

functionality would no longer be available to any Member.

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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁵⁹

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISE-2022-11 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-ISE-2022-11. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2022-11 and should be submitted on or before June 8, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁰

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94901; File No. SR-MRX-2022-04]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX's Pricing Schedule at Options 7 To Assess Membership, Port and Market Data Fees

May 12, 2022.

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 May 2, 2022, 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, 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 MRX's Pricing Schedule at Options 7 to assess membership, port and market data fees.

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.

⁵⁸ 15 U.S.C. 78s(b)(3)(A).

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

⁶⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MRX proposes to amend its Pricing Schedule at Options 7 to assess membership, port and market data fees, which are not assessed today, and which have not been assessed since MRX's inception in 2016. The proposed changes are designed to update fees for MRX's data and services to reflect their current value—rather than their value when it was a new exchange six years ago—based on MRX's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge no fees for certain services such as membership, ports and market data in order to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.³ Allowing newly-opened exchanges time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition. The proposed changes fall into three categories, discussed in detail below: Membership fees (Options 7, Section 5; Other Options Fees and Rebates); port fees (Options 7, Section 6; Ports and Other Services); and market data fees (Options 7, Section 7 Market Data).

This Proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against the other 15 options exchanges without waiving fees for membership, ports or market data. These types of fees are assessed by options exchanges that compete with MRX in the sale of exchange services—indeed, MRX is the only options exchange (out of the 16 current options exchanges) not assessing membership, port and market data fees today. New exchanges commonly waive connectivity, data and membership fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, “graduate” to

compete against established exchanges and charge fees that reflect the value of their services.⁴ If MRX is incorrect in this assessment, that error will be reflected in MRX's ability to compete with other options exchanges.⁵

Options 7, Section 5

As noted above, MRX Members are not assessed fees for membership today. Under the proposed fee change, MRX Members will be required to pay a monthly Access Fee, which entitles MRX Members to trade on the Exchange based on their membership type. Specifically, MRX proposes to assess Electronic Access Members⁶ an Access Fee of \$200 per month, per membership. The Exchange proposes to assess Market Makers⁷ Access Fees depending on whether they are a Primary Market Maker (“PMM”) or a Competitive Market Maker (“CMM”). A PMM would be assessed an Access Fee of \$200 per month, per membership. A CMM would be assessed an Access Fee of \$100 per month, per membership.⁸ The proposed

⁴ For example, MIAX Emerald commenced operations as a national securities exchange registered on March 1, 2019. *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10-233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange). MIAX Emerald filed to adopt its transaction fees and certain of its non-transaction fees in its filing SR-EMERALD-2019-15. *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR-EMERALD-2019-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule). MIAX Emerald waived its one-time application fee and monthly Trading Permit Fees assessable to EEMs and Market Makers among other fees within SR-EMERALD-2019-15.

⁵ Nasdaq recently announced that, beginning in 2022, Nasdaq plans to migrate its North American markets to Amazon Web Services in a phased approach, starting with Nasdaq MRX, a U.S. options market. The proposed fee changes are entirely unrelated to this effort.

⁶ The term “Electronic Access Member” or “EAM” means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6).

⁷ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. *See* Options 1, Section 1(a)(21). The term “Competitive Market Maker” means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term “Primary Market Maker” means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

⁸ In the case where a single Member has multiple MRX memberships, the monthly access fee is charged for each membership. For example, if a single member firm is both an EAM and a CMM, or owns multiple CMM memberships, the firm is subject to the access fee for each of those memberships.

fees are identical to access fees on Nasdaq GEMX, LLC (“GEMX”).⁹

In order to receive market making appointments to quote in any options class, CMMs will also be assessed a CMM Trading Right Fee identical to GEMX.¹⁰ CMM trading rights entitle a CMM to enter quotes in options symbols that comprise a certain percentage of industry volume. On a quarterly basis, the Exchange assigns points to each options class equal to its percentage of overall industry volume (not including exclusively traded index options), rounded down to the nearest one hundredth of a percentage with a maximum of 15 points. A new listing is assigned a point value of zero for the remainder of the quarter in which it was listed. CMMs may seek appointments to options classes that total 20 points for the first CMM Right it holds, and 10 points for the second and each subsequent CMM Right it holds.¹¹ In order to encourage CMMs to quote on the Exchange, MRX launched CMM trading rights without any fees, allowing CMMs to freely quote in all options classes.

The Exchange is now proposing to adopt a monthly CMM Trading Rights Fee. Under the proposed fee structure, CMMs will be assessed a Trading Rights Fee of \$850 per month for the first trading right, which will entitle the CMM to quote in 20 percent of industry volume.¹² Each additional CMM Right will cost \$500 per month, and will entitle the CMM to quote an additional 10 percent of volume. Similar to GEMX's trading rights fee,¹³ a new CMM would pay \$850 for the first trading right and all CMMs would thereafter pay \$500 for each additional trading right. The Exchange is proposing this pricing model because each subsequent CMM Right costs less than the first trading right. All CMMs have the opportunity to purchase additional CMM Rights beyond the initial trading right in order to quote in additional options series. The Exchange notes that it is not proposing trading right fees for

⁹ *See* GEMX Options 7, Section 6.A. (Access Fees).

¹⁰ *See* GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

¹¹ A CMM may request changes to its appointments at any time upon advance notification to the Exchange in a form and manner prescribed by the Exchange. *See* MRX Options 2, Section 3(c)(3).

¹² These trading rights are referred to as CMM Rights. *See* MRX Options 2, Section 3.

¹³ *See* GEMX Options 7, Section 6.B.

³ *See, e.g.*, Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE-NAT-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSE-NAT-2020-05.pdf>. (initiating market data fees for the NYSE National exchange after initially setting such fees at zero); *see also* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19) (introduction of membership fees by MEMX).

PMMs, as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. PMMs have additional obligations on MRX as compared to CMMs.¹⁴ The Exchange is proposing only to charge the \$200 access fee to EAMs, and no trading rights fee, as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers' use.¹⁵

Options 7, Section 6

The Exchange proposes to amend fees for the following ports within Options 7, Section 6: (1) FIX,¹⁶ (2) SQF,¹⁷ (3) SQF

¹⁴ PMMs are required to provide two-sided quotations in 90% of cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. *See* Options 2, Section 5(e)(2). Additionally, PMMs are required to submit a Valid Width Quote to open their assigned options series. *See* Options 3, Section 8(c)(1) and 8(c)(3).

¹⁵ The Exchange notes that all MRX Members may submit orders; however, only Market Makers may submit quotes. The Exchange surveils Market Makers quotes in addition to any orders transacted on MRX and conducts surveillance on Market Maker quotes to ensure these participants have met their quoting and other market making obligations. The regulatory oversight for Market Makers is in addition to the regulatory oversight which is administered for all EAMs.

¹⁶ "Financial Information eXchange" or "FIX" is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) Execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages. *See* Supplementary Material .03(a) to Options 3, Section 7.

¹⁷ "Specialized Quote Feed" or "SQF" is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (e.g., underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Supplementary Material .03(c) to Options 3, Section 7.

Purge;¹⁸ (4) OTTO;¹⁹ (5) CTI;²⁰ and (6) FIX DROP.²¹ Currently, no fees are being assessed for these ports. The Exchange proposes to assess a FIX Port Fee and OTTO Port Fee of \$650 per port, per month, per account number.²² The Exchange proposes to assess an SQF Port Fee and SQF Purge Port Fee of \$1,250 per port, per month.²³ The Exchange proposes to assess a CTI Port Fee and a FIX Drop Port Fee of \$650 per port, per month.

The OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports²⁴ are available to all EAMs, and

¹⁸ SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the market maker. Dedicated SQF Purge Ports enable market makers to seamlessly manage their ability to remove their quotes in a swift manner.

¹⁹ "Ouch to Trade Options" or "OTTO" is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (e.g., underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. *See* Supplementary Material .03(b) to Options 3, Section 7.

²⁰ Clearing Trade Interface ("CTI") is a real-time cleared trade update message that is sent to a Member after an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement ("CMTA") or The Options Clearing Corporation ("OCC") number; (ii) badge or mnemonic; (iii) account number; (iv) information which identifies the transaction type (e.g., auction type) for billing purposes; and (v) market participant capacity. *See* Options 3, Section 23(b)(1).

²¹ FIX DROP is a real-time order and execution update message that is sent to a Member after an order been received/modified or an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) Executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. *See* Options 3, Section 23(b)(3).

²² An "account number" shall mean a number assigned to a Member. Members may have more than one account number. *See* Options 1, Section 1(a)(1).

²³ SQF's Port Fees are assessed a higher dollar fee as compared to FIX and OTTO ports (\$1,250 vs. \$650) because the Exchange has to maintain options assignments within SQF and manage quoting traffic. Market Makers may utilize SQF Ports in their assigned options series. Market Maker badges are assigned to specific SQF ports to manage the option series in which a Market Maker may quote. Additionally, because of quoting obligations provided for within Options 2, Section 5, Market Makers are required to provide liquidity in their assigned options series which generates quote traffic. The Exchange notes because of the higher fee, SQF ports are billed per port, per month while FIX and OTTO ports are billed per port, per month, per account number. Members may have more than one account number.

²⁴ This includes FIX, SQF, SQF Purge, OTTO, CTI and FIX Drop Disaster Recovery Ports.

will be subject to a monthly cap of \$7,500.

The SQF Port and the SQF Purge Port will be subject to a monthly cap of \$17,500. The SQF Port and SQF Purge Port are available to Market Makers.²⁵

The Exchange is not amending the TradeInfo MRX Interface or the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed or Nasdaq MRX Spread Feed Ports, all of these aforementioned ports will continue to be assessed no fees. Additionally, as is the case today, the Disaster Recovery Ports for TradeInfo and the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed or Nasdaq MRX Spread Feed Ports will not be assessed a fee.

Finally, the Exchange proposes to amend the Disaster Recovery Port Fee from \$0 to \$50 per port, per month, per account for FIX, SQF, SQF Purge and OTTO Ports and from \$0 to \$50 per port, per month for CTI, and FIX DROP Ports. Disaster Recovery ports provide connectivity to the Exchange's disaster recovery data center, to be utilized in the event the Exchange should failover during a trading day. The Exchange proposes to assess the aforementioned Disaster Recovery Port Fees to encourage Members to be efficient when purchasing Disaster Recovery ports. Similar to all other ports, Disaster Recovery Ports need to be maintained by the Exchange.²⁶ The proposed port fees are similar to fees assessed by GEMX.²⁷

In order to submit orders into MRX, only one order protocol is required, either FIX or OTTO.²⁸ A quoting protocol, such as SQF, is only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1. Similarly, only one quoting protocol, or SQF Port, is necessary to

²⁵ Only Market Makers may quote on MRX. The Exchange is proposing non-substantive technical amendments to add commas within the Production column of the proposed rule text to separate terms.

²⁶ The Exchange maintains ports in a number of ways to ensure that ports are properly connected to the Exchange at all times. This includes offering testing, ensuring all ports are up-to-date with the latest code releases, as well as ensuring that all ports meet the Exchange's information security specifications.

²⁷ *See* GEMX Options 7, Section 6.C. (Ports and Other Services).

²⁸ Only Members may utilize ports on MRX. Any market participant that sends orders to a Member would not need to utilize a port. The Member can send all orders, proprietary and agency, through one port to MRX. Members may elect to obtain multiple account numbers to organize their business, however only one account number and one port is necessary for a Member to trade on MRX.

quote on MRX. Depending on a Member's business model, one protocol may be better suited for a Member as compared to another protocol when determining which order entry protocol to select.²⁹ Members may elect to utilize both order entry protocols, depending on how they organize their business. Only one protocol is necessary to submit orders into MRX; however, Members may choose to purchase a greater number of order entry ports, depending on that Member's business model.³⁰

The Exchange notes that FIX, and OTTO Ports, as well TradeInfo, are available to all Members and may be utilized to cancel orders. Further, FIX DROP, the Clearing Trade Interface, and TradeInfo are available to all Members and may be utilized to obtain order information. These different protocols are not all necessary to conduct business on MRX; a Member may choose among protocols based on their business workflow.

Options 7, Section 7

The Exchange proposes to amend fees for the following market data feeds within Options 7, Section 7: (1) Nasdaq MRX Depth of Market Data;³¹ (2) Nasdaq MRX Order Feed;³² (3) Nasdaq

MRX Top Quote Feed;³³ (4) Nasdaq MRX Trades Feed;³⁴ and (5) Nasdaq MRX Spread Feed.³⁵ Currently, no fees are being assessed for these feeds.

The Exchange also proposes to assess an Internal Distributor Fee³⁶ of \$1,500 per month for the Nasdaq MRX Depth of Market Feed, Order Feed, and Top Quote Feed. The Exchange proposes to assess an Internal Distributor Fee of \$750 per month for the Trades Feed. Finally, the Exchange proposes to assess an Internal Distributor Fee of \$1,000 per month for the Spread Feed. If a Member subscribes to both the Trades Feed and the Spread Feed, both Internal Distributor Fees would be assessed.

The Exchange proposes to assess an External Distributor Fee of \$2,000 per month for the Nasdaq MRX Depth of Market Feed, Order Feed, and Top Quote Feed, an External Distributor Fee of \$1,000 per month for the Trades Feed, and an External Distributor Fee of \$1,500 per month for the Spread Feed.

if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(2).

³³ Nasdaq MRX Top Quote Feed ("Top Quote Feed") calculates and disseminates MRX's best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information along with opening price, daily trading volume, high and low prices for the day. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(3).

³⁴ Nasdaq MRX Trades Feed ("Trades Feed") displays last trade information along with opening price, daily trading volume, high and low prices for the day. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. *See* Options 3, Section 23(a)(4).

³⁵ Nasdaq MRX Spread Feed ("Spread Feed") is a feed that consists of: (1) Options orders for all Complex Orders (*i.e.*, spreads, buy-writes, delta neutral strategies, etc.); (2) data aggregated at the top five price levels (BBO) on both the bid and offer side of the market; (3) last trades information. The Spread Feed provides updates, including prices, side, size and capacity, for every Complex Order placed on the MRX Complex Order Book. The Spread Feed shows: (1) Aggregate bid/ask quote size; (2) aggregate bid/ask quote size for Professional Customer Orders; and (3) aggregate bid/ask quote size for Priority Customer Orders for MRX traded options. The feed also provides Complex Order auction notifications. *See* Options 3, Section 23(a)(5).

³⁶ A "distributor" of Nasdaq MRX data is any entity that receives a feed or data file of data directly from Nasdaq MRX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a Nasdaq Global Data Agreement.

