

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90728; File No. SR-FINRA-2020-044)

December 18, 2020

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Securities Transaction Credits Applicable to FINRA/Nasdaq TRF Participants

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 December 14, 2020, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“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 Rule 7610A to modify the securities transaction credits applicable to non-Retail Participants that use 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”).

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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).

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 FINRA Rule 7610A, FINRA/Nasdaq TRF Participants that do not constitute Retail Participants<sup>5</sup> (such non-Retail Participants are referred to herein as “Participants”) may qualify for revenue sharing payments, in the form of transaction credits, for trade reporting to the FINRA/Nasdaq TRF. Nasdaq administers this Rule in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF on behalf of FINRA,<sup>6</sup> and Nasdaq collects all fees and issues all transaction credits on behalf of the FINRA/Nasdaq TRF.

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>7</sup> The percentage of attributable revenue that a FINRA member may receive in the form of a transaction credit varies depending upon the member’s market share on the FINRA/Nasdaq TRF.<sup>8</sup> The current schedule of transaction credits is as follows.

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<sup>5</sup> “Retail Participants,” as that term is defined in Supplementary Material .01 to Rule 7620A, are not eligible to receive transaction credits from the FINRA/Nasdaq TRF.

<sup>6</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>7</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 securities information processors (“SIPs”) identifies the FINRA member as the Executing Party on the transaction.

<sup>8</sup> For purposes of this Rule, the term “market share” means a percentage calculated by dividing the total number of shares represented by trades reported by a FINRA member to the FINRA/Nasdaq TRF for media purposes during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter. Market Share is calculated separately for each tape. See Rule 7620A. If a FINRA member reports trades to both FINRA/Nasdaq TRFs during a given calendar quarter, then “market share” shall be calculated by dividing the total number of shares represented by trades reported by the member to both of the FINRA/Nasdaq TRFs during

**Tape A**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>
Greater than or equal to 2%	98%
Less than 2% but greater than or equal to 1%	95%
Less than 1% but greater than or equal to 0.50%	85%
Less than 0.50% but greater than or equal to 0.10%	20%
Less than 0.10%	0%

**Tape B**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>
Greater than or equal to 2%	98%
Less than 2% but greater than or equal to 1%	90%
Less than 1% but greater than or equal to 0.35%	85%
Less than 0.35% but greater than or equal to 0.10%	10%
Less than 0.10%	0%

**Tape C**

<b>Percentage Market Share</b>	<b>Percent of attributable revenue shared</b>
Greater than or equal to 2%	98%
Less than 2% but greater than or equal to 1%	95%
Less than 1% but greater than or equal to 0.50%	85%
Less than 0.50% but greater than or equal to 0.10%	20%
Less than 0.10%	0%

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that calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq SIP, as applicable, during that quarter.

The Rule 7600A Series expressly provides that the schedules of credits and fees apply to reporting activity that occurs on either or both of the FINRA/Nasdaq TRFs and a participant's eligibility for any volume-based credits or fee caps will be determined based upon its aggregate reporting volume between the two FINRA/Nasdaq TRFs.

Nasdaq, as the Business Member, has determined to modify the current schedule of transaction credits, and FINRA is proposing to amend Rule 7610A accordingly. Nasdaq believes that there is substantial competition in the market for OTC trade reporting between the FINRA/Nasdaq TRF and the FINRA/NYSE TRF, as evidenced by recent shifts in market share between these facilities. The proposed rule change responds to these competitive forces by providing a more generous percentage share of attributable revenue than under the current schedule to certain Participants that report trades in securities in Tape B to the FINRA/Nasdaq TRF.

Specifically, under the proposed rule change, Participants that achieve one percent or more, but less than two percent of market share on the FINRA/Nasdaq TRF in securities in Tape B would be entitled to receive credits equal to 95 percent of attributable revenue in Tape B, rather than the 90 percent of attributable revenue to which they are entitled under the existing Rule. This proposed change would result in Participants with one or more percent, but less than two percent of market share on the FINRA/Nasdaq TRF in securities in all Tapes receiving an identical percentage of attributable revenue. It would also result in the FINRA/Nasdaq TRF providing the same percentage of revenue sharing as does the FINRA/NYSE TRF for participants in this market segment.<sup>9</sup>

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<sup>9</sup> Specifically, pursuant to FINRA Rule 7610B, FINRA/NYSE TRF participants with greater than or equal to 0.5% but less than 2.0% market share in securities in Tape B on the FINRA/NYSE TRF are entitled to 95% of attributable revenue in Tape B.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be January 1, 2021.

## 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.

### The Proposal is Reasonable

Nasdaq, as the Business Member, believes that the proposed rule change is reasonable as a means of rewarding Participants that engage in a significant volume of trade reporting activity on the FINRA/Nasdaq TRF. The availability of a higher credit may be an incentive for Participants to further increase the extent of their trade reporting activity on the FINRA/Nasdaq TRF. Moreover, the proposal will improve the competitiveness of the FINRA/Nasdaq TRF vis-à-vis the FINRA/NYSE TRF, which already shares 95% of attributable revenue for this same market segment.<sup>11</sup>

### The Proposal is an Equitable Allocation of Fees

Nasdaq, as the Business Member, believes that the proposed rule change will allocate fees fairly among FINRA/Nasdaq TRF Participants. The proposal is an equitable allocation of reasonable fees because the FINRA/Nasdaq TRF has available to it only a limited amount of resources to expend for participation incentives, and it is fair and equitable to allocate those

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

<sup>11</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.

scarce resources to segments of the market where they are likely to have meaningful effects, both in terms of maintaining existing participation on the FINRA/Nasdaq TRF and in incentivizing new and increased participation. In this regard, Nasdaq notes that from July 2019 through June 2020 (the last four quarters for TRF transaction credit payments), eight Participants had market shares that qualified them for this revenue sharing tier, and collectively, their qualifying market share comprised approximately 24 percent of overall volume on the FINRA/Nasdaq TRF.

Because the shared revenue percentage for this market segment is presently less than what the FINRA/NYSE TRF provides to a similar segment of its participants, Nasdaq believes that the proposed rule change will help the FINRA/Nasdaq TRF to maintain, if not increase, the extent of its trade reporting activity (both new and existing reporting) as well as the number of Participants that qualify for this revenue sharing tier.

#### The Proposal is Not Unfairly Discriminatory

Nasdaq, as the Business Member, believes that the proposed rule change is not unfairly discriminatory. Although it targets only those Participants with at least one percent and less than two percent market share, and those Participants that report trades to the FINRA/Nasdaq TRF in securities in Tape B only, the proposed rule change is fair because this particular market segment is one where the FINRA/Nasdaq TRF shares a lower percentage of attributable revenues than does the FINRA/NYSE TRF. Thus, an increase is warranted for the FINRA/Nasdaq TRF to remain competitive in this market segment. Moreover, the proposed rule change is fair because it will result in the FINRA/Nasdaq TRF sharing the same percentage of attributable revenue across all three Tapes to Participants with market shares of one percent or more, but less than two percent.

Finally, participation in the FINRA/Nasdaq TRF is voluntary. Participants that determine that the transaction credits that the FINRA/Nasdaq TRF offers are unattractive or unfavorable can report their trades to another trade reporting facility offering more generous incentives.

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 and issues all transaction credits on behalf of the FINRA/Nasdaq TRF. As discussed above, Nasdaq has observed an increase in competition in the market for OTC trade reporting, and in response to competitive forces, determined to increase the percentage of the revenue that the FINRA/Nasdaq TRF shares with Participants for their trade reporting activity in securities in Tape B. Through the proposal, Nasdaq intends to render the FINRA/Nasdaq TRF more competitive for Participants in this market segment and to otherwise provide an incentive for Participants to increase the extent of trade reporting activity on the FINRA/Nasdaq TRF.

Economic Baseline

As discussed above, pursuant to FINRA Rule 7610A, Participants in the FINRA/Nasdaq TRF are entitled to receive quarterly transaction credits that equal a percentage of FINRA/Nasdaq TRF revenues attributable to their trade reporting activities on the FINRA/Nasdaq TRF to the extent that their market share on the FINRA/Nasdaq TRF is equal to or greater than 0.10 percent. Presently, Participants with a market share of one percent or more, but less than two percent, are entitled to receive 90 percent of attributable revenues for reports in



securities in Tape B and 95 percent of attributable revenues for reports in securities in Tapes A and C.

### Economic Impacts

The proposed rule change would increase to 95 percent the percentage of attributable revenue shared with Participants with trade reports in securities in Tape B, to the extent that such Participants have market shares of one percent or more, but less than two percent.

From July 2019 through June 2020 (the last four quarters for TRF transaction credit payments), eight Participants had market shares that qualified them for this revenue sharing tier, and collectively, their qualifying market share comprised approximately 24 percent of overall volume on the FINRA/Nasdaq TRF. The quarterly credits for these qualifying Participants ranged from \$25,000 to \$320,000. Assuming that, going forward, these same Participants maintain their existing levels of activity in reports in securities in Tape B, they stand to gain between \$1,000 and \$18,000 more in credits each quarter.

The potential net impact of the proposed rule change depends on whether Participants alter their reporting activity to become eligible for the revised revenue sharing tier. To the extent that the proposed rule change increases incentives to report trades in Tape B to the FINRA/Nasdaq TRF, Participants may choose to shift their reporting from the FINRA/NYSE TRF to the FINRA/Nasdaq TRF.

Finally, the proposed rule change occurs within the context of a competitive environment in which the various trade reporting facilities vie for market share. The FINRA/NYSE TRF is free to adjust its credit and fee programs in response to the changes proposed herein to render them more attractive relative to the FINRA/Nasdaq TRF. If any existing or prospective participant on the FINRA/Nasdaq TRF determines that the proposed amended credit is less

attractive or is unfavorable relative to credits applicable to the FINRA/NYSE TRF, such Participants may choose to report to the FINRA/NYSE TRF in lieu of the FINRA/Nasdaq TRF, in which case the FINRA/Nasdaq TRFs would lose market share.

#### 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 Act<sup>12</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>13</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:

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

### 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-2020-044 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-2020-044. 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-2020-044 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>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).