

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](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2021-09 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-BOX-2021-09. 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 such 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-BOX-2021-09 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-09131 Filed 4-30-21; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91686; File No. SR-CBOE-2020-075]

#### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 2, To Make Qualified Contingent Cross Orders Available for FLEX Option Trading

April 27, 2021.

On August 3, 2020, Cboe Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make Qualified Contingent Cross ("QCC") Orders available for electronic FLEX option trading.

The proposed rule change was published for comment in the **Federal Register** on August 20, 2020.<sup>3</sup> On October 1, 2020, pursuant to Section 19(b)(2) of the Exchange Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On October 23,

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 89564 (August 14, 2020), 85 FR 51531.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 90062 (October 1, 2020), 85 FR 63312 (October 7, 2020).

2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.<sup>6</sup> On November 18, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.<sup>8</sup> On February 2, 2021, the Exchange submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.<sup>9</sup> On February 12, 2021, the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.<sup>10</sup> On April 14, 2021, the Exchange withdrew the proposed rule change (SR-CBOE-2020-075).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91687; File No. SR-MRX-2021-04]

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

April 27, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>6</sup> In Amendment No. 1, the Exchange provided additional support for the proposal. The full text of Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-075/srcboe2020075-7940531-224727.pdf>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 90457, 85 FR 75071 (November 24, 2020).

<sup>9</sup> In Amendment No. 2, the Exchange provided further support for the proposal. The full text of Amendment No. 2 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2020-075/srcboe2020075-8330243-228699.pdf>.

<sup>10</sup> See Securities Exchange Act Release No. 91127, 86 FR 10378 (February 19, 2021).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

(“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2021, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange’s Pricing Schedule at Options 7, as described further below.

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

**II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

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

**1. Purpose**

The purpose of the proposed rule change is to amend the Exchange’s Pricing Schedule at Options 7, as further described below.

**Market Maker Fees**

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

**NON-PENNY SYMBOLS**

Market participant	Maker fee Tier 1	Maker fee Tier 2	Taker fee Tier 1	Taker fee Tier 2
Market Maker <sup>3</sup> .....	\$0.20	\$0.10	\$1.10	\$1.10
Non-Nasdaq MRX Market Maker (FarMM) .....	0.90	0.90	1.10	1.10
Firm Proprietary/Broker-Dealer .....	0.90	0.90	1.10	1.10
Professional Customer .....	0.90	0.90	1.10	1.10
Priority Customer .....	0.00	0.00	0.00	0.00

The Exchange now proposes to increase the maker fees for Market Makers<sup>4</sup> from \$0.20 to \$0.35 per contract (Tier 1) and from \$0.10 to \$0.20 per contract (Tier 2).

**Qualifying Tier Thresholds**

Currently, the Exchange operates a maker/taker fee model for Penny and Non-Penny Symbols in Table 1 of Options 7, Section 3 where all market

participants are charged a fee (or are eligible for free executions) with potentially discounted fees based on the following qualifying tier thresholds in Table 3 of Options 7, Section 3:

Tiers	Total affiliated member or affiliated entity ADV <sup>5</sup>
Tier 1 .....	executes 0.00%—0.7499% of Customer Total Consolidated Volume. <sup>6</sup>
Tier 2 .....	executes 0.75% or more of Customer Total Consolidated Volume.

The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants.

The Exchange now proposes to amend the Tier 1 qualification to require that Members execute 0.00% to less than 0.75% of Customer Total Consolidated Volume. The proposed rule change will not impact current Tier 1 rates. Rather, the purpose of the proposed change is to ensure that all eligible volume gets included in the calculation of the tiers. Specifically, the proposed rule change

recognizes the potential for a Member to execute a percentage of Customer Total Consolidated Volume that falls between 0.7499% and 0.75%. As such, the proposed changes will make clear that Members that execute anywhere from 0.00% to less than 0.75% of Customer Total Consolidated Volume will qualify for Tier 1 pricing in the Exchange’s maker/taker fee schedule. The Exchange believes that its proposal will have minimal impact as no Member falls into this category.

