

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2015 - * 049	Amendment No. (req. for Amendments *)
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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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" 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)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<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"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Amend Rule 7620A Relating to FINRA/Nasdaq Trade Reporting Facility Fees

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Lisa	Last Name * Horrigan
Title * Associate General Counsel	
E-mail * lisa.horrigan@finra.org	
Telephone * (202) 728-8190	Fax (202) 728-8264

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 11/16/2015	Senior Vice President and Director of Capital Markets Policy
By Stephanie Dumont	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 \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 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**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of 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 amend FINRA Rule 7620A to modify certain fees applicable to members that use the FINRA/Nasdaq Trade Reporting Facility (the “FINRA/Nasdaq TRF”).

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**

The proposed rule change has been approved by senior management of FINRA pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing, November 16, 2015.

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

(a) Purpose

Background

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by Nasdaq, Inc. (“NASDAQ”)<sup>2</sup> and utilizes Automated Confirmation Transaction (“ACT”) Service

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

<sup>2</sup> As approved by its board of directors and the Commission, effective September 8, 2015, NASDAQ changed its legal name from The NASDAQ OMX Group, Inc. to Nasdaq, Inc. See Nasdaq, Inc. Form 8-K Current Report (filed September 8,

technology. In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and NASDAQ entered into a limited liability company agreement (the “LLC Agreement”). Under the LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/Nasdaq TRF. NASDAQ, the “Business Member,” is primarily responsible for the management of the FINRA/Nasdaq TRF’s business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF.

Pursuant to the FINRA Rule 7600A Series, FINRA members that are FINRA/Nasdaq TRF participants are charged fees and may qualify for fee caps (Rule 7620A) and also may qualify for revenue sharing payments for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). These rules are administered by NASDAQ, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF on behalf of FINRA,<sup>3</sup> and NASDAQ collects all fees on behalf of the FINRA/Nasdaq TRF.

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2015) (available at [www.sec.gov/Archives/edgar/data/1120193/000119312515314459/d48431d8k.htm](http://www.sec.gov/Archives/edgar/data/1120193/000119312515314459/d48431d8k.htm)).

FINRA and NASDAQ are in the process of amending the LLC Agreement to reflect the name change, and FINRA will file a separate proposed rule change to update the FINRA manual accordingly.

<sup>3</sup> FINRA’s oversight of this function performed by the Business Member is conducted through a recurring assessment and review of TRF operations by an outside independent audit firm.

Pursuant to Rule 7620A, FINRA members are charged fees for “Non-Comparison/Accept (Non-Match/Compare)” trades. Such trades are defined as transactions that are not subject to the ACT Comparison process, and they may be submitted as media or non-media,<sup>4</sup> clearing or non-clearing, AGU (automated give-up), QSR (Qualified Service Representative), one-sided or internalized crosses.<sup>5</sup> Under the fee schedule there are four categories of fees, each of which is applicable to transactions of the three Tapes:<sup>6</sup> (1) Media/Executing Party; (2) Non-Media/Executing Party; (3) Media/Contra; (4) Non-Media/Contra.<sup>7</sup> Each fee category is subject to a monthly fee cap, which is based on the average daily volume of reports submitted to a particular Tape. To be eligible for a cap in a particular Tape, a member must achieve a minimum average daily volume of 2,500 media reports submitted to that Tape as Executing Party in a given month. Trade reports in which the member appears as the Contra Party do not contribute to the achievement of the cap. However, if a member is eligible for a cap based on media

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<sup>4</sup> Media eligible trade reports are those that are submitted to the FINRA/Nasdaq TRF for public dissemination by the Securities Information Processors. By contrast, non-media trade reports are not submitted to the FINRA/Nasdaq TRF for public dissemination, but are submitted for regulatory and/or clearance and settlement purposes.

<sup>5</sup> See FINRA Rule 7620A.01.

<sup>6</sup> Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities (“Tape A”), American Stock Exchange and regional exchange securities (“Tape B”), and Nasdaq Stock Market securities (“Tape C”). Tape A and Tape B are generally referred to as the Consolidated Tape.

