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

File No. * SR 2024 - * 40

Amendment No. (req. for Amendments *)

Filing by Nasdaq MRX, LLC

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposal to allow unlimited external distribution of Derived Data from MRX Options Trade Outline

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Daniel Last Name * Cantu

Title * Principal Associate General Counsel

E-mail * Daniel.Cantu@Nasdaq.com

Telephone * (301) 978-8469 Fax


Signature

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

Date 10/09/2024 (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: 2024.10.09
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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 EFFS website.

Form 19b-4 Information *

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SR-MRX-2024-40 19b-4.docx

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-2024-40 Exhibit 1.docx

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

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

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

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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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SR-MRX-2024-40 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 Exchange’s fees to allow unlimited external distribution of Derived Data from MRX Options Trade Outline, as described further below.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to allow unlimited external distribution of Derived Data from MRX Options Trade Outline for a monthly fee of \$3,000.³

MRX Options Trade Outline

MRX Options Trade Outline provides aggregate quantity and volume information for trades on the Exchange for all series⁴ during a trading session.⁵

Information is provided on an End of Day, Intra-Day, and historical basis in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position,⁶ characterized by origin type (Priority Customers,⁷ Broker-

³ This proposal was initially filed on September 27, 2024, as SR-MRX-2024-038. On October 9, 2024, that filing was withdrawn and replaced with the instant filing to provide further clarification.

⁴ Every options series trades as a distinct symbol; the terms “series” and “symbol” are therefore synonyms.

⁵ See Securities Exchange Act Release No. 100789 (August 21, 2024), 89 FR 68680 (August 27, 2024) (SR-MRX-2024-31).

⁶ This includes the aggregate number of “opening purchase transactions,” defined as an Exchange Transaction that will create or increase a long position in an options contract, see Options 1, Section 1(a)(27), and the aggregate number of “opening writing transactions,” defined as an Exchange Transaction that will create or increase a short position in an options contract. See Options 1, Section 1(a)(28).

⁷ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 1 §1(a)(36).

Dealers,⁸ Market Makers,⁹ Firm Proprietary,¹⁰ and Professional Customers¹¹); and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position,¹² characterized by origin type (Priority Customers, Broker-Dealers, Market Makers, Firm Proprietary, and Professional Customers).¹³

End of Day Information

The MRX Trade Outline End of Day file provides opening buy, closing buy, opening sell and closing sell information, including option first trade price, option high trade price, option low trade price, and option last trade price. The End of Day file is updated during an overnight process with additional fields¹⁴ and will be available the following morning, providing aggregate data for the entire trading session.

⁸ A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account. See Options 7 §1(c).

⁹ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1 §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 §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).

¹⁰ A “Firm Proprietary” order is an order submitted by a Member for its own proprietary account. See Options 7 Section 1(c).

¹¹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7 Section 1(c).

¹² This includes the aggregate number of “closing purchase transactions” in the affected series, defined as an Exchange Transaction that will reduce or eliminate a short position in an options contract, see Options 1, Section 1(a)(9), and the aggregate number of “closing writing transactions,” defined as an Exchange Transaction that will reduce or eliminate a long position in an options contract. See Options 1, Section 1(a)(10).

¹³ These are the same types of information available on PHOTO, and the other trade outline products offered by Nasdaq exchanges.

¹⁴ The additional fields are: First Trade Price, High Trade Price, Low Trade Price, Last Trade Price, Underlying Close, Moneyness, Total Exchange volume, Total Industry Volume for the Series, and Open Interest.

Intra-Day Information

Intra-Day information will be released in scheduled “snapshots” available every 10 minutes for all options series over the course of the trading day. These snapshots will be updated to reflect whatever activity occurred, or to indicate that no activity occurred.¹⁵

Historical Information

Historical data will be available through ad hoc requests for information in both End of Day and Intra-Day formats for all option series traded for every calendar month after September 2017, based on specific request.¹⁶

MRX Options Trade Outline includes proprietary Exchange trading data and does not disseminate any intra-day trading data from any other exchange.¹⁷

The information provided, both in End of Day and Intra-Day formats, will not be a real-time data feed.

