported by the current or future needs of the ADF Trading Center in question. If

FINRA believes a request for significantly higher capacity usage is not supported by the documentation provided by the ADF Trading Center, FINRA will request that the ADF Trading Center supplement its submission. FINRA may, in its sole discretion, deny in total or in part a request for significantly higher capacity usage that does not appear to be reasonably supported by the current or future needs of the ADF Trading Center in question. In addition, the Plan gives FINRA the authority to decrease an ADF Trading Center's capacity and require the ADF Trading Center to submit revised volume projections if an ADF Trading Center's average monthly usage falls significantly below the volume for which the ADF Trading Center is certified.

The Plan includes a schedule of excess capacity usage fees in the event an ADF Trading Center exceeds its certified volume levels. As noted above, ADF Trading Centers submit forward-looking volume projections for quote, trade reporting, and order reporting activity broken out by National Market System ("NMS") data plan. Accordingly, each ADF Trading Center submits separate projections for Unlisted Trading Privileges ("UTP") Plan volume (i.e., Nasdaq securities) and for CTA Plan volume (i.e., CQS securities). FINRA will then certify a volume in each of these six categories for each ADF Trading Center. If an ADF Trading Center exceeds its certified capacity in one or more of the categories on one or more days in a given calendar month, the following excess capacity usage fees will apply:

Level	Percentage Exceeded	1-2 days	3-5 days	6-10 days	>10 days
1	<25%	N/A	$2,000	$4,000	$6,000
2	25% - <50%	$2,000	$4,000	$6,000	$8,000
3	50% or more	$4,000	$8,000	$10,000	$20,000

All incidents for a calendar month will be assessed at the highest level rate that any incident in the month achieved, and at the highest dollar amount based on the number of days.[9] For purposes of calculating the excess capacity usage fee, accruals of incidents apply separately for quote, trade, and order reporting activity and for each NMS data plan to determine whether multiple incidents result in Category 1, 2, or 3 level fees.[10]

Because of the potential difficulties in precisely predicting capacity needs, the Plan provides that, if an ADF Trading Center was certified for less than its requested capacity and surpasses the certified capacity level in a particular category according to the following schedule, FINRA will retroactively certify the ADF Trading Center at a higher capacity level in that category, provided there is sufficient capacity in the system to support the higher capacity level:

ADF Trading Center exceeds Capacity	**Percentage Capacity Exceeded (%)**	**FINRA will retroactively certify**
5 times in a single calendar month	By at least 25% but less than 50%	An increase of 50% over current capacity level
5 times in a single calendar month	By 50% or more	An increase of 100% over current capacity level

[9] For example, if in one month an ADF Trading Center has one Level 1 incident, one Level 2 incident, and one Level 3 incident in the same category, all three incidents will be treated as Level 3 incidents, and an $8,000 fee would apply.

[10] For example, if in one month an ADF Trading Center has one Level 1 incident in Nasdaq securities for trade report volume, two Level 2 incidents in CQS securities for quote volume, and three Level 3 incidents in CQS securities for order report volume, there would be six total incidents carrying two different fees. One fee of $2,000 would be levied for the two Level 2 incidents in CQS securities for quote volume. Another fee of $8,000 would be levied for the three Level 3 incidents in CQS securities for order report volume. There would be no fee for the one Level 1 incident in Nasdaq securities for trade report volume as it is not applicable according to the fee schedule.

This schedule applies in each category (quotes, trade reports, and order reports) and for each separate NMS data plan. The Plan explains that the retroactive higher level certification will be valid for the month in question and will remain in place for the duration of that capacity planning quarter. If an ADF Trading Center exceeds its certification level according to the schedule above in a calendar month and is retroactively certified at the higher level, the ADF Trading Center will only be subject to the excess capacity usage fee schedule for the capacity planning quarter in question if it exceeds the higher retroactive certification level.[11]

The proposed rule change adopts the excess capacity fee schedule in proposed FINRA Rule 7550 and explains how the fees are calculated. Specifically, FINRA Rule 7550 explains that (1) the fees are calculated on a monthly basis; (2) accruals of incidents apply separately for quote, trade reporting, and order reporting activity and for each NMS data plan to determine whether multiple incidents result in Level 1, 2, or 3 fees; and (3) all incidents for a calendar month in each of the six categories will be assessed at the highest level rate that any incident in the month achieved in that category and at the highest dollar amount based on the number of days according to the above schedule.

FINRA is also amending the ADF Certification Record to add an additional certification item that states that ADF Trading Centers must comply with the terms of the

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[11] If an ADF Trading Center is eligible for retroactive certification but there is insufficient capacity in the system to support retroactive capacity level increases of 50% or 100%, the ADF Trading Center will not be assessed an excess capacity usage fee until the system has been upgraded to support the higher capacity level. Once the system is upgraded to support the higher retroactive certification level, the ADF Trading Center will be subject to an excess capacity usage fee only if it exceeds the higher retroactive certification level.

Plan. FINRA is also adding a signature block to the bottom of the ADF Certification Record and replacing references to "NASD" with "FINRA."