MRX does not currently assess subscriber fees, but proposes to begin assessing Professional³⁷ and Non-Professional³⁸ subscriber fees. The Exchange proposes to assess a Professional Subscriber of \$25 per month, and a Non-Professional Subscriber of \$1 per month. These subscriber fees (both Professional and Non-Professional) cover the usage of all five MRX data products identified above and would not be assessed separately for each data product.³⁹

MRX also proposes a Non-Display Enterprise License of \$7,500 per month. This license would lower costs for internal professional subscribers and lower administrative costs overall by permitting the distribution of all MRX proprietary direct data feed products to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber, or requiring the customer to count internal subscribers.⁴⁰

The Non-Display Enterprise License is in addition to any other associated distributor fees for MRX proprietary direct data feed products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁴² 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.

³⁷ A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber.

³⁸ A Non-Professional Subscriber is a natural person who is neither: (i) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

³⁹ For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top of Market, Order, and Depth of Market Feed the firm would only report the Subscriber once and pay \$25 (\$1 for Non-Professional).

⁴⁰ The Non-Display Enterprise License of \$7,500 per month is optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

⁴¹ *See* 15 U.S.C. 78f(b).

⁴² *See* 15 U.S.C. 78f(b)(4) and (5).

²⁹ For example, while the FIX protocol permits routing capability the OTTO protocol does not permit routing capability. This distinction may cause a Member to elect a certain protocol based on whether a Member desires to execute an order locally or route an order. The OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Members depending on their trading behavior.

³⁰ For example, a Member may desire to utilize multiple FIX or OTTO ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

³¹ Nasdaq MRX Depth of Market Data Feed ("Depth of Market Feed") provides aggregate quotes and orders at the top five price levels on MRX, and provides subscribers with a consolidated view of tradable prices beyond the BBO, showing additional liquidity and enhancing transparency for MRX traded options. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. In addition, subscribers are provided with total aggregate quantity, Public Customer aggregate quantity, Priority Customer aggregate quantity, price, and side (*i.e.*, bid/ask). This information is provided for each of the top five price levels on the Depth Feed. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(1).

³² Nasdaq MRX Order Feed ("Order Feed") provides information on new orders resting on the book (*e.g.*, price, quantity and market participant capacity). In addition, the feed also announces all auctions. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies

The proposed changes to the pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated, “[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’”⁴³

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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.”⁴⁴

Congress directed the Commission to “rely on ‘competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.’”⁴⁵ As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. “If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”⁴⁶

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.”⁴⁷ In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a “proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.”⁴⁸

History of MRX Operations

Over the years, MRX has amended its transactional pricing to remain competitive and attract order flow to the Exchange.⁴⁹

⁴⁷ *Id.*

⁴⁸ See U.S. Securities and Exchange Commission, “Staff Guidance on SRO Rule Filings Relating to Fees” (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

⁴⁹ See e.g., Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR-ISEMercury-2016-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR-ISEMercury-2016-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR-ISEMercury-2016-06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR-ISEMercury-2016-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR-MRX-2018-01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR-MRX-2018-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange’s Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR-MRX-2018-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR-MRX-2018-27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange’s Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR-MRX-2019-02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR-MRX-2019-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR-MRX-2020-02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR-MRX-2020-11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85

In June 2019, MRX commenced offering complex orders.⁵⁰ With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities and other trading functionality that was nearly identical to functionality available on ISE.⁵¹ By way of comparison, ISE, unlike MRX, assessed membership fees in 2019⁵² while offering the same suite of functionality as MRX, with a limited exception.⁵³ Additionally, by way of

FR 44135 (July 21, 2020) (SR-MRX-2020-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR-MRX-2020-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange’s Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR-MRX-2020-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange’s Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR-MRX-2020-21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR-MRX-2021-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange’s Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

⁵⁰ See Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR-MRX-2019-14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing).

⁵¹ One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time, MRX has never offered Precise. “Nasdaq Precise” or “Precise” is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) Order and execution management: Enter, modify, and cancel orders on the Exchange, and manage executions (e.g., parent/child orders, inactive orders, and post-trade allocations); (2) market data: Access to real-time market data (e.g., NBBO and Exchange BBO); (3) risk management: Set customizable risk parameters (e.g., kill switch); and (4) book keeping and reporting: Comprehensive audit trail of orders and trades (e.g., order history and done away trade reports). See ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

⁵² In 2019, ISE assessed the following Access Fees: \$500 per month, per membership to an Electronic Access Member, \$5,000 per month, per membership to a Primary Market Maker and \$2,500 per month, per membership to a Competitive Market Maker. ISE does not assess Trading Rights Fees to Competitive Market Makers. See Securities Exchange Act Release No. 82446 (January 5, 2018), 83 FR 1446 (January 11, 2018) (SR-ISE-2017-112) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Non-Transaction Fees in the Exchange’s Schedule of Fees). Of note, ISE assessed Access Fees prior to 2019 as well.

⁵³ Unlike ISE, MRX does not offer Precise. See note 51, *supra*.

⁴³ See *NetCoalition*, 615 F.3d at 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)).

⁴⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁴⁵ See *NetCoalition*, 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (“[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.”).

⁴⁶ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

comparison, ISE assessed fees for ports⁵⁴ in 2019 while offering the same suite of functionality as MRX, with a limited exception.⁵⁵ Finally, in 2019, unlike MRX, ISE assessed fees for its market data,⁵⁶ while offering the same functionality suite as MRX, with a limited exception.

⁵⁴ Since 2019, ISE has assessed the following port fees: A FIX Port Fee of \$300 per port, per month, per mnemonic, an SQF Port Fee and SQF Purge Port Fee of \$1,100 per port, per month, an OTTO Port Fee of \$400 per port, per month, per mnemonic with a monthly cap of \$4,000, a CTI Port Fee and FIX DROP Port Fee of \$500 per port, per month, per mnemonic. See Securities Exchange Act Release No. 82568 (January 23, 2018), 83 FR 4086 (January 29, 2018) (SR-ISE-2018-07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Assess Fees for OTTO Port, CTI Port, FIX Port, FIX Drop Port and Disaster Recovery Port Connectivity). Of note, ISE assessed port fees prior to 2019 as well.

⁵⁵ See note 51, *supra*.

⁵⁶ See e.g., Securities Exchange Act Release Nos. 53212 (February 2, 2006), 71 FR 6803 (February 9, 2006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for Historical Options Tick Market Data); 53390 (February 28, 2006), 71 FR 11457 (March 7, 2006) (Order Granting Accelerated Approval of a Proposed Rule Change Establishing Fees for Historical Options Tick Market Data for Non-Members); 53756 (May 3, 2006), 71 FR 27526 (May 11, 2006) (Order Granting Approval of a Proposed Rule Change Establishing Fees for Enhanced Sentiment Market Data); 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ISE Open/Close Trade Profile Fees); 56315 (August 24, 2007), 72 FR 50148 (August 30, 2007) (Order Approving a Proposed Rule Change Relating to ISEE Select Market Data Fees); 59679 (April 1, 2009), 74 FR 15795 (April 7, 2009) (SR-ISE-2007-97) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Market Data Fees); 61086 (December 1, 2009), 74 FR 64783 (December 8, 2009) (SR-ISE-2009-103) (Notice of Filing of Proposed Rule Change Relating to Market Data Fees); 65002 (August 1, 2011), 76 FR 47630 (August 5, 2011) (SR-ISE-2011-50) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Fees); and 65678 (November 10, 2011), 76 FR 70178 (November 3, 2011) (SR-ISE-2011-67) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Fees).

