months has engaged, in securities activities.'' FINRA believes that the six-month proposed timeframe will provide additional clarity as to the application of the rule as members' businesses may evolve over time. Thus, for example, if a member restructures its business such that it ceases engaging in securities activities with customers, the member would be able to avail itself of the proposed proprietary trading firm exemption after a six-month period (assuming that the other conditions of the exemption are met). The six-month timeframe would be assessed on an ongoing basis; therefore, any securities activity with a customer would cause the firm to be ineligible for the exemption for six months from the time the firm ceases to engage in such customer activity. Finally, FINRA is proposing to include within the scope of ''proprietary trading firm'' a firm that (in addition to the other criteria) conducts all trading through the firm's accounts by traders that are owners of, employees of, or contractors to the firm ''or employees of an affiliate of the firm.''

Unsupportive Comments

Pittsburgh University stated that proprietary trading firms engage in significant trading in the marketplace, which pose a substantial risk to the market, and that there is a related cost for FINRA to supervise and oversee proprietary trading firm activity and that, therefore, FINRA should apply a TAF rate to proprietary trading firms that is proportional to the cost of regulating such firms.[57] Pittsburgh University also stated that ''[w]hile the cost to regulate proprietary trading firms is less than the cost to regulate firms which trade on behalf of customers, proprietary trading firms should not be entirely exempt from the TAF when trading on an exchange on which they are members.'' [58]

FINRA agrees that regulating proprietary trading firm trading activity will involve a cost. For this reason, FINRA is not proposing to exempt proprietary trading firms from the TAF altogether. As discussed above, FINRA believes it is appropriate to exempt proprietary trading firms from the TAF for transactions on an exchange of which they are a member because FINRA anticipates that regulatory costs largely will relate to overseeing such firms' activity over the counter or across exchanges.

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) of the Act [59] and paragraph (f)(2) of Rule 19b–4 thereunder.[60] 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 necessary or appropriate in the public interest, for the protection of investors, or 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 (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–FINRA–2023–009 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–FINRA–2023–009. 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 FINRA. 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–FINRA–2023–009 and should be submitted on or before July 21, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023–13894 Filed 6–29–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97800; File No. SR–MRX–2023–11]

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

June 26, 2023.

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 June 12, 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 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.

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[57] *See* University of Pittsburgh Letter, at 6.

[58] *See* University of Pittsburgh Letter. Pittsburgh University added that ''[t]o exempt proprietary trading firms from TAFs would alter the balance between the TAF and other FINRA fees that fund FINRA's operations, due to an increased cost in regulation without a similar increase of resources.''

[59] 15 U.S.C. 78s(b)(3)(A).

[60] 17 CFR 240.19b–4(f)(2).

[61] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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 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). The Exchange initially filed the proposed pricing changes on June 1, 2023 (SR–MRX–2023–09). On June 12, 2023, the Exchange withdrew that filing and submitted this filing.

Background

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

Market participant	Maker fee Tier 1	Maker fee Tier 2	Taker fee Tier 1	Taker fee Tier 2
Penny Symbols				
Market Maker[3]	$0.20	$0.10	$0.50	$0.50
Non-Nasdaq MRX Market Maker (FarMM)[4]	0.47	0.47	0.50	0.50
Firm Proprietary[5]/Broker-Dealer[6]	0.47	0.47	0.50	0.50
Professional Customer[7]	0.47	0.47	0.50	0.50
Priority Customer[8]	0.00	0.00	0.00	0.00
Non-Penny Symbols				
Market Maker	0.35	0.20	1.10	1.10
Non-Nasdaq MRX Market Maker (FarMM)	0.90	0.90	1.10	1.10
Firm Proprietary/Broker-Dealer	0.90	0.90	1.10	1.10
Professional Customer	0.90	0.90	1.10	1.10
Priority Customer	0.00	0.00	0.00	0.00