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change on its web site, which will be no later than 120 days from the date of SEC approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] 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 and Section 15A(b)(5) of the Act,[13] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that requiring ADF Trading Centers to submit reasonable volume projections for quoting and trading on the ADF will enhance FINRA's ability to ensure that the ADF has sufficient capacity to handle the volume of quote and trade data submitted to the ADF while also avoiding the need for FINRA to expend unnecessary resources to maintain data capacity that will not be used. FINRA believes that the fees assessed on ADF Trading Centers that surpass their volume projections are reasonable and appropriate given the potential consequences of overrunning volume projections (i.e.,

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[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78o–3(b)(5).

an inability for the ADF to handle the volume and increased costs to FINRA of overrunning submitting volume projections to the consolidated data plans). The adoption of the proposed rule change will help to ensure that FINRA is able to meet its regulatory obligations by maintaining a high level of operability for the ADF. In addition, it should enhance FINRA's ability to submit accurate volume projections to the consolidated data plans.

4. Self-Regulatory Organization's Statement on Burden on Competition

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

Written comments were neither solicited nor received.

6. 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.[14]

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

Not applicable.

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

Not applicable.

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[14] 15 U.S.C. 78s(b)(2).

9. Exhibits

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

Exhibit 3a. ADF Capacity Management Plan.

Exhibit 3b. Amended ADF Certification Record.

Exhibit 5. Text of proposed FINRA Rule 7550.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-069)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Excess Capacity Usage Fees and the ADF Capacity Management Plan

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.

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

FINRA is proposing to adopt a rule to impose an excess capacity usage fee on ADF Trading Centers that exceed their certified volume levels pursuant to a new FINRA Capacity Management Plan for the Alternative Display Facility ("ADF"). FINRA is also amending the ADF Certification Record to require ADF Trading Centers to comply with the ADF Capacity Management Plan ("Plan"). The proposed rule change also renumbers FINRA Rules 7550, 7560, and 7570 as 7560, 7570, and 7580, respectively.

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.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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

1. Purpose

In 2002, FINRA created the ADF to ensure that each broker-dealer, including alternative trading systems ("ATSs"), seeking to display its quotations in the over-the-counter ("OTC") market (rather than through an exchange platform) had an alternative venue through which to post its OTC quotations and report trades.[3] In order to display quotations on the ADF (i.e., become an "ADF Trading Center"), a broker-dealer must execute and comply with the ADF Certification Record.[4]

Recently, a variety of market forces, combined with the SEC's adoption of Regulation NMS in 2005,[5] have led to a dramatic increase in quote and trade volume in the National Market System. As a result of this increase in volume, self-regulatory organizations ("SROs") and trading centers generally have sought to adopt increasingly

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[3] See Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (File No. SR-NASD-2002-97).

[4] FINRA Rules 6220, 6250(a)(7).

[5] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

robust capacity management plans to ensure that they are capable of processing quote and trade data during volume peaks.

In addition, SROs have found it necessary to develop capacity management plans to mitigate the potential of being penalized for overrunning their volume projections submitted to the consolidated data plans. For example, the Consolidated Tape Association plan ("CTA Plan"), which serves as the consolidated data plan for securities listed on the New York Stock Exchange and American Stock Exchange ("CQS securities"), currently enforces a strict "pay-for-capacity" methodology that includes monetary penalties for capacity overruns.[6] Under this approach, SROs submit volume projections for the coming planning period and are held to those projections. SROs that overrun their projections are subject to penalties that increase incrementally based on the number of trading days within a calendar month that the SRO overran its submitted projections. In some cases, based on the number of trading days that projections have been exceeded, SROs are subject to mandatory commitments to buy additional capacity going forward.

FINRA is proposing to adopt the Plan for those FINRA members that opt to utilize the ADF for quoting and trade reporting. ADF Trading Centers would be required to agree to abide by the Plan as part of the ADF Certification Record that ADF Trading Centers are required to execute and comply with in order to quote on and report trades to the ADF.[7] FINRA is proposing to codify the excess capacity usage fees in the Plan as

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6 See Consolidated Tape Association Plan (July 1, 2009 Composite), available at http://www.nyxdata.com/nysedata/CTA/tabid/227/Default.aspx.

7 If a firm is only reporting trades to the ADF and is not quoting on the ADF, the firm is not an "ADF Trading Center" and is not required to complete the ADF Certification Record.

new FINRA Rule 7550.[8]

The Plan, which is substantially based upon the existing consolidated data plan methodologies, would require ADF Trading Centers to submit forward-looking volume projections of capacity usage on at least a quarterly basis. ADF Trading Centers would submit volume projections to FINRA for quoting, trade reporting, and order reporting activity for both CQS securities and securities listed on the Nasdaq Stock Market ("Nasdaq securities"); thus, each ADF Trading Center would submit six separate volume projections. Based on these projections, FINRA would then certify each ADF Trading Center at a certain volume level. If, during a calendar month, an ADF Trading Center exceeds its certified volume level in any of the six categories of information, the ADF Trading Center could be charged an excess capacity usage fee, as described in more detail below.

