

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 76	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2013 - * 054	Amendment No. (req. for Amendments *)
Filing by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposed Rule Change Relating to Capacity Management Plan"/>				
<b>Contact Information</b>				
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 action.				
First Name *	<input type="text" value="Andrew"/>	Last Name *	<input type="text" value="Madar"/>	
Title *	<input type="text" value="Assistant General Counsel"/>			
E-mail *	<input type="text" value="Andrew.Madar@finra.org"/>			
Telephone *	<input type="text" value="(202) 728-8056"/>	Fax	<input type="text" value="(202) 728-8264"/>	
<b>Signature</b>				
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.				
(Title *)				
Date	<input type="text" value="12/24/2013"/>	<input type="text" value="Senior Vice President and Director of Capital Markets Policy"/>		
By	<input type="text" value="Stephanie M. Dumont"/>	<input type="text" value="Stephanie Dumont,"/>		
(Name *)				
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.				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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, security-based swap submission, or advance notice 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**

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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**

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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**

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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**

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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**

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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 the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt a new FINRA Capacity Management Plan (“Plan”) for the Alternative Display Facility (“ADF”) and amend the ADF Trading Center Certification Record (“Certification”) to, among other things, require ADF Trading Centers to comply with the Plan.

A copy of the Plan is attached as Exhibit 3a. A copy of the revised Certification is included as Exhibit 3b. 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 19, 2013, 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.

The proposed rule change will be effective upon Commission approval.

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

(a) Purpose

The ADF is a quotation collection and trade reporting facility that provides ADF Market Participants (i.e., ADF-registered market makers or electronic communications

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

networks (“ECNs”)<sup>2</sup> the ability to post quotations, display orders and report transactions in NMS stocks<sup>3</sup> for submission to the Securities Information Processors (“SIPs”) for consolidation and dissemination to vendors and other market participants. In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.<sup>4</sup>

To become an ADF Market Participant, a member must apply to FINRA, which includes certifying the member’s good standing with FINRA and demonstrating compliance with the net capital and other financial responsibility provisions of the Act.<sup>5</sup> Before displaying quotations or orders on the ADF, an ADF Market Participant that is an “ADF Trading Center”<sup>6</sup> must also execute and comply with a Certification Record to certify the ADF Trading Center’s compliance efforts with its obligations under Regulation NMS.<sup>7</sup>

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<sup>2</sup> See Rule 6220(a)(3).

<sup>3</sup> See 17 CFR 242.600.

<sup>4</sup> See 17 CFR 242.600.

<sup>5</sup> See Rule 6271(b). FINRA has submitted a proposed rule change to amend the ADF rules to, among other things, assess an ADF Deposit Amount on ADF Market Participants. See Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 46652 (August 1, 2013) (SR-FINRA-2013-031).

<sup>6</sup> An “ADF Trading Center” is a Registered Reporting ADF Market Maker or Registered Reporting ADF ECN that is a “Trading Center,” as defined in Rule 600(b)(78) of SEC Regulation NMS, and that is certified to display its quotations or orders through the ADF. See Rule 6220(a)(4); see also 17 CFR 242.600(b)(78).

<sup>7</sup> See Rules 6220(a)(5), 6250(a)(7); NASD Notice to Members 06-67 (November 2006); see also SR-NASD-2006-091, Amendment No. 3, Exhibit 3.

Regulatory developments, such as the SEC's adoption of Regulation NMS in 2005, have resulted in a dramatic increase in quote and trade volume in the National Market System. The securities markets have experienced significant changes, evolving to a larger number and variety of trading centers that are almost completely automated, with sophisticated, rapid and interconnected systems. 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") and the Consolidated Quotation Plan ("CQ Plan"; together, "CTA/CQ Plans"), which serve as the consolidated data plans for securities listed on the New York Stock Exchange, BATS, NYSE Arca, NYSE MKT and other regional exchange-listed securities,<sup>8</sup> currently enforce a strict "pay-for-capacity" methodology that includes monetary penalties for capacity overruns.<sup>9</sup> 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

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<sup>8</sup> The CTA Plan governs the collection and dissemination of last sale price information for non-NASDAQ listed securities, while the CQ Plan governs the collection and dissemination of bid/ask quotation information for listed securities.

<sup>9</sup> See Exhibit A to the CTA Plan (October 1, 2013 composite), available at <https://cta.nyxdata.com/CTA> (Capacity Planning Process for The Consolidated Tape System); see also Exhibit A to the CQ Plan (October 1, 2013 composite), available at <https://cta.nyxdata.com/CTA>.

increase incrementally based on the number of trading days within a calendar month that the SRO overran its submitted projections and the amount by which the SRO exceeded its submitted projections. In some cases, based on the number of trading days that projections have been exceeded, SROs may be subject to mandatory commitments to buy additional capacity going forward.<sup>10</sup>

Similar to the approach of the CTA/CQ Plans to capacity planning, 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 Certification that ADF Trading Centers are required to execute and comply with to quote on and report trades to the ADF.<sup>11</sup> The details of the Plan are set forth below.

#### Definitions

The Plan defines “CTA Securities” as securities subject to the Consolidated Tape Association Plan (i.e., securities listed on the New York Stock Exchange, BATS Exchange Inc., NYSE MKT LLC or NYSE Arca LLC). The Plan defines “UTP Securities” as securities subject to the Unlisted Trading Privileges Plan (i.e., securities listed on the Nasdaq Stock Market, LLC).<sup>12</sup> Finally, the Plan defines “Certified Capacity” as the maximum level of data (by message rate and message type) an ADF

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<sup>10</sup> Id.

<sup>11</sup> 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 Certification.

<sup>12</sup> For purposes of this proposal, the CTA/CQ Plans and the Unlisted Trading Privileges Plan (“UTP Plan”) may be collectively referred to as the “NMS data plans.”

Trading Center is certified to submit to the ADF Platform following the quarterly certification volume test conducted by FINRA.

ADF Trading Center Capacity Certification

Prior to commencing quoting or trade reporting through the ADF, the Plan requires that each ADF Trading Center complete an initial ADF Trading Center Capacity Certification process.<sup>13</sup> As part of this process, an ADF Trading Center must test its connectivity to the ADF with FINRA Product Management. FINRA will provide estimates for the costs of such testing, and, upon receipt of these estimates, the ADF Trading Center may request in writing that FINRA proceed with connectivity testing. Regardless of whether an ADF Trading Center ultimately is certified and becomes an active ADF Trading Center, the ADF Trading Center will be responsible for the testing costs and will be invoiced accordingly.

The Plan also requires each ADF Trading Center to submit volume projections for current and future peak data reporting levels on a quarterly basis, and on demand from FINRA. ADF Trading Centers must submit volume projections separately for CTA Securities and UTP Securities, and they must project their volume for quotations, media trade reports, total trade reports, and order reports. An ADF Trading Center is not certified to submit quote, trade or order reporting data at its requested level simply because it has submitted its initial or final volume projections. Rather, prior to submitting quote, trade and order reporting data at its projected volume levels, FINRA staff may require an ADF Trading Center to successfully complete a test at the projected volume levels.

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<sup>13</sup> Each ADF Trading Center also is required to complete an annual recertification.

Capacity Projection Submission

As part of both the initial certification process, and as part of its ongoing utilization of the ADF, an ADF Trading Center is required to provide quarterly volume projections that accurately reflect its anticipated capacity requirements for the next two quarters in order for FINRA to assess ADF system infrastructure requirements. Such anticipated capacity requirements must be submitted on the ADF Trading Center Volume Projections Form (“Form”)<sup>14</sup> 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 two calendar quarters. Submissions are due by certain specified due dates. If a submission is not received by the specified due date, FINRA will make assumptions for ADF Trading Center projections based on prior certified activity levels. Certified capacities are established separately for UTP Securities and for CTA Securities in the following categories: (1) Quotations; (2) Media Trade Reports; (3) Total Trade Reports (i.e., media and non-media); and (4) Order Reports. This traffic must be provided on both a messages-per-second<sup>15</sup> and transactions-per-day basis, on both a projected average day and on a projected peak day. The ADF Trading Center must also specify on the Form, for both CTA and UTP securities, the number of securities it will trade, the average number of securities it will trade, and the number of securities in which it will make a market (if applicable).

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<sup>14</sup> The ADF Trading Center Volume Projections Form is Attachment A to the Plan.

<sup>15</sup> FINRA notes that the SIPs recently adopted a 100 millisecond projected peak capacity planning metric, and so FINRA reserves the ability to change this time metric through a proposed rule change to be filed with the Commission.



As set forth in the Plan, an ADF Trading Center submits its projections for the next two calendar quarters. Once an ADF Trading Center has submitted its projections for the following quarter, it may not adjust those projections; however, an ADF Trading Center will not be locked into its second quarter projections until the commencement of the planning process for that quarter, e.g., 60 calendar days before the end of the first quarter. FINRA will allow each ADF Trading Center to increase its projections for the second quarter, if necessary. An ADF Trading Center may also lower its projections by up to 10% for the second calendar quarter. Each ADF Trading Center will be subject to an Excess Capacity Usage Fee schedule (“Excess Fee”) and a Shortfall Capacity Usage Fee schedule (“Shortfall Fee”), which are discussed in greater detail below.

The reason for limiting the extent to which an ADF Trading Center may lower its capacity projection for the second calendar quarter for quote and trade data is attributable to the manner in which FINRA incurs costs related to the NMS data plans, including the direct purchase of capacity pursuant to the CTA/CQ Plans.<sup>16</sup> FINRA configures servers to support the capacity projections from ADF Trading Centers and purchases corresponding capacity from the SIPs. With respect to the CTA/CQ Plans, once FINRA has purchased capacity from the SIP, it cannot divest itself of such capacity unless there is another participant willing to acquire that capacity. By allowing ADF Trading Centers

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<sup>16</sup> Currently, FINRA directly purchases capacity under the CTA/CQ Plans for quote and trade reporting. FINRA indirectly pays for capacity under the UTP Plan in connection with quote and trade reporting, as it pays an administrator fee and a processor fee under the UTP Plan that is deducted from the Plan’s gross revenues, with FINRA receiving any distributions from the Plan’s net revenues. Upon SEC approval of the relevant pending amendment to the UTP Plan, see Securities Exchange Act Release No. 62021 (April 30, 2010), 75 FR 27010 (May 13, 2010) (File No. S7-24-89), FINRA will also directly purchase capacity under the UTP Plan.

to lower their capacity projections by up to 10% for the second quarter, FINRA is providing ADF Trading Centers with some flexibility to formulate their capacity projections while helping to ensure that ADF Trading Centers provide realistic capacity projections, thus defraying potential costs to FINRA. Similarly, although FINRA does not purchase SIP capacity for order reporting information, it does incur costs in purchasing the necessary hardware and software to support the intake and storage of such information.

#### Capacity Planning Schedule

The Plan sets forth a schedule to ensure that ADF Trading Centers provide timely and accurate volume projections which will enable FINRA to make an accurate assessment of system and capacity requirements. For example, on the first trading day of the second month of the planning cycle, FINRA will notify ADF Trading Centers via e-mail that initial volume projections on the ADF Trading Center Volume Projections Form are due. ADF Trading Centers have ten business days following the initial FINRA notification to provide initial volume projections via email on the ADF Trading Center Volume Projections Form. Between the tenth and twentieth business day following the initial FINRA notification, FINRA advises ADF Trading Centers of the respective ADF Trading Center's 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. Between the twentieth and twenty-fifth business day following the initial FINRA notification, ADF Trading Centers are required to give their final volume projections to FINRA via e-mail on the ADF Trading Center Volume Projections Form. To the extent

that a capacity increase is required, the system test will be completed between the twentieth and fortieth business days following the initial FINRA request for projections.<sup>17</sup>

#### Capacity Allocations

As set forth in the Plan, if an ADF Trading Center requests a certain amount of capacity, FINRA will honor such request and will build out capacity to support the ADF Trading Center's peak projected capacity requirements. Once an ADF Trading Center has formally requested capacity, the Plan provides that such request may not be rescinded. A request does not mean, however, that the ADF Trading Center is entitled to submit to the projected level; rather, each ADF Trading Center must still partake in quarterly volume tests before it is certified to its requested volume level.

