

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29

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

File No.* SR - 2019 - * 029

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

| | | | | | |
|-------------------------------------|---|--------------------------|---|--------------------------------------|--------------------------|
| Initial * | Amendment * | Withdrawal | Section 19(b)(2) * | Section 19(b)(3)(A) * | Section 19(b)(3)(B) * |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| | | | Rule | | |
| Pilot | Extension of Time Period for Commission Action * | Date Expires * | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="text"/> | <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) *

☐

Section 806(e)(2) *

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Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

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

Proposed Rule Change to Amend FINRA Rule 7610A to Modify the Securities Transaction Credits Applicable to
FINRA/Nasdaq TRF Participants

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 12/05/2019

By Stephanie Dumont

(Name *)

Senior Vice President and Director of Capital Markets
Policy

Stephanie Dumont,

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 EFFT website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

Exhibit 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

Add Remove View

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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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

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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”),¹ 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 7610A to modify the securities transaction credits that apply to FINRA members that utilize the FINRA/Nasdaq Trade Reporting Facility Carteret (the “FINRA/Nasdaq TRF Carteret”) and the FINRA/Nasdaq Trade Reporting Facility Chicago (the “FINRA/Nasdaq TRF Chicago”) (collectively, the “FINRA/Nasdaq TRFs”).

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 operative date will be January 1, 2020.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

The FINRA/Nasdaq TRFs are facilities of FINRA that are operated by Nasdaq, Inc. ("Nasdaq"). In connection with the establishment of the FINRA/Nasdaq TRFs, 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 TRFs. Nasdaq, the "Business Member," is primarily responsible for the management of the FINRA/Nasdaq TRFs' business affairs, including establishing pricing for use of the FINRA/Nasdaq TRFs, 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 TRFs.

Pursuant to FINRA Rule 7610A, FINRA members that report over-the-counter ("OTC") trades in NMS stocks to the FINRA/Nasdaq TRFs ("Participants") may qualify for revenue sharing payments, in the form of transaction credits, based upon those transactions that are attributable to such Participants.² This rule is administered by

² A transaction is attributable to a Participant if the Participant is identified as the Executing Party in a trade report submitted to a FINRA/Nasdaq TRF that the FINRA/Nasdaq TRF subsequently submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. Credits are paid on a quarterly basis.

Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRFs on behalf of FINRA.³

Rule 7610A sets forth tiered schedules of transaction credits that describe, for reports in transactions in each Tape (A, B and C), the percentage of attributable revenue sharing that a Participant will receive if it achieves specified percentages of market share. The schedules provide for “Retail Participants”⁴ to receive higher revenue sharing percentages than other FINRA members at the two lowest tiers for transactions in each Tape. For reference purposes, the existing transaction credit schedules are as follows:

| Tape A | | |
|--|---|---|
| Percentage Market Share | Percent of attributable revenue shared | Percent of attributable revenue shared (Retail Participants) |
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 95% | 95% |
| Less than 1% but greater than or equal to 0.50% | 75% | 75% |
| Less than 0.50% but greater than or equal to 0.10% | 20% | 75% |
| Less than 0.10% | 0% | 75% |

³ 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.

⁴ Supplementary Material .01 to Rule 7620A defines a “Retail Participant” as a “participant in the FINRA/Nasdaq Trade Reporting Facility for which substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.” The term “Retail Order” is also defined under Rule 7620A.01.

Tape B

| Percentage Market Share | Percent of attributable revenue shared | Percent of attributable revenue shared (Retail Participants) |
|--|---|---|
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 90% | 90% |
| Less than 1% but greater than or equal to 0.35% | 70% | 70% |
| Less than 0.35% but greater than or equal to 0.10% | 10% | 70% |
| Less than 0.10% | 0% | 70% |

Tape C

| Percentage Market Share | Percent of attributable revenue shared | Percent of attributable revenue shared (Retail Participants) |
|--|---|---|
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 95% | 95% |
| Less than 1% but greater than or equal to 0.50% | 75% | 75% |
| Less than 0.50% but greater than or equal to 0.10% | 20% | 75% |
| Less than 0.10% | 0% | 75% |

Nasdaq, as the Business Member, has determined to modify the schedule of transaction credits applicable to the FINRA/Nasdaq TRFs to provide a more competitive distribution of pricing incentives and benefits among Participants to the extent that they engage in a substantial volume of Executing Party activity. The proposed amended schedule is also designed to be more competitive with the schedule of transaction credits

applicable to the other FINRA TRF.⁵ FINRA proposes to amend Rule 7610A accordingly.

