

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76385; File No. SR-FINRA-2015-045)

November 6, 2015

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

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 October 29, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, 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,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 7640A (Data Products Offered By Nasdaq) to identify the Nasdaq Last Sale Plus (“NLS Plus”) data feed, which distributes FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF” or “TRF”) data to third parties.

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

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

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7600. DATA PRODUCTS AND CHARGES FOR TRADE REPORTING FACILITY SERVICES

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

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7640A. Data Products Offered by NASDAQ

(a) through (b) No Change.

(c) The following data products offered by Nasdaq pursuant to Nasdaq rules use covered market data:

(1) No Change.

(2) Nasdaq Last Sale and Nasdaq Last Sale Plus Data Feeds under Nasdaq Rule 7039; and

(3) No Change.

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

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

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

1. Purpose

FINRA Rule 7640A describes FINRA’s practices relating to the distribution of market data for over-the-counter (“OTC”) transactions in NMS stocks generated through the operation of the FINRA/Nasdaq TRF by Nasdaq, Inc. (“NASDAQ”), the Business Member under the Limited Liability Company agreement governing the FINRA/Nasdaq TRF (the “LLC Agreement”),⁴ and its affiliate, The NASDAQ Stock Market LLC (“Nasdaq”). Rule 7640A was adopted pursuant to SR-FINRA-2014-002, which describes in greater detail the TRF framework and FINRA’s oversight of TRF operations and use of FINRA/Nasdaq TRF data in Nasdaq market data products.⁵ As described in that filing, although the FINRA/Nasdaq TRF is a facility of FINRA and TRF data is OTC data for which FINRA is responsible under the Act, NASDAQ, as the Business Member, has the contractual right to develop market data products using TRF data. As such, use of FINRA/Nasdaq TRF data is conducted through Nasdaq, is subject to a separate proposed rule change filed with the Commission by Nasdaq in its capacity as a self-regulatory organization (“SRO”) and must satisfy the appropriate statutory standards.

⁴ As approved by its board of directors and the Commission [sic], effective September 8, 2015, NASDAQ changed its legal name from The NASDAQ OMX Group, Inc. to Nasdaq, Inc. See Nasdaq, Inc. Form 8-K Current Report (filed September 8, 2015) (available at www.sec.gov/Archives/edgar/data/1120193/000119312515314459/d48431d8k.htm).

FINRA and NASDAQ are in the process of amending the LLC Agreement to reflect the name change. FINRA will file a separate proposed rule change to update the FINRA manual, including Rule 7640A, accordingly.

⁵ See Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness; File No. SR-FINRA-2014-002).

Paragraph (a) of Rule 7640A codifies the contractual arrangement between FINRA and NASDAQ and provides for the overall structure relating to the FINRA/Nasdaq TRF and the permissible use of FINRA/Nasdaq TRF data. Paragraph (b) provides that fees for market data products that use FINRA/Nasdaq TRF data are charged by Nasdaq under Nasdaq rules. Nasdaq must adopt such fees pursuant to a proposed rule change submitted to the Commission under Section 19(b) of the Act, and must demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory. Paragraph (c) identifies Nasdaq rules relating to products that use FINRA/Nasdaq TRF data, including Nasdaq Rule 7039 relating to the Nasdaq Last Sale (“NLS”) data feeds.⁶

On June 22, 2015, the Commission approved proposed rule change SR-NASDAQ-2015-055, pursuant to which Nasdaq proposed to amend Nasdaq Rule 7039 to fully reflect the NLS Plus data feed and to rename the rule “Nasdaq Last Sale and Nasdaq Last Sale Plus Data Feeds.”⁷ As described in Nasdaq’s filing, NLS Plus has been offered since 2010 via NASDAQ OMX Information LLC, a subsidiary of NASDAQ. As further described in Nasdaq’s filing, in offering NLS Plus, NASDAQ OMX Information LLC is acting as a redistributor of the last sale products already offered by NASDAQ’s three equity exchanges (Nasdaq, NASDAQ OMX BX and NASDAQ OMX PSX), as well as volume information provided by the securities information processors (“SIPs”). As such, NLS Plus includes transactions from all of NASDAQ’s equity markets, as well as the FINRA/Nasdaq TRF data that is included in the current NLS product, as

⁶ Pursuant to Nasdaq Rule 7039, the NLS data feeds combine both Nasdaq Market Center and FINRA/Nasdaq TRF last sale data and provide real-time execution price, volume and time information for each reported sale.

⁷ See Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862 (June 26, 2015) (Order Approving File No. SR-NASDAQ-2015-055).

contemplated under Rule 7640A. In other words, NASDAQ OMX Information LLC redistributes last sale data that has been the subject of a proposed rule change filed with the Commission at prices that have also been the subject of a proposed rule change filed with the Commission.

