

Required fields are shown with yellow backgrounds and asterisks.

Filing by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

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

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

First Name * Last Name *
 Title *
 E-mail *
 Telephone * Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.
(Title *)

Date
By (Name *)
Senior Vice President and Director of Capital Markets Policy

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 *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 7620A to modify certain fees applicable to members that use the FINRA/Nasdaq Trade Reporting Facility Carteret (the “FINRA/Nasdaq TRF Carteret”) and the FINRA/Nasdaq Trade Reporting Facility Chicago (the “FINRA/Nasdaq TRF Chicago”) (collectively, the “FINRA/Nasdaq TRFs”).²

The text of the proposed rule change is attached as Exhibit 5.³

(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.

¹ 15 U.S.C. 78s(b)(1).

² The Commission recently approved a proposed rule change to adopt rules relating to the establishment of the FINRA/Nasdaq TRF Chicago. See Securities Exchange Act Release No. 83559 (June 29, 2018), 83 FR 31589 (July 6, 2018) (Order Approving File No. SR-FINRA-2018-013). Among other things, the proposed rule change amended the Rule 7600A Series to provide that the schedules of credits and fees 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. SR-FINRA-2018-013 will be effective on the date that the FINRA/Nasdaq TRF Chicago commences operation, which FINRA anticipates will be in September 2018.

³ The Exhibit 5 reflects rule text that has been approved pursuant to SR-FINRA-2018-013 but is not yet effective.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be September 1, 2018.

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

(a) Purpose

The FINRA/Nasdaq TRFs are facilities of FINRA that are operated by Nasdaq, Inc. ("Nasdaq") and utilize Automated Confirmation Transaction Service technology. In connection with the establishment of the FINRA/Nasdaq TRFs, FINRA and Nasdaq entered into a limited liability company agreement (the "LLC Agreement"). Under the LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the FINRA/Nasdaq TRFs. Nasdaq, the "Business Member," is primarily responsible for the management of the FINRA/Nasdaq TRFs' business affairs, including establishing pricing for use of the FINRA/Nasdaq TRFs, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRFs.

Pursuant to the FINRA Rule 7600A Series, participants in the FINRA/Nasdaq TRFs are charged fees and may qualify for fee caps (Rule 7620A) and also may qualify for revenue sharing payments for trade reporting to the FINRA/Nasdaq TRFs (Rule 7610A). These rules are administered by Nasdaq, in its capacity as the Business Member

and operator of the FINRA/Nasdaq TRFs on behalf of FINRA,⁴ and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRFs.

Pursuant to FINRA Rule 7620A, participants in the FINRA/Nasdaq TRFs are subject to four categories of fees, each of which is applicable to transactions on the three Tapes:⁵ (1) Media/Executing Party; (2) Non-Media/Executing Party; (3) Media/Contra Party; and (4) Non-Media/Contra Party.⁶ Rule 7620A provides that for any category of fees, a participant will qualify for a cap on the fees they would otherwise pay to report trades to a particular Tape during a given month, provided that during the month, the participant separately has a daily average number of Media/Executing Party trades of at least 2,500 in that same Tape. Additionally, the Rule provides for a special fee cap program – known as the “Media/Contra Cap” – for participants that make markets in an alternative trading system (“ATS”).

Nasdaq, as the Business Member, has determined to make several adjustments to the schedule of fees and caps that applies to participants in the FINRA/Nasdaq TRFs. As

⁴ FINRA’s oversight of this function performed by the Business Member is conducted through a recurring assessment and review of TRF operations by an outside independent audit firm.

⁵ Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities (“Tape A”), NYSE American and regional exchange securities (“Tape B”), and Nasdaq Stock Market securities (“Tape C”).

⁶ Media eligible trade reports are those that are submitted to the FINRA/Nasdaq TRFs for public dissemination by the Securities Information Processors. By contrast, non-media trade reports are not submitted to the FINRA/Nasdaq TRFs for public dissemination, but are submitted for regulatory and/or clearance and settlement purposes.

Pursuant to the Rule’s Supplementary Material, the “Executing Party (EP)” is defined as the member with the trade reporting obligation under FINRA rules, and the “Contra (CP)” is defined as the member on the contra side of a trade report.

discussed below, the overall aims of the proposed adjustments are to: (1) align the activity-based fees and cap levels with the rising costs of operating, maintaining, and improving the FINRA/Nasdaq TRF Carteret and, going forward, the FINRA/Nasdaq TRF Chicago; (2) re-calibrate the fee structure so that it provides for a more equitable allocation of fees among Executing Parties and Contra Parties; (3) ensure that all FINRA/Nasdaq TRF participants, regardless of the level of their reporting or contra activity, bear at least some baseline responsibility for the costs of their participation; and (4) clarify the fee structure. Nasdaq also intends for the proposed adjustments to generate profits for itself as the Business Member. FINRA is proposing to amend Rule 7620A accordingly.

Specifically, the proposed rule change would: (1) raise the threshold daily average number of Media/Executing Party trades that are necessary for a participant to qualify for a fee cap program during a month; (2) lower uncapped monthly charges for reporting Media/Executing Party and Non-Media/Executing Party trades and raise the caps on such fees, if applicable; (3) raise the caps on Media/Contra Party and Non-Media/Contra Party fees, if applicable; (4) raise the level of the cap that applies to ATS market makers; (5) establish a new fee cap program known as the “ATS Market Maker Combined Activity Cap”; (6) establish a new fixed monthly fee known as the “Participation Fee”; and (7) establish a special pricing tier for participants whose trade reporting activity to the FINRA/Nasdaq TRF consists of substantially all retail orders (“Retail Participants”). The proposed rule change also would re-organize the fee schedule and make other clarifying changes to Rule 7620A. Each of these proposals is described in detail below.

Cap Qualifying Activity

The proposed rule change would raise the level of “Cap Qualifying Activity” – i.e., the daily average number of Media/Executing Party trades that a participant must report to the FINRA/Nasdaq TRFs in a given month to qualify for caps on its trade reporting fees as set forth elsewhere in the fee schedule. Presently, the level of Cap Qualifying Activity is 2,500 for reports in each of Tapes A, B, and C. Nasdaq, as the Business Member, has determined to raise these threshold numbers to 5,000 in each Tape.

The levels of Cap Qualifying Activity have not increased since they were introduced in 2010,⁷ at a time when reporting volume on the FINRA/Nasdaq TRF Carteret was significantly lower than it is now. Indeed, average daily executions on the FINRA/Nasdaq TRF Carteret have increased by approximately 47 percent since 2012 even as cap thresholds have remained static. Meanwhile, the cost of operating the FINRA/Nasdaq TRF Carteret has increased by approximately 16 percent. These costs have increased for various reasons, including but not limited to inflation, investments that Nasdaq has made in upgrading and improving the facility, and also increased operational and maintenance costs that have flowed from rising levels of trade reporting activity. Nasdaq has advised that raising the levels of Cap Qualifying Activity will help to re-align the thresholds with rising volumes and costs.

⁷ See Securities Exchange Act Release No. 61817 (March 31, 2010), 75 FR 17810 (April 7, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2010-011).

Media/Executing Party and Non-Media/Executing Party Fees and Caps

The proposed rule change would amend the schedule of fees and associated caps for both Media/Executing Party and Non-Media/Executing Party trade reports. For both types of trade reports, Nasdaq, as the Business Member, has determined to lower the uncapped fee from \$0.018 to \$0.015 per side. Nasdaq also has determined to modify the formulas for calculating the maximum amount of fees that a participant will pay to report these trades if the participant achieves Cap Qualifying Activity. Presently, the formulas for the Media/Executing Party cap and the Non-Media/Executing Party cap are, respectively: $\$0.018 \times (\text{the required average daily number of Media/Executing Party Trades for Tape A, B, or C}) \times (\text{the number of trading days during the month})$; and $\$0.018 \times 2,500 \times (\text{the number of trading days during the month})$. Nasdaq has determined to lower the fee in the cap formulas from \$0.018 to \$0.013 and raise the average daily number of trade reports needed to qualify for the cap from 2,500 to 5,000. Finally, the proposed rule change would simplify the formula for the Media/Executing Party Cap by stating expressly the average daily number of Media/Executing Party trades necessary to qualify for the cap – 5,000 – rather than merely describe that number, as it does now.

Nasdaq has advised that the proposed changes are aimed at rationalizing Media (Non-Media)/Executing Party fee caps with the 47 percent increase in reporting activity to the FINRA/Nasdaq TRFs and the 16 percent increase in costs associated with the operation of the TRF that have occurred over the past six years. However, Nasdaq also proposes downward adjustments to the uncapped rates for reporting Media/Executing Party trades to dampen the financial impact of the increase in the cap upon participants that will no longer qualify for it under the proposed rule change.

Media/Contra Party and Non-Media/Contra Party Fees and Caps

The proposed rule change would raise the caps for both Media/Contra Party and Non-Media/Contra Party trades while keeping the uncapped monthly charge of \$0.013 per side the same. For both types of trades, Nasdaq, as the Business Member, has determined to modify the cap formulas so that, instead of being $\$0.013 \times 2,500 \times$ (the number of trading days during the month), the formulas will be $\$0.013 \times 5,000 \times$ (the number of trading days during the month). The rationale for this increase is the same as is described above.

Media/Contra Cap

FINRA Rule 7620A provides for a monthly “Media/Contra” fee cap of \$5,000 per Tape (A, B or C) that applies to all trades (i.e., Media/Executing Party, Non-Media/Executing Party, Media/Contra and Non-Media/Contra) under the Rule. Eligibility for this fee cap is based on a FINRA member’s trade reporting of Media/Contra trades to the FINRA/Nasdaq TRFs and its participation as a market maker on an ATS. To qualify as a market maker on an ATS, a FINRA member must maintain a two-sided quote for each security that the FINRA member maintains interest in within each ATS and display a quotation size of at least one normal unit of trading (specific for each security), and it must attest to these qualifications in writing. The FINRA member must also attest that it will continue to meet the ATS-based requirements to be eligible for the fee cap.⁸ To qualify for the cap, a FINRA member must have its Media/Contra Party trades equal, or exceed, 35% of its total volume on the FINRA/Nasdaq TRFs. The

⁸ As set forth in the Rule, Nasdaq will periodically audit FINRA members that choose to participate to ensure compliance with the attestation.

