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

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| 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"/> |
| | | | Rule | | |
| Pilot <input type="checkbox"/> | 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 type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input checked="" type="checkbox"/> 19b-4(f)(6) | |

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| 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"/> | |

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

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

Proposed Rule Change to Adopt FINRA Rule 7640B (Data Products Offered By NYSE)

Contact Information

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

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

Signature

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

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

(Title *)

Date 03/25/2019
 By Stephanie Dumont
 (Name *)

Senior Vice President and Director of Capital Markets Policy

Stephanie Dumont,

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt FINRA Rule 7640B (Data Products Offered By NYSE) to (1) describe FINRA’s practices relating to the distribution of market data for over-the-counter (“OTC”) transactions in NMS stocks generated through the operation of the FINRA/NYSE Trade Reporting Facility (“FINRA/NYSE TRF”) by NYSE Market (DE), Inc. (“NYSE Market”) and its affiliate, New York Stock Exchange LLC (“NYSE”); and (2) identify NYSE products that distribute FINRA/NYSE TRF data to third parties.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change has been approved by senior management of FINRA pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The proposed rule change will be operative on April 29, 2019.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

Background

The FINRA Trade Reporting Facilities (“TRFs”) are facilities for the reporting of OTC transactions in NMS stocks that allow the TRF “Business Members,” which themselves are affiliates of self-regulatory organizations (“SROs”), to retain commercial use of the market data reported to the respective TRFs.² The operation of each TRF is governed by a Limited Liability Company Agreement (the “LLC Agreement”) between FINRA and the respective Business Member. (The LLC Agreements, which were submitted as part of the rule filings to establish the respective TRFs and subsequently amended and restated, appear in the FINRA Manual.)

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

² The establishment of each TRF was subject to a proposed rule change filed with the Commission. See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving File No. SR-NASD-2005-087); Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2007-011); and Securities Exchange Act Release No. 83559 (June 29, 2018), 83 FR 31589 (July 6, 2018) (Order Approving File No. SR-FINRA-2018-013).

is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from operation of the TRF. The Business Member also provides the “user facing” front-end technology used to operate the TRF and transmit in real time trade report data directly to the NMS securities information processors (“SIPs”) and to FINRA for audit trail purposes.

Under the terms of the business arrangement between FINRA and the Business Members, each TRF owns data resulting from its operation. Each Business Member has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use market data generated by its TRF, other than data generated exclusively for regulatory purposes (“covered market data”),³ consistent with all applicable laws, rules and regulations, and has a contractual right to sell covered market data to third parties.⁴

Accordingly, although the TRFs are facilities of FINRA, the Business Members have the right under the contractual arrangements establishing the TRFs to develop market data products using covered market data. As each Business Member is an affiliate of an SRO, use of TRF data is conducted through the Business Member’s affiliated SRO, is subject to a separate proposed rule change filed with the Commission by the affiliate in its SRO capacity and must satisfy the appropriate statutory standards.

In addition to real-time interaction with Business Member staff when operational issues arise, FINRA currently executes its SRO oversight functions by performing a

³ For purposes of proposed Rule 7640B, “covered market data” would be defined as market data generated by the FINRA/NYSE TRF, other than data generated exclusively for regulatory purposes.

⁴ Under the TRF contracts, FINRA has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use the data generated by the TRF to fulfill its contractual rights and obligations, as well as its obligations as an SRO.

three-part regularly recurring review of TRF operations. First, before initial operation of the TRF can commence, the Business Member is required to certify in writing that TRF operations will comply with all relevant FINRA rules and federal securities laws, and on a quarterly basis thereafter, the Business Member must submit its current TRF procedures and a certification of compliance with those procedures. Second, FINRA staff conducts monthly conference calls with each Business Member to review TRF operations. These monthly calls follow an established agenda, including discussion of, among other things: (1) any system outages or issues since the prior monthly conference call (as well as any applicable reporting to FINRA and the SEC), (2) the status of pending systems changes, and (3) TRF market data products, including data latency and whether the Business Member has or is developing any new products that would use TRF data. Third, FINRA oversees a regular assessment cycle and extensive review of TRF operations, as measured against the TRF business requirements document and coding guidelines established by FINRA, by an outside independent audit firm. FINRA also requires the Business Members to submit on a quarterly basis an attestation that (1) identifies all products that use TRF data, and (2) certifies that the Business Member has no other products that use TRF data and that any future products that use TRF data will be developed in consultation with FINRA.

Under the TRF framework, the Business Member must ensure, among other things, that the distribution and sale of market data products that use TRF data are consistent with the requirements of the Act. In addition to FINRA's general oversight of TRF operations, and in furtherance of FINRA's SRO responsibilities with respect to OTC market data, FINRA requires that each Business Member (and its SRO affiliate) make

specific commitments and undertakings with respect to its products that use TRF data. Among other things, the Business Member will, consistent with the Commission’s interpretation of Rule 603(a) under SEC Regulation NMS, take reasonable steps to ensure—through system architecture, monitoring, or otherwise—that it does not transmit TRF transaction data to vendors or users any sooner than the TRF transmits the data to the SIPs.⁵ The Business Member also must have in place procedures and controls to ensure that its products that use TRF data are not distributed prior to dissemination of TRF data to the SIPs, including monitoring for compliance with this obligation.

⁵ Rule 603(a), 17 CFR 242.603(a), provides as follows:

(1) Any exclusive processor, or any broker or dealer with respect to information for which it is the exclusive source, that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor shall do so on terms that are fair and reasonable.

(2) Any national securities exchange, national securities association, broker, or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission stated that “adopted Rule 603(a) prohibits an SRO or broker-dealer from transmitting data to a vendor or user any sooner than it transmits the data to a Network processor.” See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37567 (June 29, 2005) (Adopting Release; File No. S7-10-04).