<sup>7</sup> Pursuant to the rule’s Supplementary Material, the “Executing Party (EP)” is defined as the member with the trade reporting obligation under FINRA rules, and the “Contra (CP)” is defined as the member on the contra side of a trade report. These positions formerly were identified in FINRA rules as the “Market Maker” or “MM” side and the “Order Entry” or “OE” side, respectively. See FINRA Rule 7620A.01.

trade reports in which it appears as the Executing Party, then caps also would apply to media reports in which that member appears as the Contra Party, as well as to non-media reports where the member appears as Executing Party or Contra Party. Thus, once a member achieves a cap, the maximum number of billable trade reports applicable to each fee category is 2,500 for Tape A, B or C.

Under the current fee cap, a FINRA member that does not conduct a business whereby it is the Executing Party does not have the opportunity to receive a fee cap whatsoever. Currently, FINRA members are charged Media/Contra fees of \$0.013 multiplied by the number of Media/Contra Reports during the month. Similarly, FINRA members are charged Non-Media/Contra fees of \$0.013 multiplied by the number of Non-Media/Contra Reports during the month. If a FINRA member is eligible under the existing cap, the maximum monthly charge is \$0.013 multiplied by 2,500 (for Tape A, B or C) multiplied by number of trading days in a month. Without the proposed fee cap, a FINRA member that does not conduct a business whereby it is the Executing Party may significantly exceed the cap limit.

Consequently, NASDAQ, as the Business Member, has determined to provide an alternative monthly fee cap of \$5,000 per Tape (A, B or C) applied to trades in each fee category. Eligibility for the new fee cap is based on a FINRA member's trade reporting of Media/Contra trades to the TRF and its participation on an alternative trading system registered pursuant to Regulation ATS<sup>8</sup> (an "ATS") as a market maker. Specifically, the FINRA member must make markets on an ATS by maintaining a two-sided quote. FINRA members must complete and provide a form to NASDAQ, in which the FINRA

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<sup>8</sup> 17 CFR 242.300-303.

member attests that it maintains two-sided quotes for each security that the FINRA member maintains interest in within each ATS and that it displays a quotation size of at least one normal unit of trading (specific for each security).<sup>9</sup> The FINRA member must also attest that it will continue to meet the ATS-based requirements to be eligible for the fee cap.<sup>10</sup> In addition, to qualify a FINRA member must have its Contra/Media trades equal, or exceed, 55% of its total FINRA/Nasdaq TRF volume. Lastly, the FINRA member must be contra to a minimum of 1 million trades in Tape A, 500,000 trades in Tape C, and 250,000 trades in Tape B to qualify for the fee cap in the securities of the Tapes, respectively. NASDAQ, as the Business Member, has set the required level of trades reported for each of the Tapes based on the differing levels of overall trades reported to the FINRA/Nasdaq TRF as Contra Party.

Although the proposed fee cap is a “flat” cap set at \$5,000 and the existing fee cap is based on a calculation, they are comparable in terms of the limitation of total fees paid. For example, a member that qualifies under the existing fee cap would pay no more than \$3,565 per month in the securities of a single Tape for trade reports (depending on the total number of days in the month).<sup>11</sup> A member qualifying under the proposed

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<sup>9</sup> The form of attestation that firms will be required to submit to NASDAQ under the proposed rule change is attached to this filing as Exhibit 3.

<sup>10</sup> NASDAQ will audit FINRA members that choose to participate to ensure compliance with the attestation.

<sup>11</sup> This upper limit is calculated based on  $\$0.018 \times 23 \text{ trading days} \times 2,500 = \underline{\$1,035}$  plus  $\$0.018 \times 23 \text{ trading days} \times 2,500 = \underline{\$1,035}$  plus  $\$0.013 \times 23 \text{ trading days} \times 2,500 = \underline{\$747.50}$  plus  $\$0.013 \times 23 \text{ trading days} \times 2500 = \underline{\$747.50}$ . Adding these totals for each category (i.e., Media/Executing Party, Non-Media Executing Party, Media/Contra, and Non-Media/Contra) results in fee a cap of \$3,565.