Because the NLS Plus product provides a subset of the same last sale data that is disseminated by the SIPs, the feed is structured so that data is not provided to the NLS Plus product sooner than it is provided to the SIPs. NASDAQ currently monitors for potential latency by comparing the time of the dissemination of FINRA/Nasdaq TRF data to the SIPs and to the NLS data feeds, including NLS Plus. In that regard, NASDAQ has made specific commitments and undertakings with respect to its products that use FINRA/Nasdaq TRF data, including that, consistent with the Commission's interpretation of Rule 603(a) under SEC Regulation NMS, it will not transmit any FINRA/Nasdaq TRF transactions data to a vendor or user any sooner than the FINRA/Nasdaq TRF transmits the data to the SIPs.⁸ Thus, FINRA believes that the NLS Plus product satisfies the requirement that FINRA/Nasdaq TRF transaction data not be disseminated to a vendor or user any sooner than such data is transmitted to the SIPs.

Accordingly, FINRA is proposing to amend Rule 7640A(c)(2) to identify the NLS Plus product in the cross-reference to Nasdaq Rule 7039. FINRA believes that the proposed rule change will ensure that Rule 7640A accurately reflects the Nasdaq products that use FINRA/Nasdaq TRF data.

⁸ See Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (Notice of Filing and Immediate Effectiveness; File No. SR-FINRA-2014-002).

On July 24, 2015, Nasdaq filed proposed rule change SR-NASDAQ-2015-088 to amend Nasdaq Rule 7039 with language indicating fees for NLS Plus.⁹ Specifically, firms that receive the NLS Plus feed pay annual administration fees for applicable NASDAQ equity exchanges (\$1,000 for Nasdaq, \$1,000 for BX and \$1,000 for PSX), are liable for NLS or Nasdaq Basic fees under Nasdaq Rules and, pursuant to SR-NASDAQ-2015-088, pay a data consolidation fee of \$350 per month. As stated in Nasdaq's filing, the NLS Plus fee is a codification of the existing NLS Plus fee, with the addition of a monthly data consolidation fee, and as such, meets the requirements of the Act.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the proposed rule change will be operative immediately upon filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding Nasdaq market data products that use FINRA/Nasdaq TRF data by specifically identifying NLS Plus under Rule 7640A. In addition, consistent with SR-NASDAQ-2015-055, NLS Plus is an additional means by which investors may access information about securities transactions, thereby providing investors with additional options for accessing information that may help

⁹ See Securities Exchange Act Release No. 75600 (August 4, 2015), 80 FR 47968 (August 10, 2015) (Notice of Filing and Immediate Effectiveness; File No. SR-NASDAQ-2015-088).

¹⁰ 15 U.S.C. 78o-3(b)(6).

inform their trading decisions. In approving the NLS Plus product, the Commission specifically determined that it is consistent with the Act.¹¹

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹² which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. As noted above, the fees for the NLS Plus product are not charged by FINRA under FINRA rules, but rather are charged by Nasdaq under Nasdaq rules. Such fees have been adopted pursuant to a proposed rule change submitted to the Commission pursuant to Section 19(b) of the Act.¹³ In its rulemaking, Nasdaq was required to demonstrate that the fees are consistent with the requirements of the Act, including that they are reasonable, equitably allocated and not unfairly discriminatory. In its filing, Nasdaq stated that the fees for the NLS Plus product are simply a codification of the existing fee structure, with the addition of the consolidation fee. Nasdaq further stated that the fees apply equally to all firms that choose to subscribe to the NLS Plus product, and no firm is required to use NLS Plus.

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 above, use of FINRA/Nasdaq TRF data is conducted through Nasdaq, is subject to a

¹¹ See Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862 (June 26, 2015) (Order Approving File No. SR-NASDAQ-2015-055).

¹² 15 U.S.C. 78q-3(b)(5).

¹³ See Securities Exchange Act Release No. 75600 (August 4, 2015), 80 FR 47968 (August 10, 2015) (Notice of Filing and Immediate Effectiveness; File No. SR-NASDAQ-2015-088).

separate proposed rule change filed with the Commission by Nasdaq in its capacity as an SRO and must satisfy the appropriate statutory standards. As such, Nasdaq has the obligation of assessing the potential impacts of the NLS Plus product in its own rulemaking. As described more fully in SR-NASDAQ-2015-055, Nasdaq's ability to offer and price NLS Plus is constrained by: (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to 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 so that the proposal may become operative upon filing. The Commission

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

believes that waiver of the 30-day operative delay is appropriate because the proposed rule change merely adds a reference to Nasdaq Last Sale Plus Data Feeds to Rule 7640A to reflect recently approved changes to NASDAQ's rules. Based on the foregoing, the Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest.¹⁶ The Commission hereby grants the waiver and designates the proposal operative upon filing.

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-045 on the subject line.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2015-045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; 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-2015-045 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.¹⁷

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).