The Exchange further proposes to permit Market Makers to alternatively qualify for the Tier 1 and Tier 2 maker/taker fees in Penny and Non-Penny Symbols based on Total Market Maker ADV. Specifically, Market Makers may alternatively qualify for the Tier 1 and Tier 2 maker/taker fees if they: execute up to 0.10% of Customer Total Consolidated Volume which adds liquidity in regular orders (Tier 1), and execute more than 0.10% of Customer Total Consolidated Volume which adds

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> This fee also applies to Market Maker orders sent to the Exchange by Electronic Access Members.

<sup>4</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market

Makers” collectively. See Options 1, Section 1(a)(21).

<sup>5</sup> “Total Affiliated Member or Affiliated Entity ADV” means all average daily volume (“ADV”) executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume

from Affiliated Members or an Affiliated Entity are aggregated in determining applicable tiers.

<sup>6</sup> “Customer Total Consolidated Volume” means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

liquidity in regular orders (Tier 2).<sup>7</sup> The Exchange also proposes to add a definition of Total Market Maker ADV to include all Market Maker ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members<sup>8</sup> or Affiliated Entities.<sup>9</sup> All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.<sup>10</sup> The Exchange also proposes to add a new note 5 in Table 1 of Options 7, Section 3, which will provide that Market Makers may alternatively qualify for the fees in Table 1 if they meet the applicable tier thresholds based on Total Market Maker ADV set forth in Table 3. Lastly, the Exchange proposes to amend the current definition of Total Affiliated Member or Affiliated Entity ADV in Table 3 as follows: “Total Affiliated Member or Affiliated Entity ADV means all ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.” With the foregoing change, the Exchange also proposes to delete redundant language regarding aggregation of Affiliated Member or Affiliated Entity volume currently in the last bullet point of Table 3.

While the fees in Table 1 of Options 7, Section 3 for nearly all market participants (*i.e.*, Non-Nasdaq MRX

<sup>7</sup> 0.10% of Customer Total Consolidated Volume is approximately 28,000 contracts per day.

<sup>8</sup> An “Affiliated Member” is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member’s Form BD, Schedule A.

<sup>9</sup> An “Affiliated Entity” is a relationship between an Appointed Market Maker and an Appointed OFF for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFFs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will terminate after a one (1) year period, unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Entity relationships must be renewed annually by each party sending an email to the Exchange. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time.

<sup>10</sup> The proposed definition will be set forth in the Table 3 notes of Options 7, Section 3.

Market Makers,<sup>11</sup> Firm Proprietary<sup>12/</sup> Broker-Dealers,<sup>13</sup> Professional Customers,<sup>14</sup> and Priority Customers)<sup>15</sup> will not be impacted by this proposal,<sup>16</sup> the proposed volume requirements will impact Market Makers that will be eligible to alternatively qualify for the lower maker fees.<sup>17</sup> The Exchange believes that the proposed fee structure will encourage Market Makers and their Affiliated Members or Affiliated Entities to increase their liquidity providing activity on the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders.

#### PIM Break-Up Rebates

Today, as set forth in Options 7, Section 3.A, the Exchange pays a PIM break-up rebate to an originating Priority Customer PIM order that executes with a response (order or quote), other than the PIM contra-side order, of \$0.25 per contract in Penny Symbols and \$0.60 per contract in Non-Penny Symbols.<sup>18</sup> The Exchange also offers additional break-up rebates in note 3 of Options 7, Section 3.A for Members that meet certain volume requirements or alternatively, that enter into Affiliated Member or Affiliated Entity relationships. In particular, note 3 currently provides: “Members that are not in an Affiliated Member or Affiliated Entity relationship and that execute 0.05% or greater of Customer

<sup>11</sup> A “Non-Nasdaq MRX Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>12</sup> A “Firm Proprietary order is an order submitted by a Member for its own proprietary account.

<sup>13</sup> A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

<sup>14</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>15</sup> A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq MRX Options 1, Section 1(a)(36).

<sup>16</sup> In particular, other non-Priority Customers will continue to be uniformly charged the same maker fees of \$0.47 per contract (Penny Symbols) and \$0.90 per contract (Non-Penny Symbols), regardless of tier achieved. Priority Customers will continue to receive free executions for their orders.

<sup>17</sup> Currently, Market Makers are charged maker fees of \$0.20 per contract (Tier 1) and \$0.10 per contract (Tier 2) in both Penny and Non-Penny Symbols. As proposed above, the maker fees for Market Makers will be increased to \$0.35 per contract (Tier 1) and \$0.20 per contract (Tier 2) in Non-Penny Symbols only.

