

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and Rule 19b-4(f)(6)<sup>26</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>27</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>28</sup> the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that the proposed rule change could immediately benefit market participants by clarifying for Sponsoring Members which relationships are subject to the Exchange's Sponsored Access rules and promoting just and equitable principles of trade. The Exchange also states that the proposed rule change could immediately bolster Sponsoring Members and Options Members collective understanding of the Exchange's Sponsored Participant rules, thereby contributing to the protection of investors and public interest. The Exchange also states the proposed addition of 11.3(b)(2)(f) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market

access. Because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>29</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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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-CboeBZX-2023-015 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-CboeBZX-2023-015. 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 such 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-CboeBZX-2023-015 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97148; File No. SR-MRX-2023-07]

**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 3 To Introduce a Growth Incentive**

March 15, 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 March 1, 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.

<sup>30</sup> 17 CFR 200.30-3(a)(12), (a)(59).

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

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

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>26</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>27</sup> 17 CFR 240.19b-4(f)(6).

<sup>28</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>29</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

The Exchange proposes to amend the Exchange’s Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).

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

The purpose of the proposed rule change is to amend the Exchange’s Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).<sup>3</sup>

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange assesses the following fees for regular orders in Penny Symbols:

PENNY SYMBOLS

Market participant	Maker fee Tier 1	Maker fee Tier 2	Taker fee Tier 1	Taker fee Tier 2
Market Maker .....	\$0.20	\$0.10	\$0.50	\$0.50
Non-Nasdaq MRX Market Maker (FarMM) .....	0.47	0.47	0.50	0.50
Firm Proprietary/Broker-Dealer .....	0.47	0.47	0.50	0.50
Professional Customer .....	0.47	0.47	0.50	0.50
Priority Customer .....	0.00	0.00	0.00	0.00

The Exchange now proposes to introduce a growth incentive in new note 6 that would allow Market Makers<sup>4</sup> to reduce their maker fees described above. The proposed growth incentive will be aimed at rewarding new and existing Market Makers to grow the extent of their liquidity adding activity in Penny Symbols on the Exchange over time. Market Makers, including any new Market Makers, who did not have any volume in the Market Maker Penny add liquidity segment for the month of December 2022 (and therefore lack December 2022 baseline volume against which to measure subsequent growth) would meet the growth requirement through whatever volume of Market Maker add liquidity activity in Penny Symbols during the first month of use.<sup>5</sup>

Specifically, Market Makers may qualify for a reduction in the Tier 1 and Tier 2 Maker Fees described above if the Market Maker has increased its volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume<sup>6</sup> by at least 100% over the Member’s December 2022 Market Maker volume which adds

liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. Market Makers that qualify will have their Tier 1 Maker Fee reduced to \$0.08 and their Tier 2 Maker Fee reduced to \$0.04. In doing so, the Exchange is proposing to reduce the Tier 1 and Tier 2 Maker Fees by 60% for qualifying Market Makers.

As noted above, Market Makers, including any new Market Makers, who did not have any volume in the Market Maker Penny add liquidity segment for the month of December 2022 would meet the growth requirement through whatever volume of Market Maker add liquidity activity in Penny Symbols during the first month of use. The Exchange therefore proposes to also add that Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees described above by having any new volume considered as added volume. As such, new Market Makers that qualify for the Tier 1 or Tier 2 Maker Fee in a given month will have any new volume in the

targeted segment qualify them for the proposed reduced fees. The Exchange also proposes to offer this incentive from January 3, 2023 until June 30, 2023 in order to encourage new Market Makers to join MRX, and will use this time period to evaluate the appropriate parameters going forward for market participants with no December 2022 volume in the targeted segment.

As noted above, the Exchange intends for this proposal to reward Market Makers that increase the extent to which they add Penny Symbol liquidity to the Exchange over time and specifically, relative to a recent benchmark month (December 2022). The Exchange believes that if the proposed incentive is effective, any ensuing increase in added liquidity in Penny Symbols will improve market quality, to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of

<sup>3</sup> 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. SR-MRX-2023-04 replaced the Market Maker growth incentive set forth in SR-MRX-2023-02. On March 1, 2023, the

Exchange withdrew SR-MRX-2023-04 and submitted this filing.

<sup>4</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

<sup>5</sup> As discussed below, the Exchange will sunset this incentive for new Market Makers on June 30, 2023 and will use this time period to evaluate the proposed growth tier criteria to determine whether the parameters are appropriately designed to

incentivize Market Makers in the intended manner. The Exchange intends to come in with a future rule filing to adjust the growth tier parameters for new Market Makers.