MRX Options Trade Outline is a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so.

Nasdaq’s experience is that investment banks, market makers, asset managers and other buy-side investors purchase trade outline products.

¹⁵ Subscribers will receive the first snapshot at 9:42 a.m. ET, representing data captured from 9:30 a.m. to 9:40 a.m., and the second calculation at 9:52 a.m., representing data from both the most recent snapshot and previous snapshots, and continuing over the course of the trading day. The final Intra-Day snapshot will be distributed at 4:15 p.m.

¹⁶ Market participants generally use historical files for model testing and research, and the period of time required by a particular market participant will depend on its unique testing and research needs as well as whether it is using End of Day or Intra-Day information. Some customers, for example, may request years of data, while others only months, or even a single month. The same principle applies to End of Day vs. Intra-Day information.

¹⁷ The End of Day report includes a field that presents Total Industry Volume for the Series.

Proposed Fees

The Exchange proposes to allow unlimited external distribution of Derived Data from MRX Options Trade Outline for a monthly fee of \$3,000. This will encourage Distributors to create and sell analytic products to the general investing public. External distribution of Derived Data is not currently permitted. The same Derived Data license is also offered by the Nasdaq PHLX, LLC (“Phlx”),¹⁸ Nasdaq ISE, LLC (“ISE”),¹⁹ and Nasdaq GEMX, LLC (“GEMX”)²⁰ exchanges and the Nasdaq Stock Market LLC (“Nasdaq Options Market” or “NOM”).²¹ A Derived Data license is also being proposed for the BX exchange concurrently with this proposal.

Derived Data is “any information generated in whole or in part from Exchange Information²² such that the information generated cannot be reverse engineered to recreate Exchange Information, or be used to create other data that is recognizable as a reasonable substitute for such Exchange Information.”

Fees for external distribution of Derived Data from MRX Options Trade Outline are in addition to fees for the End of Day product or the Intraday product, or both, as applicable.

¹⁸ See Securities Exchange Act Release No. 93293 (October 12, 2021), 86 FR 57716 (October 18, 2021) (SR-Phlx-2021-58).

¹⁹ See ISE Options 7, Section 10(A).

²⁰ See GEMX Options 7, Section 7(D).

²¹ See Nasdaq Options 7, Section 4.

²² “Exchange Information” is any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.

The proposal is designed to promote the dissemination of a variety of analytical insights—generally used only by investment banks, market makers, asset managers and other buy-side investors—to the general investing public by creating an incentive for market data vendors to identify, develop, and sell sentiment indicators and other products. The proposal will spur competition among not only exchanges, but vendors as well, thereby promoting innovation and improving the dissemination of information to the general investing public.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ 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.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade profile products offered by multiple exchanges are substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4) and (5).

Substitution

Products similar to Trade Outline are offered by many exchanges, including Nasdaq affiliates such as Phlx,²⁵ ISE,²⁶ GEMX,²⁷ and NOM,²⁸ and options markets not affiliated with Nasdaq such as Cboe Options Exchange (“Cboe”),²⁹ NYSE American Options (“NYSE American”),³⁰ NYSE Arca Options (“NYSE Arca”),³¹ BOX Options Market LLC (“BOX”),³² and MIAX Pearl Options Exchange (“Pearl”).³³

All of the trade outline products offered by the Nasdaq-affiliated exchanges include a license for the unlimited external distribution of Derived Data.³⁴ As noted above, BX will be proposing the same license together with this proposal. All of these Derived Data licenses are direct substitutes.

²⁵ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010),

²⁶ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

²⁷ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

²⁸ See Nasdaq Rules, Options 7, Section 4 (Nasdaq Options Trade Outline (“NOTO”)).

²⁹ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-Day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price, and transaction type).

³⁰ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021, 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³¹ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³² See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

³³ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

³⁴ See supra notes 24-27.

The underlying trade outline data provided by one exchange is generally similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator among trade outline products depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data. Customers generally purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. Because customers can substitute trade outline products among exchanges, customers can also substitute the proposed Derived Data license for MRX with the Derived Data licenses of any of its affiliates.

