

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98599; File No. SR–MRX–2023–18]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Complex Order Rules

September 28, 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 September 27, 2023, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions.

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

In connection with a technology migration to an enhanced Nasdaq, Inc.

(“Nasdaq”) functionality, the Exchange proposes to amend certain auction rules³ which describe the short sale price test in Rule 201 of Regulation SHO. Specifically, the Exchange proposes to adopt a new sentence within Options 3, Section 11, Auction Mechanisms, and Options 3, Section 13, Price Improvement Mechanisms for Crossing Transactions, to add further detail to the recently adopted stock-tied rule text.

Background

Before the migration of MRX to an enhanced technology platform, MRX Members were able to trade certain Stock-Option Orders as described in MRX Options 3, Section 14(a)(2)⁴ and Stock-Complex Orders as described in MRX Options 3, Section 14(a)(3),⁵ among other things. MRX recently filed a rule change to: (1) re-introduce stock-tied functionality; and (2) amend the stock-tied functionality that was available before the technology migration.⁶ Among other things, the

³ See Securities Exchange Act Release No. 95854 (September 21, 2022), 87 FR 58571 (September 27, 2022) (SR–MRX–2023–10) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Relating to Single-Leg and Complex Orders in Connection With a Technology Migration) (“SR–MRX–2023–10”).

⁴ The term “Stock-Option Order” refers to an order for a Stock-Option Strategy as defined in Options 3, Section 14(a)(2). A Stock-Option Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See MRX Options 3, Section 14(a)(2).

⁵ The term “Stock-Complex Order” refers to an order for a Stock-Complex Strategy as defined in Options 3, Section 14(a)(3). A Stock-Complex Strategy is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. Only those Stock-Complex Strategies with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis, are eligible for processing. See MRX Options 3, Section 14(a)(3).

⁶ See SR–MRX–2023–10.

proposal added Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13⁷ to address the short sale price test in Rule 201 of Regulation SHO with respect to Complex PIM Orders,⁸ Complex Facilitation Orders⁹ and Complex SOM Orders.¹⁰ The rules states [sic] that when the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, Nasdaq Execution Services, LLC (“NES”),¹¹ will not execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if the price is equal to or below the current national best bid.¹² However, NES will execute a short sale order in the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or in the underlying security component of a Complex PIM Order and/or Improvement Order, if such order is marked “short exempt,” regardless of whether it is at a price that is equal to or below the current national best bid.¹³ Further, if NES cannot execute the underlying covered security component of a Complex Facilitation Order, Complex SOM Order and/or Response, or Complex PIM Order and/or Improvement Order, in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Facilitation Order, Complex SOM Order and/or Response or Complex PIM Order and/or Improvement Order to the entering Member.

⁷ *Id.*

⁸ A Complex PIM Order is an order entered into the Complex Price Improvement Mechanism as described in Options 3, Section 13(e). See MRX Options 3, Section 14(b)(18).

⁹ A Complex Facilitation Order is an order entered into the Complex Facilitation Mechanism as described in Options 3, Section 11(c). See MRX Options 3, Section 14(b)(16).

¹⁰ A Complex SOM Order is an order entered into the Complex Solicited Order Mechanism as described in Options 3, Section 11(e). See MRX Options 3, Section 14(b)(17).

¹¹ NES is a broker-dealer owned and operated by Nasdaq, Inc. NES, an affiliate of the Exchange, has been approved by the Commission to become a Member of the Exchange and perform inbound routing on behalf of the Exchange.

¹² See MRX Supplementary Material .08(c) to Options 3, Section 11 and MRX Supplementary Material .09(c) to Options 3, Section 13. The term “covered security” has the same meaning as in Rule 201(a)(1) of Regulation SHO.

¹³ See MRX Supplementary Material .08(c) to Options 3, Section 11 and MRX Supplementary Material .09(c) to Options 3, Section 13.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19–4.

Proposal

At this time, the Exchange proposes to amend its Complex SOM, Complex Facilitation, and Complex PIM rules to add a new sentence within Supplementary Material .08(c) to Options 3, Section 11 and Supplementary Material .09(c) to Options 3, Section 13 that describes the manner in which NES would execute a short sale order in the underlying covered security component of Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book (1) when the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order in the underlying covered security component; or (2) when the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order in the underlying security component. As described more fully below, in the first case NES would execute the underlying covered security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price. In the second case, NES would execute the underlying security component of the Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book at its stated limit price or better.

