Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 61

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 07
Amendment No. (req. for Amendments *)

Filing by Nasdaq MRX, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

An amendment to MRX Options 7, Section 5

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 * Angela Last Name * Dunn

Title * Principal Associate General Counsel

E-mail * angela.dunn@nasdaq.com

Telephone * (215) 496-5692 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Nasdaq MRX, LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 06/29/2022

By John Zecca
(Name *)

(Title *) EVP and Chief Legal Officer

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

DN: email=john.zecca@nasdaq.com
Date: 2022.06.29 14:56:46 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-MRX-2022-07 19b-4.doc

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 *

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SR-MRX-2022-07 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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SR-MRX-2022-07 Exhibit 5.doc

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) Nasdaq MRX, LLC ("MRX" 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 MRX's Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, to assess membership fees.

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 (the "Board"). Exchange staff will advise the Board of any action taken 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
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8469

or

Angela Saccomandi Dunn

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

Principal Associate General Counsel
Nasdaq, Inc.
(215) 496-5692

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

a. Purpose

MRX proposes to amend its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, to assess membership fees, which are not assessed today, and which have not been assessed since MRX's inception in 2016.[3] The proposed changes are designed to update fees for MRX's services to reflect their current value—rather than their value when it was a new exchange six years ago—based on MRX's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge no fees for certain services such as membership, in order 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 time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition. The proposed changes to membership fees within Options 7, Section 5; Other Options Fees and Rebates, are described below.

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[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. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. The instant filing replaces the membership fees set forth in SR-MRX-2022-04.

[4] See also Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (introduction of membership fees by MEMX).

This proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against the other 15 options exchanges without waiving fees for membership. These types of fees are assessed by options exchanges that compete with MRX in the sale of exchange services—indeed, MRX is the only options exchange (out of the 16 current options exchanges) not assessing membership fees today. New exchanges commonly waive membership fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, "graduate" to compete against established exchanges and charge fees that reflect the value of their services.[5] If MRX is incorrect in this assessment, that error will be reflected in MRX's ability to compete with other options exchanges.[6]

As noted above, MRX Members are not assessed fees for membership today. Under the proposed fee change, MRX Members will be required to pay a monthly Access Fee, which entitles MRX Members to trade on the Exchange based on their membership

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5 For example, MIAX Emerald commenced operations as a national securities exchange registered on March 1, 2019. See Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange). MIAX Emerald filed to adopt its transaction fees and certain of its non-transaction fees in its filing SR-EMERALD-2019-15. See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule). MIAX Emerald waived its one-time application fee and monthly Trading Permit Fees assessable to EEMs and Market Makers among other fees within SR-EMERALD-2019-15.

6 Nasdaq recently announced that, beginning in 2022, Nasdaq plans to migrate its North American markets to Amazon Web Services in a phased approach, starting with Nasdaq MRX, a U.S. options market. The proposed fee changes are entirely unrelated to this effort.

type. Specifically, MRX proposes to assess Electronic Access Members[7] an Access Fee of $200 per month, per membership. The Exchange proposes to assess Market Makers[8] Access Fees depending on whether they are a Primary Market Maker ("PMM") or a Competitive Market Maker ("CMM"). A PMM would be assessed an Access Fee of $200 per month, per membership. A CMM would be assessed an Access Fee of $100 per month, per membership.[9] The proposed fees are identical to access fees on Nasdaq GEMX, LLC ("GEMX").[10]

In order to receive market making appointments to quote in any options class, CMMs will also be assessed a CMM Trading Right Fee identical to GEMX.[11] CMM trading rights entitle a CMM to enter quotes in options symbols that comprise a certain percentage of industry volume. On a quarterly basis, the Exchange assigns points to each options class equal to its percentage of overall industry volume (not including exclusively

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7 The term "Electronic Access Member" or "EAM" means a Member that is approved to exercise trading privileges associated with EAM Rights. See General 1, Section 1(a)(6).

8 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21). The term "Competitive Market Maker" means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12). The term "Primary Market Maker" means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(35).

9 In the case where a single Member has multiple MRX memberships, the monthly access fee is charged for each membership. For example, if a single member firm is both an EAM and a CMM, or owns multiple CMM memberships, the firm is subject to the access fee for each of those memberships.

10 See GEMX Options 7, Section 6.A. (Access Fees).

11 See GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

traded index options), rounded down to the nearest one hundredth of a percentage with a maximum of 15 points. A new listing is assigned a point value of zero for the remainder of the quarter in which it was listed. CMMs may seek appointments to options classes that total 20 points for the first CMM Right it holds, and 10 points for the second and each subsequent CMM Right it holds.[12] In order to encourage CMMs to quote on the Exchange, MRX launched CMM trading rights without any fees, allowing CMMs to freely quote in all options classes.

The Exchange is now proposing to adopt a monthly CMM Trading Rights Fee. Under the proposed fee structure, CMMs will be assessed a Trading Rights Fee of $850 per month for the first trading right, which will entitle the CMM to quote in 20 percent of industry volume.[13] Each additional CMM Right will cost $500 per month, and will entitle the CMM to quote an additional 10 percent of volume. Similar to GEMX's trading rights fee,[14] a new CMM would pay $850 for the first trading right and all CMMs would thereafter pay $500 for each additional trading right. The Exchange is proposing this pricing model because each subsequent CMM Right costs less than the first trading right. All CMMs have the opportunity to purchase additional CMM Rights beyond the initial trading right in order to quote in additional options series. The Exchange notes that it is not proposing trading right fees for PMMs, as the Exchange wishes to encourage

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12 A CMM may request changes to its appointments at any time upon advance notification to the Exchange in a form and manner prescribed by the Exchange. See MRX Options 2, Section 3(c)(3).

13 These trading rights are referred to as CMM Rights. See MRX Options 2, Section 3.

14 See GEMX Options 7, Section 6.B.

Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. PMMs have additional obligations on MRX as compared to CMMs.[15] The Exchange is proposing only to charge the $200 access fee to EAMs, and no trading rights fee, as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers' use.[16]

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] 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.

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15 PMMs are required to provide two-sided quotations in 90% of cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. See Options 2, Section 5(e)(2). Additionally, PMMs are required to submit a Valid Width Quote to open their assigned options series. See Options 3, Section 8(c)(1) and 8(c)(3).

16 The Exchange notes that all MRX Members may submit orders; however, only Market Makers may submit quotes. The Exchange surveils Market Makers quotes in addition to any orders transacted on MRX and conducts surveillance on Market Maker quotes to ensure these participants have met their quoting and other market making obligations. The regulatory oversight for Market Makers is in addition to the regulatory oversight which is administered for all EAMs.

17 See 15 U.S.C. 78f(b).

18 See 15 U.S.C. 78f(b)(4) and (5).

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated, "[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'…."[19]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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."[20]

Congress directed the Commission to "rely on 'competition, whenever possible,

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19 See NetCoalition, 615 F.3d at 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)).

20 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'"[21] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."[22] Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."[23] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a "proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces."[24]

History of MRX Operations

Over the years, MRX has amended its transactional pricing to remain competitive and attract order flow to the Exchange.[25]

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21 See NetCoalition, 615 F.3d at 534-35; see also H.R. Rep. No. 94-229 at 92 (1975) ("[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.").

22 See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

23 Id.

24 See U.S. Securities and Exchange Commission, "Staff Guidance on SRO Rule filings Relating to Fees" (May 21, 2019), available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.

