

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75339; File No. SR-FINRA-2015-021)

June 30, 2015

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Rule 7650A Relating to Debit Process for the Collection of FINRA/Nasdaq Trade Reporting Facility Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 23, 2015, 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 and II 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,<sup>3</sup> 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 the Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 7650A (Collection of Fees) to require FINRA members that are FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF”) participants to provide a clearing account number for an account at the National Securities Clearing Corporation (“NSCC”) for purposes of permitting the FINRA/Nasdaq TRF to debit undisputed or final fees due and owing by the member under the Rule 7600A Series.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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 TRF is a facility of FINRA that is operated by The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and NASDAQ OMX 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 OMX, the "Business Member," is primarily responsible for the management of the FINRA/Nasdaq TRF's business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. As such, the Business Member establishes pricing for use of the FINRA/Nasdaq TRF, and such pricing is implemented pursuant to FINRA rules that must be filed with the SEC and be consistent with the Act. In addition, 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.

Pursuant to the FINRA Rule 7600A Series, FINRA members that are FINRA/Nasdaq TRF participants are charged fees (Rule 7620A) and also may qualify for credits for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). These rules are administered by NASDAQ OMX, in its capacity as the “Business Member” and operator of the FINRA/Nasdaq TRF on behalf of FINRA,<sup>4</sup> and NASDAQ OMX collects all fees on behalf of the FINRA/Nasdaq TRF. FINRA is proposing to adopt Rule 7650A to require FINRA members that are FINRA/Nasdaq TRF participants to provide a clearing account number for an account at NSCC to the FINRA/Nasdaq TRF for purposes of permitting NASDAQ OMX, on behalf of the FINRA/Nasdaq TRF, to debit any undisputed or final fees due and owing under the FINRA Rule 7600A Series relating to the FINRA/Nasdaq TRF. Specifically, Rules 7610A (Securities Transaction Credit), 7620A (FINRA/Nasdaq Trade Reporting Facility Reporting Fees) and 7630A (Aggregation of Activity of Affiliated Members) will be subject to proposed Rule 7650A.

The debit process under proposed Rule 7650A would operate in the same manner as the debit process under Nasdaq Rule 7007 (Collection of Exchange Fees and Other Claims).<sup>5</sup> Specifically, NASDAQ OMX would send a monthly invoice<sup>6</sup> to each FINRA/Nasdaq TRF

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<sup>4</sup> 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.

<sup>5</sup> See Securities Exchange Act Release No. 74823 (April 28, 2015), 80 FR 25353 (May 4, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2015-046).

<sup>6</sup> The monthly invoice will clearly indicate that the amount on the invoice will be directly debited from the designated NSCC account.

participant on approximately the 3<sup>rd</sup> through 10<sup>th</sup> business day of the following month.<sup>7</sup> NASDAQ OMX would send a file to NSCC each month on approximately the 23<sup>rd</sup> of the following month to initiate the debit of the appropriate amount stated on the member's invoice for the prior month.<sup>8</sup> Because the member would receive an invoice well before any monies are debited (normally within two weeks), the member would have adequate time to contact the FINRA/Nasdaq TRF with any questions concerning its invoice.<sup>9</sup> If a member disagrees with the invoice, the debit will not commence until the dispute is resolved. Specifically, the disputed amount would not be included in the debit if the member has disputed the amount in writing to the FINRA/Nasdaq TRF by the 15<sup>th</sup> of the month, or the following business day if the 15<sup>th</sup> is not a business day, and the amount in dispute is at least \$10,000 or greater.<sup>10</sup> Once NSCC receives the file, NSCC would proceed to debit the amounts indicated from the clearing member's account.

Where a FINRA/Nasdaq TRF participant clears through a clearing member, the estimated transaction fees are typically debited by the clearing member on a daily basis in order to ensure that adequate funds have been escrowed. NASDAQ OMX would debit any undisputed or final fees due and owing under the FINRA Rule 7600A Series. Thus, FINRA and NASDAQ OMX

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<sup>7</sup> Members may elect to receive invoices either electronically, by mail or by both methods.

<sup>8</sup> Each month, NASDAQ OMX will send a file to the member's clearing firm which will indicate the amount to be debited from that member's account. If a member is "self-clearing," no such file would be sent as the member would receive the invoice, as noted above, which would indicate the amount to be debited.

<sup>9</sup> NASDAQ OMX has represented to FINRA that members generally would receive invoices well before the tenth business day of the month, and as such, would have ample time to dispute any fee before commencement of the debit process.

<sup>10</sup> NASDAQ OMX has represented to FINRA that it will attempt to resolve all disputes prior to debiting of the disputed amount from the member's account; however, where necessary, NASDAQ OMX would issue refunds or credits, as appropriate.

believe that the proposed debit process will significantly reduce the number of unpaid invoices because of the large amounts of capital held at NSCC by members.