The proposed rule change would amend the third revenue sharing tier for both Retail and non-Retail Participants (i.e., Participants that achieve market shares of less than 1.0% but greater than or equal to 0.50% for Tape A and C securities, and less than 1.0% but greater than or equal to 0.35% for Tape B securities) by increasing the percentage of revenue shared with Participants that qualify for the tier. Specifically, Participants that achieve a market share of less than 1.0% but greater than or equal to 0.50% in securities in Tapes A and C (or greater than or equal to 0.35% for Tape B securities) will be eligible to receive 85% of attributable revenues for securities in all Tapes.

Nasdaq, as the Business Member, estimates that 13 Participants currently qualify for the existing revenue sharing tier. Assuming that these Participants continue to qualify for this tier, Nasdaq estimates, based on current trade reporting activity, that all of these Participants will experience an increase in the amount of the credits that they receive. Based on a review of trade reporting activity for the period July 2018 to June 2019, Nasdaq estimates that these Participants could potentially receive between \$10,000 and \$190,000 more credits than they receive today. No new product or service will accompany the proposed changes to revenue sharing credits.

⁵ Pursuant to FINRA Rule 7610B, the FINRA/NYSE TRF presently shares with its participants, for all Tapes, 100% of attributable revenue for market shares greater than or equal to 2.0%, 95% of attributable revenue for market shares greater than or equal to 0.5% but less than 2.0%, 85% of attributable revenue for market shares greater than or equal to 0.1% but less than 0.5%, and 0% of attributable revenue for market shares of less than 0.1%.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be January 1, 2020.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁶ 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. All similarly situated members are subject to the same fee structure and access to the FINRA/Nasdaq TRFs is offered on fair and nondiscriminatory terms.

The Proposal is Reasonable

The proposed change to modify the revenue sharing credits for the FINRA/Nasdaq TRFs is reasonable in several respects. As a threshold matter, the FINRA/Nasdaq TRFs are subject to significant competitive forces in the market for trade reporting services for OTC trades in NMS stocks that constrain its pricing determinations in that market. The competing FINRA TRF presently offers a similar tiered pricing structure to that of the FINRA/Nasdaq TRFs, including a schedule of revenue sharing credits that apply based upon its participants achieving certain levels of market share.⁷ Participants can freely and do shift their trade reporting activity between the various FINRA TRFs in response to pricing, product or service changes. The proposed rule

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ Because the FINRA/Nasdaq TRFs and the FINRA/NYSE TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

change renders more generous the FINRA/Nasdaq TRFs' revenue sharing credits to maintain and increase activity and market share.

The Proposal is an Equitable Allocation of Credits and Charges

The proposed rule change will allocate revenue sharing credits fairly among FINRA/Nasdaq TRF Participants. Nasdaq, as the Business Member, has determined to increase the revenue sharing credits that the FINRA/Nasdaq TRFs offer to their Participants as a means of rewarding those Participants that engage in substantial amounts of trade reporting activity on the FINRA/Nasdaq TRFs, reducing the costs to such Participants of reporting trades to the FINRA/Nasdaq TRFs, and improving the competitive standing of the FINRA/Nasdaq TRFs relative to their competitor, which offers similar credits to its participants. Nasdaq believes it is equitable to target such increases only to Participants with market shares of less than 1.0% but greater than or equal to 0.50% (for securities in Tapes A and C) and 0.35% (for securities in Tape B). The tier selected accounts for 5% of the Transaction Credit eligible Participant base and 17% of trade reporting volume of the FINRA/Nasdaq TRFs and it is a tier that is particularly vulnerable to competition from the other FINRA TRF, which presently offers to share 95% of attributable revenues with its participants that achieve market shares of equal to or greater than 0.5% and less than 2.0%. The proposed rule change will render the FINRA/Nasdaq TRFs more competitive with its competitors in terms of revenue sharing for Participants in this market segment.

The Proposal is not Unfairly Discriminatory

The proposed rule change is not unfairly discriminatory. As an initial matter, nothing about the volume-based tiered pricing model of the FINRA/Nasdaq TRFs is

inherently unfair. Instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that FINRA TRFs have long employed under FINRA rules filed with the Commission.