The proposed Derived Data license is also subject to potential competition from exchanges not affiliated with Nasdaq. Although the Exchange is not aware of any exchanges offering a Derived Data license for trade outline other than its own affiliates, any exchange that wishes to allow distribution of a Derived Data product based on options trading information would be able to do so with an immediately effective fee filing similar to this proposal.

All trade outline products are optional. Customers can, and do, choose to forego the information from Trade Outline or any of its competitor products when making a trade, and the same holds for Derived Data from trade outline products.

As the Commission and courts³⁵ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain

³⁵ The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the

unreasonable or unfair behavior.”³⁶ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”³⁷ 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.”³⁸

Because the proposed Derived Data license is currently subject to competition from other Nasdaq exchanges, and potentially subject to competition from other exchanges, the Exchange will be limited in what it is able to charge for the license, and the proposed fee is therefore a reasonable allocation of dues, fees and other charges.

interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” NetCoalition I at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” Id. (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74771 (December 9, 2008) (SR-NYSEArca-2006-21)).

³⁶ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

³⁷ See id.

³⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

Comparability

The proposed fees for the Derived Data license are comparable to the fees charged by similarly situated exchanges for the same license.

All of the Nasdaq-affiliated exchanges offer a Derived Data license for their trade outline products. As explained above, the value of any trade outline product is determined in part by the number of underlying transactions reflected in the data.

The proposed fees for the Derived Data license are the same as the fees charged by similarly situated exchanges. MRX has a market share of approximately 4 percent, similar to that of GEMX (at approximately 3 percent).³⁹ The proposed monthly fee of \$3,000 for the unlimited external distribution of Derived Data is identical to the fee charged by GEMX.⁴⁰

The volume of trading on the MRX exchange is also similar to that on the BX exchange, which has a market share of approximately 2 percent.⁴¹ Together with this filing, BX will propose the same monthly fee of \$3,000 as MRX for the unlimited external distribution of Derived Data.

The Nasdaq-affiliated exchanges with larger market shares have comparably higher fees for the unlimited external distribution of Derived Data. Nasdaq Options Market, with a market share of approximately 5 percent,⁴² has a fee of \$4,000 per month for the unlimited external distribution of Derived Data.⁴³ ISE, with a market share of

³⁹ See NasdaqTrader.com, "Options Market Statistics," available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

⁴⁰ See GEMX Options 7, Section 7(D).

⁴¹ See *supra* note 38.

⁴² See *id.*

⁴³ See Nasdaq Options 7, Section 4.

approximately 7 percent,⁴⁴ has a fee of \$4,500 per month for the unlimited external distribution of Derived Data.⁴⁵ PHLX, with a market share of approximately 9 percent,⁴⁶ has a fee of \$5,000 per month for the unlimited external distribution of Derived Data.⁴⁷

The proposed fees are therefore comparable to those charged by similarly situated exchanges and consistent with the fees for Derived Data licenses in the market overall. If the Exchange is wrong in its assessment of fees, it will lose sales as a result.

The Proposal Does Not Permit Unfair Discrimination

The proposed Derived Data license is available to all market participants, including members and non-members, and all current and potential distributors, on the same terms. Nothing in the proposal treats any category of market participant any differently from any other category.

It is reasonable and not unfair discrimination to charge an external distributor of Derived Data a \$3,000 licensing fee that is not charged for internal usage. External distribution is fundamentally different than internal use. Vendors ordinarily charge a fee to their downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular service, Derived Data products from the Exchange will be part of a suite of offerings that generally promote sales. It is not unfair discrimination to charge a licensing fee for a product that generates downstream revenue.

It is also not unfair discrimination to allow the redistribution of Derived Data, but not the underlying information. Neither exchanges nor vendors ordinarily allow

⁴⁴ See supra note 38.

⁴⁵ See ISE Options 7, Section 10(A).

⁴⁶ See supra note 38.

⁴⁷ See PHLX Options 7, Section 10.

redistribution of analytic products—such products are typically designed solely for the use of direct customers, not for redistribution to the customers of customers in the manner of a data feed.

