

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23

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

File No. * SR 2024 - * 08

Amendment No. (req. for Amendments *)

Filing by Nasdaq MRX, LLC

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

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|--|---|--|--|--|---|
| 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

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|---|--------------------------------------|
| <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 regular taker fees in the MRX Pricing Schedule at Options 7, Section 3.

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

Date 03/12/2024 (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: 2024.03.12
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-MRX-2024-08 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-2024-08 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

Add Remove View

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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

Add Remove View

SR-MRX-2024-08 Exhibit 5.docx

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 regular taker fees in the Exchange’s Pricing Schedule at Options 7, Section 3.

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

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 regular taker fees in the Exchange’s Pricing Schedule at Options 7, Section 3.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The Exchange initially filed the proposed pricing changes on March 1, 2024 (SR-MRX-2024-06). On March 12, 2024, the Exchange withdrew that filing and replaced it with this filing.

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange charges tiered taker fees to Priority Customer³ orders in Penny Symbols that range from: \$0.15 (Tier 1 through Tier 3) to \$0.10 (Tier 4). For Non-Penny Symbols, Priority Customer orders are assessed tiered taker fees that range from: \$0.35 (Tier 1), \$0.25 (Tier 2), \$0.15 (Tier 3), and \$0.10 (Tier 4).

The Exchange now proposes a number of changes to the Priority Customer taker fees. First, the Exchange proposes to increase the Priority Customer taker fees in Penny Symbols to \$0.20 per contract across Tiers 1 – 4. Second, the Exchange proposes to increase the Priority Customer taker fees in Non-Penny Symbols to \$0.40 per contract across Tiers 1 – 4. Third, the Exchange proposes to reduce the proposed Priority Customer taker fees from \$0.20 to \$0.10 per contract (Penny Symbols) and from \$0.40 to \$0.20 per contract (Non-Penny Symbols) for Members that execute Total Affiliated Member⁴ or Affiliated Entity⁵ Priority Customer ADV⁶ of 0.30% Customer Total

³ 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).

⁴ 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.

⁵ 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 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

Consolidated Volume⁷ in regular orders for Penny and Non-Penny Symbols which remove liquidity in a given month.⁸

Lastly, the Exchange proposes non-substantive, technical edits in Options 7, Section 3, Table 1 to add parentheses around the note 6 references appended to the Priority Customer taker fees in Penny Symbols to correct a formatting error in the Pricing Schedule.

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 Pricing Schedule 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

not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

⁶ Total Affiliated Member or Affiliated Entity Priority Customer ADV means all Priority Customer ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers. See note 4 of Options 7, Section 3, Table 1.

⁷ "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.

⁸ See proposed note 7 of Options 7, Section 3, Table 1.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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 seventeen 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,

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 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 the regular taker fees in the manner described above are reasonable for several reasons. While the Exchange is proposing to increase the Priority Customer taker fees in Tiers 1 through 4 to \$0.20 per contract in Penny Symbols and \$0.40 per contract in Non-Penny Symbols, the Exchange believes that its taker fees remain competitive and lower than other options exchanges.¹³ The Exchange also believes that despite the increase, its pricing structure will remain attractive for Priority Customer orders because the Exchange will also offer market participants the opportunity to reduce the proposed taker fees by half if they meet the proposed volume qualifications in new note 7 of Options 7, Section 3, Table 1. As discussed above, note 7 will provide that Members that execute Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.30% Customer Total Consolidated Volume in regular orders for Penny and Non-Penny Symbols which remove liquidity in a given month will be assessed: (1) a \$0.10 per contract Priority Customer Taker Fee in Penny Symbols; and (2) a \$0.20 per contract Priority Customer Taker Fee in Non-Penny Symbols. By tying the discounted Priority Customer taker fees in note 7 to Affiliated Member and Affiliated Entity volume, the Exchange believes that Members may be incentivized to aggregate volume and bring more Priority Customer regular order flow to

¹³ For example, Cboe C2 Options (“C2”) charges Public Customers a \$0.43 per contract fee for removing liquidity in Penny Classes and a \$0.85 per contract fee for removing liquidity in Non-Penny Classes. See C2 Fee Schedule at: https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. In addition, MIAX Emerald charges Priority Customers a \$0.50 per contract taker fee in Penny Classes and a \$0.85 per contract taker fee in Non-Penny Classes. See MIAX Emerald Fee Schedule at: https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02262024.pdf.

