to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited.

The proposal is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues which comprised more than 40% of industry volume.

In sum, the Exchange intends for the proposed changes, in the aggregate, to increase member incentives to engage in the addition of liquidity on the Exchange. 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.[10]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BX–2023–18 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–BX–2023–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2023–18 and should be submitted on or before September 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17757 Filed 8–17–23; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98129; File No. SR–MRX–2023–15]

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

August 14, 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 August 9, 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.

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).[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

[2] 17 CFR 240.19b–4.

[3] The Exchange withdrew SR–MRX–2023–13 on August 9, 2023 and replaced it with the instant filing.

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).

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

PENNY SYMBOLS

Market participant	Maker fee tier 1	Maker fee tier 2	Maker fee/rebate tier 3	Maker Fee/rebate tier 4
Market Maker	$0.10	$0.00	($0.05)	($0.10)
Non-Nasdaq MRX Market Maker (FarMM)	0.47	0.47	0.47	0.47
Firm Proprietary/Broker-Dealer	0.47	0.47	0.47	0.47
Professional Customer	0.47	0.47	0.47	0.47
Priority Customer	0.00	0.00	0.00	0.00

Today, the Exchange assesses the following Penny Symbol Maker Fees/Rebates to Market Makers:[4] a Tier 1 fee of $0.10 per contract, a Tier 2 fee of $0.00 per contract, a Tier 3 rebate of $0.05 per contract and a Tier 4 rebate of $0.10 per contract. At this time, the Exchange proposes to amend the Market Maker Tier 1 through Tier 4 Penny Symbol Maker Fees/Rebates by adding a new note 6 in Options 7, Section 3 that would provide that Market Maker Penny Symbol Tier 1 through Tier 4 Maker Fees/Rebates will be $0.00 per contract for options on SPDR S&P 500 ETF Trust (''SPY''), the INVESCO QQQ Trust℠, Series 1 (''QQQ''), and iShares Russell 2000 ETF (''IWM'').

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

Market participant	Taker fee tier 1	Taker fee tier 2	Taker fee tier 3	Taker fee tier 4
Market Maker	$0.50	$0.50	$0.50	$0.50
Non-Nasdaq MRX Market Maker (FarMM)	0.50	0.50	0.50	0.50
Firm Proprietary/Broker-Dealer	0.50	0.50	0.50	0.50
Professional Customer	0.50	0.50	0.50	0.50
Priority Customer	0.15	0.15	0.15	0.10

Today, the Exchange assesses the following Penny Symbol Taker Fees to Priority Customers: a Tier 1 fee of $0.15 per contract, a Tier 2 fee of $0.15 per contract, a Tier 3 fee of $0.15 per contract and a Tier 4 fee of $0.10 per contract. At this time, the Exchange proposes to amend the Priority Customer[5] Tier 1 through Tier 4 Penny Symbol Taker Fees by adding a new note 6 in Options 7, Section 3 that would provide that the Priority Customer Penny Symbol Tier 1 through Tier 4 Taker Fees will be $0.00 for options on SPY, QQQ and IWM.

The Exchange believes that the proposed pricing will attract Priority Customer orders in SPY, QQQ and IWM to MRX in Penny Symbols. Additionally, the Exchange believes this pricing will encourage Market Makers to add liquidity on the MRX order book in SPY, QQQ and IWM as the Tier 1 Market Maker Penny Symbol Maker Fee of $0.10 per contract is being reduced to $0.00 per contract. While Market Makers that add liquidity in SPY, QQQ and IWM will no longer receive the Market Maker Tier 3 or Tier 4 Maker Rebates in Penny Symbols, the proposed pricing should overall continue to attract order flow to MRX in these symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] 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 Penny Symbol Maker Fees/Rebates and Taker Fees are reasonable in several respects. As a threshold matter, the

[4] A ''Market Maker'' is a market maker as defined in Nasdaq MRX Rule Options 1, Section 1(a)(21). *See* Options 1, Section 1(c).

[5] 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). Unless otherwise noted, when used in this Pricing Schedule the term ''Priority Customer'' includes ''Retail''. A ''Retail'' order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Options 1, Section 1(c).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

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'. . . .'' [8]

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.'' [9]

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 decrease its Market Maker Penny Symbol Tier 1 Maker Fee from $0.10 to $0.00 per contract on options in SPY, QQQ and IWM and not pay any Market Maker Penny Symbol Tier 3 or 4 Maker Rebates (currently $0.05 and $0.10 per contract, respectively) on options in SPY, QQQ and IWM in order to attract Priority Customer orders in SPY, QQQ and IWM to MRX and incentivize Market Makers to add liquidity in SPY, QQQ and IWM on MRX. With this proposal, the Exchange seeks to assess Market Makers no Penny Symbol Maker Fees and pay no Maker Rebates in Penny Symbols to Market Makers on options in SPY, QQQ and IWM. While Market Makers who are eligible to receive a Penny Symbol Tier 3 or 4 Maker Rebate would no longer receive this rebate in SPY, QQQ, and IWM, they would be able to provide liquidity on the order book in these symbols at no cost. Additionally, Priority Customers would be able to remove Penny Symbol liquidity from the order book at no cost. With this proposal, the Priority Customer Penny Symbol Taker Fee in Tiers 1–3 would be reduced from $0.15 to $0.00 per contract and the Priority Customer Penny Symbol Taker Fee in Tier 4 would be reduced from $0.10 to $0.00 per contract on options in SPY, QQQ and IWM.