In a subsequent order, the Commission stated that “exchanges have an obligation under Rule 603(a) to take reasonable steps to ensure—through system architecture, monitoring, or otherwise—that they release data relating to current best-priced quotations and trades through proprietary feeds no sooner than they release data to the Network Processor, including during periods of heavy trading.” See Securities Exchange Act Release No. 67857 (September 14, 2012) (Order Instituting Administrative and Cease-and-Desist Proceedings; File No. 3-15023).

In this regard, NYSE, the Business Member's affiliated SRO, has tools to compare the time of transmission of data to the SIPs and to NYSE's proprietary data feeds that use corresponding data to determine whether data was transmitted to a proprietary vendor or user sooner than to the SIPs. In addition, NYSE monitors the overall operational performance of its proprietary and SIP market data feeds intraday and has developed escalation and reporting procedures in the event that issues are detected. NYSE has represented to FINRA that these tools and procedures would be used for purposes of monitoring for potential latency for any future real-time products developed by NYSE that use and distribute FINRA/NYSE TRF data (provided such data is also required to be provided to the SIPs).

As further detailed below, NYSE will be adding FINRA/NYSE TRF transaction data to its existing data feeds, and, as such, NYSE will leverage the existing Rule 603(a) compliance programs for those data feeds for purposes of ensuring compliant distribution of FINRA/NYSE TRF transaction data contained therein.

Proposed FINRA Rule 7640B

FINRA is proposing to adopt new Rule 7640B to address the distribution of FINRA/NYSE TRF data in market data products developed by NYSE. Proposed Rule 7640B is substantively identical to current Rule 7640A, which addresses the distribution of FINRA/Nasdaq TRF data in market data products developed by Nasdaq, Inc., as the FINRA/Nasdaq TRF Business Member, and its wholly owned SRO subsidiary, The

NASDAQ Stock Market LLC. Rule 7640A was adopted and amended pursuant to proposed rule changes filed with the Commission.⁶

As noted above, the FINRA/NYSE TRF is a facility of FINRA and FINRA/NYSE TRF data is OTC data for which FINRA is responsible under the Act. However, any market data products would be distributed and sold by NYSE Market, the Business Member, through NYSE, its affiliated SRO, not FINRA. As such, paragraphs (a) and (b) of proposed Rule 7640B codify the contractual arrangements between FINRA and NYSE Market and provide for the overall structure relating to the FINRA/NYSE TRF and the permissible use of FINRA/NYSE TRF data. For example, proposed paragraph (b) provides that fees for market data products that use covered market data are charged by NYSE pursuant to an NYSE rule filing.⁷ Such fees must be adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act, and NYSE must demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory. Paragraph (c) of proposed Rule 7640B identifies NYSE products that use FINRA/NYSE TRF data pursuant to a proposed rule change filed by NYSE with the

⁶ See Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-002); and Securities Exchange Act Release No. 76385 (November 6, 2015), 80 FR 70277 (November 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-045).

⁷ FINRA notes that such fees can be found in the “NYSE PDP Market Data Pricing” fee schedule, available at www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.

Commission, and specifically the NYSE Trades market data feed⁸ and NYSE BQT market data feed.⁹

FINRA notes that pursuant to the Consolidated Tape Association (“CTA”) Plan and the Nasdaq Unlisted Trading Privileges (“UTP”) Plan, if a proprietary feed includes trades reported by the TRF to the SIP processor, then the TRF must also furnish the SIP processor with the time of the transmission as published on the proprietary feed.¹⁰ This time stamp is in addition to the time of the transaction, which, for TRF trades, is the time of execution that a FINRA member reports to a TRF in accordance with FINRA rules. FINRA/NYSE TRF data will not be included in the NYSE Trades market data feed and the NYSE BQT market data feed until the required systems changes have been made to enable the FINRA/NYSE TRF to provide the SIP processor with the time of transmission as published on the feeds.

⁸ See Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR-NYSE-2009-04); Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2013-23); Securities Exchange Act Release No. 70066 (July 30, 2013), 78 FR 47474 (August 5, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2013-53); and Securities Exchange Act Release No. 76599 (December 9, 2015), 80 FR 77676 (December 15, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2015-65).

⁹ See Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (Order Approving File No. SR-NYSE-2014-40); and Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2018-22).

¹⁰ See CTA Plan Section VI(c) and UTP Plan Section VIII.B.

NYSE Trades Market Data Feed

Pursuant to proposed rule change SR-NYSE-2019-06, NYSE is proposing to enhance the content of the NYSE Trades market data feed product offering by adding FINRA/NYSE TRF data.¹¹ As noted in its filing, NYSE is not proposing to revise the fees for the NYSE Trades feed in conjunction with this enhancement. Such fees were adopted pursuant to proposed rule changes filed with the Commission by NYSE.¹²

As described in proposed rule change SR-NYSE-2019-06, NYSE Trades is an NYSE-only last sale market data feed. NYSE Trades currently allows vendors, broker-dealers and others to receive on a real-time basis the same last sale information that NYSE reports under the CTA Plan and the UTP Plan for inclusion in the CTA and UTP SIP consolidated data streams. Specifically, the NYSE Trades feed includes, for each security traded on NYSE, the real-time last sale price, time and size information, and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.

NYSE is proposing to enhance the content of the NYSE Trades feed by including information for OTC trades in NMS stocks reported to the FINRA/NYSE TRF. The FINRA/NYSE TRF data disseminated via the NYSE Trades feed would include the same

¹¹ See Securities Exchange Act Release No. 85186 (February 25, 2019), 84 FR 7156 (March 1, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2019-06).

