

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 46

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

File No. * SR 2022 - * 22

Amendment No. (req. for Amendments *)

Filing by Nasdaq MRX, LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
---	--------------------------------------	-------------------------------------	---	---	--

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<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
Section 806(e)(1) *

Section 806(e)(2) *

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to amend MRX Pricing Schedule at Options 7 Section 7

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 * Daniel Last Name * Cantu

Title * Senior Associate General Counsel

E-mail * daniel.cantu@nasdaq.com

Telephone * (301) 978-8469 Fax

Signature

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

Date 10/14/2022

(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

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

 Date: 2022.10.14 16:24:49 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-MRX-2022-22 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

SR-MRX-2022-22 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

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

Add Remove View

SR-MRX-2022-22 Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq MRX, LLC (“MRX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend MRX’s Pricing Schedule at Options 7, Section 7.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Daniel A. Cantu
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8469

¹ 15 U.S.C. 78s(b)(1).

² 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

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

³ The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR-MRX-2022-04), instituting fees for membership, ports and market data. See Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR-MRX-2022-04). On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership (SR-MRX-2022-07), market data (SR-MRX-2022-08) and ports (SR-MRX-2022-09). On August 25, 2022, the Exchange withdrew the market data filing (SR-MRX-2022-08) and replaced it with SR-MRX-2022-14. See Securities Exchange Act Release No. 95708 (September 8, 2022), 87 FR 56457 (September 14, 2022) (SR-MRX-2022-14). On October 14, 2022, the Exchange withdrew SR-MRX-2022-14 and replaced it with the instant filing in order to reflect changes to the information contained within each of the five MRX market data feeds proposed in SR-MRX-2022-18. See Securities Exchange Act Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR-MRX-2022-18).

⁴ See, e.g., Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSENat-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf>. (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

This Proposal reflects MRX’s assessment that it has gained sufficient market share to compete effectively against other 15 options exchanges without waiving market data fees. Such fees are assessed by options exchanges that compete with MRX—indeed, MRX is the only options exchange (out of the 16 current options exchanges) not to assess them today.

As explained in further detail below, MRX in 2022 is in the same position as NYSE National in 2020, when it sought approval for the “NYSE National Integrated Feed.”⁵ The Commission approved the NYSE National Integrated Feed based on a finding that it “was subject to significant substitution-based competitive forces” based on “NYSE National’s consistently low percentage of market share, the relatively small number of subscribers to the NYSE National Integrated Feed, and the sizeable portion of subscribers that terminated their subscriptions following the proposal of the fees.”⁶

The three factors cited in the Commission’s approval order for NYSE National are present in MRX today. First, MRX has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today. Second, only a small number of firms purchase market data from MRX relative to its affiliated options exchanges. Third, a sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following

⁵ NYSE National stated that the proposed integrated feed included depth-of-book order data, last sale data, security status updates, and stock summary messages. See Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSENAT-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf>.

⁶ See id.

the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase the Exchange's market data feeds.

Disapproval of the Proposal—given that the three factors cited in the Commission's approval order for NYSE National two years ago are present in MRX today—would result in differential treatment of similarly-situated exchanges. Under such circumstances, disapproval of the Proposal should be rejected as arbitrary and capricious.

Disapproval would also place a substantial burden on competition. MRX would be uniquely disadvantaged as the only options exchange unable to charge for its market data. If the Commission were to disapprove this Proposal, that action, and not market forces, would determine whether MRX is successful in its competition with other options exchanges.

New exchanges commonly waive data fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, “graduate” to compete against established exchanges and charge fees that reflect the value of their services. If MRX is incorrect in its assessment, that error will be reflected in MRX's ability to compete with other options exchanges.⁷

The Exchange proposes to amend fees for the following market data feeds within Options 7, Section 7: (1) Nasdaq MRX Depth of Market Data Feed (“Depth of Market

⁷ Nasdaq announced that, beginning in 2022, it will migrate its North American markets to Amazon Web Services in a phased approach, starting with MRX. The MRX migration will take place in November 2022. The proposed fee changes are entirely unrelated to this effort.

Feed”);⁸ (2) Nasdaq MRX Order Feed (“Order Feed”);⁹ (3) Nasdaq MRX Top of Market Feed (“Top Feed”);¹⁰ (4) Nasdaq MRX Trades Feed (“Trades Feed”);¹¹ and (5) Nasdaq MRX Spread Feed (“Spread Feed”).¹² Prior to the initial filing of these proposed price

⁸ Nasdaq MRX Depth of Market Data Feed is a data feed that provides full order and quote depth information for individual orders and quotes on the Exchange book and last sale information for trades executed on the Exchange. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on the Exchange and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance). See Options 3, Section 23(a)(1).

⁹ Nasdaq MRX Order Feed provides information on new orders resting on the book (e.g., price, quantity, market participant capacity and Attributable Order tags when provided by a Member). The data provided for each option series includes the symbols (series and underlying security), displayed order types, order attributes (e.g., OCC account number, give-up information, CMTA information), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance), auction and exposure notifications. See Options 3, Section 23(a)(2).

¹⁰ Nasdaq MRX Top of Market Feed calculates and disseminates MRX’s best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information and for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. See Options 3, Section 23(a)(3).

¹¹ Nasdaq MRX Trades Feed displays last trade information. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(4).

¹² Nasdaq MRX Spread Feed is a feed that consists of: (1) options orders for all

changes on May 2, 2022, no fees had been assessed for these feeds.

