

information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by November 14, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 8, 2022.

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2022-19804 Filed 9-13-22; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95710; File No. SR-MRX-2022-12]

### 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, Section 6

September 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 25, 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, Section 6.

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

MRX proposes to amend its Pricing Schedule at Options 7, Section 6, Ports and Other Services, to assess port fees, which are not assessed today, and which have not been assessed since MRX's inception in 2016.<sup>3</sup> The proposed changes are designed to update fees for MRX's services to reflect their current value—rather than their value when it was established 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 ports, in order to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.<sup>4</sup> Allowing newly-opened exchanges time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition. The proposed port fees within Options 7, Section 6, Ports and Other Services, are described below.

This proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against the other 15 options exchanges

<sup>3</sup> The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR-MRX-2022-04) instituting fees for membership, ports and market data. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. SR-MRX-2022-06 replaced the port fees set forth in SR-MRX-2022-04. Thereafter, SR-MRX-2022-06 was withdrawn on July 1, 2022 and replaced with SR-MRX-2022-09. The instant filing replaces SR-MRX-2022-09 which was withdrawn on August 25, 2022.

<sup>4</sup> See, e.g., Securities Exchange Act Release No 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Initial Fee Schedule and Other Fees for MEMX LLC).

without waiving fees for ports. These types of fees are assessed by options exchanges that compete with MRX in the sale of exchange services. New exchanges commonly waive connectivity 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.<sup>5</sup> If MRX is incorrect in this assessment, that error will be reflected in MRX's ability to compete with other options exchanges.<sup>6</sup>

The Exchange proposes to amend fees for the following ports within Options 7, Section 6: (1) FIX,<sup>7</sup> (2) SQF;<sup>8</sup> (3) SQF

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> "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.

<sup>8</sup> "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.

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

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

Purge;<sup>9</sup> (4) OTTO;<sup>10</sup> (5) CTI;<sup>11</sup> (6) FIX DROP;<sup>12</sup> and Disaster Recovery Ports.<sup>13</sup> Currently, no fees are being assessed for these ports.

The Exchange proposes to assess no fee for the first FIX Port obtained by an Electronic Access Member<sup>14</sup> or the first SQF Port obtained by a Market Maker.<sup>15</sup>

<sup>9</sup> 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.

<sup>10</sup> "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.

<sup>11</sup> 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).

<sup>12</sup> 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).

<sup>13</sup> 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.

<sup>14</sup> The first FIX Port would be provided to each Electronic Access Member. 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). Also, the first SQF Port would be provided to each Market Maker. 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).

<sup>15</sup> The first SQF Port would be provided to each Market Maker. 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).

The Exchange proposes to assess a FIX Port Fee of \$650 per port, per month, per account number<sup>16</sup> for each subsequent port beyond the first port. The Exchange proposes to assess an SQF Port Fee of \$1,250 per port, per month for each subsequent port beyond the first port.<sup>17</sup> The Exchange proposes to assess an SQF Purge Port Fee of \$1,250 per port, per month. The Exchange proposes to assess an OTTO Port Fee of \$650 per port, per month, per account number. The Exchange proposes to assess a CTI Port Fee and a FIX Drop Port Fee of \$650 per port, per month.

The Exchange proposes to assess no fee for the first FIX Disaster Recovery Port obtained by an Electronic Access Member<sup>18</sup> or the first SQF Disaster Recovery Port obtained by a Market Maker.<sup>19</sup> The Exchange proposes to assess each additional FIX Disaster Recovery Port and each additional SQF Disaster Recovery Port a fee of \$50 per port, per month, per account number. Additionally, the Exchange proposes to assess a Disaster Recovery Fee for SQF Purge and OTTO Ports of \$50 per port,

<sup>16</sup> 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). Account numbers are free on MRX.

<sup>17</sup> 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.

<sup>18</sup> The first FIX Port would be provided to each Electronic Access Member. 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). Also, the first SQF Port would be provided to each Market Maker. 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).

<sup>19</sup> The first SQF Port would be provided to each Market Maker. 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).

per month, per account number. Finally, the Exchange proposes to assess a Disaster Recovery Fee for CTI Ports and FIX DROP Ports of \$50 per port, per month.

The OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports<sup>20</sup> are available to all Electronic Access Members, and will be subject to a monthly cap of \$7,500.

The SQF Port and the SQF Purge Port are available to all Market Makers, and will be subject to a monthly cap of \$17,500.<sup>21</sup>

The Exchange is not amending the TradeInfo MRX Interface<sup>22</sup> 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 and Nasdaq MRX Spread Feed Ports will not be assessed a fee.

#### Order and Quote Entry Protocols

Only one order protocol is required for an MRX Member to submit orders into MRX. The Exchange will provide each Electronic Access Member the first FIX Port at no cost to submit orders into MRX. Only one account number is necessary to transact an options business on MRX and account numbers are available to Members at no cost. Only one quote protocol is required for an MRX Market Maker to submit quotes into MRX. The Exchange will provide each Market Maker the first SQF Port at no cost to submit quotes into MRX. 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.

Only MRX 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,

<sup>20</sup> This includes FIX, SQF, SQF Purge, OTTO, CTI and FIX Drop Disaster Recovery Ports.

