

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88135; File No. SR-FINRA-2020-004)

February 6, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate Transaction Credits and Trade Reporting Fees Applicable to Retail Participants That Use the FINRA/Nasdaq Trade Reporting Facility

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 February 3, 2020, 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 7610A and 7620A to eliminate transaction credits and trade reporting fees applicable to Retail Participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret (the “FINRA/Nasdaq TRF Carteret”) and the FINRA/Nasdaq

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

Trade Reporting Facility Chicago (the “FINRA/Nasdaq TRF Chicago”) (collectively, the “FINRA/Nasdaq TRF”).

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 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.

Pursuant to the FINRA Rule 7600A Series, FINRA/Nasdaq TRF participants 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,<sup>5</sup> and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRF.

Pursuant to FINRA Rule 7620A, FINRA/Nasdaq TRF has a special pricing program, known as the “Retail Participant Program”<sup>6</sup> for which a FINRA/Nasdaq TRF participant may qualify as a “Retail Participant” if “substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.”<sup>7</sup> Under Rule 7620A, TRF Retail Participants are assessed fees for each of their Media/Executing Party, Non-

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<sup>5</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>6</sup> To qualify as a “Retail Participant” and for special pricing under the Retail Participant fee schedule, a participant must complete and submit to Nasdaq, as the Business Member, an application. The application form requires the participant to attest to its qualifications as a Retail Participant on the FINRA/Nasdaq TRF in which it is a participant and for which it seeks Retail Participant pricing. The participant must also attest to its reasonable expectation that it will maintain its qualifications for a one year period following the date of attestation. Once a participant has been designated as a Retail Participant, it must complete and submit a written attestation to Nasdaq on an annual basis to retain its status as such. A Retail Participant must inform Nasdaq promptly if at any time it ceases to qualify or it reasonably expects that it will cease to qualify as a Retail Participant. See FINRA Rule 7620A.03.

<sup>7</sup> Pursuant to FINRA Rule 7260A.01, a “Retail Order” means “an order that originates from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

Media/Executing Party, Media/Contra Party, and Non-Media/Contra Party activities on the FINRA/Nasdaq TRF. However, they may qualify for fee discounts and fee caps (Rule 7620A), and for securities transaction credits for trade reporting to the FINRA/Nasdaq TRF (Rule 7610A). Specifically, the FINRA/Nasdaq TRF offers two Retail Fee Discount Programs – one comprises volume-based discounts for Media/Contra Party and Non-Media/Contra Party activity and the other program is a combined fee cap for Retail Participants that engage in Media/Executing Party and Contra Party activity on the FINRA/Nasdaq TRFs.

A Retail Participant qualifies for the Retail Participant Contra Party Fee Discount and Cap Program to the extent that it achieves, during a given month, a qualifying volume of average daily Contra Party activity (Media, Non-Media, or both) in a particular Tape. Within each Tape, a qualifying Retail Participant will receive a volume-based discount on its monthly uncapped Contra Party activity charges relative to the standard rate (\$0.013 per execution), which includes both Media/Contra Party and Non-Media/Contra Party activity, as follows:

Tier	Average Daily Executions Per Month Per Tier	Rate Per Execution, If Uncapped	Maximum Monthly Charge, If Capped
Tape A			
1	50,000-100,000	\$0.0120	n/a
2	100,001-200,000	\$0.0072	n/a
3	200,001-300,000	\$0.0052	n/a
4	>300,000	\$0.0050	\$32,000
Tape B			
1	15,000-30,000	\$0.0120	n/a
2	30,001-60,000	\$0.0072	n/a

3	60,001-100,000	\$0.0052	n/a
4	>100,000	\$0.0050	\$11,000
Tape C			
1	50,000-100,000	\$0.0120	n/a
2	100,001-200,000	\$0.0072	n/a
3	200,001-300,000	\$0.0052	n/a
4	>300,000	\$0.0050	\$32,000

A Retail Participant qualifies for the Retail Participant Combined Cap Program, when the Retail Participants engages in Media/Executing Party activity in addition to Contra Party activity on the FINRA/Nasdaq TRF, as follows:

Tier	Total Daily Average Number of Media/Executing Party Trades over Preceding Three Month Period)	Maximum Monthly Charge, For All Executing Party/Contra Party Activity
1	1,000-2,000	\$50,000
2	2,001- 4,000	\$25,000
3	>4,000	\$15,000

Retail Participants are assessed the lowest retail pricing program each month based on their qualifying activity.

