

OMB APPROVAL

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

File No. SR - 2007 - 041

Amendment No.

Proposed Rule Change 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) ☐

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)

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Amend NASD Rule 7001B to Adjust Percentage of Market Data Revenue Shared with
FINRA/Nasdaq TRF Participants

Contact Information

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

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 officer.

Date

By
(Name)

(Title)

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

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

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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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 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”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 7001B (Securities Transaction Credit) to modify the percentage of New York Stock Exchange (“Tape A”), American Stock Exchange and regional exchange (“Tape B”), and Nasdaq Exchange (“Tape C”) market data revenue shared with FINRA members reporting trades to the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”).²

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

* * * * *

7000B. CHARGES FOR NASD/NASDAQ TRADE REPORTING FACILITY SERVICES

7001B. Securities Transaction Credit

NASD 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 NASD/Nasdaq Trade Reporting Facility may receive from the

¹ 15 U.S.C. 78s(b)(1).

² Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/Nasdaq TRF is now doing business as the FINRA/Nasdaq TRF. The formal name change of each Trade Reporting Facility (“TRF”) is pending and once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

NASD/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 NASD/Nasdaq Trade Reporting Facility that the NASD/Nasdaq Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. An NASD member may earn credits from any of three pools maintained by the NASD/Nasdaq Trade Reporting Facility, each of which [The Tape A, Tape B, and Tape C pools] represents [50% of] the revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the NASD/Nasdaq Trade Reporting Facility for each of Tape A, Tape B, and Tape C transactions [after deducting the amount, if any, that the NASD/Nasdaq Trade Reporting Facility pays to the Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage]. An NASD member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the NASD/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. The percentage of attributable revenue shared with a particular member will be determined as follows:

Tape A

<u>Percentage Market Share</u>	<u>Percent of attributable revenue shared</u>
<u>Greater than or equal to 0.25%</u>	<u>100%</u>
<u>Less than 0.25% but greater than or equal to 0.15%</u>	<u>80%</u>
<u>Less than 0.15% but greater than or equal</u>	<u>50%</u>

<u>to 0.10%</u>	
<u>Less than 0.10%</u>	<u>0%</u>

Tape B

<u>Percentage Market Share</u>	<u>Percent of attributable revenue shared</u>
<u>Greater than or equal to 0.50%</u>	<u>100%</u>
<u>Less than 0.50% but greater than or equal to 0.25%</u>	<u>80%</u>
<u>Less than 0.25% but greater than or equal to 0.10%</u>	<u>50%</u>
<u>Less than 0.10%</u>	<u>0%</u>

Tape C

<u>Percentage Market Share</u>	<u>Percent of attributable revenue shared</u>
<u>Greater than or equal to 0.75%</u>	<u>100%</u>
<u>Less than 0.75% but greater than or equal to 0.25%</u>	<u>80%</u>
<u>Less than 0.25% but greater than or equal to 0.10%</u>	<u>50%</u>
<u>Less than 0.10%</u>	<u>0%</u>

For purposes of this Rule, “Market Share” means a percentage calculated by dividing the total number of shares represented by trades reported by an NASD member to the NASD/Nasdaq TRF 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.

* * * * *

(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 is proposing that the effective date of the proposed rule change shall be January 1, 2008.

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

(a) Purpose

Background

The NASD/Nasdaq TRF provides FINRA members a mechanism for reporting locked-in transactions in exchange-listed securities effected otherwise than on an exchange. In connection with the establishment of the NASD/Nasdaq TRF, FINRA and The Nasdaq Stock Market, Inc. ("Nasdaq") entered into the Limited Liability Company Agreement of the Trade Reporting Facility LLC ("the NASD/Nasdaq TRF LLC Agreement"), a copy of which appears in the NASD Manual. Under the NASD/Nasdaq TRF LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the NASD/Nasdaq TRF. Nasdaq, the "Business Member," is primarily responsible for the management of the NASD/Nasdaq TRF's business affairs to the extent those

activities 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 NASD/Nasdaq TRF.

On July 21, 2006, FINRA filed a proposed rule change for immediate effectiveness to adopt a new NASD Rule 7000B Series relating to fees and credits applicable to the NASD/Nasdaq TRF.³ Pursuant to NASD Rule 7001B, FINRA members reporting trades in Tape A, Tape B⁴ and Tape C securities to the NASD/Nasdaq TRF currently receive a 50% *pro rata* credit on market data revenue earned by the NASD/Nasdaq TRF. At present, the revenue eligible for sharing is the revenue received by the NASD/Nasdaq TRF from the three tape associations after deducting the amount, if any, that the NASD/Nasdaq TRF pays to the Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage.⁵

³ See Securities Exchange Act Release No. 54353 (August 23, 2006), 71 FR 51255 (August 29, 2006) (Notice of Filing and Immediate Effectiveness of SR-NASD-2006-090).