In addition to the proposed fees for each data feed, the Exchange proposes an Internal Distributor Fee¹³ of \$1,500 per month for the Depth of Market Feed, Order Feed, and Top Feed, an Internal Distributor Fee of \$750 per month for the Trades Feed, and an Internal Distributor Fee of \$1,000 per month for the Spread Feed. If a Member subscribes to both the Trades Feed and the Spread Feed, both Internal Distributor Fees would be assessed.

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

MRX will also assess Professional¹⁴ and Non-Professional¹⁵ subscriber fees. The

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

¹³ A "distributor" of Nasdaq MRX data is any entity that receives a feed or data file of data directly from Nasdaq MRX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a Nasdaq Global Data Agreement.

¹⁴ A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber.

¹⁵ A Non-Professional Subscriber is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading

Professional Subscriber will be \$25 per month, and the Non-Professional Subscriber will be \$1 per month. These subscriber fees (both Professional and Non-Professional) cover the usage of all five MRX data products identified above and would not be assessed separately for each product.¹⁶

MRX also proposes a Non-Display Enterprise License for \$7,500 per month. This license would lower costs for internal professional subscribers and lower administrative costs overall by permitting the distribution of all MRX proprietary direct data feed products to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber, or requiring the customer to count internal subscribers.¹⁷ The Non-Display Enterprise License is in addition to any other associated distributor fees for MRX proprietary direct data feed products.

Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

¹⁶ For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top Quote Feed, Order, and Depth of Market Feed the firm would only report the Subscriber once and pay \$25 (\$1 for Non-Professional).

¹⁷ The Non-Display Enterprise License of \$7,500 per month is optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁰

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

¹⁸ See 15 U.S.C. 78f(b).

¹⁹ See 15 U.S.C. 78f(b)(4) and (5).

²⁰ See NetCoalition, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²¹

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

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²² See NetCoalition, 615 F.3d at 534-35; see also H.R. Rep. No. 94-229 at 92 (1975) (“[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.”).

²³ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

²⁴ Id.

the proposed fee is constrained by significant competitive forces.”²⁵

History of MRX Operations

Over the years, MRX has amended its transactional pricing to attract order flow to the Exchange.²⁶ In June 2019, MRX commenced offering complex orders.²⁷ With the

²⁵ See U.S. Securities and Exchange Commission, “Staff Guidance on SRO Rule filings Relating to Fees” (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

²⁶ See e.g. Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR-ISEMercury-2016-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISEMercury-2016-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISEMercury-2016-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR-ISEMercury-2016-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR-MRX-2018-01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR-MRX-2018-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange’s Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR-MRX-2018-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR-MRX-2018-27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange’s Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR-MRX-2019-02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR-MRX-2019-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR-MRX-2020-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR-MRX-2020-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its

addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities and other trading functionality that was nearly identical to functionality available on ISE.²⁸ The added functionality attracted order flow, which has enhanced the value of its market data and is the basis for these proposed fee changes.

Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR-MRX-2020-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR-MRX-2020-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR-MRX-2020-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange's Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR-MRX-2020-21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR-MRX-2021-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

²⁷ See Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

²⁸ One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. "Nasdaq Precise" or "Precise" is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (e.g., parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (e.g., NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (e.g., kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (e.g., order history and done away trade reports). See ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

Market Data Products are Subject to Significant Substitution-Based Competitive Forces.

An Exchange can show that a product is “subject to significant substitution-based competitive forces” by introducing evidence that customers can substitute that product with products offered by other exchanges.

NYSE National was able to prove exactly this when it sought approval for the “NYSE National Integrated Feed”²⁹ in 2020. NYSE National at the time of its filing was in a similar position to MRX today—the exchange had an approximately 1.9% market share of executed volume of equity trades.³⁰ The Commission approved the proposal to establish fees for NYSE National based on a finding that the exchange “was subject to significant substitution-based competitive forces.” Citing NetCoalition I,³¹ the Commission stated that “whether a market is competitive notwithstanding potential alternatives depends on factors such as the number of buyers who consider other products interchangeable and at what prices.”³² Noting that “many market participants . . . do not subscribe to . . . the NYSE National Integrated Feed, even when the feed is offered without charge,” the Commission concluded that “NYSE National’s consistently low percentage of market share, the relatively small number of subscribers to the NYSE National Integrated Feed, and the sizeable portion of subscribers that terminated their

²⁹ See Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE-NAT-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSE-Nat-2020-05.pdf>.

³⁰ See id.

³¹ See NetCoalition v. SEC, 615 F.3d 525, 535 (D.C. 2010) (“NetCoalition I”)

³² See NYSE National Approval Order (citing NetCoalition I)

subscriptions following the proposal of the fees,” demonstrated that the exchange “was subject to significant substitution-based competitive forces” in setting fees such that the proposed rule change was consistent with the Act.³³

MRX today is in essentially the same position as NYSE National in 2020, and all three of the factors cited in the Commission’s approval order for NYSE National are present in MRX today. First, MRX has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today. Second, only a small number of firms purchase market data from MRX relative to its affiliated options exchanges. Third, a sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase the Exchange’s market data feeds.

As of May 2, 2022, the date that MRX initially proposed these market data fees, MRX reported that two customers had terminated their market data subscriptions.³⁴ As of now, a total of five firms have cancelled, amounting to approximately 15 percent of the 34 customers that had been taking MRX feeds in the first quarter of 2022.³⁵

Commission Staff have requested additional information pertaining to: (i) the types of feeds available to these customers prior to termination, (ii) the characteristics of

³³ See id.

