

adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2018-15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAMER-2018-15. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-NYSEAMER-2018-15, and should be submitted on or before May 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-83082; File No. SR-FINRA-2018-013]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Establish a Second Trade Reporting Facility in Conjunction With Nasdaq, Inc.**

April 20, 2018.

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 April 19,

2018, 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. 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 adopt rules relating to the establishment of a second Trade Reporting Facility or "TRF" to be operated in conjunction with Nasdaq, Inc. ("Nasdaq"). The second FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF Chicago") would provide FINRA members with another mechanism for reporting over-the-counter ("OTC") trades in NMS stocks and complying with FINRA's requirements with respect to back-up trade reporting arrangements. The FINRA/Nasdaq TRF Chicago would be governed by the rules applicable to the existing FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF Carteret"), which were subject to notice and comment and approved by the Commission.<sup>3</sup>

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**

FINRA currently has three facilities that allow its members to report OTC

<sup>3</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087); and Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

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

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

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

trades in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS. These are the FINRA/Nasdaq TRF, the FINRA/NYSE TRF, and the Alternative Display Facility (“ADF”) (collectively, the “FINRA Facilities”).

On January 20, 2016, FINRA published a Trade Reporting Notice (the “Trade Reporting Notice” or the “Notice”) with guidance on firms’ OTC equity trade reporting obligations in the event of a systems issue during the trading day that prevents them from reporting OTC trades in NMS stocks in accordance with FINRA rules.<sup>4</sup> As set forth in the Notice, a firm that routinely reports its OTC trades in NMS stocks to only one FINRA Facility (a firm’s “primary facility”) must establish and maintain connectivity and report to a second FINRA Facility (a firm’s “secondary 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.<sup>5</sup>

The proposed FINRA/Nasdaq TRF Chicago would provide FINRA members with an additional mechanism to facilitate compliance with FINRA rules and the Notice. Specifically, a primary user of the FINRA/Nasdaq TRF Carteret could report on a back-up basis to the FINRA/Nasdaq TRF Chicago pursuant to the same rules, pricing, features and performance to which the firm is accustomed as a user of the FINRA/Nasdaq TRF Carteret—and vice versa.

Like the FINRA/Nasdaq TRF Carteret, the FINRA/Nasdaq TRF Chicago will be a facility of FINRA, subject to regulation by FINRA and to FINRA’s registration as a national securities association. FINRA members that match and/or execute orders internally or through proprietary systems may submit reports of these trades, with appropriate information and modifiers, to the FINRA/Nasdaq TRF Chicago, which will then submit them to the appropriate exclusive securities information processor (“SIP”). FINRA/Nasdaq TRF Chicago trade reports will be disseminated with a modifier indicating the source of the transactions that will distinguish them from transactions executed on an exchange or reported to other FINRA Facilities, including the FINRA/Nasdaq

<sup>4</sup> See Trade Reporting Notice, January 20, 2016 (OTC Equity Trading and Reporting in the Event of Systems Issues).

<sup>5</sup> As discussed in the Notice, if a firm chooses not to have connectivity to a secondary facility, it should cease executing OTC trades altogether when its primary trade reporting facility is experiencing a widespread systems issue. In that instance, the firm could route orders for execution to an exchange or another FINRA member (*i.e.*, a member with connectivity and the ability to report to a FINRA Facility that is operational).

TRF Carteret. The FINRA/Nasdaq TRF Chicago will provide FINRA with a real-time copy of each trade report for regulatory review purposes. At the option of the participant, the FINRA/Nasdaq TRF Chicago, like the FINRA/Nasdaq TRF Carteret, may provide the necessary clearing information regarding transactions to the National Securities Clearing Corporation.

