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

File No.* SR - 2021 - * 012
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) *
☑	☐	☐	☐	☑	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

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 7620A (FINRA/Nasdaq Trade Reporting Facility Reporting Fees)

Contact Information

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

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

Signature

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

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

Date 05/26/2021
By Alan Lawhead
(Name *)

(Title *)
Vice President and Director - Appellate Group

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.

Alan Lawhead, Alan.Lawhead@finra.org

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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 * 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, 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 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 Add Remove View 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 Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend FINRA Rule 7620A to eliminate the per-transaction fee for late reports and corrective transactions that is currently imposed on non-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") and to increase the Participation Fee to account for the overhead costs associated with processing late and corrective transaction reports.

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 June 1, 2021.

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1 15 U.S.C. 78s(b)(1).

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

(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 FINRA Rule 7620A, Participants[2] are charged fees and may qualify for fee caps for reporting to the FINRA/Nasdaq TRF. Nasdaq administers these rules on behalf of FINRA[3] in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF. In addition, pursuant to the contractual arrangements establishing the FINRA/Nasdaq TRF, Nasdaq collects and is entitled to all fees on behalf of the FINRA/Nasdaq TRF.

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2 The term "Trade Reporting Participant" or "Participant" is defined as any member of FINRA in good standing that uses the System. <u>See</u> FINRA Rule 7210A(k).

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.

Currently, non-Retail Participants are charged a per-transaction fee for late and corrective transaction reports. Specifically, the FINRA/Nasdaq TRF imposes a "Late Report — T+N" fee of $0.288 per trade on the Executing Party[4] for trade reports submitted one or more days after the date of the trade (T+N). In addition, Participants are charged $0.25 per trade to correct previously submitted trade reports. The reporting party is charged the fee when the correction is due to cancellation of a trade execution, a reporting error, or an "inhibit" or a "kill" transaction. Both parties to the trade are charged the fee when the correction is due to "break" or "decline" transactions. The FINRA/Nasdaq TRF assesses these fees primarily to address its administrative burden of processing error corrections and late submissions.

Historically, particularly when trade reporting was more manual in nature and trade volume was lower, a per-transaction fee was appropriate because the FINRA/Nasdaq TRF's efforts to address late and erroneous reports were discrete and the costs of those efforts could be more readily allocated to individual Participants. Today, the costs to the FINRA/Nasdaq TRF of processing errors and late trade reports no longer correlate directly to the number or size of late trade reports or corrective transactions. In recent years, trade reporting activity on the FINRA/Nasdaq TRF has grown substantially, and often if trade reporting errors occur, they will be large in number (e.g., where such errors are due to a systems coding error). However, late reports and corrective

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4 Supplementary Material .01 of FINRA Rule 7620A defines "Executing Party (EP)" as the member with the trade reporting obligation under FINRA rules. Under FINRA Rule 6380A(b), in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade.

transactions that Participants submit to the FINRA/Nasdaq TRF electronically through FIX may not necessarily require substantial time or effort for the FINRA/Nasdaq TRF operations team to address, even if they involve a large number of trades, because the process for addressing reports submitted in this manner is now largely automated. By contrast, even a small number of late or corrective transaction reports may require significant operational support to address if they involve batch uploads or manual submissions, or if the errors are complex to fix. In sum, the costs to the FINRA/Nasdaq TRF of addressing late or erroneous trade reports no longer correlate directly on a per trade basis. For example, a Participant with upload capabilities may spend hours working with Nasdaq Operations to properly format an upload file, whereas a Participant that tests a large standardized FIX submission for late or corrective activity in the Nasdaq Test Facility may replicate the entry in production in seconds or minutes with no Nasdaq Operations support.

Rather than continue to assess a fee that does not correlate to the actual costs of processing a Participant's late reports or error corrections, or attempt the complex and burdensome task of allocating those actual costs to a Participant based upon its specific late report or correction scenario, Nasdaq, as the Business Member, proposes instead to treat these costs as general overhead that all non-Retail Participants will bear as part of the monthly Participation Fee.