The proposed rules will make clear to Members who submit auction responses or Improvement Orders that include a short sale order, or Members that place orders on the Complex Order Book that include a short sale order, the manner in which NES will execute the short sale component of their order when their Response, Improvement Complex Order, or unrelated Limit Complex Order on the Complex Order Book executes in the Complex SOM, Complex Facilitation, and Complex PIM auction, (*i.e.* their short sale order will execute at its stated limit price, but not at a better price) if the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order does not include a short sale order. However their short sale order will execute at its stated limit price or better if the facilitating Electronic Access Member's contra-order, the solicited contra-side Complex Order, or the Counter-Side Order includes a short sale order. Thus, whether a short sale order included in an auction receives its stated limit price, or potentially receives a better price

than its limit price, depends on whether the contra-side order submitted to the auction with an agency order also included a short sale order. Although the availability of the potential for price improvement for the responder's short sale order will vary, depending on whether the contra-order also included a short sale order, MRX notes that for the reasons described below the alternative would be to exclude auction orders that include a short sale order from the Complex SOM, Complex Facilitation, and Complex PIM altogether, which would decrease competition in the auction and potentially reduce opportunities for the agency order to receive price improvement in the auctions. Below are some examples of Complex PIM Auction responses ("Improvement Orders") executing within a Complex PIM Auction.¹⁴

Example No. 1—Complex PIM Auction utilizing stated limit price

MRX BBO for option leg is 0.05×0.10
Underlying equity NBBO is 1.05×1.10
Reg SHO short sale price test is triggered in the underlying

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10×1.20)

Complex PIM to buy strategy, 100 @1.13 (buy stock @1.08 and options @0.05);¹⁵ Counter-Side Order does not include a short sale order

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @1.11 (sell stock @1.06 and options @0.05)

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (sell stock @1.07 and options @0.05)

Complex PIM auction timer concludes

Improvement Complex Order1 trades with Complex PIM Agency Order, option @0.05 and stock @1.06 for net price of 1.11. The Improvement Complex Order may not trade the underlying equity at 1.05 because it cannot execute a short sale order at a price that is equal to the NBB of the underlying equity.

Example No. 2—Complex PIM Auction utilizing stated limit price

MRX BBO for option leg is 0.05×0.10

¹⁴ While the examples utilize the Complex PIM auction, the same examples apply to a Complex SOM or Complex Facilitation auction.

¹⁵ The Exchange notes that different combinations of stock and options prices could determine the strategy prices in this Example 1 as well as Examples 2 and 3. The Exchange is assuming the noted prices for the examples, however the Exchange notes that multiple price points could achieve the net prices in these examples. In this particular case in Example 1, the agency order could buy stock @1.07 and buy options @0.06 in lieu of the prices noted.

Underlying equity NBBO is 1.05×1.10
Reg SHO short sale price test is triggered in the underlying

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10×1.20)

Complex PIM to buy strategy, 100 @1.13 (buy stock @1.08 and options @0.05); Counter-Side

Order does not include a short sale order

Improvement Complex Order1 is a Priority Customer Order to sell, sell short stock leg, 100 @1.10 (sell stock @1.05 and options @0.05)

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (sell stock @1.06 and options @0.06)

Complex PIM auction timer concludes

Improvement Complex Order2 trades with Complex PIM Agency Order, option @0.06 and stock @1.06 for net price of 1.12. Since the Counter-Side Order does not include a short sale order, Improvement Complex Order1 is considered for execution at its stated limit price of 1.10; since it cannot trade at 1.10 due to Reg SHO, it does not trade with the Complex PIM Agency Order.

Example No. 3—Complex PIM Auction where Counter-Side is also short selling

MRX BBO for option leg is 0.05×0.10

Underlying equity NBBO is 1.05×1.20
Counter-Side Order includes a short sale order

Reg SHO short sale price test is triggered in the underlying

Stock-Option Strategy is created to buy 1 put, buy 100 shares (cBBO for this strategy is 1.10×1.30)

Complex PIM to Buy strategy, 100 @1.13, Counter-Side Order is a Market Order that is willing to auto-match at any price point within Reg SHO price restriction bound and has 'sell short' stock leg instructions and therefore cannot trade the stock component at any price less than or equal to the underlying best bid of \$1.05. In this example, if the Counter-Side Order did not have a "sell short" instruction it would not be required to trade at a price that is better than the NBB for security (\$1.05) and could execute at a price equal to or less than the underlying best bid of \$1.05. The price of 1.10 is the cBB (net of option and underlying NBB).

Improvement Complex Order1 is to sell, sell short stock leg, 100 @1.10 (selling stock at 1.05 and options at 0.05; note it cannot trade at 1.10 due to Reg SHO)

Improvement Complex Order2 to sell, sell short stock leg, 100 @1.12 (selling stock at 1.06 and options at 0.06)

Complex PIM auction timer concludes

The Complex PIM Agency Order first executes 40 contracts with the Counter-

Side Market Order, the option leg at 0.05 and stock leg at 1.06 for a net price of 1.11. The remaining 60 contracts from the Complex Agency Order then execute with Improvement Complex Order¹ at the same price. In this example, both the Complex Counter-Side Order and the Improvement Complex Order are marked short sale, which permits the Improvement Complex Order to trade at a price that is better than its stated limit price.

