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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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–BX–2019–032 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87205; File No. SR–FINRA–2019–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 7620B To Modify the Trade Reporting Fees Applicable to Participants That Use the FINRA/NYSE Trade Reporting Facility

October 3, 2019.

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 September 26, 2019, 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[3] 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 Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7620B (Trade Reporting Facility Reporting Fees) to modify the trade reporting fees applicable to participants that use the FINRA/NYSE Trade Reporting Facility (''FINRA/NYSE 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/NYSE TRF, which is operated by NYSE Market (DE), Inc. (''NYSE Market (DE)''), is one of four FINRA facilities[5] that FINRA members can use to report over-the-counter (''OTC'') trades in NMS stocks. While members are required to report all OTC trades in NMS stocks to FINRA, they may choose which FINRA Facility (or Facilities) to use to satisfy their trade reporting obligations.[6]

As discussed below, NYSE Market (DE) proposes to modify the trade reporting fees applicable to FINRA members that use the FINRA/NYSE TRF (''FINRA/NYSE TRF Participants'' or ''Participants''). Currently, the monthly fee for use of the FINRA/NYSE TRF is calculated using a tiered fee structure based on the reporting member's OTC trading activity. NYSE Market (DE) proposes to:

- Change the tier basis to use just the trading activity reported to the FINRA/NYSE TRF, rather than using all trading activity published on FINRA's public website, as it does now; and
- increase the number of fee tiers to address differences in participant usage.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the first quarter of 2019, under the proposed fee schedule the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease.

FINRA is proposing to amend FINRA Rule 7620B (FINRA/NYSE Trade Reporting Facility Reporting Fees) accordingly. There is no new product or service accompanying the proposed fee change.

Background

The FINRA/NYSE TRF

Under the governing limited liability company agreement,[7] the FINRA/NYSE TRF has two members: FINRA and NYSE Market (DE). FINRA, the ''SRO Member,'' has sole regulatory responsibility for the FINRA/NYSE TRF. NYSE Market (DE), the ''Business Member,'' is primarily responsible for the management of the FINRA/NYSE TRF's business affairs to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA.

The Business Member establishes pricing for use of the FINRA/NYSE TRF, which pricing is implemented pursuant to FINRA rules that FINRA must file with the Commission and that must be consistent with the Act. The relevant FINRA rules are administered by NYSE Market (DE), in its capacity as the Business Member and operator of the

[27] 17 CFR 200.30–3(a)(12).

[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).

[5] The four FINRA facilities are the FINRA/NYSE TRF, two FINRA/Nasdaq Trade Reporting Facilities (together, the ''FINRA/Nasdaq TRF''), and the Alternative Display Facility (''ADF'' and together, the ''FINRA Facilities'').

[6] Members can use the FINRA/NYSE TRF as a backup system and reserve bandwidth if there is a failure at another FINRA Facility that supports the reporting of OTC trades in NMS stocks. As set forth in Trade Reporting Notice 1/20/16 (OTC Equity Trading and Reporting in the Event of Systems Issues), a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility must establish and maintain connectivity and report to a second FINRA Facility, if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.

[7] *See* the Second Amended and Restated Limited Liability Company Agreement of FINRA/NYSE Trade Reporting Facility LLC. The limited liability company agreement, which was submitted as part of the rule filing to establish the FINRA/NYSE TRF and was subsequently amended and restated, can be found in the FINRA Manual.

FINRA/NYSE TRF on behalf of FINRA,[8] and the Business Member collects all fees on behalf of the FINRA/NYSE TRF. In addition, 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/NYSE TRF.

FINRA/NYSE TRF Participants are charged fees pursuant to Rule 7620B and may qualify for transaction credits under Rule 7610B (Securities Transaction Credit). In addition, pursuant to Rule 7630B (Aggregation of Activity of Affiliated Members), affiliated members can aggregate their activity for purposes of fees and credits that are dependent upon the volume of their activity.[9]

The FINRA/NYSE TRF is smaller than the FINRA/Nasdaq TRF in terms of reported volume: FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC. For example, from July 2018 through June 2019, the breakout of trade report activity among the FINRA Facilities was as follows:

Facility	Number of reported shares	Percentage of TRF total
FINRA/NYSE TRF	130,536,250,022	19.5
FINRA/NASDAQ TRF	540,520,980,728	80.5

Competitive Environment

According to the Business Member, the FINRA/NYSE TRF operates in a competitive environment. The FINRA Facilities have different pricing [10] and compete for FINRA members' trade report activity. In turn, FINRA members can choose which FINRA Facility they use to report OTC trades in NMS stocks. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities. At the same time, the Business Member believes that the current fee structure under Rule 7620B discourages some FINRA members from becoming FINRA/NYSE TRF Participants, because the current fee is not tied to how much trading is reported specifically to the FINRA/NYSE TRF.

