

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>143</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96824; File No. SR-MRX-2023-05]

### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Options 7, Section 6

February 7, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 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 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

MRX proposes to amend its Pricing Schedule at Options 7, Section 6, Ports and Other Services, to assess port fees, which were not assessed until this year. Prior to this year, MRX did not assess its Members any port fees. MRX launched its options market in 2016<sup>3</sup> and Members did not pay any port fees until 2022.

Newly-opened exchanges often charge no fees for certain services, such as ports, in order to attract order flow to an exchange, and later amend their fees to charge for those services.<sup>4</sup> The proposed port fees within Options 7, Section 6, Ports and Other Services, are described below.

The Exchange proposes to amend fees for the following ports within Options 7, Section 6: (1) FIX,<sup>5</sup> (2) SQF,<sup>6</sup> (3) SQF

<sup>3</sup>The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR-MRX-2022-04) instituting fees for membership, ports and market data. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. SR-MRX-2022-06 replaced the port fees set forth in SR-MRX-2022-04. On July 1, 2022, SR-MRX-2022-06 was withdrawn and replaced with SR-MRX-2022-09. On August 25, 2022, SR-MRX-2022-09 was withdrawn and replaced with SR-MRX-2022-12. On October 11, 2022, SR-MRX-2022-12 was withdrawn and replaced with SR-MRX-2022-20. On December 8, 2022, SR-MRX-2022-20 was withdrawn and replaced with SR-MRX-2022-28. On December 16, 2022, SR-MRX-2022-28 was withdrawn and replaced with SR-MRX-2022-29. On February 2, 2023, SR-MRX-2022-29 was withdrawn and replaced with the instant filing.

<sup>4</sup> See, e.g., Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Initial Fee Schedule and Other Fees for MEMX LLC).

<sup>5</sup> “Financial Information eXchange” or “FIX” is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages. See Supplementary Material .03(a) to Options 3, Section 7.

<sup>6</sup> “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Supplementary Material .03(c) to Options 3, Section 7.

Purge;<sup>7</sup> (4) OTTO;<sup>8</sup> (5) CTI;<sup>9</sup> (6) FIX DROP;<sup>10</sup> and Disaster Recovery Ports.<sup>11</sup> Currently, no fees are being assessed for these ports.

The Exchange proposes to assess no fee for the first FIX Port obtained by an Electronic Access Member<sup>12</sup> or the first

<sup>7</sup> SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

<sup>8</sup> “Ouch to Trade Options” or “OTTO” is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. See Supplementary Material .03(b) to Options 3, Section 7. Unlike FIX, which offers routing capability, OTTO does not permit routing.

<sup>9</sup> Clearing Trade Interface (“CTI”) is a real-time cleared trade update message that is sent to a Member after an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement (“CMTA”) or The Options Clearing Corporation (“OCC”) number; (ii) badge or mnemonic; (iii) account number; (iv) information which identifies the transaction type (e.g., auction type) for billing purposes; and (v) market participant capacity. See Options 3, Section 23(b)(1). CTI Ports are not required for an MRX Member to meet its regulatory obligations. Members receive free daily reports listing trade executions from the Exchange.

<sup>10</sup> FIX DROP is a real-time order and execution update message that is sent to a Member after an order been received/modified or an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. See Options 3, Section 23(b)(3). FIX DROP Ports are not required for an MRX Member to meet its regulatory obligations. Members receive free daily reports listing open orders and trade executions from the Exchange.

<sup>11</sup> Disaster Recovery ports provide connectivity to the Exchange’s disaster recovery data center, to be utilized in the event the Exchange should failover during a trading day.

<sup>12</sup> The first FIX Port would be provided to each Electronic Access Member. The term “Electronic Access Member” or “EAM” means a Member that is approved to exercise trading privileges associated with EAM Rights. See General 1, Section 1(a)(6). Also, the first SQF Port would be provided to each Market Maker. The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market

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<sup>143</sup> 17 CFR 200.30-3(a)(12).