The Plan also provides that an ADF Trading Center is only authorized to submit increased volume after conducting a capacity test and receiving written notice from FINRA that the ADF Trading Center is certified for operation at the specified level.

Finally, if an ADF Trading Center ceases posting quotes on the ADF or stops reporting trades to the ADF and becomes inactive (either under Rule 6250(g) or by voluntary withdrawal), the Plan provides that such Trading Center will be deemed to have surrendered any capacity to which it was previously certified. The ADF Trading Center is still liable for any Capacity Usage Fees it may have incurred while active.

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<sup>17</sup> In the event that all of the ADF Trading Centers have no changes or de minimis changes to their projections from a previous quarter for which they were tested and certified, the Plan provides that FINRA may forego the quarterly certification system test and certify the parties for the coming quarter. If FINRA's Product Management team is unable to conduct the certification test prior to the start of the coming quarter, the Plan provides that the ADF Trading Center(s) will be conditionally certified at the previous quarter's levels and all Capacity Usage Fees will be suspended until Product Management is able to conduct a test and officially certify the ADF Trading Center(s).

### Extraordinary Upgrades

To the extent that an ADF Trading Center's volume overrun (either in message volume by category or in message per second throughput) threatens, in FINRA's sole discretion, its ability to meet its regulatory obligations, the Plan provides that FINRA has the right to make mid-quarter extraordinary system upgrades to accommodate higher message volume or higher message per second throughput. The costs for such new infrastructure investment will be borne by the ADF Trading Center that has exceeded its Certified Capacity, or, if multiple ADF Trading Centers have exceeded their Certified Capacity, will be allocated among such ADF Trading Centers. In all such instances, FINRA will provide notice to the affected ADF Trading Center(s) that FINRA is taking such actions.

Notwithstanding FINRA's ability to implement a mid-quarter extraordinary system upgrade, to the extent that ADF message volume materially exceeds certified levels of operation, as determined by FINRA staff, the Plan provides that FINRA technical staff may reconfigure the ADF connection to ensure that data levels stay at or below reasonable levels of operation. Such reconfiguration may occur on an intra-day basis in proportion to the extent to which the higher ADF message volume threatens FINRA's system stability and/or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.

### Infrastructure Costs

The Plan provides that the costs associated with building and implementing the capacity and environments (including, but not limited to, labor, hardware, software,

installation, testing, etc., as well as associated on-going operational costs) will be borne by FINRA (except in the event of an Extraordinary Upgrade).

Should FINRA need to add capacity in order to accommodate additional capacity requests, the Plan provides that 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. Until such time that the upgrades are made, FINRA will suspend the application of all Capacity Usage Fees, as described in greater detail below.

Excess Fees

If an ADF Trading Center exceeds its Certified Peak Transaction Volume (which is equivalent to the request on the ADF Trading Center Volume Projections Form for “Transactions per Day” for Projected Peak Days) in one or more categories on one or more days in a given calendar month, the Plan sets forth the following Excess Fees that will apply:

<b>Level</b>	<b>Percentage Exceeded</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	<25%	N/A	\$250	\$500	\$750
2	25% - <50%	\$250	\$500	\$750	\$1,000
3	50% or more	\$500	\$750	\$1,000	\$2,000

All incidents for a calendar month will be assessed at the highest level rate that any incident in that month achieved and at the highest dollar amount based on the number

of days.<sup>18</sup> As described above, ADF Trading Centers submit separate volume projections for quote, media trade, total trade (i.e., media and non-media), and order reporting activity. These projections are broken out by NMS data plan, so the ADF Trading Center will submit separate projections in these categories for UTP Securities volume and for CTA Securities volume.<sup>19</sup> For purposes of calculating the Excess 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.<sup>20</sup>

The Plan provides that, in assessing the Excess Fee, FINRA will (1) use its own metrics to determine if an ADF Trading Center has exceeded its Certified Capacity; (2) notify each ADF Trading Center as soon as possible after it has exceeded its Certified

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<sup>18</sup> 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 a \$750 fee would apply.

In this and the following examples, each incident refers to a discrete time when the ADF Trading Center exceeded its capacity. In this example, three different incidents are treated as three days. Since one of these incidents was a Level 3 incident, the fee to be assessed would be for three days at Level 3, or \$750.

<sup>19</sup> For purposes of calculating the Excess and Shortfall Capacity Usage Fees, the CTA and CQ Plans will both be considered for purposes of CTA Securities volume.

<sup>20</sup> For example, if in one month an ADF Trading Center has one Level 1 incident in UTP Securities for trade report volume, two Level 2 incidents in CTA Securities for quote volume, and three Level 3 incidents in CTA Securities for order report volume, there would be six total incidents carrying two different fees. One fee of \$250 would be levied for the two Level 2 incidents in CTA Securities for quote volume. Another fee of \$750 would be levied for the three Level 3 incidents in CTA Securities for order report volume. There would be no fee for the one Level 1 incident in UTP Securities for trade report volume as it is not applicable according to the fee schedule.

Capacity; and (3) notify each ADF Trading Center when it has incurred an Excess Fee. Any Excess Fee incurred during a month will appear on that month's invoice.

As set forth in the Plan, FINRA will not assess the Excess Fee for the first quarter during which an ADF Trading Center begins operating on the ADF. If an ADF Trading Center begins operations mid-quarter, FINRA will waive the Excess Fee only for the remainder of that quarter.

Shortfall Fees

If an ADF Trading Center does not achieve certain thresholds of both their Projected Average Transaction Volumes and their Certified Peak Transaction Volume in one or more categories on one or more days in a given calendar month, the Plan sets forth the following Shortfall Fees that will apply:

For Projected Average Transaction Volume:

<b>Level</b>	<b>Percentage Shortfall</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	10 - <15%	N/A	\$125	\$250	\$375
2	15% - <25%	\$125	\$250	\$375	\$500
3	25% or more	\$250	\$375	\$500	\$1000

For Certified Peak Transaction Volume:

<b>Level</b>	<b>Percentage Shortfall</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	50 - <60%	N/A	\$125	\$250	\$375
2	60% - <75%	\$125	\$250	\$375	\$500
3	75% or more	\$250	\$375	\$500	\$1000

All incidents for a calendar month will be assessed at the highest level rate that any incident in that month achieved and at the highest dollar amount based on the number

of days.<sup>21</sup> As described above, ADF Trading Centers submit separate volume projections for quote, media trade, total (media and non-media) trade, and order reporting. These projections are broken out by NMS data plan, so the ADF Trading Center will submit separate projections for UTP Securities volume and for CTA Securities volume. For purposes of calculating Shortfall Fees, accruals of incidents apply separately for quote, total 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.<sup>22</sup>

In assessing Shortfall Fees, FINRA will (1) use its own metrics to determine if an ADF Trading Center has fallen below the minimum threshold of activity; (2) provide weekly updates to each ADF Trading Center on their capacity usage; and (3) notify each ADF Trading Center when it has incurred a Shortfall Fee. Any Shortfall Fees incurred during a month will appear on that month's invoice.

As set forth in the Plan, FINRA will not assess the Shortfall Fee for the first quarter during which an ADF Trading Center begins operating on the ADF. If an ADF

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<sup>21</sup> 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 a \$375 fee would apply.

<sup>22</sup> For example, if in one month an ADF Trading Center has one Level 1 incident in UTP Securities for trade report volume, two Level 2 incidents in CTA Securities for quote volume, and three Level 3 incidents in CTA Securities for order report volume, there would be six total incidents carrying two different fees. One fee of \$125 would be levied for the two Level 2 incidents in CTA Securities for quote volume. Another fee of \$375 would be levied for the three Level 3 incidents in CTA Securities for order report volume. There would be no fee for the one Level 1 incident in UTP Securities for trade report volume as it is not applicable according to the fee schedule. These fees would be assessed for shortfalls for both Projected Average Transaction Volume and Certified Peak Transaction Volume.



Trading Center begins operations mid-quarter, FINRA will waive the Shortfall Fee only for the remainder of that quarter.

SIP NMS Capacity Penalties

In addition to making sure that the ADF platform has sufficient infrastructure capacity to handle an ADF Trading Center's message traffic, the Plan provides that FINRA is also responsible for purchasing appropriate levels of capacity in accordance with the NMS data plans. FINRA makes the capacity purchases based on the needs and projections of the ADF Trading Center. FINRA will pass through any penalties incurred (under the SIP plans) and allocate them according to the ADF Trading Center that exceeds its projected message traffic. Each ADF Trading Center will be invoiced for its capacity penalties once FINRA has received its invoice from the SIP(s). In assessing SIP capacity penalties, FINRA will (1) use the SIP's metrics to determine if a penalty has been incurred and will use its own metrics to allocate the penalty to the appropriate ADF Trading Centers (in the event that more than one ADF Trading Center has exceeded its projections); and (2) notify each ADF Trading Center as soon as possible after it has exceeded its projections.

As set forth in the Plan, FINRA will not assess any SIP penalties for the first quarter during which an ADF Trading Center begins operating on the ADF if it exceeds its projected message traffic during this time. If an ADF Trading Center begins operations mid-quarter, FINRA will waive any SIP capacity penalties only for the remainder of that quarter.

FINRA is proposing to codify the Excess Fees set forth in the Plan as new FINRA Rule 7581, and the Shortfall Fees as new FINRA Rule 7582. FINRA also proposes to

codify the provision in the Plan providing for the pass-through of any SIP penalties as new FINRA Rule 7583.<sup>23</sup>

#### Session Terminations

To the extent that an ADF Trading Center's data usage, in the sole discretion of FINRA staff, materially exceeds the ADF Trading Center's Certified Capacity, the Plan provides that FINRA Product Management may incrementally reduce the ADF Trading Center's data port sessions to ensure that data levels stay at or below reasonable 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's stability and/or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.

#### ADF Certification

As noted above, an ADF Trading Center also must execute and comply with a Certification, which certifies the ADF Trading Center's compliance efforts with its obligations under Regulation NMS.<sup>24</sup> FINRA is proposing to amend the Certification to add an additional certification item; specifically, an acknowledgement that ADF Trading

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<sup>23</sup> FINRA notes that it has submitted proposed rule change SR-FINRA-2013-053, which would, among other things, re-number Rule 7540 through Rule 7570. See Securities Exchange Act Release No. 71147 (December 19, 2013). FINRA will amend this filing and/or SR-FINRA-2013-053, as necessary, to reflect Commission approval of either of the proposed rule changes.

<sup>24</sup> A copy of the Certification was previously filed with the Commission in 2006. See Securities Exchange Act Release No. 54277 (August 4, 2006), 71 FR 46527 (August 14, 2006) (Notice of filing of SR-NASD-2006-091). FINRA subsequently submitted a revised Certification as part of Amendment No. 3 to that filing. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (Order approving SR-NASD-2006-091). In 2009, FINRA filed a revised version of the Certification as part of a proposed rule change. See SR-FINRA-2009-069 (October 14, 2009).

Centers must comply with the terms of the 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.

