

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96941; File No. SR-MRX-2023-06)

February 16, 2023

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend MRX Options 7, Section 7

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 February 6, 2023, 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 MRX’s Pricing Schedule at Options 7, Section 7.

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

On May 2, 2022, MRX initially filed this proposal to amend its Pricing Schedule at Options 7, Section 7, to assess market data fees, which had not been assessed since MRX’s inception in 2016.³ The proposed changes are designed to update data fees to reflect their current value, rather than their value when it was a new exchange six years ago. Newly-opened exchanges often charge no fees for market data to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.⁴ Allowing newly-opened exchanges

³ The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR-MRX-2022-04), instituting fees for membership, ports and market data. See Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR-MRX-2022-04). On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership (SR-MRX-2022-07), market data (SR-MRX-2022-08) and ports (SR-MRX-2022-09). On August 25, 2022, the Exchange withdrew the market data filing (SR-MRX-2022-08) and replaced it with SR-MRX-2022-14. See Securities Exchange Act Release No. 95708 (September 8, 2022), 87 FR 56457 (September 14, 2022) (SR-MRX-2022-14). On October 14, 2022, the Exchange withdrew SR-MRX-2022-14 and replaced it with SR-MRX-2022-22 to reflect changes to the information contained within each of the five MRX market data feeds proposed in SR-MRX-2022-18. See Securities Exchange Act Release No. 96144 (October 24, 2022), 87 FR 65273 (October 28, 2022) (SR-MRX-2022-22) (MRX market data fee filing); Securities Exchange Act Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR-MRX-2022-18) (modifying the definitions of MRX feeds). On December 8, 2022, the Exchange withdrew SR-MRX-2022-22 and replaced it with SR-MRX-2022-27. On December 19, 2022, the Exchange withdrew SR-MRX-2022-27 and replaced it with SR-MRX-2022-30. See Securities Exchange Act Release No. 96561 (December 21, 2022), 87 FR 79915 (December 28, 2022) (SR-MRX-2022-30). On February 6, 2023, the Exchange withdrew SR-MRX-2022-30 and replaced it with the instant filing.

⁴ See, e.g., Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule->

time to build and sustain market share before charging for their market data encourages market entry and promotes competition.

This Proposal reflects MRX’s assessment that it is ready to distribute its market data on the same basis as the other 15 options exchanges. When these fees were initially proposed in May 2022, MRX was the only options exchange out of the 16 current options exchanges not to assess market data fees.

The Exchange proposes to amend fees for the following market data feeds within Options 7, Section 7: (1) Nasdaq MRX Depth of Market Data Feed (“Depth of Market Feed”);⁵ (2) Nasdaq MRX Order Feed (“Order Feed”);⁶ (3) Nasdaq MRX Top of Market Feed (“Top Feed”);⁷

[filings/filings/2020/SR-NYSENat-2020-05.pdf](#) (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

⁵ Nasdaq MRX Depth of Market Data Feed is a data feed that provides full order and quote depth information for individual orders and quotes on the Exchange book and last sale information for trades executed on the Exchange. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on the Exchange and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance). See Options 3, Section 23(a)(1).

⁶ Nasdaq MRX Order Feed provides information on new orders resting on the book (e.g. price, quantity, market participant capacity and Attributable Order tags when provided by a Member). The data provided for each option series includes the symbols (series and underlying security), displayed order types, order attributes (e.g., OCC account number, give-up information, CMTA information), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance), auction and exposure notifications. See Options 3, Section 23(a)(2).

⁷ Nasdaq MRX Top of Market Feed calculates and disseminates MRX’s best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information and for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available

(4) Nasdaq MRX Trades Feed (“Trades Feed”);⁸ and (5) Nasdaq MRX Spread Feed (“Spread Feed”).⁹ Prior to the initial filing of these proposed price changes on May 2, 2022, no fees had been assessed for these feeds.