25 See e.g., Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR-ISEMercury-2016-02) (Notice of Filing and

Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISEMercury-2016-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISEMercury-2016-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR-ISEMercury-2016-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR-MRX-2018-01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR-MRX-2018-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange's Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR-MRX-2018-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR-MRX-2018-27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR-MRX-2019-02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR-MRX-2019-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR-MRX-2020-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR-MRX-2020-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR-MRX-2020-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR-MRX-2020-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR-MRX-2020-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange's Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18,

In June 2019, MRX commenced offering complex orders.[26] With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities, and other trading functionality that was nearly identical to functionality available on ISE.[27] By way of comparison, ISE, unlike MRX, assessed membership fees in 2019[28] while offering the same suite of functionality as MRX, with a

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2020), 85 FR 75064 (November 24, 2020) (SR-MRX-2020-21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR-MRX-2021-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

26 See Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

27 One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. "Nasdaq Precise" or "Precise" is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (e.g., parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (e.g., NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (e.g., kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (e.g., order history and done away trade reports). See ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

28 In 2019, ISE assessed the following Access Fees: $500 per month, per membership to an Electronic Access Member, $5,000 per month, per membership to a Primary Market Maker and $2,500 per month, per membership to a Competitive Market Maker. ISE does not assess Trading Rights Fees to Competitive Market Makers. See Securities Exchange Act Release No. 82446 (January 5, 2018), 83 FR 1446 (January 11, 2018) (SR-ISE-2017-112) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Non-Transaction Fees in the Exchange's Schedule of Fees). Of note, ISE assessed Access Fees prior to 2019 as well.

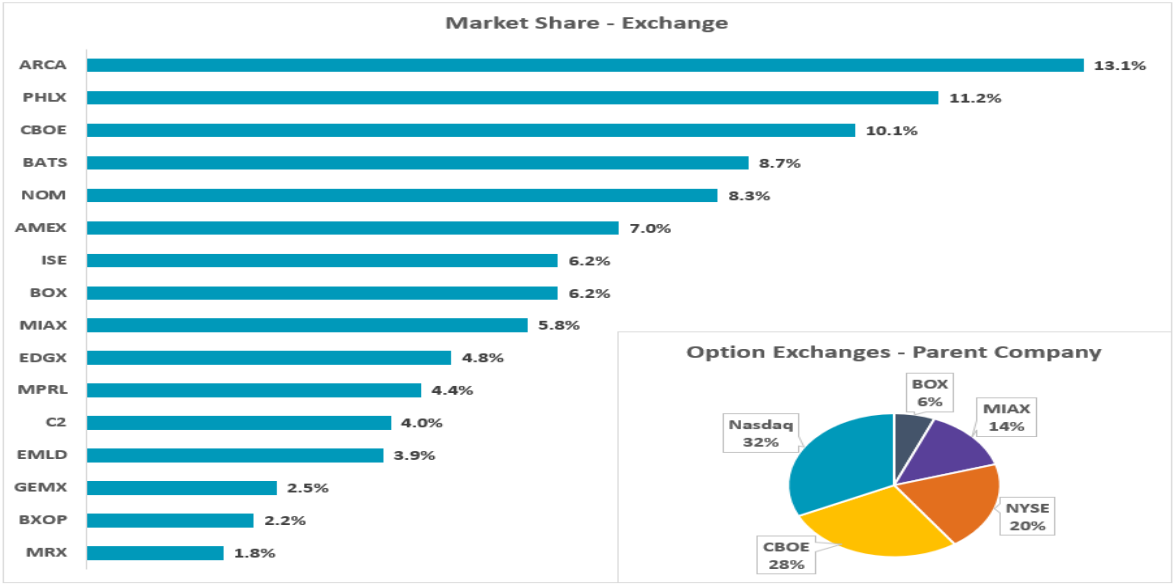
limited exception.[29]

Membership is Subject to Significant Substitution-Based Competitive Forces.

An exchange can show that a product is "subject to significant substitution-based competitive forces" by introducing evidence that customers can substitute the product for products offered by other exchanges.

Chart 1 below shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

Chart 1: Market Share by Exchange for January 2022



29 Unlike ISE, MRX does not offer Precise. See note 27, supra.

Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and membership.

Chart 2 below compares the number of firms purchasing memberships from MRX to the number of firms purchasing such services from the four MRX-affiliated options exchanges, GEMX, ISE, The Nasdaq Stock Market LLC ("NOM") and Nasdaq PHLX, LLC ("Phlx").

Chart 2: Number of Firms Purchasing Membership and Purchasing Trading Services from Options Venues (March 2022)

Chart 2 also shows that MRX has the smallest number of Members relative to its GEMX, ISE, NOM and Phlx affiliates, with approximately 40 members. This demonstrates that customers can and will choose where to become members, need not become members of all exchanges, and do not need to become Members of MRX and instead may utilize a third party.[30]

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30 Of course, that third party must itself become a Member of MRX, so at least some market participants must become Members of MRX for any trading to take place at all. Nevertheless, because some firms would be able to exercise the option of

Further, BOX Exchange LLC ("BOX") recently filed to establish a new monthly Participant Fee.[31] In that rule change BOX noted that it responded to Market Maker feedback to the proposed fees in January 2022 and due to this valuable feedback, BOX lowered the proposed fees.[32] BOX stated that, "…this reduction demonstrates that competitive constraints do not depend on showing that a Market Maker walked away, or threatened to walk away, from BOX due to a pricing change. Rather, the absence of negative feedback (in and of itself, and particularly when coupled with valuable feedback suggesting modifications or alternatives) is indicative that the proposed fees are, in fact, reasonable and consistent with BOX being subject to competitive forces in setting fees."[33]

MRX filed its membership fees on May 2, 2022 and has not received a comment with respect to the proposed membership fee changes. MRX Members may elect to cancel their membership on MRX. No MRX Member is required by rule, regulation, or competitive forces to be a Member on the Exchange.

Further, BOX noted in its rule change that one Market Maker modified their

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not becoming Members, excessive membership fees would cause the Exchange to lose members.

31 See Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees).

32 Id at 29990.

33 Id at 29990.

access to BOX since the implementation of the proposed fee change.[34] After the Market Maker reviewed the notice the Exchange issued describing the proposed fees, the Market Maker informed the Exchange that it would terminate its Market Maker status on BOX as it had no intention to provision itself for access.[35] BOX argued in its rule change that,

> The Exchange believes this further demonstrates competition within the market for exchange access, which as a result constrains fees the Exchange may charge for that access. The Exchange believes the fact that this Participant chose to terminate its Market Maker status on BOX but retained its status as an Order Flow Provider on BOX demonstrates that market participants can and do alter their membership statuses at exchanges if the market participant deems any fees as too high for its relevant marketplace. In BOX's case, the Participant determined that the Exchange's proposed fees for electronic Market Makers did not make business sense for itself, however it retained its membership as a BOX Participant in a different capacity.

Yet another example of an exchange being subject to significant competitive forces with respect to membership fees was noted in a recent NYSE Arca, Inc. ("NYSE Arca") rule change.[36] Recently, NYSE Arca filed a rule change to modify the number of option issues a Market Maker may quote per OTP and modify the fees applicable to Market Maker OTPs.[37] In that rule change, NYSE Arca stated that,

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34 BOX noted that this Market Maker was approved as an electronic Market Maker in 2017 but never underwent the process of provisioning itself to access the BOX systems. Id at 29991.