To address this issue, the Business Member has designed a fee structure under which FINRA/NYSE TRF Participants' monthly reporting fees would not be calculated using a Participant's total OTC trading activity. As discussed below, the proposed change would base the monthly fee on the Participant's share of total market volume reported to the FINRA/NYSE TRF. Accordingly, the Business Member believes that the proposed fee change will more closely correspond to actual usage and encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF. Such a change would make the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF and give members more attractive options for trade reporting, potentially encouraging FINRA members to use the FINRA/NYSE TRF to report more than the approximately 20% of their shares in NMS stocks traded OTC that they currently use it for.

Proposed Amendments to Rule 7620B

Under Rule 7620B, FINRA/NYSE TRF Participants are charged a flat fee for access to the complete range of functionality offered by the FINRA/NYSE TRF rather than a separate fee for each activity (*e.g.,* a per trade or per side fee for reporting a trade, a separate per trade fee for canceling a trade, etc.) or a separate fee for connectivity.[12] Rather than charging the same fee to all FINRA/NYSE TRF Participants irrespective of trading activity, the fees set forth in Rule 7620B are tiered, to tie the amount of the monthly fees to a Participant's trading activity.

The Current Monthly Fee

As noted above, the monthly fee for use of the FINRA/NYSE TRF is calculated using a tiered fee structure based on a Participant's total OTC trading activity, whether or not it is reported to the FINRA/NYSE TRF. Specifically, pursuant to current Rule 7620B,[13] each Participant is charged a fee based on its ''ATS & Non-ATS OTC Market Share,'' which is defined as the percentage calculated by dividing:

a. The total number of ATS and non-ATS shares [14] reported by the Participant to FINRA and published on FINRA's public website (''OTC Transparency Data website'') [15] pursuant to Rule 6110 (Trading Otherwise than on an Exchange) [16] during a given calendar quarter, by

b. the total number of all shares reported to the Consolidated Tape Association (''CTA'') or the Nasdaq

[8] FINRA's oversight of this function performed by the Business Member is conducted through a recurring assessment and review of the FINRA/NYSE TRF operations by an outside independent audit firm.

[9] No change is proposed to be made to Rules 7610B or 7630B, and so there will be no change to the requirements for, or process of, securities transaction credits and the aggregation of affiliated member activity.

[10] Because the FINRA/NYSE TRF and FINRA/Nasdaq 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.

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04).

[12] *See, e.g.,* Rules 7510(a) and 7520 (trade reporting fees and connectivity charges for the ADF) and Rule 7620A (trade reporting fees for the FINRA/Nasdaq TRF).

[13] *See* Securities Exchange Release No. 79050 (October 5, 2016), 81 FR 70462 (October 12, 2016) (SR–FINRA–2016–037).

[14] ''ATS shares'' are shares of NMS stocks executed within a member's alternative trading system (''ATS'') and ''non-ATS shares'' are shares of NMS stocks executed OTC by a member outside of an ATS.

[15] *See otctransparency.finra.org/otctransparency/AtsIssueData.*

[16] Pursuant to Rule 6110, FINRA publishes on its OTC Transparency Data website the number of shares and trades by security executed OTC (''Trading Information'') by each ATS and member firm with a trade reporting obligation under FINRA rules. Trading Information published on FINRA's website is derived directly from OTC trades reported by the member firm to the FINRA Facilities.

Securities Information Processor (''UTP SIP''), as applicable, during that period.

The ATS & Non-ATS OTC Market Share is calculated in aggregate across all tapes.[17] Such calculation is based on the data available for the prior full calendar quarter and determines the monthly fees in subsequent periods. By using the total number of ATS and non-ATS shares reported, the ATS & Non-ATS OTC Market Share does not limit its calculation to reports submitted to the FINRA/NYSE TRF.

The following chart sets forth the current fee tiers:

ATS & non-ATS OTC market share	Monthly subscriber fee
Greater than or equal to 2.0%	$30,000
Greater than or equal to 0.5% but less than 2.0%	15,000
Greater than or equal to 0.1% but less than 0.5%	5,000
Less than 0.1%	2,000

The Proposed Monthly Fee

The Business Member has determined to adjust the fees for use of the FINRA/NYSE TRF to base the monthly fee on the Participant's share of total market volume reported to the FINRA/NYSE TRF. More specifically, rather than using the ATS & Non-ATS OTC Market Share, the proposed fees will be based on the Participant's ''FINRA/NYSE TRF Market Share,'' defined as the percentage calculated by dividing:

a. The total number of shares reported to the FINRA/NYSE TRF for public dissemination (or ''tape'') purposes during a given calendar month that are attributable to a FINRA/NYSE TRF Participant, by

b. the total number of all shares reported to the CTA or UTP SIP, as applicable, during that period.

The FINRA/NYSE TRF Market Share would be calculated in aggregate across all tapes and would be based on the number of shares attributable to a FINRA/NYSE TRF Participant, irrespective of whether the trade is reported by the Participant or on behalf of the Participant by another FINRA/NYSE TRF Participant. Such calculation would be based on the data available for the prior full calendar month.[18]

The text of Rule 7620B would be revised to be consistent with the changes. As noted, the fee would be calculated based on the shares reported to the FINRA/NYSE TRF and would no longer be based on the shares published on FINRA's OTC Transparency Data website. Accordingly, amended Rule 7620B would remove the reference to ''ATS and non-ATS'' shares because that classification is used on FINRA's OTC Transparency Data website, but not by the FINRA/NYSE TRF.