MRX to qualify for the note 7 incentives. In addition, the Exchange believes that the total industry percentage threshold is reasonable in order to align with increasing Member activity on MRX over time. Total industry percentage thresholds are established concepts within the Exchange's Pricing Schedule.¹⁴ As with its existing percentage thresholds, the Exchange is proposing to base the discounted Priority Customer taker fee volume requirements on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the proposed qualification in note 7 to be calibrated to current market volumes rather than requiring a static amount of volume regardless of market conditions. The proposed threshold of 0.30% Customer Total Consolidated Volume is intended to reward Members for executing more Priority Customer regular volume on MRX. To the extent Priority Customer activity is increased by this proposal, market participants may increasingly compete for the opportunity to trade on the Exchange to the benefit of all market participants.

Further, the Exchange believes that the proposal described above is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants. With the proposed changes, Priority Customers will continue to be assessed lower regular order taker fees than any other market participant on the Exchange, with opportunity to further reduce these fees by qualifying for the proposed note 7 incentives. The Exchange continues to believe that it is equitable and not unfairly discriminatory to provide more favorable pricing for Priority Customers because the proposed changes are intended to increase Priority Customer regular order flow to MRX. An increase in

¹⁴ For instance, the qualifying tier thresholds for the Exchange's regular order maker/taker pricing in Table 1 are currently based on Customer Total Consolidated Volume percentages. See Options 7, Section 3, Table 3.

Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

Lastly, the Exchange believes that the non-substantive, technical edits in Options 7, Section 3, Table 1 described above are consistent with the Act as they are intended to correct a formatting error in the Exchange's Pricing Schedule.

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 proposal will place any category of market participant at a competitive disadvantage.

While the proposed changes described above will apply directly to Priority Customers, the Exchange believes that these changes will ultimately encourage increased activity on the Exchange to the extent the proposal incentivizes more Priority Customer regular order volume to be executed on MRX. All Members will benefit from any increase in market activity that the proposal effectuates through increased trading opportunities and price discovery.

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 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. 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.

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,¹⁵ 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-MRX-2024-08)

March __, 2024

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Regular Taker Fees in the Exchange's Pricing Schedule at Options 7, Section 3.

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 March 12, 2024, 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 the regular taker fees in the Exchange's Pricing Schedule at Options 7, Section 3.

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 regular taker fees in the Exchange's Pricing Schedule at Options 7, Section 3.

The Exchange initially filed the proposed pricing changes on March 1, 2024 (SR-MRX-2024-06). On March 12, 2024, the Exchange withdrew that filing and replaced it with this filing.

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange charges tiered taker fees to Priority Customer³ orders in Penny Symbols that range from: \$0.15 (Tier 1 through Tier 3) to \$0.10 (Tier 4). For Non-Penny Symbols, Priority Customer orders are assessed tiered taker fees that range from: \$0.35 (Tier 1), \$0.25 (Tier 2), \$0.15 (Tier 3), and \$0.10 (Tier 4).

The Exchange now proposes a number of changes to the Priority Customer taker fees. First, the Exchange proposes to increase the Priority Customer taker fees in Penny Symbols to \$0.20 per contract across Tiers 1 – 4. Second, the Exchange proposes to increase the Priority Customer taker fees in Non-Penny Symbols to \$0.40 per contract across Tiers 1 – 4. Third, the Exchange proposes to reduce the proposed Priority Customer taker fees from \$0.20 to \$0.10 per contract (Penny Symbols) and from \$0.40 to

³ 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).

\$0.20 per contract (Non-Penny Symbols) for Members that execute Total Affiliated Member⁴ or Affiliated Entity⁵ Priority Customer ADV⁶ of 0.30% Customer Total Consolidated Volume⁷ in regular orders for Penny and Non-Penny Symbols which remove liquidity in a given month.⁸

Lastly, the Exchange proposes non-substantive, technical edits in Options 7, Section 3, Table 1 to add parentheses around the note 6 references appended to the Priority Customer taker fees in Penny Symbols to correct a formatting error in the Pricing Schedule.