FINRA is also making other minor changes to the Certification. Specifically, for purposes in Item 10 of requiring that an ADF Trading Center provide sufficient public notice prior to displaying quotations through the ADF, FINRA is revising the means through which an ADF Trading Center may provide the requisite information to allow for reasonable means such as ADF Trading Center press releases, the FINRA website, and through other FINRA-sponsored information publication channels. FINRA also proposes to clarify that the information to be provided pursuant to this Item consists of relevant connectivity and access specifications. FINRA also proposes to delete the parenthetical language in Item 11 to better clarify the scope of that provision, which addresses instances where an ADF Trading Center ceases quoting and order reporting on the same day. FINRA also proposes to delete a reference in Item 4 to “other ADF Trading Centers”, as that reference is duplicative of the reference in that Item to “other FINRA members,” as ADF Trading Centers are, by definition, FINRA members. FINRA is also changing obsolete references and provisions, including replacing references to “NASD” with “FINRA”; changing references from “ADF Operations” to “FINRA Market Operations,” changing a reference from TRACS to the ADF, and deleting a provision relating to ADF Trading Centers that display quotations prior to the implementation of Regulation NMS that also seek to display quotations following the implementation of Regulation NMS. FINRA also proposes to make minor grammatical and stylistic changes, including changing “web site” to “website”, changing “with the respect” to

“with respect” in Item 13, and denoting that certain rule references are to SEC rules.

Finally, FINRA also proposes to add a signature block to the bottom of the Certification.

As noted in Item 2 of this filing, the proposed rule change will be effective upon 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,<sup>25</sup> 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,<sup>26</sup> 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, and Section 15A(b)(9) of the Act,<sup>27</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the Plan, and the proposed amendment to the Certification, are consistent with the Act because they provide an objective and transparent process for administering the capacity usage of the ADF in a manner that helps ensure that FINRA is able to maintain a high level of operability for the ADF, thereby meeting its regulatory obligations, while enhancing FINRA’s ability to submit accurate volume projections to the consolidated data plans.

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<sup>25</sup> 15 U.S.C. 78o-3(b)(6).

<sup>26</sup> 15 U.S.C. 78o-3(b)(5).

<sup>27</sup> 15 U.S.C. 78o-3(b)(9).

Specifically, the Plan provides a timeframe by which ADF Trading Centers submit initial and final volume projections for the next two calendar quarters, with final volume projections tested and certified by FINRA in the event of a capacity upgrade. The Plan also provides ADF Trading Centers with the ability to increase and decrease their capacity projections for the second quarter in the event that their actual capacity usage deviates from their projected capacity usage. The Plan also sets forth fees for excess capacity usage and shortfall capacity usage, and provides that FINRA will pass through any penalties incurred under the NMS data plans, and will allocate those penalties among the ADF Trading Centers that exceed their projected message traffic. Finally, ADF Trading Centers must sign the Certification, which requires the ADF Trading Center to certify that it will comply with the requirements of the Plan. By requiring that ADF Trading Centers submit reasonable volume projections for quoting and trading on the ADF, and assessing fees for certain excess or shortfall capacity usage, FINRA believes the Plan will enhance its ability to ensure that the ADF has sufficient capacity to handle the volume of quote, order, 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.

The Plan also contains provisions that enable FINRA to meet its regulatory obligations to maintain a high level of operability for the ADF. For example, the Plan allows FINRA to make mid-quarter extraordinary system upgrades, and assess ADF Trading Centers for those costs accordingly, in the event that the ADF Trading Center's volume overrun threatens FINRA's ability to meet its regulatory obligations. The Plan also allows FINRA to incrementally terminate an ADF Trading Center's data port

sessions in the event that the ADF Trading Center's data usage materially exceeds the ADF Trading Center's Certified Capacity, to the extent such overage threatens the ADF system's stability or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.

Similarly, FINRA believes that the new requirement in the Certification that an ADF Trading Center certify that it will comply with the terms of the Plan will facilitate FINRA's ability to administer the ADF in a manner consistent with its regulatory obligations. The change to the Certification relating to the manner in which an ADF Trading Center will provide public notice of certain information will increase the means through which such notice may be provided, potentially reaching more market participants. FINRA believes that the remaining changes to the Certification will result in a more current, and therefore more accurate, document.

With respect to the proposed Excess and Shortfall Fees, FINRA believes such fees provide for the equitable allocation of fees and other charges among ADF Trading Centers, and do not impose a burden on competition that it is not necessary or appropriate. FINRA notes that the methodology for calculating both the Excess and Shortfall Fees will apply equally to all ADF Trading Centers. Moreover, FINRA believes that the concept of an Excess Fee is reasonable and appropriate given the potential consequences of overrunning volume projections (e.g., the ADF is unable to process the message traffic and FINRA could incur increased costs by purchasing additional capacity to support the increased message traffic to the NMS data plans). FINRA also believes that the concept of the Shortfall Fee is reasonable and appropriate, as it provides incentives for ADF Trading Centers to furnish FINRA with meaningful

capacity projections and minimizes the likelihood of FINRA “overbuilding” capacity in response to unreasonably high and unrealistic capacity projections.

FINRA also believes that it is reasonable and appropriate to assess the Excess and Shortfall Fees on quote, trade and order reporting activity. FINRA proposes to assess the Excess and Shortfall Fees both for quote and trade reporting activity because FINRA pays money under both the CTA/CQ and the UTP Plans for quote and trade reporting<sup>28</sup> and, in the case of the Excess Fee, may be assessed a penalty under the CTA/CQ Plans if it exceeds its projections for either quote or trading activity. Although FINRA does not purchase capacity from the SIPs for purposes of order reporting, FINRA does incur costs in purchasing the necessary hardware and software to supporting the intake and storage of such information.

FINRA also believes that the methodology for assessing the Excess and Shortfall Fees is consistent with the Act. Similar to the CTA Plan, FINRA will calculate the Excess Fee by evaluating whether peak message volume in the three message categories (quotes, trade reporting, and order reporting) has exceeded its Certified Peak Transaction Volume, with the amount of the Excess Fee determined by the extent and duration of the ADF Trading Center’s excess usage.<sup>29</sup> As such, an ADF Trading Center that exceeds its

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<sup>28</sup> See supra note 16.

<sup>29</sup> FINRA proposes a methodology for calculating Excess Fees that is similar to the methodology for assessing excess fees in the CTA Plan, with slight differences. For example, for purposes of assessing its excess usage fee, the CTA Plan measures peak messages on a one-message-per-second basis measured over five minutes, whereas FINRA proposes to measure peak messages for purposes of the Excess Fees on a daily basis. See Exhibit A to CTA Plan, supra note 9. Both Plans measure the duration of a participant’s excessive usage in assessing its excess fee, but FINRA examines the percentage by which the ADF Trading Center has exceeded its projections instead of in total. Id.

Certified Peak Transaction Volume to a lesser extent or for a shorter duration than another ADF Trading Center will pay a proportionately lower Excess Fee. With respect to the Shortfall Fee, FINRA will calculate such fees by evaluating whether the ADF Trading Center's Projected Average Transaction Volumes and Certified Peak Transaction Volumes in the three message categories (quotes, trade reporting, and order reporting) have met certain thresholds.<sup>30</sup> As such, an ADF Trading Center that does not meet its Projected Average Transaction Volumes and Certified Peak Transaction Volumes to a lesser extent or for a shorter duration than another ADF Trading Center will pay a proportionately lower Shortfall Fee. FINRA believes this methodology for imposing such fees provides for the equitable allocation of fees and other charges among ADF Trading Centers.

FINRA also believes that the Excess Fees and Shortfall Fees are consistent with the Act because the methodology for assessing those fees will provide an element of certainty to ADF Trading Centers in calculating their potential Excess and Shortfall Fees. Excess and Capacity Fees will be charged for each message category (quotes, trade reporting, and order reporting) for both the CTA/CQ and UTP Plans. All incidents in the

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<sup>30</sup> FINRA notes that an ADF Trading Center may incur a Shortfall Fee based on its Projected Average Transaction Volume if its actual volumes for quote, trade and order reporting are no less than 10% - <15% below its Projected Average Transaction Volume, while it may incur a Shortfall Fee based on its Certified Peak Transaction Volume if its actual volumes for quote, trade and order reporting are no less than 50% - <60% below its Certified Peak Transaction Volume. FINRA is adopting a lower threshold for purposes of the Shortfall Fee based on Projected Average Transaction Volume because FINRA anticipates that an ADF Trading Center's actual daily volume should be closely in line with its projected average volume. In contrast, FINRA is adopting a higher threshold for purposes of the Shortfall Fee based on Certified Peak Transaction Volume because it anticipates that an ADF Trading Center may experience a greater variance between its actual daily volume and its projected peak volume.



same category (e.g., trade reporting) will be assessed at the highest level rate that any incident in that category achieved in that month, and at the highest dollar amount based on the number of days. Accruals of incidents will apply separately for the three message categories, and for the CTA/CQ and UTP plans. As such, the maximum Excess Fee that an ADF Trading Center could be charged in any given calendar month would be \$12,000 (3 categories of messages x 2 plans x \$2,000 maximum day/level fee). Using the same calculation, the maximum Shortfall Fee that an ADF Trading Center could be charged in any given calendar month would be \$12,000 (3 categories of messages x 2 plans x 2 Shortfall Fees x \$1,000 maximum day/level fee).

FINRA also notes that it will not assess the Excess or Shortfall Fees on an ADF Trading Center during its first quarter of operations on the ADF or portion thereof, and will also not assess any SIP penalties on an ADF Trading Center that exceeds its projected message traffic during this time. FINRA believes these provisions are consistent with the Act because they will provide a new ADF Trading Center with the opportunity to acquire data on its quote, order and trade reporting activity on the ADF prior to making capacity projections to which the fees and SIP penalties will apply.

**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. FINRA notes that the Plan is designed to assist FINRA in meeting its regulatory obligations and maintaining the stability of the ADF while enhancing FINRA's ability to submit accurate volume projections to the consolidated data plans and minimizing the need for FINRA to expend unnecessary resources to maintain data capacity that will not

be used. Given that the terms of the Plan, including the Excess and Shortfall Fees, are reasonably designed, in part, to assist FINRA in minimizing unnecessary expenditures in connection with ADF data capacity, FINRA does not believe that the Plan imposes an undue burden on competition on potential ADF Trading Centers or other FINRA members. In this regard, FINRA also notes that the proposed change would apply only to those members that choose to become ADF Trading Centers and use the ADF, and that the terms of the Plan, including the Excess and Shortfall Fees, would not apply to members that are not ADF Trading Centers. Additionally, following discussions with potential ADF Trading Centers, FINRA does not believe that the proposed rule change will impose a significant operational burden on such participants. Indeed, FINRA believes that certain aspects of the proposal, such as the methodology for assessing the Excess and Shortfall Fees, will provide ADF Trading Centers with an element of certainty in calculating the potential costs they might incur in connection with the ADF. In addition, while the Plan requires that ADF Trading Centers provide reasonable capacity estimates, it generally does not restrict ADF Trading Centers' ongoing activities if they exceed such estimates, except where the ADF system's stability or the ability of FINRA to meet its regulatory obligations with respect to the ADF are threatened.

**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.<sup>31</sup>

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

Not applicable.

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

Not applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

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

Exhibit 3a. ADF Capacity Management Plan.

Exhibit 3b. ADF Trading Center Certification Record.

Exhibit 5. Text of the proposed rule change.

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<sup>31</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2013-054)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Capacity Management Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December \_\_, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt a new FINRA Capacity Management Plan (“Plan”) for the Alternative Display Facility (“ADF”) and amend the ADF Trading Center Certification Record (“Certification”) to, among other things, require ADF Trading Centers to comply with the Plan.

