

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85313; File No. SR-MRX-2019-05)

March 14, 2019

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates

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 7, 2019, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“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 Pricing Schedule at Options 7, Section 3, entitled “Regular Order Fees and Rebates.”

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqmrx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes to amend the Pricing Schedule at Options 7, Section 3, entitled “Regular Order Fees and Rebates” at Table 2 to (1) lower PIM Fees for Crossing Orders³ for both Penny and Non-Penny Symbols provided certain criteria is met; and (2) increase the PIM rebate in Non-Penny Symbols Fees for Responses to Crossing Orders provided certain criteria is met. The Exchange will describe each amendment below.

PIM Fees for Crossing Orders

Today, MRX assesses an originating PIM Fee for Crossing Orders in Penny and Non-Penny Symbols of \$0.20 per contract for Market Maker,⁴ Non-Nasdaq MRX Market Maker,⁵ Firm Proprietary⁶, Broker-Dealer,⁷ and Professional Customer⁸ orders, and \$0.00 per contract for

³ A “Crossing Order” is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (“PIM”) or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

⁴ A “Market Maker” is a market maker as defined in Nasdaq MRX Rule 100(a)(30). Market Maker fees discussed in this section also apply to Market Maker orders sent to the Exchange by Electronic Access Members.

⁵ A “Non-Nasdaq MRX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

⁶ A “Firm Proprietary” order is an order submitted by a Member for its own proprietary account.

⁷ A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

⁸ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

Priority Customer Orders.⁹ MRX assesses a contra-side PIM Fee for Crossing Orders in all symbols of \$0.05 per contract. MRX proposes to offer market participants an opportunity to lower the contra-side Fee for Crossing Orders. Members that execute 10,000 PIM originating contracts or greater, per day, within a month will be assessed a contra-side Fee for Crossing Orders of \$0.02 per contract instead of the \$0.05 per contract fee.

The Exchange assesses Fees for Responses to Crossing Order of \$0.50 per contract in Penny Symbols and \$1.10 per contract in Non-Penny Symbols. These fees are not being amended with this proposal.

PIM Rebate

Today, MRX pays a rebate to an originating Priority Customer PIM Order that executes with a response (an order or quote), other than the PIM contra-side order, of \$0.40 per contract in Penny Symbols and \$1.00 per contract in Non-Penny Symbols. MRX proposes to offer market participants an opportunity to increase the PIM rebate for an originating Priority Customer PIM Order. Members that execute 10,000 PIM originating contracts or greater, per day, within a month will receive a rebate of \$1.05 per contract in Non-Penny Symbols instead of \$1.00 per contract.

The Exchange believes that this proposal will encourage Members to send additional PIM orders to MRX and cause the origination of PIM auctions. In turn the increased liquidity that may be obtained on MRX in PIM auctions will allow MRX Members the ability to interact with these orders by responding to PIM auctions.

⁹ 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 Rule 100(a)(37A).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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 believes that the proposed changes will attract PIM order flow to MRX, which will create trading opportunities on MRX which benefits all Members.

The Exchange believes that its proposal to assess contra-side PIM Orders a reduced Fee for Crossing Orders in both Penny and Non-Penny Symbols of \$0.02 per contract provided a Member executes 10,000 PIM originating contracts or greater, per day, within a month is reasonable because the Exchange proposes to encourage these market participants to submit a greater amount of order flow to the MRX PIM auction. The Exchange's proposal to pay a higher PIM rebate of \$1.05 per contract in Non-Penny Symbols to Members that execute 10,000 PIM originating contracts or greater, per day, within a month is reasonable because it will incentivize market participants to send additional PIM order flow to MRX. Greater liquidity in the PIM auction provides additional opportunities for price improvement.

As an example, if an MRX Member submits a Non-Penny Symbol paired order to the PIM auction with an originating Priority Customer Order, the originating Priority Customer Order would pay no Fee for Crossing Orders. The contra-side PIM order would pay a Fee for

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

Crossing Orders of \$0.05 per contract.¹² With this proposal the maximum fee for the contra-side of the PIM order could be reduced to \$0.02 per contract provided the Member submitting the paired PIM order executed 10,000 PIM originating contracts or greater, per day, within a month. This proposal offers MRX Members an opportunity initiate PIM auctions at a total maximum cost of \$0.02 per contract provided they met the requisite quantity of originating side execution in a PIM auction for the month.¹³