Media/Contra-based fee cap would pay no more than \$5,000 per month in the securities of a single Tape.<sup>12</sup>

NASDAQ, as the Business Member, has designed the proposed fee cap to make pricing more competitive to attract and retain participants on the FINRA/Nasdaq TRF. NASDAQ also has determined to introduce the proposed fee cap in recognition of this new kind of trading behavior that has emerged in the marketplace. Accordingly, FINRA, as the SRO Member, is proposing to amend Rule 7620A to reflect the proposed new Media/Contra fee cap.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing, November 16, 2015.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>13</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. FINRA members that do not conduct a significant business as an Executing Party (and thus never reach the 2,500 daily average number of Media/Executing Party trades in any of the Tapes) cannot qualify for a fee cap under current rules, and as such, some members may be assessed disproportionately large trade reporting fees.

Consequently, NASDAQ, as the Business Member, has advised FINRA that providing an

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<sup>12</sup> A FINRA member that qualifies for the lower cap would, by default, never reach the proposed cap.

<sup>13</sup> 15 U.S.C. 78o-3(b)(5).

opportunity for certain Contra Parties to qualify for a fee cap, based on certain levels of market participation and types of activities (i.e. market making), is a more equitable allocation of fees. NASDAQ, as the Business Member, has advised FINRA that because the fee cap levels were chosen relative to the current fee caps for Executing Parties, the proposed rule change may bring the fees paid by Contra Parties that would qualify for the proposed cap more in line with the fees paid by Executing Parties that currently qualify for the existing cap.<sup>14</sup> Accordingly, the proposed fee cap more equitably allocates the fees assessed to members for their use of the FINRA/Nasdaq TRF.

The proposed fee cap is available to all FINRA members that use the FINRA/Nasdaq TRF and meet the threshold requirements to qualify for the terms of the fee cap. While only some Contra Parties will qualify for the proposed cap and thus see a reduction in their FINRA/Nasdaq TRF trade reporting fees, NASDAQ, as the Business Member, has advised FINRA that the proposed cap is not unfairly discriminatory because the proposed fee cap will most benefit those Contra Parties that disproportionately bear higher trade reporting costs due to their significant volume on the FINRA/Nasdaq TRF. NASDAQ has advised FINRA that following implementation, NASDAQ will monitor the fees paid by Contra Parties and will consider whether any adjustments to the proposed fee cap or qualifying thresholds would be appropriate.

#### **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

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<sup>14</sup> As noted above, a member that qualifies under the existing fee cap would pay no more than \$3,565 per month in the securities of a single Tape, while a member that qualifies under the proposed Contra fee cap would pay no more than \$5,000 per month in the securities of a single Tape.

Act. The fee proposal would not impose new fees or fee rate increases on any member firm, and will reduce the fees paid by some members. NASDAQ has advised FINRA that the estimated fee savings to member firms based on this proposal would be in the range of \$0-\$20,000 per month per firm based on overall market and participant activity and number of trading days in the month. NASDAQ, as the Business Member, has further advised FINRA that, based on current trading practices, NASDAQ estimates that approximately two to five member firms would have been able to take advantage of the fee reductions associated with this proposal, had they been in place.

FINRA notes that its members have trade reporting alternatives other than the FINRA/Nasdaq TRF, so to the extent the proposed changes are viewed as burdensome among market participants, those participants may choose not to avail themselves of the fee cap and maintain the status quo with respect to fees or adjust their trading practices. This would permit members to mitigate any direct or indirect costs imposed by this proposal. Moreover, the proposal may promote competition among FINRA members by reducing the fee burden on certain FINRA members who are unable to qualify for the existing fee cap, and FINRA members can choose their trading partners, which determination may in part be based on the fees of the particular TRF applicable to Contra Parties. Lastly, FINRA does not believe that the proposed fee cap burdens competition among reporting facilities because each is free to adjust their respective fees to remain competitive with the FINRA/Nasdaq TRF, to the extent the proposed fee cap makes the FINRA/Nasdaq TRF a more attractive facility on which to report trades.

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**

Not applicable.

**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)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f)(2) of Rule 19b-4 thereunder,<sup>16</sup> in that the proposed rule change is establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.