Nasdaq, as the Business Member, intends for the proposal to increase incentives to FINRA/Nasdaq TRF Participants to engage in substantial trade reporting activity on the FINRA/Nasdaq TRFs. The increased incentive will be available to all Participants with market shares of less than 1.0% but greater than or equal to 0.50% (Tapes A and C securities) and 0.35% (Tape B securities).

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

FINRA does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

Nasdaq, as the Business Member, does not believe that the proposed rule change will place any category of Participant at a competitive disadvantage. As discussed above, all Participants that currently qualify for credits will continue to qualify for credits under the proposed rule change and will receive higher rates of credits than they do today. Meanwhile, Participants that do not qualify for the proposed tiers (or that do not qualify for the higher of the proposed tiers) may grow or modify their businesses so that they will do so. Participants are free to report their OTC trades in NMS stocks to the competing TRF to the extent they believe that the credits provided are not attractive. Price

competition between the TRFs is substantial, with trade reporting activity and market share moving freely between them in reaction to fee and credit changes.

Intermarket Competition

Nasdaq believes that the proposed modifications to the schedule of credits applicable to the FINRA/Nasdaq TRFs will not impose a burden on competition among the FINRA trade reporting facilities because use of the FINRA/Nasdaq TRFs is completely voluntary and subject to competition.⁸ Currently, with the exception of FINRA/Nasdaq TRF Retail Participants in the lowest tier, the competing FINRA TRF provides higher transaction credits to its participants than the FINRA/Nasdaq TRFs for engaging in similar levels of trade reporting activity. Nasdaq, as the Business Member, seeks to increase the credits that the FINRA/Nasdaq TRFs provide to market participants so that these credits are more competitive. Nasdaq believes that the proposed increase in credits is necessary to retain reported volume. Indeed, firms that report OTC trades in NMS stocks can readily favor competing facilities if they deem fee levels at a particular facility to be excessive, or credit opportunities available at other facilities to be more favorable.

The competition, in turn, is free to modify its own fees and credits in response to this proposed rule change to maintain or increase its attractiveness to participants.

Accordingly, Nasdaq believes that the risk that this proposed rule change will impose any burden on intermarket competition is extremely limited.

⁸ Because the FINRA/Nasdaq TRFs and the FINRA/NYSE TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

If market participants determine that the changes proposed herein are inadequate or unattractive, it is likely that the FINRA/Nasdaq TRFs will lose market share as a result. Accordingly, the proposed rule change will not impair the ability of the other FINRA TRF to maintain its competitive standing.

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)(ii) of the Act⁹ and paragraph (f)(2) of Rule 19b-4 thereunder,¹⁰ 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.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

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 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2019-029)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 7610A to Modify the Securities Transaction Credits Applicable to FINRA/Nasdaq TRF Participants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 7610A to modify the securities transaction credits that apply to FINRA members that utilize the FINRA/Nasdaq Trade

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

Reporting Facility Carteret (the “FINRA/Nasdaq TRF Carteret”) and the FINRA/Nasdaq Trade Reporting Facility Chicago (the “FINRA/Nasdaq TRF Chicago”) (collectively, the “FINRA/Nasdaq TRFs”).

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

The FINRA/Nasdaq TRFs are facilities of FINRA that are operated by Nasdaq, Inc. (“Nasdaq”). In connection with the establishment of the FINRA/Nasdaq TRFs, 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 TRFs. Nasdaq, the “Business Member,” is primarily responsible for the management of the FINRA/Nasdaq TRFs’ business affairs, including establishing pricing for use of the FINRA/Nasdaq TRFs, 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 TRFs.

Pursuant to FINRA Rule 7610A, FINRA members that report over-the-counter (“OTC”) trades in NMS stocks to the FINRA/Nasdaq TRFs (“Participants”) may qualify for revenue sharing payments, in the form of transaction credits, based upon those transactions that are attributable to such Participants.⁵ This rule is administered by Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRFs on behalf of FINRA.⁶

Rule 7610A sets forth tiered schedules of transaction credits that describe, for reports in transactions in each Tape (A, B and C), the percentage of attributable revenue sharing that a Participant will receive if it achieves specified percentages of market share. The schedules provide for “Retail Participants”⁷ to receive higher revenue sharing percentages than other FINRA members at the two lowest tiers for transactions in each Tape. For reference purposes, the existing transaction credit schedules are as follows:

⁵ A transaction is attributable to a Participant if the Participant is identified as the Executing Party in a trade report submitted to a FINRA/Nasdaq TRF that the FINRA/Nasdaq TRF subsequently submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. Credits are paid on a quarterly basis.