The Plan notes that FINRA will seek to accommodate all reasonable capacity projection requests; however, the Plan is sufficiently flexible to avoid FINRA "overbuilding" capacity in response to unreasonably high and unsupported capacity projections of ADF Trading Centers. Thus, the Plan will explicitly reserve the right for FINRA to deem requests for significantly higher capacity usage as being unreasonable in light of the facts and circumstances of any given request for additional capacity. This is intended to prevent ADF Trading Centers from submitting unreasonably high volume projections in an effort to avoid incurring excess capacity usage fees because of volume overruns. Consequently, pursuant to the Plan, ADF Trading Centers must provide

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[8] The proposed rule change renumbers FINRA Rules 7550, 7560, and 7570 as Rules 7560, 7570, and 7580, respectively.

FINRA with supporting documentation for requests for an increase in capacity in excess of 25 percent of current capacity usage sufficient to demonstrate that the request is reasonable in light of the facts and circumstances. In such cases, FINRA staff, in its sole discretion, will determine whether the request for additional capacity is reasonably supported by the current or future needs of the ADF Trading Center in question. If FINRA believes a request for significantly higher capacity usage is not supported by the documentation provided by the ADF Trading Center, FINRA will request that the ADF Trading Center supplement its submission. FINRA may, in its sole discretion, deny in total or in part a request for significantly higher capacity usage that does not appear to be reasonably supported by the current or future needs of the ADF Trading Center in question. In addition, the Plan gives FINRA the authority to decrease an ADF Trading Center's capacity and require the ADF Trading Center to submit revised volume projections if an ADF Trading Center's average monthly usage falls significantly below the volume for which the ADF Trading Center is certified.

The Plan includes a schedule of excess capacity usage fees in the event an ADF Trading Center exceeds its certified volume levels. As noted above, ADF Trading Centers submit forward-looking volume projections for quote, trade reporting, and order reporting activity broken out by National Market System ("NMS") data plan. Accordingly, each ADF Trading Center submits separate projections for Unlisted Trading Privileges ("UTP") Plan volume (i.e., Nasdaq securities) and for CTA Plan volume (i.e., CQS securities). FINRA will then certify a volume in each of these six categories for each ADF Trading Center. If an ADF Trading Center exceeds its certified capacity in

one or more of the categories on one or more days in a given calendar month, the following excess capacity usage fees will apply:

Level	Percentage Exceeded	1-2 days	3-5 days	6-10 days	>10 days
1	<25%	N/A	$2,000	$4,000	$6,000
2	25% - <50%	$2,000	$4,000	$6,000	$8,000
3	50% or more	$4,000	$8,000	$10,000	$20,000

All incidents for a calendar month will be assessed at the highest level rate that any incident in the month achieved, and at the highest dollar amount based on the number of days.[9] For purposes of calculating the excess capacity usage fee, accruals of incidents apply separately for quote, trade, and order reporting activity and for each NMS data plan to determine whether multiple incidents result in Category 1, 2, or 3 level fees.[10]

Because of the potential difficulties in precisely predicting capacity needs, the Plan provides that, if an ADF Trading Center was certified for less than its requested capacity and surpasses the certified capacity level in a particular category according to the following schedule, FINRA will retroactively certify the ADF Trading Center at a

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9 For example, if in one month an ADF Trading Center has one Level 1 incident, one Level 2 incident, and one Level 3 incident in the same category, all three incidents will be treated as Level 3 incidents, and an $8,000 fee would apply.

10 For example, if in one month an ADF Trading Center has one Level 1 incident in Nasdaq securities for trade report volume, two Level 2 incidents in CQS securities for quote volume, and three Level 3 incidents in CQS securities for order report volume, there would be six total incidents carrying two different fees. One fee of $2,000 would be levied for the two Level 2 incidents in CQS securities for quote volume. Another fee of $8,000 would be levied for the three Level 3 incidents in CQS securities for order report volume. There would be no fee for the one Level 1 incident in Nasdaq securities for trade report volume as it is not applicable according to the fee schedule.

higher capacity level in that category, provided there is sufficient capacity in the system to support the higher capacity level:

ADF Trading Center exceeds Capacity	**Percentage Capacity Exceeded (%)**	**FINRA will retroactively certify**
5 times in a single calendar month	By at least 25% but less than 50%	An increase of 50% over current capacity level
5 times in a single calendar month	By 50% or more	An increase of 100% over current capacity level

This schedule applies in each category (quotes, trade reports, and order reports) and for each separate NMS data plan. The Plan explains that the retroactive higher level certification will be valid for the month in question and will remain in place for the duration of that capacity planning quarter. If an ADF Trading Center exceeds its certification level according to the schedule above in a calendar month and is retroactively certified at the higher level, the ADF Trading Center will only be subject to the excess capacity usage fee schedule for the capacity planning quarter in question if it exceeds the higher retroactive certification level.[11]