Market participants are charged the above Tier 1 and Tier 2 maker/taker fees (or are eligible for free executions) if they meet the applicable tier thresholds based on Total Affiliated Member or Affiliated Entity ADV[9] in Table 3 of Options 7, Section 3. Market Makers may also alternatively qualify for these fees if they meet the applicable tier thresholds based on Total Market Maker ADV[10] in Table 3. Specifically:

Tiers	Total Affiliated Member or Affiliated Entity ADV	OR	Total Market Maker ADV
Tier 1 ...	executes 0.00% to less than 0.75% of Customer Total Consolidated Volume[11].		executes up to 0.10% of Customer Total Consolidated Volume which adds liquidity in Regular Orders.
Tier 2 ...	executes 0.75% or more of Customer Total Consolidated Volume.		executes more than 0.10% of Customer Total Consolidated Volume which adds liquidity in Regular Orders.

In addition, the Exchange currently offers Market Makers a number of ways to reduce their maker/taker fees described above. First, Market Makers may qualify for reduced taker fees in Penny Symbols when trading against Priority Customer orders in Penny Symbols entered by an Affiliated

[3] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[4] 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.

[5] A ''Firm Proprietary'' order is an order submitted by a Member for its own proprietary account.

[6] A ''Broker-Dealer'' order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

[7] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer.

[8] 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).

[9] Total Affiliated Member or Affiliated Entity ADV means all ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.

[10] Total Market Maker ADV means all Market Maker ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.

[11] ''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.

Member[12] or Affiliated Entity.[13] In lieu of the $0.50 per contract Tier 1/Tier 2 Market Maker Taker Fee, a Taker Fee of $0.20 per contract applies instead when trading with Priority Customer orders in Penny Symbols entered by an Affiliated Member or Affiliated Entity. A Taker Fee of $0.10 per contract applies instead when trading with Priority Customer orders in Penny Symbols entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV[14] of 0.20% to less than 0.75% Customer Total Consolidated Volume. A Taker Fee of $0.00 per contract applies instead when trading with Priority Customer orders in Penny Symbols entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.75% Customer Total Consolidated Volume or more.[15]

Second, Market Makers may currently qualify for reduced taker fees in Non-Penny Symbols when trading against Priority Customer orders in Non-Penny Symbols entered by an Affiliated Member or Affiliated Entity. In lieu of the $1.10 per contract Tier 1/Tier 2 Market Maker Taker Fee, a Taker Fee of $0.90 per contract applies instead when trading with Priority Customer orders in Non-Penny Symbols entered by an Affiliated Member or Affiliated Entity. A Taker Fee of $0.50 per contract applies instead when trading with Priority Customer orders in Non-Penny Symbols entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.20% to less than 0.75% Customer Total Consolidated Volume. A Taker Fee of $0.20 per contract applies instead when trading with Priority Customer orders in Non-Penny Symbols entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.75% Customer Total Consolidated Volume or more.[16]

Third, 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 Volume 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 to $0.08 and their Tier 2 Maker Fee reduced to $0.04. Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees by having any new volume considered as added volume.[17]

Proposal 1: Amend Qualifying Tier Thresholds and Related Maker/Taker Pricing

The Exchange now proposes to amend the Table 3 qualifying tier thresholds in the following manner. First, the Exchange proposes to introduce new Tiers 3 and 4 and related maker/taker fees. Specifically, the Exchange proposes that Tiers 3 and 4 will have the following volume requirements:

Tiers	Total Affiliated Member or Affiliated Entity ADV	OR	Total Market Maker ADV
Tier 3 ...	executes 1.50% to less than 2.25% of Customer Total Consolidated Volume[18].		executes more than 0.25% and up to 0.45% of Customer Total Consolidated Volume which adds liquidity in Regular Orders.[19]
Tier 4 ...	executes 2.25% or more of Customer Total Consolidated Volume[20].		executes more than 0.45% of Customer Total Consolidated Volume which adds liquidity in Regular Orders.

