

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 49

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

File No. * SR 2024 - * 009

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
--	---	--	--	--	---

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
-----------------------------------	--	--

Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input 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 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
--	---

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

Proposed Rule Change to Amend FINRA Rule 7620A (FINRA/Nasdaq Trade Reporting Facility Reporting Fees)

Contact Information

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

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

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/31/2024

(Title *)

By Robert McNamee
(Name *)

Vice President and Associate General Counsel

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

Robert McNamee	Digitally signed by Robert McNamee Date: 2024.05.31 12:26:45 -04'00'
-------------------	---

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-FINRA-2024-009 (NQ TRF fee filin

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

SR-FINRA-2024-009 (NQ TRF fee filin

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 Advanced 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 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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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

Exhibit Sent As Paper Document

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

SR-FINRA-2024-009 (NQ TRF fee filin

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 the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend FINRA Rule 7620A (FINRA/Nasdaq Trade Reporting Facility Reporting Fees) to modify the trade reporting fees and caps applicable to non-retail participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2024.

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

(a) Purpose

The FINRA/Nasdaq Trade Reporting Facility Carteret (the “FINRA/Nasdaq TRF Carteret”) and the FINRA/Nasdaq Trade Reporting Facility Chicago

¹ 15 U.S.C. 78s(b)(1).

(the “FINRA/Nasdaq TRF Chicago”) (collectively, the “FINRA/Nasdaq TRF”) are facilities of FINRA that are operated by Nasdaq, Inc. (“Nasdaq”). In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and Nasdaq entered into a limited liability company agreement (the “LLC Agreement”). Under the LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/Nasdaq TRF. Nasdaq, the “Business Member,” is primarily responsible for the management of the FINRA/Nasdaq TRF’s business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF. The proposed rule change makes several adjustments to the schedule of fees and caps that applies to participants in the FINRA/Nasdaq TRF.

Background

The FINRA/Nasdaq TRF comprises two of four FINRA facilities² that FINRA members can use to report over-the-counter (“OTC”) trades in NMS stocks. While members are required to report all OTC trades in NMS stocks to FINRA, they may choose which FINRA facility (or facilities) to use to satisfy their trade reporting obligations.

Pursuant to the FINRA Rule 7600A Series, participants in the FINRA/Nasdaq TRF are charged fees and may qualify for fee caps (Rule 7620A) and also may qualify

² The four FINRA facilities are the FINRA/Nasdaq TRF Carteret, the FINRA/Nasdaq TRF Chicago, the FINRA/NYSE Trade Reporting Facility (the “FINRA/NYSE TRF”), and the Alternative Display Facility (“ADF”).

for revenue sharing payments for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). These rules are administered by Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF, on behalf of FINRA,³ and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRF.

Pursuant to FINRA Rule 7620A, participants that are not Retail Participants⁴ in the FINRA/Nasdaq TRF 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 For each Media and Non-Media trade report submitted to the FINRA/Nasdaq TRF, both the member firm identified in the report as the Executing Party and the member firm identified as the Contra Party are assessed a fee.⁷ Rule 7620A provides that for any category of fees, a

³ FINRA's oversight of this function performed by the Business Member is conducted through a recurring assessment and review of TRF operations by an outside independent audit firm.

⁴ The term "Retail Participant" is defined in Rule 7620A.01. Retail Participants are exempt from fees for trade reporting to the FINRA/Nasdaq TRF. Unless otherwise stated, references to a "participant" herein mean a non-Retail Participant.

⁵ Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange ("Tape A"); BYX, BZX, EDGA, EDGX, IEX, LTSE, MEMX, MIAX, Nasdaq BX, Nasdaq PSX, NYSE American, NYSE Chicago, NYSE National, and NYSE Arca ("Tape B"); and Nasdaq ("Tape C").

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

⁷ Pursuant to Rule 7620A.01, the "Executing Party" is defined as the member with the trade reporting obligation under FINRA rules and the "Contra" is defined as the member on the contra side of a trade report.

non-Retail Participant will qualify for a cap on the fees they would otherwise pay to report non-comparison/accept (non-match/compare) trades to a particular tape during a given month, provided that during the month, the participant separately has an average daily number of Media/Executing Party trade reports of at least 5,000 in that same tape.

Proposed Amendments to Fee Schedule

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 TRF. 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; and (2) re-calibrate the fee structure so that it provides for a more equitable allocation of fees among Executing Parties and Contra Parties, while providing for a reasonable return to Nasdaq on its expenditures in support of and investments in the FINRA/Nasdaq TRF 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) provide for new tiered discounted Media/Contra Party and Non-Media/Contra Party fees; and (3) make non-substantive 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 the daily average number of Media/Executing trades that a participant must report to the FINRA/Nasdaq TRF in a given month to qualify for caps on its trade reporting fees (“Cap Qualifying Activity”).

Presently, the level of Cap Qualifying Activity is 5,000 Media/Executing trade reports in each of Tapes A, B, and C. Nasdaq, as the Business Member, has determined to raise these threshold numbers to 10,000 in each Tape.

The levels of Cap Qualifying Activity have not increased since 2018,⁸ at a time when reporting volume on the FINRA/Nasdaq TRF was significantly lower than it is now. Over the past five years, the FINRA/Nasdaq TRF trade reporting volume has grown twofold, while the FINRA/Nasdaq TRF monthly charge and caps for reporting trades have remained the same for the four categories over the same time period.⁹ Participants eligible for fee caps have paid the same capped charges over the past five years while trade reporting volumes have increased 201 percent over a five-year span. Meanwhile, the cost of operating the FINRA/Nasdaq TRF has increased by approximately 23 percent from 2019 to 2023. 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 increased operational and maintenance costs that have flowed from rising levels of trade reporting activity. Nasdaq, as the Business Member, believes that raising the levels of Cap Qualifying Activity will help to recalibrate the thresholds in light of increased volumes and costs.

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

⁹ Over the past five years, annual trade reporting volume on the FINRA/Nasdaq TRF has grown from 283.9 billion trades to 855.7 billion trades, an increase of 201 percent. Annual fees have increased by 44 percent over the same period. Annual fees for this purpose mean the aggregate of all reporting fees collected by the FINRA/Nasdaq TRF in a given calendar year.