³⁴ See Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR-MRX-2022-04).

³⁵ These terminations were limited to market data; none of these customers were members of MRX and therefore purchased neither memberships nor ports from the Exchange.

the customers that terminated their feeds, and (iii) whether such customers traded on the Exchange.

With respect to the types of data feeds accessed, two of the five customers had access to all five feeds: the Depth of Market Data, the Order Feed, the Top Feed, the Trades Feed, and the Spread Feed. The three remaining customers had access to only two feeds: the Order Feed and the Top Feed. All five customers cancelled all feeds that they had access to.

With respect to the types of customers cancelling feeds, three of the five were either data vendors or technology suppliers. Data vendors purchase exchange data and redistribute it to downstream customers, while technology suppliers incorporate exchange data into software solutions, which are sold to downstream customers. The remaining two firms engage in options trading, either on their own behalf or that of a customer.

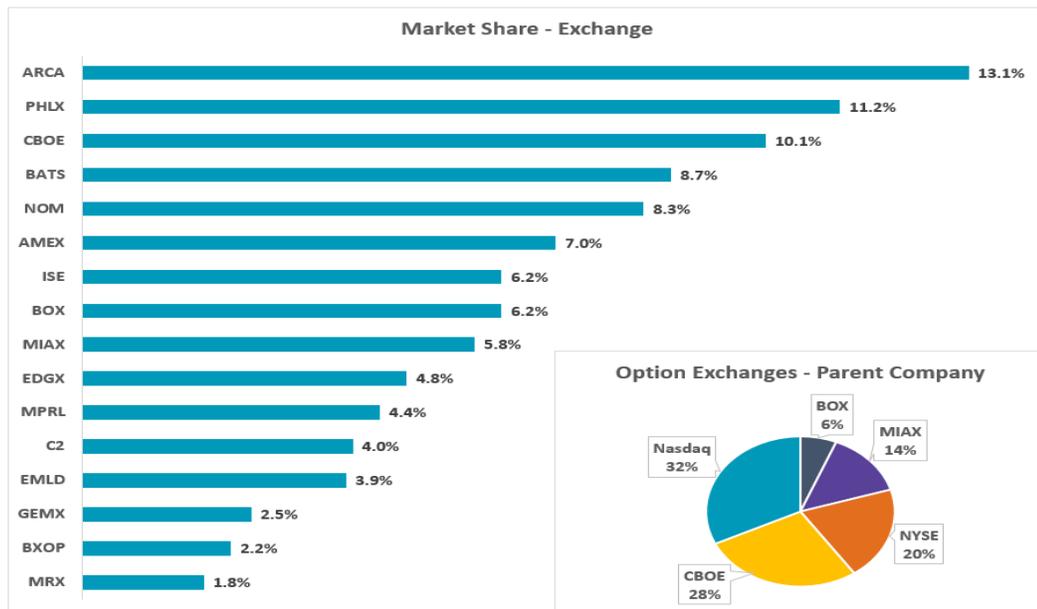
With respect to trading, the three data vendors/technology suppliers do not trade on their own behalf or on the behalf of any downstream customers, although their customers may do so. The Exchange understands that these three firms cancelled due to insufficient demand from their downstream customers for MRX data. The two remaining firms, which do engage in options trading, have not traded on MRX, but are active traders on other Nasdaq options exchanges.³⁶

Detailed information supporting the first step in the analysis of substitution-based competitive forces—low market share—is set forth in Chart 1, which shows the January

³⁶ NYSE National did not provide similarly detailed information regarding the characteristics of cancelling customers. Nevertheless, the Exchange believes that the characteristics of such customers are similar for both NYSE National and MRX, and the same competitive forces apply to all exchanges.

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

Chart 1: Market Share by Exchange for January 2022



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

The second step in this analysis—demonstrating that only a small number of firms purchase market data relative to affiliated options exchanges—is shown in Chart 2, which compares the number of firms with access to market data from MRX to the number of firms purchasing market data from the four MRX-affiliated options exchanges, GEMX,

ISE, The Nasdaq Stock Market LLC (“NOM”) and Nasdaq PHLX, LLC (“Phlx”).

Chart 2: Number of Firms with Access to Market Data and Purchasing Trading Services from Options Venues (March 2022)