The proposed licensing structure provides an incentive for vendors to innovate with new compelling and varied analytic products for the general investing public that will provide access to market sentiment insights currently available only to sophisticated investors.

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 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations). As discussed above, MRX Trade Outline is subject to direct competition from other options exchanges that offer similar products. Any of these

exchanges can replicate this proposal in full or in part, and nothing in the proposal would interfere with the ability of any exchange to do so.

Intra-market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Outline is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase a license to distribute Derived Data can do so on a non-discriminatory basis.

Indeed, the proposal is designed to foster competition for vendors as well as exchanges by creating an incentive for market data vendors to identify, develop, and sell analytic indicators to help investors inform their investments strategies and analytic models.

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,⁴⁸ 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.

⁴⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-MRX-2024-40)

October 9, 2024

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to allow unlimited external distribution of Derived Data from MRX Options Trade Outline

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on October 9, 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 allow unlimited external distribution of Derived Data from MRX Options Trade Outline.

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 allow unlimited external distribution of Derived Data from MRX Options Trade Outline for a monthly fee of \$3,000.³

MRX Options Trade Outline

MRX Options Trade Outline provides aggregate quantity and volume information for trades on the Exchange for all series⁴ during a trading session.⁵

Information is provided on an End of Day, Intra-Day, and historical basis in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume

³ This proposal was initially filed on September 27, 2024, as SR-MRX-2024-038. On October 9, 2024, that filing was withdrawn and replaced with the instant filing to provide further clarification.

⁴ Every options series trades as a distinct symbol; the terms "series" and "symbol" are therefore synonyms.

⁵ See Securities Exchange Act Release No. 100789 (August 21, 2024), 89 FR 68680 (August 27, 2024) (SR-MRX-2024-31).

effected to open a position,⁶ characterized by origin type (Priority Customers,⁷ Broker-Dealers,⁸ Market Makers,⁹ Firm Proprietary,¹⁰ and Professional Customers¹¹); and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position,¹² characterized by origin type (Priority Customers, Broker-Dealers, Market Makers, Firm Proprietary, and Professional Customers).¹³

End of Day Information

The MRX Trade Outline End of Day file provides opening buy, closing buy, opening sell and closing sell information, including option first trade price, option high trade price, option low trade price, and option last trade price. The End of Day file is

⁶ This includes the aggregate number of “opening purchase transactions,” defined as an Exchange Transaction that will create or increase a long position in an options contract, see Options 1, Section 1(a)(27), and the aggregate number of “opening writing transactions,” defined as an Exchange Transaction that will create or increase a short position in an options contract. See Options 1, Section 1(a)(28).

⁷ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 1 §1(a)(36).

⁸ A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account. See Options 7 §1(c).

⁹ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1 §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 §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).

¹⁰ A “Firm Proprietary” order is an order submitted by a Member for its own proprietary account. See Options 7 Section 1(c).

¹¹ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7 Section 1(c).

¹² This includes the aggregate number of “closing purchase transactions” in the affected series, defined as an Exchange Transaction that will reduce or eliminate a short position in an options contract, see Options 1, Section 1(a)(9), and the aggregate number of “closing writing transactions,” defined as an Exchange Transaction that will reduce or eliminate a long position in an options contract. See Options 1, Section 1(a)(10).

¹³ These are the same types of information available on PHOTO, and the other trade outline products offered by Nasdaq exchanges.

updated during an overnight process with additional fields¹⁴ and will be available the following morning, providing aggregate data for the entire trading session.

Intra-Day Information

Intra-Day information will be released in scheduled “snapshots” available every 10 minutes for all options series over the course of the trading day. These snapshots will be updated to reflect whatever activity occurred, or to indicate that no activity occurred.¹⁵

Historical Information

Historical data will be available through ad hoc requests for information in both End of Day and Intra-Day formats for all option series traded for every calendar month after September 2017, based on specific request.¹⁶

MRX Options Trade Outline includes proprietary Exchange trading data and does not disseminate any intra-day trading data from any other exchange.¹⁷

The information provided, both in End of Day and Intra-Day formats, will not be a real-time data feed.