In this example, the Improvement Complex Order traded at its next available price in lieu of its stated limit price because both the Counter-Side Order and the Improvement Complex Order included a short sale order in the underlying component security. In contrast, if the Counter-Side Order did not include a short sale order than the Counter-Side Order and Improvement Complex Order² trade with the Complex PIM Agency Order for net price of 1.12 (option @0.06 and stock @ 1.06).

The Exchange proposes to amend the rule text in Supplementary Material .08 to Options 3, Section 11 with respect to a SOM and Facilitation auction to provide:

When a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the facilitating Electronic Access Member's contra order or contra-side solicited Complex Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the facilitating Electronic Access Member's contra order or the solicited contra-side Complex Order includes a short sale order in the underlying covered security.

With respect to a Complex PIM auction, the Exchange proposes to amend the rule text within Supplementary Material .09 to Options 3, Section 13 to provide:

When an improvement order or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute such order at (1) its stated limit price if the Counter-Side Order does not include a short sale order in the underlying security; or (2) its stated limit price or better if the counter-side order includes a short sale order in the underlying covered security.

In such case where a response or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute the order at its stated limit price if the facilitating Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not include a short sale order in the

underlying covered security because the Exchange desires to foster competition by including responses that have a short sale order in the underlying covered security. In this scenario, the Exchange would consider all prices submitted by responders at which the auction may execute because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. By using the order's stated limit price in this case, the Exchange would allow the responder with a short sale order to participate in the auction and allocate the best price possible to the agency order while complying with the short sale price test.¹⁶ The Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction while also providing additional opportunity for potential price improvement for the agency order.

When a response, Improvement Order, or an unrelated limit complex order on the complex order book includes a short sale order in the underlying covered security, NES will execute the order at its stated limit price or better if the facilitating Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order includes a short sale order in the underlying security component. In this case, each short sale compliant price would be considered in determining the price at which the auction may execute, which would be at its stated limit price or better. In this scenario, because the Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. In this case, all prices that are compliant with the short sale price test are considered when

¹⁶ For example, utilizing a Complex PIM auction with a BBO of 0.05 × 0.10 and an NBBO for the underlying security component of 1.05 × 1.10, if the Initiating Order submitted an agency order to buy @1.13 and a contra-order to sell @1.13, with auto-match at any price point, and Responder1 was long @1.10, and Responder2 was short @1.10 (in this scenario 1.10 would not comply with the short sale price test), pursuant to the proposed amendment, the agency order would receive a price improvement allocation @1.10. In this scenario the improved price of 1.11 would not be allocated to the responder with a short sale rather the price improvement would be applied to the agency order. The Exchange believes it is important to offer price improvement to the agency order over the responder to the auction. Of note, the responder that was short @1.10 would be cancelled.

allocating the auction, and both the agency order and responders may receive a better price. The auction would allocate at the agency order's stated limited price or better depending on the prices of the responses. The auction responses may execute at their stated limited price or better depending on the final auction price.

This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide price improvement opportunity to the agency order.

Implementation

This Exchange intends to begin implementation of the proposed rule change prior to November 1, 2023. The Exchange will issue an Options Trader Alert to Members with the operative date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest for the reasons discussed below.

With respect to short sale regulation, the proposed handling of the stock/ETF component of a Complex Order under this proposal does not raise any issues of compliance with the currently operative provisions of Regulation SHO¹⁹ and, therefore, the proposal promotes just and equitable principles of trade. When a Complex Order has a stock/ETF component, Members must indicate, pursuant to Regulation SHO, whether that order involves a long or short sale. NES, as a trading center under Rule 201, will be compliant with the requirements of Regulation SHO. Of course, broker-dealers, including both NES and the Members submitting orders to MRX with a stock/ETF component, must comply with Regulation SHO. NES' compliance team updates, reviews and monitors NES' policies and procedures including those pertaining to Regulation SHO on an annual basis.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 17 CFR 242.200 *et seq.*

In the case where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying security would protect investors and the public interest by considering all prices at which the auction could execute. Under these circumstance, the Response, Improvement Complex Order, or unrelated Limit Complex Order would be considered for execution at its stated limit price (provided the limit price is compliant with the short sale price test in Rule 201 of Regulation SHO) while the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Utilizing the order's stated limit price in this case allows the responder with a short sale order to participate in the auction while the agency order is allocated the best price possible while complying with the short sale price test. The Exchange believes that this behavior is consistent with the protection of investors and the public interest because it attempts to afford price improvement to the agency order over the responder to the auction. Finally, the Exchange believes that including responses with a short sale order in the underlying covered security may create additional competition in the Complex SOM, Complex Facilitation and Complex PIM auction and provides the agency order with additional opportunities for potential price improvement.