35 Id at 29991.

36 See Securities Exchange Act Release No. 95142 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule).

37 Id.

> The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.[38]

Moreover, NYSE Arca noted that it observed that,

> …exchanges in the MIAX Group introduced multiple access fee increases in July and August 2021. In June 2021, prior to these fee increases, the aggregate MIAX Group share of multi-list options volume was 15.45%. In the months after the introduction of higher access fees, MIAX Group's market share declined: by September 2021, the aggregate MIAX Group market share was 14.50%, and as of March 2022, market share was 13.75%.[39]

Similar to MIAX, Chart 3 below demonstrates that since the inception of its membership, port and market data fees, MRX volumes declined.

Chart 3: MRX Options Volume as Compared to Options Volume on 15 Other Options Exchanges in 2022[40]

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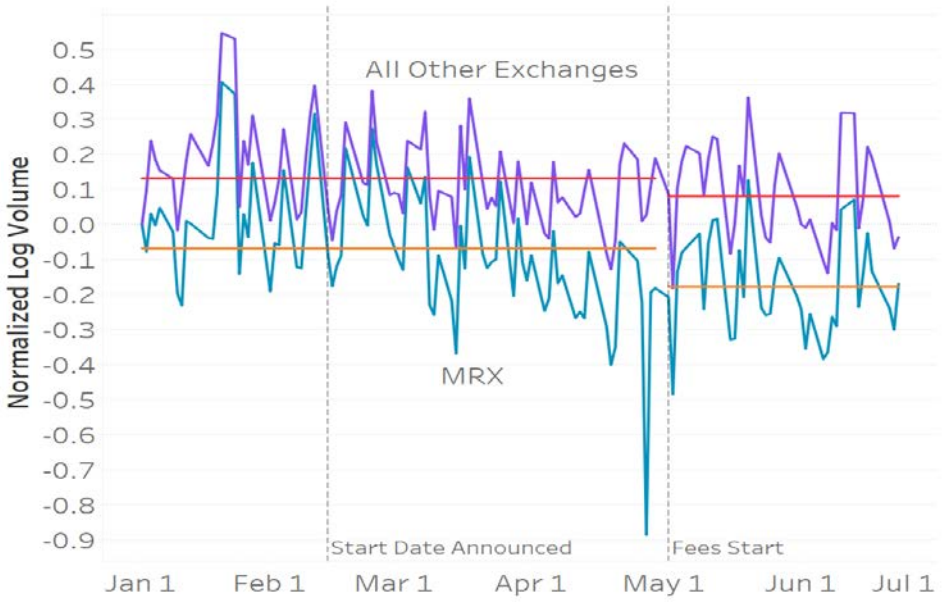
38 Id at 38790.

39 Id at note 24.

40 The chart displays the log volume for MRX and all other options exchanges combined. It is "normalized" by subtracting each day's value from the first trading day of the year (January 3, 2022). The straight lines represent the average normalized log volumes from January 3, 2022 through April 29, 2022 and from May 2, 2022 through June 23, 2022, respectively.



Specifically, since May 2, 2022,[41] MRX saw a larger drop in its average daily volume (-11%) than all other options exchanges (-5%) since MRX's fees were added on May 2, 2022 when compared to their respective year-to-date volumes through April 29, 2022. This pattern indicates that the adoption of MRX membership, port, and market data fees impacted MRX's volume negatively.

In summary, MRX membership fees are subject to significant substitution-based competitive forces due to its consistently low percentage of market share, the relatively small number of purchasers for each product, and the purchasers that are reviewing their subscriptions. Implementation of the proposed fees is therefore consistent with the Act.

Fees for Membership

The proposed membership fees described below are in line with those of other markets. Setting a fee above competitors is likely to drive away customers, so the most

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42 MRX General 3, Membership and Access, incorporates by reference Nasdaq General 3.

efficient price-setting strategy is to set prices at the same level as other firms.

The Exchange's proposal to adopt membership fees is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, MRX's membership department reviews applicants to ensure that each application complies with the rules specified within MRX General 3[42] as well as other requirements for membership.[43] Applicants must meet the Exchange's qualification criteria prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the validity of the required clearing relationship, and the history of disciplinary matters. Approved Members would be required to comply with MRX's By-Laws and Rules and would be subject to regulation by MRX. The proposed membership fees are identical to membership fees on GEMX,[44] and are lower than similar fees assessed on other options markets.[45]

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange. Among various factors, the Exchange believes market participants consider: (i) an exchange's available

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42 MRX General 3, Membership and Access, incorporates by reference Nasdaq General 3.

43 The Exchange's Membership Department must ensure, among other things, that an applicant is not statutorily disqualified.

44 See GEMX Options 7, Section 6A (Access Fees).

45 See Cboe's Fees Schedule. Cboe assesses permit fees as follows: Market-Maker Electronic Access Permit of $5,000 per month; Electronic Access Permits of $3,000 per month; and Clearing TPH Permit of $2,000 per month. See also Miami International Securities Exchange, LLC's ("MIAX") Fee Schedule. MIAX assesses an Electronic Exchange Member Fee of $1,500 per month.

liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. The Exchange believes that the decision to become a member of an exchange, particularly as a registered market maker, is a complex one that is not solely based on non-transactional costs assessed by an exchange. Market participants weigh the tradeoff between where they choose to deploy liquidity versus where trading opportunities exist. Of course, the cost of membership may factor into a decision to become a member of a certain exchange, but the Exchange believes it is by no means the only factor when comparing exchanges.

Market Makers

Market makers play an important role on options exchanges as they provide liquidity. In options markets, registered market makers are assigned options series[46] and are required to quote in those options series for a specified time period during the day.[47] Typically, a lead or primary market maker[48] will be required to quote for a longer period of time during the day as compared to other market makers registered on an exchange.[49]

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46 See Phlx, ISE, GEMX, MRX, Nasdaq BX, Inc. ("BX") and NOM Options 2, Section 3; Cboe Exchange, Inc. ("Cboe") Rule 5.50; BOX Exchange LLC ("BOX") Rule 8030; MIAX Rule 602; and NYSE Arca, Inc. ("NYSE Arca") Rule 6.35-O.

47 See ISE, GEMX and MRX, Phlx, BX and NOM Options 2, Section 5; Cboe Rule 5.52; BOX Rule 8050; MIAX Rule 604; and NYSE Arca Rule 6.37A-O.

48 Options markets refer to the primary market maker on an exchange in several ways.

49 See BX Options 2, Section 4; ISE, GEMX and MRX, and Phlx Options 2, Section 5; BOX Rule 8055; MIAX Rule 604; and NYSE Arca Rule 6.37A-O.

Additionally, market makers are typically required to quote within a certain width on options markets.[50] Greater liquidity on options markets benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of market makers in turn facilitates tighter spreads. Market participants are attracted to options markets that have ample liquidity and tighter spreads in options series.

Trading Functionality

An exchange's trading functionality attracts market participants who may elect, for example, to submit an order into a price improving auction,[51] enter a complex order,[52] or utilize a particular order type.[53] Different options exchanges offer different trading functionality to their members. For example, with respect to priority and allocation of an order book, some options exchanges have price/time allocation,[54] some have a size pro-rata allocation,[55] while other exchanges offer both allocation models.[56] The allocation

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50 See BX Options 2, Section 4; ISE, GEMX and MRX, Phlx and NOM Options 2, Section 5; and Cboe Rule 5.52; BOX Rule 8040.

