

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71575; File No. SR-FINRA-2013-054)

February 19, 2014

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

I. Introduction

On December 24, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt a Capacity Management Plan (“Plan”) for the Alternative Display Facility (“ADF”) and to amend the ADF Certification Record (“Certification”). The proposed rule change was published for comment in the Federal Register on January 8, 2014.³ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The ADF is a quotation collection and trade reporting facility that provides ADF Market Participants the ability to post quotations, display orders and report transactions in NMS stocks⁴ 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 71224 (Jan. 2, 2014), 79 FR 1414 (“Notice”).

⁴ See 17 CFR 242.600(b)(47).

data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.⁵

To ensure that the ADF has sufficient capacity to handle the volume of quote, order and trade data submitted to the ADF without maintaining unused data capacity, FINRA proposes to adopt the Plan for those FINRA members that opt to utilize the ADF for quoting and trade reporting. According to FINRA, the proposed Plan is similar to the approach of other data plans, notably the Consolidated Tape Association Plan (“CTA Plan”) and the Consolidated Quotation Plan (“CQ Plan”; together, “CTA/CQ Plans”),⁶ 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.⁷

Pursuant to the Plan, each ADF Trading Center would complete an initial ADF Trading Center Capacity Certification process,⁸ including testing its connectivity to the ADF. In addition, each ADF Trading Center would submit volume projections for current and future peak data reporting levels on a quarterly basis, and on demand from FINRA.⁹ Specifically, the Plan would provide 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 would provide ADF Trading

⁵ See 17 CFR 242.600 et seq.

⁶ The CTA/CQ Plans and the Unlisted Trading Privileges Plan are collectively referred to as the “NMS data plans.”

⁷ See Notice, *supra* note 3 at 1414.

⁸ Each ADF Trading Center would also be required to complete an annual recertification.

⁹ ADF Trading Centers would submit separate volume projections for CTA securities and UTP securities, and project their volume for quotations, media trade reports, total trade reports, and order reports.

Centers with the ability to increase and decrease their capacity projections for the second quarter, subject to certain limitations, in the event that their actual capacity usage deviates from their projected capacity usage. In addition, under the Plan, FINRA would honor an ADF Trading Center's capacity requests and build out to support the ADF Trading Center's peak projected capacity requirements. Each ADF Trading Center, however, would still partake in quarterly volume tests before it is certified to a specific volume level.

The Plan would also set forth fees for excess and shortfall capacity usage, and provides that FINRA would pass through any penalties incurred under the NMS data plans among the ADF Trading Centers that exceed their projected message traffic.¹⁰ However, FINRA would not assess the excess or shortfall capacity usage fees 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 would waive these fees only for the remainder of that quarter. Similarly, FINRA would 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 would waive any SIP capacity penalties only for the remainder of that quarter.

In addition, under the Plan, FINRA would be able to make mid-quarter extraordinary system upgrades to accommodate higher message volume or higher message per second throughput, and assess ADF Trading Centers that exceed their certified capacity for those costs accordingly. Moreover, to the extent that an ADF Trading Center's data usage, in the sole

¹⁰ 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.

discretion of FINRA staff, materially exceeds the ADF Trading Center's certified capacity, the Plan would allow FINRA to 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 would 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. Further, the Plan specifies that infrastructure 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) would be borne by FINRA except for extraordinary upgrades.

Finally, in addition to adopting the Plan, FINRA also proposes to amend the Certification to (i) require ADF Trading Centers to comply with the Plan, and (ii) make other minor or non-substantive changes, such as revising the means by which an ADF Trading Center may provide information and replacing references to NASD with FINRA.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A of the Act¹¹ and the rules and regulations thereunder applicable to a national securities association.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹³ which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent

¹¹ 15 U.S.C. 78f.

¹² In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78o-3(b)(6)

and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 15A(b)(5) of the Act,¹⁴ which requires 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.

The Commission believes that FINRA's proposed Plan should help to ensure that FINRA is able to maintain a high level of operability for the ADF, as well as enhance FINRA's ability to submit accurate volume projections to the NMS data plans. The Commission notes that under the proposed Plan, each ADF Trading Center would be required to submit its projected capacity needs and that FINRA would honor those requests subject to quarterly volume tests. ADF Trading Centers, however, would still have the ability to increase and decrease their capacity projections for their second quarter, subject to certain limitations, in the event that their actual capacity usage deviates from their projected capacity usage.¹⁵ In addition, FINRA would have the ability to make mid-quarter extraordinary upgrades and to incrementally reduce an ADF Trading Center's data port sessions in the event that the ADF Trading Center's data usage threatens the ADF system's stability or the ability of FINRA to meet its regulatory obligations with respect to the operation of the ADF.¹⁶ Accordingly, the Commission believes that FINRA's

¹⁴ 15 U.S.C. 78o-3(b)(5)

¹⁵ See Notice, supra note 3 at 1418.

¹⁶ See Notice, supra note 3 at 1419.

proposed Plan should help 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 unused data capacity and providing flexibility to ADF Trading Centers in projecting their capacity needs.

The Commission also believes that FINRA's proposed fees and the pass-through of any SIP penalties are consistent with the Act. The Commission believes that the fees should help to ensure that ADF Trading Centers provide meaningful volume projections to ensure adequate, without unnecessary, capacity. The Commission notes that the fees and SIP penalties would not be assessed during an ADF Trading Center's first quarter of operations on the ADF or a portion thereof. In this regard, the Commission believes that the proposal should allow a new ADF Trading Center 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 would apply.

The Commission believes that FINRA's proposed changes to the Certification are also consistent with Act. The Commission believes that requiring an ADF Trading Center to certify that it will comply with the terms of the Plan should help facilitate FINRA's ability to administer the ADF. Moreover, the change to the Certification relating to the manner in which an ADF Trading Center would provide public notice of certain information should increase the means through which such notice may be provided. The other remaining changes to the Certification, such as changes references from NASD to FINRA and TRACS to ADF, should make the Certification more accurate and up-to-date.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) and (b)(6) of the Act¹⁷ and the rules and regulations thereunder applicable to a national securities association.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-FINRA-2013-054) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

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Deputy Secretary

¹⁷ 15 U.S.C. 78o-3(b)(5) and (6).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).