In addition to the proposed fees for each data feed, the Exchange proposes an Internal Distributor Fee¹⁰ of \$1,500 per month for the Depth of Market Feed, Order Feed, and Top Feed, an Internal Distributor Fee of \$750 per month for the Trades Feed, and an Internal Distributor Fee of \$1,000 per month for the Spread Feed. If a Member subscribes to both the Trades Feed and the Spread Feed, both Internal Distributor Fees would be assessed.

The Exchange also proposes to assess an External Distributor Fee of \$2,000 per month for the Depth of Market Feed, Order Feed, and Top Feed, an External Distributor Fee of \$1,000 per month for the Trades Feed, and an External Distributor Fee of \$1,500 per month for the

for closing transactions only. The feed also provides order imbalances on opening/reopening. See Options 3, Section 23(a)(3).

⁸ Nasdaq MRX Trades Feed displays last trade information. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(4).

⁹ Nasdaq MRX Spread Feed is a feed that consists of: (1) options orders for all Complex Orders (i.e., spreads, buy-writes, delta neutral strategies, etc.); (2) full Complex Order depth information, including prices, side, size, capacity, Attributable Complex Order tags when provided by a Member, and order attributes (e.g., OCC account number, give-up information, CMTA information), for individual Complex Orders on the Exchange book; (3) last trades information; and (4) calculating and disseminating MRX’s complex best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable Complex Order interest in the System. The feed also provides Complex Order auction notifications. See Options 3, Section 23(a)(5).

¹⁰ A “distributor” of Nasdaq MRX data is any entity that receives a feed or data file of data directly from Nasdaq MRX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a Nasdaq Global Data Agreement.

Spread Feed.

MRX will also assess Professional¹¹ and Non-Professional¹² subscriber fees. The Professional Subscriber fee will be \$25 per month, and the Non-Professional Subscriber fee will be \$1 per month. These subscriber fees (both Professional and Non-Professional) cover the usage of all five MRX data products identified above and would not be assessed separately for each product.¹³

MRX also proposes a Non-Display Enterprise License for \$7,500 per month. This license would lower costs for internal professional subscribers and lower administrative costs overall by permitting the distribution of all MRX proprietary direct data feed products to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber, or requiring the customer to count internal subscribers.¹⁴ The Non-Display Enterprise License is in addition to any other associated distributor fees for MRX proprietary direct data feed products.

¹¹ A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber.

¹² A Non-Professional Subscriber is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) 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.

¹³ For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top Quote Feed, Order, and Depth of Market Feed the firm would only report the Subscriber once and pay \$25 (\$1 for Non-Professional).

¹⁴ The Non-Display Enterprise License of \$7,500 per month is optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ 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.

The Proposal is reasonable and unlikely to burden the market in light of MRX's small size, the nature of the fees, and the demonstrated ability of MRX customers to cancel their subscriptions for market data.¹⁷ MRX has had a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.37% in November 2022. This is the smallest market share of the 16 operating options exchanges.

The proposed fees are comparable to, and in some cases less than, those of other exchanges; in particular, the proposed MRX fees are lower than those charged by ISE today, as well as those of the MIAX Emerald Options Exchange, C2 Options, and NYSE American Options.

The MIAX Emerald Options Exchange charges \$3,000 for internal distribution and \$3,500 for external distribution of the MIAX Order Feed ("MOR").¹⁸ The proposed MRX Order

¹⁵ See 15 U.S.C. 78f(b).

¹⁶ See 15 U.S.C. 78f(b)(4) and (5).

¹⁷ Nasdaq announced that, beginning in 2022, it would migrate its North American markets to Amazon Web Services in a phased approach, starting with MRX. The MRX migration took place in November 2022. The proposed fee changes are unrelated to that effort.

¹⁸ See MIAX Emerald Options Exchange, Fee Schedule (December 8, 2022), available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_12082022c.pdf.

Feed is \$1,500 for internal distribution and \$2,000 for external distribution.