The Exchange believes that it is equitable and not unfairly discriminatory to decrease its Market Maker Penny Symbol Tier 1 Maker Fee from $0.10 to $0.00 per contract and not pay any Market Maker Penny Symbol Tier 3 or 4 Maker Rebates, (currently $0.05 and $0.10 per contract, respectively) on options in SPY, QQQ and IWM because Market Makers have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements).[10] As such, the proposed fees are designed to increase Market Maker participation in SPY, QQQ and IWM, for the benefit of all market participants, by removing fees for Market Makers to add Penny Symbol liquidity in SPY, QQQ and IWM. The Exchange believes that it is equitable and not unfairly discriminatory to assess Priority Customers no Penny Symbol Taker Fees in SPY, QQQ and IWM because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, to the benefit of all market participants.

The Exchange believes assessing different fees for options in SPY, QQQ and IWM, as compared to other symbols, is reasonable because trading in SPY, QQQ and IWM is different from trading in other symbols in that they are more liquid, have higher volume and competition for executions is more intense. Additionally, the Exchange believes assessing different fees for options in SPY, QQQ and IWM, as compared to other symbols, is equitable and not unfairly discriminatory because the Exchange would uniformly not assess a Market Maker the Penny Symbol Maker Fees or pay a Market Maker the Penny Symbol Maker Rebates in SPY, QQQ and IWM. Similarly, the Exchange would uniformly not assess Priority Customers the Penny Symbol Taker Fees in SPY, QQQ and IWM.

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 Penny Symbol Maker Fees/Rebates and Priority Customer Penny Symbol Taker Fees will encourage additional liquidity and trading of SPY, QQQ and IWM on MRX. Despite not paying Market Makers any Maker Rebates in SPY, QQQ and IWM in Penny Symbols, the proposed pricing should overall continue to attract order flow to MRX in these symbols.

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.

The Exchange believes that this proposal does not impose an undue burden on competition. The proposed pricing will attract Priority Customer orders in SPY, QQQ and IWM to MRX in Penny Symbols because no Priority Customer Penny Symbol Taker Fee will be assessed in these symbols.

[8] *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)).

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

[10] *See* MRX Options 2, Section 5.

Additionally, the Exchange believes this pricing will encourage Market Makers to add liquidity on the MRX order book in SPY, QQQ and IWM as the Tier 1 Market Maker Penny Symbol Maker Fee of $0.10 per contract is being reduced to $0.00 per contract. While Market Makers that add liquidity in SPY, QQQ and IWM will no longer receive the Market Maker Tier 3 or Tier 4 Maker Rebates in Penny Symbols, the proposed pricing should overall continue to attract order flow to MRX in these symbols. Market Makers have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements).[11] Increasing Market Maker participation in SPY, QQQ and IWM, by removing the Tier 1 Maker Fee for Market Makers to add Penny Symbol liquidity in SPY, QQQ and IWM, will benefit all market participants. Assessing Priority Customers no Penny Symbol Taker Fees in SPY, QQQ and IWM will benefit all market participants as Priority Customer liquidity provides more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants, for the benefit of all market participants. The Exchange believes assessing different fees for options in SPY, QQQ and IWM, as compared to other symbols, does not impose an undue burden on competition because the Exchange would uniformly not assess a Market Maker a Penny Symbol Maker Fee or pay a Market Maker a Penny Symbol Maker Rebate in SPY, QQQ and IWM. Similarly, the Exchange would uniformly not assess Priority Customers a Penny Symbol Taker Fee in SPY, QQQ and IWM.

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.

[11] *See* MRX Options 2, Section 5.

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[12] and Rule 19b–4(f)(2)[13] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2023–15 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–2023–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MRX–2023–15 and should be submitted on or before September 8, 2023.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17759 Filed 8–17–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98130; File No. SR–Phlx–2023–36]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 4 Regarding Qualified Contingent Cross Rebates

August 14, 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 August 10, 2023, Nasdaq PHLX LLC (''Phlx'' 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 Phlx's Pricing Schedule at Options 7, Section 4, ''Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY and

[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.