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

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

SQF Port obtained by a Market Maker.<sup>13</sup> The Exchange proposes to assess a FIX Port Fee of \$650 per port, per month, per account number<sup>14</sup> for each subsequent port beyond the first port. The Exchange proposes to assess an SQF Port Fee of \$1,250 per port, per month for each subsequent port beyond the first port.<sup>15</sup> The Exchange proposes to assess an SQF Purge Port Fee of \$1,250 per port, per month. The Exchange proposes to assess an OTTO Port Fee of \$650 per port, per month, per account number. The Exchange proposes to assess a CTI Port Fee and a FIX Drop Port Fee of \$650 per port, per month.

The Exchange proposes to assess no fee for the first FIX Disaster Recovery Port obtained by an Electronic Access Member<sup>16</sup> or the first SQF Disaster Recovery Port obtained by a Market

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

<sup>13</sup> The first SQF Port would be provided to each Market Maker. The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21). The term "Competitive Market Maker" means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12). The term "Primary Market Maker" means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(35).

<sup>14</sup> An "account number" shall mean a number assigned to a Member. Members may have more than one account number. See Options 1, Section 1(a)(1). Account numbers are free on MRX.

<sup>15</sup> SQF's Port Fees are assessed a higher dollar fee as compared to FIX and OTTO ports (\$1,250 vs. \$650) because the Exchange has to maintain options assignments within SQF and manage quoting traffic. Market Makers may utilize SQF Ports in their assigned options series. Market Maker badges are assigned to specific SQF ports to manage the option series in which a Market Maker may quote. Additionally, because of quoting obligations provided for within Options 2, Section 5, Market Makers are required to provide liquidity in their assigned options series which generates quote traffic. The Exchange notes because of the higher fee, SQF ports are billed per port, per month while FIX and OTTO ports are billed per port, per month, per account number. Members may have more than one account number.

<sup>16</sup> The first FIX Port would be provided to each Electronic Access Member. The term "Electronic Access Member" or "EAM" means a Member that is approved to exercise trading privileges associated with EAM Rights. See General 1, Section 1(a)(6). Also, the first SQF Port would be provided to each Market Maker. The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21). The term "Competitive Market Maker" means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12). The term "Primary Market Maker" means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(35).

Maker.<sup>17</sup> The Exchange proposes to assess each additional FIX Disaster Recovery Port and each additional SQF Disaster Recovery Port a fee of \$50 per port, per month, per account number. Additionally, the Exchange proposes to assess a Disaster Recovery Fee for SQF Purge and OTTO Ports of \$50 per port, per month, per account number. Finally, the Exchange proposes to assess a Disaster Recovery Fee for CTI Ports and FIX DROP Ports of \$50 per port, per month.

The OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports<sup>18</sup> are available to all Electronic Access Members, and will be subject to a monthly cap of \$7,500.

The SQF Port and the SQF Purge Port are available to all Market Makers, and will be subject to a monthly cap of \$17,500.<sup>19</sup>

The Exchange is not amending the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed, or Nasdaq MRX Spread Feed Ports; all of these aforementioned ports will continue to be assessed no fees. Additionally, as is the case today, the Disaster Recovery Ports for the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed and Nasdaq MRX Spread Feed Ports will not be assessed a fee.

#### Order and Quote Entry Protocols

Only one FIX order protocol is required for an MRX Member to submit orders into MRX and to meet its regulatory requirements.<sup>20</sup> The Exchange will provide each Electronic Access Member<sup>21</sup> the first FIX Port at no cost to submit orders into MRX. Only one account number is necessary to transact an options business on MRX

<sup>17</sup> The first SQF Port would be provided to each Market Maker. The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21). The term "Competitive Market Maker" means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1, Section 1(a)(12). The term "Primary Market Maker" means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1, Section 1(a)(35).

<sup>18</sup> This includes FIX, SQF, SQF Purge, OTTO, CTI and FIX Drop Disaster Recovery Ports.

<sup>19</sup> Only Market Makers may quote on MRX. The Exchange is proposing non-substantive technical amendments to add commas within the "Production" column of the proposed rule text to separate terms.

<sup>20</sup> MRX Members have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations.

<sup>21</sup> A Market Maker who is also an Electronic Access Member would receive both one free FIX Port and one free SQF Port.

and account numbers are available to Members at no cost.

Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements.<sup>22</sup> The Exchange will provide each Market Maker the first SQF Port at no cost to submit quotes into MRX. A quoting protocol, such as SQF, is only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1.