In contrast, when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order includes a short sale order in the underlying covered security, the auction must be allocated at a price that is short sell compliant. In this case, each short sale compliant price would be considered in determining the price at which the Complex SOM, Complex Facilitation and Complex PIM auction may execute and, because the Electronic Access Member contra order, solicited contra-side Complex Order, or Counter-Side Order are short, the Exchange will only consider prices that comply with the short sale price test in Rule 201 of Regulation SHO. As a result, the auction may allocate at the agency order's stated limited price or better depending on the

prices of the responses. Also, the auction responses may execute at their stated limited price or better depending on the final auction price. The Exchange believes its proposal is consistent with the Act and the protection of investors because both the agency order and responders may receive a better price in this case. This is in contrast to the prior scenario where the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not need to comply with the short sale price test. Utilizing the proposed stated limit price or better where a Member's contra order, contra-side solicited Complex Order, or Counter-Side Order includes a short sale order allows the Exchange to potentially provide a price improvement opportunity to the agency order and to the auction response. With the proposed amendments, Complex SOM, Complex Facilitation, and Complex PIM auction responders who submit a response would be aware of the auction price that would comply with the short sale price test in Rule 201 of Regulation SHO. The proposed amendment allows Members to participate in auctions with a short sale response and such participation facilitates competition in these auctions. This proposed approach is in lieu of prohibiting Members [sic] to respond to these auctions, which would limit competition. By allowing additional responses to participate in the auction, the Exchange believes that the proposal would benefit investors and the public interest because the additional interest may increase competition in these auctions, which may lead to better prices.

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.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying covered security does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices submitted by responders in determining the allocation price because the Electronic Access Member's contra order, contra-side solicited Complex Order, or Counter-Side Order does not

need to comply with the short sale price test in Rule 201 of Regulation SHO because the order is not short. Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price or better when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order is also a short sale order in the underlying covered security component does not impose an undue burden on intra-market competition because the Exchange would uniformly consider all prices that are compliant with the short sale price test when allocating the auction.

Where a response, Improvement Order, or an unrelated limit complex order includes a short sale order in the underlying covered security, executing such order at its stated limit price when the facilitating Electronic Access Member's contra order, contra-side Complex Order, or Counter-Side Order does not include a short sale order in the underlying covered security and executing such order its stated limit price or better when the facilitating Electronic Access Member contra-order, solicited contra-side Complex Order, or Counter-Side Order is also a short sale order in the underlying covered security component does not impose an undue burden on inter-market competition because other options exchanges today may offer a similar process for handling stock-tied transactions that have a short sale order.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)²³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow the Exchange to include the proposed functionality when it re-introduces the stock-tied functionality on the Exchange. As discussed above, the proposed functionality will allow auction responses, unrelated Limit Complex Orders on the Complex Order Book, and Improvement Orders that include a short sale order to participate in the Complex Facilitation Mechanism, Complex SOM, and Complex PIM auctions, as applicable. Although the potential execution price of the auction response or Limit Complex Order will vary depending on whether the contra order submitted to the auction with the agency order also includes a short sale order, the Exchange states that the alternative would be to exclude responses and unrelated Limit Complex Orders that include a short sale order from the Complex Facilitation Mechanism, Complex SOM, and Complex PIM auctions altogether. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. The Commission believes that the proposal will benefit investors by allowing auction responses, Improvement Orders, and unrelated Limit Complex Orders that include a short sale order to participate in the Complex Facilitation Mechanism, Complex SOM, and Complex PIM auctions, which could increase competition in the auctions and potentially result in better prices for agency orders executed in the auctions. In addition, the proposal will make clear to market participants that submit auction responses that include a short sale order, or that enter Limit Complex Orders that include a short sale order, of the prices that their orders may receive when they execute in a Complex Facilitation Mechanism, Complex SOM, or Complex PIM auction. Therefore, the

and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²² *Id.*

²³ 17 CFR 240.19b-4(f)(6)(iii).

Commission waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

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.

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-2023-18 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-MRX-2023-18. 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

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2023-18 and should be submitted on or before October 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98606; File No. SR-NASDAQ-2023-019]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under Nasdaq Rule 5711(d), Commodity-Based Trust Shares

September 28, 2023.

On July 3, 2023, The Nasdaq Stock Market LLC ("Nasdaq" or "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 list and trade shares ("Shares") of the Valkyrie Bitcoin Fund ("Trust") under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on July 21, 2023.³

On August 31, 2023, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ This order

²⁵ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97922 (July 17, 2023), 88 FR 47214 ("Notice"). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nasdaq-2023-019/srnasdaq2023019.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 98262, 88 FR 61658 (Sept. 7, 2023). The Commission