

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80843; File No. SR-FINRA-2017-016]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 7620A To Eliminate the No/Was Corrective Transaction Charge**

June 1, 2017.

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 May 23, 2017, 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 the Substance of the Proposed Rule Change**

FINRA is proposing to amend FINRA Rule 7620A (FINRA/Nasdaq Trade Reporting Facility Reporting Fees) to eliminate the “No/Was” corrective transaction charge from the fee schedule for members that use the FINRA/Nasdaq Trade Reporting Facility (the “FINRA/Nasdaq TRF”) in light of the elimination of No/Was functionality.

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

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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
<b>Media/Executing Party</b>	
Monthly Charge .....	Maximum Monthly Charge if Capped.
$(\$0.018) \times (\text{Number of Media/Executing Party Reports During the Month}).$	$(\$0.018) \times (\text{Required Daily Average Number of Media/EP Trades for Tape A, B or C}) \times (\text{Number of Trading Days During the Month}).$
<b>Non-Media/Executing Party</b>	
Monthly Charge .....	Maximum Monthly Charge if Capped.
$(\$0.018) \times (\text{Number of Non-Media/Executing Party Reports During the Month}).$	$(\$0.018) \times 2500 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month}).$
<b>Media/Contra</b>	
Monthly Charge .....	Maximum Monthly Charge if Capped.
$(\$0.013) \times (\text{Number of Media/Contra Reports During the Month})$ .....	$(\$0.013) \times 2500 \text{ for Tape A, B or C} \times (\text{Number of Trading Days During the Month}).$
<b>Media/Contra Cap</b>	
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:	
<ul style="list-style-type: none"> <li>Participant’s percentage of contra media trades must represent at least 35% of their total FINRA/Nasdaq Trade Reporting Facility volume.</li> </ul>	

<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).

Non-comparison/accept (Non-match/compare) charges:	
<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	
Maximum Monthly Charge if Capped .....	\$5,000 per Tape (A, B or C).
<b>Non-Media/Contra</b>	
Monthly Charge .....	Maximum Monthly Charge if Capped
(\$0.013) × (Number of Non-Media/Contra Reports During the Month) ...	(\$0.013) × 2500 for Tape A, B or C × (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, or 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

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by Nasdaq, Inc. and utilizes Automated Confirmation Transaction (“ACT”) Service technology. In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and Nasdaq, Inc. entered into a limited liability company agreement (the “LLC Agreement”).<sup>5</sup>

<sup>5</sup> As approved by its board of directors and the Commission, effective September 8, 2015, The NASDAQ OMX Group, Inc. changed its legal name to Nasdaq, Inc. See Nasdaq, Inc. Form 8-K Current

Under the LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/Nasdaq TRF. Nasdaq, Inc., 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 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, Inc., in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF on behalf of FINRA,<sup>6</sup> and Nasdaq, Inc. collects all fees on behalf of the FINRA/Nasdaq TRF.

Report (filed September 8, 2015) (available at [www.sec.gov/Archives/edgar/data/1120193/000119312515314459/d48431d8k.htm](http://www.sec.gov/Archives/edgar/data/1120193/000119312515314459/d48431d8k.htm)). FINRA and Nasdaq, Inc. 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.

<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.

FINRA/Nasdaq TRF participants are required to correct trade reports that are inaccurate and may use one of several FINRA/Nasdaq TRF functions (collectively referred to herein as “Corrective Transactions”) to do so, including “No/Was.” Firms would use a No/Was submission to correct the details of a trade reported earlier in the day. Under FINRA Rule 7620A, FINRA/Nasdaq TRF participants are assessed a fee of \$0.25 for Corrective Transactions, including No/Was submissions. FINRA notes that the Corrective Transaction fee is the same, irrespective of the functionality used to correct the trade. In addition to the Corrective Transaction fee, reporting firms are also assessed the applicable fee for submission of the corrected or replacement trade report.<sup>7</sup>

On September 15, 2016, Nasdaq, Inc., as the Business Member, provided notice that effective October 31, 2016, the FINRA/Nasdaq TRF would no longer support No/Was functionality.<sup>8</sup> According to Nasdaq, Inc., the No/Was logic added complexity to the system with no real benefit, since the

<sup>7</sup> Due to their nature, Corrective Transactions consume system capacity and staff resources disproportionate to those required for standard reporting transactions, and disproportionate to the fee imposed for standard reporting functions. Thus, to cover a portion of the costs of processing Corrective Transactions, the FINRA/Nasdaq TRF assesses a Corrective Transaction Charge to such transactions.

<sup>8</sup> See Nasdaq Equity Trader Alert #2016–179 (available at <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2016-179>).

functionality may be replicated by FINRA/Nasdaq TRF participants by simply cancelling the original report and submitting a corrected report. Nasdaq, Inc. has advised FINRA that prior to the disablement of the functionality, the volume of No/Was transactions was de minimis. For example, there were fewer than 850 No/Was submissions on average per month during the period from January through July 2016. By contrast, there were 841,000 total Corrective Transaction submissions on average per month during that same period (*i.e.*, No/Was submissions accounted for approximately one tenth of one percent of all Corrective Transaction submissions).

To ensure that the fee schedule under FINRA rules accurately reflects current FINRA/Nasdaq TRF functionality, FINRA is proposing to eliminate the reference to No/Was submissions for purposes of the Corrective Transaction charge under Rule 7620A.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing, May 23, 2017.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,<sup>9</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 members are subject to the same fee structure, and access to the FINRA/Nasdaq TRF is offered on fair and non-discriminatory terms.

Nasdaq, Inc., as the Business Member, has advised FINRA that it eliminated No/Was functionality effective October 31, 2016 to reduce complexity in the FINRA/Nasdaq TRF system and that such functionality can readily be replicated by participants. The proposed rule change merely deletes the reference to No/Was Corrective Transactions in Rule 7620A to ensure that the fee schedule accurately reflects current FINRA/Nasdaq TRF functionality. As such, the proposed rule change provides for the equitable allocation of reasonable fees for use of the FINRA/Nasdaq 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 merely deletes the reference to No/Was Corrective Transactions in Rule 7620A to ensure that the fee schedule accurately reflects current FINRA/Nasdaq TRF functionality. As discussed above, No/Was functionality was eliminated, but may be replicated by FINRA/Nasdaq TRF participants by simply canceling the incorrect trade report and submitting a corrected trade report, and firms would incur the same charge, irrespective of the type of Corrective Transaction submitted.<sup>10</sup> As such, the proposed rule change will have no fee impact on firms for Corrective Transaction submissions to the FINRA/Nasdaq TRF.<sup>11</sup>

### **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 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.

### **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:

<sup>10</sup> Also, as discussed above, the volume of No/Was transactions was de minimis prior to the disablement of the functionality, accounting for approximately one tenth of one percent of all Corrective Transaction submissions from January through July 2016.

<sup>11</sup> FINRA also believes that the elimination of the No/Was functionality itself had little to no cost impact on firms, and did not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2017-016 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-2017-016. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 the 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-2017-016, and should be submitted on or before June 28, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).