

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ISE-2024-18. 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-ISE-2024-18 and should be submitted on or before June 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100121; File No. SR-MRX-2024-10]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fees for Connectivity and Co-Location Services

May 13, 2024.

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 April 29, 2024, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 fees for connectivity and co-location services, as described further below.

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 fees relating to connectivity and co-location services.³ Specifically, the Exchange proposes to raise its fees for connectivity and co-location services in General 8 as well as certain fees related to its Testing Facilities in Options 7, Section 7 by 5.5%, with certain exceptions.

General 8, Section 1 includes the Exchange's fees that relate to

connectivity, including fees for cabinets, external telco/inter-cabinet connectivity fees, fees for connectivity to the Exchange, fees for connectivity to third party services, fees for market data connectivity, fees for cabinet power install, and fees for additional charges and services. General 8, Section 2 includes the Exchange's fees for direct connectivity services, including fees for direct circuit connection to the Exchange, fees for direct circuit connection to third party services, and fees for point of presence connectivity. With the exception of the Exchange's GPS Antenna fees and the Cabinet Proximity Option Fee for cabinets with power density >10kW,⁴ the Exchange proposes to increase its fees throughout General 8 by 5.5%.

In addition to increasing fees in General 8, the Exchange also proposes to increase certain fees in Options 7, Section 7, which relate to the Testing Facility. Options 7, Section 7 provides that subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. In addition, Options 7, Section 7 provides that subscribers shall also pay a one-time installation fee of \$1,000 per hand-off. The Exchange proposes to increase these aforementioned fees by 5.5% to require that subscribers to the Testing Facility shall pay a fee of \$1,055 per hand-off, per month for connection to the Testing Facility and a one-time installation fee of \$1,055 per hand-off.

The proposed increases in fees would enable the Exchange to maintain and improve its market technology and services. The Exchange has not increased any of the fees included in the proposal since 2017.⁵ However, since 2017, there has been notable inflation. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price

⁴ The Exchange proposes to exclude the GPS Antenna fees from the proposed fee increase because, unlike the other fees in General 8, the Exchange recently increased its GPS Antenna fees. See Securities Exchange Act Release No. 34-99130 (December 11, 2023), 88 FR 87009 (December 15, 2023) (SR-MRX-2023-24). The Exchange also proposes to exclude the Cabinet Proximity Option Fee for cabinets with power density >10kW from the proposed fee increase because the Exchange recently established such fee. See Securities Exchange Act Release No. 34-99798 (March 20, 2024), 89 FR 21126 (March 26, 2024) (SR-MRX-2024-09).

⁵ See Securities Exchange Act Release No. 34-81907 (October 19, 2017), 82 FR 49447 (October 25, 2017) (SRMRX-2017-21).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-MRX-2024-04). The instant filing replaces SR-MRX-2024-04, which was withdrawn on April 29, 2024.

³² 17 CFR 200.30-3(a)(12).

increase of 25.82%.⁶ Notwithstanding inflation, the Exchange historically has not increased its fees every year.⁷ The proposed fees represent a 5.5% increase from the current fees, which is far below inflation since 2017, which exceeded 25%. In addition to being far below the cumulative inflation rate since 2017, the Exchange also believes that the proposed 5.5% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2023, the inflation rate was 4.12% and in 2022, the inflation rate was 8%.⁸ The Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 25% and therefore proposes a more modest increase, similar to that of inflation in recent one-year periods.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. The Exchange notes that other exchanges have filed for comparable or higher increases in certain connectivity-related fees, based in part on similar rationale.⁹

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. These investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to

make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ 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.

This belief is based on a couple factors. First, the current fees do not properly reflect the value of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, exchange fees are constrained by the fact that market participants can choose among 17 different venues for options trading, and therefore no single venue can charge excessive fees for its products without losing customers and market share.

Real Exchange Fees Have Fallen

As explained above, the Exchange has not increased any of the fees included in the proposal since 2017. This means that such fees have fallen in real terms due to inflation, which has been notable. Between 2017 and 2024, the dollar had an average inflation rate of 3.34% per year, producing a cumulative price increase of 25.82%.¹² Notwithstanding inflation, the Exchange historically has not increased its fees every year.¹³ As noted above, the Exchange has not increased the fees in this proposal for over 6 years. Accordingly, the Exchange believes that the proposed fees are reasonable as they represent a 5.5% increase from the current fees, which is far below inflation since 2017, which exceeded 25%. In addition to being far below the inflation rate since 2017, the Exchange also believes that the proposed 5.5% increase is reasonable because it is comparable to recent inflation rates for one-year periods. For example, in 2023,

the inflation rate was 4.12% and in 2022, the inflation rate was 8%.¹⁴ The Exchange is sensitive to the sticker shock that would occur if the Exchange raised its fees by more than 25% and therefore proposes a more modest increase, similar to that of inflation in recent one-year periods.