Currently, the FINRA/Nasdaq TRF charges its Participants (other than Retail Participants) a $350 per month Participation Fee, which exists to "defray certain shared and common costs associated with the operation of the FINRA/Nasdaq TRF, including overhead costs and the costs of developing, maintaining, and upgrading shared technology."[5] The Participation Fee ensures that all non-Retail Participants in the FINRA/Nasdaq TRF – both large and small – bear at least some baseline responsibility for the upkeep and administration of the facilities.[6]

Nasdaq, as the Business Member, believes that treating the costs of processing Participants' late or corrective transaction reports as overhead and incorporating them in the Participation Fee is appropriate because such costs are necessary for the proper administration of the FINRA/Nasdaq TRF. The FINRA/Nasdaq TRF must devote staff and other resources to processing late and corrective transaction reports regardless of the total number or frequency of such reports. Nasdaq estimates that in 2020, the FINRA/Nasdaq TRF incurred approximately $740,000 to provide operational, business, and development support for late and corrective activity. This support comprised the equivalent of three full-time employees, customer technical guidance, FIX testing support, upload testing and processing support, system and trade processing review, and trade review. In addition, a majority of FINRA/Nasdaq TRF Participants submitted late or corrective transaction reports last year. Nasdaq notes that more than 60 percent of Participants incurred fees for late or corrective transaction reports at least once in 2020. Specifically, in 2020, 371 firms submitted a total of 1,248,568 cancellations and 298 firms submitted a total of 976,228 late reports to the FINRA/Nasdaq TRF.[7] As such,

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5 See Securities Exchange Act Release No. 83866 (August 16, 2018), 83 FR 42545, 42548 (August 22, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-029).

6 See supra note 5.

7 Late and corrective transaction reports nonetheless make up a very small percentage of overall trade reporting activity on the FINRA/Nasdaq TRF. For example, in 2020, 2.2 million late or corrective transactions were processed

Nasdaq believes it would be equitable for the FINRA/Nasdaq TRF to allocate these costs among all non-Retail Participants going forward.

To account for the costs of addressing late and erroneous trade reports, Nasdaq, as the Business Member, proposes to increase the Participation Fee for all Participants (other than Retail Participants, which are not subject to the fee under current rules) from $350 to $450 per month. The proposed $100 increase is based on $740,000 operating costs for three full-time equivalent staff and other resources divided across the 620 non-Retail Participants on the FINRA/Nasdaq TRF.

FINRA and Nasdaq, as the Business Member, do not believe that the proposed rule change will diminish incentives for Participants to report their trades correctly and in a timely manner, as required by FINRA rules. The FINRA/Nasdaq TRF late and corrective transaction report fees are primarily intended to address the administrative burden of processing corrections and late trade reports. While these fees may generally encourage the correct reporting of transaction data, they are not intended to serve a disciplinary function, even for Participants that report trades erroneously or late in large numbers. Separate and apart from the FINRA/Nasdaq TRF late and corrective transaction report fees, FINRA rules require Participants to report their trades in a timely manner, and firms have an ongoing obligation to report trade information accurately and

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compared to over three billion trade executions reported to the FINRA/Nasdaq TRF. In addition, in 2020, 99.94% of trades reported to the FINRA/Nasdaq TRF were reported within 10 seconds, in compliance with FINRA rules. By way of comparison, in 2020, 99.82% of trades reported to the FINRA/NYSE TRF were reported within 10 seconds.

completely.[8] To the extent that a Participant fails to comply with those rules, the Participant may be subject to a FINRA enforcement action or sanctions. The specter of such enforcement actions and sanctions – rather than the FINRA/Nasdaq TRF per-transaction correction and late fees – will continue to provide an adequate incentive for Participants to endeavor to avoid large-scale trade reporting errors and late reports.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2021.

(b) 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. As an initial matter, all non-Retail Participants are subject to the same fees 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 proposals are reasonable to: (i) eliminate the per-transaction fee for late reports and corrective transactions; and (ii)

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8 See, e.g., FINRA Rules 6380A(a)(1) and 7260A. FINRA notes that firms that report to the FINRA/NYSE TRF have the same obligations under FINRA rules (see FINRA Rules 6380B(a)(1) and 7260B); however, the FINRA/NYSE TRF does not charge a separate fee for late or corrective transaction reports. As noted above, the rates of timely reporting to the FINRA/Nasdaq TRF and FINRA/NYSE TRF in 2020 were 99.94% and 99.82%, respectively.

9 15 U.S.C. 78o-3(b)(5).

instead allocate the costs of late and corrective activity as overhead to all non-Retail Participants by increasing the monthly Participation Fee.