Media and Non-Media/Contra Party Fees

The proposed rule change would also amend the schedule of fees for Media/Contra Party and Non-Media/Contra Party trade reports. Nasdaq, as the Business Member, has determined to establish tiered pricing on Media/Contra Party and Non-Media/Contra Party trade reports for participants that do not qualify for the cap described above. Similar to the existing fee caps based on Executing Party trade report volume, the tiered pricing will apply based on a member firm's total monthly Media/Contra Party trade report volume. To be eligible for the tiered pricing, the participant's Media/Contra Party volume must equal or exceed 35 percent of the participant's total volume of trades reported to the FINRA/Nasdaq TRF in a given month. A participant that meets this threshold will qualify for discounted pricing at the following tiers:

Minimum Number of Media/Contra Trade Reports During the Month	Fee Per Trade Report
2 million	\$0.012
7 million	\$0.0095
12 million	\$0.0075

If a participant has sufficient Media/Contra Party trade reports to meet the above thresholds, then the discounted pricing will also apply to the participant's Non-Media/Contra Party trade reports. Unlike the existing fee caps, the volume and trade report thresholds are not calculated on a per tape basis for purposes of the Contra Party tiered discounts.

The proposed tiered pricing is intended to provide for a more reasonable allocation of fees among Executing Parties and Contra Parties. The three tier levels were

developed so that participants can qualify for lower fees as their Media/Contra Party trade reporting volumes increase.

As discussed above, the number of trades reported to the FINRA/Nasdaq TRF has grown significantly in recent years. Currently, participants that are primarily identified as the Contra Party on trade reports and do not have sufficient Executing Party trades that would qualify for the fee cap are not eligible for any pricing discount. The proposed rule change would therefore provide tiered discounted fees to participants identified in trade reports as the Media/Contra Party and Non-Media/Contra Party to allow more participants to qualify for discounted rates and to provide for more reasonable allocation of fees among the parties to a trade.

In addition to setting forth the proposed discounted pricing, the proposed rule change would add language to Section II.A of Rule 7620A to provide an explanation and example of qualifying trade reporting activity for the Contra Party tiered discount.

It is important to note that a participant will not receive both the fee cap based on qualifying Media/Executing Party trade reporting activity and the proposed Contra Party fee discount in the same month. Nasdaq, as the Business Member, will conduct monthly reviews of a non-Retail Participant's trade reporting volume to determine what pricing applies to the participant's activity for a given month.¹⁰ If a firm does not qualify for the fee cap based on Media/Executing Party trade reporting activity, the firm will then be evaluated for Contra Party tiered pricing based on its Media/Contra Party trade reporting

¹⁰ Retail Participants are not subject to any trade reporting fees and therefore would not be considered for any cap or fee discounts.

activity.¹¹ Non-Retail Participants will automatically receive the applicable capped or discounted pricing if they qualify based on their trade reporting activity; they do not need to submit supporting documentation or take any additional steps to qualify.¹²

General Clarifications

FINRA is also proposing non-substantive changes to the FINRA/Nasdaq TRF fee schedule to provide more clarity. First, Retail Participants are not subject to any trade reporting fees under Rule 7620A. Therefore, FINRA is proposing to eliminate language that suggests that, in some instances, Retail Participants are required to pay trade report charges. Second, FINRA is proposing minor changes to the language in Section II.A of Rule 7620A to provide more clarity on the qualifying activity required to achieve the cap. These proposed changes are not intended to make any substantive changes to the operation of the rule.

FINRA notes that the proposed rule changes do not modify the other fees assessed under Rule 7620A, including the ATS Market Maker fee caps, the fee assessed a member for submitting a clearing report to the FINRA/Nasdaq TRF to transfer a transaction fee pursuant to Rule 7230A(h), and the “Comparison” fee.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2024.

¹¹ If a firm qualifies for an ATS Market Maker fee cap, then the firm will not qualify for Contra Party pricing.

¹² By contrast, Retail Participants are required to complete and submit an application and written attestation to Nasdaq to be designated as such and to receive pricing under the Retail Participant fee schedule.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,¹³ in general, and Section 15A(b)(5) of the Act,¹⁴ in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(9) of the Act,¹⁶ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed fee schedule is reasonable and provides an equitable allocation of fees in that it will apply uniformly to all similarly situated FINRA members that use the FINRA/Nasdaq TRF. Moreover, participation in the FINRA/Nasdaq TRF is voluntary, and access to the FINRA/Nasdaq TRF is offered on fair and non-discriminatory terms.

¹³ 15 U.S.C. 78o-3(b).

¹⁴ 15 U.S.C. 78o-3(b)(5).

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78o-3(b)(9).

The proposed rule change would: (1) raise from 5,000 to 10,000 the Cap Qualifying Activity that a participant needs to achieve to qualify for capped reporting fees under Rule 7620A; and (2) provide a three-tiered fee discount for Media/Contra Party and Non-Media/Contra Party monthly charges for participants that may not otherwise achieve Cap Qualifying Activity.

As discussed above, the FINRA/Nasdaq TRF has experienced a significant increase in trade reporting activity over the past five years, while the monthly charges and caps have remained unchanged over the same time period. Nasdaq, as the Business Member, does not believe that the current Cap Qualifying Activity of 5,000 daily average trades per month continues to be an appropriate threshold in light of such increase. The caps and cap formulas have not kept pace with the rapid growth of trade reporting volume on the FINRA/Nasdaq TRF since they were amended in 2018 or with the corresponding increase in costs associated with operating, maintaining, and upgrading the FINRA/Nasdaq TRF. Nasdaq, as the Business Member, believes that doubling the minimum average daily volume of Media/Executing Party trade reports from 5,000 to 10,000 will better reflect the current levels of trade reporting activity on the FINRA/Nasdaq TRF. The proposed rule change will also help Nasdaq continue to accommodate the costs associated with rising trade reporting volumes while making substantial enhancements to the technology, functionality, and performance of the FINRA/Nasdaq TRF. Participants are required to submit Media trade reports to FINRA, while not all Non-Media trades are required to be reported under FINRA rules. In determining pricing for the FINRA/Nasdaq TRF, the Business Member has focused on attracting Media trade reports to the FINRA/Nasdaq TRF relative to other trade reporting

facilities.¹⁷ As such, the existing approach of using Media/Executing Party trade reports as the criteria for a participant to qualify for the fee cap provides for an equitable allocation of fees and is not unfairly discriminatory.

