

Required fields are shown with yellow backgrounds and asterisks.

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) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot			Rule		
<input type="checkbox"/>	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
	<input type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

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

A proposal to adopt Complex Order pricing

**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 Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 06/24/2019	Global Chief Legal & Policy Officer
By Edward S. Knight	
(Name *)	



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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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 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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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt Complex Order pricing. Specifically, MRX proposes to amend MRX’s Pricing Schedule at Options 7, Section 1, titled “General Provisions,” and adopt a new Section 4, titled “Complex Order Fees.” The Exchange proposes to renumber current Section 4, titled “Other Options Fees and Rebates” as well as amend that section and relocate Section 5, titled “Legal and Regulatory”.

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”) on September 26, 2018. 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:

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

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

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

MRX recently received approval to adopt rules to provide for the trading of Complex Orders.<sup>3</sup> MRX proposes to adopt Complex Order pricing. Specifically, the Exchange proposes to: (1) amend MRX's Pricing Schedule at Options 7, Section 1, "General Provisions" to define a Complex Order; and (2) adopt Complex Order pricing within new Section 4, titled "Complex Order Fees". The Exchange proposes to amend current Options 7, Section 4, B, "Marketing Fee" to waive this fee for Complex Orders. In addition, the Exchange proposes other technical amendments to renumber current Section 4, "Other Options Fees and Rebates" and combine that rule with Section 5, "Legal and Regulatory". Each amendment is described below.

***Description of Proposed Complex Order Pricing***

The purpose of the proposed rule change is to adopt Complex Order Pricing. The Exchange proposes to define the term "Complex Order" within Options 7, Section 1, "General Provisions". The Exchange proposes to state at Options 7, Section 1(c), a "Complex Order" is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in Nasdaq MRX Rule 722, as well as Stock-Option Orders.<sup>4</sup> This proposed description of the term

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<sup>3</sup> Securities Exchange Act Release No. 85935 (May 24, 2019), 84 FR 16907 (April 17, 2019) (SR-MRX-2019-08) (Order Approving a Proposed Rule Change To Adopt Complex Order Functionality).

<sup>4</sup> A Stock-Option Order is a Stock-Option Strategies with only one option leg and one stock leg. See MRX Rule 722(a)(2).

“Complex Order” is intended to bring greater transparency to the proposed Complex Order fees.

There are four fee proposals with respect to Complex Orders.

***(1) Complex Order Fees***

The Exchange proposes to adopt a new Options 7, Section 4, titled “Complex Order Fees.” The Exchange proposes to assess a Complex Order fee of \$0.15 per contract for orders submitted as a Market Maker,<sup>5</sup> Non-Nasdaq MRX Market Maker (FarMM),<sup>6</sup> Firm Proprietary,<sup>7</sup> Broker-Dealer<sup>8</sup> and Professional Customer.<sup>9</sup> Specifically, these proposed fees would be assessed for Complex Order transactions in the Complex Order Book as well as Complex Orders submitted into the Complex Facilitation Mechanism,<sup>10</sup> Complex Solicited Order Mechanism,<sup>11</sup> Complex Price Improvement

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<sup>5</sup> A “Market Maker” is a market maker as defined in Nasdaq MRX Rule 100(a)(30). See MRX Options 7, Section 1(c).

<sup>6</sup> A “Non-Nasdaq MRX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See MRX Options 7, Section 1(c).

<sup>7</sup> A “Firm Proprietary” order is an order submitted by a Member for its own proprietary account. See MRX Options 7, Section 1(c).

<sup>8</sup> A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account. See MRX Options 7, Section 1(c).

<sup>9</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See MRX Options 7, Section 1(c).

<sup>10</sup> See MRX Rule 716(c).

<sup>11</sup> See MRX Rule 716(e).

Mechanism (“PIM”)<sup>12</sup> or an order submitted as a Complex Customer Cross Order,<sup>13</sup> Complex Qualified Contingent Cross (“QCC”) Order<sup>14</sup> or a Complex QCC with Stock Order.<sup>15</sup> These Complex Order fees apply to an originating order, contra-side order and responses entered into MRX’s Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM and orders entered as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order. The Exchange proposes to assess no Complex Order fee to Priority Customers.<sup>16</sup> The Exchange notes that interest on the Regular Order Book that interacts with a Complex Order is subject to Regular Order<sup>17</sup> Book fees within Options 7, Section 3. The Exchange further notes that a Member will be assessed the applicable Complex Order fee on those Complex Orders that interact with the Regular Order Book.

***(2) Stock Handling Fee***

The Exchange proposes to assess a Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book. This fee would

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<sup>12</sup> See MRX Rule 723(e).

<sup>13</sup> See MRX Rule 721(b).

<sup>14</sup> See MRX Rule 721(d).

<sup>15</sup> See MRX Rule 721(f).

<sup>16</sup> A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq MRX Rule 100(a)(37A). See MRX Options 7, Section 1(c).

<sup>17</sup> A “Regular Order” is an order that consists of only a single option series and is not submitted with a stock leg. See MRX Options 7, Section 1(c).

be in addition to the above-referenced fees for Complex Orders. Nasdaq ISE, LLC (“ISE”) assesses a similar Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade)<sup>18</sup> and Cboe Exchange, Inc. (“Cboe”) assesses a Stock-Portion of Stock-Option Strategy Orders fee of \$0.0010 per share.<sup>19</sup> In order to offer Members the ability to execute Stock-Option Orders on MRX, the Exchange outsources the function of printing the stock portion of the trade to a third party venue so that MRX Members may simultaneously execute options and stock to achieve their desired strategy. The Exchange has developed its Complex Order System to process the stock leg of a Stock-Option Order and match these Stock-Option Orders against other Stock-Option Orders on the Complex Order Book. The Exchange believes offering this service to Members adds value in permitting Stock-Option Order executions on MRX. In addition, the Exchange believes that the process adds efficiency to a Member’s workflow. As stated above, the Exchange would assess a maximum of \$50 per trade.<sup>20</sup> The cap would provide Members with the total dollar that would be assessed per trade. No charges would be assessed above the cap.

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<sup>18</sup> See ISE’s Pricing Schedule at Options 7, Section 4.

<sup>19</sup> See Cboe’s Fees Schedule. Cboe notes, “The Exchange shall assess a fee of \$0.0010 per share for the stock portion, which Cboe Options must route to an outside venue, of stock option orders executed via the Complex Order Auction (“COA”), the Complex Order Book (“COB”), AIM, SAM, and the splitting mechanism which is used for certain market orders pursuant to Interpretation .06(d) of Rule 6.53C. This fee applies in addition to the fees assessed by the outside venue to which the stock portion of the order is routed if an exchange destination is specified on the original order (with such fees to be passed on to the market participant). A maximum of \$50.00 per order will be assessed under this fee.”

<sup>20</sup> The equivalent of a \$50 cap in terms of shares is 50,000 shares on a singular execution.