<sup>21</sup> 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.

<sup>22</sup> TradeInfo is a user interface that permits a Member to: (i) search all orders submitted in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.); (ii) view orders and executions; and (iii) download orders and executions for recordkeeping purposes. TradeInfo users may also cancel open orders at the order, port or firm mnemonic level through TradeInfo. See Options 3, Section 23(b)(2).

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 for orders and one port for quotes is necessary for a Member to trade on MRX.

MRX also offers an OTTO protocol. Unlike FIX, which offers routing capability, OTTO does not permit routing. Depending on a Member's business model, Members may elect to purchase an OTTO Port in addition to the first FIX Port offered at no cost. Members may prefer one protocol as compared to another protocol, for example, the ability to route may cause a Member to utilize FIX and a Member that desires to execute an order locally may utilize OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Members depending on their trading behavior. MRX Members utilizing the first FIX Port offered at no cost do not need to purchase an OTTO Port. However, Members may elect to utilize both order entry protocols, depending on how they organize their business. Because the Exchange is providing the first FIX Port at no cost, the use of an OTTO Port is optional. OTTO provides MRX Members with an additional choice as to the type of protocol that they may use to submit orders to the Exchange. Today, Nasdaq Phlx LLC ("Phlx") and Nasdaq BX, Inc. ("BX") offer only a FIX Port to submit orders on those options markets.<sup>23</sup>

Further, while only one protocol is necessary to submit orders into MRX, Members may choose to purchase a greater number of order entry ports, depending on that Member's business model.<sup>24</sup> To the extent that Electronic Access Members chose to utilize more than one FIX Port, the Electronic Access Member would be assessed \$650 per port, per month, per account number for each subsequent optional port beyond the first port. To the extent that Market Makers chose to utilize more than one SQF Port, the Market Maker would be assessed \$1,250 per port, per month for each subsequent optional port beyond the first port. Additionally, to the extent a Member expended more than \$7,500 for FIX Ports or more than \$17,500 for SQF Ports, the Exchange would not charge an MRX Member for additional

FIX or SQF Ports, respectively, beyond the cap.

#### Other Protocols

The Exchange's proposal to offer an SQF Purge Port for \$1,250 per port, per month is optional. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book. The SQF Purge Port is optional as Market Makers have various ways of purging their quotes from the order book. First of all, a Market Maker may cancel quotes through SQF in their assigned option series.<sup>25</sup> Second, a Member may cancel any bids or offers in any series of options by requesting MRX Market Operations staff to effect such cancellation as per the instructions of the Member.<sup>26</sup> Third, in the event of a loss of communication with the Exchange, MRX offers the ability to cancel all of a Member's open quotes via a cancel-on-disconnect control.<sup>27</sup> Fourth, MRX offers Market Makers the ability, with respect to quotes, to establish pre-determined levels of risk exposure which would be utilized to automatically remove quotes in all series of an options class.<sup>28</sup> Accordingly, the Exchange believes that the SQF Purge Port provides an efficient option to other available services which allow a Market Maker to cancel quotes.

CTI Ports and FIX DROP Ports are optional as Members have multiple ways of receiving information concerning open orders and executed transactions. First, FIX and OTTO protocols provide Members with real-time order execution messages similar to the Clearing Trade Interface and FIX DROP. Second, TradeInfo provides Members with the ability to query open orders and order executions real-time, at no cost, similar to the Clearing Trade Interface and FIX DROP. Third, Members receive free daily reports

listing open orders and trade executions from the Exchange. While not real-time, the Open Orders Report and Trade Detail Report provide Members with information similar to the Clearing Trade Interface and FIX DROP.

#### Disaster Recovery

With respect to Disaster Recovery Ports, the Exchange proposes to assess no fee for the first FIX Disaster Recovery Port obtained by an Electronic Access Member or the first SQF Disaster Recovery Port obtained by a Market Maker. The Exchange proposes to assess no fees for these ports to provide Members with continuous access to MRX in the event of a failover at no cost. Electronic Access Members only require one FIX Disaster Recovery Port to submit orders in the event of a failover. Market Makers only require one SQF Disaster Recovery Port to submit quotes in the event of a failover. Electronic Access Members may elect to purchase additional optional FIX Disaster Recovery Ports for \$50 per port, per month, per account number. Market Makers may elect to purchase additional optional SQF Disaster Recovery Ports for \$50 per port, per month, per account number. The additional FIX and SQF Disaster Recovery Ports are not necessary to connect to the Exchange in the event of a failover because the Exchange has provided Members with a FIX Disaster Recovery Port and an SQF Disaster Recovery Port at no cost.

Further, the Exchange's proposal to offer Disaster Recovery Ports for SQF Purge Ports and OTTO Ports for \$50 per port, per month, per account number and Disaster Recovery Ports for CTI Ports and FIX DROP Ports for \$50 per port, per month is optional. As noted herein, today, there are other alternatives for these ports. The purchase of an SQF Purge Port, OTTO Port, CTI Port, and FIX DROP Port in production are optional and, therefore, so is the purchase of Disaster Recovery Ports for these ports. The proposed Disaster Recovery Port fees are intended 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.<sup>29</sup>

Finally, in the event that an MRX Member elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Member would be

<sup>25</sup> SQF Purge Ports, similar to SQF Ports, allow Market Makers to mass cancel quotes.