FINRA member also must be contra to a minimum of 1 million trades in Tape A, 500,000 trades in Tape C, and 250,000 trades in Tape B to qualify for the fee cap in the securities of the Tapes, respectively.

Nasdaq, as the Business Member, has determined to modify the Media/Contra Party fee cap program by increasing the maximum monthly per Tape charge applicable to qualifying participants. Specifically, the maximum monthly charge will increase from \$5,000 per Tape per month to \$10,000 per Tape per month. Nasdaq, as the Business Member, has determined that the existing cap level, which has not changed since it was introduced in 2015, no longer bears a reasonable relationship to the volume of qualifying participant reporting activity that occurs on the FINRA/Nasdaq TRFs. The volume of market maker Media/Contra Party reports to the FINRA/Nasdaq TRFs is growing rapidly. From January 2016 through June 2017, the firms that presently qualify for the cap increased their activity on the FINRA/Nasdaq TRF Carteret by 60%. Their activity presently exceeds the minimum qualifying threshold for the cap by more than fourfold.

In addition, the proposed rule change would change the name of this cap to the “ATS Market Maker Media/Contra Party Cap” to more accurately describe the program, add clarity to the fee schedule and avoid potential confusion with the other Media/Contra cap.

ATS Market Maker Combined Media Activity Cap

Nasdaq, as the Business Member, has determined to establish a new fee cap program, entitled the “ATS Market Maker Combined Media Activity Cap.” The purpose of the proposed cap is to foster new reportable business activities among FINRA members that do not qualify for the existing FINRA/Nasdaq TRFs fee cap program.

For example, a participant may be a new FINRA member or it may engage in new off-exchange business activities, such as the establishment of a single-dealer platform or an ATS. In the initial stages of these business activities, the participant may not qualify for the existing fee cap programs because the participant may not achieve the requisite daily average number of Media/Executing Party trades during a month or because it may not reliably maintain the requisite volume of Media/Contra Party activity to qualify for the Media/Contra Party cap (which, as noted above, would cap both its Executing Party and Contra Party fees).

The proposed ATS Market Maker Combined Media Activity Cap will provide assistance to such a participant by capping the combined FINRA/Nasdaq TRFs fees (i.e., Media/Executing Party, Media/Contra, Non-Media/Executing Party and Non-Media/Contra) that the participant would otherwise pay while the participant ramps up its new reportable activity to levels that would enable it to qualify for existing fee cap programs with higher qualification thresholds, such as the Media/Executing Party cap and the Media/Contra Party cap.

To qualify for the proposed ATS Market Maker Combined Media Activity Cap, a participant must: (1) qualify as a market maker on an ATS (as defined below); (2) engage in both Executing Party and Contra Party activities; and (3) average at least 2,500 Media/Executing Party trades in a given Tape per day during a month. If the participant meets this threshold, then the participant will pay for that month, on a per Tape basis, the lesser of \$7,500 or the sum of all the participant's combined monthly Executing Party and Contra Party fees for that Tape during the month (as calculated using the regular uncapped Media/Executing Party, Non-Media/Executing Party, Media/Contra Party, and

Non-Media/Contra Party rates). If the participant's average daily Media/Executing Party trade reports reach at least 5,000 in a given Tape in a given month, then the participant will no longer qualify for the proposed ATS Market Maker Combined Media Activity Cap in that Tape in that month and, instead, will qualify for the regular cap programs for that month. If the participant does not reach 2,500 Media/Executing Party trades in a given Tape per day during a month, the firm will be subject to the regular uncapped fee schedule or to other fee caps that may be applicable to it for that month.⁹

As with the ATS Market Maker Media/Contra Party Cap, a participant qualifies as a market maker on an ATS by maintaining a two-sided quote for each security that the FINRA member maintains interest in within each ATS and by displaying a quotation size of at least one normal unit of trading (specific for each security). Additionally, as with the existing ATS Market Maker Media/Contra Party cap, the participant must attest to its market maker qualifications in writing and must re-certify its qualifications every six months.¹⁰ Nasdaq will periodically audit participants to ensure that their attestations are accurate and that they qualify for the ATS Market Maker Combined Activity Cap.

⁹ If a participant qualifies for the ATS Market Maker Combined Media Activity Cap in month 1 and then graduates out of the Combined Cap program in month 2 due to the fact that the participant's average daily Media/Executing Party trade reports in a given Tape in month 2 exceed 5,000, the participant will once again qualify for the ATS Market Maker Combined Media Activity Cap in month 3 if its average daily Media/Executing Party trade reports during month 3 fall back below 5,000.

¹⁰ The form of attestation that firms will be required to submit to Nasdaq under the proposed rule change is attached to this filing at Exhibit 3.

Participation Fee

Nasdaq, as the Business Member, has determined to assess a new fixed monthly Participation Fee of \$350 that will apply to each participant in the FINRA/Nasdaq TRFs.¹¹ The Participation Fee will help defray certain shared and common costs associated with the operation of the FINRA/Nasdaq TRFs, including overhead costs and the costs of developing, maintaining, and upgrading shared technology.¹² Nasdaq believes that all users of the FINRA/Nasdaq TRFs – both large and small – should bear at least some responsibility for the upkeep of the FINRA/Nasdaq TRFs.¹³ The Participation Fee represents a baseline share of this responsibility. Responsibility for costs in excess of the proposed Participation Fee will continue to be recovered from participants through trade reporting fees in proportion to the volume of their activities on the FINRA/Nasdaq TRFs. The Participation Fee is distinct from the fee that Nasdaq separately charges under its rules to port into the FINRA/Nasdaq TRFs.

¹¹ The Participation Fee will be assessed on each registered participant, irrespective of whether the participant is identified (as Executing Party or Contra Party) in any trade report submitted to the FINRA/Nasdaq TRF in a given month. Participants that use multiple Market Participant Identifiers or “MPIDs” for purposes of reporting to the FINRA/Nasdaq TRF in accordance with Rule 6160 will not be assessed a Participation Fee for each separate MPID.

¹² Because the Participation Fee covers costs that are common to and allocated specifically to either FINRA/Nasdaq TRF, a participant will pay only a single Participation Fee even if it participates in both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago.

¹³ As discussed below, Retail Participants will be exempt from paying the Participation Fee.

Retail Participant Pricing Program

Nasdaq, as the Business Member, has determined to establish a new pricing program for participants that qualify as “Retail Participants” due to the fact that substantially all of their trade reporting activity to the FINRA/Nasdaq TRFs constitutes “Retail Orders.”¹⁴ For purposes of this pricing program, a “Retail Order” is an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.¹⁵

The purpose of this retail pricing program is to help Retail Participants to control their costs associated with reporting trades to the FINRA/Nasdaq TRFs and, in doing so, to limit or reduce any such costs that Retail Participants pass on to their retail customers. Such retail customers generally include individuals who trade less frequently and have fewer trades reported to the FINRA/Nasdaq TRFs than do other categories of customers;

¹⁴ In defining a “Retail Participant,” the proposal derives from a similar concept set forth in Nasdaq’s Designated Retail Order pricing program and its corresponding Designated Retail Order Attestation Form. See Securities Exchange Act Release No. 75375 (July 7, 2015), 80 FR 40098 (July 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2015-066). The Nasdaq Designated Retail Order Attestation Form provides that to qualify for the Designated Retail Order pricing program, an applicant must attest that “substantially all orders submitted to the Exchange by the Applicant would meet the qualifications for such orders under the Retail Order rule.” See <https://nasdaqtrader.com/content/ProductsServices/Trading/AttestationForm.pdf>. FINRA will refine the definition of a Retail Participant if it proves to be unworkable in practice.

¹⁵ The definition of a “Retail Order” derives from the definition of a “Designated Retail Order” in Nasdaq Rule 7018.

therefore, it is fair and reasonable to charge Retail Participants and their customers less than these other categories of participants and customers.¹⁶

A Retail Participant will be subject to the following fee schedule when it reports trades to the FINRA/Nasdaq TRF. For Media/Executing Party (Non-Media/Executing Party) fees, the monthly charge for a Retail Participant will be \$0.018 multiplied by the number of Media/Executing Party (Non-Media/Executing Party) trades that the Retail Participant reports to the FINRA/Nasdaq TRFs during that month. Such fees will be capped for a given month once the Retail Participant reports to the FINRA/Nasdaq TRFs, on average, at least 2,500 Media/Executing Party trades per day in Tapes A, B, or C during that month. If capped for trades in a particular Tape, Media/Executing Party (Non-Media/Executing Party) fees for a Retail participant will equal \$0.018 multiplied by 2,500 multiplied by the number of trading days during that month. Additionally, Retail Participants will be exempt from paying the \$350 per month Participant Fee.

The foregoing preserves for Retail Participants the existing Media/Executing Party (Non-Media/Executing Party) fee schedules, cap thresholds, and cap formulas. It excludes Retail Participants from the adjustments that Nasdaq, as the Business Member, is otherwise proposing to make to the fee schedules and caps and the addition of the Participant Fee. In other words, the average daily trade threshold for Retail Participants to qualify for the Media/Executing Party (Non-Media/Executing Party) cap will remain at

¹⁶ In other contexts, the Commission has approved pricing programs aimed at benefitting retail investors. See, e.g., Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (Order Approving File No. SR-NASDAQ-2012-129 (Nasdaq retail price improvement pilot program); and Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (Order Approving File Nos. SR-NYSE-2011-55 and SR-NYSEAmex-2011-84) (NYSE and NYSE Amex retail liquidity pilot programs).

2,500 Media/Executing Party trade reports and will not rise to 5,000, as it will for other participants. However, Retail Participants also will not be subject to proposed decreases in the \$0.018 per trade report fee that other participants will experience.

As to Media/Contra Party (Non-Media/Contra Party) fees, the monthly charge for a Retail Participant will be the same as that which applies to all other participants: \$0.013 multiplied by the number of Media/Contra Party (Non-Media/Contra Party) trades that the participant reports to the FINRA/Nasdaq TRFs during the month. However, the threshold for Retail Participants to qualify for a cap on Media/Contra Party (Non-Media/Contra Party) fees will differ from that which will apply to other participants. Retail Participants will continue to qualify for a cap (on a per Tape basis) on Media/Contra Party (Non-Media/Contra Party) fees during a given month if they report to the FINRA/Nasdaq TRFs, on average, at least 2,500 Media/Executing Party trades per day in Tapes A, B, or C, whereas the cap threshold for other participants will rise to an average of 5,000 Media/Executing Party trades per day. If capped, Media/Contra Party (Non-Media/Contra Party) fees for a Retail Participant will equal \$0.013 multiplied by 2,500 multiplied by the number of trading days during that month. Other participants will pay a maximum charge of \$0.13 multiplied by 5,000 multiplied by the number of trading days during the month.