In addition, under Rule 7620A, Retail Participants are subject to Comparison/Accept Fees (for transactions subject to the ACT Comparison process) at the rate of \$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares). They are also subject to a \$0.03/side fee for clearing reports (to transfer a transaction fee charged by one member to another member),

a \$0.288/trade fee for late reports, a \$0.50/query fee for submitting queries, and a \$0.25 fee for making corrections to transactions (cancel, errors, inhibit, kill, break, and decline).

Currently, under Rule 7610A, FINRA members that report over-the-counter (“OTC”) transactions in NMS stocks to a FINRA/Nasdaq TRF for public dissemination or “media” purposes may receive quarterly transaction credits that equal a percentage of FINRA/Nasdaq TRF revenues that are attributable to the members’ transactions.<sup>8</sup> A Retail Participant qualifies for transaction credits with no market share thresholds in order to make revenue share payout more accessible and to lower the overall trade reporting cost for a Retail Participant. The FINRA/Nasdaq TRF offers Retail Participants that achieve less than 0.5 percent Media/Executing Party market share in Tape A or C symbols a 75 percent payout of attributable transaction credits, and a 70 percent payout of attributable revenue in Tape B symbols for less than 0.35 percent Media/Executing Party market share during a given quarter. For higher market shares, Retail Participants receive the same percentage shares of attributable revenue as other participants in all Tapes.

Tape A

Percentage Market Share	Percent of attributable revenue shared	Percent of attributable revenue shared (Retail Participants)
Greater than or equal to 2%	98%	98%
Less than 2% but greater than or equal to 1%	95%	95%
Less than 1% but greater than or equal to 0.50%	85%	85%
Less than 0.50% but greater than or equal to 0.10%	20%	75%

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<sup>8</sup> Under the Rule, a transaction is attributable to a FINRA member if a trade report submitted to the FINRA/Nasdaq TRF that the FINRA/Nasdaq TRF then submits to either of the SIPs identifies the FINRA member as the Executing Party on the transaction.

Less than 0.10%	0%	75%
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Tape B

Percentage Market Share	Percent of attributable revenue shared	Percent of attributable revenue shared (Retail Participants)
Greater than or equal to 2%	98%	98%
Less than 2% but greater than or equal to 1%	90%	90%
Less than 1% but greater than or equal to 0.35%	85%	85%
Less than 0.35% but greater than or equal to 0.10%	10%	70%
Less than 0.10%	0%	70%

Tape C

Percentage Market Share	Percent of attributable revenue shared	Percent of attributable revenue shared (Retail Participants)
Greater than or equal to 2%	98%	98%
Less than 2% but greater than or equal to 1%	95%	95%
Less than 1% but greater than or equal to 0.50%	85%	85%
Less than 0.50% but greater than or equal to 0.10%	20%	75%
Less than 0.10%	0%	75%

Proposed New Pricing for Retail Participants

Nasdaq, as the Business Member, proposes to charge no fees for trade reporting to the FINRA/Nasdaq TRF for Retail Participants. Specifically, Nasdaq proposes to eliminate the schedule of Retail Participant transaction charges in Rule 7620A, as well as the associated Retail

Participant Contra Party Fee Discount and Cap and the Combined Cap Programs. Nasdaq also proposes to exempt Retail Participants from the schedule of generally applicable transaction charges, both for Non-Comparison/Accept and Comparison/Accept trade reports and for other fees relating to clearing reports to transfer transaction fees, late reports, queries, and corrective actions. Along with charging no trade reporting fees to Retail Participants, Nasdaq proposes to eliminate transaction credits for Retail Participants.

The proposed rule change is intended to improve the competitiveness of the FINRA/Nasdaq TRF for Retail Participants in light of recent initiatives by retail brokers to eliminate the fees they charge for executing retail customer transactions. As reported in the media, many large retail brokers, such as Charles Schwab, TD Ameritrade, E-Trade Securities, Interactive Brokers and Fidelity, have lowered commission trading fees to zero.<sup>9</sup> Nasdaq understands that these initiatives are placing pressure on retail brokers to find ways to reduce their operational costs as a means of offsetting their loss of retail trading commission revenues. Nasdaq believes that its proposal would support these efforts and attract Retail Participants to the FINRA/Nasdaq TRF.