***(3) Reduced Market Maker Complex Order Fee***

The Exchange also proposes to offer Market Makers a reduced Complex Order fee. Specifically, MRX proposes to reduce the proposed \$0.15 per contract Complex Order Market Maker fee to \$0.00 per contract when a Market Maker trades against Priority Customer orders that originate from its Affiliated Member<sup>21</sup> or its Appointed Member.<sup>22</sup> This incentive is designed to encourage Market Makers, Affiliated Members and/or Appointed Members to direct additional Priority Customer order flow to the Exchange. Priority Customer order flow is unique in that it attracts valuable liquidity from Market Makers to the market, which in turn benefits all market participants by providing more trading opportunities. This increased activity from all market participants attracts Market Makers and in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Market Makers will benefit from this incentive through reduced fees, and other market participants will benefit because they will have an opportunity to trade with the order flow that Market Makers, their Affiliated Member and/or Appointed Member bring to MRX. When a Priority Customer order is submitted to MRX, a Market Maker that wishes to interact with that order flow does not know whether that order originated from one of its Affiliated Members and/or Appointed Members. The Exchange believes this

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<sup>21</sup> An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member’s Form BD, Schedule A. See Options 7, Section 1(c).

<sup>22</sup> An “Appointed Member” is either an Appointed Market Maker or Appointed Order Flow Provider. An “Appointed Market Maker” is a Market Maker who has been appointed by an Electronic Access Member pursuant to Section 3, Table 3. An “Appointed Order Flow Provider” is an Electronic Access Member who has been appointed by a Market Maker pursuant to Section 3, Table 3. See Options 7, Section 1(c).

incentive will cause Market Makers to aggressively pursue order flow in order to receive the benefit of the reduced fee when the Market Maker executes a Complex Order contra a Priority Customer. Discounting fees in this manner will reward Market Makers that bring more order flow to the Exchange. This is the case because a Market Maker through its Affiliated Member or its Appointed Member directing additional order flow would increase the chances of a Market Maker qualifying for a reduced Complex Order fee of \$0.00 (i.e., because it increases the chances that a contra-side order is entered by the Market Maker or its Affiliated Member and/or Appointed Member).

#### ***(4) Marketing Fee***

The Exchange proposes to waive the Marketing Fee within Options 7, Section 4, B which applies to MRX Market Makers. Today, MRX assesses Market Makers a Marketing Fee of \$0.25 per contract in Penny Symbols and \$0.70 per contract in Non-Penny Symbols for each Regular Priority Customer contract executed.<sup>23</sup> Today, the Marketing Fee is waived for: (i) Flash Order<sup>24</sup> Responses; (ii) Market Maker Orders that

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<sup>23</sup> The Marketing Fee is rebated proportionately to the Members that paid the fee such that on a monthly basis the Marketing Fee fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed \$100,000 and the Marketing Fee fund balance administered by a Preferred Competitive Market Maker for such a Group does not exceed \$100,000. A Preferred Competitive Market Maker that elects not to administer a fund will not be charged the Marketing Fee. The Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month. Preferred Orders. An Electronic Access Member may designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”). See MRX Rule 713 at Supplementary Material .01.

<sup>24</sup> A “Flash Order” is an order that is exposed at the National Best Bid or Offer by the Exchange to all Members for execution, as provided under Supplementary Material .02 to Nasdaq MRX Rule 1901. For all Flash Orders, the Exchange will charge the applicable maker fee and for responses that trade against a Flash Order, the Exchange will provide the applicable taker fee. See MRX Options 7, Section 1(c).

take liquidity from the Order Book; and (iii) Crossing Orders<sup>25</sup> and Responses to Crossing Orders.

In connection with the adoption of Complex Order Fees, the Exchange proposes to amend current Options 7, Section 4 to waive the Marketing Fee for Complex Orders. The Exchange believes that waiving the Marketing Fee will ensure that Market Makers can benefit from the proposed fee incentives proposed herein with respect to Complex Orders. This proposal would ensure that the total fee assessed to a Market Maker with respect to Complex Orders would be a transaction fee of either \$0.15 or \$0.00 per contract (provided the Market Maker executed against Priority Customer orders that originate from an Affiliated Member or its Appointed Member) plus a Stock Handling Fee of \$0.0010 per share. With this proposal, Market Makers will be able to lower total execution costs when executing Complex Orders.

Applicability to and Impact on Participants<sup>26</sup>

The proposed Complex Order fees would be applied uniformly to all market participant capacities (\$0.15 per contract), except for Priority Customers (\$0.00 per

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<sup>25</sup> See MRX Rule 721.

<sup>26</sup> On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Guidance”). Within the Guidance, the Division noted, among other things, that the purpose discussion should address “how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.” See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

contract). Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Priority Customers have traditionally received more favorable pricing as compared to other market participants.<sup>27</sup> The Exchange notes that any Member may transact Complex Orders on MRX or submit a response into MRX's Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM or enter an order as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order.

### ***Complex Order Fees***

The Exchange believes that assessing all non-Priority Customers a \$0.15 per contract fee will attract Complex Order flow to MRX. Today, there are 9 options markets that offer complex order functionality.<sup>28</sup> The complex order functionality offerings differ by options market.<sup>29</sup> Some options markets have offered complex order functionality for a number of years and other options markets are new entrants in recent

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<sup>27</sup> Priority Customers pay no fees for certain Select Symbols and Non-Select Symbols for Regular Order Fees. See MRX's Pricing Schedule at Options 7, Section 3.

<sup>28</sup> ISE, Nasdaq PHLX LLC, Cboe, Cboe C2 Exchange, Inc., Cboe EDGX Exchange, Inc. Miami International Securities Exchange, LLC, BOX Exchange LLC, NYSE Arca, Inc. and NYSE American LLC.

<sup>29</sup> For example, the various options markets have different complex order auctions.

years with their complex order offerings.<sup>30</sup> MRX will be the newest options market to offer market participants another venue on which to transact Complex Orders. The Exchange believes its proposed fees are reasonable and well within the range of fees assessed for complex orders among other exchanges.<sup>31</sup> The Exchange believes the proposed fees will encourage Members to submit order flow to MRX, particularly orders that may otherwise remain unfilled on other venues. The Exchange believes the proposed rates are competitive for all multiply-listed options and will offer market participants with another choice of where to transact Complex Orders. New entrants, such as MRX, may increase competition as to a particular offering, in this case Complex Orders, and encourage competitive pricing among options markets competing for such Complex Order flow. The proposed MRX offering and pricing may benefit market participants with certain business models. The Exchange believes that market participants determine where to direct their Complex Order flow by considering, among other factors, a market's functionality, pricing and the market participant's needs arising from its particular business model.

### ***Stock Handling Fee***

The proposed Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book would be applied uniformly to all market

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<sup>30</sup> Cboe EDGX Exchange, Inc. and MIAX EMERALD, LLC were the last two markets to receive approval for complex order rules prior to MRX.

<sup>31</sup> MIAX EMERALD, LLC's pricing schedule assesses complex order fees that range from \$0.10 to \$0.88 per contract for all origin types except priority customer (of which, MIAX EMERALD pays rebates of \$0.25 to \$0.87 per contract for priority customer complex orders), whether the participant is a maker or taker and whether the transaction was in a Penny or non-Penny Pilot Symbol.

participants. This fee, which is in addition to a Complex Order fee, would be applied to any market participant who executes a Complex Order.