<sup>6</sup> “Customer Total Consolidated Volume” means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. See Options 7, Section 1(c).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

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 agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . ."<sup>9</sup>

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."<sup>10</sup>

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.

The Exchange believes that it is reasonable to establish a new growth incentive that would provide Market Makers with the opportunity to reduce their maker fees to \$0.08 (Tier 1) and to \$0.04 (Tier 2) if they increase their Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume by at least 100% over their December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. The proposal is reasonable because it will provide extra incentives to Market Makers to engage in substantial amounts of liquidity adding activity in Penny Symbols on the Exchange, as well as to grow substantially the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed incentive is effective, then any ensuing increase in liquidity adding activity on the Exchange will improve the quality of the market overall, to the benefit of all market participants. The Exchange also believes that the proposed reduced fees are reasonable because the Exchange is proposing to reduce the Tier 1 and Tier 2 maker fees by the same percentage amount (*i.e.*, 60%) such that the reduced fees are commensurate with the base Tier 1 and Tier 2 maker fees that qualifying Market Makers receive for adding Penny Symbol liquidity. The Exchange similarly believes that it is reasonable to consider any new Penny add liquidity volume for Market Makers with no such volume for the month of December 2022 in order for those Market Makers to receive the proposed discounts to their maker fees because this is designed to attract additional Penny liquidity from new Market Makers to the Exchange during a temporary period between January 3, 2023 and June 30, 2023. To the extent this proposal attracts new Market Maker Penny add liquidity volume to the Exchange, all market participants should benefit through more trading opportunities and tighter spreads. As discussed above, the Exchange intends for this incentive aimed at attracting new Market Makers to sunset after June 30, 2023 and will use this time to evaluate suitable growth tier parameters for such market participants with no December 2022 volume in the targeted

segment, after which it will come in with a rule filing to adjust the growth incentive as appropriate.

The Exchange believes that the proposed growth incentive is equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the proposed growth incentive to only Market Makers because Market Makers have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements). As such, the Exchange's proposal is designed to increase Market Maker participation and reward Market Makers for the unique role they play in ensuring a robust market. As discussed above, the proposal is designed to encourage Market Makers to substantially add Penny Symbol liquidity to the Exchange. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in market quality, which stands to benefit all market participants.

The Exchange believes that the proposed growth incentive is equitable and not unfairly because as discussed above, the Exchange is proposing to reduce the Tier 1 and Tier 2 maker fees by the same percentage amount (*i.e.*, 60%) such that the reduced fees are commensurate with the base Tier 1 and Tier 2 maker fees that qualifying Market Makers receive for adding Penny Symbol liquidity. Furthermore, the Exchange believes that it is equitable and not unfairly discriminatory to consider any new Penny add liquidity volume for Market Makers with no such volume for the month of December 2022 in order for those Market Makers to receive the proposed discounts to their maker fees because this is designed to attract additional Penny liquidity from new Market Makers to the Exchange. In turn, this additional Penny liquidity should benefit all market participants through increased liquidity and order interaction. Furthermore, the proposed structure for new Market Makers with no December 2022 volume in the targeted segment will be temporary and sunset on June 30, 2023, after which the Exchange will come in with another rule filing to adjust the parameters for such market participants, as appropriate. To the extent the proposed maker fee attracts new Market Makers to the Exchange during this time period, the Exchange believes that its proposal will increase liquidity on MRX, which

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

<sup>10</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

benefits all market participants by providing more trading opportunities, tighter spreads, and increased order interaction.

#### *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. The Exchange believes that the proposed Market Maker growth incentive should encourage the provision of liquidity from both existing and new Market Makers that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities.

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, the proposed growth incentive is pro-competitive in that the Exchange intends for the changes to increase liquidity addition and activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

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.

#### **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>11</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-2023-07 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-2023-07. 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-2023-07 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-97145; File No. SR-NYSEARCA-2023-06]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 7.44-E Relating to the Retail Liquidity Program**

March 15, 2023.

On January 10, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), 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> a proposed rule change to amend the Exchange's Retail Liquidity Program (the "Program").<sup>3</sup> The proposed rule

<sup>12</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> The Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. See Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR-NYSEARCA-2019-63). In connection with the Commission's approval of the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612, which, among other things, prohibits a national securities

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).