51 See ISE, GEMX, MRX, Phlx and BX Options 3, Section 13; MIAX Rule 515A; Cboe Rule 5.37; and BOX Rules 7150 and 7245.

52 See Phlx and ISE Options 3, Section 14; MIAX Rule 518; Cboe Rule 5.33; BOX Rule 7240; and NYSE Arca Rule 6.91-O.

53 See ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 7; MIAX Rule 615; Cboe Rule 5.6; BOX Rule 7110; and NYSE Arca Rule 6.62-O.

54 See Cboe Rule 5.85; BOX Rule 7130; and NYSE Arca Rule 6.76-O.

55 See Phlx, ISE, GEMX and MRX Options 3, Section 10; and BOX Rule 7135.

methodology on a particular options exchange's order book may attract certain market participants. Also, the manner in which some options markets structure their solicitation auction,[57] or opening process,[58] may be attractive to certain market participants. Finally, some exchanges have trading floors[59] which may accommodate trading for certain market participants or trading firms.[60]

Product Offerings

Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to a particular options venue. New products in the options industry may allow market participants greater trading and hedging opportunities, as well as new avenues to manage risks. The listing of new options products enhances competition among market participants by providing investors with additional investment vehicles, as well as competitive alternatives, to existing

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56 See BX Options 3, Section 10. While BX's rule permits both price/time and size pro-rata allocation, all symbols on BX are currently designated as Price/Time. See also BOX Rules 7130 and 7135. MIAX's rule permits both Price-Time and Pro-Rata allocation. See also MIAX Rule 514.

57 See ISE, GEMX and MRX Options 3, Section 11; NYSE American Rules 971.1NY and 971.2NY; and Cboe Rule 5.39.

58 See ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 8; Cboe Rule 5.31, MIAX Rule 503, BOX Rule 7070, and NYSE Arca Rule 6.64-O.

59 Today, Phlx, Cboe, BOX, NYSE Arca, and NYSE American LLC have a trading floor. Trading floors require an on-floor presence to execute options transactions.

60 There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders.

investment products. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product.[61]

Transaction Pricing

The pricing available on a particular exchange may impact a market participant's decision to submit order flow to a particular options venue. The options industry is competitive. 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.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges. For example, a market maker on MIAX is assessed a $3,000 one-time fee and then a tiered monthly fee from $7,000 for up to 10 classes to $22,000 for over 100 classes.[62] By comparison, under the proposed fee structure, a CMM can be granted access on the Exchange for as little as $950 per month (i.e., a $100 access fee and an $850 trading right), and could quote in all options classes on the Exchange by paying the access fee and obtaining nine CMM trading rights for a total of $4,950 per month. The Exchange notes that its tiered model for CMM trading

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61 See e.g., options on the Nasdaq-100 Index® available on ISE, GEMX and Phlx and Cboe's Market Volatility Index®. Currently, MRX does not list any proprietary products.

62 See Miami International Securities Exchange, LLC Fee Schedule at 20 and 21: https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_03012022.pdf.

rights is consistent with the pricing practices of other exchanges, such as NYSE Arca, which charges $6,000 per month for the first market maker trading permit, down to $1,000 per month for the fifth and additional trading permits, with various tiers in-between. Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right.

The Exchange does not believe that it is unfairly discriminatory to assess different fees for PMMs, CMMs, and EAMs. For PMMs on MRX, the fees required to access the Exchange are substantially lower than those of competing exchanges. For example, a PMM could quote on the Exchange for only $200 (i.e., the access fee), compared with the minimum $6,000 per month trading permit fee charged by NYSE Arca. The Exchange notes that it is not proposing trading right fees for PMMs, as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. Similarly, the Exchange is proposing only to charge the $200 access fee to EAMs as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers. The CMM Trading Right Fee is identical to GEMX.[63]

Membership fees are charged by nearly all exchanges, and all established exchanges with sufficient order flow. In 2022, MEMX LLC ("MEMX") established a

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63 See GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

monthly membership fee of $200.[64] MEMX reasoned in that rule change that there is value in becoming a member of the exchange. MEMX stated that it believed that its proposed membership fee "is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange." Moreover, "neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange." In this respect, MEMX is correct; a monthly membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may choose to become a member of one or more options exchanges based on the market participant's business model. A very small number of market participants choose to become a member of all sixteen options exchanges. It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market.

Most firms that actively trade on options markets are not currently Members of MRX. Using options markets that Nasdaq operates as points of comparison, less than a third of the firms that are members of at least one of the options markets that Nasdaq operates are also Members of MRX (approximately 29%). The Exchange notes that no firm is a Member of MRX only. Few, if any, firms have become Members at MRX, notwithstanding the fact that MRX membership is currently free, because MRX currently has less liquidity than other options markets. As explained above, MRX has the smallest

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64 See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19). The Monthly Membership Fee is assessed to each active Member at the close of business on the first day of each month.

market share of the 16 options exchanges, representing only approximately 1.8% of the market, and, for certain market participants, the current levels of liquidity may be insufficient to justify the costs associated with becoming a Member and connecting to the Exchange, notwithstanding the fact that membership is free.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of an exchange does not "lock" a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is made at the beginning of the relationship, and is no less subject to competition than trading fees.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at MRX.[65] If MRX is not at the NBBO, MRX will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the

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65 See Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.

order was executed at a superior price.[66]

In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange. For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[67] or request sponsored access[68] through a member of an exchange in order to submit a trade directly to an options exchange.[69] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange. Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues,

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66 MRX Members may elect to not route their orders by marking an order as "do-not-route." In this case, the order would not be routed. See Options 3, Section 7(m).

67 Service bureaus provide access to market participants to submit and execute orders on an exchange. On MRX, a Service Bureau may be a Member. Some MRX Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only MRX Members may submit orders or quotes through ports.

68 Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

69 This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

a market participant may determine one model is more cost efficient as compared to the alternatives.

After 6 years, MRX proposes to commence assessing membership fees, just as all other options exchanges.[70] The introduction of these fees will not impede a Member's access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

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 Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. 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. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the

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70 Today, MRX is the only options exchange that does not assess membership fees.

Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed membership fees are identical to membership fees assessed by GEMX.[71] The proposed fees are designed to reflect the benefits of the technical, regulatory, and administrative services provided to a Member by the Exchange, and the fees remain competitive with similar fees offered on other options exchanges. The Exchange does not believe that assessing different fees for PMMs, CMMs, and EAMs creates an undue burden on competition.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges.[72] Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right. The Exchange notes that it is not proposing trading right fees for PMMs as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting. Additionally, as noted herein, PMMs have higher quoting obligations as compared to CMMs.[73]

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71 See GEMX Options 7, Section 6.A. (Access Fees) and Section 6.B. (CMM Trading Rights Fees).

72 See NYSE Arca Fees and Charges, General Options and Trading Permit (OTP) Fees (comparing CMM Trading Rights Fees to the Arca Market Maker fees).

73 See MRX Options 2, Section 5. PMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce. CMMs are not required to enter quotations in the options classes to which it is

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.

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)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[74] the Exchange has designated this proposal 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, which renders the proposed rule change effective upon filing.

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.

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

Not applicable.

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appointed, however if a CMM initiates quoting in an options class, the CMM, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce.

74 15 U.S.C. 78s(b)(3)(A)(ii).

