

**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:

<b><u>Level</u></b>	<b><u>Percentage Exceeded</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>&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.

\* \* \* \* \*