**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 3. Form of attestation required under the proposed rule change.

Exhibit 5. Text of the proposed rule change.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2015-049)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 7620A Relating to FINRA/Nasdaq Trade Reporting Facility Fees

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 , 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. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 amend FINRA Rule 7620A to modify certain fees applicable to members that use the FINRA/Nasdaq Trade Reporting Facility (the “FINRA/Nasdaq TRF”).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

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.

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

Background

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by Nasdaq, Inc. ("NASDAQ")<sup>5</sup> and utilizes Automated Confirmation Transaction ("ACT") Service technology. In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and NASDAQ entered into a limited liability company agreement (the "LLC Agreement"). Under the LLC Agreement, FINRA, the "SRO Member," has sole

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<sup>5</sup> As approved by its board of directors and the Commission, effective September 8, 2015, NASDAQ changed its legal name from The NASDAQ OMX Group, Inc. to Nasdaq, Inc. See Nasdaq, Inc. Form 8-K Current Report (filed September 8, 2015) (available at [www.sec.gov/Archives/edgar/data/1120193/000119312515314459/d48431d8k.htm](http://www.sec.gov/Archives/edgar/data/1120193/000119312515314459/d48431d8k.htm)).

FINRA and NASDAQ are in the process of amending the LLC Agreement to reflect the name change, and FINRA will file a separate proposed rule change to update the FINRA manual accordingly.

regulatory responsibility for the FINRA/Nasdaq TRF. NASDAQ, the “Business Member,” is primarily responsible for the management of the FINRA/Nasdaq TRF’s business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF.

Pursuant to the FINRA Rule 7600A Series, FINRA members that are FINRA/Nasdaq TRF participants are charged fees and may qualify for fee caps (Rule 7620A) and also may qualify for revenue sharing payments for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). These rules are administered by NASDAQ, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF on behalf of FINRA,<sup>6</sup> and NASDAQ collects all fees on behalf of the FINRA/Nasdaq TRF.

Pursuant to Rule 7620A, FINRA members are charged fees for “Non-Comparison/Accept (Non-Match/Compare)” trades. Such trades are defined as transactions that are not subject to the ACT Comparison process, and they may be submitted as media or non-media,<sup>7</sup> clearing or non-clearing, AGU (automated give-up),

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<sup>6</sup> FINRA’s oversight of this function performed by the Business Member is conducted through a recurring assessment and review of TRF operations by an outside independent audit firm.

<sup>7</sup> Media eligible trade reports are those that are submitted to the FINRA/Nasdaq TRF for public dissemination by the Securities Information Processors. By contrast, non-media trade reports are not submitted to the FINRA/Nasdaq TRF for public dissemination, but are submitted for regulatory and/or clearance and settlement purposes.

QSR (Qualified Service Representative), one-sided or internalized crosses.<sup>8</sup> Under the fee schedule there are four categories of fees, each of which is applicable to transactions of the three Tapes:<sup>9</sup> (1) Media/Executing Party; (2) Non-Media/Executing Party; (3) Media/Contra; (4) Non-Media/Contra.<sup>10</sup> Each fee category is subject to a monthly fee cap, which is based on the average daily volume of reports submitted to a particular Tape. To be eligible for a cap in a particular Tape, a member must achieve a minimum average daily volume of 2,500 media reports submitted to that Tape as Executing Party in a given month. Trade reports in which the member appears as the Contra Party do not contribute to the achievement of the cap. However, if a member is eligible for a cap based on media trade reports in which it appears as the Executing Party, then caps also would apply to media reports in which that member appears as the Contra Party, as well as to non-media reports where the member appears as Executing Party or Contra Party. Thus, once a member achieves a cap, the maximum number of billable trade reports applicable to each fee category is 2,500 for Tape A, B or C.

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<sup>8</sup> See FINRA Rule 7620A.01.

<sup>9</sup> Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities (“Tape A”), American Stock Exchange and regional exchange securities (“Tape B”), and Nasdaq Stock Market securities (“Tape C”). Tape A and Tape B are generally referred to as the Consolidated Tape.

<sup>10</sup> Pursuant to the rule’s Supplementary Material, the “Executing Party (EP)” is defined as the member with the trade reporting obligation under FINRA rules, and the “Contra (CP)” is defined as the member on the contra side of a trade report. These positions formerly were identified in FINRA rules as the “Market Maker” or “MM” side and the “Order Entry” or “OE” side, respectively. See FINRA Rule 7620A.01.