***Reduced Market Maker Complex Order Fee***

With this proposal, only Market Makers are offered an incentive that would reduce their Complex Order fee to \$0.00 per contract. Priority Customers do not pay a Complex Order fee as proposed herein. Other market participants, such as a Non-Nasdaq MRX Market Maker (FarMM), a Firm Proprietary, a Broker-Dealer and a Professional Customer, would not be entitled to the same fee reduction as a Market Maker. The Exchange notes that Market Makers, their Affiliated Members and their Appointed Members are being incentivized to direct Priority Customer order flow to MRX. Other market participants benefit because they may interact with this order flow. Unlike other participants, Market Makers add value to MRX through quoting obligations<sup>32</sup> and their commitment of capital. Encouraging Market Makers to add greater liquidity benefits all market participants in the quality of order interaction because the Exchange believes that Market Makers will be incentivized to aggressively pursue order flow in order to receive the benefit of the reduced fee.

***Marketing Fee***

Finally, with respect to the waiver of the Marketing Fee for Complex Orders, the Exchange notes that the Marketing Fee applies only to Market Makers. The Exchange's proposal to waive the Marketing Fee for Complex Orders would apply to uniformly to all Market Makers. As proposed, no market participant would be assessed a Marketing Fee for Complex Orders.

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<sup>32</sup> See MRX Rule 804.

### Relocation Options 7 Sections

The Exchange proposes technical amendments to the Pricing Schedule to relocate certain rule text within Options 7. The Exchange proposes to re-number current Options 7, Section 4, titled “Other Options Fees and Rebates” as new Section 5. The Exchange proposes to delete the title to current Section 5, “Legal and Regulatory” and re-letter the rule text within that section. Current Options 7, Section 5, “A” titled “Options Regulatory Fee” would be re-lettered as “C” and current Options 7, Section 5, “B” titled “FINRA Web CRD Fees” would be re-lettered as “D”.

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>33</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>34</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.<sup>35</sup>

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<sup>33</sup> 15 U.S.C. 78f(b).

<sup>34</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>35</sup> See Guidance, *supra* note 3. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

The Proposal is Reasonable

The Exchange's proposed new Complex Order fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>36</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer complex order functionality, with varying pricing schedules. The Exchange believes its proposed fees are reasonable and well within the range of fees assessed for complex order among other exchanges.<sup>37</sup>

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<sup>36</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>37</sup> See note 31 above.

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.<sup>38</sup> Separately, the Exchange has provided the SEC staff with information regarding market share.

Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors. The Exchange believes that its proposed Complex Order fees are a reasonable attempt to achieve this end because these fees are competitive as compared to other options markets. Any MRX market participant can transact Complex Orders on MRX. In fact, most options markets offer complex order functionality<sup>39</sup> making the competition for complex order flow very competitive among options exchanges with different markets offering incentives and rebates to market participants to lower transaction fees. The Exchange believes that as a new entrant offering Complex Order functionality, MRX, alongside other options markets, will provide market participants with another choice for transacting their Complex Orders. New entrants, such as MRX, increase competition as to a particular offering, in this case Complex Orders, and encourage competitive pricing among options markets competing for Complex Order flow. With this proposal, the

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<sup>38</sup> While MRX has not offered Complex Order functionality to date, the Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it as a result of this rule change. See Guidance, supra note 16. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

<sup>39</sup> Currently 9 of 16 options markets offer Complex Order functionality. MRX would be the 10<sup>th</sup> options market to offer Complex Order functionality. MIAX EMERALD has approved rules and has filed pricing for complex orders, but has not commenced offering complex order functionality.

Exchange proposes to introduce a novel pricing model so that MRX may compete with the other 9 complex order books for order flow. The proposed fee is novel because it is a flat fee as compared to a Maker-Taker model and the Exchange is not proposing to assess a Marketing Fee. The Exchange may be unsuccessful in its initial attempt to attract order flow with the proposed fees. At this time, MRX is not proposing to pay rebates to attract order flow. The Exchange would file other fee proposals if its pricing does not attract order flow and fails to be competitive. The proposed MRX offering and pricing may benefit market participants who have different business models and desire to direct their order flow to one of the various options markets that offer complex orders depending on that market's functionality, pricing and the market participant's particular business model.

### ***Complex Order Fees***

With respect to the proposed Complex Order fees, the Exchange proposes assessing a uniform fee of \$0.15 per contract to all non-Priority Customers, except for Priority Customers who would not be assessed a Complex Order fee. The Exchange believes that the fees will attract Complex Order flow to MRX. The Exchange believes not assessing Priority Customer interest a Complex Order fee will incentivize market participants to direct their Priority Customer order flow to MRX. This will provide all market participants more trading opportunities. Priority Customers have traditionally received more favorable pricing as compared to other market participants.<sup>40</sup>

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<sup>40</sup> See note 27 above.

***Stock Handling Fee***

With respect to the proposed Stock Handling Fee of \$0.0010 per share for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book, this fee would be assessed on each Complex Order so the Exchange may offer Members the ability to execute Stock-Option Orders on MRX. The Exchange would outsource the function of printing the stock portion of the trade to a third party venue so that MRX Members may simultaneously execute options and stock to achieve their desired strategy. The Exchange has developed its Complex Order System to process the stock leg of a Stock-Option Order and match these Stock-Option Orders against other Stock-Option Orders on the Complex Order Book. The Exchange believes offering this service to Members adds value in permitting Stock-Option Order executions on MRX. In addition, the Exchange believes that the process adds efficiency to a Member's workflow. Despite the fee, the Exchange would cap the amount assessed at a maximum of \$50 per trade to limit the amount paid by Members. The Exchange believes that the fee is reasonable and will allow the Exchange to offer Members the ability to trade Stock-Option Orders. This proposed fee is the same as the fee assessed today on ISE and Cboe.<sup>41</sup>

***Reduced Market Maker Complex Order Fee***

With respect to the reduced fee offered to Market Makers, the Exchange notes Market Makers add value to MRX through quoting obligations<sup>42</sup> and their commitment of capital. The fee is reasonable because incentivizing Market Makers to provide greater

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<sup>41</sup> See notes 18 and 19 above.

<sup>42</sup> See MRX Rule 804.

liquidity will benefit all market participants through the quality of order interaction. Market Makers will be incentivized to aggressively pursue order flow in order to receive the benefit of the reduced fee when the Market Maker executes a Complex Order contra a Priority Customer. This discount will reward Market Makers that bring more order flow to the Exchange.

### ***Marketing Fee***

The Exchange's proposal to waive the Marketing Fee for Complex Orders is reasonable because the Exchange desires to limit the cost of transacting Complex Orders for Market Makers who are the only market participant assessed a Marketing Fee. Today, the Exchange waives the Marketing Fee for: (i) Flash Order Responses; (ii) Market Maker Orders that take liquidity from the Order Book; and (iii) Crossing Orders and Responses to Crossing Orders. It is reasonable to seek to lower the total cost for Market Makers to execute Complex Orders while simultaneously incentivizing Market Makers to provide greater liquidity to MRX as explained herein.

### **The Proposal represents an Equitable Allocation and is not Unfairly Discriminatory**

The Exchange believes its proposal allocates its fees fairly among its market participants.

### ***Complex Order Fees***

The Exchange believes its Complex Order fees are equitable and not unfairly discriminatory. The proposed Complex Order fees would be applied uniformly to all market participant capacities (\$0.15 per contract), except for Priority Customers (\$0.00 per contract). Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all

market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Priority Customers have traditionally received more favorable pricing as compared to other market participants.<sup>43</sup> The Exchange notes that any Member may transact Complex Orders on MRX or submit a response into MRX's Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM or enter an order as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order.