<sup>26</sup> See Options 3, Section 19, Mass Cancellation of Trading Interest.

<sup>27</sup> See MRX Options 3, Section 18, Detection of Loss. This risk protection is free.

<sup>28</sup> See MRX Options 3, Section 15(a)(3)(B). Thresholds may be set by Members based on percentage, volume, delta or vega. This risk protection is free.

<sup>29</sup> 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.

<sup>23</sup> See Phlx and BX Options 3, Section 7 for a list of protocols.

<sup>24</sup> 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.

assessed no additional port fees in a given month. As noted above, the SQF Port and the SQF Purge Port are subject to a monthly cap of \$17,500 and the OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of \$7,500.

As noted herein, these different protocols are not all necessary to conduct business on MRX; a Member may choose among protocols based on their business workflow. The proposed port fees are similar to fees assessed today by GEMX.<sup>30</sup> The Exchange's proposal to offer the first FIX and SQF Port at no cost as well as the first FIX and SQF Disaster Recovery Ports at no cost would allow MRX Members to submit orders and quotes into MRX at no cost.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>31</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>32</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 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.’ . . .”<sup>33</sup>

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.”<sup>34</sup>

Congress directed the Commission to “rely on ‘competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.’”<sup>35</sup> 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.”<sup>36</sup> 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.”<sup>37</sup> 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.”<sup>38</sup>

### History of MRX Operations

Over the years, MRX has amended its transactional pricing to remain competitive and attract order flow to the Exchange.<sup>39</sup>

<sup>34</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>35</sup> 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.”).

<sup>36</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR-NYSEArca-2006–21).

<sup>37</sup> *Id.*

<sup>38</sup> 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>.

<sup>39</sup> 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

In June 2019, MRX commenced offering complex orders.<sup>40</sup> With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction

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 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.

<sup>40</sup> 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).

<sup>30</sup> See GEMX Options 7, Section 6.C. (Ports and Other Services).

<sup>31</sup> See 15 U.S.C. 78f(b).

<sup>32</sup> See 15 U.S.C. 78f(b)(4) and (5).

<sup>33</sup> See *NetCoalition*, 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770, 74,782–83 (December 9, 2008) (SR-NYSEArca-2006–21)).

capabilities and other trading functionality that was nearly identical to functionality available on ISE.<sup>41</sup> By way of comparison, ISE assessed fees for ports<sup>42</sup> in 2019 while offering the same suite of functionality as MRX, with a limited exception.<sup>43</sup>

#### Ports Are Subject to Significant Substitution-Based Competitive Forces

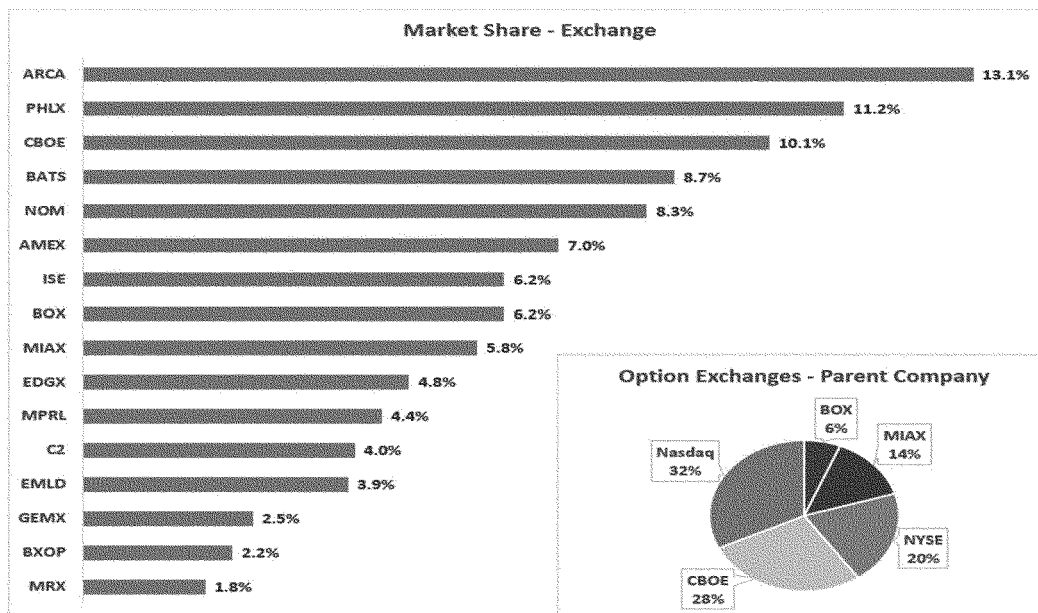
An exchange can show that a product is “subject to significant substitution-

based competitive forces” by introducing evidence that customers can substitute the product for products offered by other exchanges.

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 market share is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

**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 and ports.

As described in detail below, only one order protocol is required to submit orders to MRX. 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 is necessary to quote on MRX. Members may choose a greater number of order or quote entry ports, beyond the first FIX Port and the first SQF Port which are proposed to be offered at no cost, depending on that Member's particular business model.<sup>44</sup> However, Members do not need more than one order entry port (and account number) and one quote port to submit interest to MRX.