As proposed, Market Makers that qualify for Tiers 3 and 4 will receive Penny Symbol maker rebates of $0.05 per contract (Tier 3) and $0.10 per contract (Tier 4). Additionally, Market Makers that qualify for Tiers 3 and 4 will be assessed a Penny Symbol taker fee of $0.50 per contract in both tiers, which is the same Penny Symbol taker fee they are charged today in Tiers 1 and 2. The note 2 incentive will also apply to the Market Maker Tiers 3 and 4 taker fees in Penny Symbols, like they do today for Tiers 1 and 2. Specifically, the Exchange will also offer Market Makers the reduced Penny Symbol taker fees set forth in the note 2 incentive (in lieu of the $0.50 per contract Tier 3//Tier 4 taker fee) if they trade against Priority Customer orders in Penny Symbols entered by an Affiliated Member or Affiliated Entity.[21]

In Non-Penny Symbols, Market Makers that qualify for Tiers 3 and 4 will be charged maker fees of $0.15 per contract (Tier 3) and $0.10 per contract (Tier 4). Additionally, Market Makers that qualify for Tiers 3 and 4 will be assessed a Non-Penny Symbol taker fee of $1.10 per contract in both tiers,

[12] 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.

[13] An ''Affiliated Entity'' is a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFPs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

[14] Total Affiliated Member or Affiliated Entity Priority Customer ADV means all Priority Customer ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.

[15] *See* Options 7, Section 3, Table 1, note 2 (''note 2 incentive'').

[16] *See* Options 7, Section 3, Table 1, note 3 (''note 3 incentive'').

[17] *See* Options 7, Section 3, Table 1, note 6 (''note 6 incentive''). The note 6 incentive will be available to Market Makers until June 30, 2023.

[18] 1.50% of Customer Total Consolidated Volume is approximately 517,800 contracts per day.

[19] 0.25% of Customer Total Consolidated Volume is approximately 86,300 contracts per day. 0.45% of Customer Total Consolidated Volume is approximately 155,300 contracts per day.

[20] 2.25% of Customer Total Consolidated Volume is approximately 776,700 contracts per day.

[21] As discussed above, the note 2 incentive currently provides that a Taker Fee of $0.20 per contract applies instead when trading with Priority Customer orders in Penny Symbols entered by an Affiliated Member or Affiliated Entity. A Taker Fee of $0.10 per contract applies instead when trading with Priority Customer orders in Penny Symbols entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.20% to less than 0.75% Customer Total Consolidated Volume. A Taker Fee of $0.00 per contract applies instead when trading with Priority Customer orders in Penny Symbols entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.75% Customer Total Consolidated Volume or more.

which is the same Non-Penny Symbol taker fee they are charged today in Tiers 1 and 2. The note 3 incentive will also apply to Market Maker Tiers 3 and 4 taker fees in Non-Penny Symbols, like they do today for Tiers 1 and 2. Specifically, the Exchange will also offer Market Makers the reduced Non-Penny Symbol taker fees set forth in the note 3 incentive (in lieu of the $1.10 per contract Tier 3/Tier 4 taker fee) if they trade against Priority Customer orders in Non-Penny Symbols entered by an Affiliated Member or Affiliated Entity.[22]

For non-Priority Customers except Market Makers, the Exchange will continue to assess the same maker/taker fees in Tiers 3 and 4 for Penny and Non-Penny Symbols as the non-Priority Customer maker/taker fees in Tiers 1 and 2 today. Specifically, all non-Priority Customers other than Market Makers will be assessed the Penny Symbol maker fee of $0.47 per contract and Penny Symbol taker fee of $0.50 per contract across Tiers 1–4. Additionally, all non-Priority Customers except Market Makers will be assessed the Non-Penny Symbol maker fee of $0.90 per contract and Penny Symbol taker fee of $1.10 per contract across Tiers 1–4.