To qualify as a Retail Participant and receive pricing under the Retail Participant fee schedule, a participant must complete and submit to Nasdaq, as the Business Member, an application. The application form will require the participant to attest to its qualifications as a Retail Participant on the FINRA/Nasdaq TRFs in which it is a

participant and for which it seeks Retail Participant pricing.¹⁷ The participant must also attest to its reasonable expectation that it will maintain its qualifications for a one year period following the date of attestation. Once a participant has been designated as a Retail Participant, it must complete and submit a written attestation to Nasdaq on an annual basis to retain its status as such. A Retail Participant must inform Nasdaq promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant.¹⁸

General Reorganization and Clarification

Finally, the proposed rule change would clarify and simplify Rule 7620A. Presently, the Rule is complex and potentially confusing as to the requirements for and interaction among the various cap programs. The proposed rule change would add prefatory language to the Rule to explain more clearly how the fees and cap programs work. As discussed above, the proposed rule change would add a title to the schedule of the daily average Media/Executing Party trade reporting activity needed to qualify for a cap – “Cap Qualifying Activity.” In addition, the amended Rule would be reorganized so that its provisions are listed in a more logical order and would segregate Comparison/Accept fees from the other “Standard Fees” (renamed as “Other Fees”). Lastly, as discussed above, the proposed rule change would rename the special Media/Contra cap program that applies only to ATS market makers so that it is more clearly differentiated from the regular Media/Contra Party cap.

¹⁷ Thus, a participant in both FINRA/Nasdaq TRFs that seeks Retail Participant pricing on both TRFs must attest to their qualifications as such on both TRFs.

¹⁸ The form of application and attestation that firms will be required to submit to Nasdaq under the proposed rule change is attached to this filing at Exhibit 3.

As noted in Item 2 of this filing, FINRA has filed the proposed rule changes for immediate effectiveness. The operative date will be September 1, 2018.

(b) Statutory Basis

FINRA believes that the proposed rule changes are consistent with the provisions of Section 15A(b)(5) of the Act,¹⁹ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

The proposed rule change is reasonable to: (1) raise from 2,500 to 5,000 the Cap Qualifying Activity that a participant needs to achieve to qualify for a Media (Non-Media)/Executing Party cap or a Media (Non-Media)/Contra Party cap under Rule 7620A; (2) raise the overall²⁰ maximum charges under each of these cap programs; and (3) raise the maximum monthly charge under the ATS Market Maker Media/Contra Cap from \$5,000 to \$10,000 per Tape. These caps and cap formulas have not keep pace with the rapid growth of trade reporting volume on the FINRA/Nasdaq TRF Carteret since they were introduced or with the corresponding increase in costs associated with operating, maintaining, and upgrading the FINRA/Nasdaq TRF Carteret. Nasdaq, as the Business Member, advises FINRA that a re-calibration of Rule 7620A will help Nasdaq to continue to accommodate the costs associated with rising trade reporting volumes

¹⁹ 15 U.S.C. 78o-3(b)(5).

²⁰ Overall, the proposed rule change will increase the maximum charges under the Media (Non-Media)/Executing Party fee caps even though the per trade portions of the fee cap formulas will decrease from \$0.018 to \$0.013.

while also making substantial enhancements to the technology, functionality, and performance of the Facilities.

These proposed increases are also reasonable because they will also help to allocate responsibility for the upkeep of the FINRA/Nasdaq TRFs more equitably among Executing Parties and Contra Parties. Over time, the fee burden associated with the FINRA/Nasdaq TRF Carteret has shifted disproportionately to Contra Parties; the proposed re-allocation will help ensure that Executing Parties pay their fair share of fees.

Nasdaq advises that it expects to earn a profit from the proposed changes, but it believes that such profit represents a reasonable return on its work in support of and investments in the FINRA/Nasdaq TRFs, and that the extent of such profit will be subject to and constrained by competitive pressures. As the Commission has recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior,”²¹ and “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”²² In this instance, the proposed fee increases will be subject to significant competition from the FINRA/NYSE TRF, which has proven itself able to increase its market share relative to the FINRA/Nasdaq TRF Carteret as a result of pricing and other competitive adjustments. As the Commission has held in the past, the

²¹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 at 74781 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving File No. SR-NYSEArca-2006-21).

²² Id. at 74781-82.

presence of competition provides a substantial basis for a finding that the proposal will be an equitable allocation of reasonable dues, fees and other charges.²³

Finally, and except as described below, these proposals to adjust fee levels and fee caps are equitable and not unfairly discriminatory because they will apply to all similarly situated participants.

The establishment of a special schedule of fees and fee caps for “Retail Participants,” for whom the existing system of trade reporting fees, cap thresholds, and cap formulas will continue to apply, is reasonable, equitable, and not unfairly discriminatory. Although the proposed rule change would make a distinction in pricing in favor of Retail Participants and retail investors, the Act only prohibits unfair discrimination. In this instance, FINRA believes that the establishment of a distinct category of Retail Participant pricing is fair because customers of Retail Participants generally include individuals who trade less frequently and report fewer trades to the FINRA/Nasdaq TRFs than do other categories of customers. FINRA believes that such customers, and the participants that serve them, should not bear primary financial responsibility for helping the FINRA/Nasdaq TRFs to recover rising costs and to account for increasing reporting activity. Moreover, maintaining the existing fee schedule for Retail Participants will help the FINRA/Nasdaq TRFs to maintain its competitive standing for Retail Participants and their retail trade reporting activity. FINRA believes that the proposed qualifications for Retail Participants are reasonably tailored to ensure that they include only those that exclusively or almost exclusively handle retail trading

²³ Id.

activity. Finally, FINRA notes that the Commission has, in other contexts, approved programs like this one that are intended to specifically benefit retail firms.²⁴

The proposal to establish a new ATS Market Maker Combined Media Activity Cap is reasonable as a means of fostering the establishment and growth among FINRA members of new businesses that involve reportable activity, such as single-dealer platforms and ATSS. In the early stages of these businesses, participants many not yet qualify for the existing fee cap programs because they may not yet conduct enough business as Executing Parties to qualify for the Media/Executing Party cap or otherwise meet the qualifications for the Media/Contra Party cap. The proposed cap will help these participants to establish and grow their businesses by limiting the fees that they will otherwise incur as they grow.

Furthermore, the proposed ATS Market Maker Combined Media Activity Cap is available to all FINRA members that use the FINRA/Nasdaq TRFs and meet the threshold requirements to qualify for the terms of the fee cap. While only some participants will qualify for the proposed cap and thus see a reduction in their FINRA/Nasdaq TRF trade reporting fees, Nasdaq, as the Business Member, has advised FINRA that the proposed cap is not unfairly discriminatory because the proposed fee cap is targeted to benefit those participants that have a small but growing volume of Executing Party activity on the FINRA/Nasdaq TRFs. Nasdaq advises FINRA that it is not unfairly discriminatory to limit participation to market makers with a daily average number of Media/Executing Party trades of less than 5,000 because participants with at

²⁴ See n.16, supra.

least 5,000 Media/Executing Party trades will be eligible to graduate to the Media/Executing Party Cap.

The proposed establishment of a fixed monthly Participation Fee is a reasonable means of ensuring that all participants in the FINRA/Nasdaq TRFs (other than Retail Participants, as discussed above) bear a share of financial responsibility for funding their use of the Facility, even if the extent of their use is minimal. Indeed, the FINRA/Nasdaq TRFs incur (or, in the case of the FINRA/Nasdaq TRF Chicago, will incur) costs associated with the mere addition and maintenance of participants' accounts that are independent of the participants' usage of those accounts to report trades. FINRA believes that it is equitable and non-discriminatory to assess a Participation Fee to help the FINRA/Nasdaq TRFs to recover these costs from all participants.

Finally, FINRA believes that it is reasonable to reorganize and clarify Rule 7620A so that it is easier to comprehend and presented in a more logical order. The proposal to reorganize and restate the Rule is also equitable and not unfairly discriminatory in that the proposal will apply to all similarly situated participants in the FINRA/Nasdaq TRFs.

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

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

Regulatory Need

Nasdaq, as the Business Member and operator of the FINRA/Nasdaq TRFs, collects all fees on behalf of the FINRA/Nasdaq TRFs. As discussed above, Nasdaq has observed an increase in off exchange volumes and the associated cost of operating and

improving the FINRA/Nasdaq TRFs, and thus determined to make several adjustments to the schedule of fees and caps to align those with the costs.

Economic Baseline

As discussed above, pursuant to FINRA Rule 7620A, participants in the FINRA/Nasdaq TRFs are currently subject to four categories of fees, each of which is applicable to transactions on the three Tapes: (1) Media/Executing Party; (2) Non-Media/Executing Party; (3) Media/Contra Party; (4) and Non-Media/Contra Party. The Rule also provides fee caps for participants for a particular Tape during a given month, separately for Media/Executing Party trades and Media/Contra Party trades.

Economic Impact

The proposed rule change entails several changes to the fee and cap structure. The potential marginal impact of each proposed change is discussed below.

Nasdaq has determined to raise the threshold for the “Cap Qualifying Activity” – i.e., the daily average number of Media/Executing Party trades that a participant must report to the FINRA/Nasdaq TRFs in a given month to qualify for caps on its trade reporting fees, from 2,500 reports in each of Tapes A, B, and C to 5,000 reports. Such increase in the cap qualifying activity will increase reporting fees for participants who currently meet the threshold for the cap. Assuming that the participants do not alter the number of reports, some participants may have activity below the threshold and may no longer be eligible for the fee caps. Such participants would potentially experience a larger impact from the proposed increase.