Currently, FINRA/Nasdaq TRF has 63 participants designated as “Retail Participants.” From January 2019 to September 2019, these Retail Participants have incurred trade reporting fees that range from nearly \$0 to \$50,000 per month per firm. Under the proposed rule change, these Retail Participants will pay no fees going forward for their trade reporting activities. Meanwhile, during the same time period, Retail Participants with Media/Executing Party activity

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<sup>9</sup> See Kate Rooney, “Battle for Zero Trading Fees Threatens Robinhood’s Business Model and Next Leg of Growth,” CNBC, Oct. 4, 2019, [www.cnbc.com/2019/10/04/battle-for-zero-trading-fees-p pressures-robinhoods-next-leg-of-growth.html](http://www.cnbc.com/2019/10/04/battle-for-zero-trading-fees-p pressures-robinhoods-next-leg-of-growth.html).



received securities transaction credits that ranged from \$0 to \$10,000 per quarter. Under the proposed rule change, Retail Participants will no longer be eligible for transaction credits.

No new product or service will accompany the proposed fee change.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be February 3, 2020.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>10</sup> 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. All similarly situated designated Retail Participants will be subject to the same fee and credit structure and access to the FINRA/Nasdaq TRF is offered on fair and nondiscriminatory terms.

### The Proposal is Reasonable

Nasdaq, as the Business Member, believes the proposal to eliminate trade reporting fees under Rule 7620A and transaction credits under Rule 7610A for Retail Participants is reasonable in several respects. As a threshold matter, the FINRA/Nasdaq TRF is subject to significant competitive forces in the market for trade reporting services for OTC trades in NMS stocks that constrain its pricing determinations in that market. Participants can freely and do shift their trade reporting activity between the various FINRA TRFs in response to pricing, product or service changes. Within this context, as well as the context discussed earlier in which several large Retail Participants have eliminated the fees that they previously charged to their retail customers to execute trades, the proposed rule change demonstrates that the FINRA/Nasdaq TRF is

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<sup>10</sup> 15 U.S.C. 78q-3(b)(5).

sensitive to Retail Participants' changing business models and their need to control operational costs. Nasdaq believes that the proposal is a reasonable means of strengthening the ability of the FINRA/Nasdaq TRF to compete for the trade reporting activity of retail firms given that the proposal will improve its attractiveness relative to that of the competing FINRA TRF.

The Proposal is an Equitable Allocation of Credits and Charges

The proposed rule change will allocate fees and credits fairly among FINRA/Nasdaq TRF Participants. The proposal to offer free trade reporting for Retail Participants is an extension of the existing Retail Participant pricing program, through which the FINRA/Nasdaq TRF charges Retail Participants lower fees than Non-Retail Participants.<sup>11</sup> As discussed in FINRA's filing in 2018, it is equitable to charge Retail Participants lower fees because customers of Retail Participants generally include individuals who trade less frequently and report fewer trades to the FINRA/Nasdaq TRF than do other categories of customers. The Retail Pricing program was designed to ensure that such customers, and the participants that serve them, do not bear primary financial responsibility for helping the FINRA/Nasdaq TRF to recover rising costs, particularly increased operational and maintenance costs flowing from rising levels of trade reporting activity.<sup>12</sup> The current proposal is equitable because it will help Retail Participants to further reduce their operating costs, which they are under pressure to do as they eliminate their own retail customer trade commissions. Nasdaq notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity will continue to contribute to operating the FINRA/Nasdaq TRF insofar as the FINRA/Nasdaq TRF will continue to receive

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<sup>11</sup> 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).

<sup>12</sup> See supra note 11, at 42449-50.

a share of the SIP transaction credits generated through retail trade reporting activity that occurs on the FINRA/Nasdaq TRF.<sup>13</sup>

In addition to eliminating trade reporting fees for Retail Participants, Nasdaq also believes that it is equitable to eliminate the corresponding transaction credits for Retail Participants. The FINRA/Nasdaq TRF offers transaction credits to reward significant activity on the FINRA/Nasdaq TRF and offset trade reporting fees. To the extent that Retail Participants would no longer pay fees for reporting trades to the FINRA/Nasdaq TRF, the continuing payment of such credits would serve no purpose as there would be no fees to offset.