Only MRX Members may utilize ports on MRX. Any market participant that sends orders to a Member would not need to utilize a port. The Member can send all orders, proprietary and agency, through one port to MRX. Members may elect to obtain multiple account numbers to organize their business, however only one account number and one port for orders and one port for quotes is necessary for a Member to trade on MRX. All other ports offered by MRX are not required for an MRX Member to meet its regulatory obligations.

MRX also offers an OTTO protocol.<sup>23</sup> MRX Members utilizing the first FIX Port offered at no cost do not need to purchase an OTTO Port to meet their regulatory obligations.

Further, while only one FIX protocol is necessary to submit orders into MRX, Members may choose to purchase a greater number of order entry ports, depending on that Member's business model.<sup>24</sup> To the extent that Electronic Access Members chose to utilize more than one FIX Port, the Electronic Access Member would be assessed \$650 per port, per month, per account number for each subsequent port beyond the first port. To the extent that Market Makers chose to utilize more than one SQF Port, the Market Maker would be assessed \$1,250 per port, per month for each subsequent port beyond the first port. Additionally, to the extent a Member expended more than \$7,500 for FIX Ports or more than \$17,500 for SQF Ports, the Exchange would not charge an MRX Member for additional FIX or SQF Ports, respectively, beyond the cap.

<sup>22</sup> MRX Market Makers have intra-day quoting requirements. See Options 2, Section 5(e). Additionally, PMMs must submit a Valid Width Quote each day to open their assigned options series. See Options 3, Section 8(c)(1) and 8(c)(3).

<sup>23</sup> See note 8, *supra*.

<sup>24</sup> For example, a Member may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

## Other Protocols

The Exchange's proposal to offer an SQF Purge Port<sup>25</sup> for \$1,250 per port, per month is not required for an MRX Member to meet its regulatory obligations.

## Disaster Recovery Ports

With respect to Disaster Recovery Ports, the Exchange proposes to assess no fee for the first FIX Disaster Recovery Port obtained by an Electronic Access Member or the first SQF Disaster Recovery Port obtained by a Market Maker. The Exchange proposes to assess no fees for these ports to provide Members with continuous access to MRX in the event of a failover at no cost. Electronic Access Members only require one FIX Disaster Recovery Port to submit orders in the event of a failover. Market Makers only require one SQF Disaster Recovery Port to submit quotes in the event of a failover.<sup>26</sup> Electronic Access Members may elect to purchase additional FIX Disaster Recovery Ports for \$50 per port, per month, per account number. Market Makers may elect to purchase additional SQF Disaster Recovery Ports for \$50 per port, per month, per account number. The additional FIX and SQF Disaster Recovery Ports are not necessary to connect to the Exchange in the event of a failover because the Exchange has provided Members with a FIX Disaster Recovery Port and an SQF Disaster Recovery Port at no cost. Additional FIX and SQF Disaster Recovery Ports are not necessary for an MRX Member to meet its regulatory obligations.<sup>27</sup>

The Exchange's proposal to offer Disaster Recovery Ports for SQF Purge Ports and OTTO Ports for \$50 per port, per month, per account number and Disaster Recovery Ports for CTI Ports and FIX DROP Ports for \$50 per port, per month is not required for an MRX Member to meet its regulatory obligations. The proposed Disaster Recovery Port fees are intended to encourage Members to be efficient when purchasing Disaster Recovery Ports.

Finally, in the event that an MRX Member elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Member would be assessed no additional port fees in a given month. As noted above, the SQF Port and the SQF Purge Port are subject to a monthly cap of \$17,500 and the

OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of \$7,500.

These different protocols are not all necessary to conduct business on MRX; a Member may choose among protocols based on their business workflow. The Exchange's proposal to offer the first FIX and SQF Port at no cost as well as the first FIX and SQF Disaster Recovery Ports at no cost would allow MRX Members to submit orders and quotes into MRX at no cost while meeting their regulatory obligations.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>28</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>29</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

MRX proposes to amend its Pricing Schedule at Options 7, Section 6, Ports and Other Services, to assess port fees, which were not assessed until this year. Prior to this year, MRX did not assess its Members any port fees. MRX launched its options market in 2016<sup>30</sup> and Members did not pay any port fees until 2022. Of the 16 operating options exchanges, MRX has the smallest market share at 1.37% as of November 2022.