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 member organizations 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 MRX Member may enter all of their interest (orders or quotes) with only one order and one quote port and remain competitive.<sup>45</sup>

<sup>41</sup> 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.

<sup>42</sup> 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.

<sup>43</sup> See note 41, *supra*.

<sup>44</sup> For example, a Member may desire to utilize multiple FIX ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

<sup>45</sup> As noted above, one port would be required to submit orders and one port would be required to submit quotes.

By way of comparison, the number of ports that MRX Members purchased in April 2022 also varied widely.

**Chart 2: Number of SQF and FIX Ports Subscribed to by MRX Members in April 2022**

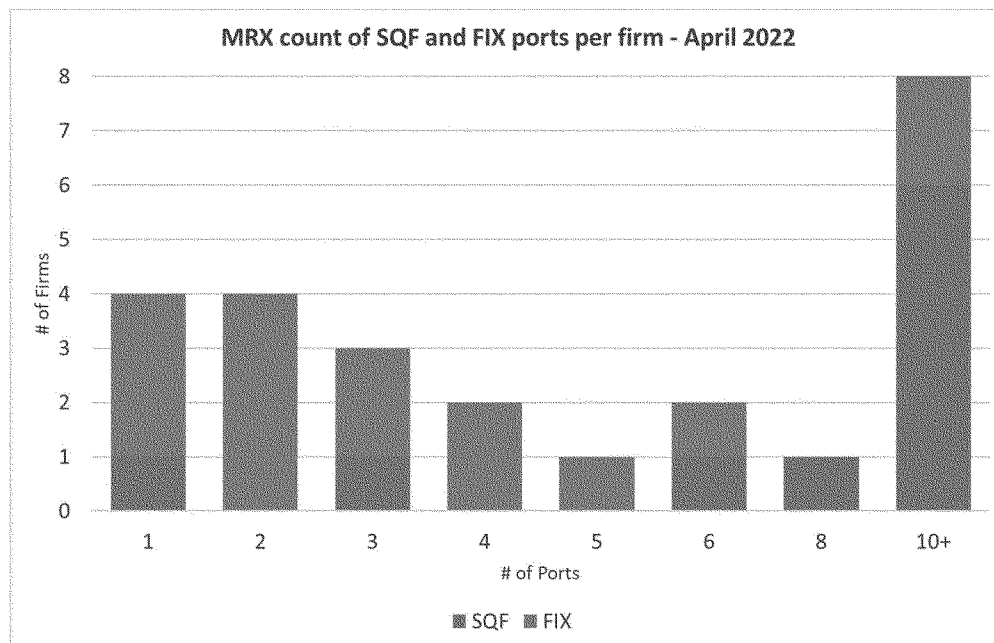


Chart 2 indicates the number of FIX and SQF Ports, respectively, that MRX Members were subscribed to in April 2022. Chart 2 shows that 1 MRX Member only subscribed to 1 SQF Port and 3 MRX Members subscribed to 1 FIX Port.

Further, approximately 23 percent of MRX Members purchased 1 SQF, FIX or OTTO Port,<sup>46</sup> 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 member organizations, have the option of reducing their port purchases without purchasing a substitute product.

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 ports 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 port, or other fees to zero, increasing marketplace competition.

<sup>46</sup> Phlx only offers FIX and SQF ports while MRX offers FIX, OTTO and SQF ports for order and quote entry.

The Exchange notes that one MRX Member cancelled 1 SQF Port and 1 OTTO Port to avoid being assessed an SQF Port fee as of May 2, 2022.<sup>47</sup> As of July 1, 2022, the Exchange did not assess MRX Members for their first SQF Port. MRX port 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 Ports

The proposed port 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.

As noted above, market participants may choose to become a member of one or more options exchanges based on the market participant's business model. The Exchange believes that there are many factors that may cause a market

<sup>47</sup> MRX originally filed to assess a fee for all FIX Ports.

participant to decide to become a member of a particular exchange dependent upon their 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.<sup>48</sup> Most firms that

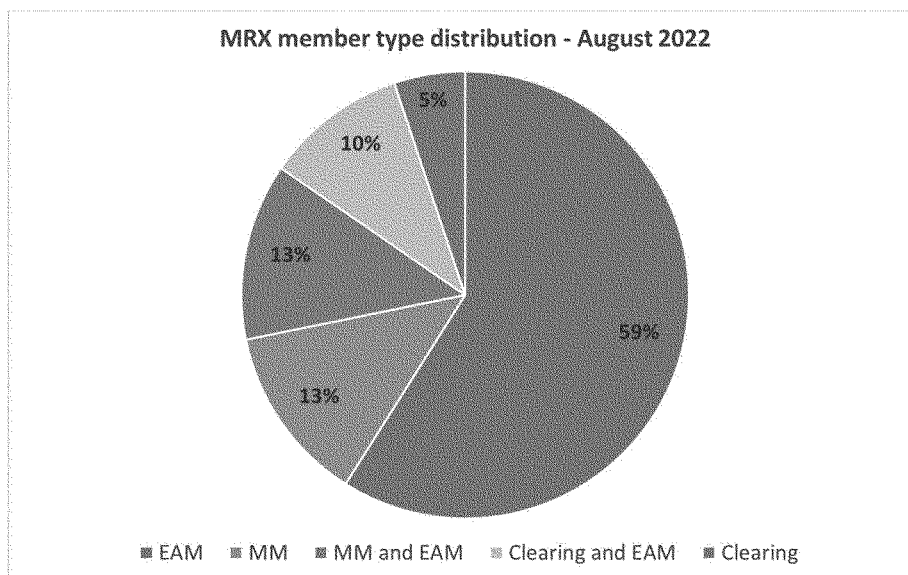
<sup>48</sup> BOX Exchange LLC ("BOX") amended its fees on January 3, 2022 to adopt an electronic market maker trading permit fee. See Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR-BOX-2022-17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). In the BOX-2022-17 rule change, BOX stated that, ". . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. The Exchange again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on the Exchange." Further, in 2022, MEMX LLC ("MEMX") established a monthly membership fee. See Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR-MEMX-2021-19). The Monthly Membership

