

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82817; File No. SR-MRX-2018-07)

March 6, 2018

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Certain Terms Used in the Schedule of Fees

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 February 20, 2018, 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 a proposed rule change to clarify certain terms used in the Schedule of Fees, and to make certain other non-substantive changes to the Schedule of Fees.

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 purpose of the proposed rule change is to clarify certain terms used in the Schedule of Fees, and to make certain other non-substantive changes to the Schedule of Fees. These proposed changes are designed to make it easier to understand how the Exchange charges fees under the Schedule of Fees, and have no impact on the actual fees charged to members, which will remain unchanged. While the Exchange believes that its members understand the concepts being clarified in this proposed rule change, which have been included in the Schedule of Fees in some cases since the Exchange began aggregating volume from affiliated/appointed firms in 2016,³ the Exchange believes that this proposed rule change will avoid any future potential for member confusion.

First, the Exchange proposes to adopt explicit definitions for the following terms: (1) Market Maker, (2) Affiliated Member, and (3) Appointed Member. As proposed, a “Market Maker” is a market maker as defined in Nasdaq MRX Rule 100(a)(30); an “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member’s Form BD, Schedule A;⁴ and an “Appointed Member” is either an Appointed Market Maker or Appointed Order Flow Provider. While these terms are currently used in the

³ See Securities Exchange Act Release No. 77412 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISEMercury-2016-06); 77841 (May 16, 2016), 81 FR 31986 (May 20, 2016) (SR-ISEMercury-2016-11).

⁴ If a firm has multiple exchange memberships housed in a single legal entity (e.g., a Primary Market Maker and an Electronic Access Member) those memberships would be Affiliated Members due to sharing 100% common ownership.

Schedule of Fees, in capitalized or non-capitalized form, and are described in either the Schedule of Fees or the Nasdaq MRX Rules, as well as the proposed rule changes that adopted the relevant terminology, the Exchange believes that including these definitions in the Preface to the Schedule of Fees will make the Schedule of Fees easier for members to understand. In connection with the above changes, the Exchange also proposes to delete references to the 75% common ownership requirement in the Qualifying Tier Thresholds section of the Schedule of Fees, as this concept is now included in the definition of Affiliated Member.

Second, the Exchange proposes to amend language under the Qualifying Tier Thresholds section of the Schedule of Fees to reference more explicitly how the Exchange aggregates volume executed by Affiliated Members and Appointed Members for purposes of various average daily volume (“ADV”) categories. Currently, this section contains bullets that describe “Total Affiliated Priority Customer ADV” and “Total Affiliated Member ADV,” and separate bullets that describe how the Exchange aggregates this volume with Appointed Members. The Exchange now proposes to incorporate the Appointed Member concept into the bullets that define these ADV categories by adding the words “and/or Appointed” to the ADV category descriptions, and including language that indicates that these categories include volume executed by Affiliated Members and/or Appointed Members, which will be aggregated with the Member’s volume in the manner described in the Schedule of Fees. In connection with these changes, the Exchange proposes to indicate that these terms “mean” rather than “include” the ADV described in the bullets to reinforce that no other volume is included in these calculations. In addition, the Exchange proposes to remove language indicating that volume executed in the PIM, Facilitation, and QCC mechanisms is included in the ADV category based on Priority Customer volume, as

the current language already indicates that all Priority Customer volume in all symbols and order types is included.

Third, the Exchange proposes non-substantive changes to the defined terms “Nasdaq MRX Appointed Market Maker,” “Nasdaq MRX Appointed Order Flow Provider,” and “Flash Order.” Nasdaq MRX Appointed Market Maker and Nasdaq MRX Appointed Order Flow Provider will now be renamed “Appointed Market Maker” and “Appointed Order Flow Provider,” respectively, and will be updated with a proper citation to Qualifying Tier Threshold section of the Schedule of Fees, which the Exchange proposes to title “Table 3.” With respect to the definition of “Flash Order,” the Exchange proposes to change the word “response” to use its non-capitalized form as there is no defined term that refers to a response to a Flash Order.

Fourth, the Exchange proposes to update references to the “Fee Schedule” with the correct title of that document, which is the “Schedule of Fees,” and to use all of the defined terms described in this filing where applicable throughout the Schedule of Fees. In addition, the Exchange proposes to add language that indicates that other terms not defined in the Schedule of Fees shall have the meaning ascribed to them under Nasdaq MRX Rules. The Exchange believes that the addition of this language will aid members in interpreting the Schedule of Fees, which currently uses certain terms that are defined in Nasdaq MRX Rules – e.g., the term “Member”, which is defined in MRX Rule 100(a)(28). With respect to the definition of “Member” in particular, the Exchange proposes to update the text of the Schedule of Fees to use the capitalized term throughout.