As discussed above, the costs that the FINRA/Nasdaq TRF incurs to process corrective and late reports no longer correlate directly to the number or size of such reports that a Participant submits. Similarly, these costs have become difficult to correlate to a particular Participant given the idiosyncratic nature of many late reports and corrective transactions and the varying levels of operational support that are required to address them. Finally, as noted above, a majority of non-Retail Participants submitted late or corrective transaction reports at least once in 2020. Accordingly, Nasdaq believes that it would be reasonable and equitable to require all non-Retail Participants to bear these costs as part of the overhead costs of operating the FINRA/Nasdaq TRF.

The Proposal is an Equitable Allocation of Fees and is Not Unfairly Discriminatory

Nasdaq, as the Business Member, believes that the proposed rule change will allocate fees fairly among FINRA/Nasdaq TRF Participants.

As a threshold matter, Nasdaq believes that the existing formula is no longer appropriate because it may result in a Participant paying a fee that does not correlate to the actual costs of processing the Participant's late or corrective transaction reports. Currently, a Participant may incur a large fee to correct a coding or other system error that impacts a large number of trades, even though the FINRA/Nasdaq TRF is able to facilitate correction of the error on an automated basis with minimal operational support. Meanwhile, another Participant may incur a small fee to correct an error in a single trade even though the error may be complex and require significant time and support to fix.

Nasdaq intends for the proposal to allocate the costs of processing late and corrective reports in a manner that is more equitable to Participants than the existing formula. As discussed above, Nasdaq believes that these costs are appropriately classified as overhead in that: (i) they involve staff and other resources that the FINRA/Nasdaq TRF dedicates for use in processing late and corrective reports regardless of the frequency or size of such reports; (2) these resources and costs are necessary for the proper operation of the FINRA/Nasdaq TRF; and (3) the majority of Participants make use of such resources. Additionally, these costs are difficult to correlate accurately to particular Participants due to the idiosyncratic nature of many late or corrective transaction reports and the varying levels of operational support that they require. The proposed rule change would avoid this difficulty by requiring all non-Retail Participants to bear these costs equally.

Going forward, non-Retail Participants with large numbers of late or corrective transaction reports will benefit from the proposed rule change because the additional amount that they pay in the Participation Fee will be less than the per-transaction late or corrective fee they would pay under the current formula. By contrast, non-Retail Participants with no or a small number of late or corrective transaction reports might incur a larger fee than they do now, through the increase in the Participation Fee. Nasdaq, as the Business Member, believes that these potentially disparate effects are not unfairly discriminatory because any Participant has the potential to submit late or corrective transaction reports in the future, even if they have not done so in the past, and thus all have the potential to benefit from the proposed rule change. For example, 13% of firms with late or corrective activity in 2020 did not have any late or corrective activity in

2019. Conversely, 15% of firms with late or corrective activity in 2019 did not have any late or corrective activity in 2020.

Moreover, the proposed $100 monthly increase in the Participation Fee is small in an absolute sense, as well as small relative to the overall fees that Participants typically incur on the FINRA/Nasdaq TRF. As such, any adverse impact of the proposed rule change on Participants that currently pay little or no fees for late or corrective activity is likely to be nominal. Nasdaq notes that the FINRA/Nasdaq TRF has not raised the Participation Fee since the fee was first established in 2018, despite the fact that the costs of operating the FINRA/Nasdaq TRF generally grow one to two percent per year (in keeping with cost of living adjustments), and the FINRA/Nasdaq TRF continues to invest in developing, maintaining, and upgrading its technology.

Nasdaq does not believe that it is inequitable or unfairly discriminatory to charge the same fee to each non-Retail Participant to cover the costs of addressing late or corrective activity, even though some Participants may need to address such activity more frequently or at higher volumes than others. The existing Participation Fee already allocates other overhead costs of operating the FINRA/Nasdaq TRF in the same manner, even though some Participants may be more heavy users of the TRF, and thus may account for more electric power, computer equipment, and other overhead costs than other Participants.

Finally, Nasdaq believes that it is not inequitable or unfairly discriminatory to exempt Retail Participants from the increased Participation Fee. Under current rules, Retail Participants are exempt from paying the Participation Fee as well as the per-transaction fee for late and corrective transaction reports.[10]

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 Participants at a competitive disadvantage. The proposed increase in the Participation Fee will apply equally to all Participants (other than to Retail Participants, which as noted above, are exempt from paying the Participation Fee under current rules). The proposed rule change will ensure non-Retail Participants share responsibility for the costs of correcting trade reports or reporting late trades as they already do for other types of overhead costs. Additionally, Participants are free to report their trades to another FINRA trade reporting facility ("TRF") to the extent they believe that the assessed fees are not attractive. Price competition between the TRFs is substantial, with trade reporting activity and market share moving between them in reaction to fee changes.

