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Page 1 of * 22

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

File No. * SR 2023 - * 03

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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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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 the Pricing Schedule at Options 7, Section 4 (Complex Order Fees)

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 * Sun Last Name * Kim

Title * Associate General Counsel

E-mail * Sun.Kim@nasdaq.com

Telephone * (646) 420-7816 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 01/30/2023


(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: 2023.01.30 15:15:53 -05'00'

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-MRX-2023-03 19b-4.doc

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

Exhibit 1 - Notice of Proposed Rule Change *

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SR-MRX-2023-03 Exhibit 1.doc

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

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

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

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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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SR-MRX-2023-03 Exhibit 5.doc

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

Partial Amendment

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

1. Text of the Proposed Rule Change

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

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

Sun Kim
Associate General Counsel
Nasdaq, Inc.
646-420-7816

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

The purpose of the proposed rule change is to amend the Exchange’s Pricing Schedule at Options 7, Section 4 (Complex Order Fees).³

As set forth in Options 7, Section 4, the Exchange presently assesses all market participants except Priority Customers⁴ a uniform \$0.15 per contract fee for all complex order transactions in all symbols.⁵ Priority Customers are presently assessed no fees for complex order transactions. In addition, the Exchange currently reduces this \$0.15 per contract fee to \$0.00 for Market Makers⁶ when a Market Maker trades against Priority Customer orders that originate from an Affiliated Member⁷ or Affiliated Entity.⁸ This

³ The Exchange initially filed the proposed pricing changes on January 3, 2023 (SR-MRX-2023-01) to adopt a Market Maker growth incentive and to amend complex order fees. On January 17, 2023, the Exchange withdrew that filing and submitted SR-MRX-2023-02. On January 30, 2023, the Exchange withdrew that filing and submitted separate filings for the Market Maker growth incentive and complex order fees. This specific filing replaces the complex order fees set forth in SR-MRX-2023-02.

⁴ 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 Options 1, Section 1(a)(36).

⁵ With the exception of complex PIM orders, which are subject to separate pricing in Options 7, Section 3.A.

⁶ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

⁷ 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.

⁸ An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the

incentive is designed to encourage Market Makers, Affiliated Members, and/or Affiliated Entities to direct additional Priority Customer order flow to the Exchange.

The Exchange now proposes to differentiate complex order pricing between Penny and Non-Penny Symbols as follows:

Capacity of Market Participant	Fee per contract – Penny Symbols	Fee per contract – Non-Penny Symbols
Market Maker	\$0.35	\$0.85
Non-Nasdaq MRX Market Maker (FarMM)	\$0.35	\$0.85
Firm Proprietary / Broker-Dealer	\$0.35	\$0.85
Professional Customer	\$0.35	\$0.85
Priority Customer	\$0.00	\$0.00

With the proposed changes, the complex order fee for all non-Priority Customers will increase from \$0.15 to \$0.35 per contract in Penny Symbols. In Non-Penny Symbols, this fee will increase from \$0.15 to \$0.85 per contract for all non-Priority Customers. Priority Customers will continue to receive free executions in all symbols under this proposal.

In addition, the Exchange will continue to provide Market Makers with the reduced fee described above for their complex orders in both Penny and Non-Penny

Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

Symbols when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or Affiliated Entity. Accordingly, the Exchange proposes to clarify note 2 in Options 7, Section 4 to reflect the proposed changes. In particular, note 2 will provide that a complex order Market Maker fee of \$0.00 per contract applies instead of the above-referenced complex order fee in Penny and Non-Penny Symbols, when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or an Affiliated Entity.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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’”¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

¹¹ 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)).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

The Exchange believes that the proposed changes to its complex order fee schedule in Options 7, Section 4 are reasonable. As discussed above, the proposed complex order fee for all non-Priority Customers will increase from \$0.15 to \$0.35 per contract in Penny Symbols. In Non-Penny Symbols, this fee will increase from \$0.15 to \$0.85 per contract for all non-Priority Customers. Priority Customers will continue to receive free executions in all symbols under this proposal. While the non-Priority Customer complex fees are increasing across the board for all symbols, the Exchange believes that the proposing pricing will remain competitive and in line with other options exchanges that charge complex order fees.¹³ When the Exchange first adopted complex functionality and related fees back in 2019, it initially set non-Priority Customer complex fees at \$0.15 per contract (i.e., the current rate).¹⁴ The Exchange adopted this initial pricing structure (which was lower than certain options exchanges that had comparable complex pricing) to enable it to effectively compete with other exchanges by attracting complex order flow to the Exchange, thereby helping the Exchange to gain market share for complex executions. After more than three years, the Exchange now believes that it is appropriate and reasonable to adjust these fees in order to bring them in line with complex fees charged at other options exchanges.

