

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89046; File No. SR-MRX-2020-11)

June 11, 2020

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Pricing Schedule at Options 7

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 1, 2020, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 its Pricing Schedule at Options 7 in connection with the pricing for orders entered into the Exchange’s Price Improvement Mechanism (“PIM”).

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

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

<sup>2</sup> 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 purpose of the proposed rule change is to amend the Exchange’s Pricing Schedule at Options 7 to adopt separate fees for complex PIM orders that will be identical to the current fees for regular PIM orders. The Exchange also proposes to amend the PIM break-up rebates to provide the rebate only for PIM orders that meet specified size requirements. In connection with the foregoing changes, the Exchange also proposes to amend its Pricing Schedule to set forth its PIM pricing in a separate section for better readability. Each change is discussed in detail below.

Background

For regular PIM orders, the Exchange currently charges a PIM originating fee in Penny and Non-Penny Symbols of \$0.20 per contract for Non-Priority Customers<sup>3</sup> and \$0.00 per contract for Priority Customers.<sup>4</sup> The Exchange also charges all market participants a PIM contra-side fee in Penny and Non-Penny Symbols of \$0.05 per contract. Members that execute an average daily volume (“ADV”) of 10,000 PIM originating contracts or greater within a month are eligible for a reduced PIM contra-side fee of \$0.02 per contract (in lieu of \$0.05 per

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<sup>3</sup> Non-Priority Customers consist of Market Makers (including Market Maker orders sent to the Exchange by EAMs), Non-Nasdaq MRX Market Makers (FarMM), Firm Proprietary / Broker-Dealers, and Professional Customers.

<sup>4</sup> A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq MRX Options 1, Section 1(a)(36).

contract). In addition, the Exchange presently charges PIM response fees of \$0.50 per contract in Penny Symbols and \$1.10 per contract in Non-Penny Symbols.<sup>5</sup>

The Exchange currently pays a regular PIM break-up rebate to an originating Priority Customer PIM order that executes with a response (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. Notwithstanding the foregoing, Members that execute an ADV of 10,000 PIM originating contracts or greater within a month will receive a break-up rebate of \$1.05 per contract in Non-Penny Symbols (in lieu of \$1.00 per contract).

As it relates to complex PIM orders, the Exchange currently charges Non-Priority Customers a uniform \$0.15 per contract fee for all complex orders, including complex orders submitted into the Complex PIM. The \$0.15 per contract fee applies to an originating order, contra-side order and responses entered into MRX's Complex PIM. No complex order fees are presently assessed to Priority Customers, including Priority Customer complex PIM orders.

#### PIM Fees

The Exchange now proposes to adopt separate fees for complex PIM orders within new Section 5.E of Options 7 that will be identical to the current fees assessed for regular PIM orders. In particular, the Exchange proposes to charge all complex Non-Priority Customer PIM originating orders in Penny and Non-Penny Symbols the \$0.20 per contract PIM originating fee that it currently assesses to all regular Non-Priority Customer PIM originating orders, and, for complex Priority Customer PIM originating orders, the \$0.00 per contract PIM originating fee it currently assesses to regular Priority Customer PIM originating orders. Likewise, the Exchange

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<sup>5</sup> The PIM response fees are the same as the response fees presently charged for all other Crossing Orders. See Options 7, Section 3, Table 2.

proposes to assess all market participants \$0.05 per contract for complex PIM contra-side orders in Penny and Non-Penny Symbols, identical to how regular PIM contra-side orders are charged today. The Exchange further proposes to offer market participants an opportunity to lower the proposed complex PIM contra-side fee from \$0.05 to \$0.02 per contract if they execute an ADV of 10,000 PIM originating contracts or greater within a month, identical to the reduced regular PIM contra-side fee it currently offers market participants today.<sup>6</sup> In addition, the Exchange proposes to assess responses entered into complex PIM at the same rate as the fees currently assessed for regular PIM responses (i.e., \$0.50 per contract in Penny Symbols and \$1.10 in Non-Penny Symbols).