Additionally, as discussed above, the proposed tiered discounts will help ensure a more equitable distribution of fees and allocate costs associated with the operation and maintenance of the FINRA/Nasdaq TRF more equitably among Executing Parties and Contra Parties. Over time, as the number of trades reported to the FINRA/Nasdaq TRF has grown significantly, the fee burden associated with the FINRA/Nasdaq TRF has shifted disproportionately to Contra Parties because participants that are primarily identified as the Contra Party and that do not have sufficient Executing Party trades to qualify for the fee cap are not currently eligible for any pricing discount. According to Nasdaq, as the Business Member, without a cap on Contra Party monthly trade report charges, the increase in Contra Party activity fees as a result of the growth in trade reporting activity over the past five years has been disproportionately higher than that of Executing Party fees. Therefore, the Business Member has advised that the proposed three-tiered fee discount for Contra Parties will help ensure that Contra Parties' fees are better calibrated relative to Executing Parties. Similar to the existing approach taken with respect to using Media/Executing Party trade reports to qualify for a fee cap, Nasdaq, as the Business Member, has determined to base the proposed fee discount for Contra Parties on Media/Contra trade reports in an effort to attract more Media reporting to the

¹⁷ The Cap Qualifying Activity requirement has historically focused on participants that are identified in the trade report as the Executing Party because historically the Executing Party has primarily made the decision on which TRF to which it report its trades.

FINRA/Nasdaq TRF relative to other trade reporting facilities.¹⁸ Therefore, as with the existing approach with respect to Cap Qualifying Activity, using Media/Contra Party trade reports as the basis for qualifying for the Contra Party fee discount provides for an equitable allocation of fees and is not unfairly discriminatory.

Nasdaq also advises that it expects to earn a profit from the proposed rule change, but it believes that such profit represents a reasonable return on its expenditures in support of and investments in the FINRA/Nasdaq TRF, 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,”¹⁹ 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.”²⁰ In this instance, the increase in fees resulting from the proposal to increase the Media/Executing Party trade reporting activity required to qualify for a fee cap will be subject to significant competition from the FINRA/NYSE TRF, which in the past has increased its market share relative to the FINRA/Nasdaq TRF 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

¹⁸ Nasdaq has advised that today, some Contra Parties may play a greater role in determining where their Executing Parties report trades than in the past.

¹⁹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving File No. SR-NYSEArca-2006-21).

²⁰ See 73 FR 74770, 74781-82.

proposed rule change will be an equitable allocation of reasonable dues, fees and other charges.²¹

Finally, FINRA believes that it is reasonable to make non-technical, clarifying changes to Rule 7620A. The proposed non-substantive changes to remove the reference to fees charged to Retail Participants and to clarify the Cap Qualifying Activity requirements for the fee caps are appropriate to make the rule more easily understandable. FINRA, Nasdaq, and all FINRA/Nasdaq TRF participants have an interest in FINRA maintaining rules for its trade reporting facilities that are clear.

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 TRF, collects all fees on behalf of the FINRA/Nasdaq TRF. As discussed above, Nasdaq has observed an increase in off-exchange volumes and the associated cost of operating and improving the FINRA/Nasdaq TRF. Nasdaq also observed that today, participants predominantly identified as the Contra Party pay a disproportionate amount of the fees. Therefore, Nasdaq determined to make several adjustments to the schedule of fees and caps to better allocate the fees among the participants and align them with the costs of operating the FINRA/Nasdaq TRF.

²¹ See supra note 20.

Economic Baseline

As discussed above, pursuant to FINRA Rule 7620A, participants in the FINRA/Nasdaq TRF 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, Non-Media/Executing Party, Media/Contra Party and Non-Media/Contra Party trades. The level of the daily average number of Media/Executing Party trades determines a participant's eligibility to qualify for fee caps on the Media/Executing Party, Non-Media/Executing Party, Media/Contra Party, and Non-Media/Contra Party trade reports. Consider, for example, a non-Retail Participant averaging 10,924 Media/Executing Party trades, 21,279 Non-Media/Executing Party trades, 1,949 Media/Contra Party trades, and 16,741 Non-Media/Contra Party trades per day in a given month and tape. This participant meets the 5,000 daily trade volume of Media/Executing Party trades that qualifies it for the fee caps. The monthly charge on its Media/Executing Party trades would be capped at \$1,430 (5,000 reports x \$0.013 x 22), assuming 22 trading days in the month. In this example, the charges for Non-Media/Executing Party and Non-Media/Contra Party trade reports both would be capped at \$1,430 because the volumes in both categories are higher than 5,000, while the charge for Media/Contra Party trade reports would be \$557.41 (1,949 reports x \$0.013 x 22) because the volume has not reached the cap size of 5,000. If the number of Media/Executing Party trades were below 5,000 in this example, then the charges on all categories would be calculated at a regular rate without a cap.

FINRA analyzed data provided by Nasdaq that shows fees incurred by 584 participants in at least one month of 2023. On average, 505 participants paid a fee each month to the FINRA/Nasdaq TRF either as an Executing Party or Contra Party in at least one of Tape A, B, and C securities.²² Among these 505 participants, on average, 33 (seven percent) were eligible and received capped fees each month. Of the 472 participants (93 percent) that were ineligible for a cap, on average, 347 (74 percent) had a larger volume of Contra Party/Media activity than Executing Party/Media activity across all tapes.

Economic Impact

The proposed rule change entails several changes to the fee and cap structure. The potential 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 TRF in a given month to qualify for caps on its trade reporting fees, from 5,000 reports in each of Tapes A, B, and C, to 10,000 reports. Under the proposed new fee structure, some participants currently qualifying for fee caps would no longer qualify for the fee cap and would therefore see an increase in fees. Participants that continue to qualify for the proposed fee cap would also expect higher charges because the required volumes for fee caps in all categories would increase from 5,000 to 10,000 trade reports under the proposed rule. Under the proposed fee structure, the cap effectively increases by 100%, approximately from \$1,430 ($\$0.013 \times 5,000 \times 22$) to

²² The counts of participants are averaged across all twelve months of 2023 and rounded to the nearest whole numbers.

