

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="32"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2018"/> - * <input type="text" value="075"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend Rules 7039, 7047, 7049, 7055, and 7061 to Update the Definition of the Term FINRA/Nasdaq Trade Reporting Facility

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date

By

(Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rules³ 7039, 7047, 7049, 7055, and 7061 to update the definition of the term “FINRA/Nasdaq Trade Reporting Facility (“TRF”)” for Nasdaq Basic, Nasdaq Last Sale (“NLS”), Nasdaq InterACT, the Short Sale Monitor and the Limit Locator to reflect approval of a second FINRA/Nasdaq TRF in Chicago, as described in further detail below.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).⁴

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on September 19, 2017. Exchange staff will advise the Board of any action taken

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References to rules are to Nasdaq rules, unless otherwise noted.

⁴ 17 CFR 240.19b-4(f)(6)(iii).

pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Daniel A. Cantu
Associate General Counsel
Nasdaq, Inc.
(301) 978-8469

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

a. Purpose

The Exchange proposes to update the definition of the term “FINRA/Nasdaq Trade Reporting Facility (“TRF”)” for Nasdaq Basic, NLS, Nasdaq InterACT, the Short Sale Monitor and the Limit Locator to reflect approval of a second FINRA/Nasdaq TRF in Chicago.

The Commission has approved a proposed rule change by FINRA to establish a second FINRA/Nasdaq TRF in Chicago as consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵ Consistent with the findings of the Commission, the Exchange proposes to define the term “FINRA/Nasdaq Trade Reporting Facility” in Rules 7039 (NLS and NLS Plus Data Feeds), 7047 (Nasdaq Basic), 7049 (Nasdaq InterACT), 7055 (Short Sale Monitor) and 7061 (Limit Locator) as the “FINRA/Nasdaq Trade Reporting Facility (“TRF”) Carteret and the FINRA/Nasdaq TRF Chicago.” The Exchange anticipates that the

⁵ See Securities Exchange Act Release No. 83559 (June 29, 2018), 83 FR 31589 (July 6, 2018) (SR-FINRA-2018-013) (approving the FINRA/Nasdaq TRF Chicago); see also Securities Exchange Act Release No. 83082 (April 20, 2018), 83 FR 18379 (April 26, 2018) (SR-FINRA-2018-013) (proposing the FINRA/Nasdaq TRF Chicago).

FINRA/Nasdaq TRF Chicago will begin to accept trade reports for Reg NMS securities on September 24, 2018, and the Exchange will begin to distribute such data in the NLS and NLS Plus Data Feeds, Nasdaq Basic, Nasdaq InterACT, the Short Sale Monitor, and the Limit Locator on that same date. The Exchange expects to retire existing versions of these products, which do not include reports from the FINRA/Nasdaq TRF Chicago, on December 31, 2018.⁶

This is a conforming change to the FINRA filing that will not change any fee or charge by the Exchange.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers. As described above, the Exchange proposes to update the definition of the FINRA/Nasdaq TRF for Nasdaq Basic,

⁶ The new data feeds for NLS, NLS Plus, Nasdaq Basic, the Short Sale Monitor, and the Limit Locator will include coding that identifies the market system that generated the trade report message, which will enable the recipient to distinguish between information from the FINRA/Nasdaq TRF Chicago and the FINRA/Nasdaq TRF Carteret. To utilize that coding, Distributors will be required to make certain technical modifications to their software. Nasdaq is working with Distributors to ensure that all such modifications will be complete before the FINRA/Nasdaq TRF Chicago commences operations, but, as a courtesy to any Distributor that has not made such modifications before such operations commence, Nasdaq will continue to make legacy feeds available until December 31, 2018.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