¹² See, e.g., Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR-NYSE-2009-04); and Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2013-23).

real-time last sale price, time and size information for each trade reported to the FINRA/NYSE TRF that the FINRA/NYSE TRF reports under the CTA Plan and UTP Plan for inclusion in the CTA and UTP SIP consolidated data streams. The FINRA/NYSE TRF data would also identify whether the trade was reported to the FINRA/NYSE TRF on a T+1 (or greater) basis. Unlike for securities traded on NYSE, the FINRA/NYSE TRF data would not include a stock summary message, which relates to exchange-specific activity only. FINRA/NYSE TRF trades would clearly be denoted as such in the NYSE Trades feed to ensure that they are not mistaken for trades executed on the exchange.¹³

NYSE has represented to FINRA that the NYSE Trades feed is already architected so that trades on the NYSE platforms are transmitted to the SIPs before being transmitted to the NYSE Trades feed. The addition of FINRA/NYSE TRF data to the NYSE Trades feed will follow a similar protocol. OTC trades reported by the FINRA/NYSE TRF are presently transmitted to the SIPs by the same systems that transmit NYSE trades to the SIPs, and the same architecture can be leveraged to ensure that the sequencing of transmission of OTC trades is to the SIPs first and to the NYSE Trades feed second. Once FINRA/NYSE TRF data is added to the NYSE Trades feed, NYSE, the Business Member's affiliated SRO, will continue to take reasonable steps to ensure its distribution of the NYSE Trades feed complies with Rule 603(a) through its existing compliance monitoring program for same.

¹³ FINRA notes that FINRA/NYSE TRF and exchange activity also must be separate and distinct and cannot be commingled in volume and market share statistics in the aggregate.

NYSE BQT Data Feed

With this proposed rule change, FINRA/NYSE TRF data disseminated via the NYSE Trades feed would also be included as part of the NYSE BQT data feed. As described in proposed rule change SR-NYSE-2019-06, the NYSE BQT data feed provides a unified view of best bid and offer (“BBO”) and last sale information for NYSE and its affiliates, NYSE Arca, Inc. (“NYSE Arca”), NYSE National, Inc. (“NYSE National”) and NYSE American LLC (“NYSE American”), and consists of data elements from eight existing market data feeds: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE National BBO, NYSE National Trades, NYSE American Trades and NYSE American BBO. The NYSE BQT data feed would, therefore, include the FINRA/NYSE TRF data as part of the data it receives via the NYSE Trades market data feed. NYSE is not proposing to amend the fees for the NYSE BQT data feed. Such fees were adopted pursuant to proposed rule changes filed with the Commission by NYSE.¹⁴

NYSE has represented to FINRA that because the NYSE BQT feed is, by design, always more latent than the NYSE Trades feed, the above-described Rule 603(a) compliance program for the NYSE Trades feed is sufficient to assure that distribution of FINRA/NYSE TRF data via the NYSE BQT feed also satisfies Rule 603(a). FINRA will periodically reassess satisfaction with this requirement as part of its regular oversight of the FINRA/NYSE TRF.

¹⁴ See, e.g., Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2014-64); and Securities Exchange Act Release No. 83360 (June 1, 2018), 83 FR 26511 (June 7, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2018-24).

FINRA believes that NYSE's proposed use of FINRA/NYSE TRF data in the NYSE Trades and NYSE BQT feeds satisfies the requirement that FINRA/NYSE TRF transaction data not be transmitted to a vendor or user any sooner than such data is transmitted to the SIPs. As part of FINRA's regular oversight of the FINRA/NYSE TRF, FINRA will review for such compliance.

FINRA anticipates that for any future products developed by NYSE that use FINRA/NYSE TRF data, NYSE will submit a proposed rule change and FINRA will submit a companion filing proposing to amend Rule 7640B(c). In addition, NYSE Market and NYSE will be required to make the specific commitments and undertakings described above regarding the inclusion of FINRA/NYSE TRF data in any new data offering.¹⁵

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The proposed rule change will be operative on April 29, 2019.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

¹⁵ FINRA notes that FINRA and NYSE occasionally provide FINRA/NYSE TRF data to the Commission, other government agencies and members of the academic community for the purpose of studying the market. While in the latter case, data generally is in an aggregated format that does not allow identification of the activity of specific market participants, FINRA on occasion may provide attributed data to the academic community pursuant to a non-disclosure agreement.

¹⁶ 15 U.S.C. 78o-3(b)(6).

FINRA believes that the proposed rule change will promote market transparency by allowing the development by NYSE, consistent with the guidelines set forth in proposed Rule 7640B, of market data products using FINRA/NYSE TRF data for distribution to FINRA/NYSE TRF participants, other market participants and the investing public. FINRA notes that proposed Rule 7640B is substantively identical to current Rule 7640A, which addresses the inclusion of FINRA/Nasdaq TRF data in market data products offered by Nasdaq. Rule 7640A was adopted and amended pursuant to proposed rule changes filed with the Commission.¹⁷

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁸ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. As noted above, the fees for the NYSE Trades and NYSE BQT feeds will not be charged by FINRA under FINRA rules, but rather will be charged by NYSE pursuant to NYSE filings. Such fees have been adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act, in which NYSE was required to demonstrate that the fees are consistent with the requirements of

¹⁷ See Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-002); and Securities Exchange Act Release No. 76385 (November 6, 2015), 80 FR 70277 (November 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-045).