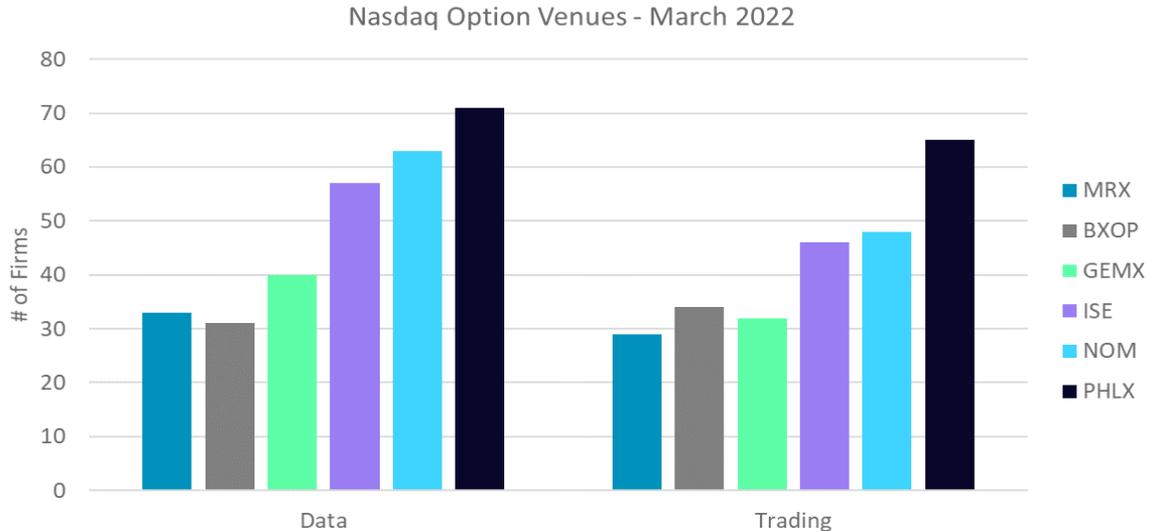


Chart 2 shows that 34 firms subscribed to at least one market data product from MRX in the first quarter of 2022. This is the second lowest number of firms purchasing market data from the Nasdaq-affiliated options exchanges.

The third step in this analysis—showing that a sizable number of customers terminated subscriptions following the proposal of the fees—is confirmed by the five customer cancellations. As explained above, all five customers terminated all feeds available to them. Although not all customers took all of the MRX feeds, each one of these feeds was cancelled by at least one customer, demonstrating that customers can and do exercise choice with respect to each feed. These cancellations reduced the number of firms with access to at least one MRX market data feed from 34 to 29, an approximately 15 percent reduction in usage, demonstrating that firms can and do exercise choice in determining whether to purchase market data from the Exchange.

MRX lists no proprietary options products that are entirely unique to MRX.

Firms can substitute MRX market data with feeds from exchanges that provide a high degree of functionality, including complex orders. Full market data options are available, for example, from Cboe,³⁷ MIAX,³⁸ and NYSE Arca Options.³⁹ Because MRX does not list options on products that are exclusively available on MRX, consumers can substitute MRX data with data from any exchange that lists such multiply-listed options, or through OPRA. Moreover, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

This analysis must be viewed in the context of a field with relatively low barriers to entry. MRX, like many new entrants to the field, offered market data for free to establish itself and gain market share. As new entrants enter the field, MRX can also expect competition from these new entrants. Those new entrants, like MRX, are likely to set market data fees to zero, increasing marketplace competition.

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

³⁷ See Cboe DataShop, available at <https://datashop.cboe.com/>.

³⁸ See MIAX Options Market Data & Offerings, available at <https://www.miaxoptions.com/market-data-offerings>.

³⁹ See NYSE Options Markets, available at <https://www.nyse.com/options>.

With respect to the proposed Non-Display Enterprise License, enterprise licenses in general have been widely recognized as an effective and not unfairly discriminatory method of distributing market data. Enterprise licenses are widely employed by options exchanges, and the proposal here is typical of such licenses.

After 6 years, MRX proposes to assess market data fees, just as all other options exchanges do now.⁴⁰ These fees will not impede access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. For all of the reasons set forth above, the Exchange is subject to "significant substitution-based competitive forces": (i) it has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today; (ii) only a small number of firms purchase market data from MRX relative to its affiliated options exchanges; and (iii) a sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do

⁴⁰ Prior to submission of the proposed pricing changes on May 2, 2022, MRX was the only options exchange not assessing market data fees.

exercise choice in deciding whether to purchase market data.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any burden on the ability of other options exchanges to compete. Each of the remaining 15 options exchanges currently sells its market data, and is capable of modifying its fees in response to the proposed changes by MRX. Moreover, allowing MRX, or any new market entrant, to waive fees for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because each customer will be able to decide whether or not to purchase the Exchange's market data, as demonstrated by the fact that a significant number of the Exchange's customers have already elected to terminate their access to such feeds.

The Exchange 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. 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. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share.⁴¹

⁴¹ The Exchange notified market participants of the new fees on December 20, 2021. See Data News #2021-11 (December 20, 2021, available at

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,⁴² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

<http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2021-11>. As such, market participants have had ample notice of the proposed fee changes and will be able to adjust their purchases of exchange services accordingly.

⁴² 15 U.S.C. 78s(b)(3)(A)(ii).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-MRX-2022-22)

October __, 2022

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on October 14, 2022, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend MRX's Pricing Schedule at Options 7, Section 7.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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

³ The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR-MRX-2022-04), instituting fees for membership, ports and market data. See Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR-MRX-2022-04). On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership (SR-MRX-2022-07), market data (SR-MRX-2022-08) and ports (SR-MRX-2022-09). On August 25, 2022, the Exchange withdrew the market data filing (SR-MRX-2022-08) and replaced it with SR-MRX-2022-14. See Securities Exchange Act Release No. 95708 (September 8, 2022), 87 FR 56457 (September 14, 2022) (SR-MRX-2022-14). On October 14, 2022, the Exchange withdrew SR-MRX-2022-14 and replaced it with the instant filing in order to reflect changes to the information contained within each of the five MRX market data feeds proposed in SR-MRX-2022-18. See Securities Exchange Act Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR-MRX-2022-18).

⁴ See, e.g., Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSENAT-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf>. (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

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

This Proposal reflects MRX’s assessment that it has gained sufficient market share to compete effectively against other 15 options exchanges without waiving market data fees. Such fees are assessed by options exchanges that compete with MRX—indeed, MRX is the only options exchange (out of the 16 current options exchanges) not to assess them today.