The proposed rule change adopts the excess capacity fee schedule in proposed FINRA Rule 7550 and explains how the fees are calculated. Specifically, FINRA Rule 7550 explains that (1) the fees are calculated on a monthly basis; (2) accruals of incidents apply separately for quote, trade reporting, and order reporting activity and for each NMS data plan to determine whether multiple incidents result in Level 1, 2, or 3 fees; and (3)

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[11] If an ADF Trading Center is eligible for retroactive certification but there is insufficient capacity in the system to support retroactive capacity level increases of 50% or 100%, the ADF Trading Center will not be assessed an excess capacity usage fee until the system has been upgraded to support the higher capacity level. Once the system is upgraded to support the higher retroactive certification level, the ADF Trading Center will be subject to an excess capacity usage fee only if it exceeds the higher retroactive certification level.

all incidents for a calendar month in each of the six categories will be assessed at the highest level rate that any incident in the month achieved in that category and at the highest dollar amount based on the number of days according to the above schedule.

FINRA is also amending the ADF Certification Record to add an additional certification item that states that ADF Trading Centers must comply with the terms of the Plan. FINRA is also adding a signature block to the bottom of the ADF Certification Record and replacing references to "NASD" with "FINRA."

FINRA will announce the effective date of the proposed rule change on its web site no later than 120 days from the date of SEC approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] 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 and Section 15A(b)(5) of the Act,[13] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that requiring ADF Trading Centers to submit reasonable volume projections for quoting and trading on the ADF will enhance FINRA's ability to ensure that the ADF has sufficient capacity to handle the volume of quote and trade data

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[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78o–3(b)(5).

submitted to the ADF while also avoiding the need for FINRA to expend unnecessary resources to maintain data capacity that will not be used. FINRA believes that the fees assessed on ADF Trading Centers that surpass their volume projections are reasonable and appropriate given the potential consequences of overrunning volume projections (i.e., an inability for the ADF to handle the volume and increased costs to FINRA of overrunning submitting volume projections to the consolidated data plans). The adoption of the proposed rule change will help to ensure that FINRA is able to meet its regulatory obligations by maintaining a high level of operability for the ADF. In addition, it should enhance FINRA's ability to submit accurate volume projections to the consolidated data plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register 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 rule-comments@sec.gov. Please include File Number SR-FINRA-2009-069 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-2009-069. 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 should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-069 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon

Deputy Secretary

[14] 17 CFR 200.30-3(a)(12).

EXHIBIT 3a

Below is the text of the ADF Capacity Management Plan. All language is new.

ADF Capacity Management Plan

ADF Trading Center Certification: ADF Trading Centers must complete an initial ADF Trading Center certification process to begin quoting and trade reporting through the ADF and must also complete an annual recertification. In addition, each ADF Trading Center must, on a quarterly basis (as well as on demand from FINRA), submit volume projections for current and future peak data reporting levels. ADF Trading Centers are only certified and authorized to submit quote, trade and order reporting data at volume projection levels once they have successfully completed (in the sole discretion of FINRA staff) a test with FINRA Product Management at the requested volume level and received written notice of being certified at the higher requested level. Submission of initial or final volume projections does not certify an ADF Trading Center at a higher volume level.

Capacity Projection Submission: ADF Trading Centers must provide volume projections that as accurately as possible reflect their anticipated capacity requirements for the next quarter in order for FINRA to assess ADF system infrastructure requirements for the next quarter. Anticipated capacity requirements must be submitted on the ADF Commitment Application Form as required by FINRA Product Management and must be received by FINRA at least 45 calendar days prior to the end of each calendar quarter for the next calendar quarter (See Attachment A – ADF Commitment Application Form). Submissions are due by certain specified due dates and, if not received in a timely fashion, certain specified assumptions are made for projections based on prior certified activity levels (See Capacity Planning Schedule below). Peak capacities are established separately for Unlisted Trading Privileges Plan volume (Nasdaq Stock Market-listed securities ("Nasdaq securities") volume) and for Consolidated Tape Association Plan volume (combined New York Stock Exchange-listed and American Stock Exchange–listed securities ("CQS securities") volume), in the following categories[1]:

(i) Quotations;

(ii) Trade Reports; and

(iii) Order Reports.

Capacity Request Denials: FINRA staff will seek to accommodate all reasonable capacity projection requests. However, FINRA reserves the right to deem requests for significantly higher capacity usage as being unreasonable in light of the facts and circumstances of any given request for additional capacity. In such cases, FINRA staff, in its sole discretion, may deny in

[1] FINRA reserves the right to request projections of other message types, e.g., cancellations.

total or in part requests for additional capacity (e.g., a request for significantly higher capacity usage that does not appear to be reasonably supported by the current or future needs of the ADF Trading Center in question may be denied in total or in part by FINRA staff in its sole discretion).

Capacity Planning Schedule: The schedule below is provided to ensure that ADF Trading Centers provide timely, well thought out, and accurate volume projections in order to facilitate an accurate assessment by FINRA of system and capacity requirements.