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-MRX-2022-07)

June __, 2022

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Options 7, Section 5

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 June 29, 2022, 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 5, Other Options Fees and Rebates, to assess membership fees.

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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

MRX proposes to amend its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, to assess membership fees, which are not assessed today, and which have not been assessed since MRX's inception in 2016.[3] The proposed changes are designed to update fees for MRX's services to reflect their current value—rather than their value when it was a new exchange six years ago—based on MRX's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge no fees for certain services such as membership, in order 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 time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition. The proposed changes to membership fees within Options 7, Section 5; Other Options Fees and Rebates, are described below.

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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. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. The instant filing replaces the membership fees set forth in SR-MRX-2022-04.

4 See also Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (introduction of membership fees by MEMX).

This proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against the other 15 options exchanges without waiving fees for membership. These types of fees are assessed by options exchanges that compete with MRX in the sale of exchange services—indeed, MRX is the only options exchange (out of the 16 current options exchanges) not assessing membership fees today. New exchanges commonly waive membership fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, "graduate" to compete against established exchanges and charge fees that reflect the value of their services.[5] If MRX is incorrect in this assessment, that error will be reflected in MRX's ability to compete with other options exchanges.[6]

As noted above, MRX Members are not assessed fees for membership today. Under the proposed fee change, MRX Members will be required to pay a monthly Access Fee, which entitles MRX Members to trade on the Exchange based on their membership

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5 For example, MIAX Emerald commenced operations as a national securities exchange registered on March 1, 2019. See Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange). MIAX Emerald filed to adopt its transaction fees and certain of its non-transaction fees in its filing SR-EMERALD-2019-15. See Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule). MIAX Emerald waived its one-time application fee and monthly Trading Permit Fees assessable to EEMs and Market Makers among other fees within SR-EMERALD-2019-15.

6 Nasdaq recently announced that, beginning in 2022, Nasdaq plans to migrate its North American markets to Amazon Web Services in a phased approach, starting with Nasdaq MRX, a U.S. options market. The proposed fee changes are entirely unrelated to this effort.

type. Specifically, MRX proposes to assess Electronic Access Members[7] an Access Fee of $200 per month, per membership. The Exchange proposes to assess Market Makers[8] Access Fees depending on whether they are a Primary Market Maker ("PMM") or a Competitive Market Maker ("CMM"). A PMM would be assessed an Access Fee of $200 per month, per membership. A CMM would be assessed an Access Fee of $100 per month, per membership.[9] The proposed fees are identical to access fees on Nasdaq GEMX, LLC ("GEMX").[10]

In order to receive market making appointments to quote in any options class, CMMs will also be assessed a CMM Trading Right Fee identical to GEMX.[11] CMM trading rights entitle a CMM to enter quotes in options symbols that comprise a certain percentage of industry volume. On a quarterly basis, the Exchange assigns points to each options class equal to its percentage of overall industry volume (not including exclusively traded index options), rounded down to the nearest one hundredth of a percentage with a

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7 The term "Electronic Access Member" or "EAM" means a Member that is approved to exercise trading privileges associated with EAM Rights. See General 1, Section 1(a)(6).

8 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21). The term "Competitive Market Maker" means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12). The term "Primary Market Maker" means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(35).

9 In the case where a single Member has multiple MRX memberships, the monthly access fee is charged for each membership. For example, if a single member firm is both an EAM and a CMM, or owns multiple CMM memberships, the firm is subject to the access fee for each of those memberships.

10 See GEMX Options 7, Section 6.A. (Access Fees).

11 See GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

maximum of 15 points. A new listing is assigned a point value of zero for the remainder of the quarter in which it was listed. CMMs may seek appointments to options classes that total 20 points for the first CMM Right it holds, and 10 points for the second and each subsequent CMM Right it holds.[12] In order to encourage CMMs to quote on the Exchange, MRX launched CMM trading rights without any fees, allowing CMMs to freely quote in all options classes.

The Exchange is now proposing to adopt a monthly CMM Trading Rights Fee. Under the proposed fee structure, CMMs will be assessed a Trading Rights Fee of $850 per month for the first trading right, which will entitle the CMM to quote in 20 percent of industry volume.[13] Each additional CMM Right will cost $500 per month, and will entitle the CMM to quote an additional 10 percent of volume. Similar to GEMX's trading rights fee,[14] a new CMM would pay $850 for the first trading right and all CMMs would thereafter pay $500 for each additional trading right. The Exchange is proposing this pricing model because each subsequent CMM Right costs less than the first trading right. All CMMs have the opportunity to purchase additional CMM Rights beyond the initial trading right in order to quote in additional options series. The Exchange notes that it is not proposing trading right fees for PMMs, as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. PMMs have additional obligations on MRX as compared to

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12 A CMM may request changes to its appointments at any time upon advance notification to the Exchange in a form and manner prescribed by the Exchange. See MRX Options 2, Section 3(c)(3).

13 These trading rights are referred to as CMM Rights. See MRX Options 2, Section 3.

14 See GEMX Options 7, Section 6.B.

CMMs.[15] The Exchange is proposing only to charge the $200 access fee to EAMs, and no trading rights fee, as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers' use.[16]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] 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 proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the

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15 PMMs are required to provide two-sided quotations in 90% of cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. See Options 2, Section 5(e)(2). Additionally, PMMs are required to submit a Valid Width Quote to open their assigned options series. See Options 3, Section 8(c)(1) and 8(c)(3).

16 The Exchange notes that all MRX Members may submit orders; however, only Market Makers may submit quotes. The Exchange surveils Market Makers quotes in addition to any orders transacted on MRX and conducts surveillance on Market Maker quotes to ensure these participants have met their quoting and other market making obligations. The regulatory oversight for Market Makers is in addition to the regulatory oversight which is administered for all EAMs.

17 See 15 U.S.C. 78f(b).

18 See 15 U.S.C. 78f(b)(4) and (5).

market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated, "[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'…."[19]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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."[20]

Congress directed the Commission to "rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'"[21] As a result, the Commission has historically relied on competitive forces to

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19 See NetCoalition, 615 F.3d at 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)).

20 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

21 See NetCoalition, 615 F.3d at 534-35; see also H.R. Rep. No. 94-229 at 92 (1975) ("[I]t is the intent of the conferees that the national market system evolve through

determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."[22] Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."[23] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a "proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces."[24]

History of MRX Operations

Over the years, MRX has amended its transactional pricing to remain competitive and attract order flow to the Exchange.[25]

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the interplay of competitive forces as unnecessary regulatory restrictions are removed.").

22 See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

23 Id.

24 See U.S. Securities and Exchange Commission, "Staff Guidance on SRO Rule filings Relating to Fees" (May 21, 2019), available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.

25 See e.g. Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR-ISEMercury-2016-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISEMercury-2016-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISEMercury-2016-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR-ISEMercury-2016-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of

Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR-MRX-2018-01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR-MRX-2018-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange's Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR-MRX-2018-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR-MRX-2018-27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR-MRX-2019-02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR-MRX-2019-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR-MRX-2020-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR-MRX-2020-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR-MRX-2020-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR-MRX-2020-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR-MRX-2020-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange's Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR-MRX-2020-21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR-MRX-2021-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

In June 2019, MRX commenced offering complex orders.[26] With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities, and other trading functionality that was nearly identical to functionality available on ISE.[27] By way of comparison, ISE, unlike MRX, assessed membership fees in 2019[28] while offering the same suite of functionality as MRX, with a limited exception.[29]

Membership is Subject to Significant Substitution-Based Competitive Forces.