As explained in further detail below, MRX in 2022 is in the same position as NYSE National in 2020, when it sought approval for the “NYSE National Integrated Feed.”⁵ The Commission approved the NYSE National Integrated Feed based on a finding that it “was subject to significant substitution-based competitive forces” based on “NYSE National’s consistently low percentage of market share, the relatively small number of subscribers to the NYSE National Integrated Feed, and the sizeable portion of subscribers that terminated their subscriptions following the proposal of the fees.”⁶

The three factors cited in the Commission’s approval order for NYSE National are present in MRX today. First, MRX has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today. Second, only a small number of firms purchase market data from MRX relative to its affiliated options exchanges. Third, a sizeable portion of

⁵ NYSE National stated that the proposed integrated feed included depth-of-book order data, last sale data, security status updates, and stock summary messages. See Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE-NAT-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf>.

⁶ See *id.*

subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase the Exchange’s market data feeds.

Disapproval of the Proposal—given that the three factors cited in the Commission’s approval order for NYSE National two years ago are present in MRX today—would result in differential treatment of similarly-situated exchanges. Under such circumstances, disapproval of the Proposal should be rejected as arbitrary and capricious.

Disapproval would also place a substantial burden on competition. MRX would be uniquely disadvantaged as the only options exchange unable to charge for its market data. If the Commission were to disapprove this Proposal, that action, and not market forces, would determine whether MRX is successful in its competition with other options exchanges.

New exchanges commonly waive data fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, “graduate” to compete against established exchanges and charge fees that reflect the value of their services. If MRX is incorrect in its assessment, that error will be reflected in MRX’s ability to compete with other options exchanges.⁷

The Exchange proposes to amend fees for the following market data feeds within Options 7, Section 7: (1) Nasdaq MRX Depth of Market Data Feed (“Depth of Market

⁷ Nasdaq announced that, beginning in 2022, it will migrate its North American markets to Amazon Web Services in a phased approach, starting with MRX. The MRX migration will take place in November 2022. The proposed fee changes are entirely unrelated to this effort.

Feed”);⁸ (2) Nasdaq MRX Order Feed (“Order Feed”);⁹ (3) Nasdaq MRX Top of Market Feed (“Top Feed”);¹⁰ (4) Nasdaq MRX Trades Feed (“Trades Feed”);¹¹ and (5) Nasdaq MRX Spread Feed (“Spread Feed”).¹² Prior to the initial filing of these proposed price

⁸ Nasdaq MRX Depth of Market Data Feed is a data feed that provides full order and quote depth information for individual orders and quotes on the Exchange book and last sale information for trades executed on the Exchange. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on the Exchange and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance). See Options 3, Section 23(a)(1).

⁹ Nasdaq MRX Order Feed provides information on new orders resting on the book (e.g., price, quantity, market participant capacity and Attributable Order tags when provided by a Member). The data provided for each option series includes the symbols (series and underlying security), displayed order types, order attributes (e.g., OCC account number, give-up information, CMTA information), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance), auction and exposure notifications. See Options 3, Section 23(a)(2).

¹⁰ Nasdaq MRX Top of Market Feed calculates and disseminates MRX’s best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information and for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. See Options 3, Section 23(a)(3).

¹¹ Nasdaq MRX Trades Feed displays last trade information. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. See Options 3, Section 23(a)(4).

¹² Nasdaq MRX Spread Feed is a feed that consists of: (1) options orders for all Complex Orders (i.e., spreads, buy-writes, delta neutral strategies, etc.); (2) full

changes on May 2, 2022, no fees had been assessed for these feeds.

In addition to the proposed fees for each data feed, the Exchange proposes an Internal Distributor Fee¹³ of \$1,500 per month for the Depth of Market Feed, Order Feed, and Top Feed, an Internal Distributor Fee of \$750 per month for the Trades Feed, and an Internal Distributor Fee of \$1,000 per month for the Spread Feed. If a Member subscribes to both the Trades Feed and the Spread Feed, both Internal Distributor Fees would be assessed.

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

MRX will also assess Professional¹⁴ and Non-Professional¹⁵ subscriber fees. The

Complex Order depth information, including prices, side, size, capacity, Attributable Complex Order tags when provided by a Member, and order attributes (e.g., OCC account number, give-up information, CMTA information), for individual Complex Orders on the Exchange book; (3) last trades information; and (4) calculating and disseminating MRX's complex best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable Complex Order interest in the System. The feed also provides Complex Order auction notifications. See Options 3, Section 23(a)(5).

¹³ A "distributor" of Nasdaq MRX data is any entity that receives a feed or data file of data directly from Nasdaq MRX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a Nasdaq Global Data Agreement.

¹⁴ A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber.

¹⁵ A Non-Professional Subscriber is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an

Professional Subscriber will be \$25 per month, and the Non-Professional Subscriber will be \$1 per month. These subscriber fees (both Professional and Non-Professional) cover the usage of all five MRX data products identified above and would not be assessed separately for each product.¹⁶

MRX also proposes a Non-Display Enterprise License for \$7,500 per month. This license would lower costs for internal professional subscribers and lower administrative costs overall by permitting the distribution of all MRX proprietary direct data feed products to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber, or requiring the customer to count internal subscribers.¹⁷ The Non-Display Enterprise License is in addition to any other associated distributor fees for MRX proprietary direct data feed products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹

“investment adviser” as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

¹⁶ For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top Quote Feed, Order, and Depth of Market Feed the firm would only report the Subscriber once and pay \$25 (\$1 for Non-Professional).