¹⁸ 15 U.S.C. 78o-3(b)(5).

the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory.¹⁹

FINRA believes that the proposed rule change is consistent with the Act because subscription to the NYSE Trades and NYSE BQT feeds is not mandatory and NYSE's fees for the feeds apply uniformly to all members and other market participants that elect to subscribe to the products. In addition, FINRA believes that, as described in proposed rule change SR-NYSE-2019-06, the existence of alternatives to the NYSE Trades feed (or NYSE BQT, through which FINRA/NYSE TRF data derived from the NYSE Trades feed can be obtained) – including real-time consolidated data, free delayed consolidated data and proprietary data from other sources – ensures that NYSE is not unreasonably discriminatory because vendors and subscribers can elect alternatives. As further noted in SR-NYSE-2019-06, the enhanced products would be available to all market participants on an equivalent basis with no change in price.

Finally, FINRA believes that use of FINRA/NYSE TRF market data, as set forth in proposed Rule 7640B, is consistent with Rule 603(a) of SEC Regulation NMS, which requires, among other things, that distributions of certain data by FINRA not be unreasonably discriminatory.²⁰ The Commission clarified in its adopting release that SEC Regulation NMS prohibits an SRO from transmitting quotation and transaction data to a vendor or user any sooner than it transmits the data to a network processor. As

¹⁹ See, e.g., Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR-NYSE-2009-04); and Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2013-23).

²⁰ See Rule 603(a)(2) of SEC Regulation NMS.

discussed above, NYSE, the Business Member's affiliated SRO, must ensure that distribution of market data products that use FINRA/NYSE TRF data is consistent with this requirement, and FINRA will require that NYSE Market and NYSE make specific commitments and undertakings, including real-time monitoring for potential data latency, with respect to all FINRA/NYSE TRF data products.

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

Regulatory Need

As discussed in SR-NYSE-2019-06, NYSE proposes to enhance the content of its proprietary data feeds by disseminating the FINRA/NYSE TRF data via the NYSE Trades and NYSE BQT data feeds. NYSE expects that the proposed addition to the data feeds would enable NYSE to better compete with Nasdaq, which already offers FINRA/Nasdaq TRF data in its data feeds to subscribers. NYSE underlines the motivation of the proposal by stating in its filing that "the proposal would improve the content included in the NYSE Trades feed and provide investors with an additional option for accessing information that may help to inform their trading decisions."

Economic Baseline

Proprietary market data is produced by trading and quoting activity at each individual exchange, as well as other entities in the OTC market, such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks. Exchanges compete with each other for the

dissemination of market data, which is used by different types of consumers for varying needs, such as observing the overall trading activity and price discovery.²¹

The FINRA/NYSE TRF is one of the TRFs that are used to report OTC trades in NMS stocks. Activity reported to the FINRA/NYSE TRF constitutes a relatively smaller part of the overall trades in the NMS market. In 2018, FINRA/NYSE TRF reports accounted for 5.06% of all SIP-reported share volume and 2.41% of all SIP-reported trades. As a percentage of aggregate TRF SIP-reported activity, the FINRA/NYSE TRF accounted for 13.93% of the share volume and 10.92% of the trades.

Economic Impacts

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

The proposed rule change establishes the framework for the use of FINRA/NYSE TRF data in products developed by NYSE while ensuring that the dissemination of such data by NYSE is subject to the oversight of FINRA. The proposed FINRA rule merely codifies this structure. Therefore, FINRA estimates that there are potentially no material impacts stemming from the proposed rule change.

FINRA believes that the existence of alternatives to the NYSE Trades feed (or NYSE BQT, through which FINRA/NYSE TRF data derived from the NYSE Trades feed can be obtained) – including real-time consolidated data, free delayed consolidated data and proprietary data from other sources – is a strong incentive to NYSE to avoid

²¹ See Jones (2018) for a discussion of the market data at <https://www0.gsb.columbia.edu/faculty/cjones/papers/2018.08.31%20US%20Equity%20Market%20Data%20Paper.pdf>.

setting unreasonable or discriminatory fees. As noted in its filing, NYSE is not proposing to amend the fees for the NYSE Trades and NYSE BQT feeds in conjunction with this additional feature. Subscription to the NYSE feeds is wholly voluntary, and members and other market participants can elect not to buy any products that, in their determination, would not add value or enhance their business model. As discussed above, there are alternative products where FINRA/NYSE TRF data will continue to be provided to the users of such data.

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

Written comments were neither solicited nor 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) of the Act²² and paragraph (f)(6) of Rule 19b-4 thereunder.²³ FINRA asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) will not become operative for 30 days after filing or such shorter time as the Commission may designate. FINRA provided the Commission with written notice of its intent to file the

²² 15 U.S.C. 78s(b)(3).

²³ 17 CFR 240.19b-4(f)(6).

proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.²⁴

FINRA believes that the proposed rule change is appropriately designated as “non-controversial” in that proposed Rule 7640B relating to FINRA/NYSE TRF data is substantively identical to existing Rule 7640A relating to FINRA/Nasdaq TRF data, which was filed with the Commission.²⁵ Specifically, proposed Rule 7640B: (1) codifies the contractual arrangements between FINRA and NYSE Market, (2) provides for the overall structure relating to the FINRA/NYSE TRF and the permissible use of FINRA/NYSE TRF data, (3) provides that fees for market data products that use FINRA/NYSE TRF data are charged by NYSE pursuant to NYSE rule filings, and (4) identifies NYSE market data products that use FINRA/NYSE TRF data pursuant to proposed rule changes filed by NYSE with the Commission. Current Rule 7640A sets forth an identical structure relating to the FINRA/Nasdaq TRF and the use of FINRA/Nasdaq TRF data in Nasdaq market data products. As such, the proposed rule change does not present any new or novel issues not already considered by the Commission.