Under the proposed calculation for the Media/Executing Party and Non-Media/Executing fee, the cap would effectively increase by approximately 44%, from

\$990 ($\$0.018 \times 2,500 \times 22$) to \$1,430 ($\$0.013 \times 5,000 \times 22$), assuming 22 trading days in a month. Based on the reporting activity from the fourth quarter of 2017 and assuming that reporting activity would remain similar, under the proposed increase in fees and the cap, 27 participants would potentially be impacted from such increase in the cap and thus would pay more in reporting fees under the proposed change. Similarly, under the proposed calculation for the Media/Contra Party and Non-Media/Contra Party fee, the cap would increase 100%, from \$715 ($\$0.013 \times 2,500 \times 22$) to \$1,430 ($\$0.013 \times 5,000 \times 22$), again assuming 22 trading days in a month.

An analysis of the participants show that the firms impacted by the cap qualifier for Media/Executing Party and Non-Media/Executing activity are the same firms who would potentially incur the 100% increase on the Contra Party fees. Under the combined capped activity, the cost increase would be 68%, on average, for the participants who report both Executing Party and Contra Party trades. The proposed increase in the maximum monthly “Media/Contra” fee from \$5,000 per Tape per month to \$10,000 per Tape per month would potentially impact a few number of qualifying participants, but could provide savings in the future if they qualify for the ATS Market Maker Combined Media Activity Cap discussed above.

The ATS Market Maker Combined Media Activity Cap would initially benefit only a small number of ATSS due to their reporting activity. The reporting fees would potentially decrease by 25%, from \$30,000 to \$22,500 under the ATS Market Maker Combined Media Activity Cap. However, the fees could potentially decrease by approximately 43% if reporting activity increases.

The proposed participant fee would be assessed on all participants equally and would raise the overall reporting fees by \$350 per month regardless of the reporting activity. Retail Participants would be exempt from paying this fee.

The proposed rule change establishes a “Retail Participant Pricing Program” for participants whose trade reporting activity to the FINRA/Nasdaq TRFs constitutes “Retail Orders.” Under the proposed program, reporting activity to be eligible for the cap would be lower compared to that for non-retail participants. Retail Participants would potentially benefit from the proposed program, and incur relatively lower costs, consistent with relatively fewer trades that are considered retail.

FINRA analyzed data provided by Nasdaq that contain fees incurred by 545 participants in the final quarter of 2017, and projected fees that were estimated under the proposed fee and cap schedule assuming that the reporting behavior would be the same under the current and the proposed schedule. On a net basis, i.e., after incorporating the proposed changes in the fees and caps and the Participation Fee, 17 participants would experience a reduction in the total fees incurred, with an average estimate of \$722. Another 13 participants would be expected to see no change in the fees incurred, and these participants appear to be those that would be eligible for the Retail Participant Program. The remaining 515 participants would incur an estimated fee increase of \$598 per month. However, for 489 participants out of the 515, the increase is solely due to the proposed Participation Fee of \$350.

The potential net impact of the proposed rule change depends on whether participants alter their reporting activity across TRFs to be eligible for the fee caps. To the extent that the proposed increases impose a burden on participants, they may choose

to shift their reporting to other TRFs. The net impact would also depend on whether the proposed fee caps create an optimal reporting strategy to be eligible for a specific cap to maximize the overall savings for all trade types reported to the FINRA/Nasdaq TRFs.

Investors may also potentially incur costs to the extent that participants choose to pass some or all of the fee increase to their customers.

Finally, FINRA notes that the proposed fee and fee cap changes occur within the context of a competitive environment in which the various trade reporting facilities vie for market share. If any existing or prospective participant in either FINRA/Nasdaq TRF determines that the new fees or fee cap thresholds are too high or are unfavorable relative to fees and fee cap programs applicable to the FINRA/NYSE TRF, such participants may choose to report to the FINRA/NYSE TRF in lieu of the FINRA/Nasdaq TRFs, in which case the FINRA/Nasdaq TRFs will lose market share. Likewise, the FINRA/NYSE TRF is free to adjust its fees and fee cap programs, or to modify its functionality, in response to the changes proposed herein to render them more attractive relative to the FINRA/Nasdaq TRFs. FINRA notes, however, that in certain instances, differences in the relative functionalities among the FINRA/Nasdaq and FINRA/NYSE TRFs may impact participants' decisions to report to the FINRA/NYSE TRF, even if the participants find the FINRA/NYSE TRF fees and fee cap programs to be preferable.

Alternatives Considered

No other alternatives were considered for the proposed rule change.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act²⁵ and paragraph (f)(2) of Rule 19b-4 thereunder,²⁶ in that the proposed rule change is establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 3a. Form of attestation required to qualify for the ATS Market Maker Combined Media Cap under the proposed rule change.

²⁵ 15 U.S.C. 78(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(2).

Exhibit 3b. Application and form of attestation required to qualify as a Retail Participant under the proposed rule change.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2018-029)

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7620A to modify certain fees applicable to members that use the FINRA/Nasdaq Trade Reporting Facility Carteret (the “FINRA/Nasdaq TRF Carteret”) and the FINRA/Nasdaq Trade Reporting Facility

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

Chicago (the “FINRA/Nasdaq TRF Chicago”) (collectively, the “FINRA/Nasdaq TRFs”).⁵

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The FINRA/Nasdaq TRFs are facilities of FINRA that are operated by Nasdaq, Inc. (“Nasdaq”) and utilize Automated Confirmation Transaction Service technology. In connection with the establishment of the FINRA/Nasdaq TRFs, FINRA and Nasdaq

⁵ The Commission recently approved a proposed rule change to adopt rules relating to the establishment of the FINRA/Nasdaq TRF Chicago. See Securities Exchange Act Release No. 83559 (June 29, 2018), 83 FR 31589 (July 6, 2018) (Order Approving File No. SR-FINRA-2018-013). Among other things, the proposed rule change amended the Rule 7600A Series to provide that the schedules of credits and fees 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. SR-FINRA-2018-013 will be effective on the date that the FINRA/Nasdaq TRF Chicago commences operation, which FINRA anticipates will be in September 2018.

entered into a limited liability company agreement (the “LLC Agreement”). Under the LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/Nasdaq TRFs. Nasdaq, the “Business Member,” is primarily responsible for the management of the FINRA/Nasdaq TRFs’ business affairs, including establishing pricing for use of the FINRA/Nasdaq TRFs, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRFs.

Pursuant to the FINRA Rule 7600A Series, participants in the FINRA/Nasdaq TRFs are charged fees and may qualify for fee caps (Rule 7620A) and also may qualify for revenue sharing payments for trade reporting to the FINRA/Nasdaq TRFs (Rule 7610A). These rules are administered by Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRFs on behalf of FINRA,⁶ and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRFs.

Pursuant to FINRA Rule 7620A, participants in the FINRA/Nasdaq TRFs are subject to four categories of fees, each of which is applicable to transactions on the three Tapes:⁷ (1) Media/Executing Party; (2) Non-Media/Executing Party; (3) Media/Contra Party; and (4) Non-Media/Contra Party.⁸ Rule 7620A provides that for any category of

⁶ FINRA’s oversight of this function performed by the Business Member is conducted through a recurring assessment and review of TRF operations by an outside independent audit firm.

⁷ Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities (“Tape A”), NYSE American and regional exchange securities (“Tape B”), and Nasdaq Stock Market securities (“Tape C”).

⁸ Media eligible trade reports are those that are submitted to the FINRA/Nasdaq TRFs for public dissemination by the Securities Information Processors. By

fees, a participant will qualify for a cap on the fees they would otherwise pay to report trades to a particular Tape during a given month, provided that during the month, the participant separately has a daily average number of Media/Executing Party trades of at least 2,500 in that same Tape. Additionally, the Rule provides for a special fee cap program – known as the “Media/Contra Cap” – for participants that make markets in an alternative trading system (“ATS”).

Nasdaq, as the Business Member, has determined to make several adjustments to the schedule of fees and caps that applies to participants in the FINRA/Nasdaq TRFs. As discussed below, the overall aims of the proposed adjustments are to: (1) align the activity-based fees and cap levels with the rising costs of operating, maintaining, and improving the FINRA/Nasdaq TRF Carteret and, going forward, the FINRA/Nasdaq TRF Chicago; (2) re-calibrate the fee structure so that it provides for a more equitable allocation of fees among Executing Parties and Contra Parties; (3) ensure that all FINRA/Nasdaq TRF participants, regardless of the level of their reporting or contra activity, bear at least some baseline responsibility for the costs of their participation; and (4) clarify the fee structure. Nasdaq also intends for the proposed adjustments to generate profits for itself as the Business Member. FINRA is proposing to amend Rule 7620A accordingly.

contrast, non-media trade reports are not submitted to the FINRA/Nasdaq TRFs for public dissemination, but are submitted for regulatory and/or clearance and settlement purposes.

Pursuant to the Rule’s Supplementary Material, the “Executing Party (EP)” is defined as the member with the trade reporting obligation under FINRA rules, and the “Contra (CP)” is defined as the member on the contra side of a trade report.

Specifically, the proposed rule change would: (1) raise the threshold daily average number of Media/Executing Party trades that are necessary for a participant to qualify for a fee cap program during a month; (2) lower uncapped monthly charges for reporting Media/Executing Party and Non-Media/Executing Party trades and raise the caps on such fees, if applicable; (3) raise the caps on Media/Contra Party and Non-Media/Contra Party fees, if applicable; (4) raise the level of the cap that applies to ATS market makers; (5) establish a new fee cap program known as the “ATS Market Maker Combined Activity Cap”; (6) establish a new fixed monthly fee known as the “Participation Fee”; and (7) establish a special pricing tier for participants whose trade reporting activity to the FINRA/Nasdaq TRF consists of substantially all retail orders (“Retail Participants”). The proposed rule change also would re-organize the fee schedule and make other clarifying changes to Rule 7620A. Each of these proposals is described in detail below.

Cap Qualifying Activity

The proposed rule change would raise the level of “Cap Qualifying Activity” – i.e., the daily average number of Media/Executing Party trades that a participant must report to the FINRA/Nasdaq TRFs in a given month to qualify for caps on its trade reporting fees as set forth elsewhere in the fee schedule. Presently, the level of Cap Qualifying Activity is 2,500 for reports in each of Tapes A, B, and C. Nasdaq, as the Business Member, has determined to raise these threshold numbers to 5,000 in each Tape.