The proposed rule change would establish the FINRA/Nasdaq TRF Chicago on the same terms as the FINRA/Nasdaq TRF Carteret. That is, the new FINRA/Nasdaq TRF would be built with the same technology, provide the same features and performance,<sup>6</sup> offer the same pricing and be governed by the same substantive rules, policies and procedures. A single set of application materials and clearing arrangements will provide for access to both FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. Moreover, Nasdaq, as the “Business Member” (defined below), has advised FINRA that these two TRFs will evolve in tandem and remain the same going forward (for example, because the same fee and credit schedule under the Rule 7600A Series will apply to both TRFs, any pricing changes would apply to both TRFs).<sup>7</sup>

Nasdaq, as the Business Member, proposes to structure the FINRA/Nasdaq TRF Chicago to be identical to the FINRA/Nasdaq TRF Carteret (in all respects other than its location) to provide FINRA members with a convenient and efficient option to fulfill their obligations under the Trade Reporting Notice through a set of primary and secondary reporting facilities that share the same rules, pricing, features and performance. Under the proposal, the FINRA/Nasdaq TRF Chicago will not be limited to use

<sup>6</sup> Users of the two FINRA/Nasdaq TRFs may experience latency differences due to their different geographic locations.

<sup>7</sup> According to Nasdaq, the FINRA/Nasdaq TRF Chicago will include several new components to provide performance improvements and operational efficiencies that Nasdaq intends to incorporate into the FINRA/Nasdaq TRF Carteret shortly after the launch of FINRA/Nasdaq TRF Chicago. Nasdaq will provide participants with notice prior to re-platforming the FINRA/Nasdaq TRF Carteret. After Nasdaq completes this re-platforming, Nasdaq generally intends to perform updates, upgrades, fixes or other modifications to the two FINRA/Nasdaq TRFs in tandem. However, Nasdaq notes that there may be instances in which it will be necessary for Nasdaq to act in sequence. During such instances, there may be disparities between the two TRFs with respect to function or performance. Nasdaq expects that any disparity in function or performance between the two TRFs that arises during sequential changes will be transitory. Nasdaq will provide participants with notice if it anticipates requiring more than a *de minimis* transition period.

as a back-up reporting facility. FINRA members will also have the option of using the FINRA/Nasdaq TRF Chicago as their primary trade reporting facility. Moreover, members may choose to report some of their trades, on a primary basis, to the FINRA/Nasdaq TRF Carteret and other trades, also on a primary basis, to the FINRA/Nasdaq TRF Chicago (or to one of the other FINRA Facilities). Members may choose to allocate their trade reports to more than one TRF as a means of further increasing resiliency and mitigating their risks, including the risks associated with outages.

The proposed rule change would allow firms to aggregate the volume of trades that they report on the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago. This would enable firms to continue to qualify for any volume-based pricing that they would otherwise qualify for if they limited their trade reporting to one of those facilities only.

It is important to note that although the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago would be structured identically and would allow for aggregated pricing, the two TRFs would physically operate as distinct and independent facilities.<sup>8</sup> For example, to help ensure that the FINRA/Nasdaq TRF Chicago could effectively serve as a back-up facility for the FINRA/Nasdaq TRF Carteret or vice versa, the front-end technology used to operate the FINRA/Nasdaq TRF Chicago would reside in Chicago, Illinois while the front-end technology used to operate the FINRA/Nasdaq TRF Carteret would continue to reside in Carteret, New Jersey. Geographic dispersion of these two TRFs would lessen the risk of a regional outage affecting them both simultaneously. FINRA also notes that rules that prohibit cross-facility reporting would apply to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. For example, FINRA rules generally prohibit the submission to a FINRA Facility of any non-tape report (including clearing reports) associated with a previously executed trade that was not reported to the same Facility, except with respect to the second leg of a riskless principal or agency transaction.<sup>9</sup>

FINRA’s oversight of the proposed FINRA/Nasdaq TRF Chicago would be the same as FINRA’s current oversight with respect to the two existing TRFs.

<sup>8</sup> Trades reported to the FINRA/Nasdaq TRF Carteret or FINRA/Nasdaq TRF Chicago will be subject to correction or modification only on the TRF to which the trades were originally reported.

<sup>9</sup> See, *e.g.*, Rule 7230A(i).