The Exchange notes that, as of May 2, 2022, one MRX Member, who was also a Market Maker, cancelled all of their ports (1 SQF Port and 1 OTTO Port) to avoid being assessed any MRX port fees.<sup>31</sup> As of July 1, 2022, the Exchange did not assess MRX Members for their first SQF Port or FIX Port. Further, in October 2022, an additional MRX

Member, who is also a Market Maker, cancelled 3 SQF Ports.<sup>32</sup>

## Proposed Port Fees Are Reasonable, Equitable and Not Unfairly Discriminatory

Only one FIX order protocol is required for an MRX Member to submit orders into MRX and to meet its regulatory requirements<sup>33</sup> at no cost while meeting its regulatory requirements. The Exchange will provide each Electronic Access Member the first FIX Port at no cost to submit orders into MRX. Only one account number is necessary to transact an options business on MRX and account numbers are available to Members at no cost.

Only one SQF quote protocol is required for an MRX Market Maker to submit quotes into MRX and to meet its regulatory requirements<sup>34</sup> at no cost while meeting its regulatory requirements. The Exchange will provide each Market Maker the first SQF Port at no cost to submit quotes into MRX. A quoting protocol, such as SQF, is only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1.

The Exchange proposes to offer each Electronic Access Member the first FIX Port and first FIX Disaster Recovery Port at no cost and it proposes to offer each Market Maker the first SQF Port and first SQF Disaster Recovery Port at no cost to meet their regulatory requirements. As noted above, Members may freely choose to rely on one or many ports, depending on their business model.

The Exchange's proposal is reasonable, equitable and not unfairly discriminatory as MRX is providing MRX Electronic Access Members the first FIX Port to submit orders and MRX Market Makers the first SQF Port to submit quotes to MRX, at no cost, in addition to providing the first FIX Disaster Recovery Port and the first SQF Disaster Recovery Port at no cost. These

<sup>28</sup> See 15 U.S.C. 78f(b).

<sup>29</sup> See 15 U.S.C. 78f(b)(4) and (5).

<sup>30</sup> The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR-MRX-2022-04) instituting fees for membership, ports and market data. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. SR-MRX-2022-06 replaced the port fees set forth in SR-MRX-2022-04. On July 1, 2022, SR-MRX-2022-06 was withdrawn and replaced with SR-MRX-2022-09. On August 25, 2022, SR-MRX-2022-09 was withdrawn and replaced with SR-MRX-2022-12. On October 11, 2022, SR-MRX-2022-12 was withdrawn and replaced with SR-MRX-2022-20. On December 8, 2022, SR-MRX-2022-20 was withdrawn and replaced with SR-MRX-2022-28. The instant filing replaces SR-MRX-2022-28 which was withdrawn on December 16, 2022.

<sup>31</sup> MRX originally filed to assess a fee for all FIX Ports.

<sup>32</sup> This Member informed the Exchange that they elected to utilize less ports in response to the current port pricing. This Member had a total of 8 SQF Ports at the time they instructed MRX to cancel 3 of those ports.

<sup>33</sup> MRX Members have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. See Rule 611 of Regulation NMS; 17 CFR 242.611 and FINRA Rule 5310.

<sup>34</sup> MRX Members have trade-through requirements under Regulation NMS as well as broker-dealers' best execution obligations. MRX Market Makers have intra-day quoting requirements. See Options 2, Section 5(e). PMMs must submit a Valid Width Quote each day to open their assigned options series. See Options 3, Section 8(c)(1) and 8(c)(3).

<sup>25</sup> See note 7, *supra*.

<sup>26</sup> The Exchange proposes to provide each Electronic Access Member the first FIX Disaster Recovery Port at no cost. The Exchange also proposes to provide each Market Maker the first SQF Disaster Recovery Port at no cost.

<sup>27</sup> See MRX General 2, Section 12(b) (this provision implements Rule 1000 of Regulation SCI).

ports, which are offered at no cost, would allow an MRX Member to meet its regulatory requirements. All other ports offered by MRX are not required for an MRX Member to meet its regulatory obligations. Therefore, for the foregoing reasons, it is reasonable to assess no fee for the first FIX Port obtained by an Electronic Access Member or the first SQF Port obtained by a Market Maker as an MRX Member is able to meet its regulatory requirements with these ports.

Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Port to Electronic Access Members as all Electronic Access Members would be entitled to the first FIX Port at no cost. Also, it is equitable and not unfairly discriminatory to assess no fee for the first SQF Port to Market Makers as all Market Makers would be entitled to the first SQF Port at no cost. With this proposal, MRX Members may organize their business in such a way as to submit orders and/or quotes continuously to MRX at no cost.

The Exchange's proposal to assess Members \$650 per port, per month, per account number for FIX Ports beyond the first port and \$1,250 per port, per month for SQF Ports beyond the first port is reasonable because these ports are not required for a member to meet its regulatory requirements. Members only require one FIX Port to submit orders to MRX and one SQF Port to submit quotes to MRX. Members electing to subscribe to more than one FIX or SQF Port are choosing the additional ports to accommodate their business model. Additionally, to the extent a Member expended more than \$7,500 for FIX Ports or more than \$17,500 for SQF Ports, the Exchange would not charge an MRX Member for additional FIX or SQF Ports beyond the cap. The fees for the proposed additional FIX and SQF Ports are equitable and not unfairly discriminatory because any Member may elect to subscribe to additional ports. Electronic Access Members would be subject to the same fees for FIX Ports and Market Makers would be subject to the same fees for SQF Ports. Unlike other market participants, Market Makers are required to provide continuous two-sided quotes on a daily basis,<sup>35</sup> and are subject to various obligations associated with providing liquidity.<sup>36</sup> Also, as noted herein, account numbers are available on MRX at no cost.

The Exchange's proposal to assess \$650 per port, per month, per account

number for an OTTO Port is reasonable because OTTO is not required for a member to meet its regulatory requirements. The Exchange is offering the first FIX Port at no cost to submit orders to MRX. In addition to the FIX Port, all Members may elect to purchase OTTO to submit orders to MRX. MRX Members utilizing the FIX Port, which is offered at no cost, do not need to utilize OTTO.

The Exchange's proposal to offer an SQF Purge Port for \$1,250 per port, per month is reasonable because this port is not required for a member to meet its regulatory requirements. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. The proposed SQF Purge Port is equitable and not unfairly discriminatory because any Market Maker may elect to purchase an SQF Purge Port and would be subject to the same fee.

The Exchange's proposal to assess \$650 per port, per month for CTI Ports and FIX DROP Ports is reasonable because these ports are not required for a member to meet its regulatory requirements. The proposed CTI and FIX DROP Ports are equitable and not unfairly discriminatory because any Member may elect to purchase an additional CTI Port or FIX DROP Port and would be subject to the same fee.

The Exchange's proposal to assess no fee for the first FIX Disaster Recovery Port or the first SQF Disaster Recovery Port is reasonable because it will provide Members with continuous access to MRX in the event of a failover, at no cost and allow MRX Members to meet their regulatory obligations. Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Disaster Recovery Port to Electronic Access Members as all Electronic Access Members would be entitled to the first FIX Disaster Recovery Port at no cost. Also, it is equitable and not unfairly discriminatory to assess no fee for the first SQF Disaster Recovery Port to Market Makers as all Market Makers would be entitled to the first SQF Disaster Recovery Port at no cost.

The Exchange's proposal to assess Members \$50 per port, per month, per account number for additional FIX Disaster Recovery Ports beyond the first port offered at no cost and \$50 per port, per month, per account number for additional SQF Disaster Recovery Ports beyond the first port at no cost is reasonable because these additional

ports are not required for MRX Members to meet their regulatory obligations. Members only require one FIX Disaster Recovery Port to submit orders to MRX in the event of a failover and one SQF Disaster Recovery Port to submit quotes to MRX in the event of a failover. Additionally, to the extent a Member expended more than \$7,500 for Disaster Recovery Ports, the Exchange would not charge an MRX Member for additional Disaster Recovery Ports beyond the cap. The fees for the proposed additional FIX and SQF Disaster Recovery Ports are equitable and not unfairly discriminatory because any Member may elect additional ports and would be subject to the same fees.