An exchange can show that a product is "subject to significant substitution-based competitive forces" by introducing evidence that customers can substitute the product for

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26 See Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

27 One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. "Nasdaq Precise" or "Precise" is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (e.g., parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (e.g., NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (e.g., kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (e.g., order history and done away trade reports). See ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

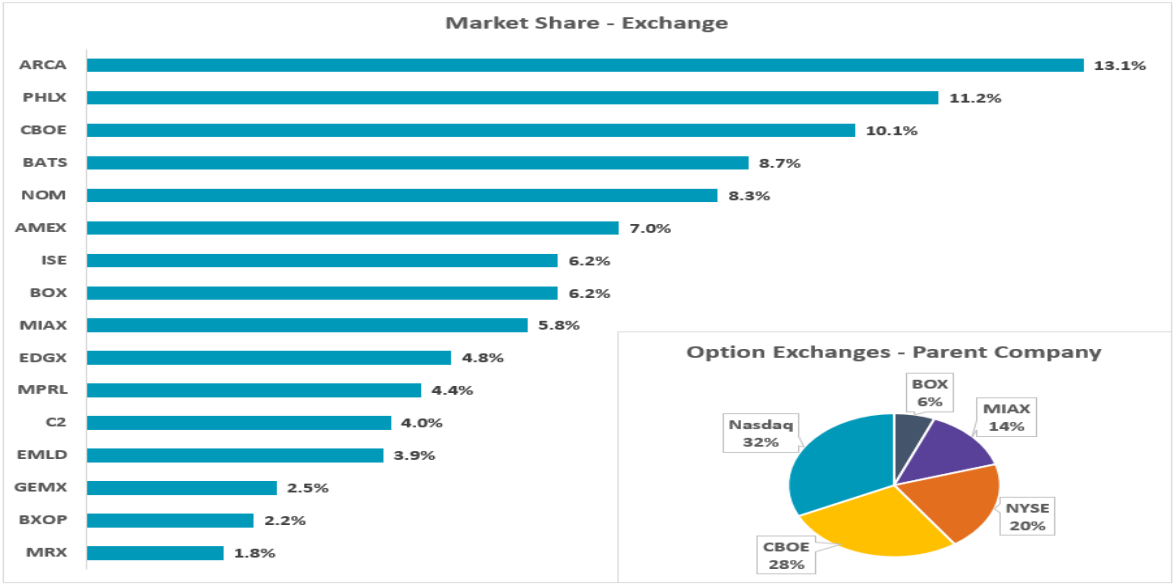
28 In 2019, ISE assessed the following Access Fees: $500 per month, per membership to an Electronic Access Member, $5,000 per month, per membership to a Primary Market Maker and $2,500 per month, per membership to a Competitive Market Maker. ISE does not assess Trading Rights Fees to Competitive Market Makers. See Securities Exchange Act Release No. 82446 (January 5, 2018), 83 FR 1446 (January 11, 2018) (SR-ISE-2017-112) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Non-Transaction Fees in the Exchange's Schedule of Fees). Of note, ISE assessed Access Fees prior to 2019 as well.

29 Unlike ISE, MRX does not offer Precise. See note 27, supra.

products offered by other exchanges.

Chart 1 below shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

Chart 1: Market Share by Exchange for January 2022



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and membership.

Chart 2 below compares the number of firms purchasing memberships from MRX to the number of firms purchasing such services from the four MRX-affiliated options exchanges, GEMX, ISE, The Nasdaq Stock Market LLC ("NOM") and Nasdaq PHLX,

LLC ("Phlx").

Chart 2: Number of Firms Purchasing Membership and Purchasing Trading Services from Options Venues (March 2022)

Chart 2 also shows that MRX has the smallest number of Members relative to its GEMX, ISE, NOM and Phlx affiliates, with approximately 40 members. This demonstrates that customers can and will choose where to become members, need not become members of all exchanges, and do not need to become Members of MRX and instead may utilize a third party.[30]

Further, BOX Exchange LLC ("BOX") recently filed to establish a new monthly Participant Fee.[31] In that rule change BOX noted that it responded to Market Maker feedback to the proposed fees in January 2022 and due to this valuable feedback, BOX

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30 Of course, that third party must itself become a Member of MRX, so at least some market participants must become Members of MRX for any trading to take place at all. Nevertheless, because some firms would be able to exercise the option of not becoming Members, excessive membership fees would cause the Exchange to lose members.

31 See Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees).

lowered the proposed fees.[32] BOX stated that, "…this reduction demonstrates that competitive constraints do not depend on showing that a Market Maker walked away, or threatened to walk away, from BOX due to a pricing change. Rather, the absence of negative feedback (in and of itself, and particularly when coupled with valuable feedback suggesting modifications or alternatives) is indicative that the proposed fees are, in fact, reasonable and consistent with BOX being subject to competitive forces in setting fees."[33]

MRX filed its membership fees on May 2, 2022 and has not received a comment with respect to the proposed membership fee changes. MRX Members may elect to cancel their membership on MRX. No MRX Member is required by rule, regulation, or competitive forces to be a Member on the Exchange.

Further, BOX noted in its rule change that one Market Maker modified their access to BOX since the implementation of the proposed fee change.[34] After the Market Maker reviewed the notice the Exchange issued describing the proposed fees, the Market Maker informed the Exchange that it would terminate its Market Maker status on BOX as it had no intention to provision itself for access.[35] BOX argued in its rule change that,

> The Exchange believes this further demonstrates competition within the market for exchange access, which as a result constrains fees the Exchange may charge for that access. The Exchange believes the fact that this Participant chose to terminate its Market Maker status on BOX but

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32 Id at 29990.

33 Id at 29990.

34 BOX noted that this Market Maker was approved as an electronic Market Maker in 2017 but never underwent the process of provisioning itself to access the BOX systems. Id at 29991.

35 Id at 29991.

> retained its status as an Order Flow Provider on BOX demonstrates that market participants can and do alter their membership statuses at exchanges if the market participant deems any fees as too high for its relevant marketplace. In BOX's case, the Participant determined that the Exchange's proposed fees for electronic Market Makers did not make business sense for itself, however it retained its membership as a BOX Participant in a different capacity.

Yet another example of an exchange being subject to significant competitive forces with respect to membership fees was noted in a recent NYSE Arca, Inc. ("NYSE Arca") rule change.[36] Recently, NYSE Arca filed a rule change to modify the number of option issues a Market Maker may quote per OTP and modify the fees applicable to Market Maker OTPs.[37] In that rule change, NYSE Arca stated that,

> The Exchange has also observed that another options exchange group experienced decreases in market share following its proposed modifications of its access fees (including Market Maker trading permit fees), suggesting that market participants (including Market Makers) are sensitive to changes in exchanges' access fees and may respond by shifting their order flow elsewhere if they deem the fees to be unreasonable or excessive.[38]

Moreover, NYSE Arca noted that it observed that,

> …exchanges in the MIAX Group introduced multiple access fee increases in July and August 2021. In June 2021, prior to these fee increases, the aggregate MIAX Group share of multi-list options volume was 15.45%. In the months after the introduction of higher access fees, MIAX Group's market share declined: by September 2021, the aggregate MIAX Group market share was 14.50%, and as of March 2022, market share was

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36 See Securities Exchange Act Release No. 95142 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule).