In addition to real-time interaction with Business Member staff when operational issues arise, FINRA currently executes its SRO oversight functions by performing a three-part regularly recurring review of TRF operations. First, before initial operation of the TRF can commence, the Business Member is required to certify in writing that TRF operations will comply with all relevant FINRA rules and federal securities laws, and on a quarterly basis thereafter, the Business Member must submit its current TRF procedures and a certification of compliance with those procedures. Second, FINRA staff conducts monthly conference calls with each Business Member to review TRF operations. These monthly calls follow an established agenda, which includes, among other things, whether there were any system outages or issues since the prior monthly conference call (and if so, to confirm that they were reported to FINRA and the SEC, as applicable), data latency, the status of pending systems changes, TRF market data products and whether the Business Member has or is developing any new products that would use TRF data. Third, FINRA oversees a regular assessment cycle and extensive review of TRF operations, as measured against the TRF business requirements document and coding guidelines established by FINRA, by an outside independent audit firm. FINRA also requires the Business Member to submit on a quarterly basis an attestation that (1) identifies all products that use TRF data, and (2) certifies that the Business Member has no other products that use TRF data and that any future products that use TRF data will be developed in consultation with FINRA.

#### FINRA/Nasdaq TRF Limited Liability Company Agreement

The Third Amended and Restated Limited Liability Company Agreement of FINRA/Nasdaq Trade Reporting Facility LLC (the “FINRA/Nasdaq TRF LLC Agreement” or the “Agreement”) will govern the establishment of the FINRA/Nasdaq TRF Chicago.

Under the FINRA/Nasdaq TRF LLC Agreement, FINRA is the “SRO Member” and has sole regulatory responsibility for both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, including real-time monitoring and T+1 surveillance, development and enforcement of trade reporting rules and submission of proposed rule changes to the Commission. Nasdaq, the Business Member under the FINRA/Nasdaq TRF LLC Agreement, is primarily responsible for the management of the business

affairs of both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, which may not be conducted in a manner inconsistent with the regulatory and oversight functions of FINRA. Among other things, the Business Member will establish pricing for both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, be obligated to pay the cost of regulation and be entitled to the profits and losses, if any, derived from operation of the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago. The Business Member will also provide the “user facing” front-end technology used to operate both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago and transmit real-time trade report data directly to the SIPs and to FINRA for audit trail purposes.

The FINRA/Nasdaq TRF LLC Agreement is substantially similar to the existing agreement that governs the FINRA/Nasdaq TRF Carteret (the Second Amended and Restated FINRA/Nasdaq TRF LLC Agreement), which is included in the FINRA Manual. However, it contains several amendments that reflect the fact that the FINRA/Nasdaq Trade Reporting Facility LLC will now operate through two TRFs: FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago.

For example, the FINRA/Nasdaq TRF LLC Agreement provides for separate termination provisions, in Section 20, for each FINRA/Nasdaq TRF. The termination provision applicable to the FINRA/Nasdaq TRF Carteret is substantially the same as under the current agreement, except as noted below. The termination provision applicable to the FINRA/Nasdaq TRF Chicago permits a Member of the LLC to terminate the FINRA/Nasdaq TRF Chicago upon at least one year’s written notice; it also permits the SRO Member to terminate the FINRA/Nasdaq TRF Chicago for any reason that the SRO Member, in its sole discretion, determines could have a negative impact on the maintenance of its status as a preeminent SRO. In addition, the FINRA/Nasdaq TRF LLC Agreement includes a provision in Section 20 that permits either Member of the LLC to terminate either of the TRFs or the entire Agreement due to a material breach by the other Member, if such breach is not cured within 60 days of notification thereof, or if the other Member becomes bankrupt or insolvent, upon 30 days’ written notice.

Finally, the FINRA/Nasdaq TRF LLC Agreement includes a provision, in Section 21, that clarifies that if either FINRA/Nasdaq TRF terminates, the LLC will continue to operate and the terms

of the Agreement relating to the remaining FINRA/Nasdaq TRF will remain in full force and effect. It also clarifies that the LLC will dissolve upon an action by either LLC Member to terminate both FINRA/Nasdaq TRFs or to terminate the last remaining FINRA/Nasdaq TRF.