C2 Options charges \$2,500 per month for internal and external distribution of its Book Depth Data Feed, plus \$50 per Device or user ID for Display Only Service Users (external users).¹⁹ MRX proposes to charge \$1,500 for internal distribution, and \$2,000 for external distribution, of its Depth of Market Feed.

NYSE American Options charges an access fee of \$3,000 per month for its American Options Top, American Options Deep and American Options Complex products, plus a multiple datafeed fee of \$200, a redistribution fee of \$2,000 per month, and a Professional per user fee of \$50 per month and a Non-Professional user fee of \$1 per month.²⁰ MRX proposes to charge no access or multiple datafeed fees, but rather a monthly external distributor fee of \$2,000 for Top Feed, and a monthly external distributor fee of \$2,000 for its Depth of Market Feed.

Internal distribution fees for the Nasdaq ISE Order Feed is \$3,000 per month per distributor for internal use, and \$3,000 per month for external redistribution, with additional fees for external controlled devices.²¹ Proposed Distributor fees for the MRX Order Feed is \$1,500 per month for internal distribution, and \$2,000 per month for external distribution.

The Top Quote Feed for ISE is \$3,000 per month per distributor for internal use, plus additional fees; \$3,000 per month per distributor for professional external distribution, plus other charges; and \$3,000 per distributor per month for external Non-Professional distribution through

¹⁹ See Cboe U.S. Options Fee Schedule, C2 Options, BBO Data Feed (Effective September 1, 2022), available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/.

²⁰ See NYSE American Options Fee Schedule (March 1, 2022), available at https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.

²¹ See Nasdaq ISE Rules, Options 7 (Pricing Schedule), Section 10(G) (Nasdaq ISE Order Feed).

a controlled device.²² Proposed distributor fees for the MRX Top Feed are \$1,500 per month for internal distribution, and \$2,000 for external distribution.

A sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees. As of May 2, 2022, the date that MRX initially proposed these market data fees, MRX reported that two customers had terminated their market data subscriptions.²³ As of now, a total of five firms have cancelled, amounting to approximately 15 percent of the 34 customers that had been taking MRX feeds in the first quarter of 2022.²⁴ Two of the five customers had access to all five feeds: the Depth of Market Data, the Order Feed, the Top Feed, the Trades Feed, and the Spread Feed. The three remaining customers had access to only two feeds: the Order Feed and the Top Feed. All five customers cancelled all feeds that they had access to.

Three of the five customers were either data vendors or technology suppliers. Data vendors purchase exchange data and redistribute it to downstream customers, while technology suppliers incorporate exchange data into software solutions, which are sold to downstream customers. The remaining two firms engage in options trading, either on their own behalf or that of a customer. The three data vendors/technology suppliers do not trade on their own behalf or on the behalf of any downstream customers, although their customers may do so. The Exchange understands that these three firms cancelled due to insufficient demand from their downstream customers for MRX data. The two remaining firms, which do engage in options trading, have

²² See Nasdaq ISE Rules, Options 7 (Pricing Schedule), Section 10(H) (Nasdaq ISE Top Quote Feed).

²³ See Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR-MRX-2022-04).

²⁴ These terminations were limited to market data; none of these customers were members of MRX and therefore purchased neither memberships nor ports from the Exchange.

not traded on MRX, but are active traders on other Nasdaq options exchanges.

The Proposal is not unfairly discriminatory. The five market data feeds at issue here—the Depth of Market Feed, Order Feed, Top Feed, Trades Feed, and Spread Feed—are used by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis.

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.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any burden on the ability of other options exchanges to compete. MRX fees are comparable to, and in some cases less than, those of other exchanges, as discussed above.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because MRX market data is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase MRX market data can do so on a non-discriminatory basis.

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.²⁵

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:

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-MRX-2023-06 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-2023-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-MRX-2023-06 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.²⁶

Sherry R. Haywood,
Assistant Secretary.

²⁶ 17 CFR 200.30-3(a)(12).