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Consequently, NASDAQ, as the Business Member, has determined to provide an alternative monthly fee cap of \$5,000 per Tape (A, B or C) applied to trades in each fee category. Eligibility for the new fee cap is based on a FINRA member's trade reporting of Media/Contra trades to the TRF and its participation on an alternative trading system registered pursuant to Regulation ATS<sup>11</sup> (an "ATS") as a market maker. Specifically, the FINRA member must make markets on an ATS by maintaining a two-sided quote. FINRA members must complete and provide a form to NASDAQ, in which the FINRA member attests that it maintains two-sided quotes for each security that the FINRA member maintains interest in within each ATS and that it displays a quotation size of at least one normal unit of trading (specific for each security).<sup>12</sup> The FINRA member must also attest that it will continue to meet the ATS-based requirements to be eligible for the

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<sup>11</sup> 17 CFR 242.300-303.

<sup>12</sup> The form of attestation that firms will be required to submit to NASDAQ under the proposed rule change is attached to this filing as Exhibit 3.

fee cap.<sup>13</sup> In addition, to qualify a FINRA member must have its Contra/Media trades equal, or exceed, 55% of its total FINRA/Nasdaq TRF volume. Lastly, the FINRA member must be contra to a minimum of 1 million trades in Tape A, 500,000 trades in Tape C, and 250,000 trades in Tape B to qualify for the fee cap in the securities of the Tapes, respectively. NASDAQ, as the Business Member, has set the required level of trades reported for each of the Tapes based on the differing levels of overall trades reported to the FINRA/Nasdaq TRF as Contra Party.

Although the proposed fee cap is a “flat” cap set at \$5,000 and the existing fee cap is based on a calculation, they are comparable in terms of the limitation of total fees paid. For example, a member that qualifies under the existing fee cap would pay no more than \$3,565 per month in the securities of a single Tape for trade reports (depending on the total number of days in the month).<sup>14</sup> A member qualifying under the proposed Media/Contra-based fee cap would pay no more than \$5,000 per month in the securities of a single Tape.<sup>15</sup>

NASDAQ, as the Business Member, has designed the proposed fee cap to make pricing more competitive to attract and retain participants on the FINRA/Nasdaq TRF. NASDAQ also has determined to introduce the proposed fee cap in recognition of this

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<sup>13</sup> NASDAQ will audit FINRA members that choose to participate to ensure compliance with the attestation.

<sup>14</sup> This upper limit is calculated based on  $\$0.018 \times 23 \text{ trading days} \times 2,500 = \underline{\$1,035}$  plus  $\$0.018 \times 23 \text{ trading days} \times 2,500 = \underline{\$1,035}$  plus  $\$0.013 \times 23 \text{ trading days} \times 2,500 = \underline{\$747.50}$  plus  $\$0.013 \times 23 \text{ trading days} \times 2500 = \underline{\$747.50}$ . Adding these totals for each category (i.e., Media/Executing Party, Non-Media Executing Party, Media/Contra, and Non-Media/Contra) results in fee a cap of \$3,565.

<sup>15</sup> A FINRA member that qualifies for the lower cap would, by default, never reach the proposed cap.

new kind of trading behavior that has emerged in the marketplace. Accordingly, FINRA, as the SRO Member, is proposing to amend Rule 7620A to reflect the proposed new Media/Contra fee cap.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing, November 16, 2015.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>16</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. FINRA members that do not conduct a significant business as an Executing Party (and thus never reach the 2,500 daily average number of Media/Executing Party trades in any of the Tapes) cannot qualify for a fee cap under current rules, and as such, some members may be assessed disproportionately large trade reporting fees.

Consequently, NASDAQ, as the Business Member, has advised FINRA that providing an opportunity for certain Contra Parties to qualify for a fee cap, based on certain levels of market participation and types of activities (i.e. market making), is a more equitable allocation of fees. NASDAQ, as the Business Member, has advised FINRA that because the fee cap levels were chosen relative to the current fee caps for Executing Parties, the proposed rule change may bring the fees paid by Contra Parties that would qualify for the proposed cap more in line with the fees paid by Executing Parties that currently qualify

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<sup>16</sup> 15 U.S.C. 78o-3(b)(5).

for the existing cap.<sup>17</sup> Accordingly, the proposed fee cap more equitably allocates the fees assessed to members for their use of the FINRA/Nasdaq TRF.