¹⁷ The Non-Display Enterprise License of \$7,500 per month is optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

¹⁸ See 15 U.S.C. 78f(b).

¹⁹ See 15 U.S.C. 78f(b)(4) and (5).

in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ...”²⁰

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

²⁰ See NetCoalition, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

broader forms that are most important to investors and listed companies.”²¹

Congress directed the Commission to “rely on ‘competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.’”²² As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. “If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”²³ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”²⁴ In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a “proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.”²⁵

History of MRX Operations

Over the years, MRX has amended its transactional pricing to attract order flow to

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²² See NetCoalition, 615 F.3d at 534-35; see also H.R. Rep. No. 94-229 at 92 (1975) (“[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.”).

²³ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 Fed. Reg. 74,770 (December 9, 2008) (SR-NYSEArca-2006-21).

²⁴ Id.

²⁵ See U.S. Securities and Exchange Commission, “Staff Guidance on SRO Rule filings Relating to Fees” (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

the Exchange.²⁶ In June 2019, MRX commenced offering complex orders.²⁷ With the

²⁶ See e.g. Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR-ISEMercury-2016-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISEMercury-2016-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISEMercury-2016-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR-ISEMercury-2016-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR-MRX-2018-01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR-MRX-2018-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange's Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR-MRX-2018-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR-MRX-2018-27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR-MRX-2019-02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR-MRX-2019-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR-MRX-2020-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR-MRX-2020-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR-MRX-2020-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR-MRX-2020-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR-MRX-2020-19) (Notice of Filing and Immediate

addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities and other trading functionality that was nearly identical to functionality available on ISE.²⁸ The added functionality attracted order flow, which has enhanced the value of its market data and is the basis for these proposed fee changes.

Market Data Products are Subject to Significant Substitution-Based Competitive Forces.

An Exchange can show that a product is “subject to significant substitution-based competitive forces” by introducing evidence that customers can substitute that product with products offered by other exchanges.

NYSE National was able to prove exactly this when it sought approval for the

Effectiveness of Proposed Rule Change To the Exchange’s Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR-MRX-2020-21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR-MRX-2021-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange’s Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

²⁷ See Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

²⁸ One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. “Nasdaq Precise” or “Precise” is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (e.g., parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (e.g., NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (e.g., kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (e.g., order history and done away trade reports). See ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

“NYSE National Integrated Feed”²⁹ in 2020. NYSE National at the time of its filing was in a similar position to MRX today—the exchange had an approximately 1.9% market share of executed volume of equity trades.³⁰ The Commission approved the proposal to establish fees for NYSE National based on a finding that the exchange “was subject to significant substitution-based competitive forces.” Citing NetCoalition I,³¹ the Commission stated that “whether a market is competitive notwithstanding potential alternatives depends on factors such as the number of buyers who consider other products interchangeable and at what prices.”³² Noting that “many market participants . . . do not subscribe to . . . the NYSE National Integrated Feed, even when the feed is offered without charge,” the Commission concluded that “NYSE National’s consistently low percentage of market share, the relatively small number of subscribers to the NYSE National Integrated Feed, and the sizeable portion of subscribers that terminated their subscriptions following the proposal of the fees,” demonstrated that the exchange “was subject to significant substitution-based competitive forces” in setting fees such that the proposed rule change was consistent with the Act.³³

MRX today is in essentially the same position as NYSE National in 2020, and all three of the factors cited in the Commission’s approval order for NYSE National are

²⁹ See Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE Nat-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSE Nat-2020-05.pdf>.

³⁰ See id.

³¹ See NetCoalition v. SEC, 615 F.3d 525, 535 (D.C. 2010) (“NetCoalition I”)

³² See NYSE National Approval Order (citing NetCoalition I)

³³ See id.

present in MRX today. First, MRX has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today. Second, only a small number of firms purchase market data from MRX relative to its affiliated options exchanges. Third, a sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase the Exchange’s market data feeds.

As of May 2, 2022, the date that MRX initially proposed these market data fees, MRX reported that two customers had terminated their market data subscriptions.³⁴ As of now, a total of five firms have cancelled, amounting to approximately 15 percent of the 34 customers that had been taking MRX feeds in the first quarter of 2022.³⁵

Commission Staff have requested additional information pertaining to: (i) the types of feeds available to these customers prior to termination, (ii) the characteristics of the customers that terminated their feeds, and (iii) whether such customers traded on the Exchange.

With respect to the types of data feeds accessed, two of the five customers had access to all five feeds: the Depth of Market Data, the Order Feed, the Top Feed, the Trades Feed, and the Spread Feed. The three remaining customers had access to only two feeds: the Order Feed and the Top Feed. All five customers cancelled all feeds that they had access to.

³⁴ See Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR-MRX-2022-04).

³⁵ These terminations were limited to market data; none of these customers were members of MRX and therefore purchased neither memberships nor ports from the Exchange.