FINRA further believes that the proposed rule change will not significantly affect the protection of investors or the public interest because the proposed rule change will promote market transparency by allowing the development by NYSE, consistent with the

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

²⁵ See Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-002).

guidelines set forth in proposed Rule 7640B, of market data products using FINRA/NYSE TRF data for distribution to FINRA/NYSE TRF participants, other market participants and the investing public. In addition, as set forth in Section 4 above, FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Finally, the proposed rule change will not become operative for 30 days after filing, in that the operative date is April 29, 2019.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2019-007)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt FINRA Rule 7640B (Data Products Offered By NYSE)

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 constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ 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 adopt FINRA Rule 7640B (Data Products Offered By NYSE) to (1) describe FINRA’s practices relating to the distribution of market data for over-the-counter (“OTC”) transactions in NMS stocks generated through the operation of the FINRA/NYSE Trade Reporting Facility (“FINRA/NYSE TRF”) by NYSE Market (DE), Inc. (“NYSE Market”) and its affiliate, New York Stock Exchange LLC

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

(“NYSE”); and (2) identify NYSE products that distribute FINRA/NYSE TRF data to third parties.

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

Background

The FINRA Trade Reporting Facilities (“TRFs”) are facilities for the reporting of OTC transactions in NMS stocks that allow the TRF “Business Members,” which themselves are affiliates of self-regulatory organizations (“SROs”), to retain commercial use of the market data reported to the respective TRFs.⁴ The operation of each TRF is

⁴ The establishment of each TRF was subject to a proposed rule change filed with the Commission. See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving File No. SR-NASD-2005-087); Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2007-011); and Securities Exchange Act Release No. 83559 (June

governed by a Limited Liability Company Agreement (the “LLC Agreement”) between FINRA and the respective Business Member. (The LLC Agreements, which were submitted as part of the rule filings to establish the respective TRFs and subsequently amended and restated, appear in the FINRA Manual.)

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

Under the terms of the business arrangement between FINRA and the Business Members, each TRF owns data resulting from its operation. Each Business Member has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use market data generated by its TRF, other than data generated exclusively for regulatory

purposes (“covered market data”),⁵ consistent with all applicable laws, rules and regulations, and has a contractual right to sell covered market data to third parties.⁶

Accordingly, although the TRFs are facilities of FINRA, the Business Members have the right under the contractual arrangements establishing the TRFs to develop market data products using covered market data. As each Business Member is an affiliate of an SRO, use of TRF data is conducted through the Business Member’s affiliated SRO, is subject to a separate proposed rule change filed with the Commission by the affiliate in its SRO capacity and must satisfy the appropriate statutory standards.

In addition to real-time interaction with Business Member staff when operational issues arise, FINRA currently executes its SRO oversight functions by performing a three-part regularly recurring review of TRF operations. First, before initial operation of the TRF can commence, the Business Member is required to certify in writing that TRF operations will comply with all relevant FINRA rules and federal securities laws, and on a quarterly basis thereafter, the Business Member must submit its current TRF procedures and a certification of compliance with those procedures. Second, FINRA staff conducts monthly conference calls with each Business Member to review TRF operations. These monthly calls follow an established agenda, including discussion of, among other things: (1) any system outages or issues since the prior monthly conference call (as well as any applicable reporting to FINRA and the SEC), (2) the status of pending systems changes,

⁵ For purposes of proposed Rule 7640B, “covered market data” would be defined as market data generated by the FINRA/NYSE TRF, other than data generated exclusively for regulatory purposes.

⁶ Under the TRF contracts, FINRA has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use the data generated by the TRF to fulfill its contractual rights and obligations, as well as its obligations as an SRO.

and (3) TRF market data products, including data latency and whether the Business Member has or is developing any new products that would use TRF data. Third, FINRA oversees a regular assessment cycle and extensive review of TRF operations, as measured against the TRF business requirements document and coding guidelines established by FINRA, by an outside independent audit firm. FINRA also requires the Business Members to submit on a quarterly basis an attestation that (1) identifies all products that use TRF data, and (2) certifies that the Business Member has no other products that use TRF data and that any future products that use TRF data will be developed in consultation with FINRA.

Under the TRF framework, the Business Member must ensure, among other things, that the distribution and sale of market data products that use TRF data are consistent with the requirements of the Act. In addition to FINRA's general oversight of TRF operations, and in furtherance of FINRA's SRO responsibilities with respect to OTC market data, FINRA requires that each Business Member (and its SRO affiliate) make specific commitments and undertakings with respect to its products that use TRF data. Among other things, the Business Member will, consistent with the Commission's interpretation of Rule 603(a) under SEC Regulation NMS, take reasonable steps to ensure—through system architecture, monitoring, or otherwise—that it does not transmit TRF transaction data to vendors or users any sooner than the TRF transmits the data to the SIPs.⁷ The Business Member also must have in place procedures and controls to

⁷ Rule 603(a), 17 CFR 242.603(a), provides as follows:

- (1) Any exclusive processor, or any broker or dealer with respect to information for which it is the exclusive source, that distributes information with respect to quotations for or

ensure that its products that use TRF data are not distributed prior to dissemination of TRF data to the SIPs, including monitoring for compliance with this obligation.

In this regard, NYSE, the Business Member's affiliated SRO, has tools to compare the time of transmission of data to the SIPs and to NYSE's proprietary data feeds that use corresponding data to determine whether data was transmitted to a proprietary vendor or user sooner than to the SIPs. In addition, NYSE monitors the overall operational performance of its proprietary and SIP market data feeds intraday and has developed escalation and reporting procedures in the event that issues are detected. NYSE has represented to FINRA that these tools and procedures would be used for purposes of monitoring for potential latency for any future real-time products developed

transactions in an NMS stock to a securities information processor shall do so on terms that are fair and reasonable.