actively trade on options markets are not currently Members of MRX and do not purchase port services at MRX. Ports are only available to MRX Members or service bureaus, and only an MRX Member may utilize a port.<sup>49</sup>

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%).

MRX, like other options markets, has a mix of market participants as Members. Chart 3 below displays the percentage of Electronic Access Members, Market Makers and Clearing Firms on MRX.<sup>50</sup>

**Chart 3: Composition of MRX Membership as of August 2022**



**BILLING CODE 8011-01-C**

The percentages in Chart 3 represent percentages of the total number of MRX Members. Some Members have dual representations (*e.g.*, a Market Maker and Electronic Access Member) as reflected in Chart 2.

The Exchange notes that no firm is a Member of MRX only. Few, if any, firms have purchased port services at MRX, notwithstanding the fact that 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 ports 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 ports.

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.<sup>51</sup> 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.<sup>52</sup>

Fee is assessed to each active Member at the close of business on the first day of each month. MEMX reasoned in MEMX-2022-19 that 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." The Exchange notes that neither BOX-2022-17 or MEMX-2022-19 were suspended.

<sup>49</sup> 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.

<sup>50</sup> Of note, Nasdaq Execution Services, LLC ("NES"), a Nasdaq affiliate, is a Member of MRX. NES is a broker-dealer and the Routing Facility of the Exchange. NES routes orders in options listed and open for trading on the System to away markets either directly or through one or more third-party unaffiliated routing broker-dealers pursuant to Exchange Rules on behalf of the Exchange. NES is subject to regulation as a facility of the Exchange,

including the requirement to file proposed rule changes under Section 19 of the Securities Exchange Act of 1934, as amended.

<sup>51</sup> 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](https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf).

<sup>52</sup> 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. See Options 3, Section 7(m).



With respect to the 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 order.<sup>53</sup> 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,<sup>54</sup> or request sponsored access<sup>55</sup> through a member of an exchange in order to submit a trade directly to an options exchange.<sup>56</sup> 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 determine one model is more cost efficient as compared to the alternatives.

Only if a market participant elects to become a Member of MRX will the market participant need to utilize a port to submit orders and/or quotes into MRX. Once an applicant is approved for membership on MRX and becomes a Member, the Exchange assigns the Member a badge<sup>57</sup> and/or mnemonic<sup>58</sup> to submit quotes and/or orders to the Exchange through the applicable port.

<sup>53</sup> Market Makers on MRX are required to obtain one SQF port to submit quotes into MRX.

<sup>54</sup> 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.

<sup>55</sup> 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.

<sup>56</sup> This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

<sup>57</sup> 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 MRX Options 1, Section 1(a)(5).

<sup>58</sup> 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 MRX Options 1, Section 1(a)(23).

An MRX Member may have one or more accounts and may assign badges or mnemonics to those account numbers.<sup>59</sup> 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 and/or quotes into the Exchange's match engine and for the Exchange to send messages related to those orders and/or quotes 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 and/or quotes 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. The Exchange proposes to offer the first FIX and SQF Port at no cost in addition to the first FIX Disaster Recovery Port and the first SQF Disaster Recovery Port at no cost.<sup>60</sup> As noted above, Members may freely choose to rely on one or many ports, depending on their business model.

The Exchange's proposal to amend port fees is reasonable, equitable and not unfairly discriminatory as MRX is providing MRX Electronic Access Members the first FIX Port to submit orders and MRX Market Makers the first SQF Port to submit quotes to MRX, at no cost, in addition to providing the first FIX Disaster Recovery Port and the first SQF Disaster Recovery Port at no cost; all other ports offered by MRX are optional and not necessary to trade options on the Exchange.

<sup>59</sup> The Exchange provides account numbers, badges and mnemonics at no cost.

<sup>60</sup> 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).

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, and MRX is providing Electronic Access Members the first FIX Port at no cost. 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 is necessary to quote on MRX and MRX is providing Market Makers the first SQF Port at no cost. As noted above, only Members may utilize ports. A Member can send all orders, proprietary and agency, through one port to MRX and all quotes through one port. Therefore, for the foregoing reasons, it is reasonable to assess no fee for the first FIX Port obtained by an Electronic Access Member or the first SQF Port obtained by a Market Maker. Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Port to Electronic Access Members as all Electronic Access Members would be entitled to the first FIX Port at no cost. Also, it is equitable and not unfairly discriminatory to assess no fee for the first SQF Port to Market Makers as all Market Makers would be entitled to the first SQF Port at no cost. With this proposal, MRX Members may organize their business in such a way as to submit orders and/or quotes continuously to MRX at no cost.