The proposed fee cap is available to all FINRA members that use the FINRA/Nasdaq TRF and meet the threshold requirements to qualify for the terms of the fee cap. While only some Contra Parties will qualify for the proposed cap and thus see a reduction in their FINRA/Nasdaq TRF trade reporting fees, NASDAQ, as the Business Member, has advised FINRA that the proposed cap is not unfairly discriminatory because the proposed fee cap will most benefit those Contra Parties that disproportionately bear higher trade reporting costs due to their significant volume on the FINRA/Nasdaq TRF. NASDAQ has advised FINRA that following implementation, NASDAQ will monitor the fees paid by Contra Parties and will consider whether any adjustments to the proposed fee cap or qualifying thresholds would be appropriate.

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. The fee proposal would not impose new fees or fee rate increases on any member firm, and will reduce the fees paid by some members. NASDAQ has advised FINRA that the estimated fee savings to member firms based on this proposal would be in the range of \$0-\$20,000 per month per firm based on overall market and participant activity and number of trading days in the month. NASDAQ, as the Business Member, has further advised FINRA that, based on current trading practices, NASDAQ estimates that

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<sup>17</sup> As noted above, a member that qualifies under the existing fee cap would pay no more than \$3,565 per month in the securities of a single Tape, while a member that qualifies under the proposed Contra fee cap would pay no more than \$5,000 per month in the securities of a single Tape.

approximately two to five member firms would have been able to take advantage of the fee reductions associated with this proposal, had they been in place.

FINRA notes that its members have trade reporting alternatives other than the FINRA/Nasdaq TRF, so to the extent the proposed changes are viewed as burdensome among market participants, those participants may choose not to avail themselves of the fee cap and maintain the status quo with respect to fees or adjust their trading practices. This would permit members to mitigate any direct or indirect costs imposed by this proposal. Moreover, the proposal may promote competition among FINRA members by reducing the fee burden on certain FINRA members who are unable to qualify for the existing fee cap, and FINRA members can choose their trading partners, which determination may in part be based on the fees of the particular TRF applicable to Contra Parties. Lastly, FINRA does not believe that the proposed fee cap burdens competition among reporting facilities because each is free to adjust their respective fees to remain competitive with the FINRA/Nasdaq TRF, to the extent the proposed fee cap makes the FINRA/Nasdaq TRF a more attractive facility on which to report trades.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>19</sup> At any time within 60 days

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2015-049 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-049. 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-2015-049 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>20</sup>

Robert W. Errett  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 3****Attestation to Certify Market Making on ATS<sup>1</sup>**

In accordance with FINRA/Nasdaq Trade Reporting Facility (TRF) rules,<sup>2</sup> a member or member organization must certify that it provides market making functions on its off-exchange trading activity to be eligible for a fee cap based on Media/Contra trades.

<b>Date:</b>		<b>Initial Application:</b>	
<b>Full Name of Submitting Firm:</b>			
<b>CRD No:</b>		<b>Primary MPID:</b>	
Provide the following information: list all trading venues registered pursuant to Regulation ATS on which submitting firm participates as a market maker; Firm Name, ATS Name, MPID			
<b>Firm Name (Owner of ATS)</b>	<b>ATS Name</b>	<b>ATS MPID</b>	
<b>Authorized Officer</b> - Provide information on the individual responsible for completing this Attestation and executing the Certification and Agreement below on behalf of the applicant firm. <b>NOTE:</b> This individual will be considered responsible for providing any amendments to this form as required by the relevant Rules referenced above.			
<b>Name:</b>		<b>Title:</b>	
<b>Phone:</b>		<b>Email:</b>	
<b>Certification and Agreement</b>			
The Applicant firm, by its duly authorized officer identified below, hereby certifies that the entities listed in this application are where the submitting firm is a market maker. The Applicant Firm agrees to provide Nasdaq, Inc., upon request, information to verify the market making status of the entities listed herein. The Applicant Firm shall also provide immediate notice of any event that causes an entity listed herein to cease to be a market maker of the referenced firms.			
<b>Signature of Authorized Officer:</b>	<b>Date:</b>		
<b>Approved by Nasdaq Regulation:</b>	<b>Date:</b>		

<sup>1</sup> **Market Making Activities must include:** 1) maintaining two-sided quotes for each security within each ATS the submitting firm references and 2) displaying a quotation size for at least one normal unit of trading (specific for each security).