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[10] See FINRA Rule 7620A. See also 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) and Securities Exchange Act Release No. 88135 (February 6, 2020), 85 FR 8079 (February 12, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-004).

<u>Intermarket Competition</u>

Nasdaq believes that the proposed rule change will not impose a burden on competition among the TRFs because use of the FINRA/Nasdaq TRF is completely voluntary and subject to competition.[11] Nasdaq, as the Business Member, believes that the proposed rule change will strengthen the competitive position of the FINRA/Nasdaq TRF with respect to competing TRFs and will support increased competition in the market.

Moreover, Nasdaq, as the Business Member, believes that the proposed rule change is necessary for the FINRA/Nasdaq TRF to retain trade reporting business and to compete for new business since customers evaluate product and pricing when they evaluate where to submit their trade reports. Nasdaq notes that the competing TRF does not charge a separate fee to report late trades or to correct previously submitted trade reports, and Nasdaq believes that the proposed rule change will reduce any price differential between the competing TRFs in this regard. 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, Nasdaq believes that the proposed rule change will not impair the ability of the other TRF to maintain its competitive standing.

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11 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.

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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f)(2) of Rule 19b-4 thereunder,[13] 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.

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[12] 15 U.S.C. 78(b)(3)(A).

[13] 17 CFR 240.19b-4(f)(2).

11. <u>Exhibits</u>

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-2021-012)

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

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 , the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act[3] 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 7620A to eliminate the per-transaction fee for late reports and corrective transactions that is currently imposed on

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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).

non-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") and to increase the Participation Fee to account for the overhead costs associated with processing late and corrective transaction reports.

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 FINRA Rule 7620A, Participants[5] are charged fees and may qualify for fee caps for reporting to the FINRA/Nasdaq TRF. Nasdaq administers these rules on behalf of FINRA[6] in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF. In addition, pursuant to the contractual arrangements establishing the FINRA/Nasdaq TRF, Nasdaq collects and is entitled to all fees on behalf of the FINRA/Nasdaq TRF.

Currently, non-Retail Participants are charged a per-transaction fee for late and corrective transaction reports. Specifically, the FINRA/Nasdaq TRF imposes a "Late Report — T+N" fee of $0.288 per trade on the Executing Party[7] for trade reports submitted one or more days after the date of the trade (T+N). In addition, Participants are charged $0.25 per trade to correct previously submitted trade reports. The reporting party is charged the fee when the correction is due to cancellation of a trade execution, a

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5 The term "Trade Reporting Participant" or "Participant" is defined as any member of FINRA in good standing that uses the System. See FINRA Rule 7210A(k).

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 of FINRA Rule 7620A defines "Executing Party (EP)" as the member with the trade reporting obligation under FINRA rules. Under FINRA Rule 6380A(b), in a trade between a member and non-member or customer, the member has the obligation to report the trade, and in a trade between two members, the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction, has the obligation to report the trade.

reporting error, or an "inhibit" or a "kill" transaction. Both parties to the trade are charged the fee when the correction is due to "break" or "decline" transactions. The FINRA/Nasdaq TRF assesses these fees primarily to address its administrative burden of processing error corrections and late submissions.

Historically, particularly when trade reporting was more manual in nature and trade volume was lower, a per-transaction fee was appropriate because the FINRA/Nasdaq TRF's efforts to address late and erroneous reports were discrete and the costs of those efforts could be more readily allocated to individual Participants. Today, the costs to the FINRA/Nasdaq TRF of processing errors and late trade reports no longer correlate directly to the number or size of late trade reports or corrective transactions. In recent years, trade reporting activity on the FINRA/Nasdaq TRF has grown substantially, and often if trade reporting errors occur, they will be large in number (e.g., where such errors are due to a systems coding error). However, late reports and corrective transactions that Participants submit to the FINRA/Nasdaq TRF electronically through FIX may not necessarily require substantial time or effort for the FINRA/Nasdaq TRF operations team to address, even if they involve a large number of trades, because the process for addressing reports submitted in this manner is now largely automated. By contrast, even a small number of late or corrective transaction reports may require significant operational support to address if they involve batch uploads or manual submissions, or if the errors are complex to fix. In sum, the costs to the FINRA/Nasdaq TRF of addressing late or erroneous trade reports no longer correlate directly on a per trade basis. For example, a Participant with upload capabilities may spend hours working with Nasdaq Operations to properly format an upload file, whereas a Participant that tests a large standardized FIX submission for late or corrective activity in the Nasdaq Test Facility may replicate the entry in production in seconds or minutes with no Nasdaq Operations support.