As it relates to Priority Customers, the Exchange will continue to assess no maker fees in Tiers 3 and 4 in both Penny and Non-Penny Symbols, identical to the Priority Customer Tiers 1 and 2 maker fees today. For the taker fees in both Penny and Non-Penny Symbols, the Exchange will charge Priority Customers $0.15 per contract in Tier 3 and $0.10 per contract in Tier 4.

Second, the Exchange proposes to modify the existing qualifying tier thresholds and related maker/taker pricing for Tiers 1 and 2. As it relates to the qualifying tier thresholds, the Exchange proposes to amend the Tier 2 qualifications as follows:

Tiers	Total Affiliated Member or Affiliated Entity ADV	OR	Total Market Maker ADV
Tier 2 ...	executes 0.75% to less than 1.50% of Customer Total Consolidated Volume [23].		executes more than 0.10% and up to 0.25% of Customer Total Consolidated Volume which adds liquidity in Regular Orders.

As described above, the Tier 2 Total Affiliated Member or Affiliated Entity ADV threshold and the Tier 2 Total Market Maker ADV threshold will both be modified to accommodate the respective new thresholds.[24] The Tier 1 qualifications will remain unchanged under this proposal.

For the related Tier 1 and Tier 2 maker/taker fees, the Exchange proposes to modify those fees for Market Makers and Priority Customers in a number of ways. For Market Makers, the Exchange proposes to decrease the Penny Symbol maker fees in Tier 1 and Tier 2 from $0.20 to $0.10 per contract (Tier 1) and from $0.10 to $0.00 per contract (Tier 2). No other changes are being proposed to the remaining Tiers 1 and 2 maker/taker fees for Market Makers.

As it relates to Priority Customers, the Exchange proposes to begin charging those market participant orders taker fees in Tiers 1 and 2. Specifically, Priority Customers will be charged taker fees of $0.15 per contract in both Tiers 1 and 2 for Penny Symbols. For Non-Penny Symbols, the Exchange proposes to charge Priority Customers taker fees of $0.35 per contract (Tier 1) and $0.25 per contract (Tier 2).

While the maker/taker fees in Table 1 of Options 7, Section 3 for the majority of market participants (*i.e.,* Non-Nasdaq MRX Market Makers, Firm Proprietary/Broker-Dealers, and Professional Customers) will not be impacted by the changes proposed above, the proposal will impact maker pricing for Market Makers and taker pricing for Priority Customers.[25] In particular, qualifying Market Makers will see a decrease in their current Tier 1 and Tier 2 maker fees in Penny Symbols, and be eligible to receive the new Tier 3 and Tier 4 maker rebates in Penny Symbols. Additionally, qualifying Market Makers will be eligible for the new Tier 3 and Tier 4 maker fees in Non-Penny Symbols, which will be lower than the current Non-Penny Symbol Tier 1 and Tier 2 maker fees.[26] Furthermore, the Exchange will start charging Priority Customers taker fees in Tiers 1–4 across all symbols traded on the Exchange in the manner described above. Today, Priority Customers are not assessed any taker fees under the Table 1 pricing schedule.[27]

Proposal 2: Eliminate Note 6 Incentive

The Exchange proposes to eliminate the note 6 incentive described above. This temporary incentive was first introduced to encourage 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.[28] The Exchange does not believe that the note 6 incentive has had the intended effect, and is therefore eliminating it before the expiration date of June 30, 2023 in order to redirect resources into other pricing programs intended to incentivize increased order flow.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[22] As discussed above, the note 3 incentive currently provides that a Taker Fee of $0.90 per contract applies instead when trading with Priority Customer orders in Non-Penny Symbols entered by an Affiliated Member or Affiliated Entity. A Taker Fee of $0.50 per contract applies instead when trading with Priority Customer orders in Non-Penny Symbols entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.20% to less than 0.75% Customer Total Consolidated Volume. A Taker Fee of $0.20 per contract applies instead when trading with Priority Customer orders in Non-Penny Symbols entered by an Affiliated Member or Affiliated Entity if the Member has a Total Affiliated Member or Affiliated Entity Priority Customer ADV of 0.75% Customer Total Consolidated Volume or more.