⁴ The proposed rule change would clarify an ambiguity in the current rule. Both Rule 7001B and the predecessor rule in effect prior to Nasdaq's separation from FINRA referred to "Amex" and "Tape B" as synonymous, but in fact the Tape B revenue sharing program has always been interpreted to include stocks listed on regional exchanges, such as NYSE Arca, because transactions in such stocks are reported to Tape B.

This ambiguity also exists in the market data revenue sharing rules relating to the other TRFs, which FINRA will propose to clarify in a separate filing.

⁵ The proposed rule change would eliminate the deduction for capacity usage. Nasdaq, as the Business Member, believes that the amount of the deduction is small and needlessly complicates the administration of the revenue sharing program.

Proposal to Adjust Securities Transaction Credit

FINRA is proposing to amend Rule 7001B to base the percentage of market data revenue shared with a FINRA member reporting trades to the NASD/Nasdaq TRF on the member's "Market Share." FINRA proposes to define "Market Share" in Rule 7001B as the percentage calculated by dividing the total number of shares represented by trades reported by a member to the NASD/Nasdaq TRF 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 will be calculated separately for each tape.

Pursuant to the proposed rule change, the percentage of Market Share required to receive particular percentages of revenue will vary among the three tapes. Thus, for example, a member whose trade reports in NYSE-listed stocks constitute 0.25% or more of the total consolidated volume in those stocks would receive 100% of the attributable market data revenue, a member with less than 0.25% but at least 0.15% would receive 80% of the attributable market data revenue, a member with less than 0.15% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the market data revenue sharing program. For Tape B stocks, a member whose trade reports constitute 0.5% or more of the total consolidated volume in those stocks would receive 100% of the attributable market data revenue, a member with less than 0.5% but at least 0.25% would receive 80% of the attributable market data revenue, a member with less than 0.25% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the program. For Tape C stocks, a member whose trade reports constitute 0.75% or more of the total consolidated volume in those stocks would receive

100% of the attributable market data revenue, a member with less than 0.75% but at least 0.25% would receive 80% of the attributable market data revenue, a member with less than 0.25% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the program. According to Nasdaq, as the Business Member under the NASD/Nasdaq TRF LLC Agreement, the different percentages required for different tapes reflect the current extent to which participants use the NASD/Nasdaq TRF to report trades in different stocks, i.e., comparatively higher volumes of trades in Tape C stocks are reported through the NASD/Nasdaq TRF than in Tape B or Tape A stocks, and thus for Tape C, the levels of revenue sharing are tied to higher market share levels.

As the Business Member, Nasdaq has determined that the proposed changes in the percentage of market data revenue shared with NASD/Nasdaq TRF participants may be necessary for competitive reasons. FINRA recently filed proposed rule changes to share 100% and 75% of the revenues paid with respect to trades reported to the NASD/NYSE TRF and the NASD/NSX TRF, respectively.⁶ Nasdaq believes that market data revenue associated with over-the-counter trade reporting should continue to serve its traditional function of defraying at least a portion of the regulatory costs associated with the activity and is reluctant to impose the regulatory costs of the NASD/Nasdaq TRF exclusively on customers that lack a nexus to its operations. Even with 50% revenue sharing, however, the amount of remaining market data revenue is not sufficient to defray the regulatory costs of the NASD/Nasdaq TRF. Without a significant pricing change, Nasdaq believes that the NASD/Nasdaq TRF would have greater difficulty competing. Nasdaq believes

⁶ See Securities Exchange Act Release No. 56754 (November 6, 2007), 72 FR 64101 (November 14, 2007) (Notice of Filing of SR-NASD-2007-031) and Securities Exchange Act Release No. 56752 (November 6, 2007), 72 FR 64099 (November 14, 2007) (Notice of Filing of SR-NASD-2007-043).

that the proposed tiered revenue sharing program, in which market participants that make the most use of the NASD/Nasdaq TRF are eligible for the highest level of revenue sharing with others receiving progressively lower percentages, will allow the NASD/Nasdaq TRF to remain competitive while still funding a portion of its regulatory costs out of market data revenue. Nevertheless, Nasdaq will be required to fund a portion of the regulatory costs associated with the NASD/Nasdaq TRF from Nasdaq's general revenues.

