

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="54"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="004"/> Amendment No. (req. for Amendments *) <input type="text"/>
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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"/>
Pilot <input type="checkbox"/>			Rule		
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 checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

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 * Last Name *

Title *

E-mail *

Telephone * Fax

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

By

(Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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 Rules 7610A and 7620A to eliminate transaction credits and trade reporting fees applicable to Retail Participants that use 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 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 operative date will be February 3, 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 TRF is a facility of FINRA that is operated by Nasdaq, Inc. (“Nasdaq”). 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/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,² and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRF.

² 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 FINRA Rule 7620A, FINRA/Nasdaq TRF has a special pricing program, known as the “Retail Participant Program”³ for which a FINRA/Nasdaq TRF participant may qualify as a “Retail Participant” if “substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.”⁴ Under Rule 7620A, TRF Retail Participants are assessed fees for each of their Media/Executing Party, Non-Media/Executing Party, Media/Contra Party, and Non-Media/Contra Party activities on the FINRA/Nasdaq TRF. However, they may qualify for fee discounts and fee caps (Rule 7620A), and for securities transaction credits for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). Specifically, the FINRA/Nasdaq TRF offers two Retail Fee Discount Programs – one comprises volume-based discounts for Media/Contra Party and Non-Media/Contra Party activity and the other program is a combined fee cap for Retail Participants that engage in Media/Executing Party and Contra Party activity on the FINRA/Nasdaq TRFs.

³ To qualify as a “Retail Participant” and for special pricing under the Retail Participant fee schedule, a participant must complete and submit to Nasdaq, as the Business Member, an application. The application form requires the participant to attest to its qualifications as a Retail Participant on the FINRA/Nasdaq TRF in which it is a participant and for which it seeks Retail Participant pricing. The participant must also attest to its reasonable expectation that it will maintain its qualifications for a one year period following the date of attestation. Once a participant has been designated as a Retail Participant, it must complete and submit a written attestation to Nasdaq on an annual basis to retain its status as such. A Retail Participant must inform Nasdaq promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant. See FINRA Rule 7620A.03.

⁴ Pursuant to FINRA Rule 7260A.01, a “Retail Order” means “an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

A Retail Participant qualifies for the Retail Participant Contra Party Fee Discount and Cap Program to the extent that it achieves, during a given month, a qualifying volume of average daily Contra Party activity (Media, Non-Media, or both) in a particular Tape. Within each Tape, a qualifying Retail Participant will receive a volume-based discount on its monthly uncapped Contra Party activity charges relative to the standard rate (\$0.013 per execution), which includes both Media/Contra Party and Non-Media/Contra Party activity, as follows:

Tier	Average Daily Executions Per Month Per Tier	Rate Per Execution, If Uncapped	Maximum Monthly Charge, If Capped
Tape A			
1	50,000-100,000	\$0.0120	n/a
2	100,001-200,000	\$0.0072	n/a
3	200,001-300,000	\$0.0052	n/a
4	>300,000	\$0.0050	\$32,000
Tape B			
1	15,000-30,000	\$0.0120	n/a
2	30,001-60,000	\$0.0072	n/a
3	60,001-100,000	\$0.0052	n/a
4	>100,000	\$0.0050	\$11,000
Tape C			
1	50,000-100,000	\$0.0120	n/a
2	100,001-200,000	\$0.0072	n/a

3	200,001-300,000	\$0.0052	n/a
4	>300,000	\$0.0050	\$32,000

A Retail Participant qualifies for the Retail Participant Combined Cap Program, when the Retail Participants engages in Media/Executing Party activity in addition to Contra Party activity on the FINRA/Nasdaq TRF, as follows:

Tier	Total Daily Average Number of Media/Executing Party Trades over Preceding Three Month Period)	Maximum Monthly Charge, For All Executing Party/Contra Party Activity
1	1,000-2,000	\$50,000
2	2,001- 4,000	\$25,000
3	>4,000	\$15,000

Retail Participants are assessed the lowest retail pricing program each month based on their qualifying activity.

In addition, under Rule 7620A, Retail Participants are subject to Comparison/Accept Fees (for transactions subject to the ACT Comparison process) at the rate of \$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares). They are also subject to a \$0.03/side fee for clearing reports (to transfer a transaction fee charged by one member to another member), a \$0.288/trade fee for late reports, a \$0.50/query fee for submitting queries, and a \$0.25 fee for making corrections to transactions (cancel, errors, inhibit, kill, break, and decline).

Currently, under Rule 7610A, FINRA members that report over-the-counter (“OTC”) transactions in NMS stocks to a FINRA/Nasdaq TRF for public dissemination

or “media” purposes may receive quarterly transaction credits that equal a percentage of FINRA/Nasdaq TRF revenues that are attributable to the members’ transactions.⁵ A Retail Participant qualifies for transaction credits with no market share thresholds in order to make revenue share payout more accessible and to lower the overall trade reporting cost for a Retail Participant. The FINRA/Nasdaq TRF offers Retail Participants that achieve less than 0.5 percent Media/Executing Party market share in Tape A or C symbols a 75 percent payout of attributable transaction credits, and a 70 percent payout of attributable revenue in Tape B symbols for less than 0.35 percent Media/Executing Party market share during a given quarter. For higher market shares, Retail Participants receive the same percentage shares of attributable revenue as other participants in all Tapes.

