SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100607; File No. SR-MRX-2024-29)

July 26, 2024

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend MRX 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 July 24, 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 Exchange's Pricing Schedule at Options 7.[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 received on the proposed rule change. The text of these statements may be examined at the places specified in

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 On July 15, 2024, the Exchange withdrew SR-MRX-2024-20 and replaced it with SR-MRX-2024-26. On July 24, 2024, the Exchange withdrew SR-MRX-2024-26 and replaced it with this filing.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

MRX proposes to amend the Exchange's Pricing Schedule at Options 7, Section 3, Table 2 related to Crossing Orders. Specifically, the Exchange proposes to amend the Regular and Complex Order Non-Penny Symbol Fees for Crossing Orders.[4]

Options 7, Section 3 – Table 2

Today, Options 7, Section 3, Table 2 applies to Regular and Complex Crossing Orders. Today, the Exchange assesses the following Regular and Complex Crossing Order Fees in Penny and Non-Penny Symbols:[5]

	Regular and Complex Crossing Orders		
Penny Symbols			
Market Participant	**Fee for Crossing Orders**	**Fee for Responses to Crossing Orders**	**Break-up Rebate for Facilitation Mechanism and Solicited Order Mechanism**
Market Maker	$0.02	$0.50	N/A
Non-Nasdaq MRX Market Maker (FarMM)	$0.02	$0.50	N/A
Firm Proprietary / Broker-Dealer	$0.02	$0.50	N/A
Professional Customer	$0.02	$0.50	N/A

4 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. See Options 7, Section 1(c).

5 Footnotes in the Pricing Schedule are not displayed in this table.

Priority Customer	$0.00	$0.50	($0.30)

Non-Penny Symbols

Market Participant	Fee for Crossing Orders	Fee for Responses to Crossing Orders
Market Maker	$0.20	$1.10
Non-Nasdaq MRX Market Maker (FarMM)	$0.20	$1.10
Firm Proprietary / Broker-Dealer	$0.20	$1.10
Professional Customer	$0.20	$1.10
Priority Customer	$0.00	$1.10

At this time, the Exchange proposes to amend Table 2 of Options 7, Section 3 to decrease the Non-Penny Symbol Non-Priority Customer[6] Fees for Crossing Orders from $0.20 to $0.02 per contract for orders in the Facilitation Mechanism,[7] Complex Facilitation Mechanism,[8] Solicitation Mechanism,[9] Complex Solicitation Mechanism[10] and Block Orders.[11] A Priority Customer would continue to be assessed no Regular and Complex Order Fee for Crossing Orders in Non-Penny Symbols.

Fees apply to the originating and contra-side orders, except for PIM Orders and Qualified Contingent Cross ("QCC") Orders, Complex QCC Orders, QCC with Stock Orders and Complex QCC with Stock Orders. The Fee for Crossing Orders for QCC Orders, Complex QCC Orders, QCC with Stock Orders and Complex QCC with Stock Orders is $0.20 per contract for Non-Priority Customer orders in Penny and Non-Penny Symbols. Priority Customer orders are not

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6 "Non-Priority Customers" include Market Makers, Non-Nasdaq GEMX Market Makers (FarMMs), Firm Proprietary / Broker-Dealers, and Professional Customers. See Options 7, Section 1(c).

7 The Facilitation Mechanism is described in Options 3, Section 11(b).

8 The Facilitation Mechanism is described in Options 3, Section 11(c).

9 The Solicitation Mechanism is described in Options 3, Section 11(d).

10 The Solicitation Mechanism is described in Options 3, Section 11(e).

11 Block Orders are single-leg orders in single-sided auctions. See Options 3, Section 11(a).

assessed a fee for Crossing Orders. Regular and Complex PIM Orders are subject to separate pricing in Part A of Options 7, Section 3.

The Exchange believes that lowering the Regular and Complex Non-Priority Customer Fees for Crossing Orders in Non-Penny Symbols will attract additional Crossing Orders to MRX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] 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 proposed changes 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'…."[14]

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12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(4) and (5).

14 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)).

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."[15]

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.

<u>Options 7, Section 3 – Table 2</u>

The Exchange's proposal to amend Table 2 of Options 7, Section 3 to decrease the Regular and Complex Non-Priority Customer Fees for Crossing Orders in Non-Penny Symbols from $0.20 to $0.02 per contract for orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders is reasonable because the Exchange would be reducing the originating and contra-side order fees to enter orders in these auction mechanisms to encourage market participants to enter additional

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

Crossing Orders on MRX. The Exchange would continue to assess no Regular and Complex Order Non-Penny Symbol Priority Customer Fee for Crossing Orders.

The Exchange's proposal to amend Table 2 of Options 7, Section 3 to decrease the Regular and Complex Non-Priority Customer Fees for Crossing Orders in Non-Penny Symbols from $0.20 to $0.02 per contract for orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders is equitable and not unfairly discriminatory as all Non-Priority Customers that enter orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders would be uniformly assessed these lower Non-Penny Symbol fees. A Priority Customer would continue to be assessed no Regular and Complex Order Fee for Crossing Orders in Non-Penny Symbols. Unlike other market participants, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow for other market participants, to the benefit of all market participants.

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.

Options 7, Section 3 – Table 2

In terms of intra-market competition, the Exchange's proposal to amend Table 2 of Options 7, Section 3 to decrease the Regular and Complex Non-Priority Customer Fees for Crossing Orders in Non-Penny Symbols from $0.20 to $0.02 per contract for orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex

Solicitation Mechanism and Block Orders does not impose an undue burden on competition as all Non-Priority Customers that enter orders in the Facilitation Mechanism, Complex Facilitation Mechanism, Solicitation Mechanism, Complex Solicitation Mechanism and Block Orders would be uniformly assessed these lower Non-Penny Symbol fees. Assessing lower Non-Penny Symbol Non-Priority Customer Fees for Crossing Orders and not lowering the Non-Penny Symbol Non-Priority Customer Responses for Crossing Orders does not impose an undue burden on competition.

Today, a differential exists as between the Fees for Crossing Orders (the fees that apply to the originating and contra-side orders) and the Responses for Crossing Orders, the Exchange does not believe that widening this differential burdens competition because lowering these originating and contra-side order fees encourages Members to initiate Facilitation Mechanisms, Complex Facilitation Mechanisms, Solicitation Mechanisms, Complex Solicitation Mechanisms and Block Orders in Non-Penny Symbols. Members responding to these auctions would continue to be assessed $1.10 per contract Non-Penny Symbol fee, which is the same fee assessed today for Members removing liquidity from the order book. The Exchange would continue to assess Members the same fees to remove liquidity whether they are removing that liquidity from the order book or one of the aforementioned auctions. The liquidity the Exchange is able to attract to MRX in the form of these auctions provides other Members an opportunity to engage with auction orders and participate in the trade by breaking-up the auction order or being allocated in the auction. Members would not be able to respond to the auctions if such auctions never commence.

A Priority Customer would continue to be assessed no Regular and Complex Order Fee for Crossing Orders in Non-Penny Symbols. Unlike other market participants, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow for other market participants, to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

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,

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2024-29 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-2024-29. 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-2024-29 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.[17]

Sherry R. Haywood,

Assistant Secretary.

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[17] 17 CFR 200.30-3(a)(12).