The Exchange's proposal to offer Disaster Recovery Ports for SQF Purge Ports, and OTTO Ports at \$50 per port, per month, per account number and CTI Ports, and FIX DROP Ports for \$50 per port, per month is reasonable because these additional ports are not required for MRX Members to meet their regulatory obligations. The proposed Disaster Recovery Port fees are intended to encourage Members to be efficient when purchasing Disaster Recovery Ports. The proposed Disaster Recovery Ports are equitable and not unfairly discriminatory because any Member may elect to purchase an additional Disaster Recovery Port and would be subject to the same fee, depending on the port.

Finally, in the event that an MRX Member elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Member would be assessed no additional fees for month. As noted above, the SQF Port and the SQF Purge Port are subject to a monthly cap of \$17,500 and the OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of \$7,500. These caps are reasonable because they allow Members to limit their fees beyond a certain level if they elect to purchase multiple ports in a given month. The caps are also equitable and not unfairly discriminatory because any Member will be subject to the cap, provided they exceeded the appropriate dollar amount in a given month.

The proposed port fees are comparable, and in some cases lower than fees assessed today by other options exchanges. The proposed port fees are similar to fees assessed today by GEMX, except that GEMX does not offer the first FIX and SQF Port at no cost, nor does GEMX offer the first FIX Disaster Recovery Port or the first SQF

<sup>35</sup> See MRX Options 2, Section 5.

<sup>36</sup> See MRX Options 2, Section 4.

Disaster Recovery Port at no cost.<sup>37</sup> By way of comparison, ISE assessed fees for ports<sup>38</sup> in 2019 while offering the same suite of functionality as MRX, with a limited exception.<sup>39</sup> Cboe<sup>40</sup> port fees are within the range of the proposed fees. While Cboe does not offer the first order and quote entry port at no cost or Disaster Recovery Ports at no cost, it tiers its BOE and FIX Logical ports and each subsequent port fee is lower than MRX's port fees. MRX's FIX DROP Port Fee is lower than Cboe's DROP Logical Port Fee.<sup>41</sup> Cboe does not cap its ports as MRX has proposed herein. BOX port fees<sup>42</sup> are within the range of the proposed fees. While BOX does not offer the first order and quote entry port at no cost or Disaster Recovery Ports at no cost, it tiers its FIX and SAIL port fees and each subsequent port fee is lower than MRX's port fees, although the fees are not capped as proposed herein. MRX's FIX DROP Port Fee is higher than BOX's Drop Copy Port Fee.<sup>43</sup> MIAX port fees<sup>44</sup> are within the range of the

<sup>37</sup> See GEMX Options 7, Section 6.C. (Ports and Other Services).

<sup>38</sup> Since 2019, ISE has assessed the following port fees: a FIX Port Fee of \$300 per port, per month, per mnemonic, an SQF Port Fee and SQF Purge Port Fee of \$1,100 per port, per month, an OTTO Port Fee of \$400 per port, per month, per mnemonic with a monthly cap of \$4,000, a CTI Port Fee and FIX DROP Port Fee of \$500 per port, per month, per mnemonic. See Securities Exchange Act Release No. 82568 (January 23, 2018), 83 FR 4086 (January 29, 2018) (SR-ISE-2018-07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Assess Fees for OTTO Port, CTI Port, FIX Port, FIX Drop Port and Disaster Recovery Port Connectivity). Of note, ISE assessed port fees prior to 2019 as well.

<sup>39</sup> See note 41, *supra*.

<sup>40</sup> Cboe assesses a fee of \$750 per port up to 5 BOE/FIX Logical Ports, and \$800 per port for over 5 BOE/FIX Logical Ports. See Cboe's Fees Schedule.

<sup>41</sup> Cboe assesses \$750 for Drop Logical Ports and \$850 for Purge Ports. See Cboe's Fees Schedule.

<sup>42</sup> BOX assesses tiered FIX Port Fees as follows: \$500 per port per month for the first FIX Port, \$250 per port per month for FIX Ports 2–5 and \$150 per port per month for over 5 FIX Ports. BOX assesses \$1000 per month for all SAIL Ports for Market Making and \$500 per month per port up to 5 ports for order entry and \$150 per month for each additional port. See BOX's Fee Schedule.