NLS, Nasdaq InterACT, the Short Sale Monitor and the Limit Locator to reflect approval of a second FINRA/Nasdaq TRF in Chicago. Updating the definition of “FINRA/Nasdaq TRF” to mean “the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago” is an equitable allocation of reasonable dues, fees and other charges because it is a conforming change that reflects the findings of the Commission that creation of the Chicago facility is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and does not change any fee or charge by the Exchange. The proposal does not unfairly discriminate between customers, issuers, brokers or dealers for the same reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.⁹

The Commission was speaking to the question of whether broker-dealers should be subject to a regulatory requirement to purchase data, such as depth-of-book data, that is *in*

⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“Regulation NMS Adopting Release”).

excess of the data provided through the consolidated tape feeds, and the Commission concluded that the choice should be left to them. Accordingly, Regulation NMS removed unnecessary regulatory restrictions on the ability of exchanges to sell their own data, thereby advancing the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

The market data products affected by this proposal are all voluntary products for which market participants can readily find substitutes. Accordingly, Nasdaq is constrained from pricing these products in a manner that would be inequitable or unfairly discriminatory. Moreover, the fees for these products, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change—which will simply define FINRA/Nasdaq TRF as it is used in the context of several market data products to reflect approval of a second FINRA/Nasdaq TRF in Chicago—does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, but rather provides both current and potential customers more precise description of the information contained in certain Exchange products without changing any fee or charge by the Exchange.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data

offered, and the value provided. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform, the cost of implementing cybersecurity to protect the data from external threats and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, the operation of the Exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large

initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (e.g., if the software can be downloaded over the internet after being purchased).¹⁰

In Nasdaq's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and each are subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,¹¹ and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will disfavor a particular exchange if the expected revenues from executing trades on the exchange do not exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers).

¹⁰ See William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," Antitrust Law Journal, Vol. 70, No. 3 (2003).

¹¹ It should be noted that the costs of operating the FINRA/Nasdaq TRF borne by Nasdaq include regulatory charges paid by Nasdaq to FINRA.

The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing more orders will become correspondingly more valuable.

Similarly, vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers offer their retail customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, Nasdaq believes that market data products can enhance

order flow to Nasdaq by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to Distributors and investors decreases if order flow falls, because the products contain less content.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Nasdaq pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an “excessive” price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in

the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.¹²

Moreover, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, internalizing broker-dealers and various forms of alternative trading systems (“ATs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and the FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for broker-dealers to further exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, broker-dealers, and ATs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATs, and broker-dealer is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE American, NYSE Arca, IEX, and BATS/Direct Edge.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

¹² Cf. Ohio v. American Express, No. 16-1454 (S. Ct. June 25, 2018), https://www.supremecourt.gov/opinions/17pdf/16-1454_5h26.pdf (recognizing the need to analyze both sides of a two-sided platform market in order to determine its competitiveness).

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹³ of the Act and Rule 19b-4(f)(6) thereunder¹⁴ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

As set forth in greater detail above, the proposed changes will update the definition of FINRA/Nasdaq TRF for Nasdaq Basic, NLS, Nasdaq InterACT, the Short Sale Monitor and the Limit Locator in order to conform the Nasdaq rule book to a FINRA filing that has already been accepted by the Commission.¹⁵ Any delay in the application of these changes works against the protection of investors and the public interest by delaying the implementation of a change that will conform Nasdaq market data rules to a FINRA proposal that has already been accepted by the Commission, and which will provide customers with more precise information about the data contained

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ See Securities Exchange Act Release No. 83559 (June 29, 2018), 83 FR 31589 (July 6, 2018) (SR-FINRA-2018-013) (approving the FINRA/Nasdaq TRF Chicago); see also Securities Exchange Act Release No. 83082 (April 20, 2018), 83 FR 18379 (April 26, 2018) (SR-FINRA-2018-013) (proposing the FINRA/Nasdaq TRF Chicago).