#### PIM Break-up Rebate

The Exchange also proposes to adopt complex PIM break-up rebates that are similar to the regular PIM break-up rebates described above, with two differences. First, the Exchange proposes, for complex PIM orders only, to pay a higher break-up rebate of \$0.45 per contract (in lieu of \$0.40 per contract) with respect to a Priority Customer PIM originating order in Penny Symbols for qualifying Members that execute an ADV of 10,000 PIM originating contracts or greater within a month.<sup>7</sup> Currently for regular PIM orders, the Exchange only provides a higher break-up rebate with respect to a Priority Customer PIM originating order in Non-Penny Symbols (\$1.05 per contract in lieu of \$1.00 per contract), not Penny Symbols, to qualifying Members that meet this ADV threshold.<sup>8</sup> Second, the Exchange proposes to provide break-up

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<sup>6</sup> See proposed note 1 in Options 7, Section 5.E.

<sup>7</sup> See proposed note 3 in Options 7, Section 5.E.

<sup>8</sup> As discussed later in this filing, the Exchange's proposal will offer this higher Non-Penny Symbol rebate of \$1.05 per contract for both regular and complex PIM orders. See proposed note 3 in Options 7, Section 5.E.

rebates only for Priority Customer PIM originating orders that meet specified size requirements. Specifically, the Exchange proposes to apply the break-up rebates only to regular PIM orders of 500 or fewer contracts and to complex PIM orders where the largest leg is 500 or fewer contracts.<sup>9</sup> As such, the break-up rebates currently offered to regular Priority Customer PIM originating orders of more than 500 contracts will be eliminated under this proposal. The Exchange is seeking to attract smaller and medium sized Priority Customer PIM order flow to MRX with this change.

Otherwise, the Exchange will apply the same break-up rebates to complex Priority Customer PIM originating orders as the current rebates applied to regular Priority Customer PIM originating orders, provided that such PIM orders meet the proposed size requirement of 500 or fewer contracts. Thus, the break-up rebates will be \$0.40 per contract in Penny Symbols and \$1.00 per contract in Non-Penny Symbols, applicable to Priority Customer PIM originating orders that are 500 or fewer contracts (for regular orders) and where the largest leg is 500 or fewer contracts (for complex orders). Furthermore, Members that execute an ADV of 10,000 PIM originating contracts or greater within a month will be eligible to receive, Exchange will apply the break-up rebate of \$1.05 per contract in Non-Penny Symbols (in lieu of \$1.00 per contract)

#### Technical Changes

For better readability, the Exchange proposes to relocate the fees and rebates for regular PIM orders currently within Table 2 of Options 7, Section 3 into new Section 5.E, titled “PIM Pricing for Regular and Complex Orders,” to group them with the proposed pricing for complex PIM orders. In connection with the foregoing changes, the Exchange also proposes to amend

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<sup>9</sup> See proposed note 2 in Options 7, Section 5.E.

Options 7, Sections 3 and 4 to clarify that regular and complex PIM orders are subject to separate pricing in Options 7, Section 5.E. Lastly, the Exchange is correcting a typo in note 1 of Options 7, Section 4 to revise “abovereferenced” to “above-referenced.”

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange’s proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange 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

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<sup>10</sup> 15 U.S.C. 78 f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' ....”<sup>12</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>13</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

#### PIM Fees

The Exchange believes that the proposed fee structure for complex PIM orders (i.e., originating, contra-side, and responses) is reasonably designed because the proposed fees will be