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

⁴ 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.

⁵ 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 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.

⁶ Total Affiliated Member or Affiliated Entity Priority Customer ADV means all Priority Customer ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers. See note 4 of Options 7, Section 3, Table 1.

⁷ "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.

⁸ See proposed note 7 of Options 7, Section 3, Table 1.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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 Pricing Schedule 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’”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

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)).

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 seventeen 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 the proposed changes to the regular taker fees in the manner described above are reasonable for several reasons. While the Exchange is proposing to increase the Priority Customer taker fees in Tiers 1 through 4 to \$0.20 per contract in Penny Symbols and \$0.40 per contract in Non-Penny Symbols, the Exchange believes that its taker fees remain competitive and lower than other options exchanges.¹³ The Exchange also believes that despite the increase, its pricing structure will remain attractive for Priority Customer orders because the Exchange will also offer market participants the opportunity to reduce the proposed taker fees by half if they meet the proposed volume qualifications in new note 7 of Options 7, Section 3, Table 1. As

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

¹³ For example, Cboe C2 Options (“C2”) charges Public Customers a \$0.43 per contract fee for removing liquidity in Penny Classes and a \$0.85 per contract fee for removing liquidity in Non-Penny Classes. See C2 Fee Schedule at: https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. In addition, MIAX Emerald charges Priority Customers a \$0.50 per contract taker fee in Penny Classes and a \$0.85 per contract taker fee in Non-Penny Classes. See MIAX Emerald Fee Schedule at: https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02262024.pdf.

discussed above, note 7 will provide that Members that execute Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.30% Customer Total Consolidated Volume in regular orders for Penny and Non-Penny Symbols which remove liquidity in a given month will be assessed: (1) a \$0.10 per contract Priority Customer Taker Fee in Penny Symbols; and (2) a \$0.20 per contract Priority Customer Taker Fee in Non-Penny Symbols. By tying the discounted Priority Customer taker fees in note 7 to Affiliated Member and Affiliated Entity volume, the Exchange believes that Members may be incentivized to aggregate volume and bring more Priority Customer regular order flow to MRX to qualify for the note 7 incentives. In addition, the Exchange believes that the total industry percentage threshold is reasonable in order to align with increasing Member activity on MRX over time. Total industry percentage thresholds are established concepts within the Exchange's Pricing Schedule.¹⁴ As with its existing percentage thresholds, the Exchange is proposing to base the discounted Priority Customer taker fee volume requirements on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the proposed qualification in note 7 to be calibrated to current market volumes rather than requiring a static amount of volume regardless of market conditions. The proposed threshold of 0.30% Customer Total Consolidated Volume is intended to reward Members for executing more Priority Customer regular volume on MRX. To the extent Priority Customer activity is increased by this proposal, market participants may increasingly compete for the opportunity to trade on the Exchange to the benefit of all market participants.

¹⁴ For instance, the qualifying tier thresholds for the Exchange's regular order maker/taker pricing in Table 1 are currently based on Customer Total Consolidated Volume percentages. See Options 7, Section 3, Table 3.

Further, the Exchange believes that the proposal described above is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants. With the proposed changes, Priority Customers will continue to be assessed lower regular order taker fees than any other market participant on the Exchange, with opportunity to further reduce these fees by qualifying for the proposed note 7 incentives. The Exchange continues to believe that it is equitable and not unfairly discriminatory to provide more favorable pricing for Priority Customers because the proposed changes are intended to increase Priority Customer regular order flow to MRX. An increase in Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may interact with this order flow.

Lastly, the Exchange believes that the non-substantive, technical edits in Options 7, Section 3, Table 1 described above are consistent with the Act as they are intended to correct a formatting error in the Exchange's Pricing Schedule.

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 proposal will place any category of market participant at a competitive disadvantage. While the proposed changes described above will apply directly to Priority Customers, the Exchange believes that these changes will ultimately encourage increased activity on the Exchange to the extent the proposal incentivizes more Priority Customer regular order volume to be executed on MRX. All Members will benefit from any increase in market

activity that the proposal effectuates through increased trading opportunities and price discovery.