#### ***Stock Handling Fee***

The Exchange believes its Stock Handling Fee is equitable and not unfairly discriminatory. The proposed Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book would be applied uniformly to all market participants. This fee, which is in addition to a Complex Order fee, would be applied to any market participant who executes a Complex Order.

#### ***Reduced Market Maker Complex Order Fee***

The Exchange believes its proposal to reduce Market Maker Complex Order fees is equitable and not unfairly discriminatory. With respect to the reduced fee offered to Market Makers, the Exchange notes that Priority Customers do not pay a Complex Order fee as proposed herein. Other market participants, such as a Non-Nasdaq MRX Market Maker (FarMM), a Firm Proprietary, a Broker-Dealer and a Professional Customer,

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<sup>43</sup> See note 27 above.

would not be entitled to the same fee reduction as a Market Maker. The Exchange notes that Market Makers, their Affiliated Members and their Appointed Members are being incentivized to direct Priority Customer order flow to MRX. Other market participants benefit from this order flow because they may interact with it. Unlike other participants, Market Makers add value to MRX through quoting obligations<sup>44</sup> and their commitment of capital. Encouraging Market Makers to add greater liquidity benefits all market participants in the quality of order interaction.

### ***Marketing Fee***

The Exchange believes its waiver of the Marketing Fee for Complex Orders is equitable and not unfairly discriminatory. The Exchange would uniformly waive the Marketing Fee for all Market Makers, who are the only type of market participants assessed the Marketing Fee. As proposed, no market participant would be assessed a Marketing Fee for Complex Orders.

### **Relocation Options 7 Sections**

The Exchange's proposal to relocate certain rule text within Options 7 are reasonable, equitable and not unfairly discriminatory. These amendments are non-substantive.

#### **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.

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<sup>44</sup> See MRX Rule 804.

### Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. Today, there are 9 options markets that offer complex order functionality.<sup>45</sup> The complex order functionality offerings differ by options market.<sup>46</sup> Some options markets have offered complex order functionality for a number of years and other options markets are new entrants in recent years with their complex order offerings.<sup>47</sup> MRX will be the newest options market to offer market participants another venue on which to transact Complex Orders. The Exchange believes the proposed fees will encourage Members to submit order flow to MRX, particularly orders that may otherwise remain unfilled on other venues. The Exchange believes the proposed rates are competitive and will offer market participants with another choice of where to transact Complex Orders. New entrants, such as MRX, increase competition as to a particular offering, in this case Complex Orders, and encourage competitive pricing among options markets competing for Complex Order flow. The proposed MRX offering and pricing may benefit market participants who have different business models and desire to direct their order flow to one of the various options markets that offer complex orders depending on that market's functionality, pricing and their particular business model.

Permitting MRX to commence offering Complex Order functionality, by permitting it to establish Complex Order fees, will bring additional competition to the option markets that currently offer Complex Orders. MRX would not commence

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<sup>45</sup> See note 28 above.

<sup>46</sup> For example, the various options markets have different complex order auctions.

<sup>47</sup> See note 30 above.

offering Complex Order functionality without implementing pricing for this new offering.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed reduced criteria is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. options exchange by volume only has 28% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

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

### Intra-market Competition

The proposed fee do not impose an undue burden on intra-market competition.

### ***Complex Order Fees***

The Exchange's proposed Complex Order fees do not impose an undue burden on competition as these fees would be applied uniformly to all market participant capacities (\$0.15 per contract), except for Priority Customers (\$0.00 per contract). Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Priority Customers have traditionally received more favorable pricing as compared to other market participants.<sup>48</sup> The Exchange notes that any Member may transact Complex Orders on MRX or submit a response into MRX's Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM or enter an order as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order.

### ***Stock Handling Fee***

The proposed Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book does not impose an undue burden on competition because this fee would be applied uniformly to all market participants. This

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<sup>48</sup> See note 27 above.

fee, which is in addition to a Complex Order fee, would be applied to any market participant who executes a Complex Order.

***Reduced Market Maker Complex Order Fee***

The Exchange's proposed reduced fee offered to Market Makers does not impose an undue burden on competition. Priority Customers do not pay a Complex Order fee as proposed herein. Other market participants, such as a Non-Nasdaq MRX Market Maker (FarMM), a Firm Proprietary, a Broker-Dealer and a Professional Customer, would not be entitled to the same fee reduction as a Market Maker. The Exchange notes that the proposal incentivizes Market Makers through their Affiliated Members and their Appointed Members to direct Priority Customer order flow to MRX. Other market participants benefit from this proposal because they may interact with this order flow. Unlike other participants, Market Makers add value to MRX through quoting obligations<sup>49</sup> and their commitment of capital. Encouraging Market Makers to add greater liquidity benefits all market participants in the quality of order interaction because the Exchange believes that Market Makers will be incentivized to aggressively pursue order flow in order to receive the benefit of the reduced fee.

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<sup>49</sup>

See MRX Rule 804.

### ***Marketing Fee***

The Exchange's proposal to waive the Marketing Fee for Complex Orders does not impose an undue burden on competition. The Marketing Fee applies only to Market Makers. The Exchange's proposal to waive the Marketing Fee for Complex Orders would apply to uniformly to all Market Makers. As proposed, no market participant would be assessed a Marketing Fee for Complex Orders.

### **Relocation Options 7 Sections**

The Exchange's proposal to relocate certain rule text within Options 7 does not impose an undue burden on competition. These amendments are non-substantive.

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,<sup>50</sup> 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

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<sup>50</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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-2019-14)

June \_\_, 2019

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Complex Order Pricing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 24, 2019, 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 adopt Complex Order pricing. Specifically, MRX proposes to amend MRX’s Pricing Schedule at Options 7, Section 1, titled “General Provisions,” and adopt a new Section 4, titled “Complex Order Fees.” The Exchange proposes to renumber current Section 4, titled “Other Options Fees and Rebates” as well as amend that section and relocate Section 5, titled “Legal and Regulatory”.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqmrx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in 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 recently received approval to adopt rules to provide for the trading of Complex Orders.<sup>3</sup> MRX proposes to adopt Complex Order pricing. Specifically, the Exchange proposes to: (1) amend MRX's Pricing Schedule at Options 7, Section 1, "General Provisions" to define a Complex Order; and (2) adopt Complex Order pricing within new Section 4, titled "Complex Order Fees". The Exchange proposes to amend current Options 7, Section 4, B, "Marketing Fee" to waive this fee for Complex Orders. In addition, the Exchange proposes other technical amendments to renumber current Section 4, "Other Options Fees and Rebates" and combine that rule with Section 5, "Legal and Regulatory". Each amendment is described below.

***Description of Proposed Complex Order Pricing***

The purpose of the proposed rule change is to adopt Complex Order Pricing. The Exchange proposes to define the term "Complex Order" within Options 7, Section 1,

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<sup>3</sup> Securities Exchange Act Release No. 85935 (May 24, 2019), 84 FR 16907 (April 17, 2019) (SR-MRX-2019-08) (Order Approving a Proposed Rule Change To Adopt Complex Order Functionality).

“General Provisions”. The Exchange proposes to state at Options 7, Section 1(c), a “Complex Order” is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in Nasdaq MRX Rule 722, as well as Stock-Option Orders.<sup>4</sup> This proposed description of the term “Complex Order” is intended to bring greater transparency to the proposed Complex Order fees.