\$2,860 ($\$0.013 \times 10,000 \times 22$), assuming 22 trading days in a month, for each category of trade reports (i.e., Media/Executing Party, Non-Media/Executing Party, Media/Contra Party and Non-Media/Contra Party) in each tape.²³ Participants not qualifying for the fee caps would be considered for the proposed tiered discounts on Contra Party trade reports and therefore could expect lower charges on the Contra Party trade reports if they qualify.²⁴

For the purpose of estimating the impacts of the proposed rule change, FINRA used monthly trade reporting volumes and fees data provided by Nasdaq from January through December of 2023 to calculate the projected fees assuming the reporting behavior would be the same as the 2023 data. Under the proposed rule change, 31 participants could expect an increase in costs on both Executing Party and Contra Party trade reporting activity (increase of \$11,531, or 68 percent, on average monthly); seven participants could expect an increase in costs on Executing Party trade reporting activity (increase of \$5,279, or 73 percent, on average monthly) and no change in costs on Contra Party activity; 11 participants could expect a decrease in costs on Contra Party trade reporting activity (decrease of \$18,562, or 18 percent, on average monthly) because they would qualify for the proposed tiered discounts; and 535 participants would expect no change in costs.

²³ As in the current Rule, under the proposed rule, a firm would qualify for fee caps in categories other than the Media/Executing Party only after it has qualified for the fee caps in the Media/Executing Party category in each Tape.

²⁴ As described above, tiered pricing on Media/Contra Party and Non-Media/Contra Party trade reports would only be available for participants that do not qualify for the Media/Executing Party fee cap.

The proposed fee structure is likely to reduce the gap in trade reporting fees between participants predominantly reporting as an Executing Party and those predominantly reporting as a Contra Party. Across all participants, the effective cost per Executing Party trade report would increase by 52 percent, from 0.053 cents to 0.080 cents per report. The effective cost per Contra Party trade report would decline by one percent, from 0.415 cents to 0.412 cents per report. In 2023, a Contra Party, on average, paid approximately eight times as much ($\$0.00415/\0.00053) as an Executing Party for each trade report. If the proposed fee structure were in effect in 2023, the ratio would have been approximately five times ($\$0.00412/\0.00080).

Besides the fees that are measurable, the proposed fee structure could potentially deliver long term economic benefits for its participants that cannot easily be estimated. Specifically, the proposed fee structure would allow Nasdaq to more effectively cover the rising operating costs associated with increased volumes, as well as improve the functionality and service of the reporting facility, such as potentially better processing speed to enable quicker transmission and dissemination of trade reports.

FINRA cannot estimate whether the proposed fee structure would deliver a net benefit or cost to participants and investors in the long term, as some of the economic benefits discussed above are not quantifiable. Additionally, FINRA notes that the proposed fee and fee cap changes occur within the context of a competitive environment in which multiple 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 or the ADF in lieu of the FINRA/Nasdaq TRF. Firms would continue reporting to FINRA/Nasdaq TRFs to the extent that they find the net cost of reporting to FINRA/Nasdaq TRF relative to reporting to other facilities preferable.

FINRA does not know how the proposed rule change would affect competing facilities, which in part determines market competition and prices for trade reporting in the long run. Should the long-run equilibrium cost of reporting off-exchange trades to any available facility, including the FINRA/Nasdaq TRF, the FINRA/NYSE TRF or the ADF, rise in a competitive market, firms could potentially choose to pass the costs to investors.

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-

²⁵ 15 U.S.C. 78(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(2).

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 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2024-009)

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the 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 (FINRA/Nasdaq Trade Reporting Facility Reporting Fees) to modify the trade reporting fees and caps applicable

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).

to non-retail participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility Chicago.

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 Trade Reporting Facility Carteret (the "FINRA/Nasdaq TRF Carteret") and the FINRA/Nasdaq Trade Reporting Facility Chicago (the "FINRA/Nasdaq TRF Chicago") (collectively, the "FINRA/Nasdaq TRF") are facilities of FINRA that are operated by Nasdaq, Inc. ("Nasdaq"). In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and Nasdaq entered into a limited liability company agreement (the "LLC Agreement"). Under the LLC Agreement, FINRA, the "SRO Member," has sole regulatory responsibility for the FINRA/Nasdaq TRF. Nasdaq, the "Business Member," is primarily responsible for the management of the FINRA/Nasdaq TRF's business affairs, including establishing pricing for use of the

FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the FINRA/Nasdaq TRF. The proposed rule change makes several adjustments to the schedule of fees and caps that applies to participants in the FINRA/Nasdaq TRF.

Background

The FINRA/Nasdaq TRF comprises two of four FINRA facilities⁵ that FINRA members can use to report over-the-counter (“OTC”) trades in NMS stocks. While members are required to report all OTC trades in NMS stocks to FINRA, they may choose which FINRA facility (or facilities) to use to satisfy their trade reporting obligations.

Pursuant to the FINRA Rule 7600A Series, participants in the FINRA/Nasdaq TRF 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 TRF (Rule 7610A). These rules are administered by Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF, on behalf of FINRA,⁶ and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRF.

⁵ The four FINRA facilities are the FINRA/Nasdaq TRF Carteret, the FINRA/Nasdaq TRF Chicago, the FINRA/NYSE Trade Reporting Facility (the “FINRA/NYSE TRF”), and the Alternative Display Facility (“ADF”).

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.

Pursuant to FINRA Rule 7620A, participants that are not Retail Participants⁷ in the FINRA/Nasdaq TRF are subject to four categories of fees, each of which is applicable to transactions on the three tapes:⁸ (1) Media/Executing Party; (2) Non-Media/Executing Party; (3) Media/Contra Party; and (4) Non-Media/Contra Party.⁹ For each Media and Non-Media trade report submitted to the FINRA/Nasdaq TRF, both the member firm identified in the report as the Executing Party and the member firm identified as the Contra Party are assessed a fee.¹⁰ Rule 7620A provides that for any category of fees, a non-Retail Participant will qualify for a cap on the fees they would otherwise pay to report non-comparison/accept (non-match/compare) trades to a particular tape during a given month, provided that during the month, the participant separately has an average daily number of Media/Executing Party trade reports of at least 5,000 in that same tape.

⁷ The term “Retail Participant” is defined in Rule 7620A.01. Retail Participants are exempt from fees for trade reporting to the FINRA/Nasdaq TRF. Unless otherwise stated, references to a “participant” herein mean a non-Retail Participant.