⁶ 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.

⁷ Supplementary Material .01 to Rule 7620A defines a “Retail Participant” as a “participant in the FINRA/Nasdaq Trade Reporting Facility for which substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.” The term “Retail Order” is also defined under Rule 7620A.01.

Tape A

| <u>Percentage Market Share</u> | <u>Percent of attributable revenue shared</u> | <u>Percent of attributable revenue shared (Retail Participants)</u> |
|--|---|---|
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 95% | 95% |
| Less than 1% but greater than or equal to 0.50% | 75% | 75% |
| Less than 0.50% but greater than or equal to 0.10% | 20% | 75% |
| Less than 0.10% | 0% | 75% |

Tape B

| <u>Percentage Market Share</u> | <u>Percent of attributable revenue shared</u> | <u>Percent of attributable revenue shared (Retail Participants)</u> |
|--|---|---|
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 90% | 90% |
| Less than 1% but greater than or equal to 0.35% | 70% | 70% |
| Less than 0.35% but greater than or equal to 0.10% | 10% | 70% |
| Less than 0.10% | 0% | 70% |

Tape C

| <u>Percentage Market Share</u> | <u>Percent of attributable revenue shared</u> | <u>Percent of attributable revenue shared (Retail Participants)</u> |
|--|---|---|
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 95% | 95% |
| Less than 1% but | 75% | 75% |

| | | |
|--|-----|-----|
| greater than or equal to 0.50% | | |
| Less than 0.50% but greater than or equal to 0.10% | 20% | 75% |
| Less than 0.10% | 0% | 75% |

Nasdaq, as the Business Member, has determined to modify the schedule of transaction credits applicable to the FINRA/Nasdaq TRFs to provide a more competitive distribution of pricing incentives and benefits among Participants to the extent that they engage in a substantial volume of Executing Party activity. The proposed amended schedule is also designed to be more competitive with the schedule of transaction credits applicable to the other FINRA TRF.⁸ FINRA proposes to amend Rule 7610A accordingly.

The proposed rule change would amend the third revenue sharing tier for both Retail and non-Retail Participants (i.e., Participants that achieve market shares of less than 1.0% but greater than or equal to 0.50% for Tape A and C securities, and less than 1.0% but greater than or equal to 0.35% for Tape B securities) by increasing the percentage of revenue shared with Participants that qualify for the tier. Specifically, Participants that achieve a market share of less than 1.0% but greater than or equal to 0.50% in securities in Tapes A and C (or greater than or equal to 0.35% for Tape B securities) will be eligible to receive 85% of attributable revenues for securities in all Tapes.

⁸ Pursuant to FINRA Rule 7610B, the FINRA/NYSE TRF presently shares with its participants, for all Tapes, 100% of attributable revenue for market shares greater than or equal to 2.0%, 95% of attributable revenue for market shares greater than or equal to 0.5% but less than 2.0%, 85% of attributable revenue for market shares greater than or equal to 0.1% but less than 0.5%, and 0% of attributable revenue for market shares of less than 0.1%.

Nasdaq, as the Business Member, estimates that 13 Participants currently qualify for the existing revenue sharing tier. Assuming that these Participants continue to qualify for this tier, Nasdaq estimates, based on current trade reporting activity, that all of these Participants will experience an increase in the amount of the credits that they receive. Based on a review of trade reporting activity for the period July 2018 to June 2019, Nasdaq estimates that these Participants could potentially receive between \$10,000 and \$190,000 more credits than they receive today. No new product or service will accompany the proposed changes to revenue sharing credits.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be January 1, 2020.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁹ 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. All similarly situated members are subject to the same fee structure and access to the FINRA/Nasdaq TRFs is offered on fair and nondiscriminatory terms.