There are four fee proposals with respect to Complex Orders.

***(1) Complex Order Fees***

The Exchange proposes to adopt a new Options 7, Section 4, titled “Complex Order Fees.” The Exchange proposes to assess a Complex Order fee of \$0.15 per contract for orders submitted as a Market Maker,<sup>5</sup> Non-Nasdaq MRX Market Maker (FarMM),<sup>6</sup> Firm Proprietary,<sup>7</sup> Broker-Dealer<sup>8</sup> and Professional Customer.<sup>9</sup> Specifically, these proposed fees would be assessed for Complex Order transactions in the Complex

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<sup>4</sup> A Stock-Option Order is a Stock-Option Strategies with only one option leg and one stock leg. See MRX Rule 722(a)(2).

<sup>5</sup> A “Market Maker” is a market maker as defined in Nasdaq MRX Rule 100(a)(30). See MRX Options 7, Section 1(c).

<sup>6</sup> A “Non-Nasdaq MRX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See MRX Options 7, Section 1(c).

<sup>7</sup> A “Firm Proprietary” order is an order submitted by a Member for its own proprietary account. See MRX Options 7, Section 1(c).

<sup>8</sup> A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account. See MRX Options 7, Section 1(c).

<sup>9</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See MRX Options 7, Section 1(c).

Order Book as well as Complex Orders submitted into the Complex Facilitation Mechanism,<sup>10</sup> Complex Solicited Order Mechanism,<sup>11</sup> Complex Price Improvement Mechanism (“PIM”)<sup>12</sup> or an order submitted as a Complex Customer Cross Order,<sup>13</sup> Complex Qualified Contingent Cross (“QCC”) Order<sup>14</sup> or a Complex QCC with Stock Order.<sup>15</sup> These Complex Order fees apply to an originating order, contra-side order and responses entered into MRX’s Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM and orders entered as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order. The Exchange proposes to assess no Complex Order fee to Priority Customers.<sup>16</sup> The Exchange notes that interest on the Regular Order Book that interacts with a Complex Order is subject to Regular Order<sup>17</sup> Book fees within Options 7, Section 3. The Exchange further notes that a Member will be assessed the applicable Complex Order fee on those Complex Orders that interact with the Regular Order Book.

***(2) Stock Handling Fee***

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<sup>10</sup> See MRX Rule 716(c).

<sup>11</sup> See MRX Rule 716(e).

<sup>12</sup> See MRX Rule 723(e).

<sup>13</sup> See MRX Rule 721(b).

<sup>14</sup> See MRX Rule 721(d).

<sup>15</sup> See MRX Rule 721(f).

<sup>16</sup> A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq MRX Rule 100(a)(37A). See MRX Options 7, Section 1(c).

<sup>17</sup> A “Regular Order” is an order that consists of only a single option series and is not submitted with a stock leg. See MRX Options 7, Section 1(c).

The Exchange proposes to assess a Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book. This fee would be in addition to the above-referenced fees for Complex Orders. Nasdaq ISE, LLC (“ISE”) assesses a similar Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade)<sup>18</sup> and Cboe Exchange, Inc. (“Cboe”) assesses a Stock-Portion of Stock-Option Strategy Orders fee of \$0.0010 per share.<sup>19</sup> In order to offer Members the ability to execute Stock-Option Orders on MRX, the Exchange outsources the function of printing the stock portion of the trade to a third party venue so that MRX Members may simultaneously execute options and stock to achieve their desired strategy. The Exchange has developed its Complex Order System to process the stock leg of a Stock-Option Order and match these Stock-Option Orders against other Stock-Option Orders on the Complex Order Book. The Exchange believes offering this service to Members adds value in permitting Stock-Option Order executions on MRX. In addition, the Exchange believes that the process adds efficiency to a Member’s workflow. As

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<sup>18</sup> See ISE’s Pricing Schedule at Options 7, Section 4.

<sup>19</sup> See Cboe’s Fees Schedule. Cboe notes, “The Exchange shall assess a fee of \$0.0010 per share for the stock portion, which Cboe Options must route to an outside venue, of stock option orders executed via the Complex Order Auction (“COA”), the Complex Order Book (“COB”), AIM, SAM, and the splitting mechanism which is used for certain market orders pursuant to Interpretation .06(d) of Rule 6.53C. This fee applies in addition to the fees assessed by the outside venue to which the stock portion of the order is routed if an exchange destination is specified on the original order (with such fees to be passed on to the market participant). A maximum of \$50.00 per order will be assessed under this fee.”

stated above, the Exchange would assess a maximum of \$50 per trade.<sup>20</sup> The cap would provide Members with the total dollar that would be assessed per trade. No charges would be assessed above the cap.

***(3) Reduced Market Maker Complex Order Fee***

The Exchange also proposes to offer Market Makers a reduced Complex Order fee. Specifically, MRX proposes to reduce the proposed \$0.15 per contract Complex Order Market Maker fee to \$0.00 per contract when a Market Maker trades against Priority Customer orders that originate from its Affiliated Member<sup>21</sup> or its Appointed Member.<sup>22</sup> This incentive is designed to encourage Market Makers, Affiliated Members and/or Appointed Members to direct additional Priority Customer order flow to the Exchange. Priority Customer order flow is unique in that it attracts valuable liquidity from Market Makers to the market, which in turn benefits all market participants by providing more trading opportunities. This increased activity from all market participants attracts Market Makers and in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Market Makers will benefit from this incentive through reduced fees, and other market

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<sup>20</sup> The equivalent of a \$50 cap in terms of shares is 50,000 shares on a singular execution.

<sup>21</sup> An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member’s Form BD, Schedule A. See Options 7, Section 1(c).

<sup>22</sup> An “Appointed Member” is either an Appointed Market Maker or Appointed Order Flow Provider. An “Appointed Market Maker” is a Market Maker who has been appointed by an Electronic Access Member pursuant to Section 3, Table 3. An “Appointed Order Flow Provider” is an Electronic Access Member who has been appointed by a Market Maker pursuant to Section 3, Table 3. See Options 7, Section 1(c).

participants will benefit because they will have an opportunity to trade with the order flow that Market Makers, their Affiliated Member and/or Appointed Member bring to MRX. When a Priority Customer order is submitted to MRX, a Market Maker that wishes to interact with that order flow does not know whether that order originated from one of its Affiliated Members and/or Appointed Members. The Exchange believes this incentive will cause Market Makers to aggressively pursue order flow in order to receive the benefit of the reduced fee when the Market Maker executes a Complex Order contra a Priority Customer. Discounting fees in this manner will reward Market Makers that bring more order flow to the Exchange. This is the case because a Market Maker through its Affiliated Member or its Appointed Member directing additional order flow would increase the chances of a Market Maker qualifying for a reduced Complex Order fee of \$0.00 (i.e., because it increases the chances that a contra-side order is entered by the Market Maker or its Affiliated Member and/or Appointed Member).