¹³ For example, MIAX Emerald charges complex order fees in Penny Classes that range from \$0.10 to \$0.50 per contract for all origin types except Priority Customers, depending on whether the market participant is a maker or taker. In Non-Penny Classes, those fees range from \$0.20 to \$0.88 per contract for all origin types except Priority Customer, depending on whether the market participant is a maker or taker. See MIAX Emerald Fee Schedule, Section 1(a)i) at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_1_9_2023.pdf.

¹⁴ See Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14).

Furthermore, the Exchange believes that the proposed fee structure for non-Priority Customer complex orders is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated participants. The Exchange believes that it is equitable and not unfairly discriminatory to continue to offer Priority Customers free executions in complex orders in all symbols. 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.

Lastly, the Exchange believes that the proposed changes to note 2 in Options 7, Section 4 are reasonable, equitable, and not unfairly discriminatory because these are clarifying changes to reflect that the Exchange will continue to provide Market Makers with the reduced fee described above for their complex orders in all symbols when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or Affiliated Entity.

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.

In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. As noted above, the proposed changes will apply uniformly to all similarly situated market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As discussed above for the proposed non-Priority Customer complex fee structure, the Exchange notes that its proposal will bring this pricing in line with other options exchanges that offer similar complex functionality.¹⁵

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.

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.

¹⁵ See supra note 13.

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,¹⁶ 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.

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.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-MRX-2023-03)

January __, 2023

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Pricing Schedule at Options 7, Section 4 (Complex Order Fees)

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 January 30, 2023, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to a proposal to amend the Exchange’s Pricing Schedule at Options 7, Section 4 (Complex Order Fees).

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

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

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

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

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, Section 4 (Complex Order Fees).³

As set forth in Options 7, Section 4, the Exchange presently assesses all market participants except Priority Customers⁴ a uniform \$0.15 per contract fee for all complex order transactions in all symbols.⁵ Priority Customers are presently assessed no fees for complex order transactions. In addition, the Exchange currently reduces this \$0.15 per contract fee to \$0.00 for Market Makers⁶ when a Market Maker trades against Priority

³ The Exchange initially filed the proposed pricing changes on January 3, 2023 (SR-MRX-2023-01) to adopt a Market Maker growth incentive and to amend complex order fees. On January 17, 2023, the Exchange withdrew that filing and submitted SR-MRX-2023-02. On January 30, 2023, the Exchange withdrew that filing and submitted separate filings for the Market Maker growth incentive and complex order fees. This specific filing replaces the complex order fees set forth in SR-MRX-2023-02.

⁴ 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 Options 1, Section 1(a)(36).

⁵ With the exception of complex PIM orders, which are subject to separate pricing in Options 7, Section 3.A.

⁶ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

Customer orders that originate from an Affiliated Member⁷ or Affiliated Entity.⁸ This incentive is designed to encourage Market Makers, Affiliated Members, and/or Affiliated Entities to direct additional Priority Customer order flow to the Exchange.

The Exchange now proposes to differentiate complex order pricing between Penny and Non-Penny Symbols as follows:

Capacity of Market Participant	Fee per contract – Penny Symbols	Fee per contract – Non-Penny Symbols
Market Maker	\$0.35	\$0.85
Non-Nasdaq MRX Market Maker (FarMM)	\$0.35	\$0.85
Firm Proprietary / Broker-Dealer	\$0.35	\$0.85
Professional Customer	\$0.35	\$0.85
Priority Customer	\$0.00	\$0.00

With the proposed changes, the complex order fee for all non-Priority Customers will increase from \$0.15 to \$0.35 per contract in Penny Symbols. In Non-Penny Symbols, this fee will increase from \$0.15 to \$0.85 per contract for all non-Priority

⁷ 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.