Amended Rule 7620B would state that a transaction is attributed to a FINRA/NYSE TRF Participant if the Participant is identified as the executing party, *i.e.,* has the trade reporting obligation under Rule 6380B(b), in a trade report submitted to the FINRA/NYSE TRF for tape purposes. Finally, amended Rule 7620B would state that FINRA/NYSE TRF Market Share would be calculated in aggregate across all Tapes and only include shares reported to the Tapes.

In addition to basing the fee on the Participant's FINRA/NYSE TRF Market Share, the proposed changes to Rule 7620B would expand the tier structure from four monthly participant fees to nine. Under the proposed rule change, for those Participants with a FINRA/NYSE TRF Market Share of less than 0.10%, the determination of the applicable tier would be tied to the number of tape reports submitted to the FINRA/NYSE TRF.

The following chart sets forth the nine proposed fee tiers: [19]

FINRA/NYSE TRF market share	Count of tape reports to FINRA/NYSE TRF	Monthly participant fee
Greater than or equal to 1.25%	n/a	$30,000
Greater than or equal to 0.75% but less than 1.25%	n/a	20,000
Greater than or equal to 0.50% but less than 0.75%	n/a	17,500
Greater than or equal to 0.25% but less than 0.50%	n/a	15,000
Greater than or equal to 0.10% but less than 0.25%	n/a	10,000
Less than 0.10%	25,000 or more trade reports	2,000
Less than 0.10%	100 or more trade reports but fewer than 25,000 trade reports	750
Less than 0.10%	1 or more trade reports but fewer than 100 trade reports	250
Less than 0.10%	No trade reports	2,000

As now, the monthly fee will be charged at the end of the calendar month and will apply to any Participant that has submitted a participant application agreement to the FINRA/NYSE TRF pursuant to Rule 7220B (Trade Reporting Participation Requirements). If a new FINRA/NYSE TRF Participant submits the participant application agreement and reports no shares traded in a given month, the Participant will not be charged the monthly fee for the first two calendar months in order to provide time to connect to the FINRA/NYSE TRF.[20]

The monthly fees paid by FINRA/NYSE TRF Participants will continue to include unlimited use of the Client Management Tool, as well as full access to the FINRA/NYSE TRF and supporting functionality, *e.g.,* trade submission, reversal and cancellation.[21]

Application of Proposed Fee Schedule

The proposed fee schedule will be applied in the same manner to all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not apply differently to different types or sizes of Participants. Rather, because it will utilize the FINRA/NYSE TRF Market Share, the proposed fees will be based on a Participant's activity on the FINRA/NYSE TRF, not, as now, on its total OTC trading activity, whether or not it is reported to the

[17] There are three tapes: ''Tape A'' includes securities listed on the New York Stock Exchange, ''Tape B'' includes securities listed on NYSE American and regional exchanges, and ''Tape C'' includes securities listed on Nasdaq.

[18] For example, the bill issued in June would be for the month of May, and would be based on shares reported during May. The Business Member believes that having the calculation based on monthly data would allow the fees to reflect any changes in a Participant's use of the FINRA/NYSE TRF more quickly than if fees were calculated using quarterly data.

[19] Because the first sentence states that ''each participant'' will be charged the fee, to make the rule consistent in its terminology ''Subscriber'' would be replaced with ''Participant'' in the heading of the third column in the table.

[20] As is the case today, after the first two calendar months, the Participant will be charged regardless of connectivity.

[21] *See* 81 FR 70462, *supra* note 13, at 70465.

FINRA/NYSE TRF.[22] At the same time, by expanding the tier structure from four monthly participant tiers to nine, the proposed rule change would create a more nuanced fee structure, under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month.

FINRA/NYSE TRF Market Share

Measured at any given point, a Participant's FINRA/NYSE TRF Market Share would always be lower than or equal to its ATS & Non-ATS OTC Market Share. Although one is calculated monthly and the other quarterly, given that the denominator for both is the total number of shares reported to the CTA or UTP SIP during the relevant period, a ratio that has the shares reported only to the FINRA/NYSE TRF as the numerator will be smaller than, or at most equal to, a ratio that has all shares reported to all FINRA Facilities as the numerator. Based on the Business Member's comparison of the information on the OTC Transparency Data website with its own activity records, the Business Member understands that few, if any, Participants do all of their reporting on the FINRA/NYSE TRF. Accordingly, the Business Member expects that most Participants' FINRA/NYSE TRF Market Share would be lower than, not equal to, their ATS & Non-ATS OTC Market Share.

Proposed Tiers

To facilitate comparison of the current and proposed tiers, the following table sets forth the proposed and current tiers, applicable monthly fee, and the number of Participants that were subject to each of the current tiers as of March 31, 2019.