If an MRX Member responds to the PIM order, breaking-up the paired order, the responding Member would be assessed a fee of \$1.10 per contract.¹⁴ Because in this example the originating Priority Customer PIM Order executed with a response (order or quote), other than the PIM contra-side order, the Member that entered the paired order would receive a rebate of \$0.40 per contract in Penny Symbols and \$1.00 per contract in Non-Penny Symbols. With this proposal, the Member that submitted the paired order could achieve the higher rebate of \$1.05 per contract, provided the Member executed 10,000 PIM originating contracts or greater, per day in Non-Penny Symbols. The PIM fee paid by the responder assists the Exchange in funding the rebate to encourage Members to submit PIM order flow to the Exchange, which all Members may interact with and respond to within the PIM auction.

The Exchange believes that its proposal to assess contra-side PIM Orders a reduced Fee for Crossing Orders in both Penny and Non-Penny Symbols of \$0.02 per contract, provided a Member executes 10,000 PIM originating contracts or greater, per day, within a month, is

¹² All market participants on the contra-side of a PIM auction are assessed a Fee for Crossing Orders of \$0.05 per contract.

¹³ MRX assesses PIM fees on a monthly basis and the fees would be applied per day, within a month, subject to any business day exclusions. The Exchange notes that this fee is calculated by averaging volume across the month per business day.

¹⁴ All market participants responding to a PIM auction pay either a \$0.50 per contract Penny Symbol or \$1.10 Non-Penny Symbol Fee for Responses to PIM auctions.

equitable and not unfairly discriminatory because all Members may achieve this reduced PIM fee provided they execute the requisite quantity of PIM originating contracts. The Exchange's proposal to pay a higher PIM rebate of \$1.05 per contract in Non-Penny Symbols to Members that execute 10,000 PIM originating contracts or greater, per day, within a month is equitable and not unfairly discriminatory because all Members may achieve a higher rebate in Non-Penny Symbols provided they execute 10,000 PIM originating contracts or greater, per day, within a month.

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. The Exchange's proposal does not impose a burden on inter-market competition because the proposed fee structure for PIM Orders remains competitive with other options exchanges.¹⁵ MRX 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.

The Exchange believes that its proposal to assess contra-side PIM Orders a reduced Fee for Crossing Orders in both Penny and Non-Penny Symbols of \$0.02 per contract, provided a Member executes 10,000 PIM originating contracts or greater, per day, within a month, does not

¹⁵ See Cboe EDGX Exchange, Inc.'s Fee Schedule, specifically the BAM Pricing.

impose an undue burden on competition because all Members may achieve this reduced PIM fee provided they execute the requisite quantity of PIM originating contracts. The Exchange's proposal to pay a higher PIM rebate of \$1.05 per contract in Non-Penny Symbols to Members that execute 10,000 PIM originating contracts or greater, per day, within a month does not impose an undue burden on competition because all Members may achieve a higher rebate in Non-Penny Symbols provided they execute 10,000 PIM originating contracts or greater, per day, within a month.

The Exchange believes that the proposed fees do not impact intra-market competition notwithstanding that the proposed per contract fees assessed to Members that respond to a PIM auction pay a greater per contract fee (\$0.50 per contract for Penny and \$1.10 per contract for Non-Penny) than Members that are contra to a PIM Order (\$0.05 or \$0.02, as proposed, per contract for all options series). The Exchange notes that Members who commence a PIM auction guarantee the execution of the agency order. Members may choose to respond to a PIM auction if they desire to participate in the auction and potentially improve the price and execute against the agency order. Initiators assume a greater risk when they guarantee the trade. Initiators provide liquidity when they initiate a PIM auction and provide an opportunity for any Member to interact with the order flow within the PIM auction. All Members that operate an agency business may initiate a PIM Order, and all Members are able to participate by responding to PIM auctions. The Exchange believes assessing responders a higher fee as compared to an initiator does not impose an undue burden on intra-market competition because Members that initiate PIM auctions bring order flow to ISE [sic] for all Members to interact with by responding to a PIM auction. The Exchange desires to incentivize these Members for bringing order flow and initiating PIM auctions. Responders are assessed a higher fee to respond to these PIM

auctions because they are not required to participate in the PIM auction and also because they may respond during the final millisecond of the auction timer and assume less risk by obtaining more certainty with respect to price. If no one responds to the PIM auction, the initiator will execute the paired order.

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MRX-2019-05 on the subject line.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2019-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-MRX-2019-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).