

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96924; File No. SR-MRX-2023-04)

February 14, 2023

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchanges Pricing Schedule at Options 7, Section 3

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 2023, 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, Section 3 (Regular Order Fees and Rebates).

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

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 purpose of the proposed rule change is to amend the Exchange’s Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).³

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange assesses the following fees for regular orders in Penny Symbols:

Market Participant	Maker	Maker	Taker	Taker
	Fee	Fee	Fee	Fee
	Tier 1	Tier 2	Tier 1	Tier 2
Market Maker	\$0.20	\$0.10	\$0.50	\$0.50
Non-Nasdaq MRX Market Maker (FarMM)	\$0.47	\$0.47	\$0.50	\$0.50
Firm Proprietary / Broker-Dealer	\$0.47	\$0.47	\$0.50	\$0.50
Professional Customer	\$0.47	\$0.47	\$0.50	\$0.50
Priority Customer	\$0.00	\$0.00	\$0.00	\$0.00

The Exchange now proposes to introduce a growth incentive in new note 6 that would allow Market Makers⁴ to reduce their maker fees described above. The proposed growth incentive will be aimed at rewarding new and existing Market Makers to grow the extent of their

³ The Exchange initially filed the proposed pricing changes on January 3, 2023 (SR-MRX-2023-01) to adopt a Market Maker growth incentive and to amend complex order fees. On January 17, 2023, the Exchange withdrew that filing and submitted SR-MRX-2023-02. On January 30, 2023, the Exchange withdrew that filing and submitted separate filings for the Market Maker growth incentive and complex order fees. This specific filing replaces the Market Maker growth incentive set forth in SR-MRX-2023-02.

⁴ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1, Section 1(a)(21).

liquidity adding activity in Penny Symbols on the Exchange over time. Market Makers, including any new Market Makers, who did not have any volume in the Market Maker Penny add liquidity segment for the month of December 2022 (and therefore lack December 2022 baseline volume against which to measure subsequent growth) would meet the growth requirement through whatever volume of Market Maker add liquidity activity in Penny Symbols during the first month of use.⁵

Specifically, Market Makers may qualify for a reduction in the Tier 1 and Tier 2 Maker Fees described above if the Market Maker has increased its volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume⁶ by at least 100% over the Member's December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. Market Makers that qualify will have their Tier 1 Maker Fee reduced by \$0.15 and their Tier 2 Market Fee reduced by \$0.05. As a result, Market Makers that qualify for the growth incentive would pay a discounted maker fee of \$0.05 per contract in Tier 1 and Tier 2.⁷

⁵ The Exchange will continue to evaluate the proposed growth tier criteria to determine whether the parameters are appropriately designed to incentivize Market Makers in the intended manner. If the Exchange determines that the growth tier parameters need to be adjusted, it will do so in a future rule filing.

⁶ "Customer Total Consolidated Volume" means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. See Options 7, Section 1(c).

⁷ The Exchange notes that MIAX Pearl Options ("PEARL") currently has a similarly structured growth incentive in place whereby it provides additional maker rebates to Market Makers in Non-Penny classes, which are applied to the Market Maker's base maker rebates for Non-Penny classes in Tiers 1 through 4 if the Market Maker increases their Non-Penny Class Maker TCV by 100% or more compared to that Market Maker's TCV for the month of July 2022. Today, PEARL Market Makers are provided base maker rebates in Non-Penny classes of \$0.30 (Tier 1), \$0.30 (Tier 2), \$0.60 (Tier 3), and \$0.65 (Tier 4). PEARL Market Makers that qualify for the growth incentive would receive the following additional rebates: (\$0.40) in Tier 1; (\$0.40) in Tier 2; (\$0.10) in Tier 3; and (\$0.05) in Tier 4. As a result, qualifying PEARL Market Makers would

As noted above, Market Makers, including any new Market Makers, who did not have any volume in the Market Maker Penny add liquidity segment for the month of December 2022 would meet the growth requirement through whatever volume of Market Maker add liquidity activity in Penny Symbols during the first month of use. The Exchange therefore proposes to also add that Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 will have any new volume considered as added volume.⁸

As noted above, the Exchange intends for this proposal to reward Market Makers that increase the extent to which they add Penny Symbol liquidity to the Exchange over time and specifically, relative to a recent benchmark month (December 2022). The Exchange believes that if the proposed incentive is effective, any ensuing increase in added liquidity in Penny Symbols will improve market quality, to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among

receive total rebates of \$0.70 per contract (i.e., base rebate plus additional rebate) in Tiers 1 through 4. See PEARL Fee Schedule at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Options_Fee_Schedule_01012023_1.pdf. See also Securities Exchange Act Release No. 95886 (September 22, 2022), 87 FR 58843 (September 28, 2022) (SR-PEARL-2022-40) (“Adopting Filing”).