A copy of the Plan was filed as Exhibit 3a. A copy of the revised Certification was filed as Exhibit 3b. The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The ADF is a quotation collection and trade reporting facility that provides ADF Market Participants (i.e., ADF-registered market makers or electronic communications networks ("ECNs"))<sup>3</sup> the ability to post quotations, display orders and report transactions in NMS stocks<sup>4</sup> for submission to the Securities Information Processors ("SIPs") for consolidation and dissemination to vendors and other market participants. In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.<sup>5</sup>

To become an ADF Market Participant, a member must apply to FINRA, which includes certifying the member's good standing with FINRA and demonstrating

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<sup>3</sup> See Rule 6220(a)(3).

<sup>4</sup> See 17 CFR 242.600.

<sup>5</sup> See 17 CFR 242.600.

compliance with the net capital and other financial responsibility provisions of the Act.<sup>6</sup> Before displaying quotations or orders on the ADF, an ADF Market Participant that is an “ADF Trading Center”<sup>7</sup> must also execute and comply with a Certification Record to certify the ADF Trading Center’s compliance efforts with its obligations under Regulation NMS.<sup>8</sup>

Regulatory developments, such as the SEC’s adoption of Regulation NMS in 2005, have resulted in a dramatic increase in quote and trade volume in the National Market System. The securities markets have experienced significant changes, evolving to a larger number and variety of trading centers that are almost completely automated, with sophisticated, rapid and interconnected systems. 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

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<sup>6</sup> See Rule 6271(b). FINRA has submitted a proposed rule change to amend the ADF rules to, among other things, assess an ADF Deposit Amount on ADF Market Participants. See Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 46652 (August 1, 2013) (SR-FINRA-2013-031).

<sup>7</sup> An “ADF Trading Center” is a Registered Reporting ADF Market Maker or Registered Reporting ADF ECN that is a “Trading Center,” as defined in Rule 600(b)(78) of SEC Regulation NMS, and that is certified to display its quotations or orders through the ADF. See Rule 6220(a)(4); see also 17 CFR 242.600(b)(78).

<sup>8</sup> See Rules 6220(a)(5), 6250(a)(7); NASD Notice to Members 06-67 (November 2006); see also SR-NASD-2006-091, Amendment No. 3, Exhibit 3.

Association Plan (“CTA Plan”) and the Consolidated Quotation Plan (“CQ Plan”); together, “CTA/CQ Plans”), which serve as the consolidated data plans for securities listed on the New York Stock Exchange, BATS, NYSE Arca, NYSE MKT and other regional exchange-listed securities,<sup>9</sup> currently enforce a strict “pay-for-capacity” methodology that includes monetary penalties for capacity overruns.<sup>10</sup> 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 and the amount by which the SRO exceeded its submitted projections. In some cases, based on the number of trading days that projections have been exceeded, SROs may be subject to mandatory commitments to buy additional capacity going forward.<sup>11</sup>

Similar to the approach of the CTA/CQ Plans to capacity planning, 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 Certification that ADF Trading Centers are required to execute

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<sup>9</sup> The CTA Plan governs the collection and dissemination of last sale price information for non-NASDAQ listed securities, while the CQ Plan governs the collection and dissemination of bid/ask quotation information for listed securities.

<sup>10</sup> See Exhibit A to the CTA Plan (October 1, 2013 composite), available at <https://cta.nyxdata.com/CTA> (Capacity Planning Process for The Consolidated Tape System); see also Exhibit A to the CQ Plan (October 1, 2013 composite), available at <https://cta.nyxdata.com/CTA>.

<sup>11</sup> Id.

and comply with to quote on and report trades to the ADF.<sup>12</sup> The details of the Plan are set forth below.

### Definitions

The Plan defines “CTA Securities” as securities subject to the Consolidated Tape Association Plan (i.e., securities listed on the New York Stock Exchange, BATS Exchange Inc., NYSE MKT LLC or NYSE Arca LLC). The Plan defines “UTP Securities” as securities subject to the Unlisted Trading Privileges Plan (i.e., securities listed on the Nasdaq Stock Market, LLC).<sup>13</sup> Finally, the Plan defines “Certified Capacity” as the maximum level of data (by message rate and message type) an ADF Trading Center is certified to submit to the ADF Platform following the quarterly certification volume test conducted by FINRA.

### ADF Trading Center Capacity Certification

Prior to commencing quoting or trade reporting through the ADF, the Plan requires that each ADF Trading Center complete an initial ADF Trading Center Capacity Certification process.<sup>14</sup> As part of this process, an ADF Trading Center must test its connectivity to the ADF with FINRA Product Management. FINRA will provide estimates for the costs of such testing, and, upon receipt of these estimates, the ADF Trading Center may request in writing that FINRA proceed with connectivity testing.

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<sup>12</sup> 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 Certification.

<sup>13</sup> For purposes of this proposal, the CTA/CQ Plans and the Unlisted Trading Privileges Plan (“UTP Plan”) may be collectively referred to as the “NMS data plans.”

<sup>14</sup> Each ADF Trading Center also is required to complete an annual recertification.



Regardless of whether an ADF Trading Center ultimately is certified and becomes an active ADF Trading Center, the ADF Trading Center will be responsible for the testing costs and will be invoiced accordingly.

The Plan also requires each ADF Trading Center to submit volume projections for current and future peak data reporting levels on a quarterly basis, and on demand from FINRA. ADF Trading Centers must submit volume projections separately for CTA Securities and UTP Securities, and they must project their volume for quotations, media trade reports, total trade reports, and order reports. An ADF Trading Center is not certified to submit quote, trade or order reporting data at its requested level simply because it has submitted its initial or final volume projections. Rather, prior to submitting quote, trade and order reporting data at its projected volume levels, FINRA staff may require an ADF Trading Center to successfully complete a test at the projected volume levels.

#### Capacity Projection Submission

As part of both the initial certification process, and as part of its ongoing utilization of the ADF, an ADF Trading Center is required to provide quarterly volume projections that accurately reflect its anticipated capacity requirements for the next two quarters in order for FINRA to assess ADF system infrastructure requirements. Such anticipated capacity requirements must be submitted on the ADF Trading Center Volume Projections Form (“Form”)<sup>15</sup> 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 two calendar quarters. Submissions are due by certain specified due dates. If a

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<sup>15</sup> The ADF Trading Center Volume Projections Form is Attachment A to the Plan.

submission is not received by the specified due date, FINRA will make assumptions for ADF Trading Center projections based on prior certified activity levels. Certified capacities are established separately for UTP Securities and for CTA Securities in the following categories: (1) Quotations; (2) Media Trade Reports; (3) Total Trade Reports (i.e., media and non-media); and (4) Order Reports. This traffic must be provided on both a messages-per-second<sup>16</sup> and transactions-per-day basis, on both a projected average day and on a projected peak day. The ADF Trading Center must also specify on the Form, for both CTA and UTP securities, the number of securities it will trade, the average number of securities it will trade, and the number of securities in which it will make a market (if applicable).

As set forth in the Plan, an ADF Trading Center submits its projections for the next two calendar quarters. Once an ADF Trading Center has submitted its projections for the following quarter, it may not adjust those projections; however, an ADF Trading Center will not be locked into its second quarter projections until the commencement of the planning process for that quarter, e.g., 60 calendar days before the end of the first quarter. FINRA will allow each ADF Trading Center to increase its projections for the second quarter, if necessary. An ADF Trading Center may also lower its projections by up to 10% for the second calendar quarter. Each ADF Trading Center will be subject to an Excess Capacity Usage Fee schedule (“Excess Fee”) and a Shortfall Capacity Usage Fee schedule (“Shortfall Fee”), which are discussed in greater detail below.

The reason for limiting the extent to which an ADF Trading Center may lower its

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<sup>16</sup> FINRA notes that the SIPs recently adopted a 100 millisecond projected peak capacity planning metric, and so FINRA reserves the ability to change this time metric through a proposed rule change to be filed with the Commission.

capacity projection for the second calendar quarter for quote and trade data is attributable to the manner in which FINRA incurs costs related to the NMS data plans, including the direct purchase of capacity pursuant to the CTA/CQ Plans.<sup>17</sup> FINRA configures servers to support the capacity projections from ADF Trading Centers and purchases corresponding capacity from the SIPs. With respect to the CTA/CQ Plans, once FINRA has purchased capacity from the SIP, it cannot divest itself of such capacity unless there is another participant willing to acquire that capacity. By allowing ADF Trading Centers to lower their capacity projections by up to 10% for the second quarter, FINRA is providing ADF Trading Centers with some flexibility to formulate their capacity projections while helping to ensure that ADF Trading Centers provide realistic capacity projections, thus defraying potential costs to FINRA. Similarly, although FINRA does not purchase SIP capacity for order reporting information, it does incur costs in purchasing the necessary hardware and software to support the intake and storage of such information.

#### Capacity Planning Schedule

The Plan sets forth a schedule to ensure that ADF Trading Centers provide timely and accurate volume projections which will enable FINRA to make an accurate assessment of system and capacity requirements. For example, on the first trading day of

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<sup>17</sup> Currently, FINRA directly purchases capacity under the CTA/CQ Plans for quote and trade reporting. FINRA indirectly pays for capacity under the UTP Plan in connection with quote and trade reporting, as it pays an administrator fee and a processor fee under the UTP Plan that is deducted from the Plan's gross revenues, with FINRA receiving any distributions from the Plan's net revenues. Upon SEC approval of the relevant pending amendment to the UTP Plan, see Securities Exchange Act Release No. 62021 (April 30, 2010), 75 FR 27010 (May 13, 2010) (File No. S7-24-89), FINRA will also directly purchase capacity under the UTP Plan.

the second month of the planning cycle, FINRA will notify ADF Trading Centers via e-mail that initial volume projections on the ADF Trading Center Volume Projections Form are due. ADF Trading Centers have ten business days following the initial FINRA notification to provide initial volume projections via email on the ADF Trading Center Volume Projections Form. Between the tenth and twentieth business day following the initial FINRA notification, FINRA advises ADF Trading Centers of the respective ADF Trading Center's 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. Between the twentieth and twenty-fifth business day following the initial FINRA notification, ADF Trading Centers are required to give their final volume projections to FINRA via e-mail on the ADF Trading Center Volume Projections Form. To the extent that a capacity increase is required, the system test will be completed between the twentieth and fortieth business days following the initial FINRA request for projections.<sup>18</sup>

#### Capacity Allocations

As set forth in the Plan, if an ADF Trading Center requests a certain amount of capacity, FINRA will honor such request and will build out capacity to support the ADF Trading Center's peak projected capacity requirements. Once an ADF Trading Center

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<sup>18</sup> In the event that all of the ADF Trading Centers have no changes or de minimis changes to their projections from a previous quarter for which they were tested and certified, the Plan provides that FINRA may forego the quarterly certification system test and certify the parties for the coming quarter. If FINRA's Product Management team is unable to conduct the certification test prior to the start of the coming quarter, the Plan provides that the ADF Trading Center(s) will be conditionally certified at the previous quarter's levels and all Capacity Usage Fees will be suspended until Product Management is able to conduct a test and officially certify the ADF Trading Center(s).

has formally requested capacity, the Plan provides that such request may not be rescinded. A request does not mean, however, that the ADF Trading Center is entitled to submit to the projected level; rather, each ADF Trading Center must still partake in quarterly volume tests before it is certified to its requested volume level.

The Plan also provides that an ADF Trading Center is only authorized to submit increased volume after conducting a capacity test and receiving written notice from FINRA that the ADF Trading Center is certified for operation at the specified level.