Membership, Ports and Market Data Are Subject to Significant Substitution-Based Competitive Forces

An Exchange can show that a product is “subject to significant substitution-based competitive forces” by introducing evidence that customers can substitute the product for products offered by other exchanges.

NYSE National was able to prove exactly this when it sought approval for the “NYSE National Integrated Feed”⁵⁷ in 2020. NYSE National at the time of its filing was in a similar position to MRX today—the exchange had an approximately 1.9% market share of executed volume of equity trades.⁵⁸ The Commission approved the proposal to establish fees for NYSE National based on a finding that the exchange “was subject to significant substitution-based competitive forces.” Citing *NetCoalition I*,⁵⁹ the Commission stated that “whether a market is competitive notwithstanding potential alternatives depends on factors such as the number of buyers who consider other products interchangeable and at what prices.”⁶⁰ Noting that “many market participants . . . do not subscribe to . . . the NYSE National Integrated Feed, even when the feed is offered without charge,” the Commission concluded that “NYSE National’s consistently low percentage of market share, the relatively small number of subscribers to the NYSE

⁵⁷ NYSE National stated that the proposed integrated feed included depth-of-book order data, last sale data, security status updates, and stock summary messages. See Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR-NYSE-NAT-2020-05), also available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSE-NAT-2020-05.pdf>. (“Initial NYSE National Proposal”)

⁵⁸ See *id.*

⁵⁹ See *NetCoalition v. SEC*, 615 F.3d 525, 535 (D.C. 2010) (“*NetCoalition I*”).

⁶⁰ See NYSE National Approval Order (citing *NetCoalition II*).

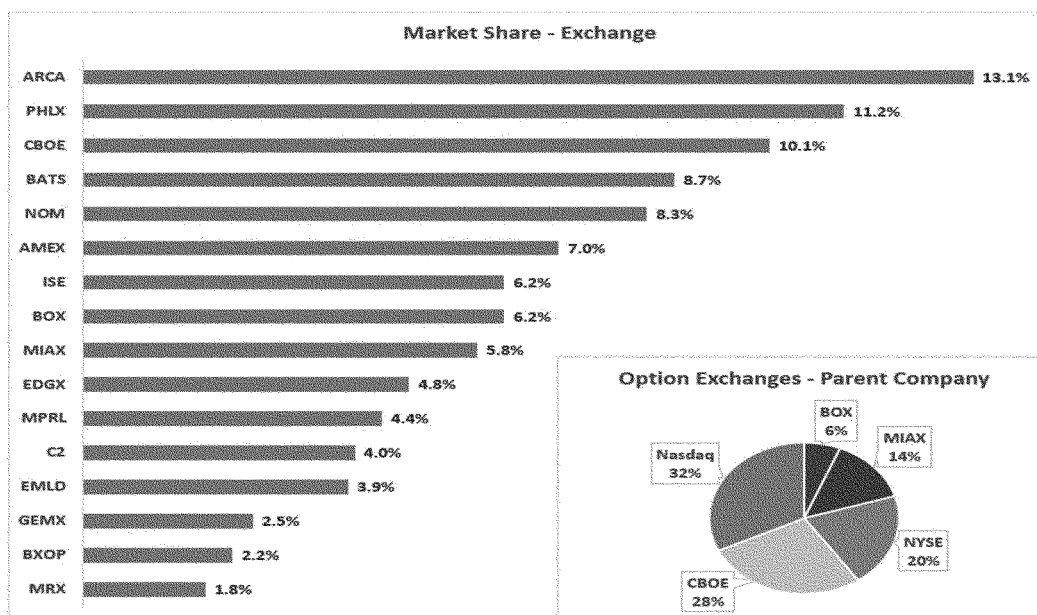
National Integrated Feed, and the sizeable portion of subscribers that terminated their subscriptions following the proposal of the fees,” demonstrated that the exchange “was subject to significant substitution-based competitive forces” in setting fees such that the proposed rule change was consistent with the Act.⁶¹

MRX today is essentially in the same position as NYSE National in 2020. MRX has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today. It has a small number of firms that are Members, subscribe to ports, or purchase market data relative to its affiliated options exchanges. Two firms that currently subscribe to MRX market data have terminated all of their subscriptions, and one additional firm that is currently a Member and purchases port services has told the Exchange that it will initiate a review of all of the services it purchases from MRX based on the all-in cost of trading on MRX. Based on prior experience, MRX may see additional cancellations of membership, ports and market data after May 2, 2022.

Chart 1 below shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

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⁶¹ See *id.*

Chart 1: Market Share by Exchange for January 2022

Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the

value of trading, membership, ports and market data.

Chart 2 below compares the number of firms purchasing FIX and SQF ports, memberships, and market data from MRX to the number of firms purchasing

such services from the four MRX-affiliated options exchanges, GEMX, ISE, The Nasdaq Stock Market LLC ("NOM") and Nasdaq PHLX, LLC ("Phlx").

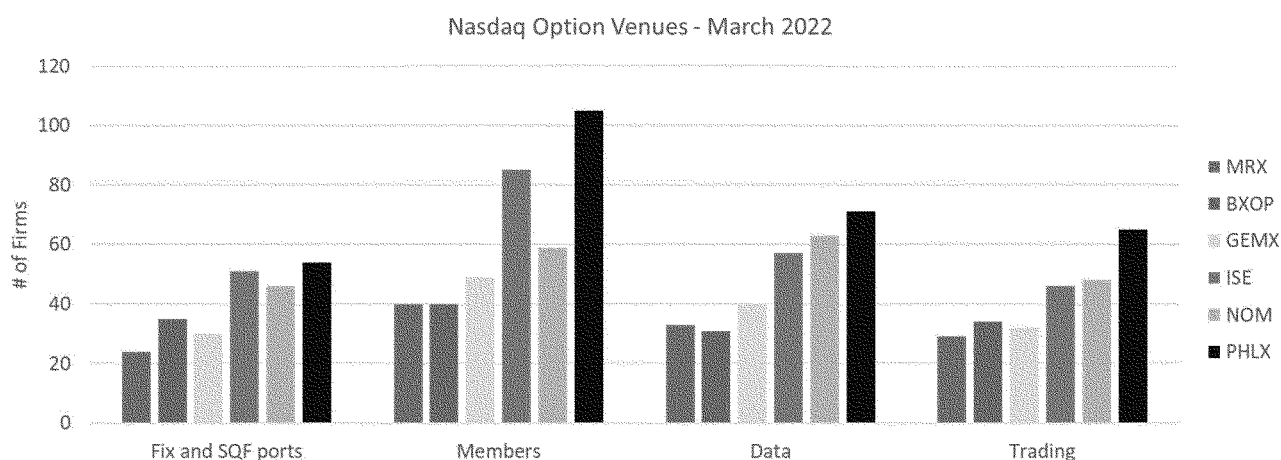
Chart 2: Number of Firms Purchasing Port, Membership, Market Data and Trading Services from Options Venues (March 2022)**BILLING CODE 8011-01-C**

Chart 2 shows that fewer firms purchased MRX ports in March 2022 than the ports of its options exchange affiliates. As described in detail below, only one order protocol is required to submit orders to MRX, either FIX or OTTO. Quoting protocols are only required to the extent an MRX Member has been appointed as a Market Maker

in an options series pursuant to Options 2, Section 1, and only one quoting protocol (SQF) is necessary to quote on MRX. Members may choose a greater number of order entry ports, however, depending on that Member's particular business model.⁶² With respect to the

⁶² For example, a Member may desire to utilize multiple FIX or OTTO ports for accounting

submission of orders, Members may also choose not to purchase any port at all from the Exchange, and instead rely on the port of a third party to submit an

purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

order.⁶³ The Exchange assigns the Member a badge⁶⁴ and/or mnemonic⁶⁵ to submit quotes and/or orders to the Exchange on a particular port. Use of this badge or mnemonic by a Member would allow a Member to use a third-party port to trade on the Exchange.