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%	85%	85%
Less than 0.50% but greater than or equal to 0.10%	20%	75%
Less than 0.10%	0%	75%

⁵ Under the Rule, a transaction is attributable to a FINRA member if a trade report submitted to the FINRA/Nasdaq TRF that the FINRA/Nasdaq TRF then submits to either of the SIPs identifies the FINRA member as the Executing Party on the transaction.

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%	85%	85%
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%	85%	85%
Less than 0.50% but greater than or equal to 0.10%	20%	75%
Less than 0.10%	0%	75%

Proposed New Pricing for Retail Participants

Nasdaq, as the Business Member, proposes to charge no fees for trade reporting to the FINRA/Nasdaq TRF for Retail Participants. Specifically, Nasdaq proposes to

eliminate the schedule of Retail Participant transaction charges in Rule 7620A, as well as the associated Retail Participant Contra Party Fee Discount and Cap and the Combined Cap Programs. Nasdaq also proposes to exempt Retail Participants from the schedule of generally applicable transaction charges, both for Non-Comparison/Accept and Comparison/Accept trade reports and for other fees relating to clearing reports to transfer transaction fees, late reports, queries, and corrective actions. Along with charging no trade reporting fees to Retail Participants, Nasdaq proposes to eliminate transaction credits for Retail Participants.

The proposed rule change is intended to improve the competitiveness of the FINRA/Nasdaq TRF for Retail Participants in light of recent initiatives by retail brokers to eliminate the fees they charge for executing retail customer transactions. As reported in the media, many large retail brokers, such as Charles Schwab, TD Ameritrade, E-Trade Securities, Interactive Brokers and Fidelity, have lowered commission trading fees to zero.⁶ Nasdaq understands that these initiatives are placing pressure on retail brokers to find ways to reduce their operational costs as a means of offsetting their loss of retail trading commission revenues. Nasdaq believes that its proposal would support these efforts and attract Retail Participants to the FINRA/Nasdaq TRF.

Currently, FINRA/Nasdaq TRF has 63 participants designated as “Retail Participants.” From January 2019 to September 2019, these Retail Participants have incurred trade reporting fees that range from nearly \$0 to \$50,000 per month per firm.

⁶ See Kate Rooney, “Battle for Zero Trading Fees Threatens Robinhood’s Business Model and Next Leg of Growth,” CNBC, Oct. 4, 2019, www.cnbc.com/2019/10/04/battle-for-zero-trading-fees-pressures-robinhoods-next-leg-of-growth.html.

Under the proposed rule change, these Retail Participants will pay no fees going forward for their trade reporting activities. Meanwhile, during the same time period, Retail Participants with Media/Executing Party activity received securities transaction credits that ranged from \$0 to \$10,000 per quarter. Under the proposed rule change, Retail Participants will no longer be eligible for transaction credits.

No new product or service will accompany the proposed fee change.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be February 3, 2020.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁷ 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 designated Retail Participants will be subject to the same fee and credit structure and access to the FINRA/Nasdaq TRF is offered on fair and nondiscriminatory terms.

The Proposal is Reasonable

Nasdaq, as the Business Member, believes the proposal to eliminate trade reporting fees under Rule 7620A and transaction credits under Rule 7610A for Retail Participants is reasonable in several respects. As a threshold matter, the FINRA/Nasdaq TRF is 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.

⁷ 15 U.S.C. 78q-3(b)(5).

Participants can freely and do shift their trade reporting activity between the various FINRA TRFs in response to pricing, product or service changes. Within this context, as well as the context discussed earlier in which several large Retail Participants have eliminated the fees that they previously charged to their retail customers to execute trades, the proposed rule change demonstrates that the FINRA/Nasdaq TRF is sensitive to Retail Participants' changing business models and their need to control operational costs. Nasdaq believes that the proposal is a reasonable means of strengthening the ability of the FINRA/Nasdaq TRF to compete for the trade reporting activity of retail firms given that the proposal will improve its attractiveness relative to that of the competing FINRA TRF.

The Proposal is an Equitable Allocation of Credits and Charges

The proposed rule change will allocate fees and credits fairly among FINRA/Nasdaq TRF Participants. The proposal to offer free trade reporting for Retail Participants is an extension of the existing Retail Participant pricing program, through which the FINRA/Nasdaq TRF charges Retail Participants lower fees than Non-Retail Participants.⁸ As discussed in FINRA's filing in 2018, it is equitable to charge Retail Participants lower fees because customers of Retail Participants generally include individuals who trade less frequently and report fewer trades to the FINRA/Nasdaq TRF than do other categories of customers. The Retail Pricing program was designed to ensure that such customers, and the participants that serve them, do not bear primary financial responsibility for helping the FINRA/Nasdaq TRF to recover rising costs,

⁸ See Securities Exchange Act Release No. 83866 (August 16, 2018), 83 FR 42545 (August 22, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-029).

particularly increased operational and maintenance costs flowing from rising levels of trade reporting activity.⁹ The current proposal is equitable because it will help Retail Participants to further reduce their operating costs, which they are under pressure to do as they eliminate their own retail customer trade commissions. Nasdaq notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity will continue to contribute to operating the FINRA/Nasdaq TRF insofar as the FINRA/Nasdaq TRF will continue to receive a share of the SIP transaction credits generated through retail trade reporting activity that occurs on the FINRA/Nasdaq TRF.¹⁰

In addition to eliminating trade reporting fees for Retail Participants, Nasdaq also believes that it is equitable to eliminate the corresponding transaction credits for Retail Participants. The FINRA/Nasdaq TRF offers transaction credits to reward significant activity on the FINRA/Nasdaq TRF and offset trade reporting fees. To the extent that Retail Participants would no longer pay fees for reporting trades to the FINRA/Nasdaq TRF, the continuing payment of such credits would serve no purpose as there would be no fees to offset.