The Exchange's proposal to assess Members \$650 per port, per month, per account number for FIX Ports beyond the first port and \$1,250 per port, per month for SQF Ports beyond the first port is reasonable because these ports are optional and Members only require one FIX Port to submit orders to MRX and one SQF Port to submit quotes to MRX. Members electing to subscribe to more than one FIX or SQF Port are choosing the additional ports to accommodate their business model. Additionally, to the extent a Member expended more than \$7,500 for FIX Ports or more than \$17,500 for SQF Ports, the Exchange would not charge an MRX Member for additional FIX or SQF Ports beyond the cap. The fees for the proposed additional FIX and SQF Ports are equitable and not unfairly discriminatory because any Member may elect to subscribe to additional ports. Electronic Access Members would be subject to the same fees for FIX Ports and Market Makers would be subject to the same fees for SQF Ports. Unlike other market participants, Market Makers are required to provide continuous two-sided quotes on a daily



basis,<sup>61</sup> and are subject to various obligations associated with providing liquidity.<sup>62</sup> Also, as noted herein, account numbers are available on MRX at no cost.

The Exchange's proposal to assess \$650 per port, per month, per account number for an OTTO Port is reasonable because OTTO is optional. The Exchange is offering the first FIX Port at no cost to submit orders to MRX. In addition to the FIX Port, all Members may elect to purchase OTTO to submit orders to MRX. Unlike FIX, which offers routing capability, OTTO does not permit routing. Depending on a Member's business model, Members may elect to purchase an OTTO Port in addition to the FIX Port, which is being provided at no cost. Members may prefer one protocol as compared to another protocol. For example, the ability to route may cause a Member to utilize FIX and a Member that desires to execute an order locally may utilize OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Members depending on their trading behavior. MRX Members utilizing the FIX Port, which is offered at no cost, do not need to utilize OTTO. Members may elect to utilize both order entry protocols, depending on how they organize their business. OTTO provides MRX Members with an additional choice as to the type of protocol that they may use to submit orders to the Exchange. Today, Phlx and BX offer only a FIX Port to submit orders on those options markets.<sup>63</sup> The proposed OTTO fee is equitable and not unfairly discriminatory because any Member may elect to purchase an optional OTTO Port and would be subject to the same fee.

The Exchange's proposal to offer an SQF Purge Port for \$1,250 per port, per month is reasonable because this port is optional. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge from the order book. The SQF Purge Port is optional as Market Makers have various

ways of purging their quotes from the order book. First of all, a Market Maker may cancel quotes through SQF in their assigned options series in the same manner as they may cancel quotes with an SQF Purge Port.<sup>64</sup> Second, a Member may cancel any bids or offers in any series of options by requesting MRX Market Operations staff to effect such cancellation as per the instructions of the Member.<sup>65</sup> Third, in the event of a loss of communication with the Exchange, MRX offers the ability to cancel all of a Member's open quotes via a cancel-on-disconnect control.<sup>66</sup> Fourth, MRX offers Market Makers the ability, with respect to simple orders, to establish pre-determined levels of risk exposure which would be utilized to automatically remove quotes in all series of an options class.<sup>67</sup> Accordingly, the Exchange believes that the SQF Purge Port provides an efficient alternative to other available services which allow a Market Maker to cancel quotes. The proposed SQF Purge Port is equitable and not unfairly discriminatory because any Member may elect to purchase an optional SQF Purge Port and would be subject to the same fee.

The Exchange's proposal to assess \$650 per port, per month for CTI Ports and FIX DROP Ports is reasonable because these ports are optional because Members have various ways of receiving information concerning open orders and executed transactions. First, FIX and OTTO provide Members with real-time order executions similar to the Clearing Trade Interface and FIX DROP. Second, TradeInfo provides Members with the ability to query open orders and order executions real-time, at no cost, similar to the Clearing Trade Interface and FIX DROP. Third, Members receive free daily reports listing open orders and trade executions from the Exchange. While not real-time, the Open Orders Report and Trade Detail Report provide Members with information similar to the Clearing Trade Interface and FIX DROP. The proposed CTI and FIX DROP Ports are equitable and not unfairly discriminatory because any Member may elect to purchase an optional CTI Port or FIX DROP Port and would be subject to the same fee.

The Exchange's proposal to assess no fee for the first FIX Disaster Recovery Port or the first SQF Disaster Recovery Port is reasonable because it will provide Members with continuous access to MRX in the event of a failover, at no cost. Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Disaster Recovery Port to Electronic Access Members as all Electronic Access Members would be entitled to the first FIX Disaster Recovery Port at no cost. Also, it is equitable and not unfairly discriminatory to assess no fee for the first SQF Disaster Recovery Port to Market Makers as all Market Makers would be entitled to the first SQF Disaster Recovery Port at no cost.