¹⁴ The additional fields are: First Trade Price, High Trade Price, Low Trade Price, Last Trade Price, Underlying Close, Moneyness, Total Exchange volume, Total Industry Volume for the Series, and Open Interest.

¹⁵ Subscribers will receive the first snapshot at 9:42 a.m. ET, representing data captured from 9:30 a.m. to 9:40 a.m., and the second calculation at 9:52 a.m., representing data from both the most recent snapshot and previous snapshots, and continuing over the course of the trading day. The final Intra-Day snapshot will be distributed at 4:15 p.m.

¹⁶ Market participants generally use historical files for model testing and research, and the period of time required by a particular market participant will depend on its unique testing and research needs as well as whether it is using End of Day or Intra-Day information. Some customers, for example, may request years of data, while others only months, or even a single month. The same principle applies to End of Day vs. Intra-Day information.

¹⁷ The End of Day report includes a field that presents Total Industry Volume for the Series.

MRX Options Trade Outline is a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so.

Nasdaq's experience is that investment banks, market makers, asset managers and other buy-side investors purchase trade outline products.

Proposed Fees

The Exchange proposes to allow unlimited external distribution of Derived Data from MRX Options Trade Outline for a monthly fee of \$3,000. This will encourage Distributors to create and sell analytic products to the general investing public. External distribution of Derived Data is not currently permitted. The same Derived Data license is also offered by the Nasdaq PHLX, LLC ("Phlx"),¹⁸ Nasdaq ISE, LLC ("ISE"),¹⁹ and Nasdaq GEMX, LLC ("GEMX")²⁰ exchanges and the Nasdaq Stock Market LLC ("Nasdaq Options Market" or "NOM").²¹ A Derived Data license is also being proposed for the BX exchange concurrently with this proposal.

Derived Data is "any information generated in whole or in part from Exchange Information"²² such that the information generated cannot be reverse engineered to

¹⁸ See Securities Exchange Act Release No. 93293 (October 12, 2021), 86 FR 57716 (October 18, 2021) (SR-Phlx-2021-58).

¹⁹ See ISE Options 7, Section 10(A).

²⁰ See GEMX Options 7, Section 7(D).

²¹ See Nasdaq Options 7, Section 4.

²² "Exchange Information" is any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.

recreate Exchange Information, or be used to create other data that is recognizable as a reasonable substitute for such Exchange Information.”

Fees for external distribution of Derived Data from MRX Options Trade Outline are in addition to fees for the End of Day product or the Intraday product, or both, as applicable.

The proposal is designed to promote the dissemination of a variety of analytical insights—generally used only by investment banks, market makers, asset managers and other buy-side investors—to the general investing public by creating an incentive for market data vendors to identify, develop, and sell sentiment indicators and other products. The proposal will spur competition among not only exchanges, but vendors as well, thereby promoting innovation and improving the dissemination of information to the general investing public.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ 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.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade profile products offered by multiple exchanges are

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4) and (5).

substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

Substitution

Products similar to Trade Outline are offered by many exchanges, including Nasdaq affiliates such as Phlx,²⁵ ISE,²⁶ GEMX,²⁷ and NOM,²⁸ and options markets not affiliated with Nasdaq such as Cboe Options Exchange (“Cboe”),²⁹ NYSE American Options (“NYSE American”),³⁰ NYSE Arca Options (“NYSE Arca”),³¹ BOX Options Market LLC (“BOX”),³² and MIAX Pearl Options Exchange (“Pearl”).³³

²⁵ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010),

²⁶ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

²⁷ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

²⁸ See Nasdaq Rules, Options 7, Section 4 (Nasdaq Options Trade Outline (“NOTO”)).

²⁹ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-Day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price, and transaction type).

³⁰ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021, 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³¹ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³² See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

³³ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

All of the trade outline products offered by the Nasdaq-affiliated exchanges include a license for the unlimited external distribution of Derived Data.³⁴ As noted above, BX will be proposing the same license together with this proposal. All of these Derived Data licenses are direct substitutes.