ATS & non-ATS OTC market share (current tiers)	FINRA/NYSE TRF market share (proposed tiers)	Monthly fee (current and proposed)	Number of participants in each current tier [1]
Greater than or equal to 2.00%	Greater than or equal to 1.25%	$30,000	4
	Greater than or equal to 0.75% but less than 1.25%	20,000	
	Greater than or equal to 0.50% but less than 0.75%	17,500	
Greater than or equal to 0.50% but less than 2.00%	Greater than or equal to 0.25% but less than 0.50%	15,000	4
	Greater than or equal to 0.10% but less than 0.25%	10,000	
Greater than or equal to 0.10% but less than 0.50%		5,000	3
Less than 0.10%	Less than 0.10% and 25,000 or more trade reports to the FINRA/NYSE TRF.	2,000	18
	Less than 0.10% and 100 or more trade reports but fewer than 25,000 trade reports to the FINRA/NYSE TRF.	750	
	Less than 0.10% and 1 or more trade reports but fewer than 100 trade reports to the FINRA/NYSE TRF.	250	
	Less than 0.10% and no trade reports to the FINRA/NYSE TRF.	2,000	
Total			29

[1] As of March 31, 2019.

The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure, under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month, without excessive charges. In making its evaluation, the Business Member utilized its comparison of the information on the OTC Transparency Data website with its own activity records.

The proposed fee schedule uses different threshold percentages for its tiers than the current fee schedule, as shown in the table above. Specifically, the highest fee would still be $30,000, but the threshold percentage of the FINRA/NYSE TRF Market Share would be 1.25%, as opposed to the current tier, which sets the threshold ATS & Non-ATS OTC Market Share at 2.0%.

The current fee schedule has two tiers between the lowest and highest tiers, *i.e.,* for Participants with an ATS & Non-ATS OTC Market Share that is at least 0.10% and less than 2.0%. By contrast, under the proposed rule change, there would be four tiers for Participants with a FINRA/NYSE TRF Market Share that is at least 0.10% and less than 1.25%.

Currently, all Participants with an ATS & Non-ATS OTC Market Share of less than 0.10% incur a flat monthly fee of $2,000. No fee is below $2,000. Under the proposed rule change, a Participant with a FINRA/NYSE TRF Market Share of less than 0.10% would pay a fee based on its number of trade reports to the FINRA/NYSE TRF. As indicated in the table above, a Participant with a FINRA/NYSE TRF Market Share of less than 0.1% would be subject to a $250 or $750 monthly fee if it had one or more but fewer than 25,000 trade reports. It would incur the $2,000 monthly fee if it (a) had less than 0.10% market share and 25,000 or more trade reports, or (b) had no trade reports.

Currently, approximately 60% of FINRA/NYSE TRF Participants are subject to the flat monthly fee of $2,000

[22] For example, using the total number of all shares reported to the CTA and UTP SIP in March 2019, if Firm A, a very large firm with a significant amount of trade reporting volume, had 364 million shares per day to report to any TRF and chose to report it all to the FINRA/NYSE TRF for the entire month, its FINRA/NYSE TRF Market Share would be 4.9% and its fee would be $30,000. If instead Firm A chose to report 64 million shares to the FINRA/NYSE TRF and 300 million shares to another FINRA Facility, the FINRA/NYSE TRF Market Share would be 0.88%, and Firm A's fee would be $20,000. The other FINRA Facility would charge the firm based on its fee schedule.

By contrast, if Firm B, a more moderate sized firm, had 21 million shares to report per day and reported all of it to the FINRA/NYSE TRF, its FINRA/NYSE TRF Market Share would be 0.29%, and Firm B would have a fee of $15,000. If it chose to report 5 million shares to the FINRA/NYSE TRF, its FINRA/NYSE TRF Market Share would be 0.07%, and it would incur a fee based on its count of tape reports. Specifically, if it reported 30,000 trades, the FINRA/NYSE TRF fee would be $2,000; if it were 500 trades, the FINRA/NYSE TRF fee would be $750; if it were one trade, the FINRA/NYSE TRF fee would be $250; and if it reported no trades, the FINRA/NYSE TRF fee would be $2,000. In each case, the FINRA Facility it reported the other shares to would charge Firm B based on its fee schedule.

for having an ATS & Non-ATS OTC Market Share of less than 0.10%.[23] All else being equal, the Business Member believes that the number of Participants with a FINRA/NYSE TRF Market Share of less than 0.10% is unlikely to be the same, as the fee will now more closely correspond to their usage of the FINRA/NYSE TRF. However, if we assume that Participants do not change their reporting behavior, the Business Member believes that most Participants would likely fall into the four bottom tiers.

The Business Member believes that using the number of trade reports submitted to the FINRA/NYSE TRF to help set the dividing line between the four bottom tiers provides a basis for distinguishing among such Participants, allowing the proposed fee to be more commensurate with the Participants' actual usage. At the same time, the Business Member believes that it is reasonable and equitable to charge a Participant the same $2,000 fee if it reports 25,000 or more reports or none at all, because it would create a reasonable incentive for reporting to the FINRA/NYSE TRF. Indeed, a Participant that submits just one report, rather than none, will reduce its fee from $2,000 to $250, an 87.5% reduction. A Participant that does not submit any reports would be charged $2,000 under the current fee structure.