#### ***(4) Marketing Fee***

The Exchange proposes to waive the Marketing Fee within Options 7, Section 4, B which applies to MRX Market Makers. Today, MRX assesses Market Makers a Marketing Fee of \$0.25 per contract in Penny Symbols and \$0.70 per contract in Non-Penny Symbols for each Regular Priority Customer contract executed.<sup>23</sup> Today, the

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<sup>23</sup> The Marketing Fee is rebated proportionately to the Members that paid the fee such that on a monthly basis the Marketing Fee fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed \$100,000 and the Marketing Fee fund balance administered by a Preferred Competitive Market Maker for such a Group does not exceed \$100,000. A Preferred Competitive Market Maker that elects not to administer a fund will not be charged the Marketing Fee. The Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month. Preferred Orders. An Electronic Access Member may designate a “Preferred

Marketing Fee is waived for: (i) Flash Order<sup>24</sup> Responses; (ii) Market Maker Orders that take liquidity from the Order Book; and (iii) Crossing Orders<sup>25</sup> and Responses to Crossing Orders.

In connection with the adoption of Complex Order Fees, the Exchange proposes to amend current Options 7, Section 4 to waive the Marketing Fee for Complex Orders. The Exchange believes that waiving the Marketing Fee will ensure that Market Makers can benefit from the proposed fee incentives proposed herein with respect to Complex Orders. This proposal would ensure that the total fee assessed to a Market Maker with respect to Complex Orders would be a transaction fee of either \$0.15 or \$0.00 per contract (provided the Market Maker executed against Priority Customer orders that originate from an Affiliated Member or its Appointed Member) plus a Stock Handling Fee of \$0.0010 per share. With this proposal, Market Makers will be able to lower total execution costs when executing Complex Orders.

#### Applicability to and Impact on Participants<sup>26</sup>

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Market Maker” on orders it enters into the System (“Preferred Orders”). See MRX Rule 713 at Supplementary Material .01.

<sup>24</sup> A “Flash Order” is an order that is exposed at the National Best Bid or Offer by the Exchange to all Members for execution, as provided under Supplementary Material .02 to Nasdaq MRX Rule 1901. For all Flash Orders, the Exchange will charge the applicable maker fee and for responses that trade against a Flash Order, the Exchange will provide the applicable taker fee. See MRX Options 7, Section 1(c).

<sup>25</sup> See MRX Rule 721.

<sup>26</sup> On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to

The proposed Complex Order fees would be applied uniformly to all market participant capacities (\$0.15 per contract), except for Priority Customers (\$0.00 per contract). Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Priority Customers have traditionally received more favorable pricing as compared to other market participants.<sup>27</sup> The Exchange notes that any Member may transact Complex Orders on MRX or submit a response into MRX's Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM or enter an order as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order.

### ***Complex Order Fees***

The Exchange believes that assessing all non-Priority Customers a \$0.15 per

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Fees" ("Guidance"). Within the Guidance, the Division noted, among other things, that the purpose discussion should address "how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants." See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

<sup>27</sup> Priority Customers pay no fees for certain Select Symbols and Non-Select Symbols for Regular Order Fees. See MRX's Pricing Schedule at Options 7, Section 3.

contract fee will attract Complex Order flow to MRX. Today, there are 9 options markets that offer complex order functionality.<sup>28</sup> The complex order functionality offerings differ by options market.<sup>29</sup> Some options markets have offered complex order functionality for a number of years and other options markets are new entrants in recent years with their complex order offerings.<sup>30</sup> MRX will be the newest options market to offer market participants another venue on which to transact Complex Orders. The Exchange believes its proposed fees are reasonable and well within the range of fees assessed for complex orders among other exchanges.<sup>31</sup> The Exchange believes the proposed fees will encourage Members to submit order flow to MRX, particularly orders that may otherwise remain unfilled on other venues. The Exchange believes the proposed rates are competitive for all multiply-listed options and will offer market participants with another choice of where to transact Complex Orders. New entrants, such as MRX, may increase competition as to a particular offering, in this case Complex Orders, and encourage competitive pricing among options markets competing for such Complex Order flow. The proposed MRX offering and pricing may benefit market participants with certain business models. The Exchange believes that market participants determine

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<sup>28</sup> ISE, Nasdaq PHLX LLC, Cboe, Cboe C2 Exchange, Inc., Cboe EDGX Exchange, Inc. Miami International Securities Exchange, LLC, BOX Exchange LLC, NYSE Arca, Inc. and NYSE American LLC.

<sup>29</sup> For example, the various options markets have different complex order auctions.

<sup>30</sup> Cboe EDGX Exchange, Inc. and MIAX EMERALD, LLC were the last two markets to receive approval for complex order rules prior to MRX.

<sup>31</sup> MIAX EMERALD, LLC's pricing schedule assesses complex order fees that range from \$0.10 to \$0.88 per contract for all origin types except priority customer (of which, MIAX EMERALD pays rebates of \$0.25 to \$0.87 per contract for priority customer complex orders), whether the participant is a maker or taker and whether the transaction was in a Penny or non-Penny Pilot Symbol.

where to direct their Complex Order flow by considering, among other factors, a market's functionality, pricing and the market participant's needs arising from its particular business model.

***Stock Handling Fee***

The proposed Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book would be applied uniformly to all market participants. This fee, which is in addition to a Complex Order fee, would be applied to any market participant who executes a Complex Order.

***Reduced Market Maker Complex Order Fee***

With this proposal, only Market Makers are offered an incentive that would reduce their Complex Order fee to \$0.00 per contract. Priority Customers do not pay a Complex Order fee as proposed herein. Other market participants, such as a Non-Nasdaq MRX Market Maker (FarMM), a Firm Proprietary, a Broker-Dealer and a Professional Customer, would not be entitled to the same fee reduction as a Market Maker. The Exchange notes that Market Makers, their Affiliated Members and their Appointed Members are being incentivized to direct Priority Customer order flow to MRX. Other market participants benefit because they may interact with this order flow. Unlike other participants, Market Makers add value to MRX through quoting obligations<sup>32</sup> and their commitment of capital. Encouraging Market Makers to add greater liquidity benefits all market participants in the quality of order interaction because the Exchange believes that Market Makers will be incentivized to aggressively pursue order flow in order to receive

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<sup>32</sup> See MRX Rule 804.

the benefit of the reduced fee.

### *Marketing Fee*

Finally, with respect to the waiver of the Marketing Fee for Complex Orders, the Exchange notes that the Marketing Fee applies only to Market Makers. The Exchange's proposal to waive the Marketing Fee for Complex Orders would apply to uniformly to all Market Makers. As proposed, no market participant would be assessed a Marketing Fee for Complex Orders.

### Relocation Options 7 Sections

The Exchange proposes technical amendments to the Pricing Schedule to relocate certain rule text within Options 7. The Exchange proposes to re-number current Options 7, Section 4, titled "Other Options Fees and Rebates" as new Section 5. The Exchange proposes to delete the title to current Section 5, "Legal and Regulatory" and re-letter the rule text within that section. Current Options 7, Section 5, "A" titled "Options Regulatory Fee" would be re-lettered as "C" and current Options 7, Section 5, "B" titled "FINRA Web CRD Fees" would be re-lettered as "D".

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>33</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>34</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>33</sup> 15 U.S.C. 78f(b).

<sup>34</sup> 15 U.S.C. 78f(b)(4) and (5).