⁸ Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange (“Tape A”); BYX, BZX, EDGA, EDGX, IEX, LTSE, MEMX, MIAX, Nasdaq BX, Nasdaq PSX, NYSE American, NYSE Chicago, NYSE National, and NYSE Arca (“Tape B”); and Nasdaq (“Tape C”).

⁹ Media eligible trade reports are those that are submitted to the FINRA/Nasdaq TRF for public dissemination by the Securities Information Processors. By contrast, non-media trade reports are not submitted to the FINRA/Nasdaq TRF for public dissemination but are submitted for regulatory and/or clearance and settlement purposes.

¹⁰ Pursuant to Rule 7620A.01, the “Executing Party” is defined as the member with the trade reporting obligation under FINRA rules and the “Contra” is defined as the member on the contra side of a trade report.

Proposed Amendments to Fee Schedule

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 TRF. 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; and (2) re-calibrate the fee structure so that it provides for a more equitable allocation of fees among Executing Parties and Contra Parties, while providing for a reasonable return to Nasdaq on its expenditures in support of and investments in the FINRA/Nasdaq TRF 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) provide for new tiered discounted Media/Contra Party and Non-Media/Contra Party fees; and (3) make non-substantive 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 the daily average number of Media/Executing trades that a participant must report to the FINRA/Nasdaq TRF in a given month to qualify for caps on its trade reporting fees (“Cap Qualifying Activity”). Presently, the level of Cap Qualifying Activity is 5,000 Media/Executing trade reports in each of Tapes A, B, and C. Nasdaq, as the Business Member, has determined to raise these threshold numbers to 10,000 in each Tape.

The levels of Cap Qualifying Activity have not increased since 2018,¹¹ at a time when reporting volume on the FINRA/Nasdaq TRF was significantly lower than it is now. Over the past five years, the FINRA/Nasdaq TRF trade reporting volume has grown twofold, while the FINRA/Nasdaq TRF monthly charge and caps for reporting trades have remained the same for the four categories over the same time period.¹² Participants eligible for fee caps have paid the same capped charges over the past five years while trade reporting volumes have increased 201 percent over a five-year span. Meanwhile, the cost of operating the FINRA/Nasdaq TRF has increased by approximately 23 percent from 2019 to 2023. 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 increased operational and maintenance costs that have flowed from rising levels of trade reporting activity. Nasdaq, as the Business Member, believes that raising the levels of Cap Qualifying Activity will help to recalibrate the thresholds in light of increased volumes and costs.

Media and Non-Media/Contra Party Fees

The proposed rule change would also amend the schedule of fees for Media/Contra Party and Non-Media/Contra Party trade reports. Nasdaq, as the Business Member, has determined to establish tiered pricing on Media/Contra Party and Non-

¹¹ See Securities Exchange Act Release No. 83866 (August 16, 2018), 83 FR 42545 (August 22, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-029).

¹² Over the past five years, annual trade reporting volume on the FINRA/Nasdaq TRF has grown from 283.9 billion trades to 855.7 billion trades, an increase of 201 percent. Annual fees have increased by 44 percent over the same period. Annual fees for this purpose mean the aggregate of all reporting fees collected by the FINRA/Nasdaq TRF in a given calendar year.

Media/Contra Party trade reports for participants that do not qualify for the cap described above. Similar to the existing fee caps based on Executing Party trade report volume, the tiered pricing will apply based on a member firm’s total monthly Media/Contra Party trade report volume. To be eligible for the tiered pricing, the participant’s Media/Contra Party volume must equal or exceed 35 percent of the participant’s total volume of trades reported to the FINRA/Nasdaq TRF in a given month. A participant that meets this threshold will qualify for discounted pricing at the following tiers:

Minimum Number of Media/Contra Trade Reports During the Month	Fee Per Trade Report
2 million	\$0.012
7 million	\$0.0095
12 million	\$0.0075

If a participant has sufficient Media/Contra Party trade reports to meet the above thresholds, then the discounted pricing will also apply to the participant’s Non-Media/Contra Party trade reports. Unlike the existing fee caps, the volume and trade report thresholds are not calculated on a per tape basis for purposes of the Contra Party tiered discounts.

The proposed tiered pricing is intended to provide for a more reasonable allocation of fees among Executing Parties and Contra Parties. The three tier levels were developed so that participants can qualify for lower fees as their Media/Contra Party trade reporting volumes increase.

As discussed above, the number of trades reported to the FINRA/Nasdaq TRF has grown significantly in recent years. Currently, participants that are primarily identified as

the Contra Party on trade reports and do not have sufficient Executing Party trades that would qualify for the fee cap are not eligible for any pricing discount. The proposed rule change would therefore provide tiered discounted fees to participants identified in trade reports as the Media/Contra Party and Non-Media/Contra Party to allow more participants to qualify for discounted rates and to provide for more reasonable allocation of fees among the parties to a trade.

In addition to setting forth the proposed discounted pricing, the proposed rule change would add language to Section II.A of Rule 7620A to provide an explanation and example of qualifying trade reporting activity for the Contra Party tiered discount.

It is important to note that a participant will not receive both the fee cap based on qualifying Media/Executing Party trade reporting activity and the proposed Contra Party fee discount in the same month. Nasdaq, as the Business Member, will conduct monthly reviews of a non-Retail Participant's trade reporting volume to determine what pricing applies to the participant's activity for a given month.¹³ If a firm does not qualify for the fee cap based on Media/Executing Party trade reporting activity, the firm will then be evaluated for Contra Party tiered pricing based on its Media/Contra Party trade reporting activity.¹⁴ Non-Retail Participants will automatically receive the applicable capped or

¹³ Retail Participants are not subject to any trade reporting fees and therefore would not be considered for any cap or fee discounts.

¹⁴ If a firm qualifies for an ATS Market Maker fee cap, then the firm will not qualify for Contra Party pricing.

discounted pricing if they qualify based on their trade reporting activity; they do not need to submit supporting documentation or take any additional steps to qualify.¹⁵

General Clarifications

FINRA is also proposing non-substantive changes to the FINRA/Nasdaq TRF fee schedule to provide more clarity. First, Retail Participants are not subject to any trade reporting fees under Rule 7620A. Therefore, FINRA is proposing to eliminate language that suggests that, in some instances, Retail Participants are required to pay trade report charges. Second, FINRA is proposing minor changes to the language in Section II.A of Rule 7620A to provide more clarity on the qualifying activity required to achieve the cap. These proposed changes are not intended to make any substantive changes to the operation of the rule.