ADF Capacity Planning Calendar Template

Step #	Action		Start Date	End Date
1.	FINRA requests initial volume projections from ADF Trading Centers via email on the ADF Commitment Application Form ("Form").		First trading day of second month of planning cycle.	First trading day of second month of planning cycle.
2.	FINRA will email ADF Trading Centers a reminder to submit their initial volume projections.		9 business days from Step #1.	9 business days from Step #1.
3.	ADF Trading Centers submit initial volume projections to FINRA via email on the Form.		Step #1 date.	10 business days from Step #1.
4.	FINRA advises ADF Trading Centers of available capacity based on the ADF Trading Center's projections and requests final volume projections. FINRA will also advise ADF Trading Centers of any necessary ADF system upgrades required to accommodate their volume requests.		10 business days from Step #1.	20 business days from Step #1.
5.	FINRA will email ADF Trading Centers a reminder to submit their final volume projections.		24 business days from Step #1.	24 business days from Step #1.
6.	ADF Trading Centers are required to give their final volume projections to FINRA via email on the Form.		20 business days from Step #1.	25 business days from Step #1.
7.	If a capacity upgrade is required, the ADF Trading Center completes a system test prior to being certified at the higher volume level. Upon acceptable test, FINRA issues notice of certification at higher level.		20 business days from Step #1.	40 business days from Step #1.

Volume Projection Submission Accuracy and Timeliness: If the ADF Trading Center fails to provide its initial projected volume and fails to provide the final projected volume by the due

date prescribed in the calendar, FINRA will use the last projected volume submitted by the ADF Trading Center or the last revised projected volume calculated by SRO Member for purposes of the upcoming capacity planning quarter.

Capacity Allocations: Assuming that sufficient ADF system capacity exists, each ADF Trading Center will be notified in writing that it may submit quote, trade and order data up to its certified and tested projected capacity requirement for the next quarter. In the event of a capacity shortfall (i.e., if there is insufficient capacity in the system to support submitted projections), FINRA allocates the available ADF capacity on a percentage basis. Requirements for additional capacity beyond available ADF system capacity will result in FINRA pursuing upgrades to the environment to achieve the projected capacity requirements. Should FINRA need to add capacity in order to accommodate the aggregate additional capacity requested, FINRA will notify the requesting ADF Trading Centers as to the maximum volumes they are permitted to submit until such time as the upgrades have been installed and tested, and the ADF Trading Centers have been recertified at the requested level.

Capacity Request Denials and Retroactive Certifications: FINRA staff will seek to accommodate all reasonable capacity projection requests. However, ADF Trading Centers must provide FINRA with supporting documentation for requests for an increase in capacity in excess of 25 percent of current capacity usage sufficient to demonstrate that the request is reasonable in light of the facts and circumstances. In such cases, FINRA staff, in its sole discretion, will determine whether the request for additional capacity is reasonably supported by the current or future needs of the ADF Trading Center in question. If FINRA believes a request for significantly higher capacity usage is not supported by the documentation provided by the ADF Trading Center, FINRA will request that the ADF Trading Center supplement its submission.

FINRA recognizes the potential difficulties in precisely predicting capacity needs, notwithstanding the best efforts of the ADF Trading Center. Therefore, if an ADF Trading Center was certified for less than its requested capacity and surpasses the certified capacity level in a particular category according to the following schedule, FINRA will retroactively certify the ADF Trading Center at a higher capacity level in that category, provided there is sufficient capacity in the system to support the higher capacity level:

ADF Trading Center exceeds Capacity	**Percentage Capacity Exceeded (%)**	**FINRA will retroactively certify**
5 times in a single calendar month	By at least 25% but less than 50%	An increase of 50% over current capacity level
5 times in a single calendar month	By 50% or more	An increase of 100% over current capacity level

The schedule above applies in each category (Quotes, Trade Reports and Order Reports) and for the separate plans (Unlisted Trading Privileges Plan and Consolidated Tape Association Plan). The retroactive higher level certification will be valid for the month in question and will remain in place for the duration of that capacity planning quarter. If the ADF Trading Center exceeds its certification level according to the schedule above in a calendar month and is retroactively certified at the higher level, the ADF Trading Center will only be subject to the excess capacity

usage fee schedule set forth below for the capacity planning quarter in question if it exceeds the higher retroactive certification level.

If an ADF Trading Center is eligible for retroactive certification but there is insufficient capacity in the system to support retroactive capacity level increases of 50% or 100%, the ADF Trading Center will not be assessed an excess capacity usage fee until the system has been upgraded to support the higher capacity level. Once the system is upgraded to support the higher retroactive certification level, the ADF Trading Center will be subject to an excess capacity usage fee pursuant to the schedule set forth below if it exceeds the higher retroactive certification level.