Anticipated Application of the New Structure

It is not possible to fully predict the number of FINRA members that are likely to become FINRA/NYSE TRF Participants, how many Participants would be subject to each of the proposed tiers, or whether there will be an appreciable increase—or decrease—in reporting to the FINRA/NYSE TRF.[24] As noted above, the Business Member anticipates that the proposed pricing will incentivize Participants to increase their reporting to the FINRA/NYSE TRF.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the first quarter of 2019, under the proposed fee schedule, the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease. More specifically, of the four Participants with a monthly subscriber fee of $30,000 as of March 31, three would remain at that rate and one would see its fee fall to $10,000. Of the four Participants with a monthly subscriber fee of $15,000, one would remain at that rate, and the others would pay fees ranging from $2,000 to $17,500. None of the three Participants with monthly subscriber fees of $5,000 would stay at that rate: one would see a fee increase, to $10,000, and the other two would be subject to fees of $750 and $2,000. Finally, of the 18 Participants with a monthly subscriber fee of $2,000, four would remain at $2,000 and 14 would see a fee reduction to $750.

The following table suggests how the new tiers would apply if more FINRA members were Participants. Using FINRA data for activity reported to the FINRA Facilities in the first quarter of 2019 from FINRA's OTC Transparency Data website, the table indicates the number of firms that would be subject to each tier if all FINRA members (excluding de minimis firms) were reporting to the FINRA/NYSE TRF subject to the current or proposed fee.[25] For the current fee, no assumptions are required, as it is calculated based on the ATS & Non-ATS OTC Market Share. For the proposed fee, the table shows the number of firms that would be in each tier were they to report 25%, 50% or 100% of their activity to the FINRA/NYSE TRF.

ATS & non-ATS OTC market share	FINRA/NYSE TRF market share	Number of firms per tier under current fee	Number of firms per tier based on percentage of reported volume [1]		
			25%	50%	100%
Greater than or equal to 2.00%	Greater than or equal to 1.25%	7	1	6	7.
	Greater than or equal to 0.75% but less than 1.25%.		2		4.
	Greater than or equal to 0.50% but less than 0.75%.		3	2	3.
Greater than or equal to 0.50% but less than 2.00%.	Greater than or equal to 0.25% but less than 0.50%.	8	2	6	7.
	Greater than or equal to 0.10% but less than 0.25%.		6	8	7.
Greater than or equal to 0.10% but less than 0.50%.		14			
Less than 0.10%	Less than 0.10% and 25,000 or more trade reports to the FINRA/NYSE TRF.	33	35	22	17.
	Less than 0.10% and 100 or more trade reports but fewer than 25,000 trade reports to the FINRA/NYSE TRF.		7	14	15.
	Less than 0.10% and 1 or more trade reports but fewer than 100 trade reports to the FINRA/NYSE TRF.		6	4	2.

[23] For the 15 months ended March 2019, the number of FINRA/NYSE TRF Participants subject to the flat $2,000 fee was between 17 and 19, and the total number of Participants reporting to the FINRA/NYSE TRF was 29 or 30.

[24] The Business Member does not propose to change the revenue sharing structure. The Business Member notes, however, that the proposed pricing may increase revenue sharing by encouraging Participants that have a FINRA/NYSE TRF Market Share of less than 0.10% to make trade reports to the FINRA/NYSE TRF in order to reduce their fees from $2,000 to $250 or $750. The Business Member believes that the increase in reporting would increase such Participants' revenue share as well as decrease the fee.

[25] The table excludes FINRA members whose activity is ''de minimis,'' which account for 1.5% of all shares reported. Such firms' activity cannot be allocated, as information for firms with ''de minimis'' volume outside of an ATS is aggregated and published on a non-attributed basis. *See* ''OTC (ATS & Non-ATS) Transparency'' at *www.finra.org/industry/otc-%28ats-%26-non-ats%29-transparency.*

ATS & non-ATS OTC market share	FINRA/NYSE TRF market share	Number of firms per tier under current fee	Number of firms per tier based on percentage of reported volume [1]		
			25%	50%	100%
	Less than 0.10% and no trade reports to the FINRA/NYSE TRF.	....	Not available	Not available	Not available.
Total Firms	....	62	62	62	62.

[1] Number of firms that would be in each tier had the firm reported 25%, 50% or 100% of its activity to the FINRA/NYSE TRF. Total activity based on data posted on the OTC Transparency Data website for the first quarter of 2019.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be October 1, 2019.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[26] 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/NYSE TRF is offered on fair and nondiscriminatory terms.

The Proposed Rule Change Is an Equitable Allocation of Reasonable Fees

FINRA believes that the proposed rule change is an equitable allocation of reasonable fees for the following reasons.

The proposed fee would be based on the Participant's FINRA/NYSE TRF Market Share, rather than its ATS & Non-ATS OTC Market Share. As a result, the proposed fee will be based on a Participant's activity on the FINRA/NYSE TRF, not, as now, on its total OTC trading activity, whether or not it is reported to the FINRA/NYSE TRF. At the same time, the proposed changes to Rule 7620B would expand the tier structure from four monthly participant fees to nine. As a result, Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month. In addition, the Business Member believes that having the calculation based on monthly data will allow the fees to reflect any changes in a Participant's use of the FINRA/NYSE TRF more quickly than if fees were calculated on a quarterly basis.