The experience of MRX's affiliates shows that the number of ports that members choose to purchase varies widely. For example, a review of the Phlx exchange in April 2022 shows that, among its members that purchase ports, approximately 26 percent purchased 1 SQF or FIX port, another 26 percent purchased between 2 and 5 ports, 21 percent purchased between 6 and 10 ports, and 28 percent purchased more than 11 ports. This means that any member has the option of reducing its purchase of port services without purchasing a substitute product by, for example, reconfiguring its systems to change the number of ports from 16 to 14.⁶⁶

By way of comparison, the number of ports that MRX Members purchased in April 2022 also varies widely. For example, approximately 23 percent purchased 1 SQF, FIX or OTTO port,⁶⁷ another 43 percent purchased between 2 and 5 ports, 13 percent purchased between 6 and 10 ports, and 20 percent purchased more than 11 ports. MRX Members, similar to Phlx members, have the option of reducing their port purchases without purchasing a substitute product.

Chart 2 also shows that MRX has the smallest number of Members relative to its GEMX, ISE, NOM and Phlx affiliates, with approximately 40 members.⁶⁸ This demonstrates that customers can and will choose where to become members, need not become members of all exchanges, and do not need to become

Members of MRX and instead may utilize a third party.⁶⁹

With respect to market data, Chart 2 shows that approximately 34 firms subscribe to at least one market data product from MRX in the first quarter of 2022. This is the second lowest number of firms purchasing market data from the Nasdaq-affiliated options exchanges.

As explained above, Nasdaq proposes to introduce fees for five market data feeds: (i) Nasdaq MRX Depth of Market Data (aggregate quotes and orders at the top five price levels on MRX, and a consolidated view of tradable prices beyond the BBO);⁷⁰ (ii) the Nasdaq MRX Order Feed (new orders resting on the book);⁷¹ (iii) Nasdaq MRX Top Quote Feed (best bid and offer position, with aggregated size based on displayable order and quote interest in the System);⁷² (iv) Nasdaq MRX Trades Feed (last trade information along with opening price, daily trading volume, high and low prices for the day);⁷³ and (5) the Nasdaq MRX Spread Feed (orders for all Complex Orders, data aggregated at the top five price levels (BBO) on both the bid and offer side of the market and last trades information).⁷⁴

The MRX Top Quote Feed and the MRX Trades Feed provide "top-of-book" information. Such information is typically of interest to a broader audience than Members trading on exchanges, including retail investors, media, portfolio managers, competing exchanges and others. For this broader audience, top-of-book data from one exchange is, in general, readily substitutable with the top-of-book

information from another exchange,⁷⁵ and therefore the Exchange may lose customers if fees for top-of-book data are set too high.

The other three market data feeds, the Depth of Market Data feed, the Order Feed, and the Spread Feed are generally of more interest to Members trading on the Exchange relative to other market participants but, as noted above, MRX has the smallest market share at 1.8%, and any Member can choose to trade on another exchange if fees for these other three feeds exceed their value.

All of these statistics must be viewed in the context of a field with relatively low barriers to entry. MRX, like many new entrants to the field, offered membership, ports and market data for free to establish itself and gain market share. As new entrants enter the field, MRX can also expect competition from these new entrants. Those new entrants, like MRX, are likely to set membership, port, market data, or other fees to zero, increasing marketplace competition.

In summary, MRX membership, port and market data fees are subject to significant substitution-based competitive forces due to its consistently low percentage of market share, the relatively small number of purchasers for each product, and the purchasers that either cancelled or are reviewing their subscriptions. Implementation of the proposed fees is therefore consistent with the Act.

Fees for Membership, Ports and Market Data

Each of the proposed membership, port and data fees described below are in line with those of other markets. Setting a fee above competitors is likely to drive away customers, so the most efficient price-setting strategy is to set prices at the same level as other firms.

Options 7, Section 5—Membership

The Exchange's proposal to adopt membership fees is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, MRX's membership department reviews applicants to ensure that each application complies with the rules specified within MRX General 3⁷⁶ as well as other requirements for membership.⁷⁷ Applicants must meet the Exchange's qualification criteria

⁶³ Market Makers on MRX are required to obtain one SQF port to submit quotes into MRX.

⁶⁴ A "badge" shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. See Options 1, Section 1(a)(5).

⁶⁵ A "mnemonic" shall mean an acronym comprised of letters and/or numbers assigned to Electronic Access Members. An Electronic Access Member account may be associated with multiple mnemonics. See Options 1, Section 1(a)(23).

⁶⁶ As noted above, one port (FIX) would be required to submit orders and one port (SQF) would be required to submit quotes.

⁶⁷ Phlx only offers FIX and SQF ports while MRX offers FIX, OTTO and SQF ports for order and quote entry.

⁶⁸ The data show that approximately 24 members purchased ports, while there are approximately 40 members of the Exchange. As discussed above, some members may use third-party ports to trade, so the low ratio of ports to memberships indicates that some members are doing so.

⁶⁹ Of course, that third party must itself become a member of MRX, so at least some market participants must become members of MRX for any trading to take place at all. Nevertheless, because some firms would be able to exercise the option of not becoming members, excessive membership fees would cause the Exchange to lose members.

⁷⁰ Nasdaq MRX Depth of Market Data Feed ("Depth of Market Feed") provides aggregate quotes and orders at the top five price levels on MRX, and provides subscribers with a consolidated view of tradable prices beyond the BBO, showing additional liquidity and enhancing transparency for MRX traded options. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. In addition, subscribers are provided with total aggregate quantity, Public Customer aggregate quantity, Priority Customer aggregate quantity, price, and side (*i.e.*, bid/ask). This information is provided for each of the top five price levels on the Depth Feed. The feed also provides order imbalances on opening/reopening. See Options 3, Section 23(a)(1).

⁷¹ See Options 3, Section 23(a)(2).

⁷² See Options 3, Section 23(a)(3).

⁷³ See Options 3, Section 23(a)(4).

⁷⁴ See Options 3, Section 23(a)(5).

⁷⁵ See, *e.g.*, Securities Exchange Act Release No. 94466 (March 18, 2022), 87 FR 16811 (March 24, 2022) (SR-Nasdaq-2022-024) (explaining that top-of-book products from major exchanges are readily substitutable).

⁷⁶ MRX General 3 incorporates by reference Nasdaq General 3.

⁷⁷ The Exchange's Membership Department must ensure, among other things, that an applicant is not statutorily disqualified.

prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the validity of the required clearing relationship, and the history of disciplinary matters. Approved Members would be required to comply with MRX's By-Laws and Rules and would be subject to regulation by MRX. The proposed membership fees are identical to membership fees on GEMX,⁷⁸ and are lower than similar fees assessed on other options markets.⁷⁹

The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange. Among various factors, the Exchange believes market participants consider: (i) An exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. The Exchange believes that the decision to become a member of an exchange, particularly as a registered market maker, is a complex one that is not solely based on non-transactional costs assessed by an exchange. Market participants weigh the tradeoff between where they choose to deploy liquidity versus where trading opportunities exist. Of course, the cost of membership, ports and market data may factor into a decision to become a member of a certain exchange, but the Exchange believes it is by no means the only factor when comparing exchanges.