The Exchange's proposal to assess Members \$50 per port, per month, per account number for optional FIX Disaster Recovery Ports beyond the first port offered at no cost and \$50 per port, per month, per account number for optional SQF Disaster Recovery Ports beyond the first port offered at no cost is reasonable because these ports are optional and Members only require one FIX Disaster Recovery Port to submit orders to MRX in the event of a failover and one SQF Disaster Recovery Port to submit quotes to MRX in the event of a failover. Additionally, to the extent a Member expended more than \$7,500 for Disaster Recovery Ports, the Exchange would not charge an MRX Member for additional Disaster Recovery Ports beyond the cap. The fees for the proposed additional FIX and SQF Disaster Recovery Ports are equitable and not unfairly discriminatory because any Member may elect additional ports and would be subject to the same fees.

The Exchange's proposal to offer Disaster Recovery Ports for SQF Purge Ports, and OTTO Ports at \$50 per port, per month, per account number and CTI Ports, and FIX DROP Ports for \$50 per port, per month is reasonable because these ports are optional. As noted herein, there are other alternatives for all of these ports today, the purchase of an SQF Purge Port, OTTO Port, CTI Port, and FIX DROP Port in production is optional and, therefore, so is the purchase of Disaster Recovery Ports for these ports. The proposed Disaster Recovery Port fees are intended to encourage Members to be efficient when purchasing Disaster Recovery Ports. The proposed Disaster Recovery Ports are equitable and not unfairly discriminatory because any Member may elect to purchase an optional Disaster Recovery Port and would be subject to the same fee, depending on the port.

<sup>64</sup> SQF Purge Ports, similar to SQF Ports, allow Market Makers to mass cancel quotes.

<sup>65</sup> See Options 3, Section 19, Mass Cancellation of Trading Interest.

<sup>66</sup> See MRX Options 3, Section 18, Detection of Loss. This risk protection is free.

<sup>67</sup> See MRX Options 3, Section 15(a)(3)(B). Thresholds may be set by Members based on percentage, volume, delta or vega. This risk protection is free.

<sup>61</sup> See MRX Options 2, Section 5.

<sup>62</sup> See MRX Options 2, Section 4.

<sup>63</sup> See Phlx and BX Options 3, Section 7 for a list of protocols.

Finally, in the event that an MRX Member elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Member would be assessed no additional fees for month. As noted above, the SQF Port and the SQF Purge Port are subject to a monthly cap of \$17,500 and the OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of \$7,500. These caps are reasonable because they allow Members to limit their fees beyond a certain level if they elect to purchase multiple ports in a given month. The caps are also equitable and not unfairly discriminatory because any Member will be subject to the cap, provided they exceeded the appropriate dollar amount in a given month.

The proposed port fees are similar to the fees assessed by GEMX.<sup>68</sup>

After 6 years, MRX proposes to commence assessing port fees, just as all other options exchanges while offering its Members the ability to submit orders and quotes to the Exchange at no cost. 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 to offer the first FIX and SQF Ports for free, as well as the first Disaster Recovery version of these ports, positions MRX as a competitive market among other options exchanges, all of which assess fees for the first order and/or quote protocols. MRX's offering would permit Electronic Access Members and Market Makers the ability to submit orders and quote to MRX at no cost. The remainder of the port offerings are optional. The Exchange believes that the optional port offerings permit MRX to remain competitive with other options markets in its offerings.

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.

By way of example, today, with the exception of Precise, ISE has identical functionality to MRX. Market participants may elect to become members of ISE instead of MRX if those market participants believe that the order flow on ISE provides more value than the order flow on MRX. ISE has more market share (6.2%) as compared to MRX (1.8%). A market participant may evaluate the fees assessed by ISE, its market share, and proprietary products, among other things, and determine to become a member of ISE instead of MRX if it determines the proposed fees to be unreasonable.

The proposed port fees are similar to port fees assessed by GEMX<sup>69</sup> for similar connectivity. As a consequence, competition will not be burdened by the proposed fees. Only one order protocol is required to submit orders to MRX, and the Exchange proposes to offer the first FIX Port and the first FIX Disaster Recovery Port to Electronic Access Members at no cost. This would provide Members with the ability to continuously submit orders to MRX, even in the event of a failover. Likewise, only one quoting protocol is required to submit quotes to MRX, and the Exchange proposes to offer the first SQF Port and the first SQF Disaster Recovery Port to Market Makers at no cost. This would provide Market Makers with the ability to continuously submit quotes to MRX, even in the event of a failover.

Only one account number is necessary per Member and account numbers are free.

As noted above, the remainder of the proposed port fees are for optional ports (additional FIX and SQF Ports, additional FIX and SQF Disaster Recovery Ports, SQF Purge Port, OTTO Port, CTI Port, FIX DROP Port and Disaster Recovery Ports for SQF Purge Ports, OTTO Ports, CTI Ports, and FIX DROP Ports). These different protocols are not all necessary to conduct business on MRX. Members choose among the protocols based on their business workflow. The proposed fees

do not impose an undue burden on competition because the Exchange would uniformly assess the port fees to all Members and would uniformly apply monthly caps. Market participants may also connect to 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,<sup>70</sup> and are subject to various obligations associated with providing liquidity.<sup>71</sup> 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 protections<sup>72</sup> 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.