[23] 0.75% of Customer Total Consolidated Volume is approximately 258,900 contracts per day.

[24] As discussed above, the new Tier 3 Total Affiliated Member or Affiliated Entity ADV threshold will require Members to execute 1.50% to less than 2.25% of Customer Total Consolidated Volume. The new Tier 3 Total Market Maker ADV threshold will require Market Makers to execute more than 0.25% and up to 0.45% of Customer Total Consolidated Volume which adds liquidity in Regular Orders.

[25] In particular, these market participants will continue to be uniformly charged the same maker fees of $0.47 per contract (Penny Symbols) and $0.90 per contract (Non-Penny Symbols), regardless of tier achieved. In addition, they will continue to be uniformly charged the same taker fees of $0.50 per contract (Penny Symbols) and $1.10 per contract (Non-Penny Symbols), regardless of tier achieved.

[26] However, as discussed above, Market Makers will continue to be uniformly charged the same taker fees $0.50 per contract (Penny Symbols) and $1.10 per contract (Non-Penny Symbols), regardless of tier achieved. They will also continue to be eligible for the note 2 incentive (Penny Symbols) and note 3 incentive (Non-Penny Symbols), regardless of tier achieved.

[27] However, as discussed above, Priority Customers will continue to not be charged any maker fees pursuant to the Table 1 pricing schedule under this proposal.

[28] *See* Securities Exchange Act Release No. 97148 (March 15, 2023), 88 FR 17068 (March 21, 2023) (SR–MRX–2023–07).

of the Act,[29] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[30] 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 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'. . . .'' [31]

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.'' [32]

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.

Proposal 1: Amend Qualifying Tier Thresholds and Related Maker/Taker Pricing

The Exchange believes that its proposal to amend the qualifying tier thresholds and related maker/taker pricing are reasonable for several reasons. The Exchange believes that the modified volume threshold in Tier 2 and the new volume thresholds in Tiers 3 and 4 are reasonably designed to encourage Market Makers and Priority Customers to increase their liquidity adding activity to qualify for lower maker fees or maker rebates (for Market Makers only) and to increase their liquidity removing activity to qualify for the lower taker fees (for Priority Customers only).[33] The Exchange believes that adding new Tiers 3 and 4 will encourage Market Makers and Priority Customers to strive to achieve the higher tiers by submitting the requisite amount of order flow. An overall increase in activity would deepen the Exchange's liquidity pool, support the quality of price discovery, and promote market quality to benefit of all market participants.

The Exchange also believes that the proposed maker/taker pricing in Table 1 of Options 7, Section 3 is reasonable for the reasons that follow. First, the Exchange believes that it is reasonable to assess qualifying Market Makers lower maker fees or maker rebates, depending on the tier achieved, in the manner described above.[34] The proposed structure will encourage Market Makers to increase their liquidity providing activity on the Exchange, which would support the quality of price discovery on the Exchange, provide additional liquidity for incoming orders, and create additional opportunities for market participants to trade. Second, the Exchange believes its proposal to begin charging Priority Customers taker fees in Tiers 1–4 across all symbols traded on the Exchange in the manner described above is reasonable because Priority Customers will continue to be assessed the lowest taker fees compared to any other market participant on the Exchange.[35] Accordingly, the Exchange believes that the proposed taker fees will remain attractive and continue to incentivize more executions in Priority Customer orders on the Exchange.