The underlying trade outline data provided by one exchange is generally similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator among trade outline products depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data. Customers generally purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. Because customers can substitute trade outline products among exchanges, customers can also substitute the proposed Derived Data license for MRX with the Derived Data licenses of any of its affiliates.

The proposed Derived Data license is also subject to potential competition from exchanges not affiliated with Nasdaq. Although the Exchange is not aware of any exchanges offering a Derived Data license for trade outline other than its own affiliates, any exchange that wishes to allow distribution of a Derived Data product based on options trading information would be able to do so with an immediately effective fee filing similar to this proposal.

³⁴ See supra notes 24-27.

All trade outline products are optional. Customers can, and do, choose to forego the information from Trade Outline or any of its competitor products when making a trade, and the same holds for Derived Data from trade outline products.

As the Commission and courts³⁵ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”³⁶ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”³⁷ 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

³⁵ The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” NetCoalition I at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” Id. (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74771 (December 9, 2008) (SR-NYSEArca-2006-21)).

³⁶ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

³⁷ See id.

market competition in its broader forms that are most important to investors and listed companies.”³⁸

Because the proposed Derived Data license is currently subject to competition from other Nasdaq exchanges, and potentially subject to competition from other exchanges, the Exchange will be limited in what it is able to charge for the license, and the proposed fee is therefore a reasonable allocation of dues, fees and other charges.

Comparability

The proposed fees for the Derived Data license are comparable to the fees charged by similarly situated exchanges for the same license.

All of the Nasdaq-affiliated exchanges offer a Derived Data license for their trade outline products. As explained above, the value of any trade outline product is determined in part by the number of underlying transactions reflected in the data.

The proposed fees for the Derived Data license are the same as the fees charged by similarly situated exchanges. MRX has a market share of approximately 4 percent, similar to that of GEMX (at approximately 3 percent).³⁹ The proposed monthly fee of \$3,000 for the unlimited external distribution of Derived Data is identical to the fee charged by GEMX.⁴⁰

The volume of trading on the MRX exchange is also similar to that on the BX exchange, which has a market share of approximately 2 percent.⁴¹ Together with this

³⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

³⁹ See NasdaqTrader.com, “Options Market Statistics,” available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

⁴⁰ See GEMX Options 7, Section 7(D).

⁴¹ See supra note 38.

filing, BX will propose the same monthly fee of \$3,000 as MRX for the unlimited external distribution of Derived Data.

The Nasdaq-affiliated exchanges with larger market shares have comparably higher fees for the unlimited external distribution of Derived Data. Nasdaq Options Market, with a market share of approximately 5 percent,⁴² has a fee of \$4,000 per month for the unlimited external distribution of Derived Data.⁴³ ISE, with a market share of approximately 7 percent,⁴⁴ has a fee of \$4,500 per month for the unlimited external distribution of Derived Data.⁴⁵ PHLX, with a market share of approximately 9 percent,⁴⁶ has a fee of \$5,000 per month for the unlimited external distribution of Derived Data.⁴⁷

The proposed fees are therefore comparable to those charged by similarly situated exchanges and consistent with the fees for Derived Data licenses in the market overall. If the Exchange is wrong in its assessment of fees, it will lose sales as a result.

The Proposal Does Not Permit Unfair Discrimination

The proposed Derived Data license is available to all market participants, including members and non-members, and all current and potential distributors, on the same terms. Nothing in the proposal treats any category of market participant any differently from any other category.

It is reasonable and not unfair discrimination to charge an external distributor of Derived Data a \$3,000 licensing fee that is not charged for internal usage. External

⁴² See id.

⁴³ See Nasdaq Options 7, Section 4.

⁴⁴ See supra note 38.

⁴⁵ See ISE Options 7, Section 10(A).

⁴⁶ See supra note 38.

⁴⁷ See PHLX Options 7, Section 10.

distribution is fundamentally different than internal use. Vendors ordinarily charge a fee to their downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular service, Derived Data products from the Exchange will be part of a suite of offerings that generally promote sales. It is not unfair discrimination to charge a licensing fee for a product that generates downstream revenue.