#### Rules Applicable to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago

FINRA proposes to amend the Rule 6300A, 7200A and 7600A Series, which govern the FINRA/Nasdaq TRF Carteret, to accommodate the establishment of the FINRA/Nasdaq TRF Chicago. That is, FINRA proposes to preface each of these Rule Series by noting that within them, any use of the term “FINRA/Nasdaq Trade Reporting Facility” shall mean the FINRA/Nasdaq TRF Carteret or the FINRA/Nasdaq TRF Chicago, as applicable, depending on the facility to which the participant elects to report.

FINRA proposes to amend Rule 6300A to provide that the forms of agreements required under the Rule 6300A Series, including the agreement to allow a Participant to report and lock-in trades on a member’s behalf required under Rule 6380A(h), will be identical for both FINRA/Nasdaq TRFs and a single agreement can be used for purposes of both FINRA/Nasdaq TRFs. Members that elect to participate in both FINRA/Nasdaq TRFs must amend any existing agreements under the Rule 6300A Series to reflect their application to both facilities.

In addition, FINRA proposes to amend Rule 7200A to clarify that application procedures and access requirements for the FINRA/Nasdaq TRF Carteret would also be applicable to the FINRA/Nasdaq TRF Chicago, meaning that an application for access to one of the FINRA/Nasdaq TRFs would provide for access to both of them, and that the requirements for continuing access apply to both TRFs. Members that elect to participate in both FINRA/Nasdaq TRFs must provide written notice to the FINRA/Nasdaq TRFs and FINRA of such election, in the form prescribed by FINRA, and amend any existing agreements under the Rule 7200A Series to reflect their application to both Facilities. Moreover, FINRA proposes to state, in Rules 6300A, 6360A, 6370A, 7200A and 7280A, that any determination to suspend, terminate, restore, reinstate, limit or prohibit access to or participation in one FINRA/Nasdaq TRF with respect to a TRF participant will apply equally to the other FINRA/Nasdaq TRF with respect to that participant.

The proposed rule change would also amend the Rule 7600A Series to state that its schedules of credits and fees will apply to reporting activity that occurs on either or both of the FINRA/Nasdaq TRFs and that a participant's eligibility for any volume-based credits or fee caps will be determined based upon its aggregate reporting volume between the two FINRA/Nasdaq TRFs.<sup>10</sup> That is, Rule 7610A would be amended to state that if a FINRA member reports trades in a given quarter to both the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago, then the amount of the member's Securities Transaction Credits for that quarter will be calculated with respect to the member's combined transactions on both TRFs. Similarly, Rule 7620A would be amended to provide that if a participant reports trades to both the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago during a given month, then the participant's aggregate reporting volume on the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago will be considered for the purpose of determining whether and to what extent charges or caps apply to the participant during that month.<sup>11</sup>

Rule 7630A would be amended to reflect a technical change that certification of affiliate status for aggregation of activity for purposes of fees and credits will be made to, and subsequent determinations regarding aggregation will be made by, the FINRA/Nasdaq TRFs, not FINRA. FINRA members currently submit their requests for aggregation to the FINRA/Nasdaq TRF Carteret rather than to FINRA, and, as such, the proposed change will better align the rule with current practice.<sup>12</sup>

<sup>10</sup> FINRA notes that Nasdaq, in its capacity as the Business Member and operator of the FINRA/Nasdaq TRFs on behalf of FINRA, will continue to administer the Rule 7600A Series and will collect all fees and issue all credits on behalf of the FINRA/Nasdaq TRF Chicago, as well as the FINRA/Nasdaq TRF Carteret. FINRA's oversight of this function performed by the Business Member will be conducted through the aforementioned assessment and review of TRF operations by an outside independent audit firm.