<sup>43</sup> BOX assesses Drop Copy Port Fees of \$500 per port per month for each month a Participant is credentialed to use a Drop Copy Port. Drop Copy Port Fees will be capped at \$2,000 per month. See BOX's Fee Schedule.

<sup>44</sup> MIAX tiers its FIX Port fees as follows: \$550 per month for the 1st FIX Port, \$350 per month per port for the FIX Ports 2 through 5 and \$150 per month for over 5 FIX Ports. MIAX tiers its MEI Port Fees and assesses fees per number of classes and as a percentage of National Average Daily Volume. MEI Port fees range from \$5,000 to \$20,500 per month. The applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. However, if the Market Maker's total monthly executed volume during the relevant month is less than 0.060% of the total monthly executed volume reported by The Options Clearing Corporation in the market maker account type for MIAX-listed option classes for that

proposed fees. MRX MEI Port users are allocated two (2) Full Service MEI Ports and two (2) Limited Service MEI Ports per matching engine to which they connect.<sup>45</sup> A MIAX Market Maker may request and be allocated two (2) Purge Ports per matching engine to which it connects via a Full Service MEI Port.<sup>46</sup> MIAX assesses a Real-Time Clearing Trade Drop Port Fee of \$0.0030 per executed contract side per month.<sup>47</sup> MIAX assesses a FIX Drop Copy Port fee of \$500 per month<sup>48</sup> which is lower than MRX's proposed fee. NYSE Arca port fees<sup>49</sup> are within the range of the proposed fees. For each order/quote entry port utilized, NYSE Arca Market Makers may utilize, free of charge, one port dedicated to quote cancellation or "quote takedown," which port(s) will not be included in the count of order/quote entry ports utilized.<sup>50</sup> NYSE Arca assesses a DROP Copy Port fee of \$500 per port per month<sup>51</sup> which is lower than MRX's proposed fee.<sup>52</sup>

month, then the fee will be \$14,500 instead of the fee otherwise applicable. MIAX will assess monthly MEI Port Fees on Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. See MIAX's Fee Schedule.

<sup>45</sup> MEI Port Fees include MEI Ports at the Primary, Secondary and Disaster Recovery data centers. MIAX Market Makers may request additional Limited Service MEI Ports for which MIAX will assess MIAX Market Makers \$100 per month per additional Limited Service MEI Port for each engine. See MIAX's Fee Schedule.

<sup>46</sup> For each month in which the MIAX Market Maker has been credentialed to use Purge Ports in the production environment and has been assigned to quote in at least one class, the Exchange will assess the MIAX Market Maker a flat fee of \$1,500 per month, regardless of the number of Purge Ports allocated to the MIAX Market Maker. The MEI Port Fee for a Market Maker that trades solely in Proprietary Products is waived until December 31, 2022. See MIAX's Fee Schedule.

<sup>47</sup> See MIAX's Fee Schedule.

<sup>48</sup> See MIAX's Fee Schedule.

<sup>49</sup> NYSE Arca assesses a tiered order/quote entry port fee of \$450 for the first 40 ports and \$150 per port per month for the 41 ports or greater. For purpose of calculating the number of order/quote entry ports and quote takedown ports, NYSE Arca aggregates the ports of affiliates. See NYSE Arca Options Fees and Charges.

<sup>50</sup> Any quote takedown port utilized by a NYSE Arca Market Maker that is in excess of the number of order/quote entry ports utilized will be counted and charged as an order/quote entry port. See NYSE Arca Options Fees and Charges.

<sup>51</sup> Only one fee per drop copy port shall apply, even if receiving drop copies from multiple order/quote entry ports and/or from NYSE Arca Equities). For the backup datacenter port, no fee shall apply if configured such that it is duplicative of another drop copy port of the same user. See NYSE Arca Options Fees and Charges.

<sup>52</sup> NYSE ARCA capped fees for Order/Quote Entry Ports, Quote Takedown Ports, and Drop Copy Ports are based on the total number of such ports an OTP Holder or OTP Firm is billed for in the month preceding the beginning of the NYSE ARCA's migration to the Pillar platform, during the Pillar Migration.