Rather than continue to assess a fee that does not correlate to the actual costs of processing a Participant's late reports or error corrections, or attempt the complex and burdensome task of allocating those actual costs to a Participant based upon its specific late report or correction scenario, Nasdaq, as the Business Member, proposes instead to treat these costs as general overhead that all non-Retail Participants will bear as part of the monthly Participation Fee.

Currently, the FINRA/Nasdaq TRF charges its Participants (other than Retail Participants) a $350 per month Participation Fee, which exists to "defray certain shared and common costs associated with the operation of the FINRA/Nasdaq TRF, including overhead costs and the costs of developing, maintaining, and upgrading shared technology."[8] The Participation Fee ensures that all non-Retail Participants in the FINRA/Nasdaq TRF – both large and small – bear at least some baseline responsibility for the upkeep and administration of the facilities.[9]

Nasdaq, as the Business Member, believes that treating the costs of processing Participants' late or corrective transaction reports as overhead and incorporating them in the Participation Fee is appropriate because such costs are necessary for the proper administration of the FINRA/Nasdaq TRF. The FINRA/Nasdaq TRF must devote staff

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8 See Securities Exchange Act Release No. 83866 (August 16, 2018), 83 FR 42545, 42548 (August 22, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-029).

9 See supra note 8.

and other resources to processing late and corrective transaction reports regardless of the total number or frequency of such reports. Nasdaq estimates that in 2020, the FINRA/Nasdaq TRF incurred approximately $740,000 to provide operational, business, and development support for late and corrective activity. This support comprised the equivalent of three full-time employees, customer technical guidance, FIX testing support, upload testing and processing support, system and trade processing review, and trade review. In addition, a majority of FINRA/Nasdaq TRF Participants submitted late or corrective transaction reports last year. Nasdaq notes that more than 60 percent of Participants incurred fees for late or corrective transaction reports at least once in 2020. Specifically, in 2020, 371 firms submitted a total of 1,248,568 cancellations and 298 firms submitted a total of 976,228 late reports to the FINRA/Nasdaq TRF.[10] As such, Nasdaq believes it would be equitable for the FINRA/Nasdaq TRF to allocate these costs among all non-Retail Participants going forward.

To account for the costs of addressing late and erroneous trade reports, Nasdaq, as the Business Member, proposes to increase the Participation Fee for all Participants (other than Retail Participants, which are not subject to the fee under current rules) from $350 to $450 per month. The proposed $100 increase is based on $740,000 operating

10 Late and corrective transaction reports nonetheless make up a very small percentage of overall trade reporting activity on the FINRA/Nasdaq TRF. For example, in 2020, 2.2 million late or corrective transactions were processed compared to over three billion trade executions reported to the FINRA/Nasdaq TRF. In addition, in 2020, 99.94% of trades reported to the FINRA/Nasdaq TRF were reported within 10 seconds, in compliance with FINRA rules. By way of comparison, in 2020, 99.82% of trades reported to the FINRA/NYSE TRF were reported within 10 seconds.

costs for three full-time equivalent staff and other resources divided across the 620 non-Retail Participants on the FINRA/Nasdaq TRF.

FINRA and Nasdaq, as the Business Member, do not believe that the proposed rule change will diminish incentives for Participants to report their trades correctly and in a timely manner, as required by FINRA rules. The FINRA/Nasdaq TRF late and corrective transaction report fees are primarily intended to address the administrative burden of processing corrections and late trade reports. While these fees may generally encourage the correct reporting of transaction data, they are not intended to serve a disciplinary function, even for Participants that report trades erroneously or late in large numbers. Separate and apart from the FINRA/Nasdaq TRF late and corrective transaction report fees, FINRA rules require Participants to report their trades in a timely manner, and firms have an ongoing obligation to report trade information accurately and completely.[11] To the extent that a Participant fails to comply with those rules, the Participant may be subject to a FINRA enforcement action or sanctions. The specter of such enforcement actions and sanctions – rather than the FINRA/Nasdaq TRF per-transaction correction and late fees – will continue to provide an adequate incentive for Participants to endeavor to avoid large-scale trade reporting errors and late reports.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2021.