As noted in Item 2 of this filing, FINRA is proposing that the effective date of the proposed rule change shall be January 1, 2008.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general, and with Section 15A(b)(5) of the Act,⁸ in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change is a reasonable and equitable credit structure in that it bases the percentage of revenue shared on members' respective contributions to the revenues of the NASD/Nasdaq TRF, and further Nasdaq has indicated that all regulatory costs owed by Nasdaq as the Business Member related to the NASD/Nasdaq TRF that are not funded out of market data revenue or trade reporting fees will be funded by Nasdaq general revenues.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

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

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

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁹

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

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

⁹ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2007-041)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend NASD Rule 7001B to Adjust Percentage of Market Data Revenue Shared with NASD/Nasdaq TRF Participants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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. 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 NASD Rule 7001B (Securities Transaction Credit) to modify the percentage of New York Stock Exchange (“Tape A”), American Stock Exchange and regional exchange (“Tape B”), and Nasdaq Exchange (“Tape C”) market data revenue shared with FINRA members reporting trades to the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”).³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/Nasdaq TRF is now doing business as the FINRA/Nasdaq TRF. The formal name change of each Trade Reporting Facility (“TRF”) is pending and

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

* * * * *

7000B. CHARGES FOR NASD/NASDAQ TRADE REPORTING FACILITY SERVICES

7001B. Securities Transaction Credit

NASD 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 NASD/Nasdaq Trade Reporting Facility may receive from the NASD/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 NASD/Nasdaq Trade Reporting Facility that the NASD/Nasdaq Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. An NASD member may earn credits from any of three pools maintained by the NASD/Nasdaq Trade Reporting Facility, each of which[. The Tape A, Tape B, and Tape C pools] represents [50% of] the revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the NASD/Nasdaq Trade Reporting Facility for each of Tape A, Tape B, and Tape C transactions [after deducting the amount, if any, that the NASD/Nasdaq Trade Reporting Facility pays to the Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage]. An NASD member may earn credits from the pools according to the pro rata share of revenue attributable to

once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

over-the-counter transactions reported to the NASD/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. The percentage of attributable revenue shared with a particular member will be determined as follows:

Tape A

<u>Percentage Market Share</u>	<u>Percent of attributable revenue shared</u>
<u>Greater than or equal to 0.25%</u>	<u>100%</u>
<u>Less than 0.25% but greater than or equal to 0.15%</u>	<u>80%</u>
<u>Less than 0.15% but greater than or equal to 0.10%</u>	<u>50%</u>
<u>Less than 0.10%</u>	<u>0%</u>

Tape B

<u>Percentage Market Share</u>	<u>Percent of attributable revenue shared</u>
<u>Greater than or equal to 0.50%</u>	<u>100%</u>
<u>Less than 0.50% but greater than or equal to 0.25%</u>	<u>80%</u>
<u>Less than 0.25% but greater than or equal to 0.10%</u>	<u>50%</u>
<u>Less than 0.10%</u>	<u>0%</u>

Tape C

<u>Percentage Market Share</u>	<u>Percent of attributable revenue shared</u>
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<u>Greater than or equal to 0.75%</u>	<u>100%</u>
<u>Less than 0.75% but greater than or equal to 0.25%</u>	<u>80%</u>
<u>Less than 0.25% but greater than or equal to 0.10%</u>	<u>50%</u>
<u>Less than 0.10%</u>	<u>0%</u>

For purposes of this Rule, “Market Share” means a percentage calculated by dividing the total number of shares represented by trades reported by an NASD member to the NASD/Nasdaq TRF 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.

* * * * *

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Background

The NASD/Nasdaq TRF provides FINRA members a mechanism for reporting locked-in transactions in exchange-listed securities effected otherwise than on an exchange. In connection with the establishment of the NASD/Nasdaq TRF, FINRA and The Nasdaq Stock Market, Inc. ("Nasdaq") entered into the Limited Liability Company Agreement of the Trade Reporting Facility LLC ("the NASD/Nasdaq TRF LLC Agreement"), a copy of which appears in the NASD Manual. Under the NASD/Nasdaq TRF LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the NASD/Nasdaq TRF. Nasdaq, the "Business Member," is primarily responsible for the management of the NASD/Nasdaq TRF's business affairs to the extent those activities 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 NASD/Nasdaq TRF.

On July 21, 2006, FINRA filed a proposed rule change for immediate effectiveness to adopt a new NASD Rule 7000B Series relating to fees and credits applicable to the NASD/Nasdaq TRF.⁴ Pursuant to NASD Rule 7001B, FINRA members

⁴ See Securities Exchange Act Release No. 54353 (August 23, 2006), 71 FR 51255 (August 29, 2006) (Notice of Filing and Immediate Effectiveness of SR-NASD-2006-090).

reporting trades in Tape A, Tape B⁵ and Tape C securities to the NASD/Nasdaq TRF currently receive a 50% *pro rata* credit on market data revenue earned by the NASD/Nasdaq TRF. At present, the revenue eligible for sharing is the revenue received by the NASD/Nasdaq TRF from the three tape associations after deducting the amount, if any, that the NASD/Nasdaq TRF pays to the Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage.⁶

Proposal to Adjust Securities Transaction Credit

FINRA is proposing to amend Rule 7001B to base the percentage of market data revenue shared with a FINRA member reporting trades to the NASD/Nasdaq TRF on the member's "Market Share." FINRA proposes to define "Market Share" in Rule 7001B as the percentage calculated by dividing the total number of shares represented by trades reported by a member to the NASD/Nasdaq TRF 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 will be calculated separately for each tape.