The proposed fee schedule uses different threshold percentages for its tiers than the current schedule, because the percentages are of a different ratio. Measured at any given point, a Participant's FINRA/NYSE TRF Market Share would always be lower than or equal to its ATS & Non-ATS OTC Market Share. Although one is calculated monthly and the other quarterly, given that the denominator for both is the total number of shares reported to the CTA or UTP SIP during the relevant period, a ratio that has the shares reported only to the FINRA/NYSE TRF as the numerator will be smaller than, or at most, equal to, a ratio that has all shares reported to all FINRA Facilities as the numerator. Based on the Business Member's comparison of the information on the OTC Transparency Data website with its own activity records, it believes that few, if any, Participants do all of their reporting on the FINRA/NYSE TRF. Accordingly, the Business Member expects that most Participants' FINRA/NYSE TRF Market Share would be lower than, not equal to, their ATS & Non-ATS OTC Market Share.

The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure, under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month, without excessive charges. In making its evaluation, the Business Member utilized its comparison of the information on the OTC Transparency Data website with its own activity records.

Currently, approximately 60% of FINRA/NYSE TRF Participants are subject to the flat monthly fee of $2,000 for having an ATS & Non-ATS OTC Market Share of less than 0.10%.[27] All else being equal, the Business Member believes that the number of Participants with a FINRA/NYSE TRF Market Share of less than 0.10% is unlikely to be the same, as the fee will now more closely correspond to their usage of the FINRA/NYSE TRF. However, if we assume that Participants do not change their reporting behavior, the Business Member believes that most Participants would likely fall into the four bottom tiers.

The Business Member believes that using the number of trade reports submitted to the FINRA/NYSE TRF to help set the dividing line between the four bottom tiers would be equitable because it would provide a basis for distinguishing among such Participants, allowing the proposed fee to be more commensurate with the Participants' actual usage. At the same time, the Business Member believes that it is reasonable and equitable to charge a Participant with a FINRA/NYSE TRF Market Share of less than 0.10% the same $2,000 fee if it reports 25,000 or more reports or none at all, because it would create a reasonable incentive for reporting to the FINRA/NYSE TRF. Indeed, a Participant that submits just one report, rather than none, will reduce its fee from $2,000 to $250, an 87.5% reduction. It would be charged $2,000 under the current fee structure.

As is true currently, the proposed fees are designed such that more active Participants have a higher fee, while less active Participants pay less. At the same time, by adding additional tiers to the current structure, the proposed rule change should lead to fees that are more reflective of Participants' activity on the FINRA/NYSE TRF.

The Proposed Rule Change Is Not Unfairly Discriminatory

FINRA believes that the proposed rule change is not unfairly discriminatory for the following reasons.

The proposed fee schedule will be assessed in the same manner on all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not be assessed differently to different types or sizes of Participants. Access to the FINRA/NYSE TRF is offered on fair and non-discriminatory terms.

FINRA members can choose among four FINRA Facilities when reporting OTC trades in NMS stocks: the FINRA/

[26] 15 U.S.C. 78*o*–3(b)(5).

[27] For the 15 months ended March 2019, the number of FINRA/NYSE TRF Participants subject to the flat $2,000 fee was between 17 and 19, and the total number of Participants reporting to the FINRA/NYSE TRF was 29 or 30.

NYSE TRF, the two FINRA/Nasdaq TRFs, or ADF. The FINRA Facilities have different pricing and compete for FINRA members' trade report activity. FINRA members will continue to have the option of using another FINRA Facility for purposes of reporting OTC trades in NMS stocks if they determine that the fees and credits of another facility are more favorable. The pricing structures of the other FINRA Facilities are publicly available, allowing FINRA members to make rational decisions based on the information. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28]

FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities.

At the same time, the Business Member believes that the current structure of Rule 7620B discourages FINRA members from becoming FINRA/NYSE TRF Participants. Because it is calculated using a Participant's total OTC trading activity, the current fee is not tied to how much trading is reported to the FINRA/NYSE TRF. In other words, a member may not choose to become a FINRA/NYSE TRF Participant because it would then be subject to a fee based on all its reporting, not just its usage of the FINRA/NYSE TRF. The Business Member believes that the proposed fee change will encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF. Such a change would make the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF and give members more attractive options for trade reporting, potentially encouraging FINRA members to use the FINRA/NYSE TRF to report more than the approximately 20% of their shares in NMS stocks traded OTC that they currently use it for.

Because it will utilize the FINRA/NYSE TRF Market Share, the proposed fees will be based on a Participant's activity on the FINRA/NYSE TRF, not, as now, on its total OTC trading activity, whether or not it is reported to the FINRA/NYSE TRF. At the same time, by expanding the tier structure from four monthly participant tiers to nine, the proposed rule change would create a structure under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month.