within certain market data products. The proposed changes do not impose any significant burden on competition because, as stated above, the proposed changes provide both current and potential customers more information about the data contained in certain Exchange products, and do not change any fee or charge by the Exchange.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the proposed changes, which conform Nasdaq market data rules to a FINRA proposal that has already been accepted by the Commission, and which provides customers with more precise information about the data contained within certain Exchange products, can become immediately operative. Any delay in instituting these changes will serve only to delay

implementation of these conforming and clarifying changes, and therefore would not serve the public interest.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2018-075)

September __, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 7039, 7047, 7049, 7055, and 7061 to Update the Definition of the Term FINRA/Nasdaq Trade Reporting Facility

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 7, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) 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 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 Rules³ 7039, 7047, 7049, 7055, and 7061 to update the definition of the term “FINRA/Nasdaq Trade Reporting Facility (‘TRF’)” for Nasdaq Basic, Nasdaq Last Sale (“NLS”), Nasdaq InterACT, the Short Sale Monitor and the Limit Locator to reflect approval of a second FINRA/Nasdaq TRF in Chicago, as described in further detail below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ References to rules are to Nasdaq rules, unless otherwise noted.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.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 update the definition of the term "FINRA/Nasdaq Trade Reporting Facility ('TRF')" for Nasdaq Basic, NLS, Nasdaq InterACT, the Short Sale Monitor and the Limit Locator to reflect approval of a second FINRA/Nasdaq TRF in Chicago.

The Commission has approved a proposed rule change by FINRA to establish a second FINRA/Nasdaq TRF in Chicago as consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁴ Consistent with the findings of the Commission, the Exchange proposes to define the

⁴ See Securities Exchange Act Release No. 83559 (June 29, 2018), 83 FR 31589 (July 6, 2018) (SR-FINRA-2018-013) (approving the FINRA/Nasdaq TRF Chicago); see also Securities Exchange Act Release No. 83082 (April 20, 2018), 83 FR 18379 (April 26, 2018) (SR-FINRA-2018-013) (proposing the FINRA/Nasdaq TRF Chicago).

term “FINRA/Nasdaq Trade Reporting Facility” in Rules 7039 (NLS and NLS Plus Data Feeds), 7047 (Nasdaq Basic), 7049 (Nasdaq InterACT), 7055 (Short Sale Monitor) and 7061 (Limit Locator) as the “FINRA/Nasdaq Trade Reporting Facility (‘TRF’) Carteret and the FINRA/Nasdaq TRF Chicago.” The Exchange anticipates that the FINRA/Nasdaq TRF Chicago will begin to accept trade reports for Reg NMS securities on September 24, 2018, and the Exchange will begin to distribute such data in the NLS and NLS Plus Data Feeds, Nasdaq Basic, Nasdaq InterACT, the Short Sale Monitor, and the Limit Locator on that same date. The Exchange expects to retire existing versions of these products, which do not include reports from the FINRA/Nasdaq TRF Chicago, on December 31, 2018.⁵

This is a conforming change to the FINRA filing that will not change any fee or charge by the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular,

⁵ The new data feeds for NLS, NLS Plus, Nasdaq Basic, the Short Sale Monitor, and the Limit Locator will include coding that identifies the market system that generated the trade report message, which will enable the recipient to distinguish between information from the FINRA/Nasdaq TRF Chicago and the FINRA/Nasdaq TRF Carteret. To utilize that coding, Distributors will be required to make certain technical modifications to their software. Nasdaq is working with Distributors to ensure that all such modifications will be complete before the FINRA/Nasdaq TRF Chicago commences operations, but, as a courtesy to any Distributor that has not made such modifications before such operations commence, Nasdaq will continue to make legacy feeds available until December 31, 2018.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers. As described above, the Exchange proposes to update the definition of the FINRA/Nasdaq TRF for Nasdaq Basic, NLS, Nasdaq InterACT, the Short Sale Monitor and the Limit Locator to reflect approval of a second FINRA/Nasdaq TRF in Chicago. Updating the definition of “FINRA/Nasdaq TRF” to mean “the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago” is an equitable allocation of reasonable dues, fees and other charges because it is a conforming change that reflects the findings of the Commission that creation of the Chicago facility is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and does not change any fee or charge by the Exchange. The proposal does not unfairly discriminate between customers, issuers, brokers or dealers for the same reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional

market data based on their own internal analysis of the need for such data.⁸

The Commission was speaking to the question of whether broker-dealers should be subject to a regulatory requirement to purchase data, such as depth-of-book data, that is *in excess of* the data provided through the consolidated tape feeds, and the Commission concluded that the choice should be left to them. Accordingly, Regulation NMS removed unnecessary regulatory restrictions on the ability of exchanges to sell their own data, thereby advancing the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

The market data products affected by this proposal are all voluntary products for which market participants can readily find substitutes. Accordingly, Nasdaq is constrained from pricing these products in a manner that would be inequitable or unfairly discriminatory. Moreover, the fees for these products, like all proprietary data fees, are constrained by the Exchange's need to compete for order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change—which will simply define FINRA/Nasdaq TRF as it is used in the context of several market data products to reflect approval of a second FINRA/Nasdaq TRF in Chicago—does not impose a burden on competition not

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“Regulation NMS Adopting Release”).

necessary or appropriate in furtherance of the purposes of the Act, but rather provides both current and potential customers more precise description of the information contained in certain Exchange products without changing any fee or charge by the Exchange.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform, the cost of implementing cybersecurity to

protect the data from external threats and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, the operation of the Exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (e.g., if the software can be downloaded over the internet after being purchased).⁹

In Nasdaq's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and each are subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of

⁹ See William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," Antitrust Law Journal, Vol. 70, No. 3 (2003).

operating, regulating,¹⁰ and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will disfavor a particular exchange if the expected revenues from executing trades on the exchange do not exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing more orders will become correspondingly more valuable.

Similarly, vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals impose a discipline by providing only data that will

¹⁰ It should be noted that the costs of operating the FINRA/Nasdaq TRF borne by Nasdaq include regulatory charges paid by Nasdaq to FINRA.

enable them to attract “eyeballs” that contribute to their advertising revenue. Retail broker-dealers offer their retail customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors’ pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, Nasdaq believes that market data products can enhance order flow to Nasdaq by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to Distributors and investors decreases if order flow falls, because the products contain less content.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Nasdaq pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some

platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an “excessive” price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.¹¹

Moreover, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including SRO markets, internalizing broker-dealers and various forms of alternative trading systems (“ATs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and the FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for broker-dealers to further exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, broker-dealers, and ATs that currently produce proprietary data or are currently capable

¹¹ Cf. Ohio v. American Express, No. 16-1454 (S. Ct. June 25, 2018), https://www.supremecourt.gov/opinions/17pdf/16-1454_5h26.pdf (recognizing the need to analyze both sides of a two-sided platform market in order to determine its competitiveness).

of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and broker-dealer is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE American, NYSE Arca, IEX, and BATS/Direct Edge.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-075 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-NASDAQ-2018-075. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2018-075 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market Rules**Equity Rules**

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7039. Nasdaq Last Sale and Nasdaq Last Sale Plus Data Feeds

(a) – (e) No change.

(f) Definitions. The following terms, when used in this Rule, shall have the meanings set forth below:

(1) – (3) No change.

(4) “FINRA/Nasdaq Trade Reporting Facility” shall mean the FINRA/Nasdaq Trade Reporting Facility (“TRF”) Carteret and the FINRA/Nasdaq TRF Chicago.

(5)[4] “Information” shall mean any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) eligible securities or other financial instruments, markets, products, vehicles, indicators or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.

(6)[5] “Non-Professional” shall mean a natural person who is not:

(A) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;

(B) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or

(C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(7[6]) “Professional” shall mean any natural person, proprietorship, corporation, partnership, or other entity whatever other than a Non-Professional.

(8[7]) “Recipient” shall mean any natural person, proprietorship, corporation, partnership, or other entity whatever that has access to Exchange Information.