The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.<sup>35</sup>

#### The Proposal is Reasonable

The Exchange's proposed new Complex Order fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>36</sup>

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

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<sup>35</sup> See Guidance, supra note 3. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

<sup>36</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

services. The Exchange is one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer complex order functionality, with varying pricing schedules. The Exchange believes its proposed fees are reasonable and well within the range of fees assessed for complex order among other exchanges.<sup>37</sup>

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.<sup>38</sup> Separately, the Exchange has provided the SEC staff with information regarding market share.

Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors. The Exchange believes that its proposed Complex Order fees are a reasonable attempt to achieve this end because these fees are competitive as compared to other options markets. Any MRX market participant can transact Complex Orders on MRX. In fact, most options markets offer complex order functionality<sup>39</sup> making the competition for complex order flow very competitive among options exchanges with different markets offering

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<sup>37</sup> See note 31 above.

<sup>38</sup> While MRX has not offered Complex Order functionality to date, the Exchange perceives no regulatory, structural, or cost impediments to market participants shifting order flow away from it as a result of this rule change. See Guidance, supra note 16. In particular, the Exchange notes that these examples of shifts in liquidity and market share, along with many others, have occurred within the context of market participants' existing duties of Best Execution and obligations under the Order Protection Rule under Regulation NMS.

<sup>39</sup> Currently 9 of 16 options markets offer Complex Order functionality. MRX would be the 10<sup>th</sup> options market to offer Complex Order functionality. MIAX EMERALD has approved rules and has filed pricing for complex orders, but has not commenced offering complex order functionality.

incentives and rebates to market participants to lower transaction fees. The Exchange believes that as a new entrant offering Complex Order functionality, MRX, alongside other options markets, will provide market participants with another choice for transacting their Complex Orders. New entrants, such as MRX, increase competition as to a particular offering, in this case Complex Orders, and encourage competitive pricing among options markets competing for Complex Order flow. With this proposal, the Exchange proposes to introduce a novel pricing model so that MRX may compete with the other 9 complex order books for order flow. The proposed fee is novel because it is a flat fee as compared to a Maker-Taker model and the Exchange is not proposing to assess a Marketing Fee. The Exchange may be unsuccessful in its initial attempt to attract order flow with the proposed fees. At this time, MRX is not proposing to pay rebates to attract order flow. The Exchange would file other fee proposals if its pricing does not attract order flow and fails to be competitive. The proposed MRX offering and pricing may benefit market participants who have different business models and desire to direct their order flow to one of the various options markets that offer complex orders depending on that market's functionality, pricing and the market participant's particular business model.

### ***Complex Order Fees***

With respect to the proposed Complex Order fees, the Exchange proposes assessing a uniform fee of \$0.15 per contract to all non-Priority Customers, except for Priority Customers who would not be assessed a Complex Order fee. The Exchange believes that the fees will attract Complex Order flow to MRX. The Exchange believes not assessing Priority Customer interest a Complex Order fee will incentivize market

participants to direct their Priority Customer order flow to MRX. This will provide all market participants more trading opportunities. Priority Customers have traditionally received more favorable pricing as compared to other market participants.<sup>40</sup>

### ***Stock Handling Fee***

With respect to the proposed Stock Handling Fee of \$0.0010 per share for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book, this fee would be assessed on each Complex Order so the Exchange may offer Members the ability to execute Stock-Option Orders on MRX. The Exchange would outsource the function of printing the stock portion of the trade to a third party venue so that MRX Members may simultaneously execute options and stock to achieve their desired strategy. The Exchange has developed its Complex Order System to process the stock leg of a Stock-Option Order and match these Stock-Option Orders against other Stock-Option Orders on the Complex Order Book. The Exchange believes offering this service to Members adds value in permitting Stock-Option Order executions on MRX. In addition, the Exchange believes that the process adds efficiency to a Member's workflow. Despite the fee, the Exchange would cap the amount assessed at a maximum of \$50 per trade to limit the amount paid by Members. The Exchange believes that the fee is reasonable and will allow the Exchange to offer Members the ability to trade Stock-Option Orders. This proposed fee is the same as the fee assessed today on ISE and Cboe.<sup>41</sup>

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<sup>40</sup> See note 27 above.

<sup>41</sup> See notes 18 and 19 above.

***Reduced Market Maker Complex Order Fee***

With respect to the reduced fee offered to Market Makers, the Exchange notes Market Makers add value to MRX through quoting obligations<sup>42</sup> and their commitment of capital. The fee is reasonable because incentivizing Market Makers to provide greater liquidity will benefit all market participants through the quality of order interaction. Market Makers will be incentivized to aggressively pursue order flow in order to receive the benefit of the reduced fee when the Market Maker executes a Complex Order contra a Priority Customer. This discount will reward Market Makers that bring more order flow to the Exchange.

***Marketing Fee***

The Exchange's proposal to waive the Marketing Fee for Complex Orders is reasonable because the Exchange desires to limit the cost of transacting Complex Orders for Market Makers who are the only market participant assessed a Marketing Fee. Today, the Exchange waives the Marketing Fee for: (i) Flash Order Responses; (ii) Market Maker Orders that take liquidity from the Order Book; and (iii) Crossing Orders and Responses to Crossing Orders. It is reasonable to seek to lower the total cost for Market Makers to execute Complex Orders while simultaneously incentivizing Market Makers to provide greater liquidity to MRX as explained herein.

**The Proposal represents an Equitable Allocation and is not Unfairly Discriminatory**

The Exchange believes its proposal allocates its fees fairly among its market participants.

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<sup>42</sup>

See MRX Rule 804.

### ***Complex Order Fees***

The Exchange believes its Complex Order fees are equitable and not unfairly discriminatory. The proposed Complex Order fees would be applied uniformly to all market participant capacities (\$0.15 per contract), except for Priority Customers (\$0.00 per contract). Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Priority Customers have traditionally received more favorable pricing as compared to other market participants.<sup>43</sup> The Exchange notes that any Member may transact Complex Orders on MRX or submit a response into MRX's Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM or enter an order as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order.

### ***Stock Handling Fee***

The Exchange believes its Stock Handling Fee is equitable and not unfairly discriminatory. The proposed Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book would be applied uniformly to all market participants. This fee, which is in addition to a Complex Order fee, would be applied to any market participant who executes a Complex Order.

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<sup>43</sup> See note 27 above.

***Reduced Market Maker Complex Order Fee***

The Exchange believes its proposal to reduce Market Maker Complex Order fees is equitable and not unfairly discriminatory. With respect to the reduced fee offered to Market Makers, the Exchange notes that Priority Customers do not pay a Complex Order fee as proposed herein. Other market participants, such as a Non-Nasdaq MRX Market Maker (FarMM), a Firm Proprietary, a Broker-Dealer and a Professional Customer, would not be entitled to the same fee reduction as a Market Maker. The Exchange notes that Market Makers, their Affiliated Members and their Appointed Members are being incentivized to direct Priority Customer order flow to MRX. Other market participants benefit from this order flow because they may interact with it. Unlike other participants, Market Makers add value to MRX through quoting obligations<sup>44</sup> and their commitment of capital. Encouraging Market Makers to add greater liquidity benefits all market participants in the quality of order interaction.

***Marketing Fee***

The Exchange believes its waiver of the Marketing Fee for Complex Orders is equitable and not unfairly discriminatory. The Exchange would uniformly waive the Marketing Fee for all Market Makers, who are the only type of market participants assessed the Marketing Fee. As proposed, no market participant would be assessed a Marketing Fee for Complex Orders.