The Proposal is Reasonable

The proposed change to modify the revenue sharing credits for the FINRA/Nasdaq TRFs is reasonable in several respects. As a threshold matter, the FINRA/Nasdaq TRFs are subject to significant competitive forces in the market for trade reporting services for OTC trades in NMS stocks that constrain its pricing determinations

⁹ 15 U.S.C. 78o-3(b)(5).

in that market. The competing FINRA TRF presently offers a similar tiered pricing structure to that of the FINRA/Nasdaq TRFs, including a schedule of revenue sharing credits that apply based upon its participants achieving certain levels of market share.¹⁰ Participants can freely and do shift their trade reporting activity between the various FINRA TRFs in response to pricing, product or service changes. The proposed rule change renders more generous the FINRA/Nasdaq TRFs' revenue sharing credits to maintain and increase activity and market share.

The Proposal is an Equitable Allocation of Credits and Charges

The proposed rule change will allocate revenue sharing credits fairly among FINRA/Nasdaq TRF Participants. Nasdaq, as the Business Member, has determined to increase the revenue sharing credits that the FINRA/Nasdaq TRFs offer to their Participants as a means of rewarding those Participants that engage in substantial amounts of trade reporting activity on the FINRA/Nasdaq TRFs, reducing the costs to such Participants of reporting trades to the FINRA/Nasdaq TRFs, and improving the competitive standing of the FINRA/Nasdaq TRFs relative to their competitor, which offers similar credits to its participants. Nasdaq believes it is equitable to target such increases only to Participants with market shares of less than 1.0% but greater than or equal to 0.50% (for securities in Tapes A and C) and 0.35% (for securities in Tape B). The tier selected accounts for 5% of the Transaction Credit eligible Participant base and 17% of trade reporting volume of the FINRA/Nasdaq TRFs and it is a tier that is particularly vulnerable to competition from the other FINRA TRF, which presently offers

¹⁰ Because the FINRA/Nasdaq TRFs and the FINRA/NYSE TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

to share 95% of attributable revenues with its participants that achieve market shares of equal to or greater than 0.5% and less than 2.0%. The proposed rule change will render the FINRA/Nasdaq TRFs more competitive with its competitors in terms of revenue sharing for Participants in this market segment.

The Proposal is not Unfairly Discriminatory

The proposed rule change is not unfairly discriminatory. As an initial matter, nothing about the volume-based tiered pricing model of the FINRA/Nasdaq TRFs is inherently unfair. Instead, it is a rational pricing model that is well-established and ubiquitous in today's economy among firms in various industries – from co-branded credit cards to grocery stores to cellular telephone data plans – that use it to reward the loyalty of their best customers that provide high levels of business activity and incent other customers to increase the extent of their business activity. It is also a pricing model that FINRA TRFs have long employed under FINRA rules filed with the Commission.

Nasdaq, as the Business Member, intends for the proposal to increase incentives to FINRA/Nasdaq TRF Participants to engage in substantial trade reporting activity on the FINRA/Nasdaq TRFs. The increased incentive will be available to all Participants with market shares of less than 1.0% but greater than or equal to 0.50% (Tapes A and C securities) and 0.35% (Tape B securities).

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

FINRA does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

Nasdaq, as the Business Member, does not believe that the proposed rule change will place any category of Participant at a competitive disadvantage. As discussed above, all Participants that currently qualify for credits will continue to qualify for credits under the proposed rule change and will receive higher rates of credits than they do today. Meanwhile, Participants that do not qualify for the proposed tiers (or that do not qualify for the higher of the proposed tiers) may grow or modify their businesses so that they will do so. Participants are free to report their OTC trades in NMS stocks to the competing TRF to the extent they believe that the credits provided are not attractive. Price competition between the TRFs is substantial, with trade reporting activity and market share moving freely between them in reaction to fee and credit changes.

Intermarket Competition

Nasdaq believes that the proposed modifications to the schedule of credits applicable to the FINRA/Nasdaq TRFs will not impose a burden on competition among the FINRA trade reporting facilities because use of the FINRA/Nasdaq TRFs is completely voluntary and subject to competition.¹¹ Currently, with the exception of FINRA/Nasdaq TRF Retail Participants in the lowest tier, the competing FINRA TRF provides higher transaction credits to its participants than the FINRA/Nasdaq TRFs for engaging in similar levels of trade reporting activity. Nasdaq, as the Business Member, seeks to increase the credits that the FINRA/Nasdaq TRFs provide to market participants so that these credits are more competitive. Nasdaq believes that the proposed increase in

¹¹ Because the FINRA/Nasdaq TRFs and the FINRA/NYSE TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

credits is necessary to retain reported volume. Indeed, firms that report OTC trades in NMS stocks can readily favor competing facilities if they deem fee levels at a particular facility to be excessive, or credit opportunities available at other facilities to be more favorable.