<sup>18</sup> Break-up rebates apply only to regular PIM orders of 500 or fewer contracts and to complex PIM orders where the largest leg is 500 or fewer contracts.

Total Consolidated Volume in non-PIM Priority Customer contracts within a month will receive an additional rebate of: (i) \$0.20 per contract in Penny Symbols for Complex PIM Orders only, (ii) \$0.15 per contract in Penny Symbols for Regular PIM Orders only, and (iii) \$0.45 per contract in Non-Penny Symbols for both Regular and Complex PIM Orders. Alternatively, Affiliated Members or Affiliated Entities will be eligible to receive the rebates in this note 3 without any additional volume requirements.”

The Exchange now proposes to modify the note 3 rebate qualifications only for those Members that are not in Affiliated Member or Affiliated Entity relationships. Under this proposal, Affiliated Members or Affiliated Entities will continue to be eligible to receive the note 3 rebates without any additional volume requirements. Specifically, the Exchange proposes to require Members not in Affiliated Member or Affiliated Entity relationships to execute 0.05% or greater of Customer Total Consolidated Volume *which adds liquidity* in non-PIM Priority Customer contracts within a month in order to receive the additional rebates in note 3.

#### Marketing Fee

Today, as set forth in Options 7, Section 5.B, the Exchange assesses Market Makers a marketing fee of \$0.25 per contract in Penny Symbols and \$0.70 per contract in Non-Penny Symbols for each regular Priority Customer contract executed.<sup>19</sup> This fee is currently waived for (i) Flash Order<sup>20</sup> responses; (ii) Market Maker orders that take liquidity from the order book; (iii) Crossing Orders<sup>21</sup> and Responses to

<sup>19</sup> The marketing fee is rebated proportionately to the Members that paid the fee such that on a monthly basis the marketing fee fund balance administered by a Primary Market Maker for a Group of options established under Options 2, Section 3(b) does not exceed \$100,000 and the marketing fee fund balance administered by a preferred Competitive Market Maker for such a Group does not exceed \$100,000. A preferred Competitive Market Maker that elects not to administer a fund is not charged the marketing fee. The Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month.

<sup>20</sup> A “Flash Order” is an order that is exposed at the National Best Bid or Offer by the Exchange to all Members for execution, as provided under Supplementary Material .02 to Nasdaq MRX Options 5, Section 2. For all Flash Orders, the Exchange will charge the applicable taker fee and for responses that trade against a Flash Order, the Exchange will charge the applicable maker fee.

<sup>21</sup> A “Crossing Order” is an order executed in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, PIM or submitted as a Qualified Contingent Cross order. For purposes of this Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

Crossing Orders;<sup>22</sup> and (iv) complex orders.

The Exchange now proposes to set this marketing fee to \$0.00 per contract. The Exchange also proposes in Options 7, Section 5.B to add language that makes clear no marketing fees will be charged with the proposed changes. Specifically, the Exchange will add that no marketing fees are charged for Penny and Non-Penny Symbols. If the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

#### Technical Amendments

The Exchange proposes non-substantive, technical amendments in Options 7, Section 1(c) to rearrange the definitions in alphabetical order without changing the substance of the Rule. The Exchange also proposes in Options 7, Section 3 to relocate the definition of Total Affiliated Member or Affiliated Entity Priority Customer ADV from Table 3 into Table 1 as this definition is currently only used within Table 1 pricing. The relocated definition will provide that Total Affiliated Member or Affiliated Entity Priority Customer ADV means all Priority Customer ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated Entities. All eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>24</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market

is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . .'"<sup>25</sup>

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>26</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

#### Market Maker Fees

The Exchange believes that the proposed increase in the Tier 1 and Tier 2 maker fees for Market Makers in Non-Penny Symbols is reasonable. As proposed, the maker fees will increase from \$0.20 to \$0.35 per contract (Tier 1) and from \$0.10 to \$0.20 per contract (Tier 2). The Exchange believes that the proposed maker fees will remain

attractive to Market Makers and will continue to incentivize them to add liquidity in Non-Penny Symbols as the proposed fees will remain the lowest maker fees assessed to any other market participant on the Exchange, except for Priority Customers who will continue to receive free executions.<sup>27</sup> Incentivizing Market Makers to provide liquidity through the lower maker fees will create additional displayed liquidity and opportunities for market participants to trade.