**Relocation Options 7 Sections**

The Exchange's proposal to relocate certain rule text within Options 7 are reasonable, equitable and not unfairly discriminatory. These amendments are non-

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<sup>44</sup> See MRX Rule 804.

substantive.

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.

Inter-market Competition

The proposal does not impose an undue burden on inter-market competition. Today, there are 9 options markets that offer complex order functionality.<sup>45</sup> The complex order functionality offerings differ by options market.<sup>46</sup> Some options markets have offered complex order functionality for a number of years and other options markets are new entrants in recent years with their complex order offerings.<sup>47</sup> MRX will be the newest options market to offer market participants another venue on which to transact Complex Orders. The Exchange believes the proposed fees will encourage Members to submit order flow to MRX, particularly orders that may otherwise remain unfilled on other venues. The Exchange believes the proposed rates are competitive and will offer market participants with another choice of where to transact Complex Orders. New entrants, such as MRX, increase competition as to a particular offering, in this case Complex Orders, and encourage competitive pricing among options markets competing for Complex Order flow. The proposed MRX offering and pricing may benefit market participants who have different business models and desire to direct their order flow to

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<sup>45</sup> See note 28 above.

<sup>46</sup> For example, the various options markets have different complex order auctions.

<sup>47</sup> See note 30 above.

one of the various options markets that offer complex orders depending on that market's functionality, pricing and their particular business model.

Permitting MRX to commence offering Complex Order functionality, by permitting it to establish Complex Order fees, will bring additional competition to the option markets that currently offer Complex Orders. MRX would not commence offering Complex Order functionality without implementing pricing for this new offering.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed reduced criteria is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. options exchange by volume only has 28% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

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

#### Intra-market Competition

The proposed fee do not impose an undue burden on intra-market competition.

#### ***Complex Order Fees***

The Exchange's proposed Complex Order fees do not impose an undue burden on competition as these fees would be applied uniformly to all market participant capacities (\$0.15 per contract), except for Priority Customers (\$0.00 per contract). Priority Customer interest brings valuable liquidity to the market, which liquidity benefits other market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Priority Customers have traditionally received more favorable pricing as compared to other market participants.<sup>48</sup> The Exchange notes that any Member may transact Complex Orders on MRX or submit a response into MRX's Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM or enter an order as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order.

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<sup>48</sup> See note 27 above.

***Stock Handling Fee***

The proposed Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book does not impose an undue burden on competition because this fee would be applied uniformly to all market participants. This fee, which is in addition to a Complex Order fee, would be applied to any market participant who executes a Complex Order.

***Reduced Market Maker Complex Order Fee***

The Exchange's proposed reduced fee offered to Market Makers does not impose an undue burden on competition. Priority Customers do not pay a Complex Order fee as proposed herein. Other market participants, such as a Non-Nasdaq MRX Market Maker (FarMM), a Firm Proprietary, a Broker-Dealer and a Professional Customer, would not be entitled to the same fee reduction as a Market Maker. The Exchange notes that the proposal incentivizes Market Makers through their Affiliated Members and their Appointed Members to direct Priority Customer order flow to MRX. Other market participants benefit from this proposal because they may interact with this order flow. Unlike other participants, Market Makers add value to MRX through quoting obligations<sup>49</sup> and their commitment of capital. Encouraging Market Makers to add greater liquidity benefits all market participants in the quality of order interaction because the Exchange believes that Market Makers will be incentivized to aggressively pursue order flow in order to receive the benefit of the reduced fee.

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<sup>49</sup>See MRX Rule 804.

### ***Marketing Fee***

The Exchange's proposal to waive the Marketing Fee for Complex Orders does not impose an undue burden on competition. The Marketing Fee applies only to Market Makers. The Exchange's proposal to waive the Marketing Fee for Complex Orders would apply to uniformly to all Market Makers. As proposed, no market participant would be assessed a Marketing Fee for Complex Orders.

### **Relocation Options 7 Sections**

The Exchange's proposal to relocate certain rule text within Options 7 does not impose an undue burden on competition. These amendments are non-substantive.

#### **C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

No written comments were either solicited or received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>50</sup> 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.

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<sup>50</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2019-14 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MRX-2019-14. 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-2019-14 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>51</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

New text is underlined; deleted text is in brackets.

**Nasdaq MRX, LLC Rules**

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**Options 7 Pricing Schedule****Section 1. General Provisions**

\* \* \* \* \*

(c) For purposes of assessing fees, the following references should serve as guidance. Terms not defined in this Pricing Schedule shall have the meaning ascribed to them under Nasdaq MRX Rules. Fees and rebates are listed per contract per leg unless otherwise noted.

\* \* \* \* \*

A “**Crossing Order**” is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (“PIM”) or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders

A “**Complex Order**” is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, as provided in Nasdaq MRX Rule 722, as well as Stock-Option Orders.

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**Section 4. Complex Order Fees**

The following Complex Order fees will be assessed for Complex Order transactions in the Complex Order Book as well as Complex Orders submitted into the Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex Price Improvement Mechanism (“PIM”) or an order submitted as a Complex Customer Cross Order, Complex Qualified Contingent Cross (“QCC”) Order or a Complex QCC with Stock Order. Fees apply to an originating order, contra-side order and responses entered into MRX’s Complex Facilitation Mechanism, Complex Solicited Order Mechanism, Complex PIM and orders entered as a Complex Customer Cross Order, Complex QCC Order or Complex QCC with Stock Order.<sup>(1)</sup> Interest on the Regular Order Book that interacts with a Complex Order is subject to Regular Order Book fees within Options 7, Section 3.

<u>Capacity of Market Participant</u>	<u>Fee per contract</u>
<u>Market Maker</u>	<u>\$0.15 <sup>(2)</sup></u>
<u>Non-Nasdaq MRX Market Maker (FarMM)</u>	<u>\$0.15</u>
<u>Firm Proprietary / Broker-Dealer</u>	<u>\$0.15</u>
<u>Professional Customer</u>	<u>\$0.15</u>
<u>Priority Customer</u>	<u>\$0.00</u>

(1) MRX will assess a Stock Handling Fee of \$0.0010 per share (capped at a maximum of \$50 per trade) for the stock leg of Stock-Option Orders executed against other Stock-Option Orders in the Complex Order Book. This fee will be in addition to the above-referenced fees for Complex Orders.

(2) A Complex Order Market Maker fee of \$0.00 per contract applies instead of the above-referenced \$0.15 per contract Complex Order fee, when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or an Appointed Member.

\* \* \* \* \*

**Section [4]5. Other Options Fees and Rebates**

**A.** No change.

**B. Marketing Fee**

<b>Market Participant</b>	<b>Penny Symbols</b>	<b>Non-Penny Symbols</b>
Market Maker	\$0.25	\$0.70

- » Marketing fees apply to Market Makers for each Regular Priority Customer contract executed except as noted below.
- » Marketing fees are waived for Flash Order responses.
- » Marketing fees are waived for Market Maker orders that take liquidity from the order book.
- » Marketing fees are waived for Crossing Orders and Responses to Crossing Orders.

» Marketing fees are waived for Complex Orders.

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**[Section 5. Legal and Regulatory]**

**[A]C. Options Regulatory Fee**

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**[B]D. FINRA Web CRD Fees**

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