Finally, if an ADF Trading Center ceases posting quotes on the ADF or stops reporting trades to the ADF and becomes inactive (either under Rule 6250(g) or by voluntary withdrawal), the Plan provides that such Trading Center will be deemed to have surrendered any capacity to which it was previously certified. The ADF Trading Center is still liable for any Capacity Usage Fees it may have incurred while active.

#### Extraordinary Upgrades

To the extent that an ADF Trading Center's volume overrun (either in message volume by category or in message per second throughput) threatens, in FINRA's sole discretion, its ability to meet its regulatory obligations, the Plan provides that FINRA has the right to make mid-quarter extraordinary system upgrades to accommodate higher message volume or higher message per second throughput. The costs for such new infrastructure investment will be borne by the ADF Trading Center that has exceeded its Certified Capacity, or, if multiple ADF Trading Centers have exceeded their Certified Capacity, will be allocated among such ADF Trading Centers. In all such instances, FINRA will provide notice to the affected ADF Trading Center(s) that FINRA is taking such actions.

Notwithstanding FINRA's ability to implement a mid-quarter extraordinary system upgrade, to the extent that ADF message volume materially exceeds certified levels of operation, as determined by FINRA staff, the Plan provides that FINRA technical staff may reconfigure the ADF connection to ensure that data levels stay at or below reasonable levels of operation. Such reconfiguration may occur on an intra-day basis in proportion to the extent to which the higher ADF message volume threatens FINRA's system stability and/or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.

#### Infrastructure Costs

The Plan provides that the costs associated with building and implementing the capacity and environments (including, but not limited to, labor, hardware, software, installation, testing, etc., as well as associated on-going operational costs) will be borne by FINRA (except in the event of an Extraordinary Upgrade).

Should FINRA need to add capacity in order to accommodate additional capacity requests, the Plan provides that 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. Until such time that the upgrades are made, FINRA will suspend the application of all Capacity Usage Fees, as described in greater detail below.

#### Excess Fees

If an ADF Trading Center exceeds its Certified Peak Transaction Volume (which is equivalent to the request on the ADF Trading Center Volume Projections Form for "Transactions per Day" for Projected Peak Days) in one or more categories on one or

more days in a given calendar month, the Plan sets forth the following Excess Fees that will apply:

<b>Level</b>	<b>Percentage Exceeded</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	<25%	N/A	\$250	\$500	\$750
2	25% - <50%	\$250	\$500	\$750	\$1,000
3	50% or more	\$500	\$750	\$1,000	\$2,000

All incidents for a calendar month will be assessed at the highest level rate that any incident in that month achieved and at the highest dollar amount based on the number of days.<sup>19</sup> As described above, ADF Trading Centers submit separate volume projections for quote, media trade, total trade (i.e., media and non-media), and order reporting activity. These projections are broken out by NMS data plan, so the ADF Trading Center will submit separate projections in these categories for UTP Securities volume and for CTA Securities volume.<sup>20</sup> For purposes of calculating the Excess 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

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<sup>19</sup> 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 a \$750 fee would apply.

In this and the following examples, each incident refers to a discrete time when the ADF Trading Center exceeded its capacity. In this example, three different incidents are treated as three days. Since one of these incidents was a Level 3 incident, the fee to be assessed would be for three days at Level 3, or \$750.

<sup>20</sup> For purposes of calculating the Excess and Shortfall Capacity Usage Fees, the CTA and CQ Plans will both be considered for purposes of CTA Securities volume.

fees.<sup>21</sup>

The Plan provides that, in assessing the Excess Fee, FINRA will (1) use its own metrics to determine if an ADF Trading Center has exceeded its Certified Capacity; (2) notify each ADF Trading Center as soon as possible after it has exceeded its Certified Capacity; and (3) notify each ADF Trading Center when it has incurred an Excess Fee. Any Excess Fee incurred during a month will appear on that month's invoice.

As set forth in the Plan, FINRA will not assess the Excess Fee for the first quarter during which an ADF Trading Center begins operating on the ADF. If an ADF Trading Center begins operations mid-quarter, FINRA will waive the Excess Fee only for the remainder of that quarter.

#### Shortfall Fees

If an ADF Trading Center does not achieve certain thresholds of both their Projected Average Transaction Volumes and their Certified Peak Transaction Volume in one or more categories on one or more days in a given calendar month, the Plan sets forth the following Shortfall Fees that will apply:

For Projected Average Transaction Volume:

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<sup>21</sup> For example, if in one month an ADF Trading Center has one Level 1 incident in UTP Securities for trade report volume, two Level 2 incidents in CTA Securities for quote volume, and three Level 3 incidents in CTA Securities for order report volume, there would be six total incidents carrying two different fees. One fee of \$250 would be levied for the two Level 2 incidents in CTA Securities for quote volume. Another fee of \$750 would be levied for the three Level 3 incidents in CTA Securities for order report volume. There would be no fee for the one Level 1 incident in UTP Securities for trade report volume as it is not applicable according to the fee schedule.



<b>Level</b>	<b>Percentage Shortfall</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	10 - <15%	N/A	\$125	\$250	\$375
2	15% - <25%	\$125	\$250	\$375	\$500
3	25% or more	\$250	\$375	\$500	\$1000

For Certified Peak Transaction Volume:

<b>Level</b>	<b>Percentage Shortfall</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	50 - <60%	N/A	\$125	\$250	\$375
2	60% - <75%	\$125	\$250	\$375	\$500
3	75% or more	\$250	\$375	\$500	\$1000

All incidents for a calendar month will be assessed at the highest level rate that any incident in that month achieved and at the highest dollar amount based on the number of days.<sup>22</sup> As described above, ADF Trading Centers submit separate volume projections for quote, media trade, total (media and non-media) trade, and order reporting. These projections are broken out by NMS data plan, so the ADF Trading Center will submit separate projections for UTP Securities volume and for CTA Securities volume. For purposes of calculating Shortfall Fees, accruals of incidents apply separately for quote, total 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.<sup>23</sup>

<sup>22</sup> 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 a \$375 fee would apply.

<sup>23</sup> For example, if in one month an ADF Trading Center has one Level 1 incident in UTP Securities for trade report volume, two Level 2 incidents in CTA Securities for quote volume, and three Level 3 incidents in CTA Securities for order report volume, there would be six total incidents carrying two different fees. One fee of \$125 would be levied for the two Level 2 incidents in CTA Securities for quote

In assessing Shortfall Fees, FINRA will (1) use its own metrics to determine if an ADF Trading Center has fallen below the minimum threshold of activity; (2) provide weekly updates to each ADF Trading Center on their capacity usage; and (3) notify each ADF Trading Center when it has incurred a Shortfall Fee. Any Shortfall Fees incurred during a month will appear on that month's invoice.

As set forth in the Plan, FINRA will not assess the Shortfall Fee for the first quarter during which an ADF Trading Center begins operating on the ADF. If an ADF Trading Center begins operations mid-quarter, FINRA will waive the Shortfall Fee only for the remainder of that quarter.

#### SIP NMS Capacity Penalties

In addition to making sure that the ADF platform has sufficient infrastructure capacity to handle an ADF Trading Center's message traffic, the Plan provides that FINRA is also responsible for purchasing appropriate levels of capacity in accordance with the NMS data plans. FINRA makes the capacity purchases based on the needs and projections of the ADF Trading Center. FINRA will pass through any penalties incurred (under the SIP plans) and allocate them according to the ADF Trading Center that exceeds its projected message traffic. Each ADF Trading Center will be invoiced for its capacity penalties once FINRA has received its invoice from the SIP(s). In assessing SIP capacity penalties, FINRA will (1) use the SIP's metrics to determine if a penalty has been incurred and will use its own metrics to allocate the penalty to the appropriate ADF

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volume. Another fee of \$375 would be levied for the three Level 3 incidents in CTA Securities for order report volume. There would be no fee for the one Level 1 incident in UTP Securities for trade report volume as it is not applicable according to the fee schedule. These fees would be assessed for shortfalls for both Projected Average Transaction Volume and Certified Peak Transaction Volume.

Trading Centers (in the event that more than one ADF Trading Center has exceeded its projections); and (2) notify each ADF Trading Center as soon as possible after it has exceeded its projections.

As set forth in the Plan, FINRA will not assess any SIP penalties for the first quarter during which an ADF Trading Center begins operating on the ADF if it exceeds its projected message traffic during this time. If an ADF Trading Center begins operations mid-quarter, FINRA will waive any SIP capacity penalties only for the remainder of that quarter.

FINRA is proposing to codify the Excess Fees set forth in the Plan as new FINRA Rule 7581, and the Shortfall Fees as new FINRA Rule 7582. FINRA also proposes to codify the provision in the Plan providing for the pass-through of any SIP penalties as new FINRA Rule 7583.<sup>24</sup>

#### Session Terminations

To the extent that an ADF Trading Center's data usage, in the sole discretion of FINRA staff, materially exceeds the ADF Trading Center's Certified Capacity, the Plan provides that FINRA Product Management may incrementally reduce the ADF Trading Center's data port sessions to ensure that data levels stay at or below reasonable 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's stability and/or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.

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<sup>24</sup> FINRA notes that it has submitted proposed rule change SR-FINRA-2013-053, which would, among other things, re-number Rule 7540 through Rule 7570. See Securities Exchange Act Release No. 71147 (December 19, 2013). FINRA will amend this filing and/or SR-FINRA-2013-053, as necessary, to reflect Commission approval of either of the proposed rule changes.

ADF Certification

As noted above, an ADF Trading Center also must execute and comply with a Certification, which certifies the ADF Trading Center's compliance efforts with its obligations under Regulation NMS.<sup>25</sup> FINRA is proposing to amend the Certification to add an additional certification item; specifically, an acknowledgement that ADF Trading Centers must comply with the terms of the 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.

FINRA is also making other minor changes to the Certification. Specifically, for purposes in Item 10 of requiring that an ADF Trading Center provide sufficient public notice prior to displaying quotations through the ADF, FINRA is revising the means through which an ADF Trading Center may provide the requisite information to allow for reasonable means such as ADF Trading Center press releases, the FINRA website, and through other FINRA-sponsored information publication channels. FINRA also proposes to clarify that the information to be provided pursuant to this Item consists of relevant connectivity and access specifications. FINRA also proposes to delete the parenthetical language in Item 11 to better clarify the scope of that provision, which addresses instances where an ADF Trading Center ceases quoting and order reporting on the same day. FINRA also proposes to delete a reference in Item 4 to "other ADF Trading

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<sup>25</sup> A copy of the Certification was previously filed with the Commission in 2006. See Securities Exchange Act Release No. 54277 (August 4, 2006), 71 FR 46527 (August 14, 2006) (Notice of filing of SR-NASD-2006-091). FINRA subsequently submitted a revised Certification as part of Amendment No. 3 to that filing. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (Order approving SR-NASD-2006-091). In 2009, FINRA filed a revised version of the Certification as part of a proposed rule change. See SR-FINRA-2009-069 (October 14, 2009).

Centers”, as that reference is duplicative of the reference in that Item to “other FINRA members,” as ADF Trading Centers are, by definition, FINRA members. FINRA is also changing obsolete references and provisions, including replacing references to “NASD” with “FINRA”; changing references from “ADF Operations” to “FINRA Market Operations,” changing a reference from TRACS to the ADF, and deleting a provision relating to ADF Trading Centers that display quotations prior to the implementation of Regulation NMS that also seek to display quotations following the implementation of Regulation NMS. FINRA also proposes to make minor grammatical and stylistic changes, including changing “web site” to “website”, changing “with the respect” to “with respect” in Item 13, and denoting that certain rule references are to SEC rules. Finally, FINRA also proposes to add a signature block to the bottom of the Certification.