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11 See, e.g., FINRA Rules 6380A(a)(1) and 7260A. FINRA notes that firms that report to the FINRA/NYSE TRF have the same obligations under FINRA rules (see FINRA Rules 6380B(a)(1) and 7260B); however, the FINRA/NYSE TRF does not charge a separate fee for late or corrective transaction reports. As noted above, the rates of timely reporting to the FINRA/Nasdaq TRF and FINRA/NYSE TRF in 2020 were 99.94% and 99.82%, respectively.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[12] 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. As an initial matter, all non-Retail Participants are subject to the same fees and access to the FINRA/Nasdaq TRF is offered on fair and nondiscriminatory terms.

<u>The Proposal is Reasonable</u>

Nasdaq, as the Business Member, believes the proposals are reasonable to: (i) eliminate the per-transaction fee for late reports and corrective transactions; and (ii) instead allocate the costs of late and corrective activity as overhead to all non-Retail Participants by increasing the monthly Participation Fee.

As discussed above, the costs that the FINRA/Nasdaq TRF incurs to process corrective and late reports no longer correlate directly to the number or size of such reports that a Participant submits. Similarly, these costs have become difficult to correlate to a particular Participant given the idiosyncratic nature of many late reports and corrective transactions and the varying levels of operational support that are required to address them. Finally, as noted above, a majority of non-Retail Participants submitted late or corrective transaction reports at least once in 2020. Accordingly, Nasdaq believes that it would be reasonable and equitable to require all non-Retail Participants to bear these costs as part of the overhead costs of operating the FINRA/Nasdaq TRF.

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12 15 U.S.C. 78<u>o</u>-3(b)(5).

The Proposal is an Equitable Allocation of Fees and is Not Unfairly Discriminatory

Nasdaq, as the Business Member, believes that the proposed rule change will allocate fees fairly among FINRA/Nasdaq TRF Participants.

As a threshold matter, Nasdaq believes that the existing formula is no longer appropriate because it may result in a Participant paying a fee that does not correlate to the actual costs of processing the Participant's late or corrective transaction reports. Currently, a Participant may incur a large fee to correct a coding or other system error that impacts a large number of trades, even though the FINRA/Nasdaq TRF is able to facilitate correction of the error on an automated basis with minimal operational support. Meanwhile, another Participant may incur a small fee to correct an error in a single trade even though the error may be complex and require significant time and support to fix.

Nasdaq intends for the proposal to allocate the costs of processing late and corrective reports in a manner that is more equitable to Participants than the existing formula. As discussed above, Nasdaq believes that these costs are appropriately classified as overhead in that: (i) they involve staff and other resources that the FINRA/Nasdaq TRF dedicates for use in processing late and corrective reports regardless of the frequency or size of such reports; (2) these resources and costs are necessary for the proper operation of the FINRA/Nasdaq TRF; and (3) the majority of Participants make use of such resources. Additionally, these costs are difficult to correlate accurately to particular Participants due to the idiosyncratic nature of many late or corrective transaction reports and the varying levels of operational support that they require. The proposed rule change would avoid this difficulty by requiring all non-Retail Participants to bear these costs equally.

Going forward, non-Retail Participants with large numbers of late or corrective transaction reports will benefit from the proposed rule change because the additional amount that they pay in the Participation Fee will be less than the per-transaction late or corrective fee they would pay under the current formula. By contrast, non-Retail Participants with no or a small number of late or corrective transaction reports might incur a larger fee than they do now, through the increase in the Participation Fee. Nasdaq, as the Business Member, believes that these potentially disparate effects are not unfairly discriminatory because any Participant has the potential to submit late or corrective transaction reports in the future, even if they have not done so in the past, and thus all have the potential to benefit from the proposed rule change. For example, 13% of firms with late or corrective activity in 2020 did not have any late or corrective activity in 2019. Conversely, 15% of firms with late or corrective activity in 2019 did not have any late or corrective activity in 2020.