Market Makers

Market makers play an important role on options exchanges as they provide liquidity. In options markets, registered market makers are assigned options series⁸⁰ and are required to quote in those options series for a specified time period during the day.⁸¹ Typically, a lead or primary market maker⁸² will be required to quote for a longer period of

time during the day as compared to other market makers registered on an exchange.⁸³ Additionally, market makers are typically required to quote within a certain width on options markets.⁸⁴ Greater liquidity on options markets benefits all market participants by providing more trading opportunities and attracting greater participation by market makers. An increase in the activity of market makers in turn facilitates tighter spreads. Market participants are attracted to options markets that have ample liquidity and tighter spreads in options series.

Trading Functionality

An exchange's trading functionality attracts market participants who may elect, for example, to submit an order into a price improving auction,⁸⁵ enter a complex order,⁸⁶ or utilize a particular order type.⁸⁷ Different options exchanges offer different trading functionality to their members. For example, with respect to priority and allocation of an order book, some options exchanges have price/time allocation,⁸⁸ some have a size pro-rata allocation,⁸⁹ while other exchanges offer both allocation models.⁹⁰ The allocation methodology on a particular options exchange's order book may attract certain market participants. Also, the manner in which some options markets structure their solicitation auction,⁹¹ or opening process,⁹² may be attractive to certain market participants. Finally, some exchanges have trading floors⁹³

which may accommodate trading for certain market participants or trading firms.⁹⁴

Product Offerings

Introducing new and innovative products to the marketplace designed to meet customer demands may attract market participants to a particular options venue. New products in the options industry may allow market participants greater trading and hedging opportunities, as well as new avenues to manage risks. The listing of new options products enhances competition among market participants by providing investors with additional investment vehicles, as well as competitive alternatives, to existing investment products. An exchange's proprietary product offering may attract order flow to a particular exchange to trade a particular options product.⁹⁵

Transaction Pricing

The pricing available on a particular exchange may impact a market participant's decision to submit order flow to a particular options venue. The options industry is competitive. 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.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges. For example, a market maker on MIAX assesses Market Makers a \$3,000 one-time fee and then a tiered monthly fee from \$7,000 for up to 10 classes to \$22,000 for over 100 classes.⁹⁶ By comparison, under the proposed fee structure, a CMM can be granted access

floors require an on-floor presence to execute options transactions.

⁹⁴ There are certain features of open outcry trading that are difficult to replicate in an electronic trading environment. The Exchange has observed, and understands from various market participants, that they have had difficulty executing certain orders, such as larger orders and high-risk and complicated strategies, in an all-electronic trading configuration without the element of human interaction to negotiate pricing for these orders.

⁹⁵ See e.g. options on the Nasdaq-100 Index® available on ISE, GEMX and Phlx and Cboe's Market Volatility Index®. Currently, MRX does not list any proprietary products.

⁹⁶ See Miami International Securities Exchange, LLC Fee Schedule at 20 and 21: https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_03012022.pdf.

⁷⁸ See GEMX Options 7, Section 6A (Access Fees).

⁷⁹ See Cboe's Fees Schedule. Cboe assesses permit fees as follows: Market-Maker Electronic Access Permit of \$5,000 per month; Electronic Access Permits of \$3,000 per month; and Clearing TPH Permit of \$2,000 per month. See also Miami International Securities Exchange, LLC's ("MIAX") Fee Schedule. MIAX assesses an Electronic Exchange Member Fee of \$1,500 per month.

⁸⁰ See Phlx, ISE, GEMX, MRX, Nasdaq BX, Inc. ("BX") and NOM Options 2, Section 3; Cboe Exchange, Inc. ("Cboe") Rule 5.50; BOX Exchange LLC ("BOX") Rule 8030; MIAX Rule 602; and NYSE Arca, Inc. ("NYSE Arca") Rule 6.35-O.

⁸¹ See ISE, GEMX and MRX, Phlx, BX and NOM Options 2, Section 5; Cboe Rule 5.52; BOX Rule 8050; MIAX Rule 604; and NYSE Arca Rule 6.37A-O.

⁸² Options markets refer to the primary market maker on an exchange in several ways.

⁸³ See BX Options 2, Section 4; ISE, GEMX and MRX, and Phlx Options 2, Section 5; BOX Rule 8055; MIAX Rule 604; and NYSE Arca Rule 6.37A-O.

⁸⁴ See BX Options 2, Section 4; ISE, GEMX and MRX, Phlx and NOM Options 2, Section 5; and Cboe Rule 5.52; BOX Rule 8040.

⁸⁵ See ISE, GEMX, MRX, Phlx and BX Options 3, Section 13; MIAX Rule 515A; Cboe Rule 5.37; and BOX Rules 7150 and 7245.

⁸⁶ See Phlx and ISE Options 3, Section 14; MIAX Rule 518; Cboe Rule 5.33; BOX Rule 7240; and NYSE Arca Rule 6.91-O.

⁸⁷ See ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 7; MIAX Rule 615; Cboe Rule 5.6; BOX Rule 7110; and NYSE Arca Rule 6.62-O.

⁸⁸ See Cboe Rule 5.85; BOX Rule 7130; and NYSE Arca Rule 6.76-O.

⁸⁹ See Phlx, ISE, GEMX and MRX Options 3, Section 10; and BOX Rule 7135.

⁹⁰ See BX Options 3, Section 10. While BX's rule permits both price/time and size pro-rata allocation, all symbols on BX are currently designated as Price/Time. See also BOX Rules 7130 and 7135. MIAX's rule permits both Price-Time and Pro-Rata allocation. See also MIAX Rule 514.

⁹¹ See ISE, GEMX and MRX Options 3, Section 11; NYSE American Rules 971.1NY and 971.2NY; and Cboe Rule 5.39.

⁹² See ISE, GEMX, MRX, Phlx, BX and NOM Options 3, Section 8; Cboe Rule 5.31, MIAX Rule 503, BOX Rule 7070, and NYSE Arca Rule 6.64-O.

⁹³ Today, Phlx, Cboe, BOX, NYSE Arca, and NYSE American LLC have a trading floor. Trading

on the Exchange for as little as \$950 per month (*i.e.*, a \$100 access fee and an \$850 trading right), and could quote in all options classes on the Exchange by paying the access fee and obtaining nine CMM trading rights for a total of \$4,950 per month. The Exchange notes that its tiered model for CMM trading rights is consistent with the pricing practices of other exchanges, such as NYSE Arca, which charges \$6,000 per month for the first market maker trading permit, as mentioned above, down to \$1,000 per month for the fifth and additional trading permits, with various tiers in-between. Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right.