FINRA notes that the proposed rule changes do not modify the other fees assessed under Rule 7620A, including the ATS Market Maker fee caps, the fee assessed a member for submitting a clearing report to the FINRA/Nasdaq TRF to transfer a transaction fee pursuant to Rule 7230A(h), and the “Comparison” fee.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be June 1, 2024.

¹⁵ By contrast, Retail Participants are required to complete and submit an application and written attestation to Nasdaq to be designated as such and to receive pricing under the Retail Participant fee schedule.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,¹⁶ in general, and Section 15A(b)(5) of the Act,¹⁷ in particular, which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA also 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 must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(9) of the Act,¹⁹ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that the proposed fee schedule is reasonable and provides an equitable allocation of fees in that it will apply uniformly to all similarly situated FINRA members that use the FINRA/Nasdaq TRF. Moreover, participation in the FINRA/Nasdaq TRF is voluntary, and access to the FINRA/Nasdaq TRF is offered on fair and non-discriminatory terms.

¹⁶ 15 U.S.C. 78o-3(b).

¹⁷ 15 U.S.C. 78o-3(b)(5).

¹⁸ 15 U.S.C. 78o-3(b)(6).

¹⁹ 15 U.S.C. 78o-3(b)(9).

The proposed rule change would: (1) raise from 5,000 to 10,000 the Cap Qualifying Activity that a participant needs to achieve to qualify for capped reporting fees under Rule 7620A; and (2) provide a three-tiered fee discount for Media/Contra Party and Non-Media/Contra Party monthly charges for participants that may not otherwise achieve Cap Qualifying Activity.

As discussed above, the FINRA/Nasdaq TRF has experienced a significant increase in trade reporting activity over the past five years, while the monthly charges and caps have remained unchanged over the same time period. Nasdaq, as the Business Member, does not believe that the current Cap Qualifying Activity of 5,000 daily average trades per month continues to be an appropriate threshold in light of such increase. The caps and cap formulas have not kept pace with the rapid growth of trade reporting volume on the FINRA/Nasdaq TRF since they were amended in 2018 or with the corresponding increase in costs associated with operating, maintaining, and upgrading the FINRA/Nasdaq TRF. Nasdaq, as the Business Member, believes that doubling the minimum average daily volume of Media/Executing Party trade reports from 5,000 to 10,000 will better reflect the current levels of trade reporting activity on the FINRA/Nasdaq TRF. The proposed rule change will also help Nasdaq continue to accommodate the costs associated with rising trade reporting volumes while making substantial enhancements to the technology, functionality, and performance of the FINRA/Nasdaq TRF. Participants are required to submit Media trade reports to FINRA, while not all Non-Media trades are required to be reported under FINRA rules. In determining pricing for the FINRA/Nasdaq TRF, the Business Member has focused on attracting Media trade reports to the FINRA/Nasdaq TRF relative to other trade reporting

facilities.²⁰ As such, the existing approach of using Media/Executing Party trade reports as the criteria for a participant to qualify for the fee cap provides for an equitable allocation of fees and is not unfairly discriminatory.

Additionally, as discussed above, the proposed tiered discounts will help ensure a more equitable distribution of fees and allocate costs associated with the operation and maintenance of the FINRA/Nasdaq TRF more equitably among Executing Parties and Contra Parties. Over time, as the number of trades reported to the FINRA/Nasdaq TRF has grown significantly, the fee burden associated with the FINRA/Nasdaq TRF has shifted disproportionately to Contra Parties because participants that are primarily identified as the Contra Party and that do not have sufficient Executing Party trades to qualify for the fee cap are not currently eligible for any pricing discount. According to Nasdaq, as the Business Member, without a cap on Contra Party monthly trade report charges, the increase in Contra Party activity fees as a result of the growth in trade reporting activity over the past five years has been disproportionately higher than that of Executing Party fees. Therefore, the Business Member has advised that the proposed three-tiered fee discount for Contra Parties will help ensure that Contra Parties' fees are better calibrated relative to Executing Parties. Similar to the existing approach taken with respect to using Media/Executing Party trade reports to qualify for a fee cap, Nasdaq, as the Business Member, has determined to base the proposed fee discount for Contra Parties on Media/Contra trade reports in an effort to attract more Media reporting to the

²⁰ The Cap Qualifying Activity requirement has historically focused on participants that are identified in the trade report as the Executing Party because historically the Executing Party has primarily made the decision on which TRF to which it report its trades.

FINRA/Nasdaq TRF relative to other trade reporting facilities.²¹ Therefore, as with the existing approach with respect to Cap Qualifying Activity, using Media/Contra Party trade reports as the basis for qualifying for the Contra Party fee discount provides for an equitable allocation of fees and is not unfairly discriminatory.

Nasdaq also advises that it expects to earn a profit from the proposed rule change, but it believes that such profit represents a reasonable return on its expenditures in support of and investments in the FINRA/Nasdaq TRF, 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,”²² 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.”²³ In this instance, the increase in fees resulting from the proposal to increase the Media/Executing Party trade reporting activity required to qualify for a fee cap will be subject to significant competition from the FINRA/NYSE TRF, which in the past has increased its market share relative to the FINRA/Nasdaq TRF 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

²¹ Nasdaq has advised that today, some Contra Parties may play a greater role in determining where their Executing Parties report trades than in the past.

²² See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving File No. SR-NYSEArca-2006-21).

²³ See 73 FR 74770, 74781-82.

proposed rule change will be an equitable allocation of reasonable dues, fees and other charges.²⁴

Finally, FINRA believes that it is reasonable to make non-technical, clarifying changes to Rule 7620A. The proposed non-substantive changes to remove the reference to fees charged to Retail Participants and to clarify the Cap Qualifying Activity requirements for the fee caps are appropriate to make the rule more easily understandable. FINRA, Nasdaq, and all FINRA/Nasdaq TRF participants have an interest in FINRA maintaining rules for its trade reporting facilities that are clear.