The competition, in turn, is free to modify its own fees and credits in response to this proposed rule change to maintain or increase its attractiveness to participants. Accordingly, Nasdaq believes that the risk that this proposed rule change will impose any burden on intermarket competition is extremely limited.

If market participants determine that the changes proposed herein are inadequate or unattractive, it is likely that the FINRA/Nasdaq TRFs will lose market share as a result. Accordingly, the proposed rule change will not impair the ability of the other FINRA TRF to maintain its competitive standing.

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 Act¹² and paragraph (f)(2) of Rule 19b-4 thereunder.¹³ At any time within 60 days 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-FINRA-2019-029 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2019-029. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2019-029 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Jill M. Peterson
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

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

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7600. DATA PRODUCTS AND CHARGES FOR TRADE REPORTING FACILITY SERVICES

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

7610A. Securities Transaction Credit

FINRA members that trade securities listed on the NYSE ("Tape A"), Amex and regional exchanges ("Tape B"), or Nasdaq ("Tape C") in over-the-counter transactions reported to the FINRA/Nasdaq Trade Reporting Facility may receive from the FINRA/Nasdaq Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the FINRA/Nasdaq Trade Reporting Facility that the FINRA/Nasdaq Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. A FINRA member may earn credits from any of three pools maintained by the FINRA/Nasdaq Trade Reporting Facility, each of which represents the revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the FINRA/Nasdaq Trade Reporting Facility for each of Tape A, Tape B, and Tape C

transactions. A FINRA member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the FINRA/Nasdaq Trade Reporting Facility by the member in each of Tape A, Tape B, and Tape C for each calendar quarter. Credits will be paid on a quarterly basis.

Retail Participants, as that term is defined in Supplementary Material .01 to Rule 7620A, may also receive from the FINRA/Nasdaq Trade Reporting Facility transaction credits based on transactions attributed to them. Retail Participants shall be entitled to receive such credits on the same basis as are FINRA members, as described in the immediately preceding paragraph. If a participant is approved as or ceases to be a Retail Participant after the first day of a calendar quarter, then the approval or cessation shall be deemed to be effective as of the first day of the next calendar quarter.

The percentage of attributable revenue shared with a particular member or Retail Participant, as applicable, will be determined as follows:

Tape A

| Percentage Market Share | Percent of attributable revenue shared | Percent of attributable revenue shared (Retail Participants) |
|--|---|---|
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 95% | 95% |
| Less than 1% but greater than or equal to 0.50% | [75%] <u>85%</u> | [75%] <u>85%</u> |
| Less than 0.50% but greater than or equal to 0.10% | 20% | 75% |

| | | |
|-----------------|----|-----|
| Less than 0.10% | 0% | 75% |
|-----------------|----|-----|

Tape B

| Percentage Market Share | Percent of attributable revenue shared | Percent of attributable revenue shared (Retail Participants) |
|--|---|---|
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 90% | 90% |
| Less than 1% but greater than or equal to 0.35% | [70%] <u>85%</u> | [70%] <u>85%</u> |
| Less than 0.35% but greater than or equal to 0.10% | 10% | 70% |
| Less than 0.10% | 0% | 70% |

Tape C

| Percentage Market Share | Percent of attributable revenue shared | Percent of attributable revenue shared (Retail Participants) |
|--|---|---|
| Greater than or equal to 2% | 98% | 98% |
| Less than 2% but greater than or equal to 1% | 95% | 95% |
| Less than 1% but greater than or equal to 0.50% | [75%] <u>85%</u> | [75%] <u>85%</u> |
| Less than 0.50% but greater than or equal to 0.10% | 20% | 75% |
| Less than 0.10% | 0% | 75% |

For purposes of this Rule, "Market Share" means a percentage calculated by dividing the total number of shares represented by trades reported by a FINRA member to the FINRA/Nasdaq Trade Reporting Facility during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share is calculated separately for each tape.

For avoidance of doubt, if a FINRA member reports trades to both the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago during a given calendar quarter, "Market Share" shall be calculated by dividing the total number of shares represented by trades reported by the member to both the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago during that calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter.

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