The Exchange's proposal to increase the Tier 1 and Tier 2 maker fees in Non-Penny Symbols for Market Makers is equitable and not unfairly discriminatory as the proposed increase will apply uniformly to all similarly situated market participants. Market Makers will continue to pay lower maker fees in Non-Penny Symbols compared to other non-Priority Customers. The Exchange believes that it is equitable and not unfairly discriminatory to continue charging lower maker fees for Market Makers as they, unlike other market participants, add value to the Exchange through quoting obligations and their commitment of capital.

#### Qualifying Tier Thresholds

The Exchange believes that the proposal to amend the current Tier 1 threshold is reasonable, equitable, and not unfairly discriminatory. As discussed above, the proposed rule change will not impact current Tier 1 rates; rather, the proposed change will ensure that all eligible volume gets included in the calculation of the tiers and will make clear that Members that execute 0.00% to less than 0.75% of Customer Total Consolidated Volume will qualify for Tier 1 pricing in the Exchange's maker/taker fee schedule. As noted above, the Exchange believes that its proposal will have minimal impact as no market participant falls into this category. Furthermore, the proposed changes to the existing Tier 1 threshold will apply uniformly to all market participants.

Furthermore, the Exchange believes that it is reasonable to introduce an alternative way for Market Makers to qualify for the Tier 1 and Tier 2 fees based on Total Market Maker ADV.<sup>28</sup> As

<sup>27</sup> Specifically, Non-Nasdaq MRX Market Makers, Firm Proprietary/Broker-Dealers, and Professional Customers will continue to be assessed the \$0.90 per contract maker fee in Non-Penny Symbols, regardless of tier achieved.

<sup>28</sup> As discussed above, Total Market Maker ADV will be defined in the Pricing Schedule as all Market Maker ADV executed on the Exchange in all symbols and order types, including volume executed by Affiliated Members or Affiliated

<sup>22</sup> "Responses to Crossing Order" is any contra-side interest (i.e., orders & quotes) submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or Price Improvement Mechanism.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>25</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>26</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

discussed above, Market Makers may alternatively qualify for the Tier 1 and Tier 2 maker/taker fees if they: execute up to 0.10% of Customer Total Consolidated Volume which adds liquidity in regular orders (Tier 1), and execute more than 0.10% of Customer Total Consolidated Volume which adds liquidity in regular orders (Tier 2). The Exchange believes that the proposal would encourage additional order flow, especially liquidity adding regular order flow, from Market Makers and their Affiliated Members or Affiliated Entities by providing an alternative method for Market Makers to qualify for the Tier 1 and Tier 2 fees. This, in turn, will benefit all market participants that will have an opportunity to trade with the order flow that these firms bring to the market.

The Exchange's proposal to introduce an alternative way for Market Makers to qualify for Tier 1 and Tier 2 pricing based on Total Market Maker ADV is equitable and not unfairly discriminatory because it will apply uniformly to all similarly situated market participants. The Exchange believes it is equitable and not unfairly discriminatory to introduce the proposed alternative qualifications for only Market Makers because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). As such, the Exchange's proposal is designed to increase Market Maker participation and reward Market Makers for the unique role that they play in ensuring a robust market.

#### PIM Break-up Rebates

The Exchange believes that the proposed changes to the qualifications for receiving the additional PIM break-up rebates are reasonable, equitable, and not unfairly discriminatory. As discussed above, the Exchange is proposing to amend the rebate qualifications to require that Members not in Affiliated Member or Affiliated Entity relationships execute 0.05% or greater of Customer Total Consolidated Volume which adds liquidity in non-PIM Priority Customer contracts within a month in order to receive the additional rebates in note 3 of Options 7, Section 3.A. The Exchange believes that the proposed changes will incentivize Members to bring greater liquidity adding order flow for execution on the Exchange, which the Exchange believes may result in tighter

spreads, thereby making the Exchange a more attractive trading venue to the benefit of all market participants.