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 TRF, collects all fees on behalf of the FINRA/Nasdaq TRF. As discussed above, Nasdaq has observed an increase in off-exchange volumes and the associated cost of operating and improving the FINRA/Nasdaq TRF. Nasdaq also observed that today, participants predominantly identified as the Contra Party pay a disproportionate amount of the fees. Therefore, Nasdaq determined to make several adjustments to the schedule of fees and caps to better allocate the fees among the participants and align them with the costs of operating the FINRA/Nasdaq TRF.

²⁴ See supra note 23.

Economic Baseline

As discussed above, pursuant to FINRA Rule 7620A, participants in the FINRA/Nasdaq TRF 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, Non-Media/Executing Party, Media/Contra Party and Non-Media/Contra Party trades. The level of the daily average number of Media/Executing Party trades determines a participant's eligibility to qualify for fee caps on the Media/Executing Party, Non-Media/Executing Party, Media/Contra Party, and Non-Media/Contra Party trade reports. Consider, for example, a non-Retail Participant averaging 10,924 Media/Executing Party trades, 21,279 Non-Media/Executing Party trades, 1,949 Media/Contra Party trades, and 16,741 Non-Media/Contra Party trades per day in a given month and tape. This participant meets the 5,000 daily trade volume of Media/Executing Party trades that qualifies it for the fee caps. The monthly charge on its Media/Executing Party trades would be capped at \$1,430 (5,000 reports x \$0.013 x 22), assuming 22 trading days in the month. In this example, the charges for Non-Media/Executing Party and Non-Media/Contra Party trade reports both would be capped at \$1,430 because the volumes in both categories are higher than 5,000, while the charge for Media/Contra Party trade reports would be \$557.41 (1,949 reports x \$0.013 x 22) because the volume has not reached the cap size of 5,000. If the number of Media/Executing Party trades were below 5,000 in this example, then the charges on all categories would be calculated at a regular rate without a cap.

FINRA analyzed data provided by Nasdaq that shows fees incurred by 584 participants in at least one month of 2023. On average, 505 participants paid a fee each month to the FINRA/Nasdaq TRF either as an Executing Party or Contra Party in at least one of Tape A, B, and C securities.²⁵ Among these 505 participants, on average, 33 (seven percent) were eligible and received capped fees each month. Of the 472 participants (93 percent) that were ineligible for a cap, on average, 347 (74 percent) had a larger volume of Contra Party/Media activity than Executing Party/Media activity across all tapes.

Economic Impact

The proposed rule change entails several changes to the fee and cap structure. The potential 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 TRF in a given month to qualify for caps on its trade reporting fees, from 5,000 reports in each of Tapes A, B, and C, to 10,000 reports. Under the proposed new fee structure, some participants currently qualifying for fee caps would no longer qualify for the fee cap and would therefore see an increase in fees. Participants that continue to qualify for the proposed fee cap would also expect higher charges because the required volumes for fee caps in all categories would increase from 5,000 to 10,000 trade reports under the proposed rule. Under the proposed fee structure, the cap effectively increases by 100%, approximately from \$1,430 ($\$0.013 \times 5,000 \times 22$) to

²⁵ The counts of participants are averaged across all twelve months of 2023 and rounded to the nearest whole numbers.

\$2,860 ($\$0.013 \times 10,000 \times 22$), assuming 22 trading days in a month, for each category of trade reports (i.e., Media/Executing Party, Non-Media/Executing Party, Media/Contra Party and Non-Media/Contra Party) in each tape.²⁶ Participants not qualifying for the fee caps would be considered for the proposed tiered discounts on Contra Party trade reports and therefore could expect lower charges on the Contra Party trade reports if they qualify.²⁷

For the purpose of estimating the impacts of the proposed rule change, FINRA used monthly trade reporting volumes and fees data provided by Nasdaq from January through December of 2023 to calculate the projected fees assuming the reporting behavior would be the same as the 2023 data. Under the proposed rule change, 31 participants could expect an increase in costs on both Executing Party and Contra Party trade reporting activity (increase of \$11,531, or 68 percent, on average monthly); seven participants could expect an increase in costs on Executing Party trade reporting activity (increase of \$5,279, or 73 percent, on average monthly) and no change in costs on Contra Party activity; 11 participants could expect a decrease in costs on Contra Party trade reporting activity (decrease of \$18,562, or 18 percent, on average monthly) because they would qualify for the proposed tiered discounts; and 535 participants would expect no change in costs.

²⁶ As in the current Rule, under the proposed rule, a firm would qualify for fee caps in categories other than the Media/Executing Party only after it has qualified for the fee caps in the Media/Executing Party category in each Tape.

²⁷ As described above, tiered pricing on Media/Contra Party and Non-Media/Contra Party trade reports would only be available for participants that do not qualify for the Media/Executing Party fee cap.

The proposed fee structure is likely to reduce the gap in trade reporting fees between participants predominantly reporting as an Executing Party and those predominantly reporting as a Contra Party. Across all participants, the effective cost per Executing Party trade report would increase by 52 percent, from 0.053 cents to 0.080 cents per report. The effective cost per Contra Party trade report would decline by one percent, from 0.415 cents to 0.412 cents per report. In 2023, a Contra Party, on average, paid approximately eight times as much ($\$0.00415/\0.00053) as an Executing Party for each trade report. If the proposed fee structure were in effect in 2023, the ratio would have been approximately five times ($\$0.00412/\0.00080).

Besides the fees that are measurable, the proposed fee structure could potentially deliver long term economic benefits for its participants that cannot easily be estimated. Specifically, the proposed fee structure would allow Nasdaq to more effectively cover the rising operating costs associated with increased volumes, as well as improve the functionality and service of the reporting facility, such as potentially better processing speed to enable quicker transmission and dissemination of trade reports.

FINRA cannot estimate whether the proposed fee structure would deliver a net benefit or cost to participants and investors in the long term, as some of the economic benefits discussed above are not quantifiable. Additionally, FINRA notes that the proposed fee and fee cap changes occur within the context of a competitive environment in which multiple 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 or the ADF in lieu of the FINRA/Nasdaq TRF. Firms would continue reporting to FINRA/Nasdaq TRFs to the extent that they find the net cost of reporting to FINRA/Nasdaq TRF relative to reporting to other facilities preferable.