The Exchange further believes that the proposed changes to the qualifying tier thresholds and related maker/taker pricing in the manner described above are equitable and not unfairly discriminatory as the proposed changes will apply uniformly to all similarly situated participants. The maker/taker fees in Table 1 of Options 7, Section 3 for the majority of market participants (*i.e.,* Non-Nasdaq MRX Market Makers, Firm Proprietary/Broker-Dealers, and Professional Customers) will not be impacted by the Exchange's proposal as they will continue to be charged the same pricing they are assessed today, regardless of tier achieved.[36] The proposal, however, will impact maker pricing for Market Makers and taker pricing for Priority Customers, which will ultimately result in these market participants receiving more favorable pricing compared to other market participants under amended Table 1 of Options 7, Section 3. The Exchange believes the proposed structure continues to be equitable and not unfairly discriminatory as the Exchange has historically provided Market Makers and Priority Customers with more favorable pricing. Furthermore, Market Makers, unlike other market participants add value to the Exchange through quoting obligations and their commitment of capital. Additionally, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(4) and (5).

[31] *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)).

[32] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[33] As discussed above, Non-Nasdaq MRX Market Makers, Firm Proprietary/Broker-Dealers, and Professional Customers will continue to be uniformly charged the same maker fees of $0.47 per contract (Penny Symbols) and $0.90 per contract (Non-Penny Symbols), regardless of tier achieved. In addition, they will continue to be uniformly charged the same taker fees of $0.50 per contract (Penny Symbols) and $1.10 per contract (Non-Penny Symbols), regardless of tier achieved.

[34] In particular, qualifying Market Makers will see a decrease in their current Tier 1 and Tier 2 maker fees in Penny Symbols, and be eligible to receive the new Tier 3 and Tier 4 maker rebates in Penny Symbols. Additionally, qualifying Market Makers will be eligible for the new Tier 3 and Tier 4 maker fees in Non-Penny Symbols, which will be lower than the current Non-Penny Symbol Tier 1 and Tier 2 maker fees.

[35] As proposed, Priority Customers will now be assessed Penny Symbol taker fees of $0.15 per contract (Tiers 1–3) and $0.10 per contract (Tier 4). For all non-Priority Customers, this Penny Symbol taker fee is $0.50 per contract (regardless of tier achieved). Additionally, Priority Customers will now be assessed Non-Penny Symbol taker fees of $0.35 per contract (Tier 1), $0.25 per contract (Tier 2), $0.15 per contract (Tier 3), and $0.10 per contract (Tier 4). For all non-Priority Customers, this Non-Penny Symbol taker fee is $1.10 per contract.

[36] *See supra* note 25.

activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants.

Proposal 2: Eliminate Note 6 Incentive

The Exchange believes that its proposal to eliminate the note 6 incentive described above is reasonable because this temporary incentive has not had its intended effect of incentivizing Market Makers to increase their liquidity adding activity in Penny Symbols on the Exchange over the stipulated time period. As such, the Exchange is eliminating the note 6 incentive in order to redirect future resources into other pricing programs intended to incentivize increased order flow.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory as the note 6 incentive will be eliminated for all Market Makers. Further, the Exchange notes that the proposed changes will not adversely impact any market participant's ability to otherwise qualify for reduced fees or rebates offered under other programs in the Pricing Schedule.

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 market participant at a competitive disadvantage. As discussed above, while parts of the Exchange's proposal provide more incentives for certain order flow and activity on the Exchange (*i.e.,* Market Maker liquidity adding activity and Priority Customer liquidity removing activity), the proposed changes are ultimately aimed at attracting greater liquidity to the Exchange, which benefits all market participants in the quality of order interaction.

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 exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to 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. 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 [37] and Rule 19b–4(f)(2) [38] 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 email to *rule-comments@sec.gov.* Please include file number SR–MRX–2023–11 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–2023–11. 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 (*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 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–2023–11 and should be submitted on or before July 21, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2023–13895 Filed 6–29–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12114]

Amendment of the Designations of ISIL-Libya and Real IRA (and Other Aliases) as Specially Designated Global Terrorists

Based upon a review of the administrative records assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that ISIL-Libya (and other aliases) uses

[37] 15 U.S.C. 78s(b)(3)(A)(ii).

[38] 17 CFR 240.19b–4(f)(2).

[39] 17 CFR 200.30–3(a)(12).