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

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

Nothing in the proposal burdens inter-market competition because MRX's proposal to offer the first FIX and SQF Ports for free, as well as the first Disaster Recovery version of these ports, permits MRX to set fees, similar to other options markets, while continuing to allow MRX Members to meet their regulatory obligations. MRX's offering would permit Electronic Access Members and Market Makers the ability to submit orders and quote to MRX at no cost. The remainder of the port offerings (additional FIX and SQF Ports, additional FIX and SQF Disaster Recovery Ports, SQF Purge Port, OTTO Port, CTI Port, FIX DROP Port and Disaster Recovery Ports for SQF Purge Ports, OTTO Ports, CTI Ports, and FIX DROP Ports) are not required for MRX Members to meet their regulatory obligations. The proposed port fees are similar to port fees assessed by other options markets as noted in this proposal.

Nothing in the proposal burdens intra-market competition because the Exchange would uniformly assess the port fees to all Members, as applicable, and would uniformly apply monthly caps. With respect to the higher fees assessed for SQF Ports and SQF Purge Ports, the Exchange notes that only Market Makers may utilize these ports. Market Makers are required to provide continuous two-sided quotes on a daily basis,<sup>53</sup> and are subject to various obligations associated with providing liquidity.<sup>54</sup> As a result of these quoting obligations, the SQF Port and SQF Purge Port are designed to handle higher throughput to permit Market Makers to bundle orders to meet their obligations. The technology to permit Market Makers to submit a greater number of quotes, in addition to the various risk protections<sup>55</sup> afforded to these market participants when quoting, accounts for the higher SQF Port and SQF Purge Port fees.

<sup>53</sup> See MRX Options 2, Section 5.

<sup>54</sup> See MRX Options 2, Section 4.

<sup>55</sup> See MRX Options 3, Section 15(a)(3). Market Makers are offered risk protections to permit them to manage their risk more effectively.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>56</sup>

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

### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2023-05 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-2023-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2023-05 and should be submitted on or before March 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**Sherry R. Haywood**,  
*Assistant Secretary*.

[FR Doc. 2023-02946 Filed 2-9-23; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96829; File No. SR-NYSEARCA-2022-82]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Rule 6.40P-O Concerning Pre-Trade Risk Controls

February 7, 2023.

On December 14, 2022, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission (the "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> a proposed rule change to add additional pre-trade risk controls to Rule 6.40P-O. The proposed rule change was published for comment on December 21, 2022.<sup>3</sup> On February 6, 2023, NYSE Arca withdrew the proposed rule change (SR-NYSEARCA-2022-82).

<sup>57</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 96504 (December 15, 2022), 87 FR 78166 (December 21, 2022). Comments received on the proposal are available on the Commission's website at: <http://www.sec.gov/comments/sr-nysearca-2022-82/srnysearca202282.htm>.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>4</sup>

**Sherry R. Haywood**,  
*Assistant Secretary*.

[FR Doc. 2023-02953 Filed 2-9-23; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34828; File No. 812-15367]

#### Constitution Capital Access Fund, LLC, et al.

February 7, 2023.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").

**ACTION:** Notice.

Notice of application for an order ("Order") under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

*Summary of Application:* Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

*Applicants:* Constitution Capital Access Fund, LLC, Constitution Capital PM, L.P., Constitution Capital Equity Partners, L.P., Constitution Capital Credit Partners, L.P., Ironsides Partnership Fund VI, L.P., Ironsides Offshore Partnership Fund VI, L.P., Ironsides Co-Investment Fund VI, L.P., Ironsides Offshore Co-Investment Fund VI, L.P., Ironsides Opportunities Fund II, L.P., Ironsides Opportunities Offshore Fund II, L.P., Ironsides Partnership Fund IV, L.P., Ironsides Direct Investment Fund IV, L.P., Ironsides Partnership Fund V, L.P., Ironsides Direct Investment Fund V, L.P., and Ironsides Direct Investment Fund V—Parallel A, L.P.

*Filing Dates:* The application was filed on July 12, 2022, and amended on October 17, 2022 and January 13, 2023.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at [Secretary@sec.gov](mailto:Secretary@sec.gov) and serving the Applicants with a copy of the

<sup>4</sup> 17 CFR 200.30-3(a)(12).

<sup>56</sup> 15 U.S.C. 78s(b)(3)(A)(ii).