FINRA believes that the proposed direct debit process would create an efficient and uniform method of collecting undisputed or final amounts due and owing from FINRA/Nasdaq TRF participants under the Rule 7600A Series.<sup>11</sup> FINRA further believes that the proposed direct debit process would reduce the cost of administrative processes associated with invoicing and collecting fees owed by FINRA/Nasdaq TRF participants and would help reduce the possibility of their accounts becoming overdue.

FINRA has filed the proposed rule change for immediate effectiveness and requested waiver of the 30-day operative delay. FINRA proposes that the proposed rule change will become operative on July 1, 2015. On August 24, 2015, NASDAQ OMX, as the Business Member on behalf of the FINRA/Nasdaq TRF, will debit July 2015 billing pursuant to the process described in the proposed rule change.<sup>12</sup> FINRA will notify its members of the proposed rule change to provide its members time to provide the FINRA/Nasdaq TRF with the information necessary for the direct debit and prepare for the change to the collection process.<sup>13</sup> NASDAQ OMX has represented that a member's primary NSCC account number will be used unless the

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<sup>11</sup> Consistent with the debit process proposed under SR-NASDAQ-2015-046, NASDAQ OMX has represented to FINRA that it will not debit accounts for fees that are unusually large or for special circumstances. FINRA notes that the debit process under this proposed rule change is limited to FINRA Rules 7610A, 7620A and 7630A.

<sup>12</sup> The initial debit will include all undisputed outstanding fees through August 2015.

<sup>13</sup> FINRA notes that NASDAQ OMX has already provided notice relating to the proposed debit process under NASDAQ Rule 7007, and NASDAQ OMX has represented that FINRA/Nasdaq TRF participants would have received such notice. See, e.g., Equity Trader Alert #2015-83 (June 3, 2015), available at [www.nasdaqtrader.com/TraderNews.aspx?id=ETA2015-83](http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2015-83).

member contacts the FINRA/Nasdaq TRF prior to July 24, 2015 with an alternate NSCC account number.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Consistent with SR-NASDAQ-2015-046, the proposed debit process would provide FINRA/Nasdaq TRF participants with an efficient process to pay undisputed or final fees due and owing to the FINRA/Nasdaq TRF. In addition, consistent with SR-NASDAQ-2015-046, the proposed debit process would ease FINRA/Nasdaq TRF participants' administrative burden in paying monthly invoices, avoid overdue balances and provide same day collection from all FINRA/Nasdaq TRF participants that owe monies to the FINRA/Nasdaq TRF. Finally, consistent with SR-NASDAQ-2015-046, the proposed debit process is equitable and not unfairly discriminatory because it would apply to all FINRA/Nasdaq TRF participants in a uniform manner.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described herein, and consistent with the LLC agreement, the proposed debit process is identical to the debit process NASDAQ OMX currently has in place for collection of fees and other amounts owed by NASDAQ Options Market LLC ("NOM") participants under Nasdaq rules and is also identical to the debit process proposed by Nasdaq for collection of fees and other amounts

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

owed by Nasdaq equity participants under Nasdaq Stock Market rules. As the Business Member, NASDAQ OMX has the obligation of assessing the potential impacts of the proposed debit process in its own rulemaking. FINRA notes that Nasdaq's debit process was subject to proposed rule changes filed by Nasdaq with the Commission.<sup>15</sup>

Consistent with SR-NASDAQ-2015-046, the proposed debit process would apply uniformly to all members that are FINRA/Nasdaq TRF participants, as it does today with NOM participants and as proposed for Nasdaq equity participants. In addition, consistent with SR-NASDAQ-2015-046, the proposed debit process would provide a cost savings to the FINRA/Nasdaq TRF, in that it would alleviate administrative processes related to the collection of amounts owed by members for reporting to the FINRA/Nasdaq TRF, as it does today with NOM participants and as proposed for Nasdaq equity participants. Finally, consistent with SR-NASDAQ-2015-046, the proposed debit process would prevent FINRA/Nasdaq TRF participant accounts from becoming overdue.

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

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<sup>15</sup> See, e.g., Securities Exchange Act Release No. 74823 (April 28, 2015), 80 FR 25353 (May 4, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2015-046).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. FINRA will implement the proposed rule change on July 1, 2015, and on August 24, 2015, NASDAQ OMX, as the Business Member on behalf of the FINRA/Nasdaq TRF, will debit July 2015 billing pursuant to the process described in the proposed rule change. FINRA will notify its members of the proposed rule change to provide its members time to provide the FINRA/Nasdaq TRF with the information necessary for the direct debit and prepare for the change to the collection process. NASDAQ OMX has represented that a member's primary NSCC account number will be used unless the member contacts the FINRA/Nasdaq TRF prior to July 24, 2015 with an alternate NSCC account number. The proposal presents no novel issues, and the Commission believes the terms of this implementation schedule are reasonable. Furthermore, the Commission finds no reason to delay implementation for 30 days, given the reduction of administrative burdens and costs inherent

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).



in the proposed rule change. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.<sup>19</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-021 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-2015-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>19</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-021, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Robert W. Errett  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).