

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97440; File No. SR-MRX-2023-08)

May 5, 2023

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 24, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).

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

---

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

<sup>2</sup> 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 Exchange’s Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange assesses the following fees for regular orders in Penny Symbols:

<b>Market Participant</b>	<b>Maker</b>	<b>Maker</b>	<b>Taker</b>	<b>Taker</b>
	<b>Fee</b>	<b>Fee</b>	<b>Fee</b>	<b>Fee</b>
	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 1</b>	<b>Tier 2</b>
Market Maker	\$0.20	\$0.10	\$0.50	\$0.50
Non-Nasdaq MRX Market Maker (FarMM)	\$0.47	\$0.47	\$0.50	\$0.50
Firm Proprietary / Broker-Dealer	\$0.47	\$0.47	\$0.50	\$0.50
Professional Customer	\$0.47	\$0.47	\$0.50	\$0.50
Priority Customer	\$0.00	\$0.00	\$0.00	\$0.00

In addition, the Exchange currently offers a growth incentive that allows Market Makers<sup>3</sup> to reduce their maker fees described above.<sup>4</sup> Specifically, Market Makers may qualify for a reduction in the Tier 1 and Tier 2 Maker Fees described above if the Market Maker has increased its volume which adds liquidity in Penny Symbols as a percentage of Customer Total

<sup>3</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

<sup>4</sup> See Options 7, Section 3, note 6.

Consolidated Volume<sup>5</sup> by at least 100% over the Member's December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. Market Makers that qualify would have their Tier 1 Maker Fee reduced to \$0.08 and their Tier 2 Maker Fee reduced to \$0.04. From January 3, 2023 until June 30, 2023, Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees by having any new volume considered as added volume. As stated in the adopting filing, the Exchange offers this temporary incentive from January 3, 2023 until June 30, 2023 in order to encourage new Market Makers to join MRX, and is using this time period to evaluate the appropriate parameters going forward for market participants with no December 2022 volume in the targeted segment.<sup>6</sup>

The Exchange now proposes to amend this Market Maker growth incentive by expanding the sunset date from the current new Market Maker portion of the incentive to the entire incentive. As amended, note 6 will provide:

Market Makers may qualify for a reduction in the Tier 1 and Tier 2 Maker Fees described above if the Market Maker has increased its volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume by at least 100% over the Member's December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. Market Makers that qualify will have their Tier 1 Maker Fee reduced to \$0.08 and their Tier 2 Maker Fee reduced to \$0.04. Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees by having any new volume considered as added volume. This note 6 incentive will be available to Market Makers until June 30, 2023.

---

<sup>5</sup> "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. See Options 7, Section 1(c).

<sup>6</sup> See Securities Exchange Act Release No. 97148 (March 15, 2023), 88 FR 17068 (March 21, 2023) (SR-MRX-2023-07).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> 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 Exchange's proposed changes to its schedule of credits 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’....”<sup>9</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the

---

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> 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)).

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.”<sup>10</sup>

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 Exchange is only one of sixteen 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 it is reasonable to have the growth incentive in note 6 expire on June 30, 2023. Currently, only the new Market Maker portion of this incentive expires on June 30, 2023.<sup>11</sup> The proposal is reasonable because it will continue to provide extra incentives to Market Makers to engage in substantial amounts of liquidity adding activity in Penny Symbols on the Exchange, as well as to grow substantially the extent to which they do so relative to a recent benchmark month. The Exchange believes that sunsetting the note 6 incentive within six months of the base month (December 2022) will ensure that the benchmark against which

---

<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>11</sup> Specifically, the rule provides that from January 3, 2023 until June 30, 2023, Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees by having any new volume considered as added volume.

Market Maker growth is measured is timely and meets the intended purpose of encouraging increased order flow.

The Exchange believes that its proposal to have the note 6 growth incentive expire on June 30, 2023 is equitable and not unfairly discriminatory because the proposed expiration date will be applied uniformly to all Market Makers. The Exchange continues to believe that it is equitable and not unfairly discriminatory to provide the note 6 growth incentive to only Market Makers because Market Makers have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements). As such, this growth incentive is designed to increase Market Maker participation and reward Market Makers for the unique role they play in ensuring a robust market. As discussed above, the note 6 incentive is designed to encourage Market Makers to substantially add Penny Symbol liquidity to the Exchange, to the benefit of all market participants.

**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. The proposed change to sunset the note 6 incentive on June 30, 2023 does not impose an undue burden on intra-market competition because all Market Makers will have the opportunity to qualify for this growth incentive for the six months it is offered. The Exchange also believes that the Market Maker growth incentive will continue to encourage the provision of liquidity from both existing and new Market Makers that enhances the quality of the Exchange’s market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities.

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 options 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,<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. 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

---

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

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2023-08 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-2023-08. 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 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. 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-2023-08 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.<sup>14</sup>

J. Matthew DeLesDernier

Deputy Secretary

---

<sup>14</sup> 17 CFR 200.30-3(a)(12).