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 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. 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.¹⁵ 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-08 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-2024-08. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-08 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).

New text is underlined; deleted text is in brackets.

EXHIBIT 5

Nasdaq MRX, LLC Rules

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Options 7 Pricing Schedule

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Section 3. Regular Order Fees and Rebates

Table 1

Penny Symbols

| Market Participant | Maker Fee Tier 1 | Maker Fee Tier 2 | Maker Fee/Rebate Tier 3 | Maker Fee/Rebate Tier 4 | Taker Fee Tier 1 | Taker Fee Tier 2 | Taker Fee Tier 3 | Taker Fee Tier 4 |
|-------------------------------------|-------------------------|-------------------------|--------------------------------|--------------------------------|------------------------------|----------------------------------|----------------------------------|------------------------------|
| Market Maker ⁽¹⁾⁽⁵⁾ | \$0.10 ⁽⁶⁾ | \$0.00 ⁽⁶⁾ | (\$0.05) ⁽⁶⁾ | (\$0.10) ⁽⁶⁾ | \$0.50 ⁽²⁾⁽⁴⁾ | \$0.50 ⁽²⁾⁽⁴⁾ | \$0.50 ⁽²⁾⁽⁴⁾ | \$0.50 ⁽²⁾⁽⁴⁾ |
| Non-Nasdaq MRX Market Maker (FarMM) | \$0.47 | \$0.47 | \$0.47 | \$0.47 | \$0.50 | \$0.50 | \$0.50 | \$0.50 |
| Firm Proprietary / Broker-Dealer | \$0.47 | \$0.47 | \$0.47 | \$0.47 | \$0.50 | \$0.50 | \$0.50 | \$0.50 |
| Professional Customer | \$0.47 | \$0.47 | \$0.47 | \$0.47 | \$0.50 | \$0.50 | \$0.50 | \$0.50 |
| Priority Customer | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.[15]20 ⁽⁶⁾⁽⁷⁾ | \$0. [15]20 ⁽⁶⁾⁽⁷⁾ | \$0. [15]20 ⁽⁶⁾⁽⁷⁾ | \$0.[10]20 ⁽⁶⁾⁽⁷⁾ |

Non-Penny Symbols

| Market Participant | Maker Fee Tier 1 | Maker Fee Tier 2 | Maker Fee Tier 3 | Maker Fee Tier 4 | Taker Fee Tier 1 | Taker Fee Tier 2 | Taker Fee Tier 3 | Taker Fee Tier 4 |
|-------------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| Market Maker ⁽¹⁾⁽⁵⁾ | \$0.35 | \$0.20 | \$0.15 | \$0.10 | \$1.10 ⁽³⁾⁽⁴⁾ | \$1.10 ⁽³⁾⁽⁴⁾ | \$1.10 ⁽³⁾⁽⁴⁾ | \$1.10 ⁽³⁾⁽⁴⁾ |
| Non-Nasdaq MRX Market Maker (FarMM) | \$0.90 | \$0.90 | \$0.90 | \$0.90 | \$1.10 | \$1.10 | \$1.10 | \$1.10 |
| Firm Proprietary / Broker-Dealer | \$0.90 | \$0.90 | \$0.90 | \$0.90 | \$1.10 | \$1.10 | \$1.10 | \$1.10 |
| Professional Customer | \$0.90 | \$0.90 | \$0.90 | \$0.90 | \$1.10 | \$1.10 | \$1.10 | \$1.10 |
| Priority Customer | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.[35]40 ⁽⁷⁾ | \$0.[25]40 ⁽⁷⁾ | \$0.[15]40 ⁽⁷⁾ | \$0.[10]40 ⁽⁷⁾ |

* * * * *

7. Members that execute Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.30% Customer Total Consolidated Volume in Regular Orders for Penny and Non-Penny Symbols which remove liquidity in a given month will be assessed: (1) a \$0.10 per contract Priority Customer Taker Fee in Penny Symbols; and (2) a \$0.20 per contract Priority Customer Taker Fee in Non-Penny Symbols.

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