The Business Member selected the proposed tiers and fees based on its evaluation of what thresholds and fees would create a more nuanced structure, under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month, without excessive charges. In making its evaluation, the Business Member utilized its comparison of the information on the OTC Transparency Data website with its own activity records.

The Business Member believes that, for those Participants with a FINRA/NYSE TRF Market Share of less than 0.10%, using the number of trade reports submitted to the FINRA/NYSE TRF to help set the dividing line between tiers provides a basis for distinguishing among such Participants, allowing the proposed fee to be more commensurate with the Participants' actual usage. At the same time, the Business Member believes that it is reasonable and equitable to charge a Participant the same $2,000 fee if it reports 25,000 or more reports or none at all, because it would create a reasonable incentive for reporting to the FINRA/NYSE TRF. Indeed, a Participant that submits just one report, rather than none, will reduce its fee from $2,000 to $250, an 87.5% reduction. It would be charged $2,000 under the current fee structure.

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. In fact, the Business Member believes that, rather than impose a burden on competition, the proposed change will benefit competition because it will give all FINRA members more attractive options for trade reporting. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [29]

Intramarket Competition. FINRA members currently use the FINRA/NYSE TRF to report approximately 20% of shares in NMS stocks traded OTC, compared to approximately 80% for the FINRA/Nasdaq TRF. Based on the Business Member's comparison of the information on the OTC Transparency Data website with its own activity records, the Business Member understands that few, if any, Participants do all of their reporting on the FINRA/NYSE TRF.

The Business Member believes that pricing is the key factor for FINRA members when choosing which FINRA Facility to use. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they deem pricing levels at the other FINRA Facilities to be more favorable, so long as they are participants of such other facilities. At the same time, the Business Member believes that the current fee structure under Rule 7620B discourages some FINRA members from becoming FINRA/NYSE TRF Participants, because the current fee is not tied to how much trading is reported specifically to the FINRA/NYSE TRF.

To address this issue, the Business Member has designed a fee structure under which FINRA/NYSE TRF Participants' monthly reporting fees would no longer be calculated using a Participant's total OTC trading activity. Instead, as discussed above, the proposed change would base the monthly fee on the Participant's share of total market volume reported to the FINRA/NYSE TRF. Accordingly, the Business Member believes that the proposed fee change will more closely correspond to actual usage and encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF, thereby

[28] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04).

[29] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04).

making it more competitive with the FINRA/Nasdaq TRF.

The Business Member does not believe that the proposed fee would place certain market participants at a relative disadvantage compared to other market participants, because the proposed fee schedule will be applied in the same manner to all FINRA members that are, or elect to become, FINRA/NYSE TRF Participants. It will not apply differently to different types or sizes of Participants. Rather, the proposed fees will be based on a Participant's activity on the FINRA/NYSE TRF, because it will utilize the FINRA/NYSE TRF Market Share.[30] At the same time, by expanding the tier structure from four monthly participant tiers to nine, the proposed rule change would create a structure under which Participants' monthly fees would more closely correspond to the extent to which they use the FINRA/NYSE TRF in a given month.

As of March 31, 2019, there were 29 Participants, of which a majority of 18 were in the $2,000 per month tier. Four of the remaining Participants were in the $30,000 per month tier, four were in the $15,000 per month tier, and three were in the $5,000 per month tier. Assuming the number of Participants remained flat, the average fee incurred during March 2019 was estimated to be approximately $7,966 per Participant across the 29 Participants.

If there were no change in reporting to the FINRA/NYSE TRF, such that Participants' reporting volume stayed the same as it was in the first quarter of 2019, under the proposed fee schedule, the total monthly subscriber fees paid to the FINRA/NYSE TRF would decrease. More specifically, assuming there was no change in reporting to the FINRA/NYSE TRF, under the proposed fee schedule the average subscriber fee that would have been incurred would have been approximately $6,060 across the 29 Participants, compared to approximately $7,966 per Participant under the current fee. Of the four Participants with a monthly subscriber fee of $30,000, three would remain at that rate and one would see its fee fall to $10,000. Of the four Participants with a monthly subscriber fee of $15,000, one would remain at that rate, and the others would pay fees ranging from $2,000 to $17,500. None of the three Participants with monthly subscriber fees of $5,000 would stay at that rate: One would see a fee increase, to $10,000, and the other two would be subject to fees of $750 and $2,000. Finally, of the 18 Participants with a monthly subscriber fee of $2,000, four would remain at $2,000 and 14 would see a fee reduction to $750.

Participants may potentially alter their trading activity in response to the proposed rule change. Specifically, those Participants that would incur higher fees may refrain from reporting to the FINRA/NYSE TRF and may choose to report to another FINRA Facility. Alternatively, such firms may continue reporting or new firms may start reporting to the FINRA/NYSE TRF if they find that the proposed net cost of reporting and other functionalities provided represent the best value to their business.[31] The net effect on any individual Participant of the proposed change in reporting fees will depend on the number of shares the Participant reports to the FINRA/NYSE TRF and the total number of all shares reported to the CTA or UTP SIP, as applicable, during a period.

