

Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² a proposed rule change to amend the Exchange’s Fee Schedule to adopt a tiered pricing structure for certain connectivity fees. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on December 20, 2021.⁴ On January 27, 2022, the Commission temporarily suspended the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change.⁶ On February 1, 2022, the Exchange withdrew the proposed rule change (SR–EMERALD–2021–42).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94156; File No. SR–FINRA–2022–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate the Transaction Query Fee for the FINRA/Nasdaq TRF

February 4, 2022.

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 January 31, 2022, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the

proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7620A (FINRA/Nasdaq Trade Reporting Facility Reporting Fees) to modify the query fee applicable to non-retail participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret (the “FINRA/Nasdaq TRF Carteret”) and the FINRA/Nasdaq Trade Reporting Facility Chicago (the “FINRA/Nasdaq TRF Chicago”) (collectively, the “FINRA/Nasdaq TRF”).

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The FINRA/Nasdaq TRF is a facility of FINRA that is operated by Nasdaq, Inc. (“Nasdaq”). In connection with the establishment of the FINRA/Nasdaq TRF, FINRA and Nasdaq entered into a limited liability company agreement (the “LLC Agreement”). Under the LLC Agreement, FINRA, the “SRO Member,” has sole regulatory responsibility for the FINRA/Nasdaq TRF. Nasdaq, the “Business Member,” is primarily responsible for the management of the FINRA/Nasdaq TRF’s business affairs, including establishing pricing for use of the FINRA/Nasdaq TRF, to the extent those affairs are not inconsistent with the regulatory and oversight functions of FINRA. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits

and losses, if any, derived from the operation of the FINRA/Nasdaq TRF.

Pursuant to FINRA Rule 7620A (“Rule”), FINRA/Nasdaq TRF participants that do not constitute Retail Participants³ (such non-Retail Participants are referred to herein as “Participants”) must pay a \$0.50/query fee for each FINRA/Nasdaq TRF transaction query. FINRA members use WebLink ACT/Nasdaq Workstation Post Trade (“WebLink”)⁴, Act Workstation (“Workstation”)⁵, and Nasdaq WorkX™ (“WorkX”)⁶ in connection with FINRA/Nasdaq TRF reporting.⁷ According to the Business Member, these products permit members to perform data searches on reported transactions, which members use to monitor large volumes of data in furtherance of performing their regulatory responsibilities.

Nasdaq administers this Rule in its capacity as the Business Member and operator of the FINRA/Nasdaq TRF on behalf of FINRA,⁸ and Nasdaq collects all fees on behalf of the FINRA/Nasdaq TRF. Nasdaq has determined to modify the current schedule of fees by removing the 0.50/query fee applicable to FINRA/Nasdaq TRF transaction queries performed using WebLink, Workstation, and WorkX, and FINRA is proposing to amend the Rule accordingly. Nasdaq has determined to eliminate this fee to allow users to make maximum use of the query tool available in WebLink,

³ “Retail Participants,” as that term is defined in Supplementary Material .01 to Rule 7620A, is “a participant in the FINRA/Nasdaq Trade Reporting Facility for which substantially all of its trade reporting activity on the FINRA/Nasdaq Trade Reporting Facility comprises Retail Orders.”

⁴ WebLink ACT is a browser-based application that electronically facilitates trade reporting and clearing functions for trades reported to the FINRA/Nasdaq Trade Reporting Facility.

⁵ Workstation is a web-based application that electronically facilitates trade reporting and clearing functions for trades reported to the FINRA/Nasdaq TRF. Workstation services include trade entry, trade scan, and uploads for bulk trade entry to support FINRA/Nasdaq TRF participant trade reporting in accordance with FINRA rules.

⁶ WorkX is a re-platformed version of Workstation that simplifies regulatory responsibilities and enhances the user experience with improved workflow, system performance, and data visualization. WorkX also upgrades trade reporting and monitoring with a modern user interface using cloud-based technology. FINRA rules and FINRA/Nasdaq Trade Reporting Facility system processing are unchanged.

⁷ FINRA notes that firms reporting to the FINRA/Nasdaq TRF pay Nasdaq associated user fees for WebLink, Workstation, and WorkX under Nasdaq rules. See, e.g., Equity 7 Pricing Schedule, Section 115(e) of the Nasdaq Rule.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ See Securities Exchange Act Release No. 93776 (December 14, 2021), 86 FR 71983.

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 94089, 87 FR 5910 (February 2, 2022).

⁷ 17 CFR 200.30–3(a)(12).

⁸ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Workstation, and WorkX, thereby supporting member compliance efforts.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be February 1, 2022.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁹ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that the proposed rule change is reasonable because it eliminates the existing query fee-permitting members to use the tool without incurring a separate charge. FINRA believes that the proposal is an equitable allocation of reasonable fees and is not unfairly discriminatory because removal of the query fee applies equally to all users of WebLink, Workstation, and WorkX, and it eliminates any impediment to users freely utilizing the query function-reducing members' costs associated with monitoring trade reporting activity and satisfying regulatory responsibilities. Moreover, participation in the FINRA/Nasdaq TRF is voluntary, as is the use of the query feature.

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

FINRA does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Regulatory Need

As discussed above, Nasdaq believes that eliminating this fee will increase the usability of the query tool. Nasdaq believes it is beneficial for users to be able to perform unlimited queries of their trade history at no cost in support of meeting their regulatory responsibilities.

Economic Baseline

From October 2020 to September 2021, on average, approximately 200 Participants paid on average \$200 per month in WebLink, Workstation, and WorkX query charges.¹⁰

Economic Impacts

The proposed rule change would eliminate query charges to all firms

using WebLink, Workstation, and WorkX services.¹¹ The number of firms charged query fees each month varies based on the level of product usage and scans by individual subscribers.

Assuming that, going forward, these same Participants maintain their existing levels of query activity, they stand to save on average \$200 per month in query charges.

The potential net impact of the proposed rule change depends on whether Participants alter their query activity as a result of the proposed rule change. Thus, Participants who continue to perform queries in line with prior usage will reap corresponding benefits. However, to the extent that the proposed rule change results in Participants performing more queries, then the potential net benefit will be greater.

Alternatives Considered

No other alternatives were considered for the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f)(2) 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2022-002 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-2022-002. 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 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-2022-002 and should be submitted on or before March 3, 2022.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ From October 2020 to September 2021, 303 Participants were charged WebLink, Workstation, and WorkX query fees for scan searches.

¹¹ This discussion of economic impacts does not relate to any fee other than the \$0.50/query fee that is proposed to be eliminated in the instant filing.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 17 CFR 200.30-3(a)(12).