

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 68	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2018 - * 013	Amendment No. (req. for Amendments *)
Filing by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposed rule change relating to the establishment of a second Trade Reporting Facility in conjunction with Nasdaq, Inc."/>				
<b>Contact Information</b>				
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 *	<input type="text" value="Lisa"/>	Last Name *	<input type="text" value="Horrigan"/>	
Title *	<input type="text" value="Associate General Counsel"/>			
E-mail *	<input type="text" value="lisa.horrigan@finra.org"/>			
Telephone *	<input type="text" value="(202) 728-8190"/>	Fax	<input type="text" value="(202) 728-8264"/>	
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="04/10/2018"/>	<input type="text" value="Senior Vice President and Director of Capital Markets Policy"/>		
By	<input type="text" value="Stephanie Dumont"/>	<input type="text" value="Stephanie Dumont,"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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

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

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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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 the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt rules relating to the establishment of a second Trade Reporting Facility or “TRF” to be operated in conjunction with Nasdaq, Inc. (“Nasdaq”). The second FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF Chicago”) would provide FINRA members with another mechanism for reporting over-the-counter (“OTC”) trades in NMS stocks and complying with FINRA’s requirements with respect to back-up trade reporting arrangements. The FINRA/Nasdaq TRF Chicago would be governed by the rules applicable to the existing FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF Carteret”), which were subject to notice and comment and approved by the Commission.<sup>2</sup>

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.

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

<sup>2</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087); and Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date upon which the FINRA/Nasdaq TRF Chicago commences operation, which is currently anticipated to be no earlier than August 1, 2018. FINRA will provide notice of that date upon successful completion of system testing and certification.

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

(a) Purpose

FINRA currently has three facilities that allow its members to report OTC trades in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS. These are the FINRA/Nasdaq TRF, the FINRA/NYSE TRF, and the Alternative Display Facility (“ADF”) (collectively, the “FINRA Facilities”).

On January 20, 2016, FINRA published a Trade Reporting Notice (the “Trade Reporting Notice” or the “Notice”) with guidance on firms’ OTC equity trade reporting obligations in the event of a systems issue during the trading day that prevents them from reporting OTC trades in NMS stocks in accordance with FINRA rules.<sup>3</sup> As set forth in the Notice, a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility (a firm’s “primary facility”) must establish and maintain connectivity and report to a second FINRA Facility (a firm’s “secondary facility”) if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.<sup>4</sup>

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<sup>3</sup> See Trade Reporting Notice, January 20, 2016 (OTC Equity Trading and Reporting in the Event of Systems Issues).

<sup>4</sup> As discussed in the Notice, if a firm chooses not to have connectivity to a secondary facility, it should cease executing OTC trades altogether when its

The proposed FINRA/Nasdaq TRF Chicago would provide FINRA members with an additional mechanism to facilitate compliance with FINRA rules and the Notice. Specifically, a primary user of the FINRA/Nasdaq TRF Carteret could report on a back-up basis to the FINRA/Nasdaq TRF Chicago pursuant to the same rules, pricing, features and performance to which the firm is accustomed as a user of the FINRA/Nasdaq TRF Carteret – and vice versa.

Like the FINRA/Nasdaq TRF Carteret, the FINRA/Nasdaq TRF Chicago will be a facility of FINRA, subject to regulation by FINRA and to FINRA’s registration as a national securities association. FINRA members that match and/or execute orders internally or through proprietary systems may submit reports of these trades, with appropriate information and modifiers, to the FINRA/Nasdaq TRF Chicago, which will then submit them to the appropriate exclusive securities information processor (“SIP”). FINRA/Nasdaq TRF Chicago trade reports will be disseminated with a modifier indicating the source of the transactions that will distinguish them from transactions executed on an exchange or reported to other FINRA Facilities, including the FINRA/Nasdaq TRF Carteret. The FINRA/Nasdaq TRF Chicago will provide FINRA with a real-time copy of each trade report for regulatory review purposes. At the option of the participant, the FINRA/Nasdaq TRF Chicago, like the FINRA/Nasdaq TRF Carteret, may provide the necessary clearing information regarding transactions to the National Securities Clearing Corporation.

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primary trade reporting facility is experiencing a widespread systems issue. In that instance, the firm could route orders for execution to an exchange or another FINRA member (i.e., a member with connectivity and the ability to report to a FINRA Facility that is operational).

The proposed rule change would establish the FINRA/Nasdaq TRF Chicago on the same terms as the FINRA/Nasdaq TRF Carteret. That is, the new FINRA/Nasdaq TRF would be built with the same technology, provide the same features and performance,<sup>5</sup> offer the same pricing and be governed by the same substantive rules, policies and procedures. A single set of application materials and clearing arrangements will provide for access to both FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. Moreover, Nasdaq, as the “Business Member” (defined below), has advised FINRA that these two TRFs will evolve in tandem and remain the same going forward (for example, because the same fee and credit schedule under the Rule 7600A Series will apply to both TRFs, any pricing changes would apply to both TRFs).<sup>6</sup>

Nasdaq, as the Business Member, proposes to structure the FINRA/Nasdaq TRF Chicago to be identical to the FINRA/Nasdaq TRF Carteret (in all respects other than its location) to provide FINRA members with a convenient and efficient option to fulfill their obligations under the Trade Reporting Notice through a set of primary and

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<sup>5</sup> Users of the two FINRA/Nasdaq TRFs may experience latency differences due to their different geographic locations.

<sup>6</sup> According to Nasdaq, the FINRA/Nasdaq TRF Chicago will include several new components to provide performance improvements and operational efficiencies that Nasdaq intends to incorporate into the FINRA/Nasdaq TRF Carteret shortly after the launch of FINRA/Nasdaq TRF Chicago. Nasdaq will provide participants with notice prior to re-platforming the FINRA/Nasdaq TRF Carteret. After Nasdaq completes this re-platforming, Nasdaq generally intends to perform updates, upgrades, fixes or other modifications to the two FINRA/Nasdaq TRFs in tandem. However, Nasdaq notes that there may be instances in which it will be necessary for Nasdaq to act in sequence. During such instances, there may be disparities between the two TRFs with respect to function or performance. Nasdaq expects that any disparity in function or performance between the two TRFs that arises during sequential changes will be transitory. Nasdaq will provide participants with notice if it anticipates requiring more than a de minimis transition period.

secondary reporting facilities that share the same rules, pricing, features and performance. Under the proposal, the FINRA/Nasdaq TRF Chicago will not be limited to use as a back-up reporting facility. FINRA members will also have the option of using the FINRA/Nasdaq TRF Chicago as their primary trade reporting facility. Moreover, members may choose to report some of their trades, on a primary basis, to the FINRA/Nasdaq TRF Carteret and other trades, also on a primary basis, to the FINRA/Nasdaq TRF Chicago (or to one of the other FINRA Facilities). Members may choose to allocate their trade reports to more than one TRF as a means of further increasing resiliency and mitigating their risks, including the risks associated with outages.

The proposed rule change would allow firms to aggregate the volume of trades that they report on the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago. This would enable firms to continue to qualify for any volume-based pricing that they would otherwise qualify for if they limited their trade reporting to one of those facilities only.

It is important to note that although the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago would be structured identically and would allow for aggregated pricing, the two TRFs would physically operate as distinct and independent facilities.<sup>7</sup> For example, to help ensure that the FINRA/Nasdaq TRF Chicago could effectively serve as a back-up facility for the FINRA/Nasdaq TRF Carteret or vice versa, the front-end technology used to operate the FINRA/Nasdaq TRF Chicago would reside

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<sup>7</sup> Trades reported to the FINRA/Nasdaq TRF Carteret or FINRA/Nasdaq TRF Chicago will be subject to correction or modification only on the TRF to which the trades were originally reported.

in Chicago, Illinois while the front-end technology used to operate the FINRA/Nasdaq TRF Carteret would continue to reside in Carteret, New Jersey. Geographic dispersion of these two TRFs would lessen the risk of a regional outage affecting them both simultaneously. FINRA also notes that rules that prohibit cross-facility reporting would apply to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. For example, FINRA rules generally prohibit the submission to a FINRA Facility of any non-tape report (including clearing reports) associated with a previously executed trade that was not reported to the same Facility, except with respect to the second leg of a riskless principal or agency transaction.<sup>8</sup>

FINRA's oversight of the proposed FINRA/Nasdaq TRF Chicago would be the same as FINRA's current oversight with respect to the two existing TRFs. In addition to real-time interaction with Business Member staff when operational issues arise, FINRA currently executes its SRO oversight functions by performing a three-part regularly recurring review of TRF operations. First, before initial operation of the TRF can commence, the Business Member is required to certify in writing that TRF operations will comply with all relevant FINRA rules and federal securities laws, and on a quarterly basis thereafter, the Business Member must submit its current TRF procedures and a certification of compliance with those procedures. Second, FINRA staff conducts monthly conference calls with each Business Member to review TRF operations. These monthly calls follow an established agenda, which includes, among other things, whether there were any system outages or issues since the prior monthly conference call (and if so, to confirm that they were reported to FINRA and the SEC, as applicable), data

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<sup>8</sup> See, e.g., Rule 7230A(i).

latency, the status of pending systems changes, TRF market data products and whether the Business Member has or is developing any new products that would use TRF data. Third, FINRA oversees a regular assessment cycle and extensive review of TRF operations, as measured against the TRF business requirements document and coding guidelines established by FINRA, by an outside independent audit firm. FINRA also requires the Business Member to submit on a quarterly basis an attestation that (1) identifies all products that use TRF data, and (2) certifies that the Business Member has no other products that use TRF data and that any future products that use TRF data will be developed in consultation with FINRA.