⁵ The proposed rule change would clarify an ambiguity in the current rule. Both Rule 7001B and the predecessor rule in effect prior to Nasdaq's separation from FINRA referred to "Amex" and "Tape B" as synonymous, but in fact the Tape B revenue sharing program has always been interpreted to include stocks listed on regional exchanges, such as NYSE Arca, because transactions in such stocks are reported to Tape B.

This ambiguity also exists in the market data revenue sharing rules relating to the other TRFs, which FINRA will propose to clarify in a separate filing.

⁶ The proposed rule change would eliminate the deduction for capacity usage. Nasdaq, as the Business Member, believes that the amount of the deduction is small and needlessly complicates the administration of the revenue sharing program.

Pursuant to the proposed rule change, the percentage of Market Share required to receive particular percentages of revenue will vary among the three tapes. Thus, for example, a member whose trade reports in NYSE-listed stocks constitute 0.25% or more of the total consolidated volume in those stocks would receive 100% of the attributable market data revenue, a member with less than 0.25% but at least 0.15% would receive 80% of the attributable market data revenue, a member with less than 0.15% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the market data revenue sharing program. For Tape B stocks, a member whose trade reports constitute 0.5% or more of the total consolidated volume in those stocks would receive 100% of the attributable market data revenue, a member with less than 0.5% but at least 0.25% would receive 80% of the attributable market data revenue, a member with less than 0.25% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the program. For Tape C stocks, a member whose trade reports constitute 0.75% or more of the total consolidated volume in those stocks would receive 100% of the attributable market data revenue, a member with less than 0.75% but at least 0.25% would receive 80% of the attributable market data revenue, a member with less than 0.25% but at least 0.10% would receive 50%, and a member with less than 0.1% would not be eligible for the program. According to Nasdaq, as the Business Member under the NASD/Nasdaq TRF LLC Agreement, the different percentages required for different tapes reflect the current extent to which participants use the NASD/Nasdaq TRF to report trades in different stocks, i.e., comparatively higher volumes of trades in Tape C stocks are reported through the NASD/Nasdaq TRF than in Tape B or Tape A stocks, and thus for Tape C, the levels of revenue sharing are tied to higher market share levels.

As the Business Member, Nasdaq has determined that the proposed changes in the percentage of market data revenue shared with NASD/Nasdaq TRF participants may be necessary for competitive reasons. FINRA recently filed proposed rule changes to share 100% and 75% of the revenues paid with respect to trades reported to the NASD/NYSE TRF and the NASD/NSX TRF, respectively.⁷ Nasdaq believes that market data revenue associated with over-the-counter trade reporting should continue to serve its traditional function of defraying at least a portion of the regulatory costs associated with the activity and is reluctant to impose the regulatory costs of the NASD/Nasdaq TRF exclusively on customers that lack a nexus to its operations. Even with 50% revenue sharing, however, the amount of remaining market data revenue is not sufficient to defray the regulatory costs of the NASD/Nasdaq TRF. Without a significant pricing change, Nasdaq believes that the NASD/Nasdaq TRF would have greater difficulty competing. Nasdaq believes that the proposed tiered revenue sharing program, in which market participants that make the most use of the NASD/Nasdaq TRF are eligible for the highest level of revenue sharing with others receiving progressively lower percentages, will allow the NASD/Nasdaq TRF to remain competitive while still funding a portion of its regulatory costs out of market data revenue. Nevertheless, Nasdaq will be required to fund a portion of the regulatory costs associated with the NASD/Nasdaq TRF from Nasdaq's general revenues.

FINRA is proposing that the effective date of the proposed rule change shall be January 1, 2008.

⁷ See Securities Exchange Act Release No. 56754 (November 6, 2007), 72 FR 64101 (November 14, 2007) (Notice of Filing of SR-NASD-2007-031) and Securities Exchange Act Release No. 56752 (November 6, 2007), 72 FR 64099 (November 14, 2007) (Notice of Filing of SR-NASD-2007-043).

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(5) of the Act,⁹ in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change is a reasonable and equitable credit structure in that it bases the percentage of revenue shared on members' respective contributions to the revenues of the NASD/Nasdaq TRF, and further Nasdaq has indicated that all regulatory costs owed by Nasdaq as the Business Member related to the NASD/Nasdaq TRF that are not funded out of market data revenue or trade reporting fees will be funded by Nasdaq general revenues.

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

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

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

Written comments were neither solicited nor received.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-2007-041 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2007-041. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2007-041 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris

Secretary

¹⁰ 17 CFR 200.30-3(a)(12).