The Exchange believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2017. The Exchange notes that this inflationary effect is a general phenomenon that is independent of any change in the Exchange's costs in providing its goods and services. The Exchange believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects.

In addition, the Exchange continues to invest in maintaining, improving, and enhancing its connectivity and co-location products, services, and facilities—for the benefit and often at the behest of its customers. Such enhancements include refreshing hardware and expanding the Exchange's existing co-location facility to offer customers additional space and power. Again, these investments, and the value they provide to customers, far exceed the amount of the proposed price increases. It is reasonable and consistent with the Act for the Commission to allow the Exchange to recoup these investments by charging fees, lest the Commission will disincentivize the Exchange to make similar investments in the future—a result that would be detrimental to the Exchange's competitiveness as well as the interests of market participants and investors.

Customers Have a Choice in Trading Venue

Customers face many choices in where to trade options. Market participants will continue to choose trading venues and the method of connectivity based on their specific needs. No broker-dealer is required to become a Member of the Exchange. There is no regulatory requirement that any market participant connect to any one exchange, nor that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the

⁶ See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

⁷ Unregulated competitors providing connectivity and colocation services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

⁸ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>.

⁹ See, e.g., Securities Exchange Act Release No. 34-100004 (April 22, 2024), 89 FR 32465 (April 26, 2024) (SR-CboeBYX-2024-012).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² See <https://www.officialdata.org/us/inflation/2017?amount=1> (Last updated February 27, 2024).

¹³ As noted above, unregulated competitors providing connectivity and colocation services often have annual price increases written into their agreements with customers to account for inflation and rising costs.

¹⁴ See <https://www.officialdata.org/us/inflation/2022?endYear=2023&amount=1>.

Exchange. Indeed, the Exchange is unaware of any one exchange whose membership includes every registered broker-dealer. The Exchange also believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange, indirect connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets.

There are currently 17 exchanges offering options trading services. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent.¹⁵ This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

As such, the Exchange must set its fees, including its fees for connectivity and co-location services and products, competitively. If not, customers may move to other venues or reduce use of the Exchange's services. "If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior."¹⁶ Accordingly, "the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory."¹⁷ Disincentivizing market participants from purchasing Exchange connectivity would only serve to discourage participation on the Exchange, which ultimately does not benefit the Exchange. Moreover, if the Exchange charges excessive fees, it may stand to lose not only connectivity revenues but also other revenues, including revenues associated with the execution of orders.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms

and customers have a choice in trading venue and will exercise that choice and trade at another venue if exchange fees are not set competitively.

No Unfair Discrimination

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees are assessed uniformly across all market participants that voluntarily subscribe to or purchase connectivity and co-location services or products, which are available to all customers.

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.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition (the competition among consumers) because the Exchange's connectivity and co-location services are available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase such services can do so on a non-discriminatory basis.

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.¹⁸ 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-2024-10 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-2024-10. 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

¹⁵ See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

¹⁶ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁷ *Id.*

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

subject to copyright protection. All submissions should refer to file number SR-MRX-2024-10 and should be submitted on or before June 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100114; File No. SR-CboeEDGX-2024-009]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Definition of Retail Order, and Codify Interpretations and Policies Regarding Permissible Uses of Algorithms by RMOs

May 13, 2024.

I. Introduction

On January 25, 2024, Cboe EDGX Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the definition of Retail Order,³ and codify interpretations and policies regarding permissible uses of algorithms by Retail Member Organizations.⁴ The proposed rule change was published for comment in the **Federal Register** on February 13, 2024.⁵ On March 20, 2024, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁷ The Commission

did not receive any comments. The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change⁹

Currently, the Exchange offers order book priority benefits to Retail Orders that are entered on behalf of retail investors that enter a limited number of equity orders each trading day.¹⁰ RMOs that enter Retail Priority Orders are required to have reasonable policies and procedures in place to ensure that such orders are appropriately represented on the Exchange.¹¹ Pursuant to Exchange Rule 11.21(a)(2), a Retail Order is an agency order or riskless principal that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, 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. The Exchange also states that it offers retail-only pricing incentives and offers RMO discounts on port fees and market data, and that retail tiers give growing retail firms additional rebates.¹²