FINRA/Nasdaq TRF Limited Liability Company Agreement

The Third Amended and Restated Limited Liability Company Agreement of FINRA/Nasdaq Trade Reporting Facility LLC (the “FINRA/Nasdaq TRF LLC Agreement” or the “Agreement”) will govern the establishment of the FINRA/Nasdaq TRF Chicago.

Under the FINRA/Nasdaq TRF LLC Agreement, FINRA is the “SRO Member” and has sole regulatory responsibility for both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, including real-time monitoring and T+1 surveillance, development and enforcement of trade reporting rules and submission of proposed rule changes to the Commission. Nasdaq, the Business Member under the FINRA/Nasdaq TRF LLC Agreement, is primarily responsible for the management of the business affairs of both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, which may not be conducted in a manner inconsistent with the regulatory and oversight functions of FINRA. Among other things, the Business Member will establish pricing for both the

FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, be obligated to pay the cost of regulation and be entitled to the profits and losses, if any, derived from operation of the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. The Business Member will also provide the “user facing” front-end technology used to operate both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago and transmit real-time trade report data directly to the SIPs and to FINRA for audit trail purposes.

The FINRA/Nasdaq TRF LLC Agreement is substantially similar to the existing agreement that governs the FINRA/Nasdaq TRF Carteret (the Second Amended and Restated FINRA/Nasdaq TRF LLC Agreement), which is included in the FINRA Manual. However, it contains several amendments that reflect the fact that the FINRA/Nasdaq Trade Reporting Facility LLC will now operate through two TRFs: FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago.

For example, the FINRA/Nasdaq TRF LLC Agreement provides for separate termination provisions, in Section 20, for each FINRA/Nasdaq TRF. The termination provision applicable to the FINRA/Nasdaq TRF Carteret is substantially the same as under the current agreement, except as noted below. The termination provision applicable to the FINRA/Nasdaq TRF Chicago permits a Member of the LLC to terminate the FINRA/Nasdaq TRF Chicago upon at least one year’s written notice; it also permits the SRO Member to terminate the FINRA/Nasdaq TRF Chicago for any reason that the SRO Member, in its sole discretion, determines could have a negative impact on the maintenance of its status as a preeminent SRO. In addition, the FINRA/Nasdaq TRF LLC Agreement includes a provision in Section 20 that permits either Member of the LLC to terminate either of the TRFs or the entire Agreement due to a material breach by

the other Member, if such breach is not cured within 60 days of notification thereof, or if the other Member becomes bankrupt or insolvent, upon 30 days' written notice.

Finally, the FINRA/Nasdaq TRF LLC Agreement includes a provision, in Section 21, that clarifies that if either FINRA/Nasdaq TRF terminates, the LLC will continue to operate and the terms of the Agreement relating to the remaining FINRA/Nasdaq TRF will remain in full force and effect. It also clarifies that the LLC will dissolve upon an action by either LLC Member to terminate both FINRA/Nasdaq TRFs or to terminate the last remaining FINRA/Nasdaq TRF.

Rules Applicable to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago

FINRA proposes to amend the Rule 6300A, 7200A and 7600A Series, which govern the FINRA/Nasdaq TRF Carteret, to accommodate the establishment of the FINRA/Nasdaq TRF Chicago. That is, FINRA proposes to preface each of these Rule Series by noting that within them, any use of the term "FINRA/Nasdaq Trade Reporting Facility" shall mean the FINRA/Nasdaq TRF Carteret or the FINRA/Nasdaq TRF Chicago, as applicable, depending on the facility to which the participant elects to report.

FINRA proposes to amend Rule 6300A to provide that the forms of agreements required under the Rule 6300A Series, including the agreement to allow a Participant to report and lock-in trades on a member's behalf required under Rule 6380A(h), will be identical for both FINRA/Nasdaq TRFs and a single agreement can be used for purposes of both FINRA/Nasdaq TRFs. Members that elect to participate in both FINRA/Nasdaq TRFs must amend any existing agreements under the Rule 6300A Series to reflect their application to both facilities.

In addition, FINRA proposes to amend Rule 7200A to clarify that application procedures and access requirements for the FINRA/Nasdaq TRF Carteret would also be applicable to the FINRA/Nasdaq TRF Chicago, meaning that an application for access to one of the FINRA/Nasdaq TRFs would provide for access to both of them, and that the requirements for continuing access apply to both TRFs. Members that elect to participate in both FINRA/Nasdaq TRFs must provide written notice to the FINRA/Nasdaq TRFs and FINRA of such election, in the form prescribed by FINRA, and amend any existing agreements under the Rule 7200A Series to reflect their application to both Facilities. Moreover, FINRA proposes to state, in Rules 6300A, 6360A, 6370A, 7200A and 7280A, that any determination to suspend, terminate, restore, reinstate, limit or prohibit access to or participation in one FINRA/Nasdaq TRF with respect to a TRF participant will apply equally to the other FINRA/Nasdaq TRF with respect to that participant.

The proposed rule change would also amend the Rule 7600A Series to state that its schedules of credits and fees will apply to reporting activity that occurs on either or both of the FINRA/Nasdaq TRFs and that a participant's eligibility for any volume-based credits or fee caps will be determined based upon its aggregate reporting volume between the two FINRA/Nasdaq TRFs.<sup>9</sup> That is, Rule 7610A would be amended to state that if a FINRA member reports trades in a given quarter to both the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago, then the amount of the member's

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<sup>9</sup> FINRA notes that Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRFs on behalf of FINRA, will continue to administer the Rule 7600A Series and will collect all fees and issue all credits on behalf of the FINRA/Nasdaq TRF Chicago, as well as the FINRA/Nasdaq TRF Carteret. FINRA's oversight of this function performed by the Business Member will be conducted through the aforementioned assessment and review of TRF operations by an outside independent audit firm.

Securities Transaction Credits for that quarter will be calculated with respect to the member's combined transactions on both TRFs. Similarly, Rule 7620A would be amended to provide that if a participant reports trades to both the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago during a given month, then the participant's aggregate reporting volume on the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago will be considered for the purpose of determining whether and to what extent charges or caps apply to the participant during that month.<sup>10</sup>

Rule 7630A would be amended to reflect a technical change that certification of affiliate status for aggregation of activity for purposes of fees and credits will be made to, and subsequent determinations regarding aggregation will be made by, the FINRA/Nasdaq TRFs, not FINRA. FINRA members currently submit their requests for aggregation to the FINRA/Nasdaq TRF Carteret rather than to FINRA, and, as such, the proposed change will better align the rule with current practice.<sup>11</sup>

The proposed rule change would amend Rule 7640A to state that Nasdaq's license to use, distribute and sell FINRA/Nasdaq TRF Carteret market data to third parties, and to sell such data for fees that Nasdaq charges under its rules, would also extend to

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<sup>10</sup> FINRA notes that members will be able to report trades to the FINRA/Nasdaq TRF Chicago via Nasdaq's ACT Workstation, a Financial Information eXchange ("FIX") line or indirectly via third party intermediaries (e.g., service bureaus) and will be required to pay the associated fees under Nasdaq rules. For example, firms that report to the FINRA/Nasdaq TRF Chicago via FIX – either directly or indirectly through third party intermediaries – would pay Nasdaq charges associated with FIX ports to connect to the FINRA/Nasdaq TRF Chicago data center. See, e.g., Nasdaq Rule 7015. Firms will not have the option of connecting to the FINRA/Nasdaq TRF Chicago via a computer-to-computer interface ("CTCI").

<sup>11</sup> As noted above, Nasdaq, as the TRF Business Member, administers this Rule and receives the certifications of affiliate status and makes the aggregation determinations thereunder.

FINRA/Nasdaq TRF Chicago market data. In addition, the proposed rule change would amend the rule to state that the list of Nasdaq data products that incorporate FINRA/Nasdaq TRF Carteret market data would also incorporate FINRA/Nasdaq TRF Chicago market data.<sup>12</sup>

Finally, Rule 6184 (Transactions in Exchange-Traded Managed Fund Shares (“NextShares”)) would be amended to provide for the reporting of transactions in NextShares to the FINRA/Nasdaq TRF Chicago in the same manner that such transactions currently are reported to the FINRA/Nasdaq TRF Carteret.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date upon which the FINRA/Nasdaq TRF Chicago commences operation, which is currently anticipated to be no earlier than August 1, 2018. FINRA will provide notice of that date upon successful completion of system testing and certification.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>13</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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<sup>12</sup> Prior to the date when the FINRA/Nasdaq TRF Chicago becomes operational, Nasdaq intends to file with the Commission a proposal to amend Nasdaq’s rules governing its proprietary data products to provide for the inclusion therein of FINRA/Nasdaq TRF Chicago data.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

FINRA believes that the proposed rule change is consistent with the Act because it provides members with an alternative for meeting their trade reporting obligations under FINRA rules and will allow members that wish to connect to a secondary FINRA Facility in accordance with the Trade Reporting Notice to continue executing OTC trades in NMS stocks in the event their primary facility is experiencing a widespread systems issue. FINRA believes that an additional facility for the reporting of OTC transactions in NMS stocks in the event a member's primary facility is experiencing systems issues will enhance the resiliency and promote the integrity of the OTC market.

In addition, FINRA believes that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges because the charges and credits that would apply to the FINRA/Nasdaq TRF Chicago are the same as those that apply to the FINRA/Nasdaq TRF Carteret under current FINRA rules. The proposed rule change would also provide for the equitable allocation of reasonable dues, fees and other charges in that it would allow firms that choose to concurrently report trades to the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago to aggregate their reporting volumes on the two TRFs so that they could continue to qualify for volume-based pricing to the extent that they would have otherwise qualified had they reported their trades only to one of those TRFs. As discussed above, Nasdaq, as the Business Member, has advised FINRA that the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago will be subject to identical fees under the amended Rule 7600A Series, thereby allowing members to use either TRF freely in terms of the volume reported to each TRF without providing a disincentive to use one over the other for the sole purpose of maintaining eligibility for any fee caps.

**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.

The proposed rule change would apply only to members that have a trade reporting obligation under the FINRA rules<sup>14</sup> and elect to report to the FINRA/Nasdaq TRF Chicago. As noted above, there currently are three FINRA Facilities that allow members to report OTC trades in NMS stocks. There are only several hundred firms that execute and report OTC trades in NMS stocks to the FINRA Facilities on a regular basis. Many firms, including smaller firms, route their order flow to another firm, e.g., their clearing firm, for execution, and as the routing firm, they do not have the trade reporting obligation. Thus, the proposed rule change will have no impact on many members.

As explained above, the proposed rule change provides members with an alternative for meeting their trade reporting obligations under FINRA rules and will allow members that wish to connect to a secondary facility for trade reporting in accordance with the Trade Reporting Notice to continue executing OTC trades in NMS stocks in the event their primary facility is experiencing a widespread systems issue.

The proposed FINRA/Nasdaq TRF Chicago should provide benefits, in particular, for those members that currently report trades to the FINRA/Nasdaq TRF Carteret, as

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<sup>14</sup> FINRA rules for reporting OTC transactions in equity securities require that for transactions between members, the “executing party” report the trade to a FINRA facility. For transactions between a member and a non-member or customer, the member must report the trade. “Executing party” is defined under FINRA Rule 6380A(b) as 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.

such members would have the opportunity to aggregate their reporting volumes if they choose to concurrently report trades to both FINRA/Nasdaq TRFs. Thus, under the proposed fee structure, if a member chooses to connect to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago as primary and backup trade reporting facilities, then the member will receive credit for the shares reported to the backup facility. This may create an incentive for members to jointly utilize the two FINRA/Nasdaq TRFs as primary and back-up reporting facilities.

FINRA staff analyzed participation agreements and reporting activity to FINRA/Nasdaq TRF Carteret, FINRA/NYSE TRF and ADF, and found that 430 member firms reported to at least one FINRA Facility in 2017. While 84 firms had participation agreements with at least two FINRA Facilities, only 20 of those firms reported to both the FINRA/Nasdaq TRF Carteret and another FINRA Facility. Based on this one-year sample, FINRA expects the proposal to potentially benefit at least those firms that report to two or more FINRA Facilities; however, more firms can potentially benefit from volume-based pricing in the long-run, provided that reporting trades to more than one FINRA Facility becomes necessary or preferred.

To the extent that members choose to satisfy their reporting obligations via the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, and cease to maintain connectivity to the FINRA/NYSE TRF or ADF as a back-up FINRA Facility to report trades, the latter two may experience a reduction in reporting activity and hence revenue. Thus, the impact on FINRA Facilities may effectively be an economic transfer between them.

The proposed FINRA/Nasdaq TRF Chicago provides an alternative that may provide costs savings to those members that choose to report to both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago instead of spreading trade reporting between the FINRA/Nasdaq TRF Carteret and another FINRA Facility. Members can effectively satisfy the requirement under the Trade Reporting Notice to establish connectivity to a second FINRA Facility to maintain reporting in the event that their primary facility experiences a widespread systems issue during the trading day. As such, members can use one FINRA/Nasdaq TRF as the primary reporting facility and the other FINRA/Nasdaq TRF as the back-up facility. This could mitigate the risks associated with a regional outage that could simultaneously affect them both, as the front-end technology used to operate the FINRA/Nasdaq TRF Chicago would reside in Chicago, Illinois while the front-end technology used to operate the FINRA/Nasdaq TRF Carteret would continue to reside in Carteret, New Jersey.

However, the two FINRA/Nasdaq TRFs would have common technology, computer code and features. As such, a member firm's decision to rely upon the FINRA/Nasdaq TRFs to satisfy both its primary and back-up requirements may not fully mitigate risks if these common technologies, code or features contemporaneously experience problems or otherwise fail. Thus, when member firms consider how they will meet their reporting obligations going forward, they will need to weigh the potential costs if both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago experience common problems or become unavailable simultaneously against the costs of maintaining connectivity to unrelated FINRA Facilities with fewer efficiencies and less attractive aggregate pricing.

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.<sup>15</sup>

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)**

Not applicable.

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

Not applicable.

9. **Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

10. **Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

11. **Exhibits**

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

Exhibit 5. Text of the proposed rule change.

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<sup>15</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2018-013)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Establishment of a Second Trade Reporting Facility in Conjunction with Nasdaq, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 adopt rules relating to the establishment of a second Trade Reporting Facility or “TRF” to be operated in conjunction with Nasdaq, Inc. (“Nasdaq”). The second FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF Chicago”) would provide FINRA members with another mechanism for reporting over-the-counter (“OTC”) trades in NMS stocks and complying with FINRA’s requirements with respect to back-up trade reporting arrangements. The FINRA/Nasdaq TRF Chicago would be governed by the rules applicable to the existing FINRA/Nasdaq Trade Reporting Facility

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

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

(“FINRA/Nasdaq TRF Carteret”), which were subject to notice and comment and approved by the Commission.<sup>3</sup>

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

FINRA currently has three facilities that allow its members to report OTC trades in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS. These are the FINRA/Nasdaq TRF, the FINRA/NYSE TRF, and the Alternative Display Facility (“ADF”) (collectively, the “FINRA Facilities”).

On January 20, 2016, FINRA published a Trade Reporting Notice (the “Trade Reporting Notice” or the “Notice”) with guidance on firms’ OTC equity trade reporting obligations in the event of a systems issue during the trading day that prevents them from

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<sup>3</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087); and Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

reporting OTC trades in NMS stocks in accordance with FINRA rules.<sup>4</sup> As set forth in the Notice, a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility (a firm's "primary facility") must establish and maintain connectivity and report to a second FINRA Facility (a firm's "secondary facility") if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.<sup>5</sup>

The proposed FINRA/Nasdaq TRF Chicago would provide FINRA members with an additional mechanism to facilitate compliance with FINRA rules and the Notice. Specifically, a primary user of the FINRA/Nasdaq TRF Carteret could report on a back-up basis to the FINRA/Nasdaq TRF Chicago pursuant to the same rules, pricing, features and performance to which the firm is accustomed as a user of the FINRA/Nasdaq TRF Carteret – and vice versa.

Like the FINRA/Nasdaq TRF Carteret, the FINRA/Nasdaq TRF Chicago will be a facility of FINRA, subject to regulation by FINRA and to FINRA's registration as a national securities association. FINRA members that match and/or execute orders internally or through proprietary systems may submit reports of these trades, with appropriate information and modifiers, to the FINRA/Nasdaq TRF Chicago, which will then submit them to the appropriate exclusive securities information processor ("SIP").

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<sup>4</sup> See Trade Reporting Notice, January 20, 2016 (OTC Equity Trading and Reporting in the Event of Systems Issues).

<sup>5</sup> As discussed in the Notice, if a firm chooses not to have connectivity to a secondary facility, it should cease executing OTC trades altogether when its primary trade reporting facility is experiencing a widespread systems issue. In that instance, the firm could route orders for execution to an exchange or another FINRA member (i.e., a member with connectivity and the ability to report to a FINRA Facility that is operational).

FINRA/Nasdaq TRF Chicago trade reports will be disseminated with a modifier indicating the source of the transactions that will distinguish them from transactions executed on an exchange or reported to other FINRA Facilities, including the FINRA/Nasdaq TRF Carteret. The FINRA/Nasdaq TRF Chicago will provide FINRA with a real-time copy of each trade report for regulatory review purposes. At the option of the participant, the FINRA/Nasdaq TRF Chicago, like the FINRA/Nasdaq TRF Carteret, may provide the necessary clearing information regarding transactions to the National Securities Clearing Corporation.

The proposed rule change would establish the FINRA/Nasdaq TRF Chicago on the same terms as the FINRA/Nasdaq TRF Carteret. That is, the new FINRA/Nasdaq TRF would be built with the same technology, provide the same features and performance,<sup>6</sup> offer the same pricing and be governed by the same substantive rules, policies and procedures. A single set of application materials and clearing arrangements will provide for access to both FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. Moreover, Nasdaq, as the “Business Member” (defined below), has advised FINRA that these two TRFs will evolve in tandem and remain the same going forward (for example, because the same fee and credit schedule under the Rule 7600A Series will apply to both TRFs, any pricing changes would apply to both TRFs).<sup>7</sup>

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<sup>6</sup> Users of the two FINRA/Nasdaq TRFs may experience latency differences due to their different geographic locations.

<sup>7</sup> According to Nasdaq, the FINRA/Nasdaq TRF Chicago will include several new components to provide performance improvements and operational efficiencies that Nasdaq intends to incorporate into the FINRA/Nasdaq TRF Carteret shortly after the launch of FINRA/Nasdaq TRF Chicago. Nasdaq will provide participants with notice prior to re-platforming the FINRA/Nasdaq TRF Carteret. After Nasdaq completes this re-platforming, Nasdaq generally intends to perform updates, upgrades, fixes or other modifications to the two FINRA/Nasdaq TRFs

Nasdaq, as the Business Member, proposes to structure the FINRA/Nasdaq TRF Chicago to be identical to the FINRA/Nasdaq TRF Carteret (in all respects other than its location) to provide FINRA members with a convenient and efficient option to fulfill their obligations under the Trade Reporting Notice through a set of primary and secondary reporting facilities that share the same rules, pricing, features and performance. Under the proposal, the FINRA/Nasdaq TRF Chicago will not be limited to use as a back-up reporting facility. FINRA members will also have the option of using the FINRA/Nasdaq TRF Chicago as their primary trade reporting facility. Moreover, members may choose to report some of their trades, on a primary basis, to the FINRA/Nasdaq TRF Carteret and other trades, also on a primary basis, to the FINRA/Nasdaq TRF Chicago (or to one of the other FINRA Facilities). Members may choose to allocate their trade reports to more than one TRF as a means of further increasing resiliency and mitigating their risks, including the risks associated with outages.

The proposed rule change would allow firms to aggregate the volume of trades that they report on the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago. This would enable firms to continue to qualify for any volume-based pricing that they would otherwise qualify for if they limited their trade reporting to one of those facilities only.

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in tandem. However, Nasdaq notes that there may be instances in which it will be necessary for Nasdaq to act in sequence. During such instances, there may be disparities between the two TRFs with respect to function or performance. Nasdaq expects that any disparity in function or performance between the two TRFs that arises during sequential changes will be transitory. Nasdaq will provide participants with notice if it anticipates requiring more than a de minimis transition period.

It is important to note that although the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago would be structured identically and would allow for aggregated pricing, the two TRFs would physically operate as distinct and independent facilities.<sup>8</sup> For example, to help ensure that the FINRA/Nasdaq TRF Chicago could effectively serve as a back-up facility for the FINRA/Nasdaq TRF Carteret or vice versa, the front-end technology used to operate the FINRA/Nasdaq TRF Chicago would reside in Chicago, Illinois while the front-end technology used to operate the FINRA/Nasdaq TRF Carteret would continue to reside in Carteret, New Jersey. Geographic dispersion of these two TRFs would lessen the risk of a regional outage affecting them both simultaneously. FINRA also notes that rules that prohibit cross-facility reporting would apply to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. For example, FINRA rules generally prohibit the submission to a FINRA Facility of any non-tape report (including clearing reports) associated with a previously executed trade that was not reported to the same Facility, except with respect to the second leg of a riskless principal or agency transaction.<sup>9</sup>

FINRA's oversight of the proposed FINRA/Nasdaq TRF Chicago would be the same as FINRA's current oversight with respect to the two existing TRFs. In addition to real-time interaction with Business Member staff when operational issues arise, FINRA currently executes its SRO oversight functions by performing a three-part regularly recurring review of TRF operations. First, before initial operation of the TRF can

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<sup>8</sup> Trades reported to the FINRA/Nasdaq TRF Carteret or FINRA/Nasdaq TRF Chicago will be subject to correction or modification only on the TRF to which the trades were originally reported.

<sup>9</sup> See, e.g., Rule 7230A(i).

commence, the Business Member is required to certify in writing that TRF operations will comply with all relevant FINRA rules and federal securities laws, and on a quarterly basis thereafter, the Business Member must submit its current TRF procedures and a certification of compliance with those procedures. Second, FINRA staff conducts monthly conference calls with each Business Member to review TRF operations. These monthly calls follow an established agenda, which includes, among other things, whether there were any system outages or issues since the prior monthly conference call (and if so, to confirm that they were reported to FINRA and the SEC, as applicable), data latency, the status of pending systems changes, TRF market data products and whether the Business Member has or is developing any new products that would use TRF data. Third, FINRA oversees a regular assessment cycle and extensive review of TRF operations, as measured against the TRF business requirements document and coding guidelines established by FINRA, by an outside independent audit firm. FINRA also requires the Business Member to submit on a quarterly basis an attestation that (1) identifies all products that use TRF data, and (2) certifies that the Business Member has no other products that use TRF data and that any future products that use TRF data will be developed in consultation with FINRA.

FINRA/Nasdaq TRF Limited Liability Company Agreement

The Third Amended and Restated Limited Liability Company Agreement of FINRA/Nasdaq Trade Reporting Facility LLC (the “FINRA/Nasdaq TRF LLC Agreement” or the “Agreement”) will govern the establishment of the FINRA/Nasdaq TRF Chicago.

Under the FINRA/Nasdaq TRF LLC Agreement, FINRA is the “SRO Member” and has sole regulatory responsibility for both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, including real-time monitoring and T+1 surveillance, development and enforcement of trade reporting rules and submission of proposed rule changes to the Commission. Nasdaq, the Business Member under the FINRA/Nasdaq TRF LLC Agreement, is primarily responsible for the management of the business affairs of both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, which may not be conducted in a manner inconsistent with the regulatory and oversight functions of FINRA. Among other things, the Business Member will establish pricing for both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, be obligated to pay the cost of regulation and be entitled to the profits and losses, if any, derived from operation of the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. The Business Member will also provide the “user facing” front-end technology used to operate both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago and transmit real-time trade report data directly to the SIPs and to FINRA for audit trail purposes.

The FINRA/Nasdaq TRF LLC Agreement is substantially similar to the existing agreement that governs the FINRA/Nasdaq TRF Carteret (the Second Amended and Restated FINRA/Nasdaq TRF LLC Agreement), which is included in the FINRA Manual. However, it contains several amendments that reflect the fact that the FINRA/Nasdaq Trade Reporting Facility LLC will now operate through two TRFs: FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago.

For example, the FINRA/Nasdaq TRF LLC Agreement provides for separate termination provisions, in Section 20, for each FINRA/Nasdaq TRF. The termination

provision applicable to the FINRA/Nasdaq TRF Carteret is substantially the same as under the current agreement, except as noted below. The termination provision applicable to the FINRA/Nasdaq TRF Chicago permits a Member of the LLC to terminate the FINRA/Nasdaq TRF Chicago upon at least one year's written notice; it also permits the SRO Member to terminate the FINRA/Nasdaq TRF Chicago for any reason that the SRO Member, in its sole discretion, determines could have a negative impact on the maintenance of its status as a preeminent SRO. In addition, the FINRA/Nasdaq TRF LLC Agreement includes a provision in Section 20 that permits either Member of the LLC to terminate either of the TRFs or the entire Agreement due to a material breach by the other Member, if such breach is not cured within 60 days of notification thereof, or if the other Member becomes bankrupt or insolvent, upon 30 days' written notice.

Finally, the FINRA/Nasdaq TRF LLC Agreement includes a provision, in Section 21, that clarifies that if either FINRA/Nasdaq TRF terminates, the LLC will continue to operate and the terms of the Agreement relating to the remaining FINRA/Nasdaq TRF will remain in full force and effect. It also clarifies that the LLC will dissolve upon an action by either LLC Member to terminate both FINRA/Nasdaq TRFs or to terminate the last remaining FINRA/Nasdaq TRF.

Rules Applicable to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago

FINRA proposes to amend the Rule 6300A, 7200A and 7600A Series, which govern the FINRA/Nasdaq TRF Carteret, to accommodate the establishment of the FINRA/Nasdaq TRF Chicago. That is, FINRA proposes to preface each of these Rule Series by noting that within them, any use of the term "FINRA/Nasdaq Trade Reporting

Facility” shall mean the FINRA/Nasdaq TRF Carteret or the FINRA/Nasdaq TRF Chicago, as applicable, depending on the facility to which the participant elects to report.

FINRA proposes to amend Rule 6300A to provide that the forms of agreements required under the Rule 6300A Series, including the agreement to allow a Participant to report and lock-in trades on a member’s behalf required under Rule 6380A(h), will be identical for both FINRA/Nasdaq TRFs and a single agreement can be used for purposes of both FINRA/Nasdaq TRFs. Members that elect to participate in both FINRA/Nasdaq TRFs must amend any existing agreements under the Rule 6300A Series to reflect their application to both facilities.

In addition, FINRA proposes to amend Rule 7200A to clarify that application procedures and access requirements for the FINRA/Nasdaq TRF Carteret would also be applicable to the FINRA/Nasdaq TRF Chicago, meaning that an application for access to one of the FINRA/Nasdaq TRFs would provide for access to both of them, and that the requirements for continuing access apply to both TRFs. Members that elect to participate in both FINRA/Nasdaq TRFs must provide written notice to the FINRA/Nasdaq TRFs and FINRA of such election, in the form prescribed by FINRA, and amend any existing agreements under the Rule 7200A Series to reflect their application to both Facilities.

Moreover, FINRA proposes to state, in Rules 6300A, 6360A, 6370A, 7200A and 7280A, that any determination to suspend, terminate, restore, reinstate, limit or prohibit access to or participation in one FINRA/Nasdaq TRF with respect to a TRF participant will apply equally to the other FINRA/Nasdaq TRF with respect to that participant.

The proposed rule change would also amend the Rule 7600A Series to state that its schedules of credits and fees will apply to reporting activity that occurs on either or

both of the FINRA/Nasdaq TRFs and that a participant's eligibility for any volume-based credits or fee caps will be determined based upon its aggregate reporting volume between the two FINRA/Nasdaq TRFs.<sup>10</sup> That is, Rule 7610A would be amended to state that if a FINRA member reports trades in a given quarter to both the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago, then the amount of the member's Securities Transaction Credits for that quarter will be calculated with respect to the member's combined transactions on both TRFs. Similarly, Rule 7620A would be amended to provide that if a participant reports trades to both the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago during a given month, then the participant's aggregate reporting volume on the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago will be considered for the purpose of determining whether and to what extent charges or caps apply to the participant during that month.<sup>11</sup>

Rule 7630A would be amended to reflect a technical change that certification of affiliate status for aggregation of activity for purposes of fees and credits will be made to,

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<sup>10</sup> FINRA notes that Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRFs on behalf of FINRA, will continue to administer the Rule 7600A Series and will collect all fees and issue all credits on behalf of the FINRA/Nasdaq TRF Chicago, as well as the FINRA/Nasdaq TRF Carteret. FINRA's oversight of this function performed by the Business Member will be conducted through the aforementioned assessment and review of TRF operations by an outside independent audit firm.

<sup>11</sup> FINRA notes that members will be able to report trades to the FINRA/Nasdaq TRF Chicago via Nasdaq's ACT Workstation, a Financial Information eXchange ("FIX") line or indirectly via third party intermediaries (e.g., service bureaus) and will be required to pay the associated fees under Nasdaq rules. For example, firms that report to the FINRA/Nasdaq TRF Chicago via FIX – either directly or indirectly through third party intermediaries – would pay Nasdaq charges associated with FIX ports to connect to the FINRA/Nasdaq TRF Chicago data center. See, e.g., Nasdaq Rule 7015. Firms will not have the option of connecting to the FINRA/Nasdaq TRF Chicago via a computer-to-computer interface ("CTCI").

and subsequent determinations regarding aggregation will be made by, the FINRA/Nasdaq TRFs, not FINRA. FINRA members currently submit their requests for aggregation to the FINRA/Nasdaq TRF Carteret rather than to FINRA, and, as such, the proposed change will better align the rule with current practice.<sup>12</sup>

The proposed rule change would amend Rule 7640A to state that Nasdaq's license to use, distribute and sell FINRA/Nasdaq TRF Carteret market data to third parties, and to sell such data for fees that Nasdaq charges under its rules, would also extend to FINRA/Nasdaq TRF Chicago market data. In addition, the proposed rule change would amend the rule to state that the list of Nasdaq data products that incorporate FINRA/Nasdaq TRF Carteret market data would also incorporate FINRA/Nasdaq TRF Chicago market data.<sup>13</sup>

Finally, Rule 6184 (Transactions in Exchange-Traded Managed Fund Shares ("NextShares")) would be amended to provide for the reporting of transactions in NextShares to the FINRA/Nasdaq TRF Chicago in the same manner that such transactions currently are reported to the FINRA/Nasdaq TRF Carteret.

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date upon which the FINRA/Nasdaq TRF Chicago commences operation, which is currently anticipated to be no earlier than August 1, 2018.

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<sup>12</sup> As noted above, Nasdaq, as the TRF Business Member, administers this Rule and receives the certifications of affiliate status and makes the aggregation determinations thereunder.

<sup>13</sup> Prior to the date when the FINRA/Nasdaq TRF Chicago becomes operational, Nasdaq intends to file with the Commission a proposal to amend Nasdaq's rules governing its proprietary data products to provide for the inclusion therein of FINRA/Nasdaq TRF Chicago data.

FINRA will provide notice of that date upon successful completion of system testing and certification.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change is consistent with the Act because it provides members with an alternative for meeting their trade reporting obligations under FINRA rules and will allow members that wish to connect to a secondary FINRA Facility in accordance with the Trade Reporting Notice to continue executing OTC trades in NMS stocks in the event their primary facility is experiencing a widespread systems issue. FINRA believes that an additional facility for the reporting of OTC transactions in NMS stocks in the event a member's primary facility is experiencing systems issues will enhance the resiliency and promote the integrity of the OTC market.

In addition, FINRA believes that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges because the charges and credits that would apply to the FINRA/Nasdaq TRF Chicago are the same as those that apply to the FINRA/Nasdaq TRF Carteret under current FINRA rules. The proposed rule change would also provide for the equitable allocation of reasonable dues, fees and other charges in that it would allow firms that choose to concurrently report trades to the

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<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago to aggregate their reporting volumes on the two TRFs so that they could continue to qualify for volume-based pricing to the extent that they would have otherwise qualified had they reported their trades only to one of those TRFs. As discussed above, Nasdaq, as the Business Member, has advised FINRA that the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago will be subject to identical fees under the amended Rule 7600A Series, thereby allowing members to use either TRF freely in terms of the volume reported to each TRF without providing a disincentive to use one over the other for the sole purpose of maintaining eligibility for any fee caps.

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

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

The proposed rule change would apply only to members that have a trade reporting obligation under the FINRA rules<sup>15</sup> and elect to report to the FINRA/Nasdaq TRF Chicago. As noted above, there currently are three FINRA Facilities that allow members to report OTC trades in NMS stocks. There are only several hundred firms that execute and report OTC trades in NMS stocks to the FINRA Facilities on a regular basis. Many firms, including smaller firms, route their order flow to another firm, e.g., their

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<sup>15</sup> FINRA rules for reporting OTC transactions in equity securities require that for transactions between members, the "executing party" report the trade to a FINRA facility. For transactions between a member and a non-member or customer, the member must report the trade. "Executing party" is defined under FINRA Rule 6380A(b) as 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.

clearing firm, for execution, and as the routing firm, they do not have the trade reporting obligation. Thus, the proposed rule change will have no impact on many members.

As explained above, the proposed rule change provides members with an alternative for meeting their trade reporting obligations under FINRA rules and will allow members that wish to connect to a secondary facility for trade reporting in accordance with the Trade Reporting Notice to continue executing OTC trades in NMS stocks in the event their primary facility is experiencing a widespread systems issue.

The proposed FINRA/Nasdaq TRF Chicago should provide benefits, in particular, for those members that currently report trades to the FINRA/Nasdaq TRF Carteret, as such members would have the opportunity to aggregate their reporting volumes if they choose to concurrently report trades to both FINRA/Nasdaq TRFs. Thus, under the proposed fee structure, if a member chooses to connect to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago as primary and backup trade reporting facilities, then the member will receive credit for the shares reported to the backup facility. This may create an incentive for members to jointly utilize the two FINRA/Nasdaq TRFs as primary and back-up reporting facilities.

FINRA staff analyzed participation agreements and reporting activity to FINRA/Nasdaq TRF Carteret, FINRA/NYSE TRF and ADF, and found that 430 member firms reported to at least one FINRA Facility in 2017. While 84 firms had participation agreements with at least two FINRA Facilities, only 20 of those firms reported to both the FINRA/Nasdaq TRF Carteret and another FINRA Facility. Based on this one-year sample, FINRA expects the proposal to potentially benefit at least those firms that report to two or more FINRA Facilities; however, more firms can potentially benefit from

volume-based pricing in the long-run, provided that reporting trades to more than one FINRA Facility becomes necessary or preferred.

To the extent that members choose to satisfy their reporting obligations via the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, and cease to maintain connectivity to the FINRA/NYSE TRF or ADF as a back-up FINRA Facility to report trades, the latter two may experience a reduction in reporting activity and hence revenue. Thus, the impact on FINRA Facilities may effectively be an economic transfer between them.

The proposed FINRA/Nasdaq TRF Chicago provides an alternative that may provide costs savings to those members that choose to report to both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago instead of spreading trade reporting between the FINRA/Nasdaq TRF Carteret and another FINRA Facility. Members can effectively satisfy the requirement under the Trade Reporting Notice to establish connectivity to a second FINRA Facility to maintain reporting in the event that their primary facility experiences a widespread systems issue during the trading day. As such, members can use one FINRA/Nasdaq TRF as the primary reporting facility and the other FINRA/Nasdaq TRF as the back-up facility. This could mitigate the risks associated with a regional outage that could simultaneously affect them both, as the front-end technology used to operate the FINRA/Nasdaq TRF Chicago would reside in Chicago, Illinois while the front-end technology used to operate the FINRA/Nasdaq TRF Carteret would continue to reside in Carteret, New Jersey.

However, the two FINRA/Nasdaq TRFs would have common technology, computer code and features. As such, a member firm's decision to rely upon the

FINRA/Nasdaq TRFs to satisfy both its primary and back-up requirements may not fully mitigate risks if these common technologies, code or features contemporaneously experience problems or otherwise fail. Thus, when member firms consider how they will meet their reporting obligations going forward, they will need to weigh the potential costs if both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago experience common problems or become unavailable simultaneously against the costs of maintaining connectivity to unrelated FINRA Facilities with fewer efficiencies and less attractive aggregate pricing.

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

Written comments were neither solicited nor received.

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

Within 45 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 or disapprove 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2018-013 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2018-013. 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-2018-013 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 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.

\* \* \* \* \*

**FINRA Manual**

**Corporate Organization**

\* \* \* \* \*

**TRF LLC Agreements**

\* \* \* \* \*

**[Second]Third Amended and Restated Limited Liability Company Agreement of the FINRA/NASDAQ Trade Reporting Facility LLC**

This [Second]Third Amended and Restated Limited Liability Company Agreement of The FINRA/NASDAQ Trade Reporting Facility LLC (the "Company") (together with the schedules attached hereto, this "Agreement"), dated as of [Sept 13, 2017]August 1, 2018 ("Effective Date") that replaces the [First]Second Amended and Restated Limited Liability Company Agreement of The Trade Reporting Facility, LLC, between [The] NASDAQ[ OMX GROUP], Inc., and Financial Industry Regulatory Authority, Inc. [(the "SRO Member")], dated [July 23, 2008]September 13, 2017 (the "Prior Agreement"), is entered into by and between NASDAQ, Inc. [(the successor entity to The NASDAQ OMX Group, Inc.)], a Delaware corporation (the "Business Member"), and Financial Industry Regulatory Authority, Inc., a Delaware non-stock corporation (the "SRO Member" or "FINRA" and, together with the Business Member, the "Members", and each, a "Member"). Capitalized terms used herein and not otherwise defined have the meanings set forth on Schedule A hereto.

WHEREAS, The Members formed and continued the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.), as amended from time to time (the "Act") on April 27, 2006 (the "Original Effective Date"). By execution of this Agreement, the Members continue the Company as a limited liability company pursuant to and in accordance with the Act. This Agreement is effective as of the date of this Agreement; and

WHEREAS the Members have determined that it is appropriate to amend and restate the Prior Agreement for the purposes of reflecting [the change in the name of the Business Member] that the Business Member has now chosen to operate the Company through two separate trade reporting facilities (each a "TRF"): (i) The FINRA/Nasdaq TRF Carteret ("TRF 1"); and (ii) The FINRA/Nasdaq TRF Chicago ("TRF 2").

NOW, THEREFORE, for and in consideration of the covenants, conditions and agreements contained herein, the Members do hereby agree as follows:

1. through 5. No change.
6. Certificates.

John M. Yetter, as an "authorized person" within the meaning of the Act, executed, delivered and filed the Certificate of Formation with the Secretary of State of the State of Delaware on April 27, 2006. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an "authorized person" ceased, and each Member thereupon became a designated "authorized person" and each Member shall continue as a designated "authorized person" within the meaning of the

Act. The Members or an Officer shall execute, deliver and file any other certificates (and any amendments thereto and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

7. Purposes.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, to operate [a facility]one or more facilities for Non-System Trading and to engage in all related activities arising therefrom or relating thereto or necessary, desirable, advisable, convenient or appropriate in connection therewith as the Members may determine. The Company may not undertake material business activities unrelated to the business of Non-System Trading without obtaining the approval required by Section 10(e).

8. through 9. No change.

10. Board of Directors.

(a) *Number and Composition.* The Company shall be managed by or under the direction of the board of directors (the "Board of Directors" or "Board"), which shall be established by the Members. The Board is comprised of three (3) Directors. The Business Member is entitled to designate two (2) Directors, each of whom must be a director, officer or employee of the Business Member or an Affiliate thereof. The SRO Member is entitled to designate one (1) Director (the "SRO Member Director") who shall be a member of the SRO Member's Board of Governors or an officer or employee of the SRO Member designated by the SRO Member's Board of Governors. Each Director elected, designated or appointed to the Board shall hold office until a successor is elected

and qualified or until such Director's earlier death, resignation or removal. Each Director shall execute and deliver a Management Agreement or other instrument pursuant to which such Director shall accept [its]his or her appointment and duties as a Director and agree to be bound by the terms of this Agreement. Subject to Section 10(e) of this Agreement, the Board may change the number of the Directors and the composition of the Board from time to time at its discretion; provided, however, that the Board shall, at all times, include at least one SRO Member Director. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) may be a Director.

(b) through (d) No change.

(e) *Special Voting Requirements; Major Actions.* Notwithstanding the provisions set forth in Section 10(d) regarding voting requirements, no action with respect to any Major Action (as defined below), shall be effective unless approved by consent of the SRO Member Director. Additionally, unless approved by the SRO Member Director, neither Member on behalf of the Company shall enter into or permit the Company to enter into any Major Action. For purposes of this Agreement, "Major Action" means any of the following:

(i) through (vii) No change.

(viii) to the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company, other than as contemplated by Section 20 herein;

(ix) through (xii) No change.

(f) through (k) No change.

11. through 16. No change.

17. Books, Records and Jurisdiction.

(a) through (b) No change.

(c) The Members and the officers, directors, governors, agents and employees of the Members irrevocably submit to the jurisdiction of the U.S. federal courts, SEC and FINRA for the purpose of any suit, action or proceeding pursuant to U.S. federal securities laws, and the rules or regulations thereunder, arising from, or relating to, the Company's activities or Section 17(b) hereof (except that such jurisdictions shall include Delaware for any such matter relating to the organization or internal affairs of the Company, provided that such matter is not related to trading on, or the regulation of, the markets operated by the Company), and hereby waive and agree not to assert by way of motion, as a defense or otherwise, in any such suit, action or proceeding any claims that they are not personally subject to the jurisdiction of the SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.

(d) through (e) No change.

18. through 19. No change.

20. Termination. The termination of TRF 1 will be governed by the terms of Section 20(a) and the termination of TRF 2 will be governed by the terms of Section 20(b) below, provided, however, that either TRF 1 or TRF 2 or both TRF 1 and TRF 2 may also be terminated pursuant to Section 20(c).

(a) TRF 1.

[(a)](i) Unless otherwise agreed in writing by the Members, [the Company]TRF 1 may be dissolved by either Member in accordance with this Section 20. Either Member may dissolve [the Company]TRF 1 by providing to the other Member prior written notice of at least one year, unless the Member revokes such notice prior to the expiration of the one-year period; provided, however, that neither Member may deliver such notice of dissolution to the other Member before the second anniversary of the Effective Date of [the Prior]this Agreement. Unless the notice is revoked prior to the date of dissolution or as otherwise agreed to by the Members, [the Company]TRF 1 shall dissolve in accordance with the terms of this Agreement one year from the date notice of such dissolution is received by the applicable Member or at such later time as expressly set forth in the notice (the "Dissolution Date"). If the SRO Member provides notice of dissolution pursuant to this Section 20(a) (the date of delivery by the SRO Member of such notice of dissolution is hereinafter referred to as the "Notice of Dissolution Delivery Date"), then the Members shall negotiate in good faith to: [(i)](a) allow the Business Member to continue to operate [the Company]TRF 1 or the business of [the Company]TRF 1 under the SRO Member's SRO registration, [(ii)](b) restructure [the Company]TRF 1 so that the Business Member can operate [the Company]TRF 1 or the business of [the Company]TRF 1 under the SRO registration of the Business Member or any Affiliate thereof, as the case may be, or [(iii)](c) sell [the Company]TRF 1 or the business of [the Company]TRF 1 to the SRO Member based on a valuation of [the Company]TRF 1's business and assets conducted in such manner as the parties may agree, and consideration for the sale may include a contract for the Business Member to

provide services to the SRO Member relating to the operation of [the Company]TRF 1 and the business of [the Company]TRF 1.

[(b)](ii) In the event the parties have not agreed on any of [(i), (ii) or (iii)](a), (b), or (c) of Section 20(a)(i) by the date that is 60 days after the Notice of Dissolution Delivery Date (the "FMV Commencement Date"), the Members shall thereafter in good faith seek to agree on the Fair Market Value. If the Members cannot agree on the Fair Market Value within 30 days after the FMV Commencement Date, the Members shall cooperate in good faith to select an independent investment banking firm (an "Investment Bank") of recognized international standing (the "Appraiser") to determine the Fair Market Value. Any Investment Bank that has received an aggregate of \$100,000 or more for services or otherwise from either Member during the three-year period prior to the Dissolution Date shall not be eligible to serve as the Appraiser. The fees and expenses of the Appraiser will be borne by the Members in equal amounts. Each Member will share with the other Member any written information it provides to the Appraiser and will not communicate with the Appraiser, other than through such written information, without giving the other Member an opportunity to be present at any such communication. Within 90 days after the date on which the date the Appraiser has been selected, the Appraiser will determine the Fair Market Value and will notify the Members in writing of such determination (specifying the Fair Market Value and setting forth, in reasonable detail, the basis for such determination). The determination of Fair Market Value in accordance with this Section [20(b)]20(a)(ii) will be final, binding and conclusive upon the Members. At a closing to occur on the date that is 10 business days following the determination of the Fair Market Value (whether by agreement of the Members or by

determination of the Appraiser), or such other date as the Members shall mutually determine: [(i)](a) the SRO Member shall pay to the Business Member an amount equal to the Fair Market Value; [(ii)](b) the Business Member shall transfer to the SRO Member the Business Member's interest in [the Company]TRF 1 in its entirety; and [(iii)](c) the Notice of Dissolution shall be deemed revoked. Upon dissolution of [the Company]TRF 1, except as may be prohibited by applicable law, the Business Member covenants and agrees that it will not apply to register as a Registered Securities Association. This covenant shall survive termination of this Agreement for a period of five years.

(b) TRF 2.

(i) A Member may terminate TRF 2 by providing the other Member with prior written notice of at least one year, unless the Member revokes such notice prior to the expiration of the one-year period. Unless the foregoing notice is revoked prior to the date of dissolution as agreed to by the Members, TRF 2 shall dissolve in accordance with the terms of this Agreement one year from the date notice of such dissolution is received by the applicable Member or at such later time as expressly set forth in the notice.

(ii) The SRO Member may terminate TRF 2 for any reason that the SRO Member, in its sole discretion, determines could have a negative impact on the maintenance of its status as a preeminent SRO. In the event that the Business Member takes any action or fails to take any action that the SRO Member determines, in the exercise of its business judgment, could or does jeopardize the SRO member's status or reputation as an SRO, that cannot be cured or has not been cured within 30 days of receipt of written notice to the Business Member, the SRO Member will thereafter be

entitled to immediate dissolution of TRF 2. In such event, TRF 2 will immediately suspend all operations and the SRO Member will have no further obligations to TRF 2 and will be entitled to any and all amounts due to the SRO Member under the terms of this Agreement, in addition to any other damages provided for under common law or agreements between the Members. Notwithstanding subsection (i) of this Section 20(b), the SRO Member may invoke this Section 20(b)(ii) at any time during the term of this Agreement.

(c) *Additional Grounds for Termination.*

(i) A Member may terminate either TRF or this entire Agreement due to the material breach of the other Member if the breach is not cured within 60 days of the breaching party's receipt of written notice of the breach.

(ii) A Member may terminate either TRF or this entire Agreement for the other Member's bankruptcy or insolvency on 30 days' written notice.

21. Dissolution and Winding Up.

(a) If TRF 1 or TRF 2, but not both, is terminated, the Company will continue to operate and the terms related to the remaining TRF will remain in full force and effect.

The Company shall be dissolved, however, and its affairs shall be wound up upon the first to occur of the following: (i) an action by either Member to terminate TRF 1 and TRF 2, both TRFs at the same time, or to terminate the then-last remaining TRF in accordance with and pursuant to Section 20 herein, (ii) the occurrence of any event which terminates the continued membership of the last remaining Member in the Company unless the Company is continued in a manner permitted by the Act or (iii) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) through (d) No change.

22. through 29. No change.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first written herein.

NASDAQ, INC.

By: \_\_\_\_\_

Name: Tal Cohen

Title: SVP North American Equities

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By: \_\_\_\_\_

Name: Thomas Gira

Title: [EVP]Executive Vice President, Market

Regulation and Transparency Services

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## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

“Agreement” means this [Second]Third Amended and Restated Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented from time to time.

“Appraiser” has the meaning set forth in Section 20(b) of this Agreement.

“Board” or “Board of Directors” has the meaning set forth in Section 10(a).

“Business Member” means NASDAQ, Inc., a Delaware corporation, in its capacity as a member of the Company, and includes any of its permitted successors or assigns admitted to the Company as such pursuant to this Agreement.

“Certificate of Formation” means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on April 27, 2006, as amended or amended and restated from time to time.

“Confidential Information” has the meaning set forth in Section 17(d) of this Agreement.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

“Covered Persons” has the meaning set forth in Section 18(a) of this Agreement.

“Directors” means the directors elected, designated or appointed to the Board from time to time by the Members. A list of the Directors of the Company is attached hereto as Schedule E. A Director is hereby designated as a “manager” of the Company within the meaning of Section 18-101(10) of the Act.

“Dissolution Date” has the meaning set forth in Section 20(a) of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Facility Services Agreement” means the Facility Services Agreement entered into between the Company and the Business Member or an Affiliate thereof, as such agreement may from time to time be amended.

“Fair Market Value” means the private market value that a willing Third Party would pay for the Business Member’s interest in the Company in an arms-length transaction taking into account the prospects and potential of the Company’s business operated as a going concern under a valid SRO registration.

“FMV Commencement Date” has the meaning set forth in Section 20(b) of this Agreement.

“Investment Bank” has the meaning set forth in Section 20(b) of this Agreement.

“Major Action” has the meaning set forth in Section 10(e) of this Agreement.

“Management Agreement” means the agreement of the Directors in substantially the form attached hereto as Schedule C.

“Member” has the meaning set forth in the preamble to this Agreement.

“Non-System Trading” means trading otherwise than on an exchange of securities for which the SEC has approved a transaction reporting plan pursuant to SEC Rule 240.11Aa3-1 or SEC Rule 242.601

“Notice of Dissolution Delivery Date” has the meaning set forth in Section 20(a) of this Agreement.

“Officer” means an officer of the Company described in Section 11. The Officers are listed on Schedule D hereto.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint-stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Registered Securities Association” means a “registered securities association” within the meaning of the Exchange Act.

“SEC” means the Securities and Exchange Commission.

“SRO” means a “self-regulatory organization” within the meaning of the Exchange Act.

“SRO Member” means Financial Industry Regulatory Authority, Inc., a Delaware non-stock corporation, in its capacity as a member of the Company, and includes any of its permitted successors or assigns admitted to the Company pursuant to this Agreement.

“SRO Member Director” has the meaning set forth in Section 10(a) of this Agreement.

“SRO Responsibilities” means those duties or responsibilities of an SRO pursuant to the Exchange Act and the rules promulgated thereunder.

“Statement of Work” means the written statement delivered to the Company by FINRA or an Affiliate thereof setting forth the SRO Responsibilities that FINRA or an Affiliate thereof will perform for the Company.

“Third Party” means any person other than (i) the Company or any Affiliate thereof or (ii) either Member or any Affiliate thereof.

B. No change.

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## **SCHEDULE B**

No change.

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## **SCHEDULE C**

Management Agreement

\_\_\_\_\_, 20\_\_

The FINRA/NASDAQ Trade Reporting Facility LLC

One Liberty Plaza

New York, New York 10006

Re: Management Agreement

The FINRA/NASDAQ Trade Reporting Facility LLC

Ladies and Gentlemen:

For good and valuable consideration, each of the undersigned persons, who have been designated as directors of the Board of Directors (the "Board") of The FINRA/NASDAQ Trade Reporting Facility, LLC, a Delaware limited liability company (the "Company"), in accordance with the [~~Second~~]Third Amended and Restated Limited

Liability Company Agreement of the Company, dated as of \_\_\_\_\_, 201\_, as it may be amended or restated from time to time (the "LLC Agreement"), hereby agree as follows:

1. No change.
2. No change.

IN WITNESS WHEREOF, the undersigned have executed this Management Agreement as of the day and year first above written.

\_\_\_\_\_

Name:

\_\_\_\_\_

Name:

\_\_\_\_\_

Name:

\_\_\_\_\_

**SCHEDULE D**

No change.

\_\_\_\_\_

**SCHEDULE E**

No change.

\* \* \* \* \*

**FINRA Rules**

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**6000. QUOTATION, ORDER, AND TRANSACTION REPORTING FACILITIES**

**6100. QUOTING AND TRADING IN NMS STOCKS**

\* \* \* \* \*

**6184. Transactions in Exchange-Traded Managed Fund Shares (“NextShares”)**

(a) Members that effect secondary market transactions otherwise than on an exchange in exchange-traded managed fund shares or “NextShares,” as defined under Nasdaq Rule 5745, must report such transactions to [the] a FINRA/Nasdaq Trade Reporting Facility or the Alternative Display Facility in accordance with this Rule and the rules applicable to the trade reporting facility used by the reporting member. Such transactions cannot be reported to the FINRA/NYSE Trade Reporting Facility. As used in this Rule 6184, the term “FINRA/Nasdaq Trade Reporting Facility” means the FINRA/Nasdaq Trade Reporting Facility Carteret or the FINRA/Nasdaq Trade Reporting Facility Chicago, as applicable, depending on the facility to which the member elects to report.

(b) through (d) No change.

**••• Supplementary Material: -----**

.01 through .02 No change.

\* \* \* \* \*

**6300. TRADE REPORTING FACILITIES**

**6300A. FINRA/NASDAQ TRADE REPORTING FACILITIES**

There are two FINRA/Nasdaq Trade Reporting Facilities: FINRA/Nasdaq Trade Reporting Facility Carteret and FINRA/Nasdaq Trade Reporting Facility Chicago. As used in the Rule 6300A Series, the term “FINRA/Nasdaq Trade Reporting Facility”

means either the FINRA/Nasdaq Trade Reporting Facility Carteret or FINRA/Nasdaq Trade Reporting Facility Chicago, as applicable, depending on the facility to which the Participant elects to report. The two FINRA/Nasdaq Trade Reporting Facilities are separate and distinct facilities, and as such, for example, the correction, cancellation or reversal of a trade can only be reported to the FINRA/Nasdaq Trade Reporting Facility to which the trade was originally reported.

The forms of agreements required under the Rule 6300A Series, including the agreement to allow a Participant to report and lock-in trades on a member's behalf required under Rule 6380A(h), shall be identical for both FINRA/Nasdaq Trade Reporting Facilities and a single agreement can be used for purposes of both FINRA/Nasdaq Trade Reporting Facilities. Members that elect to participate in both FINRA/Nasdaq Trade Reporting Facilities must amend any existing agreements under the Rule 6300A Series to reflect their application to both Facilities.

Any determinations made by FINRA to suspend, condition, limit or terminate a Participant's ability to use one of the FINRA/Nasdaq Trade Reporting Facilities shall also apply to the other FINRA/Nasdaq Trade Reporting Facility with respect to that Participant.

\* \* \* \* \*

#### **6360A. Suspension and Termination by FINRA Action**

FINRA may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Trade Reporting Facility Participant's ability to use FINRA/Nasdaq Trade Reporting Facility services in one or more designated securities for violations of applicable requirements or prohibitions. For avoidance of

doubt, any determination by FINRA to suspend, limit, prohibit, or terminate a Participant's ability to use services of one of the two FINRA/Nasdaq Trade Reporting Facilities will apply equally to the other FINRA/Nasdaq Trade Reporting Facility with respect to that Participant.

**6370A. Termination of FINRA/Nasdaq Trade Reporting Facility Services**

FINRA may, upon notice, terminate FINRA/Nasdaq Trade Reporting Facility services in the event that a Trade Reporting Facility Participant fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered. For avoidance of doubt, any determination by FINRA to terminate the services of one of the two FINRA/Nasdaq Trade Reporting Facilities with respect to a Participant will also terminate the services of the other FINRA/Nasdaq Trade Reporting Facility with respect to that Participant.

\* \* \* \* \*

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

\* \* \* \* \*

**7200. TRADE REPORTING FACILITIES**

**7200A. FINRA/NASDAQ TRADE REPORTING FACILITIES**

There are two FINRA/Nasdaq Trade Reporting Facilities: FINRA/Nasdaq Trade Reporting Facility Carteret and FINRA/Nasdaq Trade Reporting Facility Chicago. As used in the Rule 7200A Series, the term "FINRA/Nasdaq Trade Reporting Facility" means either the FINRA/Nasdaq Trade Reporting Facility Carteret or FINRA/Nasdaq Trade Reporting Facility Chicago, as applicable, depending on the facility to which the

Participant elects to report. The two FINRA/Nasdaq Trade Reporting Facilities are separate and distinct facilities, and as such, for example, the correction, cancellation or reversal of a trade can only be reported to the FINRA/Nasdaq Trade Reporting Facility to which the trade was originally reported.

The forms of agreements required under the Rule 7200A Series, including the Participant Application Agreements required under Rule 7220A and the agreement to include transaction fees in clearing reports required under Rule 7230A(h), shall be identical for both FINRA/Nasdaq Trade Reporting Facilities and a single agreement can be used for purposes of both FINRA/Nasdaq Trade Reporting Facilities. Members that elect to participate in both FINRA/Nasdaq Trade Reporting Facilities must provide written notice to the FINRA/Nasdaq Trade Reporting Facility and FINRA of such election, in the form prescribed by FINRA, and amend any existing agreements under the Rule 7200A Series, to reflect their application to both Facilities.

Any determinations made by FINRA to grant, deny, suspend, terminate, limit, prohibit, restore, or reinstate access to or participation in one of the FINRA/Nasdaq Trade Reporting Facilities with respect to a Participant shall also apply to the other FINRA/Nasdaq Trade Reporting Facility with respect to that Participant.

\* \* \* \* \*

#### **7280A. Termination of Access**

FINRA may, upon notice, terminate access to the trade reporting service of the System as to a Participant in the event that a Participant fails to abide by any of the rules or operating procedures of the trade reporting service of the System or FINRA, or fails to honor contractual agreements entered into with FINRA or FINRA Regulation, or fails to

pay promptly for services rendered by the trade reporting service of the System. For avoidance of doubt, any determination by FINRA to terminate access to the services of one of the two FINRA/Nasdaq Trade Reporting Facilities with respect to a Participant will also terminate access to the services of the other FINRA/Nasdaq Trade Reporting Facility with respect to that Participant.

\* \* \* \* \*

## **7600. DATA PRODUCTS AND CHARGES FOR TRADE REPORTING**

### **FACILITY SERVICES**

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

There are two FINRA/Nasdaq Trade Reporting Facilities: FINRA/Nasdaq Trade Reporting Facility Carteret and FINRA/Nasdaq Trade Reporting Facility Chicago. As used in the Rule 7600A Series, the term “FINRA/Nasdaq Trade Reporting Facility” means either the FINRA/Nasdaq Trade Reporting Facility Carteret or FINRA/Nasdaq Trade Reporting Facility Chicago, as applicable, depending on the facility to which the Participant elects to report.

#### **7610A. Securities Transaction Credit**

FINRA members that trade securities listed on the NYSE ("Tape A"), Amex and regional exchanges ("Tape B"), or Nasdaq ("Tape C") in over-the-counter transactions reported to the FINRA/Nasdaq Trade Reporting Facility may receive from the FINRA/Nasdaq Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the FINRA/Nasdaq Trade Reporting

Facility that the FINRA/Nasdaq Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. A FINRA member may earn credits from any of three pools maintained by the FINRA/Nasdaq Trade Reporting Facility, each of which represents the revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the FINRA/Nasdaq Trade Reporting Facility for each of Tape A, Tape B, and Tape C transactions. A FINRA member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the FINRA/Nasdaq Trade Reporting Facility by the member in each of Tape A, Tape B, and Tape C for each calendar quarter. Credits will be paid on a quarterly basis. The percentage of attributable revenue shared with a particular member will be determined as follows:

**Tape A**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>
Greater than or equal to 2%	98%
Less than 2% but greater than or equal to 1%	95%
Less than 1% but greater than or equal to 0.50%	75%
Less than 0.50% but greater than or equal to 0.10%	20%

Less than 0.10%	0%
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**Tape B**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>
Greater than or equal to 2%	98%
Less than 2% but greater than or equal to 1%	90%
Less than 1% but greater than or equal to 0.35%	70%
Less than 0.35% but greater than or equal to 0.10%	10%
Less than 0.10%	0%

**Tape C**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>
Greater than or equal to 2%	98%
Less than 2% but greater than or equal to 1%	95%
Less than 1% but greater than or equal to 0.50%	75%
Less than 0.50% but greater than or	20%

equal to 0.10%	
Less than 0.10%	0%

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

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

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

The following charges shall be paid by participants for use of the FINRA/Nasdaq Trade Reporting Facility. In the case of trades where the same market participant is on both sides of a trade report, applicable fees assessed on a "per side" basis will be assessed once, rather than twice, and the market participant will be assessed applicable Non-

Comparison/Accept (Non-Match/Compare) Charges as the Executing Party side only.

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.

<b>Non-Comparison/Accept (Non-Match/Compare) Charges:</b>	
<b>Tape</b>	<b>Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap</b>
A	2500
B	2500
C	2500
<b>Media/Executing Party</b>	
<b>Monthly Charge</b>	<b>Maximum Monthly Charge if Capped</b>

<p>(\$0.018) x (Number of Media/Executing Party Reports During the Month)</p>	<p>(\$0.018) x (Required Daily Average Number of Media/EP Trades for Tape A, B or C) x (Number of Trading Days During the Month)</p>
<p><b>Non-Media/Executing Party</b></p>	
<p><b>Monthly Charge</b></p>	<p><b>Maximum Monthly Charge if Capped</b></p>
<p>(\$0.018) x (Number of Non-Media/Executing Party Reports During the Month)</p>	<p>(\$0.018) x 2500 for Tape A, B or C x (Number of Trading Days During the Month)</p>
<p><b>Media/Contra</b></p>	
<p><b>Monthly Charge</b></p>	<p><b>Maximum Monthly Charge if Capped</b></p>
<p>(\$0.013) x (Number of Media/Contra Reports During the Month)</p>	<p>(\$0.013) x 2500 for Tape A, B or C x (Number of Trading Days During the Month)</p>

### **Media/Contra Cap**

Participants making markets in alternative trading systems registered pursuant to Regulation ATS will qualify for a fee cap applied to all trades under Rule 7620A if they meet the following criteria on a monthly basis:

- Participant's percentage of contra media trades must represent at least 35% of their total FINRA/Nasdaq Trade Reporting Facility volume.
- Participant must be contra to a minimum of 1,000,000 trades in Tape A, 500,000 trades in Tape C and 250,000 trades in Tape B.
- Participant must complete an attestation form stating that they maintain a two-sided quote in each symbol traded on an alternative trading system registered pursuant to Regulation ATS and display a quotation size of at least one normal unit of trading (specific for each security) thereon.

Participants will be audited by Nasdaq, Inc. periodically.

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

	the Executing Party)
Query	\$0.50/query
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, or Kill , paid by reporting side; \$0.25/Break, Decline transaction, paid by each party

••• **Supplementary Material:** -----

.01 through .02 No change.

**7630A. Aggregation of Activity of Affiliated Members**

(a) For purposes of applying any provision of the Rule 7600A Series that reflects a charge assessed, or credit provided, by the FINRA/Nasdaq Trade Reporting Facility, a member may request that the FINRA/Nasdaq Trade Reporting Facility aggregate its activity with the activity of its affiliates.

(1) A member requesting aggregation of affiliate activity shall be required to certify to the FINRA/Nasdaq Trade Reporting Facility the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform the FINRA/Nasdaq Trade Reporting Facility immediately of any event that causes an entity to cease to be an affiliate. The FINRA/Nasdaq Trade Reporting Facility shall review available information

regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity. The FINRA/Nasdaq Trade Reporting Facility shall approve a request unless it determines that the certification is not accurate.

(2) If two or more members become affiliated on or prior to the sixteenth day of a month and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request by the FINRA/Nasdaq Trade Reporting Facility shall be deemed to be effective as of the first day of that month. If two or more members become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request by the FINRA/Nasdaq Trade Reporting Facility shall be deemed to be effective as of the first day of the next calendar month.

(b) through (c) No change.

#### **7640A. Data Products Offered by NASDAQ**

(a) Under the terms of the business arrangement establishing the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago, Nasdaq, Inc., as the Business Member, has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use covered market data, consistent with all applicable laws, rules and regulations. Nasdaq, Inc., as the Business Member, has a contractual right to distribute and sell covered market data to third parties, consistent with the Exchange Act, and has determined to distribute or sell the products referenced in paragraph (c) of this Rule that use covered market data through its wholly

owned self-regulatory organization subsidiary, The NASDAQ Stock Market LLC ("Nasdaq"). For purposes of this Rule, "covered market data" means market data generated by the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago, other than data generated exclusively for regulatory purposes.

(b) through (c) No change.

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