FINRA does not know how the proposed rule change would affect competing facilities, which in part determines market competition and prices for trade reporting in the long run. Should the long-run equilibrium cost of reporting off-exchange trades to any available facility, including the FINRA/Nasdaq TRF, the FINRA/NYSE TRF or the ADF, rise in a competitive market, firms could potentially choose to pass the costs to investors.

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 Act²⁸ and paragraph (f)(2) of Rule 19b-4 thereunder.²⁹ 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

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2024-009 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2024-009. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2024-009 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.³⁰

Jill M. Peterson
Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

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 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, discounts or caps apply to the participant during that month.

I. No change.

II. **Non-Comparison/Accept (Non-Match/Compare) Trade Report Fees, Discounts 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 the extent that a participant’s activity on the FINRA/Nasdaq Trade Reporting Facility qualifies it for more than one special pricing program during a given month, then the participant will automatically receive the benefit of the lowest fee applicable to such activity.

1. Media/Executing Party Trade Report Fees and Cap

Monthly Charge <u>if Not Capped</u>	Maximum Monthly Charge if Capped
(\$0.015) x (Number of Media/Executing Party Reports During the Month)	(\$0.013) x [5]10,000 <u>for Tape A, B or C</u> x (Number of Trading Days During the Month)
Monthly Charge for Retail Participants	
\$0.00	

2. Non-Media/Executing Party Trade Report Fees and Cap

Monthly Charge <u>if Not Capped</u>	Maximum Monthly Charge if Capped
(\$0.015) x (Number of Non-Media/Executing Party Reports During the Month)	(\$0.013) x [5]10,000 <u>for Tape A, B or C</u> x (Number of Trading Days During the Month)

Monthly Charge for Retail Participants	
\$0.00	
3. Media/Contra Party Trade Report Fees, <u>Discounts</u> and Cap	
Monthly Charge <u>if Not Capped or Discounted</u>	Maximum Monthly Charge if Capped
$(\$0.013) \times (\text{Number of Media/Contra Party Reports During the Month})$	$(\$0.013) \times [5]10,000 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month})$
<u>Monthly Discounted Charge</u>	
<u>Tier 1</u> $(\$0.0075) \times (\text{Number of Media/Contra Party Reports During the Month})$	
<u>Tier 2</u> $(\$0.0095) \times (\text{Number of Media/Contra Party Reports During the Month})$	
<u>Tier 3</u> $(\$0.012) \times (\text{Number of Media/Contra Party Reports During the Month})$	
Monthly Charge for Retail Participants	
\$0.00	
4. Non-Media/Contra Party <u>Trade Report Fees, Discounts</u> and Cap	

<p>Monthly Charge <u>if Not Capped or Discounted</u></p>	<p>Maximum Monthly Charge if Capped</p>
<p>(\$0.013) x (Number of Non-Media/Contra Party Reports During the Month)</p>	<p>(\$0.013) x [5]10,000 for Tape A, B or C x (Number of Trading Days During the Month)</p>
<p><u>Monthly Discounted Charge</u></p> <p><u>Tier 1</u></p> <p>(\$0.0075) x (Number of Non-Media/Contra Party Reports During the Month)</p> <p><u>Tier 2</u></p> <p>(\$0.0095) x (Number of Non-Media/Contra Party Reports During the Month)</p> <p><u>Tier 3</u></p> <p>(\$0.012) x (Number of Non-Media /Contra Party Reports During the Month)</p>	
<p>Monthly Charge for Retail Participants</p>	
<p>\$0.00</p>	
<p>A. [Cap]Qualifying Activity <u>Requirements for Fee Cap and Discounts</u> [(Requisite Daily Average Media/Executing Party Trade Reporting Activity for a Non-Retail Participant to Qualify for Fee Caps in Paragraphs 1 — 4 Above)]</p> <p><u>(1) Qualifying Activity for Fee Cap in Paragraphs 1 - 4</u></p>	

To qualify for the caps (set forth in paragraphs 1 – 4 above) on the charges that non-Retail Participants incur [to report] on trades reported to the FINRA/Nasdaq Trade Reporting Facility during a month, a non-Retail Participant must achieve Cap Qualifying Media/Executing Party Activity during that month, as set forth below in this paragraph. A participant will qualify for caps on a per Tape basis.

For example, if in a given month, a non-Retail Participant averages [6]11,000 Media/Executing Party trade reports per day in Tape A, [5]10,000 average daily Media/Executing Party trade reports in Tape B, and [1]5,000 average daily Media/Executing Party trade reports in Tape C, then the non-Retail 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.

Tape	Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap
A	[5] <u>10,000</u>
B	[5] <u>10,000</u>
C	[5] <u>10,000</u>

(2) Qualifying Activity for Contra Party Discounts in Paragraphs 3 – 4

To qualify for the Media/Contra Party and Non-Media/Contra Party tiered discounts in paragraphs 3 – 4 above on the charges that non-Retail Participants incur on trades reported to the FINRA/Nasdaq Trade Reporting Facility during a month, a non-Retail Participant’s Media/Contra Party volume must equal or exceed 35% of the participant’s total volume of trades reported to the FINRA/Nasdaq TRF during that month and the participant must meet the minimum number of Media/Contra Party trade reports during that month, as set forth below in this paragraph. The volume and trade report thresholds are not calculated on a per tape basis for purposes of the Contra Party tiered discounts. For example, if in a given month, a non-Retail Participant has 20 million total trades reported to the FINRA/Nasdaq Trade Reporting Facility, of which 13 million are Media/Contra Party trades, then the participant would qualify for a discounted rate of 0.0075 on its Media/Contra and Non-Media/Contra trade reports for that month, having met the 12 million Media/Contra trade reports requirement and the 35% Media/Contra reports to total trade reports requirement.

	<u>Tier</u>	<u>Minimum Number of Media/Contra Trade Reports During the Month</u>
<u>At least 35% of the participant’s total number of trades reported</u>	<u>1</u>	<u>12 million</u>
	<u>2</u>	<u>7 million</u>

<p><u>to the FINRA/Nasdaq Trade Reporting Facility during the month represent Media/Contra Party trades and the participant meets the minimum number of Media/Contra Trade Reports for a given tier.</u></p>	<p><u>3</u></p>	<p><u>2 million</u></p>
<p>B. No Change.</p>		
<p>C. No Change.</p>		
<p>III. No Change.</p>		
<p>IV. No Change.</p>		

••• **Supplementary Material:** -----

No Change.

* * * * *