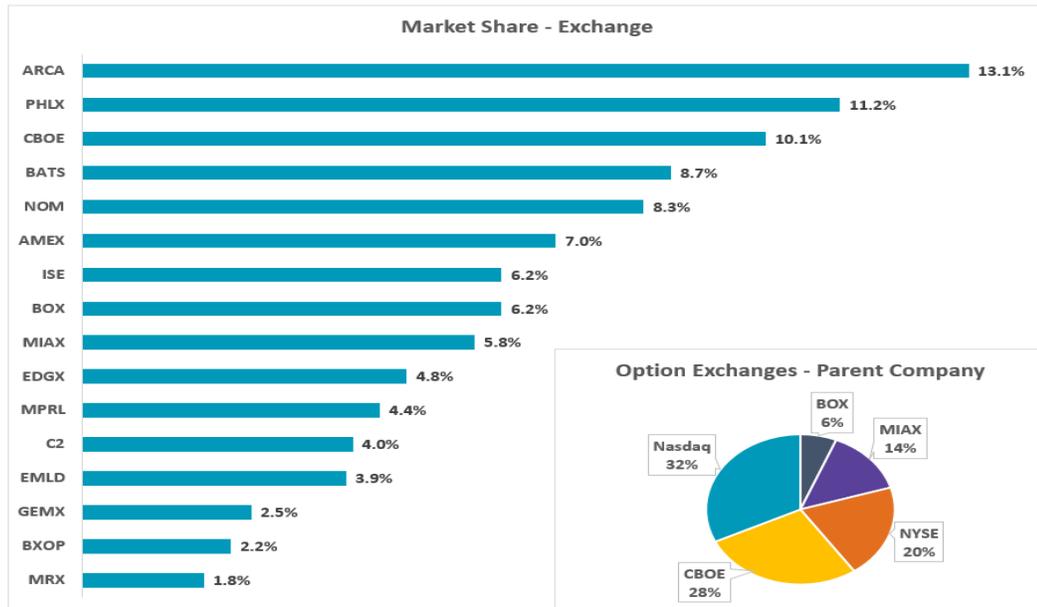
With respect to the types of customers cancelling feeds, three of the five were either data vendors or technology suppliers. Data vendors purchase exchange data and redistribute it to downstream customers, while technology suppliers incorporate exchange data into software solutions, which are sold to downstream customers. The remaining two firms engage in options trading, either on their own behalf or that of a customer.

With respect to trading, the three data vendors/technology suppliers do not trade on their own behalf or on the behalf of any downstream customs, although their customers may do so. The Exchange understands that these three firms cancelled due to insufficient demand from their downstream customers for MRX data. The two remaining firms, which do engage in options trading, have not traded on MRX, but are active traders on other Nasdaq options exchanges.³⁶

Detailed information supporting the first step in the analysis of substitution-based competitive forces—low market share—is set forth in Chart 1, which shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

³⁶ NYSE National did not provide similarly detailed information regarding the characteristics of cancelling customers. Nevertheless, the Exchange believes that the characteristics of such customers are similar for both NYSE National and MRX, and the same competitive forces apply to all exchanges.

Chart 1: Market Share by Exchange for January 2022



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

The second step in this analysis—demonstrating that only a small number of firms purchase market data relative to affiliated options exchanges—is shown in Chart 2, which compares the number of firms with access to market data from MRX to the number of firms purchasing market data from the four MRX-affiliated options exchanges, GEMX, ISE, The Nasdaq Stock Market LLC (“NOM”) and Nasdaq PHLX, LLC (“Phlx”).

Chart 2: Number of Firms with Access to Market Data and Purchasing Trading Services from Options Venues (March 2022)

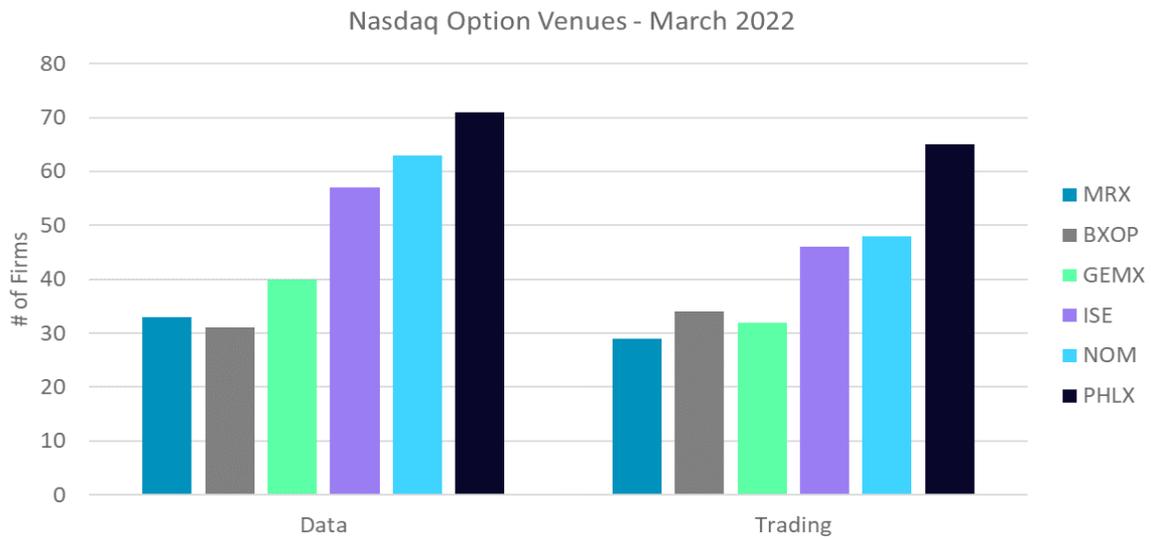


Chart 2 shows that 34 firms subscribed to at least one market data product from MRX in the first quarter of 2022. This is the second lowest number of firms purchasing market data from the Nasdaq-affiliated options exchanges.