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<sup>12</sup> NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>13</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

aligned with the fees currently in place for regular PIM orders. The proposed fee structure is designed to promote order flow through the complex PIM, which benefits all market participants by providing additional trading opportunities at improved prices. While the Exchange is increasing the complex PIM originating fees for Non-Priority Customers<sup>14</sup> and the complex PIM response fees for all market participants<sup>15</sup> under this proposal, the proposed fees will harmonize the complex PIM fees with the regular PIM fees assessed today. While the all market participants will be charged higher complex PIM response fees than the fees currently assessed, the Exchange believes that the increased fees are appropriate to offset the significant break-up rebates to Priority Customers who submit PIM orders as proposed herein.<sup>16</sup>

As proposed, the Exchange will also charge complex PIM contra-side orders at the same rate as regular PIM contra-side order today. The proposed changes will decrease the complex PIM contra-side fee for certain market participants while increasing the fee for others. In particular, the Exchange believes that its proposal to assess Non-Priority Customers a decreased

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<sup>14</sup> The complex PIM originating fees will increase from \$0.15 to \$0.20 per contract for Non-Priority Customers in all symbols. As discussed above, this fee will remain at \$0.00 for Priority Customers.

<sup>15</sup> The complex PIM response fees will increase (i) in Penny Symbols, from \$0.15 to \$0.50 per contract for Non-Priority Customers and from \$0.00 to \$0.50 per contract for Priority Customers, and (ii) in Non-Penny Symbols, from \$0.15 to \$1.10 per contract for Non-Priority Customers and from \$0.00 to \$1.10 per contract for Priority Customers.

<sup>16</sup> As discussed above, the Exchange proposes to offer break-up rebates to Priority Customer PIM originating orders of 500 or fewer contracts (regular PIM orders) or where the largest leg is 500 or fewer contracts (complex PIM orders), which execute with any response other than the PIM contra-side order. This rebate will be (i) \$0.40 per contract in Penny Symbols (or, for complex PIM orders only, \$0.45 for Members that execute an ADV of 10,000 PIM originating contracts or greater within a month for complex PIM orders only), and (ii) \$1.00 per contract in Non-Penny Symbols (or, for both regular and complex PIM orders, \$1.05 for Members that execute an ADV of 10,000 PIM originating contracts or greater within a month).



complex PIM contra-side fee<sup>17</sup> is reasonable because the Exchange is seeking to encourage these market participants to submit a greater amount of order flow to the MRX PIM auction. The Exchange believes it is reasonable to assess Priority Customers an increased complex PIM contra-side fee<sup>18</sup> because the Exchange will also offer Priority Customers an opportunity to receive significant break-up rebates for any originating Priority Customer PIM order that meets the requirements described herein. In addition, Priority Customers will continue to receive free executions on their complex PIM originating orders as is the case today. Furthermore, all market participants will have the opportunity to reduce their \$0.05 contra-side PIM fees to \$0.02 per contract if they execute an ADV of 10,000 PIM originating contracts or greater within a month, thereby incentivizing market participants to send additional PIM order flow to MRX. Greater liquidity in the PIM auction provides additional opportunities for price improvement. The Exchange further notes that the proposed fees are generally within the range of fees assessed by another exchange that employs a similar fee structure for its price improvement mechanisms.<sup>19</sup>

The Exchange believes that the proposed fees for complex PIM orders (i.e., originating, contra-side, and responses) are equitable and not unfairly discriminatory as the fees will be more

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<sup>17</sup> The complex PIM contra-side fee will decrease from \$0.20 to \$0.05 per contract for Non-Priority Customers in all symbols.

<sup>18</sup> The complex PIM contra-side fee will increase from \$0.00 to \$0.05 per contract for Priority Customers in all symbols.