The proposed rule change will be effective upon 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,<sup>26</sup> 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,<sup>27</sup> 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

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<sup>26</sup> 15 U.S.C. 78o-3(b)(6).

<sup>27</sup> 15 U.S.C. 78o-3(b)(5).

FINRA operates or controls, and Section 15A(b)(9) of the Act,<sup>28</sup> which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the Plan, and the proposed amendment to the Certification, are consistent with the Act because they provide an objective and transparent process for administering the capacity usage of the ADF in a manner that helps ensure that FINRA is able to maintain a high level of operability for the ADF, thereby meeting its regulatory obligations, while enhancing FINRA's ability to submit accurate volume projections to the consolidated data plans.

Specifically, the Plan provides a timeframe by which ADF Trading Centers submit initial and final volume projections for the next two calendar quarters, with final volume projections tested and certified by FINRA in the event of a capacity upgrade. The Plan also provides ADF Trading Centers with the ability to increase and decrease their capacity projections for the second quarter in the event that their actual capacity usage deviates from their projected capacity usage. The Plan also sets forth fees for excess capacity usage and shortfall capacity usage, and provides that FINRA will pass through any penalties incurred under the NMS data plans, and will allocate those penalties among the ADF Trading Centers that exceed their projected message traffic. Finally, ADF Trading Centers must sign the Certification, which requires the ADF Trading Center to certify that it will comply with the requirements of the Plan. By requiring that ADF Trading Centers submit reasonable volume projections for quoting and trading on the ADF, and assessing fees for certain excess or shortfall capacity usage, FINRA believes the Plan will enhance its ability to ensure that the ADF has sufficient

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<sup>28</sup> 15 U.S.C. 78q-3(b)(9).

capacity to handle the volume of quote, order, 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.

The Plan also contains provisions that enable FINRA to meet its regulatory obligations to maintain a high level of operability for the ADF. For example, the Plan allows FINRA to make mid-quarter extraordinary system upgrades, and assess ADF Trading Centers for those costs accordingly, in the event that the ADF Trading Center's volume overrun threatens FINRA's ability to meet its regulatory obligations. The Plan also allows FINRA to incrementally terminate an ADF Trading Center's data port sessions in the event that the ADF Trading Center's data usage materially exceeds the ADF Trading Center's Certified Capacity, to the extent such overage threatens the ADF system's stability or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.

Similarly, FINRA believes that the new requirement in the Certification that an ADF Trading Center certify that it will comply with the terms of the Plan will facilitate FINRA's ability to administer the ADF in a manner consistent with its regulatory obligations. The change to the Certification relating to the manner in which an ADF Trading Center will provide public notice of certain information will increase the means through which such notice may be provided, potentially reaching more market participants. FINRA believes that the remaining changes to the Certification will result in a more current, and therefore more accurate, document.

With respect to the proposed Excess and Shortfall Fees, FINRA believes such fees provide for the equitable allocation of fees and other charges among ADF Trading

Centers, and do not impose a burden on competition that it is not necessary or appropriate. FINRA notes that the methodology for calculating both the Excess and Shortfall Fees will apply equally to all ADF Trading Centers. Moreover, FINRA believes that the concept of an Excess Fee is reasonable and appropriate given the potential consequences of overrunning volume projections (e.g., the ADF is unable to process the message traffic and FINRA could incur increased costs by purchasing additional capacity to support the increased message traffic to the NMS data plans). FINRA also believes that the concept of the Shortfall Fee is reasonable and appropriate, as it provides incentives for ADF Trading Centers to furnish FINRA with meaningful capacity projections and minimizes the likelihood of FINRA “overbuilding” capacity in response to unreasonably high and unrealistic capacity projections.

FINRA also believes that it is reasonable and appropriate to assess the Excess and Shortfall Fees on quote, trade and order reporting activity. FINRA proposes to assess the Excess and Shortfall Fees both for quote and trade reporting activity because FINRA pays money under both the CTA/CQ and the UTP Plans for quote and trade reporting<sup>29</sup> and, in the case of the Excess Fee, may be assessed a penalty under the CTA/CQ Plans if it exceeds its projections for either quote or trading activity. Although FINRA does not purchase capacity from the SIPs for purposes of order reporting, FINRA does incur costs in purchasing the necessary hardware and software to supporting the intake and storage of such information.

FINRA also believes that the methodology for assessing the Excess and Shortfall Fees is consistent with the Act. Similar to the CTA Plan, FINRA will calculate the

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<sup>29</sup> See supra note 17.



Excess Fee by evaluating whether peak message volume in the three message categories (quotes, trade reporting, and order reporting) has exceeded its Certified Peak Transaction Volume, with the amount of the Excess Fee determined by the extent and duration of the ADF Trading Center's excess usage.<sup>30</sup> As such, an ADF Trading Center that exceeds its Certified Peak Transaction Volume to a lesser extent or for a shorter duration than another ADF Trading Center will pay a proportionately lower Excess Fee. With respect to the Shortfall Fee, FINRA will calculate such fees by evaluating whether the ADF Trading Center's Projected Average Transaction Volumes and Certified Peak Transaction Volumes in the three message categories (quotes, trade reporting, and order reporting) have met certain thresholds.<sup>31</sup> As such, an ADF Trading Center that does not meet its Projected Average Transaction Volumes and Certified Peak Transaction Volumes to a

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<sup>30</sup> FINRA proposes a methodology for calculating Excess Fees that is similar to the methodology for assessing excess fees in the CTA Plan, with slight differences. For example, for purposes of assessing its excess usage fee, the CTA Plan measures peak messages on a one-message-per-second basis measured over five minutes, whereas FINRA proposes to measure peak messages for purposes of the Excess Fees on a daily basis. See Exhibit A to CTA Plan, *supra* note 10. Both Plans measure the duration of a participant's excessive usage in assessing its excess fee, but FINRA examines the percentage by which the ADF Trading Center has exceeded its projections instead of in total. *Id.*

<sup>31</sup> FINRA notes that an ADF Trading Center may incur a Shortfall Fee based on its Projected Average Transaction Volume if its actual volumes for quote, trade and order reporting are no less than 10% - <15% below its Projected Average Transaction Volume, while it may incur a Shortfall Fee based on its Certified Peak Transaction Volume if its actual volumes for quote, trade and order reporting are no less than 50% - <60% below its Certified Peak Transaction Volume. FINRA is adopting a lower threshold for purposes of the Shortfall Fee based on Projected Average Transaction Volume because FINRA anticipates that an ADF Trading Center's actual daily volume should be closely in line with its projected average volume. In contrast, FINRA is adopting a higher threshold for purposes of the Shortfall Fee based on Certified Peak Transaction Volume because it anticipates that an ADF Trading Center may experience a greater variance between its actual daily volume and its projected peak volume.

lesser extent or for a shorter duration than another ADF Trading Center will pay a proportionately lower Shortfall Fee. FINRA believes this methodology for imposing such fees provides for the equitable allocation of fees and other charges among ADF Trading Centers.

FINRA also believes that the Excess Fees and Shortfall Fees are consistent with the Act because the methodology for assessing those fees will provide an element of certainty to ADF Trading Centers in calculating their potential Excess and Shortfall Fees. Excess and Capacity Fees will be charged for each message category (quotes, trade reporting, and order reporting) for both the CTA/CQ and UTP Plans. All incidents in the same category (e.g., trade reporting) will be assessed at the highest level rate that any incident in that category achieved in that month, and at the highest dollar amount based on the number of days. Accruals of incidents will apply separately for the three message categories, and for the CTA/CQ and UTP plans. As such, the maximum Excess Fee that an ADF Trading Center could be charged in any given calendar month would be \$12,000 (3 categories of messages x 2 plans x \$2,000 maximum day/level fee). Using the same calculation, the maximum Shortfall Fee that an ADF Trading Center could be charged in any given calendar month would be \$12,000 (3 categories of messages x 2 plans x 2 Shortfall Fees x \$1,000 maximum day/level fee).

FINRA also notes that it will not assess the Excess or Shortfall Fees on an ADF Trading Center during its first quarter of operations on the ADF or portion thereof, and will also not assess any SIP penalties on an ADF Trading Center that exceeds its projected message traffic during this time. FINRA believes these provisions are consistent with the Act because they will provide a new ADF Trading Center with the

opportunity to acquire data on its quote, order and trade reporting activity on the ADF prior to making capacity projections to which the fees and SIP penalties will apply.

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. FINRA notes that the Plan is designed to assist FINRA in meeting its regulatory obligations and maintaining the stability of the ADF while enhancing FINRA's ability to submit accurate volume projections to the consolidated data plans and minimizing the need for FINRA to expend unnecessary resources to maintain data capacity that will not be used. Given that the terms of the Plan, including the Excess and Shortfall Fees, are reasonably designed, in part, to assist FINRA in minimizing unnecessary expenditures in connection with ADF data capacity, FINRA does not believe that the Plan imposes an undue burden on competition on potential ADF Trading Centers or other FINRA members. In this regard, FINRA also notes that the proposed change would apply only to those members that choose to become ADF Trading Centers and use the ADF, and that the terms of the Plan, including the Excess and Shortfall Fees, would not apply to members that are not ADF Trading Centers. Additionally, following discussions with potential ADF Trading Centers, FINRA does not believe that the proposed rule change will impose a significant operational burden on such participants. Indeed, FINRA believes that certain aspects of the proposal, such as the methodology for assessing the Excess and Shortfall Fees, will provide ADF Trading Centers with an element of certainty in calculating the potential costs they might incur in connection with the ADF. In addition, while the Plan requires that ADF Trading Centers provide reasonable

capacity estimates, it generally does not restrict ADF Trading Centers' ongoing activities if they exceed such estimates, except where the ADF system's stability or the ability of FINRA to meet its regulatory obligations with respect to the ADF are threatened.

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 45 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 or disapprove 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2013-054 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-054. 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 website (<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 website viewing and printing 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-2013-054 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.<sup>32</sup>

Elizabeth M. Murphy  
Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).

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

### **ADF Capacity Management Plan**

#### **I. Definitions:**

*CTA Securities* – Securities subject to the Consolidated Tape Association Plan (i.e., securities listed on the New York Stock Exchange, BATS Exchange Inc., NYSE MKT LLC or NYSE Arca LLC).

*UTP Securities* – Securities subject to the Unlisted Trading Privileges Plan (i.e., securities listed on the Nasdaq Stock Market, LLC).

*Certified Capacity* – The maximum level of data (by message rate and message type) an ADF Trading Center is certified to submit to the ADF Platform following the quarterly certification volume test conducted by FINRA. (See Section II below.)

#### **II. ADF Trading Center Certification:**

Each ADF Trading Center 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. An ADF Trading Center is authorized to submit quote, media trade, total trade (media and non-media), and order reporting data at volume projection levels only after it has successfully completed (in the sole discretion of FINRA staff) a test with FINRA Product Management and in conjunction with ADF participants as deemed necessary (in the sole discretion of FINRA staff) at the requested volume levels and received written notice of being certified at said levels. Submission of initial or final volume projections does not certify an ADF Trading Center at the requested level.

As part of the initial ADF Trading Center certification process, an ADF Trading Center must test with FINRA Product Management for connectivity. FINRA will provide, using commercially reasonable efforts, estimates of the testing that may be required due to this initial certification process. Upon receipt of the estimates, the ADF Trading Center will request in writing that FINRA proceed with the certification testing. Regardless of whether an ADF Trading Center ultimately is certified and becomes an active ADF Trading Center, the ADF Trading Center will be responsible for the testing costs and will be invoiced accordingly.