⁸ The Exchange notes that PEARL has a substantially similar structure in place for its Market Maker growth incentive whereby it considers any new volume as added volume for PEARL Market Makers with no volume in the Non-Penny class maker segment for the month of July 2022. See *supra* note 7 for PEARL Fee Schedule and for Adopting Filing.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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 schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”¹¹

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹²

¹¹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

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.

The Exchange believes that it is reasonable to establish a new growth incentive that would provide Market Makers with the opportunity to reduce their maker fees by \$0.15 (Tier 1) and by \$0.05 (Tier 2) if they increase their Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume by at least 100% over their December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. The proposal is reasonable because it will provide extra incentives to Market Makers to engage in substantial amounts of liquidity adding activity in Penny Symbols on the Exchange, as well as to grow substantially the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed incentive is effective, then any ensuing increase in liquidity adding activity on the Exchange will improve the quality of the market overall, to the benefit of all market participants. The Exchange also believes that it is reasonable to provide Market Makers with a higher discount in the base Tier 1 marker fee than in Tier 2 because the Exchange believes that the prospect of obtaining the higher discount in Tier 1 will attract Penny add liquidity volume from new Market Makers. The Exchange similarly believes that it is reasonable to consider any new Penny add liquidity volume for Market Makers with no such volume for the month of December 2022 in order for those

Market Makers to receive the proposed discounts to their maker fees because this is designed to attract additional Penny liquidity from new Market Makers to the Exchange. To the extent this proposal attracts new Market Maker Penny add liquidity volume to the Exchange, all market participants should benefit through more trading opportunities and tighter spreads. The Exchange notes that another options exchange employs a similarly structured growth incentive today that provides tiered incentives to Market Makers for increasing their add liquidity activity relative to a benchmark month, including providing higher incentives in the lower tiers versus the higher tiers and considering any new volume as added volume for Market Makers with no volume in the targeted segment for the benchmark month.¹³

The Exchange believes that the proposed growth incentive is equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the proposed growth incentive to only Market Makers because Market Makers have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements). As such, the Exchange's proposal is designed to increase Market Maker participation and reward Market Makers for the unique role they play in ensuring a robust market. As discussed above, the proposal is designed to encourage Market Makers to substantially add Penny Symbol liquidity to the Exchange. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in market quality, which stands to benefit all market participants.

Furthermore, the Exchange believes that it is equitable and not unfairly discriminatory to provide a higher discount to qualifying Market Makers in the base Tier 1 marker fee than in Tier

¹³ See supra note 7.

2 because as noted above, the Exchange is seeking to attract Penny add liquidity volume from new Market Makers by offering the opportunity of obtaining a higher discount in Tier 1. The Exchange similarly believes that it is equitable and not unfairly discriminatory to consider any new Penny add liquidity volume for Market Makers with no such volume for the month of December 2022 in order for those Market Makers to receive the proposed discounts to their maker fees because this is designed to attract additional Penny liquidity from new Market Makers to the Exchange. In turn, this additional Penny liquidity should benefit all market participants through increased liquidity and order interaction. To the extent the proposed maker fee attracts new Market Makers to the Exchange, the Exchange similarly believes that its proposal will increase liquidity on MRX, which benefits all market participants by providing more trading opportunities, tighter spreads, and increased order interaction. As discussed earlier, the proposed growth incentive is structured similarly to another options exchange.¹⁴

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 proposals will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed Market Maker growth incentive should encourage the provision of liquidity from both existing and new Market Makers that enhances the quality of the Exchange’s market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities.

¹⁴

Id.

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.

As discussed above, the proposed growth incentive is pro-competitive in that the Exchange intends for the changes to increase liquidity addition and activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants. The Exchange also notes that its proposed incentive is structured similarly to a competing options exchange.¹⁵

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.

¹⁵ See supra note 7.

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-2023-04 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-2023-04. 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

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2023-04 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

Sherry R. Haywood,
Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).