<sup>11</sup> FINRA notes that members will be able to report trades to the FINRA/Nasdaq TRF Chicago via Nasdaq's ACT Workstation, a Financial Information eXchange ("FIX") line or indirectly via third party intermediaries (e.g., service bureaus) and will be required to pay the associated fees under Nasdaq rules. For example, firms that report to the FINRA/Nasdaq TRF Chicago via FIX—either directly or indirectly through third party intermediaries—would pay Nasdaq charges associated with FIX ports to connect to the FINRA/Nasdaq TRF Chicago data center. See, e.g., Nasdaq Rule 7015. Firms will not have the option of connecting to the FINRA/Nasdaq TRF Chicago via a computer-to-computer interface ("CTCI").

<sup>12</sup> As noted above, Nasdaq, as the TRF Business Member, administers this Rule and receives the

The proposed rule change would amend Rule 7640A to state that Nasdaq's license to use, distribute and sell FINRA/Nasdaq TRF Carteret market data to third parties, and to sell such data for fees that Nasdaq charges under its rules, would also extend to FINRA/Nasdaq TRF Chicago market data. In addition, the proposed rule change would amend the rule to state that the list of Nasdaq data products that incorporate FINRA/Nasdaq TRF Carteret market data would also incorporate FINRA/Nasdaq TRF Chicago market data.<sup>13</sup>

Finally, Rule 6184 (Transactions in Exchange-Traded Managed Fund Shares ("NextShares")) would be amended to provide for the reporting of transactions in NextShares to the FINRA/Nasdaq TRF Chicago in the same manner that such transactions currently are reported to the FINRA/Nasdaq TRF Carteret.

If the Commission approves the proposed rule change, the effective date of the proposed rule change will be the date upon which the FINRA/Nasdaq TRF Chicago commences operation, which is currently anticipated to be no earlier than August 1, 2018. FINRA will provide notice of that date upon successful completion of system testing and certification.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change is consistent with the Act because it provides members with an alternative for meeting their trade reporting obligations under FINRA rules and will allow members that wish to connect to a secondary FINRA Facility in accordance with the Trade Reporting Notice to continue executing OTC trades in NMS stocks in the event their primary facility is experiencing a widespread systems issue. FINRA believes that an additional facility for the reporting of OTC transactions in NMS stocks in the event a member's

certifications of affiliate status and makes the aggregation determinations thereunder.

<sup>13</sup> Prior to the date when the FINRA/Nasdaq TRF Chicago becomes operational, Nasdaq intends to file with the Commission a proposal to amend Nasdaq's rules governing its proprietary data products to provide for the inclusion therein of FINRA/Nasdaq TRF Chicago data.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

primary facility is experiencing systems issues will enhance the resiliency and promote the integrity of the OTC market.

In addition, FINRA believes that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges because the charges and credits that would apply to the FINRA/Nasdaq TRF Chicago are the same as those that apply to the FINRA/Nasdaq TRF Carteret under current FINRA rules. The proposed rule change would also provide for the equitable allocation of reasonable dues, fees and other charges in that it would allow firms that choose to concurrently report trades to the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago to aggregate their reporting volumes on the two TRFs so that they could continue to qualify for volume-based pricing to the extent that they would have otherwise qualified had they reported their trades only to one of those TRFs. As discussed above, Nasdaq, as the Business Member, has advised FINRA that the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago will be subject to identical fees under the amended Rule 7600A Series, thereby allowing members to use either TRF freely in terms of the volume reported to each TRF without providing a disincentive to use one over the other for the sole purpose of maintaining eligibility for any fee caps.

## 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 apply only to members that have a trade reporting obligation under the FINRA rules<sup>15</sup> and elect to report to the FINRA/Nasdaq TRF Chicago. As noted above, there currently are three FINRA Facilities that allow members to report OTC trades in NMS stocks. There are only several hundred firms that execute and report OTC trades in NMS stocks to the FINRA Facilities on a regular basis. Many firms, including smaller firms, route their order flow to another firm, e.g., their clearing firm, for execution,

<sup>15</sup> FINRA rules for reporting OTC transactions in equity securities require that for transactions between members, the "executing party" report the trade to a FINRA facility. For transactions between a member and a non-member or customer, the member must report the trade. "Executing party" is defined under FINRA Rule 6380A(b) as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction.

and as the routing firm, they do not have the trade reporting obligation. Thus, the proposed rule change will have no impact on many members.