Finally, the Exchange proposes to eliminate an obsolete reference to footnote 3 under Section I, Table 2, which is currently marked “Reserved,” and to add the word “instead” to footnote 2 under Section I, Table 1 to reinforce that the taker fees described in that footnote

would apply instead of the regular taker fees described in Table 1. With respect to the former change, footnote 1 under Section I, Table 2 contains language stating that fees, i.e., the fee for Crossing Orders, apply to the originating and contra orders, except as noted in footnote 3. Because footnote 3 is now marked reserved, this exception is no longer necessary. With respect to the latter change, footnote 2 under Section I, Table 1 describes a discounted taker fee that is applied to Members that meet specified requirements. The proposed addition of the word “instead” would reinforce that the fees in that footnote are instead of and not in addition to those contained in the table.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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. Specifically, the Exchange believes that the proposed rule change is reasonable, equitable, and not unfairly discriminatory as it is designed to increase transparency around the Schedule of Fees to the benefit of members and investors. The proposed rule change adopts more explicit definitions for certain terms used in the Schedule of Fees, and makes other non-substantive clarifying changes, which do not impact how the Exchange will charge fees. For the following reasons, the Exchange believes that each of the proposed changes is reasonable, equitable, and not unfairly discriminatory.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt explicit definitions of “Market Maker,” “Affiliated Member,” and “Appointed Member.”

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

The term “Market Maker” is already used throughout the Schedule of Fees and will refer to related definitions already included in the Exchange’s rules. And the terms “Affiliated Member” and “Appointed Member” are based on current language in the Qualifying Tier Thresholds section of the Schedule of Fees. Specifically, the “Affiliated Member” definition replaces language that indicates how the Exchange aggregates volume from affiliates that meet the specified common ownership requirements, and the term “Appointed Member” refers to two types of Members that can agree to have their volume aggregated in the manner described in the Schedule of Fees.

The Exchange believes that the proposes changes related to Total Affiliated and/or Appointed Priority Customer ADV and Total Affiliated and/or Appointed Member ADV are reasonable, equitable, and not unfairly discriminatory as they reinforce the fact that volume executed by Appointed Members may be aggregated in the manner described in the Qualifying Tier Thresholds section of the Schedule of Fees. Although this is an existing concept described in the Schedule of Fees, the Exchange believes that including all of this information in the bullets that describe these ADV categories will make the Schedule of Fees easier for Members to follow. Furthermore, the other changes being proposed to these categories – including removing unnecessary references to volume executed in the PIM, Facilitation, and QCC mechanisms, and using the word “means” – are non-substantive changes designed to make these descriptions more transparent.

The Exchange believes that the proposed changes to the defined terms “Nasdaq MRX Appointed Market Maker,” “Nasdaq MRX Appointed Order Flow Provider,” and “Flash Order” are reasonable, equitable, and not unfairly discriminatory. In addition to renaming Nasdaq MRX Appointed Market Maker and Nasdaq MRX Appointed Order Flow Provider to “Appointed

Market Maker” and “Appointed Order Flow Provider,” respectively, these definitions will be updated with a proper citation so that members can identify where these terms are described in the Schedule of Fees. In addition, the proposed change to the definition of “Flash Order” is a non-substantive change to the capitalization of a word that is not defined in the Schedule of Fees.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to update references to the “Fee Schedule” with the correct title of that document, which is the “Schedule of Fees,” and to use all of the defined terms described in this filing where applicable throughout the Schedule of Fees as these changes are meant to ensure that defined terms are used consistently in the Schedule of Fees. Furthermore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory add language that indicates that other terms not defined in the Schedule of Fees shall have the meaning ascribed to them under Nasdaq MRX Rules. Certain definitions contained in the Nasdaq MRX Rules are used in the Schedule of Fees, and the Exchange believes that adding this reference to the Schedule of Fees will alert members to this fact. With this change, the Exchange will also use the defined term “Member” throughout the Schedule of Fees to indicate that the Exchange is using the defined term contained in the Nasdaq MRX Rules.

Finally, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to eliminate the reference to footnote 3 under Section I, Table 2, and to add the word “instead” to footnote 2 under Section I, Table 1. The former change removes an obsolete reference to a footnote that is now marked “Reserved.” The latter reinforces that the taker fees described in that footnote would apply instead of the regular taker fees described in Table 1. While the Exchange believes that members understand that the footnoted taker fees, which are provided to members that meet additional volume and other requirements, apply instead of rather

than in addition to the taker fees charged to members that do not meet these requirements, the Exchange believes that spelling this out more explicitly will avoid any potential confusion.

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 does not believe that the proposed rule change will have any impact on competition as the proposed changes would merely clarify the Schedule of Fees by, among other things, adopting explicit definitions for certain common terms, and making other non-substantive changes. No changes to the actual fees charged to market participants are proposed, and members will continue to be charged the same fees as they are assessed under the Schedule of Fees today.

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,⁷ and Rule 19b-4(f)(2)⁸ 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.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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-2018-07 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-2018-07. 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-2018-07 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.⁹

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Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).