The levels of Cap Qualifying Activity have not increased since they were introduced in 2010,⁹ at a time when reporting volume on the FINRA/Nasdaq TRF Carteret was significantly lower than it is now. Indeed, average daily executions on the FINRA/Nasdaq TRF Carteret have increased by approximately 47 percent since 2012 even as cap thresholds have remained static. Meanwhile, the cost of operating the FINRA/Nasdaq TRF Carteret has increased by approximately 16 percent. These costs have increased for various reasons, including but not limited to inflation, investments that Nasdaq has made in upgrading and improving the facility, and also increased operational and maintenance costs that have flowed from rising levels of trade reporting activity. Nasdaq has advised that raising the levels of Cap Qualifying Activity will help to re-align the thresholds with rising volumes and costs.

Media/Executing Party and Non-Media/Executing Party Fees and Caps

The proposed rule change would amend the schedule of fees and associated caps for both Media/Executing Party and Non-Media/Executing Party trade reports. For both types of trade reports, Nasdaq, as the Business Member, has determined to lower the uncapped fee from \$0.018 to \$0.015 per side. Nasdaq also has determined to modify the formulas for calculating the maximum amount of fees that a participant will pay to report these trades if the participant achieves Cap Qualifying Activity. Presently, the formulas for the Media/Executing Party cap and the Non-Media/Executing Party cap are, respectively: \$0.018 x (the required average daily number of Media/Executing Party Trades for Tape A, B, or C) x (the number of trading days during the month); and \$0.018

⁹ See Securities Exchange Act Release No. 61817 (March 31, 2010), 75 FR 17810 (April 7, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2010-011).

x 2,500 x (the number of trading days during the month). Nasdaq has determined to lower the fee in the cap formulas from \$0.018 to \$0.013 and raise the average daily number of trade reports needed to qualify for the cap from 2,500 to 5,000. Finally, the proposed rule change would simplify the formula for the Media/Executing Party Cap by stating expressly the average daily number of Media/Executing Party trades necessary to qualify for the cap – 5,000 – rather than merely describe that number, as it does now.

Nasdaq has advised that the proposed changes are aimed at rationalizing Media (Non-Media)/Executing Party fee caps with the 47 percent increase in reporting activity to the FINRA/Nasdaq TRFs and the 16 percent increase in costs associated with the operation of the TRF that have occurred over the past six years. However, Nasdaq also proposes downward adjustments to the uncapped rates for reporting Media/Executing Party trades to dampen the financial impact of the increase in the cap upon participants that will no longer qualify for it under the proposed rule change.

Media/Contra Party and Non-Media/Contra Party Fees and Caps

The proposed rule change would raise the caps for both Media/Contra Party and Non-Media/Contra Party trades while keeping the uncapped monthly charge of \$0.013 per side the same. For both types of trades, Nasdaq, as the Business Member, has determined to modify the cap formulas so that, instead of being $\$0.013 \times 2,500 \times$ (the number of trading days during the month), the formulas will be $\$0.013 \times 5,000 \times$ (the number of trading days during the month). The rationale for this increase is the same as is described above.

Media/Contra Cap

FINRA Rule 7620A provides for a monthly “Media/Contra” fee cap of \$5,000 per Tape (A, B or C) that applies to all trades (i.e., Media/Executing Party, Non-Media/Executing Party, Media/Contra and Non-Media/Contra) under the Rule. Eligibility for this fee cap is based on a FINRA member’s trade reporting of Media/Contra trades to the FINRA/Nasdaq TRFs and its participation as a market maker on an ATS. To qualify as a market maker on an ATS, a FINRA member must maintain a two-sided quote for each security that the FINRA member maintains interest in within each ATS and display a quotation size of at least one normal unit of trading (specific for each security), and it must attest to these qualifications in writing. The FINRA member must also attest that it will continue to meet the ATS-based requirements to be eligible for the fee cap.¹⁰ To qualify for the cap, a FINRA member must have its Media/Contra Party trades equal, or exceed, 35% of its total volume on the FINRA/Nasdaq TRFs. The FINRA member also must be contra to a minimum of 1 million trades in Tape A, 500,000 trades in Tape C, and 250,000 trades in Tape B to qualify for the fee cap in the securities of the Tapes, respectively.

Nasdaq, as the Business Member, has determined to modify the Media/Contra Party fee cap program by increasing the maximum monthly per Tape charge applicable to qualifying participants. Specifically, the maximum monthly charge will increase from \$5,000 per Tape per month to \$10,000 per Tape per month. Nasdaq, as the Business Member, has determined that the existing cap level, which has not changed since it was introduced in 2015, no longer bears a reasonable relationship to the volume of qualifying

¹⁰ As set forth in the Rule, Nasdaq will periodically audit FINRA members that choose to participate to ensure compliance with the attestation.

participant reporting activity that occurs on the FINRA/Nasdaq TRFs. The volume of market maker Media/Contra Party reports to the FINRA/Nasdaq TRFs is growing rapidly. From January 2016 through June 2017, the firms that presently qualify for the cap increased their activity on the FINRA/Nasdaq TRF Carteret by 60%. Their activity presently exceeds the minimum qualifying threshold for the cap by more than fourfold.

In addition, the proposed rule change would change the name of this cap to the “ATS Market Maker Media/Contra Party Cap” to more accurately describe the program, add clarity to the fee schedule and avoid potential confusion with the other Media/Contra cap.

ATS Market Maker Combined Media Activity Cap

Nasdaq, as the Business Member, has determined to establish a new fee cap program, entitled the “ATS Market Maker Combined Media Activity Cap.” The purpose of the proposed cap is to foster new reportable business activities among FINRA members that do not qualify for the existing FINRA/Nasdaq TRFs fee cap program.

For example, a participant may be a new FINRA member or it may engage in new off-exchange business activities, such as the establishment of a single-dealer platform or an ATS. In the initial stages of these business activities, the participant may not qualify for the existing fee cap programs because the participant may not achieve the requisite daily average number of Media/Executing Party trades during a month or because it may not reliably maintain the requisite volume of Media/Contra Party activity to qualify for the Media/Contra Party cap (which, as noted above, would cap both its Executing Party and Contra Party fees).

The proposed ATS Market Maker Combined Media Activity Cap will provide assistance to such a participant by capping the combined FINRA/Nasdaq TRFs fees (i.e., Media/Executing Party, Media/Contra, Non-Media/Executing Party and Non-Media/Contra) that the participant would otherwise pay while the participant ramps up its new reportable activity to levels that would enable it to qualify for existing fee cap programs with higher qualification thresholds, such as the Media/Executing Party cap and the Media/Contra Party cap.

To qualify for the proposed ATS Market Maker Combined Media Activity Cap, a participant must: (1) qualify as a market maker on an ATS (as defined below); (2) engage in both Executing Party and Contra Party activities; and (3) average at least 2,500 Media/Executing Party trades in a given Tape per day during a month. If the participant meets this threshold, then the participant will pay for that month, on a per Tape basis, the lesser of \$7,500 or the sum of all the participant's combined monthly Executing Party and Contra Party fees for that Tape during the month (as calculated using the regular uncapped Media/Executing Party, Non-Media/Executing Party, Media/Contra Party, and Non-Media/Contra Party rates). If the participant's average daily Media/Executing Party trade reports reach at least 5,000 in a given Tape in a given month, then the participant will no longer qualify for the proposed ATS Market Maker Combined Media Activity Cap in that Tape in that month and, instead, will qualify for the regular cap programs for that month. If the participant does not reach 2,500 Media/Executing Party trades in a

given Tape per day during a month, the firm will be subject to the regular uncapped fee schedule or to other fee caps that may be applicable to it for that month.¹¹

As with the ATS Market Maker Media/Contra Party Cap, a participant qualifies as a market maker on an ATS by maintaining a two-sided quote for each security that the FINRA member maintains interest in within each ATS and by displaying a quotation size of at least one normal unit of trading (specific for each security). Additionally, as with the existing ATS Market Maker Media/Contra Party cap, the participant must attest to its market maker qualifications in writing and must re-certify its qualifications every six months.¹² Nasdaq will periodically audit participants to ensure that their attestations are accurate and that they qualify for the ATS Market Maker Combined Activity Cap.

Participation Fee

Nasdaq, as the Business Member, has determined to assess a new fixed monthly Participation Fee of \$350 that will apply to each participant in the FINRA/Nasdaq TRFs.¹³ The Participation Fee will help defray certain shared and common costs

¹¹ If a participant qualifies for the ATS Market Maker Combined Media Activity Cap in month 1 and then graduates out of the Combined Cap program in month 2 due to the fact that the participant's average daily Media/Executing Party trade reports in a given Tape in month 2 exceed 5,000, the participant will once again qualify for the ATS Market Maker Combined Media Activity Cap in month 3 if its average daily Media/Executing Party trade reports during month 3 fall back below 5,000.

¹² The form of attestation that firms will be required to submit to Nasdaq under the proposed rule change is attached to this filing at Exhibit 3.

¹³ The Participation Fee will be assessed on each registered participant, irrespective of whether the participant is identified (as Executing Party or Contra Party) in any trade report submitted to the FINRA/Nasdaq TRF in a given month. Participants that use multiple Market Participant Identifiers or "MPIDs" for purposes of reporting to the FINRA/Nasdaq TRF in accordance with Rule 6160 will not be assessed a Participation Fee for each separate MPID.

associated with the operation of the FINRA/Nasdaq TRFs, including overhead costs and the costs of developing, maintaining, and upgrading shared technology.¹⁴ Nasdaq believes that all users of the FINRA/Nasdaq TRFs – both large and small – should bear at least some responsibility for the upkeep of the FINRA/Nasdaq TRFs.¹⁵ The Participation Fee represents a baseline share of this responsibility. Responsibility for costs in excess of the proposed Participation Fee will continue to be recovered from participants through trade reporting fees in proportion to the volume of their activities on the FINRA/Nasdaq TRFs. The Participation Fee is distinct from the fee that Nasdaq separately charges under its rules to port into the FINRA/Nasdaq TRFs.

Retail Participant Pricing Program

Nasdaq, as the Business Member, has determined to establish a new pricing program for participants that qualify as “Retail Participants” due to the fact that substantially all of their trade reporting activity to the FINRA/Nasdaq TRFs constitutes “Retail Orders.”¹⁶ For purposes of this pricing program, a “Retail Order” is an order that

¹⁴ Because the Participation Fee covers costs that are common to and allocated specifically to either FINRA/Nasdaq TRF, a participant will pay only a single Participation Fee even if it participates in both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago.

¹⁵ As discussed below, Retail Participants will be exempt from paying the Participation Fee.

¹⁶ In defining a “Retail Participant,” the proposal derives from a similar concept set forth in Nasdaq’s Designated Retail Order pricing program and its corresponding Designated Retail Order Attestation Form. See Securities Exchange Act Release No. 75375 (July 7, 2015), 80 FR 40098 (July 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2015-066). The Nasdaq Designated Retail Order Attestation Form provides that to qualify for the Designated Retail Order pricing program, an applicant must attest that “substantially all orders submitted to the Exchange by the Applicant would meet the qualifications for such orders under the Retail Order rule.” See <https://nasdaqtrader.com/content/ProductsServices/Trading/AttestationForm.pdf>.

originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.¹⁷

The purpose of this retail pricing program is to help Retail Participants to control their costs associated with reporting trades to the FINRA/Nasdaq TRFs and, in doing so, to limit or reduce any such costs that Retail Participants pass on to their retail customers. Such retail customers generally include individuals who trade less frequently and have fewer trades reported to the FINRA/Nasdaq TRFs than do other categories of customers; therefore, it is fair and reasonable to charge Retail Participants and their customers less than these other categories of participants and customers.¹⁸

A Retail Participant will be subject to the following fee schedule when it reports trades to the FINRA/Nasdaq TRF. For Media/Executing Party (Non-Media/Executing Party) fees, the monthly charge for a Retail Participant will be \$0.018 multiplied by the number of Media/Executing Party (Non-Media/Executing Party) trades that the Retail Participant reports to the FINRA/Nasdaq TRFs during that month. Such fees will be capped for a given month once the Retail Participant reports to the FINRA/Nasdaq TRFs,

FINRA will refine the definition of a Retail Participant if it proves to be unworkable in practice.

¹⁷ The definition of a “Retail Order” derives from the definition of a “Designated Retail Order” in Nasdaq Rule 7018.

¹⁸ In other contexts, the Commission has approved pricing programs aimed at benefitting retail investors. *See, e.g.*, Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (Order Approving File No. SR-NASDAQ-2012-129 (Nasdaq retail price improvement pilot program); and Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (Order Approving File Nos. SR-NYSE-2011-55 and SR-NYSEAmex-2011-84) (NYSE and NYSE Amex retail liquidity pilot programs).

on average, at least 2,500 Media/Executing Party trades per day in Tapes A, B, or C during that month. If capped for trades in a particular Tape, Media/Executing Party (Non-Media/Executing Party) fees for a Retail participant will equal \$0.018 multiplied by 2,500 multiplied by the number of trading days during that month. Additionally, Retail Participants will be exempt from paying the \$350 per month Participant Fee.

The foregoing preserves for Retail Participants the existing Media/Executing Party (Non-Media/Executing Party) fee schedules, cap thresholds, and cap formulas. It excludes Retail Participants from the adjustments that Nasdaq, as the Business Member, is otherwise proposing to make to the fee schedules and caps and the addition of the Participant Fee. In other words, the average daily trade threshold for Retail Participants to qualify for the Media/Executing Party (Non-Media/Executing Party) cap will remain at 2,500 Media/Executing Party trade reports and will not rise to 5,000, as it will for other participants. However, Retail Participants also will not be subject to proposed decreases in the \$0.018 per trade report fee that other participants will experience.

As to Media/Contra Party (Non-Media/Contra Party) fees, the monthly charge for a Retail Participant will be the same as that which applies to all other participants: \$0.013 multiplied by the number of Media/Contra Party (Non-Media/Contra Party) trades that the participant reports to the FINRA/Nasdaq TRFs during the month. However, the threshold for Retail Participants to qualify for a cap on Media/Contra Party (Non-Media Contra Party) fees will differ from that which will apply to other participants. Retail Participants will continue to qualify for a cap (on a per Tape basis) on Media/Contra Party (Non-Media/Contra Party) fees during a given month if they report to the FINRA/Nasdaq TRFs, on average, at least 2,500 Media/Executing Party trades per day in

Tapes A, B, or C, whereas the cap threshold for other participants will rise to an average of 5,000 Media/Executing Party trades per day. If capped, Media/Contra Party (Non-Media/Contra Party) fees for a Retail Participant will equal \$0.013 multiplied by 2,500 multiplied by the number of trading days during that month. Other participants will pay a maximum charge of \$0.13 multiplied by 5,000 multiplied by the number of trading days during the month.

To qualify as a Retail Participant and receive pricing under the Retail Participant fee schedule, a participant must complete and submit to Nasdaq, as the Business Member, an application. The application form will require the participant to attest to its qualifications as a Retail Participant on the FINRA/Nasdaq TRFs in which it is a participant and for which it seeks Retail Participant pricing.¹⁹ The participant must also attest to its reasonable expectation that it will maintain its qualifications for a one year period following the date of attestation. Once a participant has been designated as a Retail Participant, it must complete and submit a written attestation to Nasdaq on an annual basis to retain its status as such. A Retail Participant must inform Nasdaq promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant.²⁰

General Reorganization and Clarification

Finally, the proposed rule change would clarify and simplify Rule 7620A.

Presently, the Rule is complex and potentially confusing as to the requirements for and

¹⁹ Thus, a participant in both FINRA/Nasdaq TRFs that seeks Retail Participant pricing on both TRFs must attest to their qualifications as such on both TRFs.

²⁰ The form of application and attestation that firms will be required to submit to Nasdaq under the proposed rule change is attached to this filing at Exhibit 3.

interaction among the various cap programs. The proposed rule change would add prefatory language to the Rule to explain more clearly how the fees and cap programs work. As discussed above, the proposed rule change would add a title to the schedule of the daily average Media/Executing Party trade reporting activity needed to qualify for a cap – “Cap Qualifying Activity.” In addition, the amended Rule would be reorganized so that its provisions are listed in a more logical order and would segregate Comparison/Accept fees from the other “Standard Fees” (renamed as “Other Fees”). Lastly, as discussed above, the proposed rule change would rename the special Media/Contra cap program that applies only to ATS market makers so that it is more clearly differentiated from the regular Media/Contra Party cap.

FINRA has filed the proposed rule changes for immediate effectiveness. The operative date will be September 1, 2018.

2. Statutory Basis

FINRA believes that the proposed rule changes are consistent with the provisions of Section 15A(b)(5) of the Act,²¹ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

The proposed rule change is reasonable to: (1) raise from 2,500 to 5,000 the Cap Qualifying Activity that a participant needs to achieve to qualify for a Media (Non-Media)/Executing Party cap or a Media (Non-Media)/Contra Party cap under Rule

²¹ 15 U.S.C. 78q-3(b)(5).

7620A; (2) raise the overall²² maximum charges under each of these cap programs; and (3) raise the maximum monthly charge under the ATS Market Maker Media/Contra Cap from \$5,000 to \$10,000 per Tape. These caps and cap formulas have not kept pace with the rapid growth of trade reporting volume on the FINRA/Nasdaq TRF Carteret since they were introduced or with the corresponding increase in costs associated with operating, maintaining, and upgrading the FINRA/Nasdaq TRF Carteret. Nasdaq, as the Business Member, advises FINRA that a re-calibration of Rule 7620A will help Nasdaq to continue to accommodate the costs associated with rising trade reporting volumes while also making substantial enhancements to the technology, functionality, and performance of the Facilities.

These proposed increases are also reasonable because they will also help to allocate responsibility for the upkeep of the FINRA/Nasdaq TRFs more equitably among Executing Parties and Contra Parties. Over time, the fee burden associated with the FINRA/Nasdaq TRF Carteret has shifted disproportionately to Contra Parties; the proposed re-allocation will help ensure that Executing Parties pay their fair share of fees.

Nasdaq advises that it expects to earn a profit from the proposed changes, but it believes that such profit represents a reasonable return on its work in support of and investments in the FINRA/Nasdaq TRFs, and that the extent of such profit will be subject to and constrained by competitive pressures. As the Commission has recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work

²² Overall, the proposed rule change will increase the maximum charges under the Media (Non-Media)/Executing Party fee caps even though the per trade portions of the fee cap formulas will decrease from \$0.018 to \$0.013.

powerfully to constrain unreasonable or unfair behavior,”²³ and “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”²⁴ In this instance, the proposed fee increases will be subject to significant competition from the FINRA/NYSE TRF, which has proven itself able to increase its market share relative to the FINRA/Nasdaq TRF Carteret as a result of pricing and other competitive adjustments. As the Commission has held in the past, the presence of competition provides a substantial basis for a finding that the proposal will be an equitable allocation of reasonable dues, fees and other charges.²⁵

Finally, and except as described below, these proposals to adjust fee levels and fee caps are equitable and not unfairly discriminatory because they will apply to all similarly situated participants.

The establishment of a special schedule of fees and fee caps for “Retail Participants,” for whom the existing system of trade reporting fees, cap thresholds, and cap formulas will continue to apply, is reasonable, equitable, and not unfairly discriminatory. Although the proposed rule change would make a distinction in pricing in favor of Retail Participants and retail investors, the Act only prohibits unfair discrimination. In this instance, FINRA believes that the establishment of a distinct category of Retail Participant pricing is fair because customers of Retail Participants

²³ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 at 74781 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving File No. SR-NYSEArca-2006-21).

²⁴ Id. at 74781-82.

²⁵ Id.

generally include individuals who trade less frequently and report fewer trades to the FINRA/Nasdaq TRFs than do other categories of customers. FINRA believes that such customers, and the participants that serve them, should not bear primary financial responsibility for helping the FINRA/Nasdaq TRFs to recover rising costs and to account for increasing reporting activity. Moreover, maintaining the existing fee schedule for Retail Participants will help the FINRA/Nasdaq TRFs to maintain its competitive standing for Retail Participants and their retail trade reporting activity. FINRA believes that the proposed qualifications for Retail Participants are reasonably tailored to ensure that they include only those that exclusively or almost exclusively handle retail trading activity. Finally, FINRA notes that the Commission has, in other contexts, approved programs like this one that are intended to specifically benefit retail firms.²⁶

The proposal to establish a new ATS Market Maker Combined Media Activity Cap is reasonable as a means of fostering the establishment and growth among FINRA members of new businesses that involve reportable activity, such as single-dealer platforms and ATSs. In the early stages of these businesses, participants may not yet qualify for the existing fee cap programs because they may not yet conduct enough business as Executing Parties to qualify for the Media/Executing Party cap or otherwise meet the qualifications for the Media/Contra Party cap. The proposed cap will help these participants to establish and grow their businesses by limiting the fees that they will otherwise incur as they grow.

Furthermore, the proposed ATS Market Maker Combined Media Activity Cap is available to all FINRA members that use the FINRA/Nasdaq TRFs and meet the

²⁶ See n.18, supra.

threshold requirements to qualify for the terms of the fee cap. While only some participants will qualify for the proposed cap and thus see a reduction in their FINRA/Nasdaq TRF trade reporting fees, Nasdaq, as the Business Member, has advised FINRA that the proposed cap is not unfairly discriminatory because the proposed fee cap is targeted to benefit those participants that have a small but growing volume of Executing Party activity on the FINRA/Nasdaq TRFs. Nasdaq advises FINRA that it is not unfairly discriminatory to limit participation to market makers with a daily average number of Media/Executing Party trades of less than 5,000 because participants with at least 5,000 Media/Executing Party trades will be eligible to graduate to the Media/Executing Party Cap.

The proposed establishment of a fixed monthly Participation Fee is a reasonable means of ensuring that all participants in the FINRA/Nasdaq TRFs (other than Retail Participants, as discussed above) bear a share of financial responsibility for funding their use of the Facility, even if the extent of their use is minimal. Indeed, the FINRA/Nasdaq TRFs incur (or, in the case of the FINRA/Nasdaq TRF Chicago, will incur) costs associated with the mere addition and maintenance of participants' accounts that are independent of the participants' usage of those accounts to report trades. FINRA believes that it is equitable and non-discriminatory to assess a Participation Fee to help the FINRA/Nasdaq TRFs to recover these costs from all participants.

Finally, FINRA believes that it is reasonable to reorganize and clarify Rule 7620A so that it is easier to comprehend and presented in a more logical order. The proposal to reorganize and restate the Rule is also equitable and not unfairly discriminatory in that the proposal will apply to all similarly situated participants in the FINRA/Nasdaq TRFs.

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

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

Regulatory Need

Nasdaq, as the Business Member and operator of the FINRA/Nasdaq TRFs, collects all fees on behalf of the FINRA/Nasdaq TRFs. As discussed above, Nasdaq has observed an increase in off exchange volumes and the associated cost of operating and improving the FINRA/Nasdaq TRFs, and thus determined to make several adjustments to the schedule of fees and caps to align those with the costs.

Economic Baseline

As discussed above, pursuant to FINRA Rule 7620A, participants in the FINRA/Nasdaq TRFs are currently subject to four categories of fees, each of which is applicable to transactions on the three Tapes: (1) Media/Executing Party; (2) Non-Media/Executing Party; (3) Media/Contra Party; (4) and Non-Media/Contra Party. The Rule also provides fee caps for participants for a particular Tape during a given month, separately for Media/Executing Party trades and Media/Contra Party trades.

Economic Impact

The proposed rule change entails several changes to the fee and cap structure. The potential marginal impact of each proposed change is discussed below.

Nasdaq has determined to raise the threshold for the "Cap Qualifying Activity" – i.e., the daily average number of Media/Executing Party trades that a participant must report to the FINRA/Nasdaq TRFs in a given month to qualify for caps on its trade

reporting fees, from 2,500 reports in each of Tapes A, B, and C to 5,000 reports. Such increase in the cap qualifying activity will increase reporting fees for participants who currently meet the threshold for the cap. Assuming that the participants do not alter the number of reports, some participants may have activity below the threshold and may no longer be eligible for the fee caps. Such participants would potentially experience a larger impact from the proposed increase.

Under the proposed calculation for the Media/Executing Party and Non-Media/Executing fee, the cap would effectively increase by approximately 44%, from \$990 ($\$0.018 \times 2,500 \times 22$) to \$1,430 ($\$0.013 \times 5,000 \times 22$), assuming 22 trading days in a month. Based on the reporting activity from the fourth quarter of 2017 and assuming that reporting activity would remain similar, under the proposed increase in fees and the cap, 27 participants would potentially be impacted from such increase in the cap and thus would pay more in reporting fees under the proposed change. Similarly, under the proposed calculation for the Media/Contra Party and Non-Media/Contra Party fee, the cap would increase 100%, from \$715 ($\$0.013 \times 2,500 \times 22$) to \$1,430 ($\$0.013 \times 5,000 \times 22$), again assuming 22 trading days in a month.

An analysis of the participants show that the firms impacted by the cap qualifier for Media/Executing Party and Non-Media/Executing activity are the same firms who would potentially incur the 100% increase on the Contra Party fees. Under the combined capped activity, the cost increase would be 68%, on average, for the participants who report both Executing Party and Contra Party trades. The proposed increase in the maximum monthly "Media/Contra" fee from \$5,000 per Tape per month to \$10,000 per Tape per month would potentially impact a few number of qualifying participants, but

could provide savings in the future if they qualify for the ATS Market Maker Combined Media Activity Cap discussed above.

The ATS Market Maker Combined Media Activity Cap would initially benefit only a small number of ATSs due to their reporting activity. The reporting fees would potentially decrease by 25%, from \$30,000 to \$22,500 under the ATS Market Maker Combined Media Activity Cap. However, the fees could potentially decrease by approximately 43% if reporting activity increases.

The proposed participant fee would be assessed on all participants equally and would raise the overall reporting fees by \$350 per month regardless of the reporting activity. Retail Participants would be exempt from paying this fee.

The proposed rule change establishes a “Retail Participant Pricing Program” for participants whose trade reporting activity to the FINRA/Nasdaq TRFs constitutes “Retail Orders.” Under the proposed program, reporting activity to be eligible for the cap would be lower compared to that for non-retail participants. Retail Participants would potentially benefit from the proposed program, and incur relatively lower costs, consistent with relatively fewer trades that are considered retail.

FINRA analyzed data provided by Nasdaq that contain fees incurred by 545 participants in the final quarter of 2017, and projected fees that were estimated under the proposed fee and cap schedule assuming that the reporting behavior would be the same under the current and the proposed schedule. On a net basis, i.e., after incorporating the proposed changes in the fees and caps and the Participation Fee, 17 participants would experience a reduction in the total fees incurred, with an average estimate of \$722. Another 13 participants would be expected to see no change in the fees incurred, and

these participants appear to be those that would be eligible for the Retail Participant Program. The remaining 515 participants would incur an estimated fee increase of \$598 per month. However, for 489 participants out of the 515, the increase is solely due to the proposed Participation Fee of \$350.

The potential net impact of the proposed rule change depends on whether participants alter their reporting activity across TRFs to be eligible for the fee caps. To the extent that the proposed increases impose a burden on participants, they may choose to shift their reporting to other TRFs. The net impact would also depend on whether the proposed fee caps create an optimal reporting strategy to be eligible for a specific cap to maximize the overall savings for all trade types reported to the FINRA/Nasdaq TRFs.

Investors may also potentially incur costs to the extent that participants choose to pass some or all of the fee increase to their customers.

Finally, FINRA notes that the proposed fee and fee cap changes occur within the context of a competitive environment in which the various trade reporting facilities vie for market share. If any existing or prospective participant in either FINRA/Nasdaq TRF determines that the new fees or fee cap thresholds are too high or are unfavorable relative to fees and fee cap programs applicable to the FINRA/NYSE TRF, such participants may choose to report to the FINRA/NYSE TRF in lieu of the FINRA/Nasdaq TRFs, in which case the FINRA/Nasdaq TRFs will lose market share. Likewise, the FINRA/NYSE TRF is free to adjust its fees and fee cap programs, or to modify its functionality, in response to the changes proposed herein to render them more attractive relative to the FINRA/Nasdaq TRFs. FINRA notes, however, that in certain instances, differences in the relative functionalities among the FINRA/Nasdaq and FINRA/NYSE TRFs may

impact participants' decisions to report to the FINRA/NYSE TRF, even if the participants find the FINRA/NYSE TRF fees and fee cap programs to be preferable.

Alternatives Considered

No other alternatives were considered for the proposed rule change.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁷ and paragraph (f)(2) of Rule 19b-4 thereunder.²⁸ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(2).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2018-029 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-2018-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal

identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2018-029 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Robert W. Errett
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 3a**ATS Market Maker Combined Media Cap Program**

In accordance with FINRA/Nasdaq Trade Reporting Facility (TRF) rules,¹ a member or member organization must certify every six months that it provides market making² functions on its off-exchange trading activity to be eligible for a fee cap based on Combined Media Activity trades.

Date:		Initial Application Date:	
Full Name of Firm:			
CRD No:		Primary MPID:	
Provide the following information: list all trading venues registered pursuant to Regulation ATS on which submitting firm participates as a market maker; Firm Name, ATS Name, MPID.			
Firm Name (Owner of ATS)			
ATS Name		ATS MPID	
Authorized Officer - Provide information on the individual responsible for completing this Attestation and executing the Certification and Agreement below on behalf of the applicant firm. NOTE: This individual will be considered responsible for providing any amendments to this form as required by the relevant Rules referenced above.			
Name:		Title:	
Phone:		Email:	
Certification and Agreement			
The Applicant firm, by its duly authorized officer identified below, hereby certifies that the entities listed in this application are where the submitting firm is a market maker. The Applicant Firm agrees to provide Nasdaq, Inc., upon request, information to verify the market making status of the entities listed herein. The Applicant Firm shall also provide immediate notice of any event that causes an entity listed herein to cease to be a market maker of the referenced firms.			
Signature of Authorized Officer:		Date:	
Approved by Nasdaq Regulation:		Date:	

¹ See FINRA Rule 7620A.

² **Market Making Activities must include:** 1) maintaining two-sided quotes for each security within each ATS the submitting firm references; and 2) displaying a quotation size for at least one normal unit of trading (specific for each security).