<sup>2</sup> See FINRA Rule 7620A.

**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined.

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

\* \* \* \* \*

**7600. DATA PRODUCTS AND CHARGES FOR TRADE REPORTING  
FACILITY SERVICES**

**7600A. DATA PRODUCTS AND CHARGES FOR FINRA/NASDAQ TRADE  
REPORTING FACILITY SERVICES**

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**7620A. FINRA/Nasdaq Trade Reporting Facility Reporting Fees**

The following charges shall be paid by participants for use of the FINRA/Nasdaq Trade Reporting Facility. In the case of trades where the same market participant is on both sides of a trade report, applicable fees assessed on a “per side” basis will be assessed once, rather than twice, and the market participant will be assessed applicable Non-Comparison/Accept (Non-Match/Compare) Charges as the Executing Party side only.

<b>Non-Comparison/Accept (Non-Match/Compare) Charges:</b>	
<b>Tape</b>	<b>Daily Average Number of Media/Executing Party Trades During the Month Needed to</b>

	<b>Qualify for Cap</b>
A	2500
B	2500
C	2500
<b>Media/Executing Party</b>	
<b>Monthly Charge</b>	<b>Maximum Monthly Charge if Capped</b>
(\$0.018) x (Number of Media/Executing Party Reports During the Month)	(\$0.018) x (Required Daily Average Number of Media/EP Trades for Tape A, B or C) x (Number of Trading Days During the Month)
<b>Non-Media/Executing Party</b>	
<b>Monthly Charge</b>	<b>Maximum Monthly Charge if Capped</b>
(\$0.018) x (Number of Non-Media/Executing Party Reports During the Month)	(\$0.018) x 2500 for Tape A, B or C x (Number of Trading Days During the Month)

<b>Media/Contra</b>	
<b>Monthly Charge</b>	<b>Maximum Monthly Charge if Capped</b>
(\$0.013) x (Number of Media/Contra Reports During the Month)	(\$0.013) x 2500 for Tape A, B or C x (Number of Trading Days During the Month)
<b><u>Media/Contra Cap</u></b>	
<p><u>Participants making markets in alternative trading systems registered pursuant to Regulation ATS will qualify for a fee cap applied to all trades under Rule 7620A if they meet the following criteria on a monthly basis:</u></p> <ul style="list-style-type: none"> <li>• <u>Participant’s percentage of contra media trades must represent at least 55% of their total TRF volume.</u></li> <li>• <u>Participant must be contra to a minimum of 1,000,000 trades in Tape A, 500,000 trades in Tape C and 250,000 trades in Tape B.</u></li> <li>• <u>Participant must complete an attestation form stating that they maintain a two-sided quote in each symbol traded on an alternative trading system registered pursuant to Regulation ATS and display a quotation size of at least one normal unit of trading (specific for each security) thereon. Participants will be audited by Nasdaq, Inc. periodically.</u></li> </ul>	

<b><u>Maximum Monthly Charge if Capped</u></b>	<u>\$5,000 per Tape (A, B or C)</u>
<b>Non-Media/Contra</b>	
<b>Monthly Charge</b>	<b>Maximum Monthly Charge if Capped</b>
(\$0.013) x (Number of Non-Media/Contra Reports During the Month)	(\$0.013) x 2500 for Tape A, B or C x (Number of Trading Days During the Month)
<b>Standard Fees:</b>	
Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7230A(h)	\$0.03/side
Comparison/Accept	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report—T+N	\$0.288/trade (charged to the Executing Party)
Query	\$0.50/query

Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party
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**••• Supplementary Material: -----**

**.01** No Change.

**.02** Participants that qualify for the Media/Contra fee cap must contact Nasdaq Trading Services to complete the attestation form required under this Rule.

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