<sup>19</sup> See MIAX Options (“MIAX”) Fee Schedule, Section 1(a)(vi) (MIAX Complex Price Improvement Mechanism (“cPRIME”) Fees), which provides for comparable rates for similar originating (i.e., agency) orders, contra-side orders and responses submitted into its cPRIME auctions. For example, MIAX assesses all non-Priority Customers a fee of \$0.30 for cPRIME agency orders and \$0.04 for cPRIME contra-side orders. MIAX also assesses all market participants a fee of \$0.50 (Penny Classes) and \$0.99 (Non-Penny Classes) for cPRIME responses. As it relates to the Non-Penny response fee, while the Exchange will charge a higher complex PIM response fee, the proposed fee is intended to offset the proposed break-up rebates as discussed below.

standardized across regular and complex PIM orders, and across market participant types, with the exception that Priority Customers will continue to not be charged a fee for PIM originating orders. The Exchange believes it is equitable and not unfairly discriminatory to not charge Priority Customers a complex PIM originating fee as the Exchange has historically offered lower pricing or other incentives to Priority Customer orders in order to incentivize such order flow to the Exchange. Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow.

#### PIM Break-up Rebate

The Exchange believes that the proposed PIM break-up rebates are reasonable because these incentives will attract additional order flow to PIM, particularly smaller to medium sized Priority Customer PIM orders (i.e., 500 or fewer contracts). By providing break-up rebates of \$0.40 (Penny Symbols) and \$1.00 (Non-Penny Symbols) to Priority Customer PIM originating orders that execute with any response other than the PIM contra-side order, and by offering these rebates only to PIM orders of 500 or fewer contracts, the proposal is designed to encourage Members to execute this order flow in the Exchange's PIM. Additional PIM order flow provides all market participants with additional trading opportunities at improved prices. The Exchange notes that other exchanges, including its affiliate Nasdaq ISE ("ISE"), impose size requirements for certain rebates and credits.<sup>20</sup> Furthermore, the Exchange believes that providing higher

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<sup>20</sup> See ISE Pricing Schedule, Options 7, Section 4, note 1, which sets forth a Priority Customer complex rebate that is provided to complex orders where the largest leg of the order is under fifty contracts and trades with quotes and orders on the regular order book; Cboe Options ("Cboe") Fee Schedule, Volume Incentive Program ("VIP"), which provides that VIP credits on orders executed electronically in Cboe's Automated Improvement Mechanism ("AIM") will be capped at 1,000 contracts per order for simple executions and 1,000 contracts per leg for complex executions; and MIAX Fee Schedule,

break-up rebates to Members that execute a higher ADV of PIM originating orders as described above will encourage Members to send additional PIM order flow to MRX in order to qualify for the higher rebates. The Exchange also believes that the proposed break-up rebates are set at reasonable rates because they are aligned with the rebates currently provided for regular Priority Customer PIM originating orders.

The Exchange believes that the proposed break-up rebates are equitable and not unfairly discriminatory because the proposed rebates will apply equally to all Priority Customer PIM originating orders that execute against PIM responses. While Priority Customers will receive the break-up rebate, as opposed to other market participants, the Exchange believes that this application of the rebate is equitable and not unfairly discriminatory because Priority Customer order flow enhances liquidity on the Exchange. This, in turn, provides more trading opportunities and attracts other market participants, thus facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants. Moreover, as stated above, the Exchange has historically provided lower pricing or other incentives to Priority Customers in order to attract such order flow.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of Exchange market participant at a competitive disadvantage. The proposed changes to the Exchange's PIM pricing program are all designed to incentivize market

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Section 1(a)(iii) (Priority Customer Rebate Program), which provides that the per contract credit for cPRIME Agency Orders is assessable to the first 1,000 contracts per leg for each cPRIME Agency Order.

participants to direct PIM order flow to the Exchange. While some aspects of the proposal apply directly to Priority Customers (through the free executions of PIM originating orders and application of the break-up rebates), the Exchange believes that the proposed changes taken together will fortify and encourage additional PIM order flow to MRX. As noted above, all market participants will benefit from any increase in market activity that the proposal effectuates.

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.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>21</sup> and Rule 19b-4(f)(2)<sup>22</sup> thereunder. 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](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2020-11 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-2020-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).

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-2020-11 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.<sup>23</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).