⁸ An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterparty, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

Customers. Priority Customers will continue to receive free executions in all symbols under this proposal.

In addition, the Exchange will continue to provide Market Makers with the reduced fee described above for their complex orders in both Penny and Non-Penny Symbols when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or Affiliated Entity. Accordingly, the Exchange proposes to clarify note 2 in Options 7, Section 4 to reflect the proposed changes. In particular, note 2 will provide that a complex order Market Maker fee of \$0.00 per contract applies instead of the above-referenced complex order fee in Penny and Non-Penny Symbols, when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or an Affiliated Entity.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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’”¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and

¹¹ 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)).

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that the proposed changes to its complex order fee schedule in Options 7, Section 4 are reasonable. As discussed above, the proposed complex order fee for all non-Priority Customers will increase from \$0.15 to \$0.35 per contract in Penny Symbols. In Non-Penny Symbols, this fee will increase from \$0.15 to \$0.85 per contract for all non-Priority Customers. Priority Customers will continue to receive free executions in all symbols under this proposal. While the non-Priority Customer complex fees are increasing across the board for all symbols, the Exchange believes that the proposing pricing will remain competitive and in line with other options exchanges that charge complex order fees.¹³ When the Exchange first adopted complex functionality and related fees back in 2019, it initially set non-Priority Customer complex fees at \$0.15 per contract (i.e., the current rate).¹⁴ The Exchange adopted this initial pricing structure (which was lower than certain options exchanges that had comparable complex pricing) to enable it to effectively compete with other exchanges by attracting complex order flow to the Exchange, thereby helping the Exchange to gain market share

¹³ For example, MIAX Emerald charges complex order fees in Penny Classes that range from \$0.10 to \$0.50 per contract for all origin types except Priority Customers, depending on whether the market participant is a maker or taker. In Non-Penny Classes, those fees range from \$0.20 to \$0.88 per contract for all origin types except Priority Customer, depending on whether the market participant is a maker or taker. See MIAX Emerald Fee Schedule, Section 1)a)i) at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_1_9_2023.pdf.

¹⁴ See Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14).

for complex executions. After more than three years, the Exchange now believes that it is appropriate and reasonable to adjust these fees in order to bring them in line with complex fees charged at other options exchanges.

Furthermore, the Exchange believes that the proposed fee structure for non-Priority Customer complex orders is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated participants. The Exchange believes that it is equitable and not unfairly discriminatory to continue to offer Priority Customers free executions in complex orders in all symbols. 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.

Lastly, the Exchange believes that the proposed changes to note 2 in Options 7, Section 4 are reasonable, equitable, and not unfairly discriminatory because these are clarifying changes to reflect that the Exchange will continue to provide Market Makers with the reduced fee described above for their complex orders in all symbols when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or Affiliated Entity.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. As

noted above, the proposed changes will apply uniformly to all similarly situated market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As discussed above for the proposed non-Priority Customer complex fee structure, the Exchange notes that its proposal will bring this pricing in line with other options exchanges that offer similar complex functionality.¹⁵

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

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

No written comments were either solicited or received.

¹⁵ See supra note 13.

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.¹⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MRX-2023-03 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MRX-2023-03. This file number should be included on the subject line if e-mail is used. To help the Commission process

¹⁶ 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-2023-03 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

NASDAQ MRX, LLC RULES

* * * * *

OPTIONS 7 PRICING SCHEDULE

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Section 4. Complex Order Fees

* * * * *

Capacity of Market Participant	Fee per contract – <u>Penny Symbols</u>	Fee per contract – <u>Non-Penny Symbols</u>
Market Maker	\$0.[15]35 ⁽²⁾	<u>\$0.85⁽²⁾</u>
Non-Nasdaq MRX Market Maker (FarMM)	\$0.[15]35	<u>\$0.85</u>
Firm Proprietary / Broker-Dealer	\$0.[15]35	<u>\$0.85</u>
Professional Customer	\$0.[15]35	<u>\$0.85</u>
Priority Customer	\$0.00	<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 in Penny and Non-Penny Symbols, when the Market Maker trades against Priority Customer orders that originate from an Affiliated Member or an Affiliated Entity.

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