

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99784; File No. SR-MRX-2024-08)

March 20, 2024

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Regular Taker Fees in the Exchange's Pricing Schedule at Options 7, Section 3

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 March 12, 2024, Nasdaq MRX, LLC ("MRX" 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 the regular taker fees in the Exchange's Pricing Schedule at Options 7, Section 3.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to amend the regular taker fees in the Exchange's Pricing Schedule at Options 7, Section 3.

The Exchange initially filed the proposed pricing changes on March 1, 2024 (SR-MRX-2024-06). On March 12, 2024, the Exchange withdrew that filing and replaced it with this filing.

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange charges tiered taker fees to Priority Customer³ orders in Penny Symbols that range from: \$0.15 (Tier 1 through Tier 3) to \$0.10 (Tier 4). For Non-Penny Symbols, Priority Customer orders are assessed tiered taker fees that range from: \$0.35 (Tier 1), \$0.25 (Tier 2), \$0.15 (Tier 3), and \$0.10 (Tier 4).

The Exchange now proposes a number of changes to the Priority Customer taker fees. First, the Exchange proposes to increase the Priority Customer taker fees in Penny Symbols to \$0.20 per contract across Tiers 1 – 4. Second, the Exchange proposes to increase the Priority Customer taker fees in Non-Penny Symbols to \$0.40 per contract across Tiers 1 – 4. Third, the Exchange proposes to reduce the proposed Priority Customer taker fees from \$0.20 to \$0.10 per contract (Penny Symbols) and from \$0.40 to \$0.20 per contract (Non-Penny Symbols) for

³ A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq MRX Options 1, Section 1(a)(36).

Members that execute Total Affiliated Member⁴ or Affiliated Entity⁵ Priority Customer ADV⁶ of 0.30% Customer Total Consolidated Volume⁷ in regular orders for Penny and Non-Penny Symbols which remove liquidity in a given month.⁸

Lastly, the Exchange proposes non-substantive, technical edits in Options 7, Section 3, Table 1 to add parentheses around the note 6 references appended to the Priority Customer taker fees in Penny Symbols to correct a formatting error in the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁴ An "Affiliated Member" is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A.

⁵ An "Affiliated Entity" is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

⁶ Total Affiliated Member or Affiliated Entity Priority Customer ADV means all Priority Customer ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers. See note 4 of Options 7, Section 3, Table 1.

⁷ "Customer Total Consolidated Volume" means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

⁸ See proposed note 7 of Options 7, Section 3, Table 1.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The

¹¹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the proposed changes to the regular taker fees in the manner described above are reasonable for several reasons. While the Exchange is proposing to increase the Priority Customer taker fees in Tiers 1 through 4 to \$0.20 per contract in Penny Symbols and \$0.40 per contract in Non-Penny Symbols, the Exchange believes that its taker fees remain competitive and lower than other options exchanges.¹³ The Exchange also believes that despite the increase, its pricing structure will remain attractive for Priority Customer orders because the Exchange will also offer market participants the opportunity to reduce the proposed taker fees by half if they meet the proposed volume qualifications in new note 7 of Options 7, Section 3, Table 1. As discussed above, note 7 will provide that Members that execute Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.30% Customer Total Consolidated Volume in regular orders for Penny and Non-Penny Symbols which remove liquidity in a given month will be assessed: (1) a \$0.10 per contract Priority Customer Taker Fee in Penny Symbols; and (2) a \$0.20 per contract Priority Customer Taker Fee in Non-Penny Symbols. By tying the discounted Priority Customer taker fees in note 7 to Affiliated Member and Affiliated Entity volume, the

¹³ For example, Cboe C2 Options (“C2”) charges Public Customers a \$0.43 per contract fee for removing liquidity in Penny Classes and a \$0.85 per contract fee for removing liquidity in Non-Penny Classes. See C2 Fee Schedule at: https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. In addition, MIAX Emerald charges Priority Customers a \$0.50 per contract taker fee in Penny Classes and a \$0.85 per contract taker fee in Non-Penny Classes. See MIAX Emerald Fee Schedule at: https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02262024.pdf.

Exchange believes that Members may be incentivized to aggregate volume and bring more Priority Customer regular order flow to MRX to qualify for the note 7 incentives. In addition, the Exchange believes that the total industry percentage threshold is reasonable in order to align with increasing Member activity on MRX over time. Total industry percentage thresholds are established concepts within the Exchange's Pricing Schedule.¹⁴ As with its existing percentage thresholds, the Exchange is proposing to base the discounted Priority Customer taker fee volume requirements on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the proposed qualification in note 7 to be calibrated to current market volumes rather than requiring a static amount of volume regardless of market conditions. The proposed threshold of 0.30% Customer Total Consolidated Volume is intended to reward Members for executing more Priority Customer regular volume on MRX. To the extent Priority Customer activity is increased by this proposal, market participants may increasingly compete for the opportunity to trade on the Exchange to the benefit of all market participants.

Further, the Exchange believes that the proposal described above is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants. With the proposed changes, Priority Customers will continue to be assessed lower regular order taker fees than any other market participant on the Exchange, with opportunity to further reduce these fees by qualifying for the proposed note 7 incentives. The Exchange continues to believe that it is equitable and not unfairly discriminatory to provide more favorable pricing for Priority Customers because the proposed changes are intended to increase Priority

¹⁴ For instance, the qualifying tier thresholds for the Exchange's regular order maker/taker pricing in Table 1 are currently based on Customer Total Consolidated Volume percentages. See Options 7, Section 3, Table 3.

Customer regular order flow to MRX. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

Lastly, the Exchange believes that the non-substantive, technical edits in Options 7, Section 3, Table 1 described above are consistent with the Act as they are intended to correct a formatting error in the Exchange's Pricing Schedule.

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. In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. While the proposed changes described above will apply directly to Priority Customers, the Exchange believes that these changes will ultimately encourage increased activity on the Exchange to the extent the proposal incentivizes more Priority Customer regular order volume to be executed on MRX. All Members will benefit from any increase in market activity that the proposal effectuates through increased trading opportunities and price discovery.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose

any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

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)(ii) of the Act.¹⁵ 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.

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:

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-08 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-MRX-2024-08. 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-08 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).