The Proposal is Not Unfairly Discriminatory

Although Nasdaq intends for this proposal to benefit Retail Participants specifically, Nasdaq does not believe that it is unfair to do so. The Commission already

⁹ See supra note 8, at 42449-50.

¹⁰ Nasdaq has separately provided data to the Commission in support of this assertion, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

permits the FINRA/Nasdaq TRF to apply lower pricing to Retail Participants.¹¹ The proposed rule change is merely an extension of this existing pricing program.

Moreover, any financial benefit that the proposal offers to Retail Participants will be limited in scope because the amount of the fees that Retail Participants pay for their reporting is already small, and the total amount of fees paid by Retail Participants is trivial relative to the total amount of fees that Non-Retail Participants pay.¹²

Additionally, Nasdaq notes that the FINRA/Nasdaq TRF does not propose to adjust any of the Non-Retail Participant trade reporting fees to offset the loss of Retail Participant trade reporting fees.

Relatedly, Nasdaq notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity will continue to contribute to operating the FINRA/Nasdaq TRF insofar as the FINRA/Nasdaq TRF will continue to receive a share of the SIP transaction credits generated through retail trade reporting activity that occurs on the FINRA/Nasdaq TRF.¹³ Accordingly, the proposal will not require Non-Retail Participants to assume a larger role in supporting the operation of the FINRA/Nasdaq TRF.

¹¹ See supra note 8.

¹² Nasdaq has separately provided data to the Commission in support of these assertions, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

¹³ Nasdaq has separately provided data to the Commission in support of this assertion, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

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 Retail Participants, whether they are large or small, and regardless of whether they report a large or small volume of trade reports to the FINRA/Nasdaq TRF, will incur no fees for their trade reporting activity on the FINRA/Nasdaq TRF. Participants are free to report their over-the-counter trades in NMS stocks to the competing FINRA TRF to the extent they believe that the fees, product or services provided by the FINRA/Nasdaq TRF are not attractive. Price competition between the FINRA TRFs is substantial, with trade reporting activity and market share moving freely between them in reaction to fee, product and service changes.

Lastly, Nasdaq notes that Retail Participants and Non-Retail Participants do not typically compete for the same business, such that Nasdaq does not expect the proposal to create a competitive advantage for Retail Participants relative to Non-Retail Participants.

Intermarket Competition

Nasdaq believes that the proposal will not impose a burden on competition among the FINRA trade reporting facilities because use of the FINRA/Nasdaq TRF is

completely voluntary and subject to competition.¹⁴ Nasdaq, as the Business Member, proposes this rule change to strengthen the competitive position of the FINRA/Nasdaq TRF with respect to retail trade reporting. Nasdaq believes its proposal will support increased competition in the market.

Nasdaq, as the Business Member, believes that the elimination of trade reporting fees for Retail Participants will be necessary for the FINRA/Nasdaq TRF to retain existing retail business and to compete for new such business, particularly in light of recent moves by large retail brokers to eliminate their own retail transaction fees and to reduce their operating costs accordingly. 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 an undue 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 TRF 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

No written comments were either solicited or received.

¹⁴ Because the FINRA/Nasdaq TRF 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.

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 Act¹⁵ and paragraph (f)(2) of Rule 19b-4 thereunder,¹⁶ 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 5. Text of the proposed rule change.

¹⁵ 15 U.S.C. 78(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2020-004)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate Transaction Credits and Trade Reporting Fees Applicable to Retail Participants that Use the FINRA/Nasdaq Trade Reporting Facility

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 Rules 7610A and 7620A to eliminate transaction credits and trade reporting fees applicable to Retail Participants that use the

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).

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 TRF”).

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 TRF is a facility of FINRA that is operated by Nasdaq, Inc. (“Nasdaq”). 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/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,⁵ and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRF.

Pursuant to FINRA Rule 7620A, FINRA/Nasdaq TRF has a special pricing program, known as the “Retail Participant Program”⁶ for which a FINRA/Nasdaq TRF participant may qualify as a “Retail Participant” if “substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.”⁷

⁵ 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.

⁶ To qualify as a “Retail Participant” and for special pricing under the Retail Participant fee schedule, a participant must complete and submit to Nasdaq, as the Business Member, an application. The application form requires the participant to attest to its qualifications as a Retail Participant on the FINRA/Nasdaq TRF in which it is a participant and for which it seeks Retail Participant pricing. The participant must also attest to its reasonable expectation that it will maintain its qualifications for a one year period following the date of attestation. Once a participant has been designated as a Retail Participant, it must complete and submit a written attestation to Nasdaq on an annual basis to retain its status as such. A Retail Participant must inform Nasdaq promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant. See FINRA Rule 7620A.03.