Excess Capacity Usage Fees: Should an ADF Trading Center exceed its certified capacity in one or more of the categories listed above on one or more days in a given calendar month, the following excess capacity usage fees will apply:

Level	Percentage Exceeded	1-2 days	3-5 days	6-10 days	>10 days
1	<25%	N/A	$2,000	$4,000	$6,000
2	25% - <50%	$2,000	$4,000	$6,000	$8,000
3	50% or more	$4,000	$8,000	$10,000	$20,000

All incidents for a calendar month will be assessed at the highest level rate that any incident in the month achieved, and at the highest dollar amount based on the number of days.[2] ADF Trading Centers submit separate volume projections for quote, trade, and order reporting activity broken out by National Market System ("NMS") data plan (*i.e.*, separate projections are submitted for Nasdaq securities volume and for CQS securities volume). For purposes of calculating the excess capacity usage fee, accruals of incidents apply separately for quote, trade, and order reporting activity and for each NMS data plan to determine whether multiple incidents result in Category 1, 2, or 3 level fees.[3]

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[2] For example, if in one month an ADF Trading Center has one Level 1 incident, one Level 2 incident, and one Level 3 incident in the same category, all three incidents will be treated as Level 3 incidents, and an $8,000 fee would apply.

[3] For example, if in one month an ADF Trading Center has one Level 1 incident in Nasdaq securities for trade report volume, two Level 2 incidents in CQS securities for quote volume, and three Level 3 incidents in CQS securities for order report volume, there would be six total incidents carrying two different fees. One fee of $2,000 would be levied for the two Level 2 incidents in CQS securities for quote volume. Another fee of $8,000 would be levied for the three Level 3 incidents in CQS securities for order report volume. There would be no fee for the one Level 1 incident in Nasdaq securities for trade report volume as it is not applicable according to the fee schedule.

In assessing excess capacity usage fees:

(i) FINRA will use its own metrics to determine if an ADF Trading Center has exceeded its certified and tested volume level;

(ii) FINRA will notify each ADF Trading Center as soon as possible after it has exceeded its certified and tested volume level;

(iii) FINRA will notify each ADF Trading Center when it has incurred an excess capacity usage fee; and

(iv) Any excess capacity usage fee(s) incurred during a month will appear on that month's invoice.

Limit Sessions: To the extent that the average monthly volume falls significantly below certified data usage levels for an ADF Trading Center (based upon the sole discretion of FINRA staff), FINRA Product Management may deem the ADF Trading Center as being certified at a lower data usage level. Moreover, FINRA Product Management may, upon notification to the ADF Trading Center, terminate the ADF Trading Center's data port sessions to ensure that data levels stay at or below certified levels, and may require the ADF Trading Center to retest to establish a new, lower certified capacity. FINRA Product Management will work with the ADF Trading Center to establish a new data usage certification level and corresponding data port sessions that allow sufficient capacity to be available for the ADF Trading Center's anticipated near-term volume increases and market breakout events relative to current and near-term volume levels.

Terminate Sessions: To the extent that such data usage materially exceeds certified data usage levels for an ADF Trading Center (based upon the sole discretion of FINRA staff), FINRA Product Management may incrementally terminate the ADF Trading Center's data port sessions to ensure that data levels stay at or below certified levels. Such termination may occur on an intra-day basis and will be proportionate to the extent to which the data overage threatens the ADF system stability and/or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.

ADF Commitment Application Form

FINRA Member:
Official Address:
Official Address2:

Name of Contact:
Title of Contact:

Phone Number:
Fax Number:
Email Address of Contact:
Mailing Address (if different from above):

Forecasted ADF Volume
Q1 20__

Nasdaq

	Average Day		99% Confidence Level	
	Msgs per Second	Peak per Day	Msgs per Second	Peak per Day
Quotes				
Trade Reports				
Order Reports				

NYSE/AMEX

	Average Day		99% Confidence Level	
	Msgs per Second	Peak per Day	Msgs per Second	Peak per Day
Quotes				
Trade Reports				
Order Reports				

Signature of Contact: _____ Date: _____

Forecasted ADF Volume
Q2 20__

Nasdaq

	Average Day		99% Confidence Level	
	Msgs per Second	Peak per Day	Msgs per Second	Peak per Day
Quotes				
Trade Reports				
Order Reports				

NYSE/AMEX

	Average Day		99% Confidence Level	
	Msgs per Second	Peak per Day	Msgs per Second	Peak per Day
Quotes				
Trade Reports				
Order Reports				

Signature of Contact: _____ Date: _____

Forecasted ADF Volume
Q3 20__

Nasdaq

	Average Day		99% Confidence Level	
	Msgs per Second	Peak per Day	Msgs per Second	Peak per Day
Quotes				
Trade Reports				
Order Reports				

NYSE/AMEX

	Average Day		99% Confidence Level	
	Msgs per Second	Peak per Day	Msgs per Second	Peak per Day
Quotes				
Trade Reports				
Order Reports				

Signature of Contact: _____ Date: _____

Forecasted ADF Volume
Q4 20__

Nasdaq

	Average Day		99% Confidence Level	
	Msgs per Second	Peak per Day	Msgs per Second	Peak per Day
Quotes				
Trade Reports				
Order Reports				

NYSE/AMEX

	Average Day		99% Confidence Level	
	Msgs per Second	Peak per Day	Msgs per Second	Peak per Day
Quotes				
Trade Reports				
Order Reports				

Signature of Contact: _____ Date: _____

	Nasdaq	NYSE/AMEX
Number of Securities you will trade		
Average number of securities you will trade		
Number of securities in which you make a market		

Signature of Contact: _____ Date: _____

EXHIBIT 3b

Below is the text of the ADF Certification Record. New language is underlined; deletions are in brackets.