EXHIBIT 3b

THE FINRA/NASDAQ TRADE REPORTING FACILITY RETAIL PARTICIPANT APPLICATION AND ATTESTATION FORM

FINRA/Nasdaq TRF Retail Participant Qualifications:

(1) To qualify as a Retail Participant to the FINRA/Nasdaq Trade Reporting Facility Carteret (“FINRA/Nasdaq TRF Carteret”), the FINRA/Nasdaq Trade Reporting Facility Chicago (“FINRA/Nasdaq TRF Chicago”), or both (the “FINRA/Nasdaq TRFs”), substantially all of a participant’s trade reporting activity to the FINRA/Nasdaq TRF or TRFs in which it participates must comprise Retail Orders. A Retail Order means an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market, and the order does not originate by a trading algorithm or any other computerized methodology.

(2) To become a Retail Participant, a participant must complete and submit the following:

(a) a completed application form, including a signed written attestation that substantially all of its trade reporting activity to the FINRA/Nasdaq TRF then comprises and that it reasonably expects that such activity will continue to comprise Retail Orders for a one year period after the date of attestation (attestation will be reviewed and approved by Nasdaq, Inc.); and

(b) supporting documentation sufficient to demonstrate the retail nature of the participant’s trade reporting activity to the FINRA/Nasdaq TRF Carteret, the FINRA/Nasdaq TRF Chicago, or both, as applicable. Examples may include sample marketing literature, website screenshots, and other publicly disclosed materials describing the nature of retail activity. These materials must be reasonably sufficient to demonstrate that the applicant’s trade reports meet the requirements of the Retail Order definition.

(3) After an applicant submits the application form and supporting documentation, the FINRA/Nasdaq TRF(s) shall notify the applicant of its(their) decision in writing.

(4) A disapproved applicant may reapply for Retail Participant status 90 days after the disapproval notice is issued.

(5) A Retail Participant may voluntarily withdraw from such status at any time by giving written notice to FINRA/Nasdaq TRF(s).

FINRA / Nasdaq TRF Retail Participant Application Form

1. PARTICIPANT INFORMATION

Name of FINRA Member Firm (Applicant):

Web CRD Number:

Business Contact Name:

Business Address:

Business Contact Phone:

Business Contact E-Mail:

2. ATTESTATION

By executing this Application, Applicant attests that substantially all of its trade reporting to the FINRA/Nasdaq TRFs meets the definition of a Retail Order under FINRA Rule 7620A.01 as of the date of this attestation. The Applicant further attests that it reasonably expects, in good faith, that substantially of its trade reporting activity will continue to comprise Retail Orders for a one-year period following the date of this attestation. Applicant shall monitor its trade reporting activities and plans and promptly inform the FINRA/Nasdaq TRFs at any time that it no longer qualifies or reasonably expects that it will no longer qualify as a Retail Participant.

Name (Printed):	
Name (Signature):	
Title:	
Date:	

Please return this completed application form to Nasdaq, Inc.

Email: subscriber@nasdaq.com

Fax: +1 212 231 5426

EXHIBIT 5

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

* * * * *

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

* * * * *

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

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

* * * * *

7620A. FINRA/Nasdaq Trade Reporting Facility Reporting Fees

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

Participation Fee

\$350 per month per participant*

\$0 per month for Retail Participants

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

Non-Comparison/Accept (Non-Match/Compare) [Charges:] Trade Report Fees and Caps on Trade Report Fees

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

To qualify for the caps (set forth in paragraphs 1-4 below) on the charges that participants incur to report trades to the FINRA/Nasdaq Trade Reporting Facility during a month, a participant must achieve Cap Qualifying Activity during that month, as set forth below. A participant will qualify for caps on a per Tape basis. For example, if in a given month, a participant averages 6,000 Media/Executing Party trade reports per day in Tape A, 5,000 average daily Media/Executing Party trade reports in Tape B, and 1,000 average daily Media/Executing Party trade reports in Tape C, then the participant will qualify for caps on the fees it pays during that month for reporting Media/Executing Party, Media/Non-Executing Party,

Media/Contra Party, and Non-Media/Contra Party trades in Tapes A and B, but the participant will not qualify for such caps with respect to trade reports in Tape C.

Cap Qualifying Activity

(Requisite Daily Average Media/Executing Party Trade Reporting Activity for a Participant to Qualify for Fee Caps in Paragraphs 1 – 4 Below)

Tape	Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap	<u>Daily Average Number of Retail Participant Media/Executing Party Trades During the Month Needed to Qualify for Cap</u>
A	[2500]5,000	2,500
B	[2500]5,000	2,500
C	[2500]5,000	2,500

1. Media/Executing Party Trade Report Fees and Cap

Monthly Charge	Maximum Monthly Charge if Capped
(\$0.01[8]5) x (Number of Media/Executing Party Reports)	(\$0.01[8]3) x [(Required Daily Average Number of Media/EP Trades for Tape A, B

During the Month)	or C)] <u>5,000</u> x (Number of Trading Days During the Month)
<u>Monthly Charge for Retail Participants</u>	<u>Maximum Monthly Charge for Retail Participants if Capped</u>
<u>\$0.018 x (Number of Retail Participant Media/Executing Party Reports During the Month)</u>	<u>(\$0.018) x 2,500 x (Number of Trading Days During the Month)</u>
<u>2. Non-Media/Executing Party Trade Report Fees and Cap</u>	
Monthly Charge	Maximum Monthly Charge if Capped
<u>(\$0.01[8]<u>5</u>) x (Number of Non-Media/Executing Party Reports During the Month)</u>	<u>(\$0.01[8]<u>3</u>) x [2500]<u>5,000</u> for Tape A, B or C x (Number of Trading Days During the Month)</u>
<u>Monthly Charge for Retail Participants</u>	<u>Maximum Monthly Charge for Retail Participants if Capped</u>
<u>\$0.018 x (Number of Retail Participant Non-Media/Executing Party Reports During the Month)</u>	<u>(\$0.018) x 2,500 for Tape A, B or C x (Number of Trading Days During the Month)</u>
<u>3. Media/Contra Party Trade Report Fees and Cap</u>	
Monthly Charge	Maximum Monthly Charge if Capped

$(\$0.013) \times (\text{Number of Media/Contra Party Reports During the Month})$	$(\$0.013) \times [2500]5,000 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month})$
<u>Monthly Charge for Retail Participants</u>	<u>Maximum Monthly Charge for Retail Participants if Capped</u>
$\$0.013 \times (\text{Number of Retail Participant Media/Contra Party Reports During the Month})$	$(\$0.013) \times 2,500 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month})$
[Media/Contra Cap]	
<p>[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:]</p> <ul style="list-style-type: none"> [• 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.] 	
[Maximum Monthly Charge if	[\$5,000 per Tape (A, B or C)]

Capped]	
<u>4. Non-Media/Contra Party Fees and Cap</u>	
Monthly Charge	Maximum Monthly Charge if Capped
(\$0.013) x (Number of Non-Media/Contra Party Reports During the Month)	(\$0.013) x [2500]5,000 for Tape A, B or C x (Number of Trading Days During the Month)
<u>Monthly Charge for Retail Participants</u>	<u>Maximum Monthly Charge for Retail Participants if Capped</u>
(\$0.013) x (Number of Non-Media/Contra Party Reports During the Month)	(\$0.013) x 2,500 for Tape A, B or C x (Number of Trading Days During the Month)
<u>5. ATS Market Maker Media/Contra Party Cap</u>	
<p><u>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:</u></p> <ul style="list-style-type: none"> • <u>Participant's percentage of contra media trades must represent at least 35% of their total FINRA/Nasdaq Trade Reporting Facility volume.</u> • <u>Participant must be contra to a minimum of 1,000,000 trades in Tape A, 500,000 trades in Tape C or 250,000 trades in Tape B.</u> • <u>Participant must complete an attestation form stating that they maintain a two-</u> 	

sided quote in each symbol traded on an alternative trading system registered pursuant to Regulation ATS and display a quotation size of at least one normal unit of trading (specific for each security) thereon. Participants will be audited by Nasdaq, Inc. periodically.

Maximum Monthly Charge if

Capped

\$10,000 per Tape (A, B or C)

6. ATS Market Maker Combined Media Activity Cap

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

- Participant averages at least 2,500 Media/Executing Party trade reports per Tape (A, B or C) per day during a month.
- Participant must complete an attestation form and re-certify every six months that they maintain a two-sided quote in each symbol traded on an alternative trading system registered pursuant to Regulation ATS and display a quotation size of at least one normal unit of trading (specific for each security) thereon.
Participants will be audited by Nasdaq, Inc. periodically.

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

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

Comparison/Accept Fees

\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)

[Standard] Other Fees:

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 For purposes of this Rule, the terms below shall have the following meanings.

"Comparison/Accept" shall mean transactions that are subject to the ACT Comparison process.

"Non-Comparison/Accept (Non-Match/Compare)" shall mean transactions that are not subject to the ACT Comparison process and may be submitted as "Media" and "Non-Media," clearing and non-clearing, AGU, QSR, one-sided and "Internalized cross" trade reports.

"Internalized cross" shall mean cross trades where a single party is on both sides of a trade report.

"Executing Party (EP)" shall mean the member with the trade reporting obligation under FINRA rules.

"Contra Party or Contra (CP)" shall mean the member on the contra side of a trade report.

"Media" reports shall mean reports of transactions submitted for public dissemination.

"Non-Media" reports shall mean reports of transactions not submitted for public dissemination.

"Retail Participant" shall mean a participant in the FINRA/Nasdaq Trade Reporting Facility for which substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.

"Retail Order" shall mean an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

.02 Participants that qualify for the Media/Contra fee cap must contact Nasdaq Trading Services to complete the attestation forms required under this Rule.

.03 A participant that wishes to qualify as a Retail Participant and receive Retail Participant pricing under this Rule, must complete and submit to Nasdaq, Inc. an application form and a written attestation of its then-existing qualifications as a Retail Participant and its reasonable expectation that it will maintain such qualifications for a one year period following the date of attestation. A Retail Participant must also complete and submit a written attestation to Nasdaq, Inc. on an annual basis to retain its status as such. A Retail Participant must inform Nasdaq, Inc. promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant. Participants must contact Nasdaq, Inc. for the application and attestation forms. Retail Participants will be audited by Nasdaq, Inc. periodically.

* * * * *