The Exchange does not believe that it is unfairly discriminatory to assess different fees for PMMs, CMMs, and EAMs. For PMMs on MRX, the fees required to access the Exchange are substantially lower than those of competing exchanges. For example, a PMM could quote on the Exchange for only \$200 (*i.e.*, the access fee), compared with the minimum \$6,000 per month trading permit fee charged by NYSE Arca. The Exchange notes that it is not proposing trading right fees for PMMs, as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting requirements. Similarly, the Exchange is proposing only to charge the \$200 access fee to EAMs as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers. The CMM Trading Right Fee is identical to GEMX.⁹⁷

Membership fees are charged by nearly all exchanges, and all established exchanges with sufficient order flow. In 2022, MEMX LLC ("MEMX") established a monthly membership fee of \$200.⁹⁸ MEMX reasoned in that rule change that there is value in becoming a Member of the Exchange. MEMX stated that it believed that its proposed membership fee "is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange." Moreover, "neither the

trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange." In this respect, MEMX is correct; a monthly membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may choose to become a member of one or more options exchanges based on the market participant's business model. A very small number of market participants choose to become a member of all sixteen options exchanges. It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market. Most firms that actively trade on options markets are not currently members of MRX and do not purchase port services at MRX. Using options markets that Nasdaq operates as points of comparison, less than a third of the firms that are members of at least one of the options markets that Nasdaq operates are also members of MRX (approximately 29%). The Exchange notes that no firm that is a member of MRX only. Few, if any, firms have become members or purchased port services at MRX, notwithstanding the fact that both MRX membership and ports are currently free, because MRX currently has less liquidity than other options markets. As explained above, MRX has the smallest market share of the 16 options exchanges, representing only approximately 1.8% of the market, and, for certain market participants, the current levels of liquidity may be insufficient to justify the costs associated with becoming a member and connecting to the exchange, notwithstanding the fact that both are currently free.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) An exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not "lock" a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is made at the beginning of the relationship, and is no less subject to

competition than trading fees or market data.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at MRX.⁹⁹ If MRX is not at the NBBO, MRX will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the order was executed at a superior price.¹⁰⁰

In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange. For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,¹⁰¹ or request sponsored access¹⁰² through a member of an exchange in order to submit a trade directly to an options exchange.¹⁰³ A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange. Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues, a market participant may

⁹⁹ See Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), available at https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.

¹⁰⁰ MRX Members may elect to not route their orders by marking an order as "do-not-route." In this case, the order would not be routed.

¹⁰¹ Service bureaus provide access to market participants to submit and execute orders on an exchange. On MRX, a Service Bureau may be a Member. Some MRX Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only MRX Members may submit orders or quotes through ports.

¹⁰² Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

¹⁰³ This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

⁹⁷ See GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

⁹⁸ See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19). The Monthly Membership Fee is assessed to each active Member at the close of business on the first day of each month.

determine one model is more cost efficient as compared to the alternatives.

Options 7, Section 6—Ports

The Exchange's proposal to amend port fees is reasonable, equitable and not unfairly discriminatory. The proposed port fees are similar to the fees assessed by GEMX,¹⁰⁴ and lower than the fees assessed by ISE. The proposed fees reflect the ongoing services provided to maintain and support the ports. In order to submit orders into MRX, only one order protocol is required, either FIX or OTTO. Quoting protocols are only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1. Similarly, only one quoting protocol (SQF) is necessary to quote on MRX. Depending on a Member's business model, one protocol may be better suited for a particular Member relative to another.¹⁰⁵ Members may elect to utilize both order entry protocols, depending on how they organize their business. Only one protocol is necessary to submit orders into MRX. However, Members may choose a greater number of order entry ports, depending on that Member's particular business model.¹⁰⁶ Similarly, only one account number is necessary per Member, although Members may choose to have additional accounts number to organize their business. The Exchange notes that FIX, OTTO, FIX DROP, the Clearing Trade Interface, and TradeInfo are available to all Members and may be utilized to obtain order information.

Members choose among the protocols based on their business workflow. The Exchange would uniformly assess the port fees to all Members and would uniformly apply monthly caps.

Ports are only available to MRX Members or service bureaus, and only an MRX Member may utilize a port.¹⁰⁷

Once an applicant is approved for membership on MRX and becomes a

Member, the Exchange assigns the Member a badge¹⁰⁸ and/or mnemonic¹⁰⁹ to submit quotes and/or orders to the Exchange through the applicable port. An MRX Member may have one or more accounts numbers and may assign badges or mnemonics to those account numbers. Membership approval grants a Member a right to exercise trading privileges on MRX, which includes the submission of orders and/or quotes into the Exchange through a secure port by utilizing the badge and/or mnemonic assigned to a specific Member by the Exchange. The Exchange utilizes ports as a secure method for Members to submit orders into the Exchange's match engine and for the Exchange to send messages related to those orders to its Members.

MRX is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, MRX takes measures to ensure access is monitored and maintained with various controls. Ports are a method utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member of MRX, and is approved for membership by MRX, the Member is granted trading rights to enter orders into MRX through secure ports.

As noted herein, there is no legal or regulatory requirement that a market participant become a Member of MRX, or, if it is a Member, to purchase port services beyond the one quoting protocol or one order entry protocol necessary to quote or submit orders on MRX.¹¹⁰ As noted above, Members may freely choose to rely on one or many ports, depending on their business model. A Member can only submit interest (quotes or orders) through a secure port. Only one port is required to submit an order (FIX or OTTO) to MRX and only one port is required to submit a quote (SQF) to MRX. A market participant may decide, in the alternative, not to become a member of an exchange and instead utilize a third party.¹¹¹

The decision as to what types and number of ports to buy, like the decision to become a member of an exchange, is

made at the beginning of that relationship, but that decision may be altered at any time as a market participant's business strategy evolves or the manner in which the market participant interacts with the exchange changes over time. As noted herein, only one protocol is required to submit orders. Depending on a Member's business model, one protocol may be better suited for a Member than another. Port selection is often made at the beginning of a trading relationship, like the decision whether to become a member, but a member is not "locked" into a particular number or type of ports over the course of the business relationship.

Options 7, Section 7—Market Data

The Exchange's proposal to adopt market data fees is reasonable, equitable and not unfairly discriminatory. The five market data feeds at issue here—the Depth of Market Feed,¹¹² Order Feed,¹¹³ Top Quote Feed,¹¹⁴ Trades Feed,¹¹⁵ and Spreads Feed¹¹⁶—are used throughout the market by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis. With respect to the proposed Non-Display Enterprise License, the Exchange notes that enterprise licenses in general have been widely recognized as an effective and not unfairly discriminatory method of distributing market data. Enterprise licenses are widely employed by options exchanges, and the proposal here is typical of such licenses.

¹¹² The Depth of Market Feed provides aggregate quotes and orders at the top five price levels on MRX, and provides subscribers with a consolidated view of tradable prices beyond the BBO, showing additional liquidity and enhancing transparency for MRX traded options.

¹¹³ The Order Feed provides information on new orders resting on the book (e.g. price, quantity and market participant capacity), and also announces all auctions.

¹¹⁴ The Top Quote Feed calculates and disseminates MRX's best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information along with opening price, daily trading volume, high and low prices for the day.

¹¹⁵ The Trades Feed displays last trade information along with opening price, daily trading volume, high and low prices for the day.

¹¹⁶ The Spread Feed consists of: (1) Options orders for all Complex Orders (i.e., spreads, buy-writes, delta neutral strategies, etc.); (2) data aggregated at the top five price levels (BBO) on both the bid and offer side of the market; (3) last trades information.

¹⁰⁴ See GEMX Options 7, Section 6.C. (Ports and Other Services).

¹⁰⁵ For example, while the FIX protocol permits routing capability the OTTO protocol does not permit routing capability. This distinction may cause a Member to elect a certain protocol based on whether they want the order executed locally or have the option to allow the order to route. The OTTO Port offer lower latency as compared to the FIX Port, which may be attractive to Members depending on their trading behavior.

¹⁰⁶ For example, a Member may desire to utilize multiple FIX or OTTO ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

¹⁰⁷ Service bureaus may obtain ports on behalf of members. The Exchange would only assign a badge and/or mnemonic to a Member to be utilized to submit quotes and/or orders to the Exchange.