### **III. Capacity Projection Submission:**

An ADF Trading Center must provide quarterly volume projections that accurately reflect its anticipated capacity requirements for the next two quarters in order for FINRA to assess ADF system infrastructure requirements. Anticipated capacity requirements must be submitted on the ADF Trading Center Volume Projections 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 two calendar quarters. (See Attachment A – ADF Trading Center Volume Projections Form.) Submissions are due by certain specified due dates. If a submission is not received by the specified due date, FINRA will make assumptions for ADF Trading Center projections based on prior certified activity levels. (See Section IV below.) Certified Capacities are established separately for UTP Securities and for CTA Securities in the following categories<sup>1</sup>:

- (i) Quotations;
- (ii) Media Trade Reports;
- (iii) Total Trade Reports (i.e., media and non-media); and
- (iv) Order Reports.

Each ADF Trading Center will be responsible without adjustment for their projections for the following quarter.<sup>2</sup> Each Trading Center will be subject to the Excess Capacity Usage Fee schedule (see Section VIII) and the Shortfall Capacity Usage Fee schedule (see Section IX). Even though each ADF Trading Center is required to provide projections for the next two calendar quarters, they will only be locked in for the first quarter submission. An ADF Trading Center will not be locked into its second quarter projections until the commencement of the planning process for that quarter, e.g., 60 calendar days before the end of the first quarter. FINRA will allow each ADF Trading Center to increase their projections for the second quarter, if necessary, but they will only be allowed to lower their projections by 10% should they choose to do so.<sup>3</sup>

### **IV. Capacity Planning Schedule:**

The schedule below is provided to ensure that ADF Trading Centers provide timely and accurate volume projections in order to facilitate an accurate assessment by FINRA of system and capacity requirements. If an ADF Trading Center fails to provide its initial

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<sup>1</sup> FINRA reserves the right to request projections of other message types, e.g., cancellations.

<sup>2</sup> FINRA will suspend the application of any Capacity Usage fees and the pass-through of any SIP penalties for the first quarter that an ADF Trading Center begins operations on the ADF. If an ADF Trading Center begins operations mid-quarter, the Capacity Usage Fees and the pass-through of any SIP penalties will only be waived for the remainder of that quarter.

<sup>3</sup> FINRA reserves the right to modify this methodology at any time in the interests of fairness and equity.



projected volume and fails to provide the final projected volume by the due date prescribed in the calendar, FINRA may, at its option, use the last projected volume submitted by the ADF Trading Center or the last certified volume levels for purposes of the upcoming capacity planning quarter.

**ADF Capacity Planning Calendar Template**

<b>Step #</b>	<b>Action</b>	<b>Start Date</b>	<b>End Date</b>
1.	FINRA requests initial volume projections from ADF Trading Centers via email on the ADF Trading Center Volume Projections 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 the ADF Trading Center’s 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. <sup>4</sup>	20 business days from Step #1.	40 business days from Step #1.

<sup>4</sup> In the event that all of the ADF Trading Centers have no changes or de minimis changes to their projections from a previous quarter for which they were tested and certified, FINRA may forego the quarterly certification system test and certify the parties for the coming quarter. If FINRA’s Product Management team is unable to conduct the certification test prior to the start of the coming quarter, the ADF Trading Center(s) will be conditionally certified at the previous quarter’s levels and all capacity usage fees (See Sections VIII & IX below) will be suspended until Product Management is able to conduct a test and officially certify the ADF Trading Center(s).

## **V. Capacity Allocations:**

If an ADF Trading Center requests a certain amount of capacity, FINRA will honor those requests and build out to support the ADF Trading Center's peak projected capacity requirements. Once an ADF Trading Center has formally requested capacity, the request may not be rescinded. A request does not mean that the ADF Trading Center is entitled to submit to the projected level. Each ADF Trading Center must still partake in quarterly volume tests before it is certified to a specific volume level.

An ADF Trading Center is only authorized to submit increased volume after conducting a capacity test and receiving written notice from FINRA that the ADF Trading Center is certified for operation at the specified level.

Lastly, if an ADF Trading Center ceases posting quotes on the ADF or stops reporting trades to the ADF and becomes inactive (either under FINRA Rule 6250(g) or by voluntary withdrawal), it will be deemed to have surrendered any capacity to which it was previously certified to.

## **VI. Extraordinary Upgrades:**

To the extent that an ADF Trading Center's volume overrun (either in message volume (by category) or in message per second throughput<sup>5</sup>) threatens, in FINRA's sole discretion, its ability to meet its regulatory obligations, FINRA has the right to make mid-quarter extraordinary system upgrades to accommodate higher message volume or higher message per second throughput. The costs for such new infrastructure investment will be borne by the ADF Trading Center that exceeds its Certified Capacity (or will be allocated among multiple ADF Trading Centers if multiple ADF Trading Centers have exceeded their Certified Capacity). In all instances, FINRA will alert the ADF Trading Center that FINRA is taking such actions. In the case of an ADF system upgrade being made to accommodate higher message per second throughput, ADF Trading Centers that opt for a third party service connectivity provider are responsible for all expenses, including but not limited to, modifications related to that third party service provider. Notwithstanding FINRA's ability to implement a mid-quarter extraordinary system upgrade, to the extent that ADF message volume materially exceeds certified levels of operation (based upon the sole discretion of FINRA staff), FINRA technical staff may reconfigure the ADF connection to ensure that data levels stay within reasonable levels of operation. Such reconfiguration may occur on an intra-day basis in proportion to the extent to which the higher ADF message volume threatens FINRA's system stability or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.

## **VII. Infrastructure Costs:**

The costs associated with building and implementing the capacity and environments (including, but not limited to, labor, hardware, software, installation, testing, etc., as well

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<sup>5</sup> Or other relevant time metric, e.g., 100 millisecond projected peak capacity planning.

as associated on-going operational costs) will be borne by FINRA (except in the event of an Extraordinary Upgrade as detailed in Section VI.)

Should FINRA need to add capacity in order to accommodate additional capacity requests, 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.

Until such time that the upgrades are made, FINRA will suspend the application of Capacity Usage Fees. (See Sections VIII & IX below.)

**VIII. Excess Capacity Usage Fees:**

If an ADF Trading Center exceeds its Certified Peak Transaction Volume in one or more categories on one or more days in a given calendar month, the following excess capacity usage fees will apply:

<b>Level</b>	<b>Percentage Exceeded</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	<25%	N/A	\$250	\$500	\$750
2	25% - <50%	\$250	\$500	\$750	\$1,000
3	50% or more	\$500	\$750	\$1,000	\$2,000

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.<sup>6</sup> ADF Trading Centers shall submit separate volume projections for quote, media trade, total (i.e., media and non-media) trade, and order reporting activity broken out by National Market System (“NMS”) data plan (i.e., separate projections are submitted for UTP Securities volume and for CTA 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.<sup>7</sup>

In assessing excess capacity usage fees:

- (i) FINRA will use its own metrics to determine if an ADF Trading Center has exceeded its Certified Capacity;
- (ii) FINRA will notify each ADF Trading Center as soon as possible after it has exceeded its Certified Capacity;
- (iii) FINRA will notify each ADF Trading Center when it has incurred an excess capacity usage fee; and

<sup>6</sup> 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 a \$750 fee would apply.

<sup>7</sup> For example, if in one month an ADF Trading Center has one Level 1 incident in UTP Securities for trade report volume, two Level 2 incidents in CTA Securities for quote volume, and three Level 3 incidents in CTA Securities for order report volume, there would be six total incidents carrying two different fees. One fee of \$250 would be levied for the two Level 2 incidents in CTA Securities for quote volume. Another fee of \$750 would be levied for the three Level 3 incidents in CTA Securities for order report volume. There would be no fee for the one Level 1 incident in UTP Securities for trade report volume as it is not applicable according to the fee schedule.

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

### **IX. Shortfall Capacity Usage Fees:**

If an ADF Trading Center does not achieve certain thresholds of both its Projected Average Transaction Volume and its Certified Peak Transaction Volume in one or more categories on one or more days in a given calendar month, the following shortfall capacity usage fees will apply:

For Projected Average Transaction Volume:

<b>Level</b>	<b>Percentage Shortfall</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	10% - <15%	N/A	\$125	\$250	\$375
2	15% - <25%	\$125	\$250	\$375	\$500
3	25% or more	\$250	\$375	\$500	\$1000

For Certified Peak Transaction Volume:

<b>Level</b>	<b>Percentage Shortfall</b>	<b>1-2 days</b>	<b>3-5 days</b>	<b>6-10 days</b>	<b>&gt;10 days</b>
1	50% - <60%	N/A	\$125	\$250	\$375
2	60% - <75%	\$125	\$250	\$375	\$500
3	75% or more	\$250	\$375	\$500	\$1000

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.<sup>8</sup> ADF Trading Centers shall submit separate volume projections for quote, media trade, total (i.e., media and non-media) trade, and order reporting activity broken out by National Market System ("NMS") data plan (i.e., separate projections are submitted for UTP Securities volume and for CTA Securities volume). For purposes of calculating the shortfall capacity usage fee, accruals of incidents apply separately for quote, total 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.<sup>9</sup>

<sup>8</sup> 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 a \$375 fee would apply.

<sup>9</sup> For example, if in one month an ADF Trading Center has one Level 1 incident in UTP Securities for trade report volume, two Level 2 incidents in CTA Securities for quote volume, and three Level 3 incidents in CTA Securities for order report volume, there would be six total incidents carrying two different fees. One fee of \$125 would be levied for the two Level 2 incidents in CTA

In assessing shortfall capacity usage fees:

- (i) FINRA will use its own metrics to determine if an ADF Trading Center has fallen below the minimum threshold of activity;
- (ii) FINRA will provide weekly updates to each ADF Trading Center on their capacity usage;
- (iii) FINRA will notify each ADF Trading Center when it has incurred a shortfall capacity usage fee; and
- (iv) Any shortfall capacity usage fee(s) incurred during a month will appear on that month's invoice.

#### **X. SIP NMS Capacity:**

In addition to making sure that the ADF platform has sufficient infrastructure capacity to handle an ADF Trading Center's message traffic, FINRA is also responsible for purchasing appropriate levels of capacity in accordance with the SIP NMS Data Plans. FINRA makes the capacity purchases based on the needs and projections of the ADF Trading Centers. FINRA will pass through any penalties incurred under the NMS Data Plans and allocate them according to the ADF Trading Center that exceeds its projected message traffic. Each ADF Trading Center will be invoiced for any penalties that may occur. In assessing SIP capacity penalties:

- (i) FINRA will use the SIP's metrics to determine if a penalty has been incurred and will use its own metrics to allocate the penalty to the appropriate ADF Trading Centers (in the event that more than one ADF Trading Center has exceeded its projections);
- (ii) FINRA will notify each ADF Trading Center as soon as possible after it has exceeded its projections; and
- (iii) The ADF Trading Center will be invoiced for the penalties once FINRA has received its invoice from the SIP(s).

#### **XI. Session Terminations:**

To the extent that an ADF Trading Center's data usage materially exceeds the ADF Trading Center's Certified Capacity as determined by the sole discretion of FINRA staff, FINRA Product Management may incrementally reduce the ADF Trading Center's data port sessions to ensure that data levels stay within reasonable levels. Such reductions

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Securities for quote volume. Another fee of \$375 would be levied for the three Level 3 incidents in CTA Securities for order report volume. There would be no fee for the one Level 1 incident in UTP Securities for trade report volume as it is not applicable according to the fee schedule.

may occur on an intra-day basis and will be proportionate to the extent to which the data overage threatens the ADF system's stability or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.