(2) Any national securities exchange, national securities association, broker, or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission stated that "adopted Rule 603(a) prohibits an SRO or broker-dealer from transmitting data to a vendor or user any sooner than it transmits the data to a Network processor." See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37567 (June 29, 2005) (Adopting Release; File No. S7-10-04).

In a subsequent order, the Commission stated that "exchanges have an obligation under Rule 603(a) to take reasonable steps to ensure—through system architecture, monitoring, or otherwise—that they release data relating to current best-priced quotations and trades through proprietary feeds no sooner than they release data to the Network Processor, including during periods of heavy trading." See Securities Exchange Act Release No. 67857 (September 14, 2012) (Order Instituting Administrative and Cease-and-Desist Proceedings; File No. 3-15023).

by NYSE that use and distribute FINRA/NYSE TRF data (provided such data is also required to be provided to the SIPs).

As further detailed below, NYSE will be adding FINRA/NYSE TRF transaction data to its existing data feeds, and, as such, NYSE will leverage the existing Rule 603(a) compliance programs for those data feeds for purposes of ensuring compliant distribution of FINRA/NYSE TRF transaction data contained therein.

Proposed FINRA Rule 7640B

FINRA is proposing to adopt new Rule 7640B to address the distribution of FINRA/NYSE TRF data in market data products developed by NYSE. Proposed Rule 7640B is substantively identical to current Rule 7640A, which addresses the distribution of FINRA/Nasdaq TRF data in market data products developed by Nasdaq, Inc., as the FINRA/Nasdaq TRF Business Member, and its wholly owned SRO subsidiary, The NASDAQ Stock Market LLC. Rule 7640A was adopted and amended pursuant to proposed rule changes filed with the Commission.⁸

As noted above, the FINRA/NYSE TRF is a facility of FINRA and FINRA/NYSE TRF data is OTC data for which FINRA is responsible under the Act. However, any market data products would be distributed and sold by NYSE Market, the Business Member, through NYSE, its affiliated SRO, not FINRA. As such, paragraphs (a) and (b) of proposed Rule 7640B codify the contractual arrangements between FINRA and NYSE Market and provide for the overall structure relating to the FINRA/NYSE

⁸ See Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-002); and Securities Exchange Act Release No. 76385 (November 6, 2015), 80 FR 70277 (November 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-045).

TRF and the permissible use of FINRA/NYSE TRF data. For example, proposed paragraph (b) provides that fees for market data products that use covered market data are charged by NYSE pursuant to an NYSE rule filing.⁹ Such fees must be adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act, and NYSE must demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory. Paragraph (c) of proposed Rule 7640B identifies NYSE products that use FINRA/NYSE TRF data pursuant to a proposed rule change filed by NYSE with the Commission, and specifically the NYSE Trades market data feed¹⁰ and NYSE BQT market data feed.¹¹

FINRA notes that pursuant to the Consolidated Tape Association (“CTA”) Plan and the Nasdaq Unlisted Trading Privileges (“UTP”) Plan, if a proprietary feed includes trades reported by the TRF to the SIP processor, then the TRF must also furnish the SIP

⁹ FINRA notes that such fees can be found in the “NYSE PDP Market Data Pricing” fee schedule, available at www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.

¹⁰ See Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR-NYSE-2009-04); Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2013-23); Securities Exchange Act Release No. 70066 (July 30, 2013), 78 FR 47474 (August 5, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2013-53); and Securities Exchange Act Release No. 76599 (December 9, 2015), 80 FR 77676 (December 15, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2015-65).

¹¹ See Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (Order Approving File No. SR-NYSE-2014-40); and Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2018-22).

processor with the time of the transmission as published on the proprietary feed.¹² This time stamp is in addition to the time of the transaction, which, for TRF trades, is the time of execution that a FINRA member reports to a TRF in accordance with FINRA rules. FINRA/NYSE TRF data will not be included in the NYSE Trades market data feed and the NYSE BQT market data feed until the required systems changes have been made to enable the FINRA/NYSE TRF to provide the SIP processor with the time of transmission as published on the feeds.

NYSE Trades Market Data Feed

Pursuant to proposed rule change SR-NYSE-2019-06, NYSE is proposing to enhance the content of the NYSE Trades market data feed product offering by adding FINRA/NYSE TRF data.¹³ As noted in its filing, NYSE is not proposing to revise the fees for the NYSE Trades feed in conjunction with this enhancement. Such fees were adopted pursuant to proposed rule changes filed with the Commission by NYSE.¹⁴

As described in proposed rule change SR-NYSE-2019-06, NYSE Trades is an NYSE-only last sale market data feed. NYSE Trades currently allows vendors, broker-dealers and others to receive on a real-time basis the same last sale information that NYSE reports under the CTA Plan and the UTP Plan for inclusion in the CTA and UTP

¹² See CTA Plan Section VI(c) and UTP Plan Section VIII.B.

¹³ See Securities Exchange Act Release No. 85186 (February 25, 2019), 84 FR 7156 (March 1, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2019-06).

¹⁴ See, e.g., Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR-NYSE-2009-04); and Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2013-23).

SIP consolidated data streams. Specifically, the NYSE Trades feed includes, for each security traded on NYSE, the real-time last sale price, time and size information, and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.

NYSE is proposing to enhance the content of the NYSE Trades feed by including information for OTC trades in NMS stocks reported to the FINRA/NYSE TRF. The FINRA/NYSE TRF data disseminated via the NYSE Trades feed would include the same real-time last sale price, time and size information for each trade reported to the FINRA/NYSE TRF that the FINRA/NYSE TRF reports under the CTA Plan and UTP Plan for inclusion in the CTA and UTP SIP consolidated data streams. The FINRA/NYSE TRF data would also identify whether the trade was reported to the FINRA/NYSE TRF on a T+1 (or greater) basis. Unlike for securities traded on NYSE, the FINRA/NYSE TRF data would not include a stock summary message, which relates to exchange-specific activity only. FINRA/NYSE TRF trades would clearly be denoted as such in the NYSE Trades feed to ensure that they are not mistaken for trades executed on the exchange.¹⁵

NYSE has represented to FINRA that the NYSE Trades feed is already architected so that trades on the NYSE platforms are transmitted to the SIPs before being transmitted to the NYSE Trades feed. The addition of FINRA/NYSE TRF data to the NYSE Trades feed will follow a similar protocol. OTC trades reported by the

¹⁵ FINRA notes that FINRA/NYSE TRF and exchange activity also must be separate and distinct and cannot be commingled in volume and market share statistics in the aggregate.

FINRA/NYSE TRF are presently transmitted to the SIPs by the same systems that transmit NYSE trades to the SIPs, and the same architecture can be leveraged to ensure that the sequencing of transmission of OTC trades is to the SIPs first and to the NYSE Trades feed second. Once FINRA/NYSE TRF data is added to the NYSE Trades feed, NYSE, the Business Member's affiliated SRO, will continue to take reasonable steps to ensure its distribution of the NYSE Trades feed complies with Rule 603(a) through its existing compliance monitoring program for same.

NYSE BQT Data Feed

With this proposed rule change, FINRA/NYSE TRF data disseminated via the NYSE Trades feed would also be included as part of the NYSE BQT data feed. As described in proposed rule change SR-NYSE-2019-06, the NYSE BQT data feed provides a unified view of best bid and offer ("BBO") and last sale information for NYSE and its affiliates, NYSE Arca, Inc. ("NYSE Arca"), NYSE National, Inc. ("NYSE National") and NYSE American LLC ("NYSE American"), and consists of data elements from eight existing market data feeds: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE National BBO, NYSE National Trades, NYSE American Trades and NYSE American BBO. The NYSE BQT data feed would, therefore, include the FINRA/NYSE TRF data as part of the data it receives via the NYSE Trades market data feed. NYSE is not proposing to amend the fees for the NYSE BQT data feed. Such fees were adopted pursuant to proposed rule changes filed with the Commission by NYSE.¹⁶

¹⁶ See, e.g., Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2014-64); and Securities Exchange Act Release No. 83360

NYSE has represented to FINRA that because the NYSE BQT feed is, by design, always more latent than the NYSE Trades feed, the above-described Rule 603(a) compliance program for the NYSE Trades feed is sufficient to assure that distribution of FINRA/NYSE TRF data via the NYSE BQT feed also satisfies Rule 603(a). FINRA will periodically reassess satisfaction with this requirement as part of its regular oversight of the FINRA/NYSE TRF.

FINRA believes that NYSE's proposed use of FINRA/NYSE TRF data in the NYSE Trades and NYSE BQT feeds satisfies the requirement that FINRA/NYSE TRF transaction data not be transmitted to a vendor or user any sooner than such data is transmitted to the SIPs. As part of FINRA's regular oversight of the FINRA/NYSE TRF, FINRA will review for such compliance.

FINRA anticipates that for any future products developed by NYSE that use FINRA/NYSE TRF data, NYSE will submit a proposed rule change and FINRA will submit a companion filing proposing to amend Rule 7640B(c). In addition, NYSE Market and NYSE will be required to make the specific commitments and undertakings described above regarding the inclusion of FINRA/NYSE TRF data in any new data offering.¹⁷

(June 1, 2018), 83 FR 26511 (June 7, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2018-24).

¹⁷ FINRA notes that FINRA and NYSE occasionally provide FINRA/NYSE TRF data to the Commission, other government agencies and members of the academic community for the purpose of studying the market. While in the latter case, data generally is in an aggregated format that does not allow identification of the activity of specific market participants, FINRA on occasion may provide attributed data to the academic community pursuant to a non-disclosure agreement.

FINRA has filed the proposed rule change for immediate effectiveness. The proposed rule change will be operative on April 29, 2019.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁸ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote market transparency by allowing the development by NYSE, consistent with the guidelines set forth in proposed Rule 7640B, of market data products using FINRA/NYSE TRF data for distribution to FINRA/NYSE TRF participants, other market participants and the investing public. FINRA notes that proposed Rule 7640B is substantively identical to current Rule 7640A, which addresses the inclusion of FINRA/Nasdaq TRF data in market data products offered by Nasdaq. Rule 7640A was adopted and amended pursuant to proposed rule changes filed with the Commission.¹⁹

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,²⁰ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other

¹⁸ 15 U.S.C. 78o-3(b)(6).

¹⁹ See Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-002); and Securities Exchange Act Release No. 76385 (November 6, 2015), 80 FR 70277 (November 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-045).

²⁰ 15 U.S.C. 78o-3(b)(5).

charges among members and issuers and other persons using any facility or system that FINRA operates or controls. As noted above, the fees for the NYSE Trades and NYSE BQT feeds will not be charged by FINRA under FINRA rules, but rather will be charged by NYSE pursuant to NYSE filings. Such fees have been adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act, in which NYSE was required to demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory.²¹

FINRA believes that the proposed rule change is consistent with the Act because subscription to the NYSE Trades and NYSE BQT feeds is not mandatory and NYSE's fees for the feeds apply uniformly to all members and other market participants that elect to subscribe to the products. In addition, FINRA believes that, as described in proposed rule change SR-NYSE-2019-06, the existence of alternatives to the NYSE Trades feed (or NYSE BQT, through which FINRA/NYSE TRF data derived from the NYSE Trades feed can be obtained) – including real-time consolidated data, free delayed consolidated data and proprietary data from other sources – ensures that NYSE is not unreasonably discriminatory because vendors and subscribers can elect alternatives. As further noted in SR-NYSE-2019-06, the enhanced products would be available to all market participants on an equivalent basis with no change in price.