Moreover, the proposed $100 monthly increase in the Participation Fee is small in an absolute sense, as well as small relative to the overall fees that Participants typically incur on the FINRA/Nasdaq TRF. As such, any adverse impact of the proposed rule change on Participants that currently pay little or no fees for late or corrective activity is likely to be nominal. Nasdaq notes that the FINRA/Nasdaq TRF has not raised the Participation Fee since the fee was first established in 2018, despite the fact that the costs of operating the FINRA/Nasdaq TRF generally grow one to two percent per year (in keeping with cost of living adjustments), and the FINRA/Nasdaq TRF continues to invest in developing, maintaining, and upgrading its technology.

Nasdaq does not believe that it is inequitable or unfairly discriminatory to charge the same fee to each non-Retail Participant to cover the costs of addressing late or corrective activity, even though some Participants may need to address such activity more frequently or at higher volumes than others. The existing Participation Fee already allocates other overhead costs of operating the FINRA/Nasdaq TRF in the same manner, even though some Participants may be more heavy users of the TRF, and thus may account for more electric power, computer equipment, and other overhead costs than other Participants.

Finally, Nasdaq believes that it is not inequitable or unfairly discriminatory to exempt Retail Participants from the increased Participation Fee. Under current rules, Retail Participants are exempt from paying the Participation Fee as well as the per-transaction fee for late and corrective transaction reports.[13]

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

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[13] See FINRA Rule 7620A. See also 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) and Securities Exchange Act Release No. 88135 (February 6, 2020), 85 FR 8079 (February 12, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-004).

Nasdaq, as the Business Member, does not believe that the proposed rule change will place any category of Participants at a competitive disadvantage. The proposed increase in the Participation Fee will apply equally to all Participants (other than to Retail Participants, which as noted above, are exempt from paying the Participation Fee under current rules). The proposed rule change will ensure non-Retail Participants share responsibility for the costs of correcting trade reports or reporting late trades as they already do for other types of overhead costs. Additionally, Participants are free to report their trades to another FINRA trade reporting facility ("TRF") to the extent they believe that the assessed fees are not attractive. Price competition between the TRFs is substantial, with trade reporting activity and market share moving between them in reaction to fee changes.

Intermarket Competition

Nasdaq believes that the proposed rule change will not impose a burden on competition among the TRFs because use of the FINRA/Nasdaq TRF is completely voluntary and subject to competition.[14] Nasdaq, as the Business Member, believes that the proposed rule change will strengthen the competitive position of the FINRA/Nasdaq TRF with respect to competing TRFs and will support increased competition in the market.

Moreover, Nasdaq, as the Business Member, believes that the proposed rule change is necessary for the FINRA/Nasdaq TRF to retain trade reporting business and to

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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.

compete for new business since customers evaluate product and pricing when they evaluate where to submit their trade reports. Nasdaq notes that the competing TRF does not charge a separate fee to report late trades or to correct previously submitted trade reports, and Nasdaq believes that the proposed rule change will reduce any price differential between the competing TRFs in this regard. 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, Nasdaq believes that the proposed rule change will not impair the ability of the other 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

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 Act[15] and paragraph (f)(2) of Rule 19b-4 thereunder.[16] 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

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15 15 U.S.C. 78s(b)(3)(A)(ii).

16 17 CFR 240.19b-4(f)(2).

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-2021-012 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-2021-012. 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-2021-012 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.[17]

Jill M. Peterson
Assistant Secretary

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[17] 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

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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.

<table>
<tr><td colspan="2">I. Participation Fee</td></tr>
<tr><td colspan="2">$[3]450 per month per participant*</td></tr>
<tr><td colspan="2">$0 per month for Retail Participants</td></tr>
<tr><td colspan="2">* A participant will be charged only one Participation Fee regardless of whether it participates in one or both FINRA/Nasdaq Trade Reporting Facilities.</td></tr>
<tr><td colspan="2">II. – III. No Change.</td></tr>
<tr><td colspan="2">IV. Other Fees (Not Applicable to Retail Participants):</td></tr>
<tr><td>Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7230A(h)</td><td>$0.03/side</td></tr>
<tr><td>[Late Report—T+N]</td><td>[$0.288/trade (charged to the Executing Party)]</td></tr>
<tr><td>Query</td><td>$0.50/query</td></tr>
<tr><td>[Corrective Transaction Charge]</td><td>[$0.25/Cancel, Error, Inhibit, or Kill paid by reporting side; $0.25/Break, Decline transaction, paid by each party]</td></tr>
</table>

• • • Supplementary Material: ------------------

.01 through .03 No Change.

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