**Attachment A**

**ADF Trading Center Volume Projections**

**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**  
**Q\_ 20\_\_**

**UTP**

	Projected Average Day		Projected Peak Day	
	Messages per Second	Transactions per Day	Messages per Second	Transactions per Day
Quotes				
Media Trade Reports				
Trade Reports				
Order Reports				

**CTA**

	Projected Average Day		Projected Peak Day	
	Messages per Second	Transactions per Day	Messages per Second	Transactions per Day
Quotes				
Media Trade Reports				
Trade Reports				
Order Reports				

**Forecasted ADF Volume**

**Q\_ 20\_\_**

**UTP**

	Projected Average Day		Projected Peak Day	
	Messages per Second	Transactions per Day	Messages per Second	Transactions per Day
Quotes				
Media Trade Reports				
Trade Reports				
Order Reports				

**CTA**

	Projected Average Day		Projected Peak Day	
	Messages per Second	Transactions per Day	Messages per Second	Transactions per Day
Quotes				
Media Trade Reports				
Trade Reports				
Order Reports				

	UTP	CTA
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:** \_\_\_\_\_

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

**ADF Trading Center  
Certification Record**

<i>Regulation NMS-Compliant Certifications*</i>	<i>Certification Signature</i>
<p><b>(1) Certification Scope</b> – ADF Trading Center certifies its acknowledgement that this ADF Trading Center Certification Record is intended to assist [NASD] <u>FINRA</u> 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] <u>FINRA</u> certifying ADF Trading Center for quoting on the ADF and/or trade reporting through [TRACS] <u>the ADF</u> shall constitute an estoppel as to [NASD] <u>FINRA</u> or bind [NASD] <u>FINRA</u> in any subsequent administrative, civil or disciplinary proceeding.</p>	
<p><b>(2) Real Time Monitoring of Protected Quotations</b> – 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.</p>	

\* 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.

<p><b>(3) Automated Quotations</b> – 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.)</p>	
<p><b>(4) Order Response Time</b> - 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] <u>FINRA</u> members [and other ADF Trading Centers]. ADF Trading Center certifies that it will accept intermarket sweep orders and execute them in conformity with Regulation NMS. 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.</p>	
<p><b>(5) Fair and Non-Discriminatory Access</b> – ADF Trading Center certifies that it offers fair and non-discriminatory access to any person as required by Regulation NMS.</p>	
<p><b>(6) Access Fee Cap Order Designator</b> - 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.</p>	
<p><b>(7) Substantially Equivalent Level and Cost of Access</b> - 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.</p>	
<p><b>(8) Defray Costs</b> - ADF Trading Center certifies that, to the extent that [NASD] <u>FINRA</u> deems such ADF Trading Center not to be granting the requisite level and cost of access, ADF Trading Center will be required by [NASD] <u>FINRA</u> to defray the connectivity costs of those persons entitled to access ADF Trading Center.</p>	

<p><b>(9) 60-Day Pre-Quotation Display Notice</b> – ADF Trading Center certifies its acknowledgement that [NASD] <u>FINRA</u> will not permit ADF Trading Center quotations to be displayed through the ADF unless [NASD] <u>FINRA</u> 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] <u>FINRA</u> web[ ]site, and other [NASD] <u>FINRA</u>-sponsored information publication channels (e.g., e-mail push alerts)).</p>	
<p><b>(10) Connectivity / Access</b> – 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 <u>through reasonable means (e.g., through ADF Trading Center press releases, on ADF Trading Center web[ ]site, on FINRA website, and through other FINRA-sponsored information publication channels)</u> relevant connectivity and access specifications, including:</p> <ul style="list-style-type: none"> <li>(i) technical interface specifications (e.g., compatible system protocols, etc.);</li> <li>(ii) testing schedules;</li> <li>(iii) connectivity providers (e.g., extranet providers and direct market access firms) through which ADF Trading Center quotations may be accessed; and</li> <li>(iv) all relevant subscriber and non-subscriber fees, access fees, port fees, connectivity fees and rebates.</li> </ul>	
<p><b>(11) ADF Order Reports</b> - If ADF Trading Center terminates transmitting ADF order reports to [NASD] <u>FINRA</u> 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.</p>	

<p><b>(12) Intra-Day Staff Availability</b> - 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] <u>FINRA Market</u> Operations inquiries concerning ADF Trading Center operations. ADF Trading Center acknowledges that [ADF] <u>FINRA Market</u> Operations has full discretion to remove ADF Trading Center quotations from the ADF to the extent that [ADF] <u>FINRA Market</u> 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.</p>	
<p><b>(13) Self-Help Notification</b> - ADF Trading Center certifies that it will immediately transmit to [ADF] <u>FINRA Market</u> Operations (in the form reasonably required by [ADF] <u>FINRA Market</u> 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” (<u>SEC</u> 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] <u>FINRA Market</u> Operations (in the form reasonably required by [ADF] <u>FINRA Market</u> 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” (<u>SEC</u> Rule 611(b)(1)) to the Order Protection Rule with [the] respect to the quotations of the other Trading Center.</p>	
<p><b><u>(14) ADF Capacity Management Plan</u></b> - ADF Trading Center certifies that it will adhere to, comply with, and actively participate in the <u>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.</u></p>	

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**

\* \* \* \* \*

**7580. Capacity Fees and Penalties**

**7581. Excess Capacity Usage Fees**

(a) If an ADF Trading Center exceeds its Certified Peak Transaction Volume in one or more categories on one or more days in a given calendar month, the following excess capacity usage fees will apply:

<u>Level</u>	<u>Percentage Exceeded</u>	<u>1-2 days</u>	<u>3-5 days</u>	<u>6-10 days</u>	<u>&gt;10 days</u>
<u>1</u>	<u>&lt;25%</u>	<u>N/A</u>	<u>\$250</u>	<u>\$500</u>	<u>\$750</u>
<u>2</u>	<u>25% - &lt;50%</u>	<u>\$250</u>	<u>\$500</u>	<u>\$750</u>	<u>\$1,000</u>
<u>3</u>	<u>50% or more</u>	<u>\$500</u>	<u>\$750</u>	<u>\$1,000</u>	<u>\$2,000</u>

(b) 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.

(c) ADF Trading Centers shall submit separate volume projections for quote, media trade, total (i.e., media and non-media) trade, and order reporting activity broken

out by National Market System (“NMS”) data plan (i.e., separate projections are submitted for UTP Securities volume and for CTA 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.

(d) For purposes of Rule 7581:

(1) the term “ADF Trading Center,” shall have the same meaning as defined in Rule 6220;

(2) the term “CTA Securities” shall mean securities subject to the Consolidated Tape Association Plan;

(3) the term “UTP Securities” shall mean securities subject to the Unlisted Trading Privileges Plan; and

(4) the term “Certified Peak Transaction Volume” means an ADF Trading Center’s projected transactions per day on a projected peak day in any of the following categories that an ADF Trading Center has been certified to submit to the ADF based on the results of the ADF Trading Center’s quarterly certification volume test:

(A) quotation volume in CTA Securities;

(B) trade reporting volume in CTA Securities;

(C) order reporting volume in CTA Securities;

(D) quotation volume in UTP Securities;

(E) trade reporting volume in UTP Securities; and

(F) order reporting volume in UTP Securities.



**7582. Shortfall Capacity Usage Fees**

(a) If an ADF Trading Center does not achieve certain thresholds of both its Projected Average Transaction Volume and its Certified Peak Transaction Volume in one or more categories on one or more days in a given calendar month, the following shortfall capacity usage fees will apply:

For Projected Average Transaction Volume:

<b><u>Level</u></b>	<b><u>Percentage Shortfall</u></b>	<b><u>1-2 days</u></b>	<b><u>3-5 days</u></b>	<b><u>6-10 days</u></b>	<b><u>&gt;10 days</u></b>
<u>1</u>	<u>10% - &lt;15%</u>	<u>N/A</u>	<u>\$125</u>	<u>\$250</u>	<u>\$375</u>
<u>2</u>	<u>15% - &lt;25%</u>	<u>\$125</u>	<u>\$250</u>	<u>\$375</u>	<u>\$500</u>
<u>3</u>	<u>25% or more</u>	<u>\$250</u>	<u>\$375</u>	<u>\$500</u>	<u>\$1000</u>

For Certified Peak Transaction Volume:

<b><u>Level</u></b>	<b><u>Percentage Shortfall</u></b>	<b><u>1-2 days</u></b>	<b><u>3-5 days</u></b>	<b><u>6-10 days</u></b>	<b><u>&gt;10 days</u></b>
<u>1</u>	<u>50% - &lt;60%</u>	<u>N/A</u>	<u>\$125</u>	<u>\$250</u>	<u>\$375</u>
<u>2</u>	<u>60% - &lt;75%</u>	<u>\$125</u>	<u>\$250</u>	<u>\$375</u>	<u>\$500</u>
<u>3</u>	<u>75% or more</u>	<u>\$250</u>	<u>\$375</u>	<u>\$500</u>	<u>\$1000</u>

(b) 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.

(c) ADF Trading Centers shall submit separate volume projections for quote, media trade, total (i.e., media and non-media) trade, and order reporting activity broken out by National Market System (“NMS”) data plan (i.e., separate projections are

submitted for UTP Securities volume and for CTA Securities volume). For purposes of calculating the shortfall capacity usage fee, accruals of incidents apply separately for quote, total 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.

(d) For purposes of Rule 7582:

(1) the term “ADF Trading Center,” shall have the same meaning as defined in Rule 6220;

(2) the term “CTA Securities” shall mean securities subject to the Consolidated Tape Association Plan;

(3) the term “UTP Securities” shall mean securities subject to the Unlisted Trading Privileges Plan;

(4) the term “Projected Average Transaction Volume” means an ADF Trading Center’s projected transactions per day on a projected average day in 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 CTA Securities;

(B) trade reporting volume in CTA Securities;

(C) order reporting volume in CTA Securities;

(D) quotation volume in UTP Securities;

(E) trade reporting volume in UTP Securities; and

(F) order reporting volume in UTP Securities; and

(5) the term “Certified Peak Transaction Volume” means an ADF Trading Center’s projected transactions per day on a projected peak day in any of the

following categories that an ADF Trading Center has been certified to submit to the ADF based on the results of the ADF Trading Center's quarterly certification volume test:

- (A) quotation volume in CTA Securities;
- (B) trade reporting volume in CTA Securities;
- (C) order reporting volume in CTA Securities;
- (D) quotation volume in UTP Securities;
- (E) trade reporting volume in UTP Securities; and
- (F) order reporting volume in UTP Securities.

**7583. Penalties Incurred Pursuant to the National Market System Data Plans**

(a) FINRA will pass through any penalties incurred under the National Market System data plans and allocate them accordingly to the ADF Trading Center that exceeds its projected message traffic. Each ADF Trading Center will be invoiced for any penalties that may occur.

(b) In assessing capacity penalties incurred under the National Market System Plans:

(1) FINRA will use the metrics of the applicable Securities Information Processor (SIP) to determine if a penalty has been incurred and will use its own metrics to allocate the penalty to the appropriate ADF Trading Centers (in the event that more than one ADF Trading Center has exceeded its projections);

(2) FINRA will notify each ADF Trading Center as soon as possible after it has exceeded its projections; and

(3) The ADF Trading Center will be invoiced for the penalties once FINRA has received its invoice from the SIP(s).

(c) For purposes of Rule 7583:

(1) the term “ADF Trading Center,” shall have the same meaning as defined in Rule 6220; and

(2) the term “National Market System Data Plans” means the Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Unlisted Trading Privileges Plan.

\* \* \* \* \*