The third step in this analysis—showing that a sizable number of customers terminated subscriptions following the proposal of the fees—is confirmed by the five customer cancellations. As explained above, all five customers terminated all feeds available to them. Although not all customers took all of the MRX feeds, each one of these feeds was cancelled by at least one customer, demonstrating that customers can and do exercise choice with respect to each feed. These cancellations reduced the number of firms with access to at least one MRX market data feed from 34 to 29, an approximately 15 percent reduction in usage, demonstrating that firms can and do exercise choice in determining whether to purchase market data from the Exchange.

MRX lists no proprietary options products that are entirely unique to MRX. Firms can substitute MRX market data with feeds from exchanges that provide a high

degree of functionality, including complex orders. Full market data options are available, for example, from Cboe,³⁷ MIAAX,³⁸ and NYSE Arca Options.³⁹ Because MRX does not list options on products that are exclusively available on MRX, consumers can substitute MRX data with data from any exchange that lists such multiply-listed options, or through OPRA. Moreover, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

This analysis must be viewed in the context of a field with relatively low barriers to entry. MRX, like many new entrants to the field, offered market data for free to establish itself and gain market share. As new entrants enter the field, MRX can also expect competition from these new entrants. Those new entrants, like MRX, are likely to set market data fees to zero, increasing marketplace competition.

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

With respect to the proposed Non-Display Enterprise License, enterprise licenses in general have been widely recognized as an effective and not unfairly discriminatory

³⁷ See Cboe DataShop, available at <https://datashop.cboe.com/>.

³⁸ See MIAAX Options Market Data & Offerings, available at <https://www.miaaxoptions.com/market-data-offerings>.

³⁹ See NYSE Options Markets, available at <https://www.nyse.com/options>.

method of distributing market data. Enterprise licenses are widely employed by options exchanges, and the proposal here is typical of such licenses.

After 6 years, MRX proposes to assess market data fees, just as all other options exchanges do now.⁴⁰ These fees will not impede access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. For all of the reasons set forth above, the Exchange is subject to "significant substitution-based competitive forces": (i) it has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today; (ii) only a small number of firms purchase market data from MRX relative to its affiliated options exchanges; and (iii) a sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase market data.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any

⁴⁰ Prior to submission of the proposed pricing changes on May 2, 2022, MRX was the only options exchange not assessing market data fees.

burden on the ability of other options exchanges to compete. Each of the remaining 15 options exchanges currently sells its market data, and is capable of modifying its fees in response to the proposed changes by MRX. Moreover, allowing MRX, or any new market entrant, to waive fees for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because each customer will be able to decide whether or not to purchase the Exchange's market data, as demonstrated by the fact that a significant number of the Exchange's customers have already elected to terminate their access to such feeds.

The Exchange 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. 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. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share.⁴¹

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.

⁴¹ The Exchange notified market participants of the new fees on December 20, 2021. See Data News #2021-11 (December 20, 2021, available at <http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2021-11>). As such, market participants have had ample notice of the proposed fee changes and will be able to adjust their purchases of exchange services accordingly.

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.⁴² At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MRX-2022-22 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-2022-22. This file number should be included on the subject line if e-mail is used. To help the Commission process

⁴² 15 U.S.C. 78s(b)(3)(A)(ii).

and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-MRX-2022-22 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.⁴³

J. Matthew DeLesDernier
Assistant Secretary

⁴³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq MRX, LLC Rules

* * * * *

Options Rules

* * * * *

Options 7 Pricing Schedule

* * * * *

Section 7. Market Data

Distributor Fees

	<u>Monthly Charge</u>	
	<u>Internal Distributor Fee</u>	<u>External Distributor Fee</u>
(1) [Nasdaq MRX]Depth of Market Feed[Data]	<u>\$1,500</u> [\$0 per month]	<u>\$2,000</u>
(2) [Nasdaq MRX]Order Feed	<u>\$1,500</u> [\$0 per month]	<u>\$2,000</u>
(3) [Nasdaq MRX]Top [Quote]Feed	<u>\$1,500</u> [\$0 per month]	<u>\$2,000</u>
(4) [Nasdaq MRX]Trades Feed	<u>\$750</u> [\$0 per month]	<u>\$1,000</u>
(5) [Nasdaq MRX]Spread Feed	<u>\$1,000</u> [\$0 per month]	<u>\$1,500</u>

Subscriber Fees

	<u>Monthly Charge</u>
<u>Professional</u>	<u>\$25</u>
<u>Non-Professional</u>	<u>\$1</u>
<u>Non-Display Enterprise License: Permits distribution to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber. The Non-Display Enterprise License covers non-display Subscriber Fees for all MRX proprietary direct data feed products and is in addition to any other associated distributor fees for MRX proprietary direct data feed products.</u>	<u>\$7,500</u>

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

organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

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

• The Monthly Charge per Subscriber (both Professional and Non-Professional) covers the usage of all five MRX data products and will not be assessed separately for each data product. MRX data is comprised of Depth of Market, Order, Top of Market, Trades, and Spread data. For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top of Market, Order, and Depth of Market the firm would only report the Subscriber once and pay \$25 (\$1 for Non-Professional).

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

* * * * *