The Exchange believes that the proposed changes to the additional PIM break-up rebate qualifications in note 3 are equitable and not unfairly discriminatory because the changes will apply uniformly to all Priority Customer PIM originating orders that execute with any PIM response. While Priority Customer PIM originating orders will continue to be eligible to receive the additional break-up rebates in note 3, as opposed to other market participants, the Exchange believes that the application of this rebate program is equitable and not unfairly discriminatory because Priority Customer PIM originating order flow enhances liquidity on the Exchange. This, in turn, provides more trading opportunities and attracts other market participants, thus facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants. Moreover, the Exchange has historically provided lower pricing or other incentives to Priority Customer PIM originating orders in order to attract such order flow.

#### Marketing Fee

The Exchange believes that it is reasonable to set the marketing fee to \$0.00 per contract for Penny and Non-Penny Symbols because the Exchange seeks to limit the cost of transacting in regular orders for Market Makers who are the only market participants that are assessed this fee today. The Exchange believes that the proposed fee change is equitable and not unfairly discriminatory as no Market Makers would be charged a marketing fee under this proposal. Furthermore, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to add language in Options 7, Section 5.B as it will make clear that no marketing fees will be assessed for Penny and Non-Penny Symbols with the proposed changes, and that if the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

#### Technical Amendments

The Exchange believes that the proposed changes to alphabetize the definitions in Options 7, Section 1(c) and to relocate the definition of Total Affiliated Member or Affiliated Entity Priority Customer ADV in Options 7, Section 3 in the manner described above are reasonable, equitable, and not unfairly discriminatory. All of the changes are non-substantive, technical

amendments that will facilitate the use of the Exchange's Pricing Schedule by market participants.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intra-market competition, the Exchange does not believe that the proposed changes will place any category of market participant at a competitive disadvantage. Overall, the Exchange's proposal is designed to incentivize Members to bring additional order flow to the Exchange, and create a more active and quality market in MRX-listed options. Market Makers and Priority Customers would continue to receive favorable pricing by way of lower fees or rebates, as compared to other market participants. As discussed above, Market Makers add value through continuous quoting and are subject to additional requirements and obligations unlike other market participants. Incentivizing Market Makers to increase their participation on the Exchange benefits all market participants through the quality of order interaction. Similarly, Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts other market participants, thus facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose

Entities. Furthermore, all eligible volume from Affiliated Members or an Affiliated Entity will be aggregated in determining applicable tiers.

market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>29</sup> and Rule 19b-4(f)(2)<sup>30</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2021-04 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-2021-04. 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-2021-04 and should be submitted on or before May 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-09130 Filed 4-30-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #16936 and #16937; ALABAMA Disaster Number AL-00120]**

**Presidential Declaration of a Major Disaster for the State of ALABAMA**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of ALABAMA (FEMA-4596-DR), dated 04/26/2021. Incident: Severe Storm, Straight-line Winds, and Tornadoes. Incident Period: 03/25/2021 through 03/26/2021.

**DATES:** Issued on 04/26/2021.

*Physical Loan Application Deadline Date:* 06/25/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/26/2022.

**ADDRESSES:** Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 04/26/2021, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Bibb, Calhoun, Clay, Hale, Jefferson, Perry, Randolph, Shelby.

*Contiguous Counties (Economic Injury Loans Only):*

Alabama: Blount, Chambers, Cherokee, Chilton, Cleburne, Coosa, Dallas, Etowah, Greene, Marengo, Saint Clair, Talladega, Tallapoosa, Tuscaloosa, Walker.

Georgia: Carroll, Heard, Troup.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	2.500
Homeowners without Credit Available Elsewhere .....	1.250
Businesses with Credit Available Elsewhere .....	6.000
Businesses without Credit Available Elsewhere .....	3.000
Non-Profit Organizations with Credit Available Elsewhere .....	2.000
Non-Profit Organizations without Credit Available Elsewhere .....	2.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	3.000
Non-Profit Organizations without Credit Available Elsewhere .....	2.000

The number assigned to this disaster for physical damage is 16936 C and for economic injury is 16937 O.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**  
*Associate Administrator for Disaster Assistance.*

[FR Doc. 2021-09179 Filed 4-30-21; 8:45 am]

**BILLING CODE 8026-03-P**

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>30</sup> 17 CFR 240.19b-4(f)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).