¹⁰⁸ See note 64, *supra*.

¹⁰⁹ See note 65, *supra*.

¹¹⁰ Only Members and service bureaus may request ports on MRX, and only Members may utilize ports on MRX through their assigned badge or mnemonic. See Options 1, Section 1(a)(5) and (23).

¹¹¹ In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange as described above.

Market data, often mistakenly characterized as the “exhaust” of an exchange, is in fact the engine that drives liquidity: Firms are attracted by high levels of liquidity, diverse offerings and bids and offers close to the NBBO. Market data, unlike membership or ports, is not sold only to members, but rather is open to investors generally.

Nasdaq is subject to direct competition in the sale of market data. As explained above, Nasdaq proposes to introduce fees for both top-of-book and depth-of-book feeds. Top-of-book feeds are generally of interest to a broader audience that can readily substitute the top-of-book feed of one exchange with that of another. Depth-of-book feeds are, for the most part, of more interest to Members trading on the Exchange than other market participants but MRX has the smallest market share at 1.8%, and any Member can choose to trade on another exchange if fees for these other three feeds exceed their value.

Moreover, MRX lists no proprietary options products that are entirely unique to MRX. Firms can substitute MRX market data with feeds from exchanges that provide a high degree of functionality, including complex orders. Full market data options are available, for example, from Cboe,¹¹⁷ MIAX,¹¹⁸ and NYSE Arca Options.¹¹⁹

Top-of-book data—last trade and best bid and offer information—is sold broadly to a wide of market participants, including the media, the general investing public, retail broker-dealers, regulatory agencies, and many others in addition to broker-dealers routing order flow. Because MRX does not list options on products that are exclusively available on MRX, then these same types of general-interest consumers of data can substitute MRX data with data from any exchange that lists such multiply-listed options, or through OPRA, in the same sense that consumers of top-of-book data on equity exchanges compete with other sellers of top-of-book data.¹²⁰ Top-of-book data is

easily substitutable by many of its users, and therefore is subject to particularly fierce competition.

All of this competition must be understood in the context of the fact that all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

* * * * *

After 6 years, MRX proposes to commence assessing membership, port, and market data fees, just as all other options exchanges.¹²¹ The introduction of these fees will not impede a Member’s access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX’s ability to compete with other options exchanges.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. 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. 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.

Options 7, Section 5—Membership

The proposed membership fees are identical to membership fees assessed by GEMX.¹²² The proposed fees are designed to reflect the benefits of the

technical, regulatory, and administrative services provided to a Member by the Exchange, and the fees remain competitive with similar fees offered on other options exchanges. The Exchange does not believe that assessing different fees for PMMs, CMMs, and EAMs creates an undue burden on competition.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges.¹²³ Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right. The Exchange notes that it is not proposing trading right fees for PMMs as the Exchange wishes to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting. Additionally, as noted herein, PMMs have higher quoting obligations as compared to CMMs.¹²⁴

Options 7, Section 6—Ports

The proposed port fees are similar to port fees assessed by GEMX¹²⁵ for similar connectivity. As a consequence, competition will not be burdened by the proposed fees. In order to submit orders into MRX, only one order protocol is required, either FIX or OTTO. Likewise, only one quoting protocol, SQF, is necessary to quote on MRX. Finally, only one account number is necessary per Member. FIX, and OTTO Ports, as well TradeInfo, are available to all Members and may be utilized to cancel orders. Further, FIX, and OTTO Ports, as well TradeInfo, are available to all Members and may be utilized to cancel orders and FIX DROP, the Clearing Trade Interface, and TradeInfo are available to all Members and may be utilized to obtain order information. These different protocols are not all necessary to conduct business on MRX. Market participants may also connect to

¹¹⁷ See Cboe DataShop, available at <https://datashop.cboe.com/>.

¹¹⁸ See MIAX Options Market Data & Offerings, available at <https://www.miaxoptions.com/market-data-offerings>.

¹¹⁹ See NYSE Options Markets, available at <https://www.nyse.com/options>.

¹²⁰ See Securities Exchange Act Release No. 94466 (March 18, 2022), 87 FR 16811 (March 24, 2022) (SR-NASDAQ-2022-024) (explaining that “[a]ll of the top-of-book proprietary products offered by the exchanges are readily substitutable for each other.” “Top-of-book data can be used for many purposes—from a retail investor casually surveying the market to sophisticated market participants using it for a variety of applications, such as investment analysis, risk management, or portfolio valuation.” “All major exchange groups compete to sell top-of-book data.”).

¹²¹ Today, MRX is the only options exchange that does not assess membership, port, and market data fees.

¹²² See GEMX Options 7, Section 6.A. (Access Fees) and Section 6.B. (CMM Trading Rights Fees).

¹²³ See NYSE Arca Fees and Charges, General Options and Trading Permit (OTP) Fees (comparing CMM Trading Rights Fees to the Arca Market Maker fees).

¹²⁴ See MRX Options 2, Section 5. PMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce. CMMs are not required to enter quotations in the options classes to which it is appointed, however if a CMM initiates quoting in an options class, the CMM, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce.

¹²⁵ See GEMX Options 7, Section 6.C. (Ports and Other Services).

third parties instead of directly to the Exchange.

With respect to the higher fees assessed for SQF Ports and SQF Purge Ports, the Exchange notes that only Market Makers may utilize these ports. Market Makers are required to provide continuous two-sided quotes on a daily basis,¹²⁶ and are subject to various obligations associated with providing liquidity.¹²⁷ As a result of these quoting obligations, the SQF Port and SQF Purge Port are designed to handle higher throughput to permit Market Makers to bundle orders to meet their obligations. The technology to permit Market Makers to submit a greater number of quotes, in addition to the various risk protections¹²⁸ afforded to these market participants when quoting, accounts for the higher SQF Port and SQF Purge Port fees. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. Also, an increase in the activity of Market Makers in turn facilitates tighter spreads.

Options 7, Section 7—Market Data

The initiation of market data fees will not impose an undue burden on inter-market competition. Since February 2016, MRX has disseminated market data without charging a fee, allowing MRX time to build order flow. Now that order flow has increased from approximately 0.2 percent to 1.8 percent of the market, MRX proposes charging fees that reflect the value of that data.

Permitting MRX to charge a fee for its data does not impose any burden on the ability of other options exchanges to compete. Each of the remaining 15 options exchanges currently sells its market data, and is capable of modifying its fees response to the proposed changes by MRX. Moreover, allowing MRX, or any new market entrant, to waive fees for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share.¹²⁹ 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.¹³⁰ 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-2022-04 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-2022-04. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2022-04 and should be submitted on or before June 8, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³¹

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-10617 Filed 5-17-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34583; File No. 812-15315]

First Eagle Alternative Capital BDC, Inc., et al.

May 13, 2022.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order ("Order") under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

¹²⁶ See MRX Options 2, Section 5.

¹²⁷ See MRX Options 2, Section 4.

¹²⁸ See MRX Options 3, Section 15(a)(3). Market Makers are offered risk protections to permit them to manage their risk more effectively.

¹²⁹ The Exchange notified market participants of the new fees on December 20, 2021. See Data News #2021-11 (December 20, 2021, available at <http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2021-11>). As such, market participants have had ample notice of the proposed fee changes and will be able to adjust their purchases of exchange services accordingly.

¹³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹³¹ 17 CFR 200.30-3(a)(12).