⁷ Pursuant to FINRA Rule 7260A.01, a “Retail Order” means “an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the

Under Rule 7620A, TRF Retail Participants are assessed fees for each of their Media/Executing Party, Non-Media/Executing Party, Media/Contra Party, and Non-Media/Contra Party activities on the FINRA/Nasdaq TRF. However, they may qualify for fee discounts and fee caps (Rule 7620A), and for securities transaction credits for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). Specifically, the FINRA/Nasdaq TRF offers two Retail Fee Discount Programs – one comprises volume-based discounts for Media/Contra Party and Non-Media/Contra Party activity and the other program is a combined fee cap for Retail Participants that engage in Media/Executing Party and Contra Party activity on the FINRA/Nasdaq TRFs.

A Retail Participant qualifies for the Retail Participant Contra Party Fee Discount and Cap Program to the extent that it achieves, during a given month, a qualifying volume of average daily Contra Party activity (Media, Non-Media, or both) in a particular Tape. Within each Tape, a qualifying Retail Participant will receive a volume-based discount on its monthly uncapped Contra Party activity charges relative to the standard rate (\$0.013 per execution), which includes both Media/Contra Party and Non-Media/Contra Party activity, as follows:

Tier	Average Daily Executions Per Month Per Tier	Rate Per Execution, If Uncapped	Maximum Monthly Charge, If Capped
Tape A			
1	50,000-100,000	\$0.0120	n/a
2	100,001-200,000	\$0.0072	n/a

order does not originate from a trading algorithm or any other computerized methodology.”

3	200,001-300,000	\$0.0052	n/a
4	>300,000	\$0.0050	\$32,000
Tape B			
1	15,000-30,000	\$0.0120	n/a
2	30,001-60,000	\$0.0072	n/a
3	60,001-100,000	\$0.0052	n/a
4	>100,000	\$0.0050	\$11,000
Tape C			
1	50,000-100,000	\$0.0120	n/a
2	100,001-200,000	\$0.0072	n/a
3	200,001-300,000	\$0.0052	n/a
4	>300,000	\$0.0050	\$32,000

A Retail Participant qualifies for the Retail Participant Combined Cap Program, when the Retail Participants engages in Media/Executing Party activity in addition to Contra Party activity on the FINRA/Nasdaq TRF, as follows:

Tier	Total Daily Average Number of Media/Executing Party Trades over Preceding Three Month Period)	Maximum Monthly Charge, For All Executing Party/Contra Party Activity
1	1,000-2,000	\$50,000
2	2,001- 4,000	\$25,000
3	>4,000	\$15,000

Retail Participants are assessed the lowest retail pricing program each month based on their qualifying activity.

In addition, under Rule 7620A, Retail Participants are subject to Comparison/Accept Fees (for transactions subject to the ACT Comparison process) at the rate of \$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares). They are also subject to a \$0.03/side fee for clearing reports (to transfer a transaction fee charged by one member to another member), a \$0.288/trade fee for late reports, a \$0.50/query fee for submitting queries, and a \$0.25 fee for making corrections to transactions (cancel, errors, inhibit, kill, break, and decline).

Currently, under Rule 7610A, FINRA members that report over-the-counter (“OTC”) transactions in NMS stocks to a FINRA/Nasdaq TRF for public dissemination or “media” purposes may receive quarterly transaction credits that equal a percentage of FINRA/Nasdaq TRF revenues that are attributable to the members’ transactions.⁸ A Retail Participant qualifies for transaction credits with no market share thresholds in order to make revenue share payout more accessible and to lower the overall trade reporting cost for a Retail Participant. The FINRA/Nasdaq TRF offers Retail Participants that achieve less than 0.5 percent Media/Executing Party market share in Tape A or C symbols a 75 percent payout of attributable transaction credits, and a 70 percent payout of attributable revenue in Tape B symbols for less than 0.35 percent Media/Executing Party market share during a given quarter. For higher market shares, Retail Participants

⁸ Under the Rule, a transaction is attributable to a FINRA member if a trade report submitted to the FINRA/Nasdaq TRF that the FINRA/Nasdaq TRF then submits to either of the SIPs identifies the FINRA member as the Executing Party on the transaction.

receive the same percentage shares of attributable revenue as other participants in all Tapes.

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%	85%	85%
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%	85%	85%
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%	85%	85%
Less than 0.50% but greater than or equal to 0.10%	20%	75%
Less than 0.10%	0%	75%

Proposed New Pricing for Retail Participants

Nasdaq, as the Business Member, proposes to charge no fees for trade reporting to the FINRA/Nasdaq TRF for Retail Participants. Specifically, Nasdaq proposes to eliminate the schedule of Retail Participant transaction charges in Rule 7620A, as well as the associated Retail Participant Contra Party Fee Discount and Cap and the Combined Cap Programs. Nasdaq also proposes to exempt Retail Participants from the schedule of generally applicable transaction charges, both for Non-Comparison/Accept and Comparison/Accept trade reports and for other fees relating to clearing reports to transfer transaction fees, late reports, queries, and corrective actions. Along with charging no trade reporting fees to Retail Participants, Nasdaq proposes to eliminate transaction credits for Retail Participants.

The proposed rule change is intended to improve the competitiveness of the FINRA/Nasdaq TRF for Retail Participants in light of recent initiatives by retail brokers to eliminate the fees they charge for executing retail customer transactions. As reported in the media, many large retail brokers, such as Charles Schwab, TD Ameritrade, E-Trade Securities, Interactive Brokers and Fidelity, have lowered commission trading fees

to zero.⁹ Nasdaq understands that these initiatives are placing pressure on retail brokers to find ways to reduce their operational costs as a means of offsetting their loss of retail trading commission revenues. Nasdaq believes that its proposal would support these efforts and attract Retail Participants to the FINRA/Nasdaq TRF.

Currently, FINRA/Nasdaq TRF has 63 participants designated as “Retail Participants.” From January 2019 to September 2019, these Retail Participants have incurred trade reporting fees that range from nearly \$0 to \$50,000 per month per firm. Under the proposed rule change, these Retail Participants will pay no fees going forward for their trade reporting activities. Meanwhile, during the same time period, Retail Participants with Media/Executing Party activity received securities transaction credits that ranged from \$0 to \$10,000 per quarter. Under the proposed rule change, Retail Participants will no longer be eligible for transaction credits.

No new product or service will accompany the proposed fee change.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be February 3, 2020.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁰ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among

⁹ See Kate Rooney, “Battle for Zero Trading Fees Threatens Robinhood’s Business Model and Next Leg of Growth,” CNBC, Oct. 4, 2019, www.cnbc.com/2019/10/04/battle-for-zero-trading-fees-pressures-robinhoods-next-leg-of-growth.html.

¹⁰ 15 U.S.C. 78q-3(b)(5).

members and issuers and other persons using any facility or system that FINRA operates or controls. All similarly situated designated Retail Participants will be subject to the same fee and credit structure and access to the FINRA/Nasdaq TRF is offered on fair and nondiscriminatory terms.

The Proposal is Reasonable

Nasdaq, as the Business Member, believes the proposal to eliminate trade reporting fees under Rule 7620A and transaction credits under Rule 7610A for Retail Participants is reasonable in several respects. As a threshold matter, the FINRA/Nasdaq TRF is 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. Participants can freely and do shift their trade reporting activity between the various FINRA TRFs in response to pricing, product or service changes. Within this context, as well as the context discussed earlier in which several large Retail Participants have eliminated the fees that they previously charged to their retail customers to execute trades, the proposed rule change demonstrates that the FINRA/Nasdaq TRF is sensitive to Retail Participants' changing business models and their need to control operational costs. Nasdaq believes that the proposal is a reasonable means of strengthening the ability of the FINRA/Nasdaq TRF to compete for the trade reporting activity of retail firms given that the proposal will improve its attractiveness relative to that of the competing FINRA TRF.

The Proposal is an Equitable Allocation of Credits and Charges

The proposed rule change will allocate fees and credits fairly among FINRA/Nasdaq TRF Participants. The proposal to offer free trade reporting for Retail Participants is an extension of the existing Retail Participant pricing program, through

which the FINRA/Nasdaq TRF charges Retail Participants lower fees than Non-Retail Participants.¹¹ As discussed in FINRA's filing in 2018, it is equitable to charge Retail Participants lower fees because customers of Retail Participants generally include individuals who trade less frequently and report fewer trades to the FINRA/Nasdaq TRF than do other categories of customers. The Retail Pricing program was designed to ensure that such customers, and the participants that serve them, do not bear primary financial responsibility for helping the FINRA/Nasdaq TRF to recover rising costs, particularly increased operational and maintenance costs flowing from rising levels of trade reporting activity.¹² The current proposal is equitable because it will help Retail Participants to further reduce their operating costs, which they are under pressure to do as they eliminate their own retail customer trade commissions. Nasdaq notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity will continue to contribute to operating the FINRA/Nasdaq TRF insofar as the FINRA/Nasdaq TRF will continue to receive a share of the SIP transaction credits generated through retail trade reporting activity that occurs on the FINRA/Nasdaq TRF.¹³

In addition to eliminating trade reporting fees for Retail Participants, Nasdaq also believes that it is equitable to eliminate the corresponding transaction credits for Retail Participants. The FINRA/Nasdaq TRF offers transaction credits to reward significant

¹¹ See Securities Exchange Act Release No. 83866 (August 16, 2018), 83 FR 42545 (August 22, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-029).

¹² See supra note 11, at 42449-50.

¹³ Nasdaq has separately provided data to the Commission in support of this assertion, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

activity on the FINRA/Nasdaq TRF and offset trade reporting fees. To the extent that Retail Participants would no longer pay fees for reporting trades to the FINRA/Nasdaq TRF, the continuing payment of such credits would serve no purpose as there would be no fees to offset.

The Proposal is Not Unfairly Discriminatory

Although Nasdaq intends for this proposal to benefit Retail Participants specifically, Nasdaq does not believe that it is unfair to do so. The Commission already permits the FINRA/Nasdaq TRF to apply lower pricing to Retail Participants.¹⁴ The proposed rule change is merely an extension of this existing pricing program.

Moreover, any financial benefit that the proposal offers to Retail Participants will be limited in scope because the amount of the fees that Retail Participants pay for their reporting is already small, and the total amount of fees paid by Retail Participants is trivial relative to the total amount of fees that Non-Retail Participants pay.¹⁵ Additionally, Nasdaq notes that the FINRA/Nasdaq TRF does not propose to adjust any of the Non-Retail Participant trade reporting fees to offset the loss of Retail Participant trade reporting fees.

Relatedly, Nasdaq notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity will continue to contribute to operating the FINRA/Nasdaq TRF insofar as the FINRA/Nasdaq TRF will continue to receive a share of the SIP transaction credits generated through retail trade reporting

¹⁴ See supra note 11.

¹⁵ Nasdaq has separately provided data to the Commission in support of these assertions, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

activity that occurs on the FINRA/Nasdaq TRF.¹⁶ Accordingly, the proposal will not require Non-Retail Participants to assume a larger role in supporting the operation of the FINRA/Nasdaq TRF.

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 Retail Participants, whether they are large or small, and regardless of whether they report a large or small volume of trade reports to the FINRA/Nasdaq TRF, will incur no fees for their trade reporting activity on the FINRA/Nasdaq TRF. Participants are free to report their over-the-counter trades in NMS stocks to the competing FINRA TRF to the extent they believe that the fees, product or services provided by the FINRA/Nasdaq TRF are not attractive. Price competition between the FINRA TRFs is substantial, with trade reporting activity and market share moving freely between them in reaction to fee, product and service changes.

Lastly, Nasdaq notes that Retail Participants and Non-Retail Participants do not typically compete for the same business, such that Nasdaq does not expect the proposal to create a competitive advantage for Retail Participants relative to Non-Retail Participants.

¹⁶ Nasdaq has separately provided data to the Commission in support of this assertion, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

Intermarket Competition

Nasdaq believes that the proposal will not impose a burden on competition among the FINRA trade reporting facilities because use of the FINRA/Nasdaq TRF is completely voluntary and subject to competition.¹⁷ Nasdaq, as the Business Member, proposes this rule change to strengthen the competitive position of the FINRA/Nasdaq TRF with respect to retail trade reporting. Nasdaq believes its proposal will support increased competition in the market.

Nasdaq, as the Business Member, believes that the elimination of trade reporting fees for Retail Participants will be necessary for the FINRA/Nasdaq TRF to retain existing retail business and to compete for new such business, particularly in light of recent moves by large retail brokers to eliminate their own retail transaction fees and to reduce their operating costs accordingly. 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 an undue 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 TRF 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.

¹⁷ Because the FINRA/Nasdaq TRF 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or 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 Act¹⁸ and paragraph (f)(2) of Rule 19b-4 thereunder.¹⁹ 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 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-2020-004 on the subject line.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

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-2020-004. 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-2020-004 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.²⁰

Jill M. Peterson
Assistant Secretary

²⁰ 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**

* * * * *

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

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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] are not entitled to 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 (excluding a[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%	85%	[85%]
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%	85%	[85%]
Less than 0.35% but greater than or equal to 0.10%	10%	[70%]

Less than 0.10%	0%	[70%]
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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%	85%	[85%]
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.

7620A. FINRA/Nasdaq Trade Reporting Facility Reporting Fees

The following charges shall be paid by participants and, in certain instances, Retail 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 Trade Report Fees as the Executing Party side only. For avoidance of doubt, if a market participant reports trades to both the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago during a given month, then the participant's aggregate reporting volume on both FINRA/Nasdaq Trade Reporting Facilities will be considered for the purpose of determining whether and to what extent the following charges or caps apply to the participant during that month.

I. Participation Fee

\$350 per month per participant*

\$0 per month for Retail Participants

* A participant will be charged only one Participation Fee regardless of whether it participates in one or both FINRA/Nasdaq Trade Reporting Facilities.

II. Non-Comparison/Accept (Non-Match/Compare) Trade Report Fees and Caps on Trade Report Fees

A participant shall pay the following fees for reporting non-comparison/accept (non-match/compare) trades to the FINRA/Nasdaq Trade Reporting Facility, on a per trade report basis, unless the participant qualifies for a cap on such fees during a given month, as set forth below, in which case the participant will pay fees for each trade it reports during the month up to the amount of the cap.

To the extent that a participant's activity on the FINRA/Nasdaq Trade Reporting Facility qualifies it for more than one special pricing program during a given month, then the participant will automatically receive the benefit of the lowest fee applicable to such activity.

1. Media/Executing Party Trade Report Fees and Cap

<p>Monthly Charge</p>	<p>Maximum Monthly Charge if Capped</p>
<p>(\$0.015) x (Number of Media/Executing Party Reports During the Month)</p>	<p>(\$0.013) x 5,000 x (Number of Trading Days During the Month)</p>
<p>Monthly Charge for Retail Participants</p>	<p>[Maximum Monthly Charge for Retail Participants if Capped]</p>
<p><u>\$0.00</u> [(\$0.018) x (Number of Retail Participant Media/Executing Party Reports During the Month)]</p>	<p>[See II.C below for applicable capped charges.]</p>
<p>2. Non-Media/Executing Party Trade Report Fees and Cap</p>	

<p>Monthly Charge</p>	<p>Maximum Monthly Charge if Capped</p>
<p>(\$0.015) x (Number of Non-Media/Executing Party Reports During the Month)</p>	<p>(\$0.013) x 5,000 for Tape A, B or C x (Number of Trading Days During the Month)</p>
<p>Monthly Charge for Retail Participants</p>	<p>[Maximum Monthly Charge for Retail Participants if Capped]</p>
<p><u>\$0.00</u> [(\$0.018) x (Number of Retail Participant Non-Media/Executing Party Reports During the Month)]</p>	<p>[See II.C below for applicable capped charges.]</p>
<p>3. Media/Contra Party Trade Report Fees and Cap</p>	

<p>Monthly Charge</p>	<p>Maximum Monthly Charge if Capped</p>
<p>(\$0.013) x (Number of Media/Contra Party Reports During the Month)</p>	<p>(\$0.013) x 5,000 for Tape A, B or C x (Number of Trading Days During the Month)</p>
<p>Monthly Charge for Retail Participants</p>	<p>[Maximum Monthly Charge for Retail Participants if Capped]</p>
<p><u>\$0.00</u>[(Either (\$0.013) or (the applicable discounted rate set forth in paragraph C below)) x (Number of Retail Participant</p>	<p>[See II.B and II.C below to determine applicable capped charges.]</p>

<p>Media/Contra Party Reports During the Month)]</p>	
<p>4. Non-Media/Contra Party Fees and Cap</p>	
<p>Monthly Charge</p>	<p>Maximum Monthly Charge if Capped</p>
<p>(\$0.013) x (Number of Non- Media/Contra Party Reports During the Month)</p>	<p>(\$0.013) x 5,000 for Tape A, B or C x (Number of Trading Days During the Month)</p>
<p>Monthly Charge for Retail Participants</p>	<p>[Maximum Monthly Charge for Retail Participants if Capped]</p>
<p><u>\$0.00</u>[(Either (\$0.013) or (the applicable</p>	<p>[See II.B and II.C below to determine applicable capped charges.]</p>

<p>discounted rate set forth in paragraph C below)) x (Number of Non- Media/Contra Party Reports During the Month)]</p>	
<p>A. Cap Qualifying Activity (Requisite Daily Average Media/Executing Party Trade Reporting Activity for a Non-Retail Participant to Qualify for Fee Caps in Paragraphs 1 — 4 Above)</p> <p>To qualify for the caps (set forth in paragraphs 1 - 4 above) on the charges that non-Retail Participants incur to report trades to the FINRA/Nasdaq Trade Reporting Facility during a month, a non-Retail Participant must achieve Cap Qualifying Activity during that month, as set forth below in this paragraph. A participant will qualify for caps on a per Tape basis.</p> <p>For example, if in a given month, a non-Retail participant averages 6,000 Media/Executing Party trade reports per day in Tape A, 5,000</p>	

average daily Media/Executing Party trade reports in Tape B, and 1,000 average daily Media/Executing Party trade reports in Tape C, then the non-Retail participant will qualify for caps on the fees it pays during that month for reporting Media/Executing Party, Media/Non-Executing Party, Media/Contra Party, and Non-Media/Contra Party trades in Tapes A and B, but the participant will not qualify for such caps with respect to trade reports in Tape C.

Tape	Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap
A	5,000
B	5,000
C	5,000

[B. Retail Participant Contra Party Activity Fee Discounts and Cap]

[A Retail Participant shall be entitled to the following special tiered pricing on its Contra Party activity to the extent that it achieves, during a given month, a qualifying volume of average daily Contra Party executions in a particular Tape (Media, Non-Media, or both). Within each Tape, qualifying Retail Participants will receive a

volume-based discount on their monthly uncapped Contra Party activity charges relative to the standard rate. Monthly fees for a Retail Participant's qualifying Contra Party activity for each Tape will be capped at a maximum monthly amount that is specific to the applicable Tier, as set forth below.]

[Example 1: If in a given month with 20 trading days, a Retail Participant achieves an average daily execution volume on the FINRA/Nasdaq Trade Reporting Facility of 150,000 Media/Contra Party trades in Tape A, 20,000 Media/Contra Party Trades in Tape B, and 400,000 Media/Contra Party Trades in Tape C, then the Retail Participant would be entitled to receive the special Media/Contra Party pricing set forth in paragraph 3 above with respect to its activity in Tape A (Tier 2), Tape B (Tier 1) and Tape C (Tier 4). As to Tape A, the Retail Participant would pay the uncapped discounted monthly charges applicable to Tier 2 ($(\$0.0072) \times (\text{the number of Media/Contra Party trades in Tape A during the month } (150,000)) \times (20 \text{ trading days}) = \$21,600$). As to Tape B, the Retail Participant would pay the uncapped discounted monthly charges applicable to Tier 1 activity, which would be $\$4,800$ ($(\$0.012) \times (\text{the number of Media/Contra Party trades in Tape B during the month } (20,000)) \times (20 \text{ trading days})$). As to Tape C, the Retail Participant would pay the lesser of the uncapped discounted monthly charges applicable to Tier 4 ($(\$0.005) \times (\text{the number of$

Media/Contra Party trades in Tape C during the month (400,000) x (20 trading days) = \$40,000) or the Tier 4 cap (\$32,000), which would be \$32,000. Assuming that these Contra media transactions comprised all of the Retail Participant's activity on the FINRA/Nasdaq Trade Reporting Facility, then the Retail Participant's total fees for such activity would be \$58,400.]