ADF Trading Center
Certification Record

Regulation NMS-Compliant Certifications*	***Certification Signature***
(1) Certification Scope – ADF Trading Center certifies its acknowledgement that this ADF Trading Center Certification Record is intended to assist [NASD] FINRA in determining that ADF Trading Center is capable of meeting ADF Trading Center's Regulation NMS obligations and otherwise meeting the terms of the certifications enumerated below. ADF Trading Center certifies its acknowledgement that neither this ADF Trading Center Certification Record nor the act of [NASD] FINRA certifying ADF Trading Center for quoting on the ADF and/or trade reporting through TRACS shall constitute an estoppel as to [NASD] FINRA or bind [NASD] FINRA in any subsequent administrative, civil or disciplinary proceeding.	
(2) Real Time Monitoring of Protected Quotations – ADF Trading Center certifies that it monitors in real time away market protected quotations, including the protected quotations of other ADF Trading Centers and SRO trading facilities, and that it has implemented a clock synchronization protocol such that ADF Trading Center's internal clock used for Regulation NMS compliance purposes is set to Eastern Standard Time and is corrected to the NIST Atomic Clock, and in no event is the ADF Trading Center's internal clock more than one second away from the NIST Atomic Clock.	

* See Regulation NMS, SEC Rule 600, 17 CFR § 242.600, for defined terms throughout the certification. All certification entries require sufficient records, testing materials, and any other documentation as deemed necessary in the sole discretion of [NASD] FINRA staff to reasonably support such certifications.

(3) Automated Quotations – ADF Trading Center certifies that it will submit only automated quotations for posting on the ADF and that under no circumstances will a manual quotation be submitted (including a quotation that otherwise would be an automated quotation, but for an ADF Trading Center system error, malfunction, latency, etc.)	
(4) Order Response Time - ADF Trading Center certifies that it offers immediate-or-cancel order execution functionality for execution against its protected quotations and that such functionality is offered to those required to be granted access to protected quotations, including other [NASD] FINRA members and other ADF Trading Centers. ADF Trading Center certifies that its order response time will at least meet the response time required for its quotations to qualify as automated quotations. ADF Trading Center certifies that in no event will its immediate response to orders require any human discretion for completion.	
(5) Fair and Non-Discriminatory Access – ADF Trading Center certifies that it offers fair and non-discriminatory access to any person as required by Regulation NMS.	
(6) Access Fee Cap Order Designator - ADF Trading Center certifies that, if it intends to charge a fee in excess of the fee cap for accessing orders other than protected quotations, such ADF Trading Center provides functionality that enables market participants to assure that they will not inadvertently be charged a fee in excess of the fee cap.	
(7) Substantially Equivalent Level and Cost of Access - ADF Trading Center certifies that it provides a level and cost of access that is substantially equivalent to that offered by SRO trading facilities generally.	
(8) Defray Costs - ADF Trading Center certifies that, to the extent that [NASD] FINRA deems such ADF Trading Center not to be granting the requisite level and cost of access, ADF Trading Center will be required by [NASD] FINRA to defray the connectivity costs of those persons entitled to access ADF Trading Center.	

(9) 60-Day Pre-Quotation Display Notice – ADF Trading Center certifies its acknowledgement that [NASD] FINRA will not permit ADF Trading Center quotations to be displayed through the ADF unless [NASD] FINRA determines that sufficient public notice has been provided of the ADF Trading Center's intention to display quotations through the ADF at least 60 days in advance of such activity. With regard to an ADF Trading Center that displays quotations in the ADF prior to the implementation of Regulation NMS and seeks to continue uninterrupted quoting on the ADF after Regulation NMS implementation, such ADF Trading Center must comply with this 60-day public notice period in advance of Regulation NMS implementation. Such advance notice must be given through reasonable means (e.g., through press releases, their web site, the [NASD] FINRA web site, and other [NASD] FINRA-sponsored information publication channels (e.g., e-mail push alerts)).	
(10) Connectivity / Access – ADF Trading Center certifies that, as part of its providing sufficient public notice prior to displaying quotations through the ADF, ADF Trading Center will make publicly available through reasonable means (e.g., through ADF Trading Center press releases, on ADF Trading Center web site, on [NASD] FINRA web site, and through other [NASD] FINRA-sponsored information publication channels) relevant connectivity and access specifications, including: (i) technical interface specifications (e.g., compatible system protocols, etc.); (ii) testing schedules; (iii) connectivity providers (e.g., extranet providers and direct market access firms) through which ADF Trading Center quotations may be accessed; and (iv) all relevant subscriber and non-subscriber fees, access fees, port fees, connectivity fees and rebates.	
(11) ADF Order Reports - If ADF Trading Center terminates transmitting ADF order reports to [NASD] FINRA at the end of the same trading day in which it last posted an ADF quote (rather than the day following the trading day in which it last posted an ADF quote), ADF Trading Center certifies that it is able to determine the time at which it ceased posting ADF quotes.	