As explained above, the proposed rule change provides members with an alternative for meeting their trade reporting obligations under FINRA rules and will allow members that wish to connect to a secondary facility for trade reporting in accordance with the Trade Reporting Notice to continue executing OTC trades in NMS stocks in the event their primary facility is experiencing a widespread systems issue.

The proposed FINRA/Nasdaq TRF Chicago should provide benefits, in particular, for those members that currently report trades to the FINRA/Nasdaq TRF Carteret, as such members would have the opportunity to aggregate their reporting volumes if they choose to concurrently report trades to both FINRA/Nasdaq TRFs. Thus, under the proposed fee structure, if a member chooses to connect to the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago as primary and backup trade reporting facilities, then the member will receive credit for the shares reported to the backup facility. This may create an incentive for members to jointly utilize the two FINRA/Nasdaq TRFs as primary and back-up reporting facilities.

FINRA staff analyzed participation agreements and reporting activity to FINRA/Nasdaq TRF Carteret, FINRA/NYSE TRF and ADF, and found that 430 member firms reported to at least one FINRA Facility in 2017. While 84 firms had participation agreements with at least two FINRA Facilities, only 20 of those firms reported to both the FINRA/Nasdaq TRF Carteret and another FINRA Facility. Based on this one-year sample, FINRA expects the proposal to potentially benefit at least those firms that report to two or more FINRA Facilities; however, more firms can potentially benefit from volume-based pricing in the long-run, provided that reporting trades to more than one FINRA Facility becomes necessary or preferred.

To the extent that members choose to satisfy their reporting obligations via the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago, and cease to maintain connectivity to the FINRA/NYSE TRF or ADF as a back-up FINRA Facility to report trades, the latter two may experience a reduction in reporting activity and hence revenue. Thus, the impact on FINRA Facilities may effectively be an economic transfer between them.

The proposed FINRA/Nasdaq TRF Chicago provides an alternative that

may provide costs savings to those members that choose to report to both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago instead of spreading trade reporting between the FINRA/Nasdaq TRF Carteret and another FINRA Facility. Members can effectively satisfy the requirement under the Trade Reporting Notice to establish connectivity to a second FINRA Facility to maintain reporting in the event that their primary facility experiences a widespread systems issue during the trading day. As such, members can use one FINRA/Nasdaq TRF as the primary reporting facility and the other FINRA/Nasdaq TRF as the back-up facility. This could mitigate the risks associated with a regional outage that could simultaneously affect them both, as the front-end technology used to operate the FINRA/Nasdaq TRF Chicago would reside in Chicago, Illinois while the front-end technology used to operate the FINRA/Nasdaq TRF Carteret would continue to reside in Carteret, New Jersey.

However, the two FINRA/Nasdaq TRFs would have common technology, computer code and features. As such, a member firm's decision to rely upon the FINRA/Nasdaq TRFs to satisfy both its primary and back-up requirements may not fully mitigate risks if these common technologies, code or features contemporaneously experience problems or otherwise fail. Thus, when member firms consider how they will meet their reporting obligations going forward, they will need to weigh the potential costs if both the FINRA/Nasdaq TRF Carteret and FINRA/Nasdaq TRF Chicago experience common problems or become unavailable simultaneously against the costs of maintaining connectivity to unrelated FINRA Facilities with fewer efficiencies and less attractive aggregate pricing.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2018-013 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-2018-013. 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 10:00 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. 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-

2018–013, and should be submitted on or before May 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83083; File No. SR–GEMX–2018–13]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Incorporate by Reference The Nasdaq Stock Market LLC's Consolidated Audit Trail Rules Into the Rules of Nasdaq GEMX

April 20, 2018.

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 April 10, 2018, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“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 incorporate by reference The Nasdaq Stock Market LLC's (“Nasdaq”) rule at General 7, entitled “Consolidated Audit Trail Compliance” into GEMX's General 7.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqgemx.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.