The Exchange states it has received member feedback that its rule is unclear as to whether the use of algorithms or other computerized methodologies is permitted when submitting individual investors’ orders to the Exchange,¹³ and proposes to amend its definition of Retail Order to provide that the use of

to determine whether to disapprove the proposed rule change).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ For a full description of the proposed rule change, refer to the Notice, *supra* note 5. The text of the Exchange’s proposed Rule 11.21(a)(2) and Interpretations and Policies .01–.04 is available on the Commission’s website at <https://www.sec.gov/files/rules/sro/cboeedx/2024/34-99490-ex5.pdf>.

¹⁰ See Exchange Rule 11.9 and Interpretation and Policy .01 to Exchange Rule 11.9. See also Securities Exchange Act Release No. 87200 (October 2, 2019), 84 FR 53788, 53789 (October 8, 2019) (order granting approval of the Exchange’s proposed rule change to introduce retail priority) (“Retail Priority Approval Order”). Interpretation and Policy .01 to Exchange Rule 11.9 defines a Retail Priority Order as a Retail Order (as defined in Exchange Rule 11.21(a)(2)) that is entered on behalf of a person that does not place more than 390 equity orders per day on average for its own beneficial account(s). See Interpretation and Policy .01 to Exchange Rule 11.9; Notice, *supra* note 5, at 10134. The Exchange refers to its retail priority offering as its “Retail Priority program.” See, e.g., Notice, *supra* note 5, at 10130.

¹¹ See Interpretation and Policy .02 to Exchange Rule 11.9. See also Retail Priority Approval Order, *supra* note 10, at 53789–90.

¹² See Notice, *supra* note 5, at 10130.

¹³ *Id.*

an algorithm to submit orders to the Exchange on behalf of a retail investor does not automatically preclude an RMO from designating such orders as “Retail Orders.”¹⁴ The Exchange proposes that use of an algorithm to submit a Retail Order would be permissible, provided that the order, or investment criteria for the order, originates from a natural person, such as the investor themselves, or a natural person on behalf of a retail investor (such as a financial advisor or trader).¹⁵ The Exchange states that the proposed definition could encourage additional members to become RMOs and route their Retail Orders to the Exchange, and that if more members chose to become RMOs, there will be additional opportunities to interact with retail order flow, which is likely to incentivize more retail liquidity provision, as it is generally considered preferable to trade with retail orders than with orders of professional investors that are typically more informed regarding short-term price movements.¹⁶

In connection with the proposed amendments to its definition of Retail Order, the Exchange is proposing to adopt several Interpretations and Policies to describe: (1) the meaning of the term “retail investor” as used in the definition, (2) the meaning of the term “natural person” as used in the definition, (3) permissible uses of algorithms when entering Retail Orders onto the Exchange, and (4) when an RMO may amend a Retail Order’s price or side. First, the Exchange is proposing Interpretation and Policy .01 to describe that the term “retail investor” is intended to refer to a non-professional, individual investor that invests money in their own account held at a brokerage firm or online brokerage firm, or an account held in corporate form for the benefit of an individual or group of related family members, and whose investment goals are mainly saving for

¹⁴ *Id.*

¹⁵ *Id.* Pursuant to proposed Exchange Rule 11.21(a)(2), a Retail Order would be defined as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03, and would require a Retail Order to originate from a natural person, such as the retail investors themselves, or by a natural person on behalf of a retail investor, and be submitted to the Exchange by a Retail Member Organization. In submitting a Retail Order to the Exchange, a Retail Member Organization may utilize an algorithm or other computerized methodology, provided the terms or investment criteria of the order originate from a retail investor her/himself, or a natural person on behalf of a retail investor, and the algorithm or other computerized methodology does not change the terms or investment criteria of the Retail Order with respect to price or side.

¹⁶ *Id.* at 10130–31.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Retail Order” is defined in Exchange Rule 11.21(a)(2). See *infra* section II.

⁴ The term “Retail Member Organization” (or “RMO”) is defined in Exchange Rule 11.21(a)(1) to mean a member of the Exchange (or a division thereof) that has been approved by the Exchange under Exchange Rule 11.21 to submit Retail Orders.

⁵ See Securities Exchange Act Release No. 99490 (February 7, 2024), 89 FR 10129 (“Notice”).

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 99811, 89 FR 21077 (March 26, 2024) (designating May 13, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings