

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77243; File No. SR-FINRA-2016-009)

February 26, 2016

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 February 23, 2016, 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 the Substance of the Proposed Rule Change

FINRA is proposing to adjust one of the thresholds required to qualify for the Media/Contra fee cap under FINRA Rule 7620A (FINRA/Nasdaq Trade Reporting Facility Reporting Fees).

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

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).

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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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7620A. FINRA/Nasdaq Trade Reporting Facility Reporting Fees

The following charges shall be paid by 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 Non-Comparison/Accept (Non-Match/Compare) Charges as the Executing Party side only.

Non-Comparison/Accept (Non-Match/Compare) Charges:	
Tape	Daily Average Number of Media/Executing Party Trades During the Month Needed to Qualify for Cap
A	2500

B	2500
C	2500
Media/Executing Party	
Monthly Charge	Maximum Monthly Charge if Capped
$(\$0.018) \times (\text{Number of Media/Executing Party Reports During the Month})$	$(\$0.018) \times (\text{Required Daily Average Number of Media/EP Trades for Tape A, B or C}) \times (\text{Number of Trading Days During the Month})$
Non-Media/Executing Party	
Monthly Charge	Maximum Monthly Charge if Capped
$(\$0.018) \times (\text{Number of Non-Media/Executing Party Reports During the Month})$	$(\$0.018) \times 2500 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month})$
Media/Contra	
Monthly Charge	Maximum Monthly Charge if Capped

<p>(\$0.013) x (Number of Media/Contra Reports During the Month)</p>	<p>(\$0.013) x 2500 for Tape A, B or C x (Number of Trading Days During the Month)</p>
<p>Media/Contra Cap</p>	
<p>Participants making markets in alternative trading systems registered pursuant to Regulation ATS will qualify for a fee cap applied to all trades under Rule 7620A if they meet the following criteria on a monthly basis:</p> <ul style="list-style-type: none"> • Participant's percentage of contra media trades must represent at least [5]35% of their total [TRF] <u>FINRA/Nasdaq Trade Reporting Facility</u> volume. • Participant must be contra to a minimum of 1,000,000 trades in Tape A, 500,000 trades in Tape C and 250,000 trades in Tape B. • Participant must complete an attestation form stating that they maintain a two-sided quote in each symbol traded on an alternative trading system registered pursuant to Regulation ATS and display a quotation size of at least one normal unit of trading (specific for each security) thereon. Participants will be audited by Nasdaq, Inc. periodically. 	
<p>Maximum Monthly Charge if Capped</p>	<p>\$5,000 per Tape (A, B or C)</p>
<p>Non-Media/Contra</p>	
<p>Monthly Charge</p>	<p>Maximum Monthly Charge if Capped</p>

(\$0.013) x (Number of Non-Media/Contra Reports During the Month)	(\$0.013) x 2500 for Tape A, B or C x (Number of Trading Days During the Month)
Standard Fees:	
Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule 7230A(h)	\$0.03/side
Comparison/Accept	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report—T+N	\$0.288/trade (charged to the Executing Party)
Query	\$0.50/query
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party

••• Supplementary Material: -----

.01 through .02 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

Background

The FINRA/Nasdaq Trade Reporting Facility (“TRF”) is a facility of FINRA that is operated by Nasdaq, Inc. (“NASDAQ”)⁵ and utilizes Automated Confirmation Transaction (“ACT”) Service technology. 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

⁵ As approved by its board of directors and the Commission, 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, and FINRA will file a separate proposed rule change to update the FINRA manual accordingly.

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 members that are 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,⁶ and NASDAQ collects all fees on behalf of the FINRA/Nasdaq TRF.

Pursuant to Rule 7620A, FINRA members are charged fees for “Non-Comparison/Accept (Non-Match/Compare)” trades. Such trades are defined as transactions that are not subject to the ACT Comparison process, and they may be submitted as media or non-media,⁷ clearing or non-clearing, AGU (automated give-up), QSR (Qualified Service Representative), one-sided or internalized crosses.⁸ Under the fee schedule there are four categories of fees, each of which is

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.

⁷ 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.

⁸ See FINRA Rule 7620A.01.

applicable to transactions of the three Tapes:⁹ (1) Media/Executing Party; (2) Non-Media/Executing Party; (3) Media/Contra; (4) Non-Media/Contra.¹⁰

FINRA recently filed a proposed rule change¹¹ that would allow FINRA members that are a Contra Party to qualify for a monthly fee cap of \$5,000 per Tape applied to trades in each fee category. Eligibility for the Media/Contra fee cap is based on a FINRA member's trade reporting of Media/Contra trades to the TRF and its participation on an alternative trading system registered pursuant to Regulation ATS¹² (an "ATS") as a market maker. Specifically, the FINRA member must make markets on an ATS by maintaining a two-sided quote. The member also must complete and provide a form to NASDAQ, in which the member attests that (1) it maintains two-sided quotes for each security that the member maintains interest in within each ATS and displays a quotation size of at least one normal unit of trading (specific for each security), and (2) it will continue to meet the ATS-based requirements to be eligible for the fee cap. In addition, to qualify a FINRA member must have its Media/Contra trades equal, or exceed, 55% of its total FINRA/Nasdaq TRF volume. Lastly, the FINRA member must be contra to a minimum of 1 million trades in Tape A, 500,000 trades in Tape C, and 250,000 trades in Tape B to qualify for the fee cap in the securities of the Tapes, respectively. NASDAQ, as the

⁹ Market data is transmitted to three tapes based on the listing venue of the security: New York Stock Exchange securities ("Tape A"), American Stock Exchange and regional exchange securities ("Tape B"), and Nasdaq Stock Market securities ("Tape C"). Tape A and Tape B are generally referred to as the Consolidated Tape.

¹⁰ Pursuant to the rule's Supplementary Material, the "Executing Party (EP)" is defined as the member with the trade reporting obligation under FINRA rules, and the "Contra (CP)" is defined as the member on the contra side of a trade report. These positions formerly were identified in FINRA rules as the "Market Maker" or "MM" side and the "Order Entry" or "OE" side, respectively. See FINRA Rule 7620A.01.

¹¹ See Securities Exchange Act Release No. 76556 (December 4, 2015), 80 FR 76724 (December 10, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-053).

¹² 17 CFR 242.300-303.

Business Member, set the required level of trades reported for each of the Tapes based on the differing levels of overall trades reported to the FINRA/Nasdaq TRF as Contra Party.

Proposed Adjustment

In proposing the Media/Contra fee cap, NASDAQ, as the Business Member, advised FINRA that following implementation, it would monitor the fees paid by Contra Parties and would consider whether any adjustments to the fee cap or qualifying thresholds would be appropriate. Since adopting the Media/Contra fee cap, no FINRA member has achieved the level of Media/Contra trades to equal, or exceed, 55% of its total FINRA/Nasdaq TRF volume. NASDAQ, as the Business Member, designed the Media/Contra fee cap to make pricing more competitive to attract and retain participants on the FINRA/Nasdaq TRF, and because no FINRA member currently qualifies for the Media/Contra fee cap, NASDAQ has determined to reduce the level of Media/Contra trades required to qualify for the fee cap. Specifically, NASDAQ has determined to reduce the level from 55% of the member's total FINRA/Nasdaq TRF volume to 35%. NASDAQ believes that reducing the level of Media/Contra trades required to qualify will make the fee cap more attainable for FINRA members.

Accordingly, FINRA, as the SRO Member, is proposing to amend Rule 7620A to reflect the proposed reduction in the level of Media/Contra trades required to qualify for the Media/Contra fee cap. FINRA also is proposing a technical amendment to clarify that the reference to a member's "total TRF volume" means its total FINRA/Nasdaq TRF volume.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing, February 23, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹³ 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. NASDAQ, as the Business Member, proposed the \$5,000 per tape Media/Contra fee cap for FINRA members that could not qualify for a fee cap under the then-current rules. However, as noted, NASDAQ has determined that the level of Media/Contra trades required to qualify for [sic] fee cap is set too high, resulting in no FINRA member qualifying for the fee cap since its adoption. By reducing this level from 55% to 35% of total FINRA/Nasdaq TRF trades, NASDAQ has advised FINRA that it believes that more FINRA members will be able to qualify for the Media/Contra fee cap and thus the proposed reduction is reasonable. The proposed reduction in the level of Media/Contra trades required to qualify for the Media/Contra fee cap is equitably allocated because it will apply to all FINRA members that use the FINRA/Nasdaq TRF. Any FINRA member that meets the reduced level of Media/Contra trades together with the other requirements under the Rule will qualify for the capped fee.

As discussed in SR-FINRA-2015-053, NASDAQ, as the Business Member, advised FINRA that the Media/Contra fee cap is not unfairly discriminatory because the fee cap would most benefit those Contra Parties that have significant volume on the FINRA/Nasdaq TRF and thus may pay larger trade reporting fees than firms with comparable “Executing Party” volume that qualify for a fee cap. NASDAQ anticipates that the proposed rule change will make the fee cap more attainable for these Contra Parties. In addition, FINRA members that are not subject to

¹³ 15 U.S.C. 78o-3(b)(5).

capped fees can choose to report trades to a competing TRF (or, in this instance, a market maker may elect to route its orders to an ATS that reports to a competing TRF).

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. The proposed rule change would not impose new fees or fee rate increases on any member firm, and will reduce the fees paid by some members to the extent they qualify under the new, lower criteria. NASDAQ, as the Business Member, has advised FINRA that the estimated fee savings to member firms that qualify for the Media/Contra fee would be in the range of \$0-\$20,000 per month per firm based on overall market and participant activity and number of trading days in the month. NASDAQ has further advised FINRA that, based on current trading practices, NASDAQ estimates that approximately three to eight member firms may be able to take advantage of the fee reductions associated with the Media/Contra fee cap with the proposed reduction in the level of trades required to qualify.

As discussed in SR-FINRA-2015-053, FINRA members have trade reporting alternatives other than the FINRA/Nasdaq TRF, so to the extent the proposed rule change is viewed as burdensome among market participants, those participants may choose not to avail themselves of the fee cap and maintain the status quo with respect to fees or adjust their trading practices. This would permit members to mitigate any direct or indirect costs imposed by this proposal. Moreover, by making the fee cap more attainable, the proposed rule change may promote competition among FINRA members by reducing the fee burden on certain FINRA members who are unable to qualify for the existing fee cap, and FINRA members can choose their trading partners, which determination may in part be based on the fees of the particular TRF applicable

to Contra Parties. Lastly, FINRA does not believe that the proposed rule change burdens competition among reporting facilities because each is free to adjust their [sic] respective fees to remain competitive with the FINRA/Nasdaq TRF, to the extent the proposed rule change makes the FINRA/Nasdaq TRF a more attractive facility on which to report trades.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f)(2) of Rule 19b-4 thereunder.¹⁵ 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

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2016-009 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-2016-009. 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 10:00 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; 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-2016-009, 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.¹⁶

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).