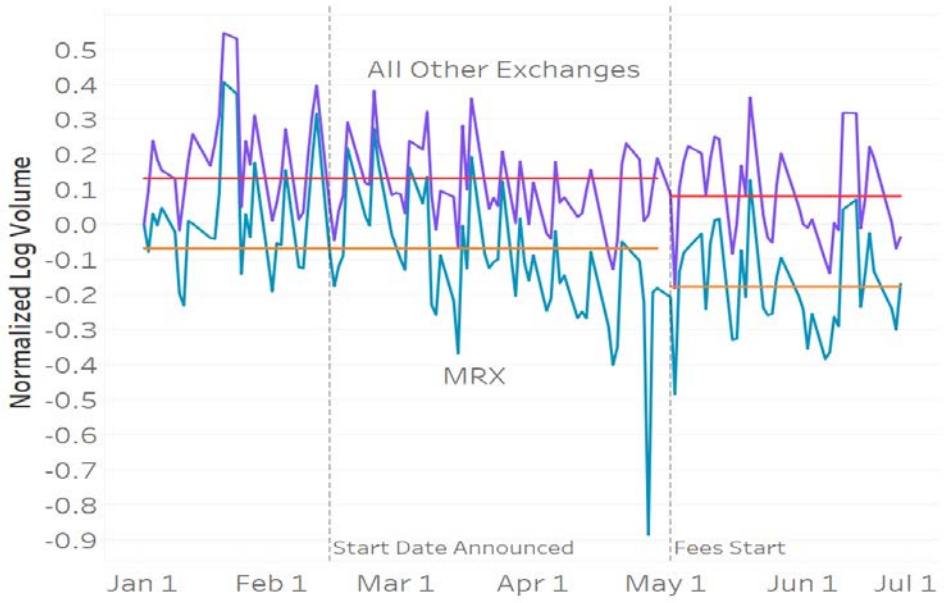
37 Id.

38 Id at 38790.

13.75%.[39]

Similar to MIAX, Chart 3 below demonstrates that since the inception of its membership, port and market data fees, MRX volumes declined.

Chart 3: MRX Options Volume as Compared to Options Volume on 15 Other Options Exchanges in 2022[40]



Specifically, since May 2, 2022,[41] MRX saw a larger drop in its average daily volume (-11%) than all other options exchanges (-5%) since MRX's fees were added on May 2, 2022 when compared to their respective year-to-date volumes through April 29, 2022. This pattern indicates that the adoption of MRX membership, port, and market data fees

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39 Id at note 24.

40 The chart displays the log volume for MRX and all other options exchanges combined. It is "normalized" by subtracting each day's value from the first trading day of the year (January 3, 2022). The straight lines represent the average normalized log volumes from January 3, 2022 through April 29, 2022 and from May 2, 2022 through June 23, 2022, respectively.

42 MRX General 3, Membership and Access, incorporates by reference Nasdaq General 3.

impacted MRX's volume negatively.

In summary, MRX membership fees are subject to significant substitution-based competitive forces due to its consistently low percentage of market share, the relatively small number of purchasers for each product, and the purchasers that are reviewing their subscriptions. Implementation of the proposed fees is therefore consistent with the Act.

Fees for Membership

The proposed membership fees described below are in line with those of other markets. Setting a fee above competitors is likely to drive away customers, so the most efficient price-setting strategy is to set prices at the same level as other firms.

The Exchange's proposal to adopt membership fees is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, MRX's membership department reviews applicants to ensure that each application complies with the rules specified within MRX General 3[42] as well as other requirements for membership.[43] Applicants must meet the Exchange's qualification criteria prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the validity of the required clearing relationship, and the history of disciplinary matters. Approved Members would be required to comply with MRX's By-Laws and Rules and would be subject to regulation by MRX. The

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42 MRX General 3, Membership and Access, incorporates by reference Nasdaq General 3.

43 The Exchange's Membership Department must ensure, among other things, that an applicant is not statutorily disqualified.

proposed membership fees are identical to membership fees on GEMX,[44] and are lower than similar fees assessed on other options markets.[45]

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange. Among various factors, the Exchange believes market participants consider: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. The Exchange believes that the decision to become a member of an exchange, particularly as a registered market maker, is a complex one that is not solely based on non-transactional costs assessed by an exchange. Market participants weigh the tradeoff between where they choose to deploy liquidity versus where trading opportunities exist. Of course, the cost of membership may factor into a decision to become a member of a certain exchange, but the Exchange believes it is by no means the only factor when comparing exchanges.

Market Makers

Market makers play an important role on options exchanges as they provide liquidity. In options markets, registered market makers are assigned options series[46] and

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44 See GEMX Options 7, Section 6A (Access Fees).

45 See Cboe's Fees Schedule. Cboe assesses permit fees as follows: Market-Maker Electronic Access Permit of $5,000 per month; Electronic Access Permits of $3,000 per month; and Clearing TPH Permit of $2,000 per month. See also Miami International Securities Exchange, LLC's ("MIAX") Fee Schedule. MIAX assesses an Electronic Exchange Member Fee of $1,500 per month.

46 See Phlx, ISE, GEMX, MRX, Nasdaq BX, Inc. ("BX") and NOM Options 2, Section 3; Cboe Exchange, Inc. ("Cboe") Rule 5.50; BOX Exchange LLC ("BOX") Rule 8030; MIAX Rule 602; and NYSE Arca, Inc. ("NYSE Arca") Rule 6.35-O.

are required to quote in those options series for a specified time period during the day.[47] Typically, a lead or primary market maker[48] will be required to quote for a longer period of time during the day as compared to other market makers registered on an exchange.[49] Additionally, market makers are typically required to quote within a certain width on options markets.[50] Greater liquidity on options markets benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of market makers in turn facilitates tighter spreads. Market participants are attracted to options markets that have ample liquidity and tighter spreads in options series.

Trading Functionality

An exchange's trading functionality attracts market participants who may elect, for example, to submit an order into a price improving auction,[51] enter a complex order,[52] or utilize a particular order type.[53] Different options exchanges offer different trading

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47 See ISE, GEMX and MRX, Phlx, BX and NOM Options 2, Section 5; Cboe Rule 5.52; BOX Rule 8050; MIAX Rule 604; and NYSE Arca Rule 6.37A-O.

48 Options markets refer to the primary market maker on an exchange in several ways.

49 See BX Options 2, Section 4; ISE, GEMX and MRX, and Phlx Options 2, Section 5; BOX Rule 8055; MIAX Rule 604; and NYSE Arca Rule 6.37A-O.

50 See BX Options 2, Section 4; ISE, GEMX and MRX, Phlx and NOM Options 2, Section 5; and Cboe Rule 5.52; BOX Rule 8040.

51 See ISE, GEMX, MRX, Phlx and BX Options 3, Section 13; MIAX Rule 515A; Cboe Rule 5.37; and BOX Rules 7150 and 7245.

52 See Phlx and ISE Options 3, Section 14; MIAX Rule 518; Cboe Rule 5.33; BOX Rule 7240; and NYSE Arca Rule 6.91-O.

53 See ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 7; MIAX Rule 615; Cboe Rule 5.6; BOX Rule 7110; and NYSE Arca Rule 6.62-O.

functionality to their members. For example, with respect to priority and allocation of an order book, some options exchanges have price/time allocation,[54] some have a size pro-rata allocation,[55] while other exchanges offer both allocation models.[56] The allocation methodology on a particular options exchange's order book may attract certain market participants. Also, the manner in which some options markets structure their solicitation auction,[57] or opening process,[58] may be attractive to certain market participants. Finally, some exchanges have trading floors[59] which may accommodate trading for certain market participants or trading firms.[60]

Product Offerings

Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to a particular options venue. New

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54 See Cboe Rule 5.85; BOX Rule 7130; and NYSE Arca Rule 6.76-O.