### *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>73</sup> 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.

<sup>70</sup> See MRX Options 2, Section 5.

<sup>71</sup> See MRX Options 2, Section 4.

<sup>72</sup> See MRX Options 3, Section 15(a)(3). Market Makers are offered risk protections to permit them to manage their risk more effectively.

<sup>73</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>68</sup> See GEMX Options 7, Section 6.C. (Ports and Other Services).

<sup>69</sup> See GEMX Options 7, Section 6.C. (Ports and Other Services).

#### 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-2022-12 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-2022-12. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2022-12 and should be submitted on or before October 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>74</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2022-19817 Filed 9-13-22; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 34699; File No. 812-15368]**

#### **Ares Capital Corporation, et al.**

September 8, 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.

*Applicants:* ACE III Master Fund, L.P., ACIP Investment Management LLC, ACIP Parallel Fund A, L.P., ACIP Apex Co-Investment, L.P., ACOF Investment Management LLC, ACOF IV ATD Co-Invest, L.P., ACOF Operating Manager II, L.P., ACOF Operating Manager III, LLC, ACOF Operating Manager IV, LLC, ACOF Operating Manager, L.P., ADREX Advisor LLC, AEIF Kleen Investor, LLC, AEIF Linden Blocker II LLC, AEPEP II N Strategic Investments, L.P., AEPEP III N Strategic Co-Invest, L.P., AF Energy Feeder, L.P., AF V APR Co-Invest, L.P., AIREX Advisor LLC, Ambition Holdings, L.P., American Capital Equity I, LLC, American Capital Equity II, LP, Apollo Poland Real Estate Co-Investment, L.P., Apollo Real Estate Investment Fund V, L.P., Apollo Real Estate Management V L.P., Apollo Real Estate Parallel Fund V-A, L.P., Apollo Real Estate Parallel Fund V-B, L.P., Apollo Real Estate Parallel Fund V-C, L.P., APSecurities Manager LP, AREA EAGLE Co-Invest Management LLC, AREA EAGLE Co-Invest Partnership, L.P., AREA European Property Enhancement Management, LLC, AREA

European Property Enhancement Program, L.P., AREA UK Co-Invest Real Estate Management L.P., AREA-C, L.P., AREA-CAELUS Co-Invest Management, L.P., AREA-CAELUS Co-Invest, L.P., AREG AC Makena Holdings LLC, AREG CC II Manager L.P., AREG CIP 601 W. 29 AIV LP, AREG CIP 601 W. 29 Co-Invest Member LLC, AREG CIP DAQ AIV LP, AREG CIP IE Portfolio AIV LP, AREG CIP Needham AIV LP, AREG CIP One South Halsted AIV LP, AREG CIP Portland Industrial AIV LP, AREG CIP RW50 AIV LP, AREG CIP Wellington Bay AIV LP, AREG CV Boston Hotel Co-Investor LLC, AREG ELI Co-Invest Vehicle, L.P., AREG Iberian Residential Co-Invest Vehicle SCSp, AREG Kennedy Co-Invest S.C.A., AREG Klondike Manager, L.P., AREG LPKC Partners, L.P., AREG Makena Management L.P., AREG Star and Garter Co-Invest Partnership, L.P., AREG-T European Portfolio, L.P., AREG-T Manager III, L.P., AREG-Talisman Fred Supp Partners, L.P., Ares Alternative Credit Management LLC, Ares Apex Pooling, LLC, Ares Asia Management Ltd, Ares ASIP VII Management, L.P., Ares Asset-Backed Loan Fund LP, Ares Cactus Operating Manager, L.P., Ares Capital Corporation, Ares Capital Europe IV (E) Levered, Ares Capital Europe IV (E) Unlevered, Ares Capital Europe IV (G) Levered, Ares Capital Europe IV (G) Unlevered, Ares Capital Europe V (E) Levered, Ares Capital Europe V (E) Unlevered, Ares Capital Europe V (G) Levered, Ares Capital Europe V (G) Unlevered, Ares Capital Europe, L.P., Ares Capital Management LLC, Ares Capital Management II LLC, Ares Capital Management III LLC, Ares Centre Street Management, L.P., Ares Centre Street Partnership, L.P., Ares CIP (V) Management LLC, ARES CIP US Real Estate Opportunity Partners A, L.P., ARES CIP US Real Estate Opportunity Partners B, L.P., Ares Climate Infrastructure Partners, L.P., Ares CLO Funding I, L.P., Ares CLO Funding III LP, Ares CLO Management LLC, Ares CLO Management XXVII, L.P., Ares CLO Management II, LLC, Ares CLO Management IIIR/IVR, L.P., Ares CLO Management VIR, L.P., Ares CLO Management VR, L.P., Ares CLO Management X, L.P., Ares CLO Management XI, L.P., Ares CLO Management XX, L.P., Ares CLO Management XXI, L.P., Ares CLO Management XXIX, L.P., Ares CLO Warehouse 2021-6 Ltd., Ares CLO Warehouse 2021-8 Ltd., Ares Commercial Finance LP, Ares Commercial Finance Management, LP, Ares Commercial Real Estate Corporation, Ares Commercial Real

<sup>74</sup> 17 CFR 200.30-3(a)(12).