It is also not unfair discrimination to allow the redistribution of Derived Data, but not the underlying information. Neither exchanges nor vendors ordinarily allow redistribution of analytic products—such products are typically designed solely for the use of direct customers, not for redistribution to the customers of customers in the manner of a data feed.

The proposed licensing structure provides an incentive for vendors to innovate with new compelling and varied analytic products for the general investing public that will provide access to market sentiment insights currently available only to sophisticated investors.

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 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 and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations). As discussed above, MRX Trade Outline is subject to direct competition from other options exchanges that offer similar products. Any of these exchanges can replicate this proposal in full or in part, and nothing in the proposal would interfere with the ability of any exchange to do so.

Intra-market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Outline is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase a license to distribute Derived Data can do so on a non-discriminatory basis.

Indeed, the proposal is designed to foster competition for vendors as well as exchanges by creating an incentive for market data vendors to identify, develop, and sell analytic indicators to help investors inform their investments strategies and analytic models.

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.⁴⁸ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-40 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.

⁴⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to file number SR-MRX-2024-40. 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-2024-40 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.⁴⁹

Sherry R. Haywood,

Assistant Secretary.

⁴⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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NASDAQ MRX, LLC RULES

Options Rules

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Options 7: Pricing Schedule

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Section 7. Market Data

Distributor Fees

	Monthly Charge	
	Internal Distributor Fee	External Distributor Fee
(1) Depth of Market Feed	\$1,500	\$2,000
(2) Order Feed	\$1,500	\$2,000
(3) Top Feed	\$1,500	\$2,000
(4) Trades Feed	\$750	\$1,000
(5) Spread Feed	\$1,000	\$1,500

MRX Options Trade Outline

Account Type	Monthly Charge
End of Day Product Distributor:	\$750
Intra-Day Product Distributor:	\$1,500

MRX Options Trade Outline Historical Data

Account Type	Fee
End of Day Product Distributor:	\$500 per month
Historical Data for Current End of Day Product Distributors:	\$6,000 for the most recent 36 months
Intra-Day Product Distributor:	\$750 per month

Historical Data for Current Intra-Day Product Distributors: \$9,000 for the most recent 36 months

A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

The most recent 36 months is measured based on the date of purchase of the 36 months of data by a Current Distributor.

Ad hoc requests for historical data are \$500 per month for End of Day data and \$750 per month for Intra-Day data. Historical information is available starting in September 2017.

MRX Options Trade Outline External Distribution of Derived Data

<u>Account Type</u>	<u>Monthly Charge</u>
<u>Unlimited External Distribution of Derived Data:</u>	<u>\$3,000</u>

Fees for external distribution of Derived Data from MRX Options Trade Outline are in addition to fees for the End of Day product or the Intraday product, or both, as applicable.

“Derived Data” is any information generated in whole or in part from Exchange Information such that the information generated cannot be reverse engineered to recreate Exchange Information, or be used to create other data that is recognizable as a reasonable substitute for such Exchange Information.

“Exchange Information” is any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) eligible securities or other financial instruments, markets, products, vehicles, indicators or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.

Subscriber Fees

	Monthly Charge
Professional	\$25
Non-Professional	\$1
Non-Display Enterprise License: Permits distribution to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber. The Non-Display Enterprise License covers non-	\$7,500

display Subscriber Fees for all MRX proprietary direct data feed products and is in addition to any other associated distributor fees for MRX proprietary direct data feed products.	
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- A Non-Professional Subscriber is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.
- A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber.
- The Monthly Charge per Subscriber (both Professional and Non-Professional) covers the usage of all five MRX data products and will not be assessed separately for each data product. MRX data is comprised of Depth of Market, Order, Top of Market, Trades, and Spread data. For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top of Market, Order, and Depth of Market the firm would only report the Subscriber once and pay \$25 (\$1 for Non-Professional).
- A "distributor" of Nasdaq MRX data is any entity that receives a feed or data file of data directly from Nasdaq MRX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a Nasdaq Global Data Agreement.

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