55 See Phlx, ISE, GEMX and MRX Options 3, Section 10; and BOX Rule 7135.

56 See BX Options 3, Section 10. While BX's rule permits both price/time and size pro-rata allocation, all symbols on BX are currently designated as Price/Time. See also BOX Rules 7130 and 7135. MIAX's rule permits both Price-Time and Pro-Rata allocation. See also MIAX Rule 514.

57 See ISE, GEMX and MRX Options 3, Section 11; NYSE American Rules 971.1NY and 971.2NY; and Cboe Rule 5.39.

58 See ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 8; Cboe Rule 5.31, MIAX Rule 503, BOX Rule 7070, and NYSE Arca Rule 6.64-O.

59 Today, Phlx, Cboe, BOX, NYSE Arca, and NYSE American LLC have a trading floor. Trading floors require an on-floor presence to execute options transactions.

60 There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders.

products in the options industry may allow market participants greater trading and hedging opportunities, as well as new avenues to manage risks. The listing of new options products enhances competition among market participants by providing investors with additional investment vehicles, as well as competitive alternatives, to existing investment products. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product.[61]

Transaction Pricing

The pricing available on a particular exchange may impact a market participant's decision to submit order flow to a particular options venue. The options industry is competitive. 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.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges. For example, a market maker on MIAX is assessed a $3,000 one-time fee and then a tiered monthly fee from $7,000 for up to 10 classes to $22,000 for over 100 classes.[62] By comparison, under the proposed fee structure, a CMM can be granted access on the Exchange for as little as $950 per month

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61 See e.g., options on the Nasdaq-100 Index® available on ISE, GEMX and Phlx and Cboe's Market Volatility Index®. Currently, MRX does not list any proprietary products.

62 See Miami International Securities Exchange, LLC Fee Schedule at 20 and 21: https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_03012022.pdf .

(i.e., a $100 access fee and an $850 trading right), and could quote in all options classes on the Exchange by paying the access fee and obtaining nine CMM trading rights for a total of $4,950 per month. The Exchange notes that its tiered model for CMM trading rights is consistent with the pricing practices of other exchanges, such as NYSE Arca, which charges $6,000 per month for the first market maker trading permit, down to $1,000 per month for the fifth and additional trading permits, with various tiers in-between. Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right.

The Exchange does not believe that it is unfairly discriminatory to assess different fees for PMMs, CMMs, and EAMs. For PMMs on MRX, the fees required to access the Exchange are substantially lower than those of competing exchanges. For example, a PMM could quote on the Exchange for only $200 (i.e., the access fee), compared with the minimum $6,000 per month trading permit fee charged by NYSE Arca. The Exchange notes that it is not proposing trading right fees for PMMs, as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. Similarly, the Exchange is proposing only to charge the $200 access fee to EAMs as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers. The CMM Trading Right Fee is identical to GEMX.[63]

Membership fees are charged by nearly all exchanges, and all established

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63 See GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

exchanges with sufficient order flow. In 2022, MEMX LLC ("MEMX") established a monthly membership fee of $200.[64] MEMX reasoned in that rule change that there is value in becoming a member of the exchange. MEMX stated that it believed that its proposed membership fee "is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange." Moreover, "neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange." In this respect, MEMX is correct; a monthly membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may choose to become a member of one or more options exchanges based on the market participant's business model. A very small number of market participants choose to become a member of all sixteen options exchanges. It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market.

Most firms that actively trade on options markets are not currently Members of MRX. Using options markets that Nasdaq operates as points of comparison, less than a third of the firms that are members of at least one of the options markets that Nasdaq operates are also Members of MRX (approximately 29%). The Exchange notes that no firm is a Member of MRX only. Few, if any, firms have become Members at MRX, notwithstanding the fact that MRX membership is currently free, because MRX currently has less liquidity than other options markets. As explained above, MRX has the smallest

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64 See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19). The Monthly Membership Fee is assessed to each active Member at the close of business on the first day of each month.

market share of the 16 options exchanges, representing only approximately 1.8% of the market, and, for certain market participants, the current levels of liquidity may be insufficient to justify the costs associated with becoming a Member and connecting to the Exchange, notwithstanding the fact that membership is free.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of an exchange does not "lock" a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is made at the beginning of the relationship, and is no less subject to competition than trading fees.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at MRX.[65] If MRX is not at the NBBO, MRX will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the order was executed at a superior price.[66]

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65 See Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.

66 MRX Members may elect to not route their orders by marking an order as "do-not-route." In this case, the order would not be routed. See Options 3, Section 7(m).

In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange. For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[67] or request sponsored access[68] through a member of an exchange in order to submit a trade directly to an options exchange.[69] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange. Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues, a market participant may determine one model is more cost efficient as compared to the alternatives.

After 6 years, MRX proposes to commence assessing membership fees, just as all

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67 Service bureaus provide access to market participants to submit and execute orders on an exchange. On MRX, a Service Bureau may be a Member. Some MRX Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only MRX Members may submit orders or quotes through ports.

68 Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

69 This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

other options exchanges.[70] The introduction of these fees will not impede a Member's access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

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 Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. 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. 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.

The proposed membership fees are identical to membership fees assessed by

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70 Today, MRX is the only options exchange that does not assess membership fees.

GEMX.[71] The proposed fees are designed to reflect the benefits of the technical, regulatory, and administrative services provided to a Member by the Exchange, and the fees remain competitive with similar fees offered on other options exchanges. The Exchange does not believe that assessing different fees for PMMs, CMMs, and EAMs creates an undue burden on competition.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges.[72] Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right. The Exchange notes that it is not proposing trading right fees for PMMs as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting. Additionally, as noted herein, PMMs have higher quoting obligations as compared to CMMs.[73]

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71 See GEMX Options 7, Section 6.A. (Access Fees) and Section 6.B. (CMM Trading Rights Fees).

72 See NYSE Arca Fees and Charges, General Options and Trading Permit (OTP) Fees (comparing CMM Trading Rights Fees to the Arca Market Maker fees).

73 See MRX Options 2, Section 5. PMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce. CMMs are not required to enter quotations in the options classes to which it is appointed, however if a CMM initiates quoting in an options class, the CMM, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce.

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.[74] 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-2022-07 on the subject line.

74 15 U.S.C. 78s(b)(3)(A)(ii).

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-2022-07. 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-MRX-2022-07 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.[75]

J. Matthew DeLesDernier
Assistant Secretary

[75] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined.

Nasdaq MRX, LLC Rules

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Options Rules

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Options 7 Pricing Schedule

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Section 5. Other Options Fees and Rebates
A. – D. No change.

E. Access Fees

Electronic Access Member

$200 per month, per membership

Market Maker

Primary Market Maker - $200 per month, per membership

Competitive Market Maker - $100 per month, per membership

F. CMM Trading Right Fees

$850 per month for first trading right

$500 per month for each additional trading right

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