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

##### 1. Purpose

The Exchange proposes to incorporate by reference Nasdaq's rule at General 7, entitled “Consolidated Audit Trail Compliance” into GEMX's General 7. The rule sets are identical.<sup>3</sup> GEMX proposes to remove the current rule text from General 7 and replace that rule text with the following text:<sup>4</sup>

The rules contained in The Nasdaq Stock Market LLC General 7, as such rules may be in effect from time to time (the “General 7 Rules”), are hereby incorporated by reference into this Nasdaq GEMX General 7, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members. Nasdaq GEMX Members shall comply with the General 7 Rules as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the General 7 Rules shall be read to refer to the Nasdaq GEMX related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term “Exchange” in the General 7 Rules shall be read to refer to the Nasdaq GEMX Exchange; the defined term “Rule” in the General 7 Rules shall be read to refer to the Nasdaq GEMX Rule.

Should any rules which impact trading behavior be added to the Consolidated Audit Trail Compliance Rules in Nasdaq General 7 in the future, those rules shall not become subject to the incorporation by reference and shall be placed elsewhere within GEMX's Rulebook. The incorporations by reference of Nasdaq General 7 into GEMX's General 7 Rule are regulatory in nature.<sup>5</sup> The Exchange notes that as a

<sup>3</sup> See Securities Exchange Act Release Nos. 82601 (January 30, 2018), 83 FR 4949 (February 2, 2018) (SR–Phlx–2018–11); 82604 (January 30, 2018), 83 FR 5154 (February 5, 2018) (SR–NASDAQ–2018–007); 82597 (January 30, 2018), 83 FR 4942 (February 2, 2018) (SR–BX–2018–007); 82599 (January 30, 2017), 83 FR 4947 (February 2, 2018) (SR–ISE–2018–09); 82598 (January 30, 2018), 83 FR 4936 (February 2, 2018) (SR–GEMX–2018–02); and 82600 (January 30, 2018), 83 FR 4934 (February 2, 2018) (SR–MRX–2018–03).

<sup>4</sup> GEMX shall include a hyperlink to Nasdaq's General 7 for ease of reference.

<sup>5</sup> The General 7 Rules are categories of rules that are not trading rules. See 17 CFR 200.30–3(a)(76) (contemplating such requests). In addition, several

condition of an exemption, which the Exchange will request and will need to be approved by the Commission,<sup>6</sup> GEMX agrees to provide written notice to its members whenever Nasdaq proposes a change to its General 7 Rule.<sup>7</sup> Such notice will alert GEMX members to the proposed Nasdaq rule change and give them an opportunity to comment on the proposal. GEMX will similarly inform its members in writing when the SEC approves any such proposed change.

##### Implementation

The Exchange proposes that this rule change become operative at such time as it receives approval for an exemption from the Securities and Exchange Commission, pursuant to its authority under Section 36 of the Exchange Act of 1934 (“Act”) and Rule 0–12<sup>8</sup> thereunder, from the Section 19(b) rule filing requirements to separately file a proposed rule change to amend GEMX General 7.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by consolidating its rules into a single rule set. The Exchange intends to also file similar proposed rule changes for the Nasdaq PHLX LLC; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; and Nasdaq MRX, LLC markets so that the General 7 Rules

other SROs incorporate by reference certain regulatory rules of another SRO and have received from the Commission similar exemptions from Section 19(b) of the Exchange Act. See e.g., Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008), 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006); 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

<sup>6</sup> The Exchange will request an exemption pursuant to its authority under Section 36 of the Exchange Act of 1934 (“Act”) and Rule 0–121 thereunder, from the Section 19(b) rule filing requirements to separately file a proposed rule change to amend GEMX General 7.

<sup>7</sup> GEMX will provide such notice via a posting on the same website location where GEMX posts its own rule filings pursuant to Rule 19b–4 within the timeframe require by such Rule. The website posting will include a link to the location on the Nasdaq website where the applicable proposed rule change is posted.

<sup>8</sup> See 17 CFR 240.0–12; Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.