The Proposal is Not Unfairly Discriminatory

Although Nasdaq intends for this proposal to benefit Retail Participants specifically, Nasdaq does not believe that it is unfair to do so. The Commission already permits the FINRA/Nasdaq TRF to apply lower pricing to Retail Participants.<sup>14</sup> The proposed rule change is merely an extension of this existing pricing program.

Moreover, any financial benefit that the proposal offers to Retail Participants will be limited in scope because the amount of the fees that Retail Participants pay for their reporting is already small, and the total amount of fees paid by Retail Participants is trivial relative to the total amount of fees that Non-Retail Participants pay.<sup>15</sup> Additionally, Nasdaq notes that the

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<sup>13</sup> Nasdaq has separately provided data to the Commission in support of this assertion, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

<sup>14</sup> See supra note 11.

<sup>15</sup> Nasdaq has separately provided data to the Commission in support of these assertions, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

FINRA/Nasdaq TRF does not propose to adjust any of the Non-Retail Participant trade reporting fees to offset the loss of Retail Participant trade reporting fees.

Relatedly, Nasdaq notes that even as it proposes to eliminate trade reporting fees for Retail Participants, such Retail Participant activity will continue to contribute to operating the FINRA/Nasdaq TRF insofar as the FINRA/Nasdaq TRF will continue to receive a share of the SIP transaction credits generated through retail trade reporting activity that occurs on the FINRA/Nasdaq TRF.<sup>16</sup> Accordingly, the proposal will not require Non-Retail Participants to assume a larger role in supporting the operation of the FINRA/Nasdaq TRF.

**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.

**Intramarket Competition**

Nasdaq, as the Business Member, does not believe that the proposed rule change will place any category of Participant at a competitive disadvantage. As discussed above, all Retail Participants, whether they are large or small, and regardless of whether they report a large or small volume of trade reports to the FINRA/Nasdaq TRF, will incur no fees for their trade reporting activity on the FINRA/Nasdaq TRF. Participants are free to report their over-the-counter trades in NMS stocks to the competing FINRA TRF to the extent they believe that the fees, product or services provided by the FINRA/Nasdaq TRF are not attractive. Price competition between the FINRA TRFs is substantial, with trade reporting activity and market share moving freely between them in reaction to fee, product and service changes.

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<sup>16</sup> Nasdaq has separately provided data to the Commission in support of this assertion, pursuant to a request for confidential treatment under the Freedom of Information Act, 5 U.S.C. 552.

Lastly, Nasdaq notes that Retail Participants and Non-Retail Participants do not typically compete for the same business, such that Nasdaq does not expect the proposal to create a competitive advantage for Retail Participants relative to Non-Retail Participants.

#### Intermarket Competition

Nasdaq believes that the proposal will not impose a burden on competition among the FINRA trade reporting facilities because use of the FINRA/Nasdaq TRF is completely voluntary and subject to competition.<sup>17</sup> Nasdaq, as the Business Member, proposes this rule change to strengthen the competitive position of the FINRA/Nasdaq TRF with respect to retail trade reporting. Nasdaq believes its proposal will support increased competition in the market.

Nasdaq, as the Business Member, believes that the elimination of trade reporting fees for Retail Participants will be necessary for the FINRA/Nasdaq TRF to retain existing retail business and to compete for new such business, particularly in light of recent moves by large retail brokers to eliminate their own retail transaction fees and to reduce their operating costs accordingly. The competition, in turn, is free to modify its own fees and credits in response to this proposed rule change to maintain or increase its attractiveness to participants. Accordingly, Nasdaq believes that the risk that this proposed rule change will impose an undue burden on intermarket competition is extremely limited.

If market participants determine that the changes proposed herein are inadequate or unattractive, it is likely that the FINRA/Nasdaq TRF will lose market share as a result.

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<sup>17</sup> Because the FINRA/Nasdaq TRF and the FINRA/NYSE TRF are operated by different business members competing for market share, FINRA does not take a position on whether the pricing for one TRF is more favorable or competitive than the pricing for the other TRF.

Accordingly, the proposed rule change will not impair the ability of the other FINRA TRF to maintain its competitive standing.

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 Act<sup>18</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<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 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2020-004 on the subject line.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

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-2020-004. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-FINRA-2020-004 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>

J. Matthew DeLesDernier  
Assistant Secretary

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