(12) Intra-Day Staff Availability - ADF Trading Center certifies that it will make its Chief Compliance Officer or other principal with appropriate oversight responsibilities available during ADF trading hours to respond to ADF Operations inquiries concerning ADF Trading Center operations. ADF Trading Center acknowledges that ADF Operations has full discretion to remove ADF Trading Center quotations from the ADF to the extent that ADF Operations is unable to contact or receives an insufficient response from ADF Trading Center's Chief Compliance Officer or other principal with appropriate oversight responsibilities in connection with a material ADF Trading Center operations matter.	
(13) Self-Help Notification - ADF Trading Center certifies that it will immediately transmit to ADF Operations (in the form reasonably required by ADF Operations) any notifications received by ADF Trading Center that another ADF Trading Center or other Trading Center (including an SRO Trading Facility) has invoked the "Self-Help Exception" (SEC Rule 611(b)(1)) to the Order Protection Rule with the respect to the quotations of the ADF Trading Center. ADF Trading Center also certifies that it will immediately transmit to ADF Operations (in the form reasonably required by ADF Operations) any notifications transmitted by ADF Trading Center to another ADF Trading Center or other Trading Center (including an SRO Trading Facility) that the ADF Trading Center has invoked the "Self-Help Exception" (SEC Rule 611(b)(1)) to the Order Protection Rule with the respect to the quotations of the other Trading Center.	

(14) ADF Capacity Management Plan - ADF Trading Center certifies that it will adhere to, comply with, and actively participate in the FINRA ADF capacity management plan with respect to the total volume of messages (quotations; trade reports; order reports) and peak transmission rates (in messages per second) that it will send to the ADF. On at least a quarterly basis, as well as on demand from FINRA, ADF Trading Center will provide its projected average and peak message volumes and transmission rates. ADF Trading Center acknowledges that it is not authorized or approved for submitting such volumes or rates merely by having requested them. ADF Trading Center agrees to conduct performance testing with the ADF at a time set and as reasonably requested by FINRA. Upon completion of the testing, FINRA will inform the ADF Trading Center of the volumes and message rates for which the ADF Trading Center is approved in writing. ADF Trading Center certifies that it will not exceed such volumes and acknowledges that FINRA has the right to limit or suspend transmissions to FINRA in excess of approved volumes. ADF Trading Center acknowledges that exceeding certified volume levels may result in the imposition of excess capacity usage fees and possible action by FINRA to limit the ability of ADF Trading Center to submit volume to the ADF above certified levels.	

I HEREBY CERTIFY that the foregoing information provided by me on behalf of the _____ is true and correct to the best of my knowledge, information and belief. Executed on _____, 20 _.

By: _____

Printed Name: _____

Title: _____

EXHIBIT 5

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

* * * * *

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

* * * * *

7500. CHARGES FOR ALTERNATIVE DISPLAY FACILITY SERVICES AND EQUIPMENT

* * * * *

7550. Excess Capacity Usage Fees

(a) As part of the Certification Record, each ADF Trading Center is required to comply with the ADF Capacity Management Plan and to certify, on at least a quarterly basis, that it will not exceed its certified volume levels with respect to any Volume Certification Category.

(b) If an ADF Trading Center exceeds its certified volume level in any Volume Certification Category on one or more days in a given calendar month, the ADF Trading Center will be charged an excess capacity usage fee in accordance with the ADF Capacity Management Plan for that month based on the following fee table:

Level	Percentage Exceeded	1-2 days	3-5 days	6-10 days	>10 days
1	<25%	N/A	$2,000	$4,000	$6,000
2	25% - <50%	$2,000	$4,000	$6,000	$8,000
3	50% or more	$4,000	$8,000	$10,000	$20,000

(c) In calculating the excess capacity usage fee pursuant to paragraph (b), all incidents in a calendar month in a particular Volume Certification Category will be assessed at the highest

Level that any single incident in that Volume Certification Category during that month achieved, and at the highest dollar amount based on the aggregate number of days for all incidents in that Volume Certification Category.

(d) For purposes of Rule 7550:

(1) the terms "ADF Trading Center," "Certification Record," "CQS security," and "Nasdaq security" shall have the same meaning as those terms are defined in Rule 6220; and

(2) the term "Volume Certification Category" means any of the following categories that an ADF Trading Center is required to certify to regarding volume submitted to the ADF:

(A) quotation volume in CQS securities;

(B) trade reporting volume in CQS securities;

(C) order reporting volume in CQS securities;

(D) quotation volume in Nasdaq securities;

(E) trade reporting volume in Nasdaq securities; and

(F) order reporting volume in Nasdaq securities.

* * * * *

[7550] 7560. Partial Month Charges

The charges for the month of commencement or termination of service will be prorated based on the number of trade days in that month.

* * * * *

[7560] 7570. Late Fees

(a) through (b) No Change.

* * * * *

[7570] 7580. Minor Modifications in Charges

(a) through (b) No Change.