Intermarket Competition. The FINRA/NYSE TRF operates in a competitive environment. The proposed fee would not impose a burden on competition on other FINRA Facilities that is not necessary or appropriate. The FINRA Facilities have different pricing and compete for FINRA members' trade report activity. The pricing structures of the FINRA/NYSE TRF and other FINRA Facilities are publicly available, allowing FINRA members to make rational decisions regarding which FINRA Facility they use to report OTC trades in NMS stocks.

FINRA members can choose among four FINRA Facilities when reporting OTC trades in NMS stocks: The FINRA/NYSE TRF, the two FINRA/Nasdaq TRFs, or ADF. FINRA members can report their OTC trades in NMS stocks to a given FINRA Facility's competitors if they determine that the fees and credits of another FINRA Facility are more favorable, so long as they are participants of such other facility.

The Business Member believes that in such an environment the FINRA/NYSE TRF must adjust its fees to be competitive with other FINRA Facilities and to attract Participant reporting. By making the FINRA/NYSE TRF more competitive with the FINRA/Nasdaq TRF, the Business Member believes that the proposed fee change will encourage more FINRA members to become FINRA/NYSE TRF Participants and use the FINRA/NYSE TRF, thereby increasing competition among the FINRA Facilities and giving FINRA members more attractive options for trade reporting.

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[32] and paragraph (f)(2) of Rule 19b–4 thereunder.[33] 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

[30] *See* note 22, *supra.* As noted in note 6, *supra,* a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility would have connectivity to a second FINRA Facility for backup purposes. The proposed fee change is expected to reduce costs for many Participants that utilize the FINRA/NYSE TRF as a backup facility only, because it will be calculated using the Participant's share of total market volume reported to the FINRA/NYSE TRF, rather than its total OTC trading activity. For example, if Firm A, a very large firm with a significant amount of trade reporting volume, had 364 million shares per day to report and chose to report it all to another FINRA Facility, but kept its position as a Participant in the FINRA/NYSE TRF for backup purposes, its current FINRA/NYSE TRF fee would be $30,000 for the month, because it would be based on Firm A's total OTC trading activity. Under the proposed fee Firm A would pay only $2,000 per month, because the fee would be based on its reporting to the FINRA/NYSE TRF.

[31] The FINRA/NYSE TRF does not impose a fee on new Participants, and so a FINRA member that opts to become a Participant would not incur an additional cost from the FINRA/NYSE TRF. In some cases, a new Participant may incur incidental costs to connect to the FINRA/NYSE TRF, but those are not charged by the FINRA/NYSE TRF. An existing Participant that ceases to be a Participant is not subject to any change fee by the FINRA/NYSE TRF.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–024 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–2019–024. 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 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. 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–2019–024 and should be submitted on or before October 30, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Jill M. Peterson,

Assistant Secretary.

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[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87214; File No. SR–ISE–2019–24]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE's Rulebook and By-Laws

October 3, 2019.

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 September 23, 2019, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the compositional requirements of the Exchange's board (''Board'') and Regulatory Oversight Committee (''ROC''), and (iv) make additional, non-substantive edits.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, 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, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the Board and ROC compositional requirements, and (iv) make additional, non-substantive edits. Each change is discussed below.[3]

Rules 200–203

Chapter 2 of the Exchange's Rulebook presently contains a number of rules relating to the organization and administration of committees of the Exchange. In particular, Rules 200–203 set forth provisions for the establishment of committees, removal of committee members, committee procedures and the general duties and powers of committees, all of which have been in place since the Exchange's inception. The Exchange has since amended its committee structure and related rules to align with those of its affiliates.[4] Accordingly, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange's Limited Liability Company Agreement (''LLC Agreement'') and its By-Laws.

Historically, Rules 200 and 201 authorized the Chief Executive Officer of the Exchange to establish committees not comprised of directors pursuant to delegated authority by the Board, and to appoint or remove any such committee members with Board approval.[5] With

[3] All references herein and in the Exhibit 5 to ''the Company'' mean the Exchange. Company is defined in the By-Laws to mean Nasdaq ISE, LLC.

[4] *See* Securities Exchange Act Release No. 81263 (July 31, 2017), 82 FR 36497 (August 4, 2017) (SR–ISE–2017–32) (establishing, among other changes, a Board and committee structure substantially similar to The Nasdaq Stock Market LLC's structure); and Securities Exchange Act Release No. 83703 (July 25, 2018), 83 FR 36992 (July 31, 2018) (SR–ISE–2018–59) (establishing, among other changes, an Exchange Review Council substantially similar to Exchange Review Council of Nasdaq BX, Inc. to replace the Business Conduct Committee). As a result of these changes, Exchange's board and committee structure is generally harmonized with its affiliates, Nasdaq BX, Inc. (''BX''), The Nasdaq Stock Market LLC (''Nasdaq''), and Nasdaq PHLX LLC (''Phlx'').

[5] For example, the Exchange's former Business Conduct Committee (''BCC'') was established by the Chief Executive Officer pursuant to delegated authority. As noted above, the BCC was recently replaced by the Exchange Review Council in SR–ISE–2018–59. *See* Securities Exchange Act Release

Continued