(9[8]) “Subscriber” shall mean a device, computer terminal, automated service, or unique user identification and password combination that is not shared and prohibits simultaneous access, and which is capable of accessing Exchange Information; “Interrogation Device,” “Device” or “Access” have the same meaning as Subscriber. For any device, computer terminal, automated service, or unique user identification and password combination that is shared or allows simultaneous access, Subscriber shall mean the number of such simultaneous accesses.

(10[9]) “User” shall mean a natural person who has access to Exchange Information.

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7047. Nasdaq Basic

(a) – (c) No change.

(d) Definitions.

(1) – (2) No change.

(3) “FINRA/Nasdaq TRF” shall mean the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago.

(4[3]) “Professional/Non-Professional Subscriber” refers to the classification of types of Subscribers.

(A) – (B) No change.

(5[4]) A “Hosted Display Solution” is a product, solution or capability provided by a Distributor in which the Distributor makes available Nasdaq data or Derived Data to an application branded or co-branded with the third-party brand for use by external subscribers of the third-party entity or Distributor. The Distributor maintains control of the data, entitlements and display of the product, solution or capability. Hosted Display Solutions include, but are not limited to: (1) “Widgets” (such as an iframe, applet, or other solution), in which the Hosted Display Solution is a part or a subset of a website or platform hosted or maintained by the third-party entity; and (2) “White Labels,” in which the Distributor hosts or maintains the website or platform on behalf of the third-party entity.

(6[5]) “Derived Data” is pricing data or other information that is created in whole or in part from Nasdaq information; it cannot be reverse engineered to recreate Nasdaq information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information.

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7049. Nasdaq InterACT

Nasdaq InterACT is a surveillance tool that provides summaries of a subscribing member's trade activity for the FINRA/Nasdaq Trade Reporting Facility. Such summaries include the total number of trades that have been reported to the Facility, various statistics associated with those trades reported (including: declines, cancels, stepouts, as-ofs, etc), the total number of trades that must be reviewed for acceptance, and the total number of Regulation NMS trade throughs. “FINRA/Nasdaq Trade Reporting Facility” shall mean the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago.

InterACT is available for a subscription fee of \$400 per month, per user, with a maximum fee of \$2,400 per month, per member firm.

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7055. Short Sale Monitor

(a) The Short Sale Monitor is a real-time surveillance and alert tool that assists member firms with monitoring and post trade analysis of their short sale and short sale exempt trades reported to the FINRA/Nasdaq Trade Reporting Facility (TRF), which includes real-time alerts of covered securities subject to the restrictions of SEC Rule 201, reports of a member firm’s trades marked as “short” that are subject to the restrictions of SEC Rule 201, and reports of a member firm’s trades marked as “short exempt.” “FINRA/Nasdaq Trade Reporting Facility” shall mean the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago.

The Short Sale Monitor is available to each member firm at no cost for a trial period ending March 31, 2011, and for a fee of \$750 per MPID, per month thereafter.

(b) No change.

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7061. Limit Locator

Limit Locator is a tool to assist a member firm in monitoring its trades reported into the FINRA/Nasdaq TRF for compliance with the requirements of the National Market System Plan to Address Extraordinary Market Volatility. The service provides a subscribing member firm with an overview of its trades reported at, or outside of, a designated Limit Up/Limit Down pricing band. The service will provide a total count of the subscribing member firm’s trades in each category as well as present this information

graphically, on a rolling month basis. A subscribing member firm is able to create custom e-mails alerts to notify users when a trade is reported at, or outside of, a Limit Up/Limit Down pricing band. Limit Locator is accessed through the Nasdaq Workstation or Weblink ACT 2.0 and is offered for a fee of \$750 per month/per MPID beginning April 8, 2013. “FINRA/Nasdaq Trade Reporting Facility” shall mean the FINRA/Nasdaq TRF Carteret and the FINRA/Nasdaq TRF Chicago.

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