²¹ See, e.g., Securities Exchange Act Release No. 59606 (March 19, 2009), 74 FR 13293 (March 26, 2009) (Order Approving File No. SR-NYSE-2009-04); and Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2013-23).

Finally, FINRA believes that use of FINRA/NYSE TRF market data, as set forth in proposed Rule 7640B, is consistent with Rule 603(a) of SEC Regulation NMS, which requires, among other things, that distributions of certain data by FINRA not be unreasonably discriminatory.²² The Commission clarified in its adopting release that SEC Regulation NMS prohibits an SRO from transmitting quotation and transaction data to a vendor or user any sooner than it transmits the data to a network processor. As discussed above, NYSE, the Business Member's affiliated SRO, must ensure that distribution of market data products that use FINRA/NYSE TRF data is consistent with this requirement, and FINRA will require that NYSE Market and NYSE make specific commitments and undertakings, including real-time monitoring for potential data latency, with respect to all FINRA/NYSE TRF data products.

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

As discussed in SR-NYSE-2019-06, NYSE proposes to enhance the content of its proprietary data feeds by disseminating the FINRA/NYSE TRF data via the NYSE Trades and NYSE BQT data feeds. NYSE expects that the proposed addition to the data feeds would enable NYSE to better compete with Nasdaq, which already offers FINRA/Nasdaq TRF data in its data feeds to subscribers. NYSE underlines the motivation of the proposal by stating in its filing that "the proposal would improve the content included in the NYSE Trades feed and provide investors with an additional option for accessing information that may help to inform their trading decisions."

²² See Rule 603(a)(2) of SEC Regulation NMS.

Economic Baseline

Proprietary market data is produced by trading and quoting activity at each individual exchange, as well as other entities in the OTC market, such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks. Exchanges compete with each other for the dissemination of market data, which is used by different types of consumers for varying needs, such as observing the overall trading activity and price discovery.²³

The FINRA/NYSE TRF is one of the TRFs that are used to report OTC trades in NMS stocks. Activity reported to the FINRA/NYSE TRF constitutes a relatively smaller part of the overall trades in the NMS market. In 2018, FINRA/NYSE TRF reports accounted for 5.06% of all SIP-reported share volume and 2.41% of all SIP-reported trades. As a percentage of aggregate TRF SIP-reported activity, the FINRA/NYSE TRF accounted for 13.93% of the share volume and 10.92% of the trades.

Economic Impacts

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

The proposed rule change establishes the framework for the use of FINRA/NYSE TRF data in products developed by NYSE while ensuring that the dissemination of such data by NYSE is subject to the oversight of FINRA. The proposed FINRA rule merely

²³ See Jones (2018) for a discussion of the market data at <https://www0.gsb.columbia.edu/faculty/cjones/papers/2018.08.31%20US%20Equity%20Market%20Data%20Paper.pdf>.

codifies this structure. Therefore, FINRA estimates that there are potentially no material impacts stemming from the proposed rule change.

FINRA believes that the existence of alternatives to the NYSE Trades feed (or NYSE BQT, through which FINRA/NYSE TRF data derived from the NYSE Trades feed can be obtained) – including real-time consolidated data, free delayed consolidated data and proprietary data from other sources – is a strong incentive to NYSE to avoid setting unreasonable or discriminatory fees. As noted in its filing, NYSE is not proposing to amend the fees for the NYSE Trades and NYSE BQT feeds in conjunction with this additional feature. Subscription to the NYSE feeds is wholly voluntary, and members and other market participants can elect not to buy any products that, in their determination, would not add value or enhance their business model. As discussed above, there are alternative products where FINRA/NYSE TRF data will continue to be provided to the users of such data.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed,

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and Rule 19b-4(f)(6) thereunder.²⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2019-007 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.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-FINRA-2019-007. 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-2019-007 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.²⁶

Robert W. Errett
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined.

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

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

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**7600B. DATA PRODUCTS AND CHARGES FOR FINRA/NYSE TRADE
REPORTING FACILITY SERVICES**

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7640B. Data Products Offered By NYSE

(a) Under the terms of the business arrangement establishing the FINRA/NYSE Trade Reporting Facility, NYSE Market (DE), Inc. (“NYSE Market”), as the Business Member, has a non-exclusive, irrevocable, worldwide, perpetual, royalty-free right and license to use covered market data, consistent with all applicable laws, rules and regulations. NYSE Market, as the Business Member, has a contractual right to distribute and sell covered market data to third parties, consistent with the Exchange Act, and has determined to distribute or sell the products referenced in paragraph (c) of this Rule that use covered market data through its affiliated self-regulatory organization, New York Stock Exchange LLC (“NYSE”). For purposes of this Rule, “covered market data” means market data generated by the FINRA/NYSE Trade Reporting Facility, other than data generated exclusively for regulatory purposes.

(b) Any fee for products that use covered market data shall be charged by NYSE pursuant to a proposed rule change filed with the Commission by NYSE, in its capacity as an affiliated self-regulatory organization of the Business Member.

(c) The following data products offered by NYSE pursuant to proposed rule changes filed with the Commission by NYSE use covered market data:

(1) NYSE Trades feed; and

(2) NYSE BQT feed.

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