[Tier]	[Daily Average Number of Executions During the Month Needed to Qualify for Tier]	[Discounted Rate (Relative to Standard Rate) to be Used to Calculate Monthly Charge, If Uncapped]	[Maximum Monthly Charge, If Capped]
[Tape A]			
[1]	[50,000-100,000]	[\$0.0120]	[n/a]
[2]	[100,001-200,000]	[\$0.0072]	[n/a]

[3]	[200,001- 300,000]	[\$0.0052]	[n/a]
[4]	[>300,000]	[\$0.0050]	[\$32,000]
[Tape B]			
[1]	[15,000- 30,000]	[\$0.0120]	[n/a]
[2]	[30,001- 60,000]	[\$0.0072]	[n/a]
[3]	[60,001- 100,000]	[\$0.0052]	[n/a]
[4]	[>100,000]	[\$0.0050]	[\$11,000]
[Tape C]			
[1]	[50,000- 100,000]	[\$0.0120]	[n/a]
[2]	[100,001- 200,000]	[\$0.0072]	[n/a]
[3]	[200,001- 300,000]	[\$0.0052]	[n/a]
[4]	[>300,000]	[\$0.0050]	[\$32,000]

[C. Retail Participant Combined Cap]

[To qualify for the caps below on the combined charges that Retail Participants incur to report both Executing Party and Contra Party trades to the FINRA/Nasdaq Trade Reporting Facility during a month, a Retail Participant must achieve a qualifying amount of average daily Media/Executing Party trade reports during the three month period immediately prior to the assessment date, as set forth below. This cap qualifying activity will be assessed based upon the Retail Participant's aggregate average daily Media/Executing Party across Tapes A, B, and C.]

[Example 2: Assume that, in addition to the Contra Party activity described in Example 1 in paragraph B above, a Retail Participant also achieves 1,500 Media/Executing Party trade reports per day in Tape A, 500 average daily Media/Executing Party trade reports in Tape B, and 100 average daily Media/Executing Party trade reports in Tape C, during the prior three months. Under this scenario, the Retail Participant will qualify for the Tier 2 Retail Participant Combined Cap of \$25,000, as set forth below.]

[In this scenario, the Retail Participant would not pay the \$58,400 fee in Example 1 above to cover its Contra Party Activity. Instead, the Retail Participant would only pay the \$25,000 capped fee, which would cover both its Executing Party and its Contra Party activity on the FINRA/Nasdaq Trade Reporting Facility during the month.]

As stated above, where a Retail Participant's activity on the FINRA/Nasdaq Trade Reporting Facility qualifies for more than one special pricing program under this schedule, then it will receive the benefit of the lowest applicable fee.]

[Tier]	[Daily Average Number of Media/Executing Party Trades (In All Three Tapes During Immediately Preceding Three Month Period)]	[Maximum Monthly Charge, If Capped, For All Executing Party/Contra Party Activity]
[1]	[1,000-2,000]	[\$50,000]
[2]	[2,001 - 4,000]	[\$25,000]
[3]	[>4,000]	[\$15,000]

B[D]. ATS Market Maker Media/Contra Party Cap

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:

- Participant's percentage of contra media trades must represent at least 35% of their total FINRA/Nasdaq Trade Reporting Facility volume.
- Participant must be contra to a minimum number of trades during the month in a particular Tape to qualify for a cap on trades in that Tape. The minimum number of monthly trades for each Tape are as follows:
1,000,000 trades in Tape A, 500,000 trades in Tape C and 250,000 trades in Tape B.
- 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.

Maximum Monthly Charge if Capped	\$10,000 per Tape (A, B or C)
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C[E]. ATS Market Maker Combined Media Activity Cap

Participants making markets in alternative trading systems registered pursuant to Regulation ATS that are engaged in Executing Party and Contra Party activities will qualify for a fee cap

applied to all trades under Rule 7620A if they meet the following criteria on a monthly basis:

- Participant averages at least 2,500 Media/Executing Party trade reports per Tape (A, B or C) per day during a month.
- Participant must complete an attestation form and re-certify every six months 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.

A participant that qualifies for the ATS Market Maker Combined Media Activity fee cap shall pay for that month, on a per Tape basis, the lesser of \$7,500 or the sum of all the participant's combined regular monthly Executing Party and Contra Party fees for that Tape during the month.

If the participant's average daily Media/Executing Party trade reporting levels reach at least 5,000 per Tape, then the participant shall be subject during that month, on a per Tape basis, to the regular Executing Party and Contra Party fees and/or any other fee caps that may be applicable to it.

III. Comparison/Accept Fees <u>(Not Applicable to Retail Participants)</u>	
\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)	
IV. Other Fees <u>(Not Applicable to Retail Participants):</u>	
Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7230A(h)	\$0.03/side
Late Report—T+N	\$0.288/trade (charged to the Executing Party)
Query	\$0.50/query
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, or Kill paid by reporting side; \$0.25/Break, Decline transaction, paid by each party

••• **Supplementary Material:** -----

.01 through .03 No Change.

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