

proposing the elimination of reporting requirements related to COATS and EBS, as well as other duplicative rules, to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the self-regulatory organizations and/or their members.

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

Although written comments on the proposed rule change were not solicited, the Exchange received comments from two commenters, the Financial Information Forum ("FIF") and the Securities Industry and Financial Markets Association ("SIFMA"), regarding the retirement of systems related to the CAT.<sup>28</sup> In its comment letters, with regard to the retirement of duplicative systems more generally, FIF recommended that the Participants continue the effort to incorporate current reporting obligations into the CAT in order to replace existing reportable systems with the CAT. In addition, FIF further recommended that, once a CAT Reporter achieved satisfactory reporting data quality, the CAT Reporter should be exempt from reporting to any duplicative reporting systems. FIF believed that these recommendations "would serve both an underlying regulatory objective of more immediate and accurate access to data as well as an industry objective of reduced costs and burdens of regulatory oversight."<sup>29</sup> In its comments about EBS specifically, FIF stated that the retirement of the EBS requirements should be a high priority, and that the CAT should be designed to include the requisite data elements to permit the rapid retirement of EBS.<sup>30</sup> Similarly, SIFMA stated that "the establishment of the CAT must be accompanied by the prompt elimination of duplicative systems," and "recommend[ed] that the initial technical specifications be designed to facilitate the immediate retirement of . . . duplicative reporting systems."<sup>31</sup>

As discussed above, the Exchange agrees with the commenters that the reporting requirements proposed to be modified or eliminated should be replaced by the CAT reporting requirements as soon as accurate and reliable CAT Data is available. To this end, the Exchange anticipates that the CAT will be designed to collect the data necessary to permit the modification or elimination, as applicable, of these reporting requirements and the retirement of related systems. However, as discussed above, the Exchange disagrees with the recommendation to provide individual exemptions to those CAT Reporters who obtain satisfactory data reporting quality.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be 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-CBOE-2017-041 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-CBOE-2017-041. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2017-041 and should be submitted on or before June 22, 2017.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80771; File No. SR-MRX-2017-05]

**Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .03 to Rule 713**

May 25, 2017.

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 May 19, 2017, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>32</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>28</sup> Letter from William H. Hebert, FIF, to Participants re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules (Apr. 12, 2017) ("FIF Letter"); Letter from William H. Hebert, FIF, to Brent J. Fields, SEC re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules (Apr. 12, 2017); and Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesis as CAT Processor (Apr. 4, 2017) ("SIFMA Letter") at 2.

<sup>29</sup> FIF Letter at 2.

<sup>30</sup> FIF Letter at 2.

<sup>31</sup> SIFMA Letter at 2.

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

The Exchange proposes to amend Supplementary Material .03 to Rule 713 to change the allocation entitlement for Preferred PMMs.

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.com), 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

Supplementary Material .03 to Rule 713 allows an Electronic Access Member ("EAM") to designate a "Preferred Market Maker" on orders it enters into the System ("Preferred Orders"). A Preferred Market Maker may be the Primary Market Maker ("PMM") appointed to the options class or any Competitive Market Maker ("CMM") appointed to the options class.<sup>3</sup> The purpose of the proposed rule change is to amend Supplementary Material .03 to Rule 713 to change the allocation entitlement for PMMs that receive Preferred Orders (*i.e.*, "Preferred PMMs"), consistent with allocation entitlements for PMM equivalents on other options exchanges.

Currently, a Preferred Market Maker that is quoting at the national best bid of offer ("NBBO") at the time the Preferred Order is received,<sup>4</sup> is entitled to participation rights equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, or (ii) sixty

percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price.<sup>5</sup> This allocation entitlement is in lieu of the regular allocation provided in Supplementary Material .01 to Rule 713, and applies regardless of whether the Preferred Market Maker is a PMM or CMM. In some instances where the Preferred Market Maker is the PMM appointed to the options class this results in a preferred allocation that is worse than the market maker's regular allocation entitlement. Specifically, Supplementary Material .01(c) to Rule 713 provides a small order entitlement whereby orders of five contracts or fewer are executed first by the PMM. A PMM that normally receives an allocation entitlement for orders of five contracts or fewer,<sup>6</sup> would not receive this allocation entitlement if it were designated as the Preferred Market Maker.

The Exchange now proposes to amend the participation rights of Preferred PMMs such that the PMM appointed in an option class will receive participation rights that are consistent with the higher allocation entitlement given to PMM equivalents on the MIAX Options Exchange ("MIAX"), and with the allocation entitlement recently adopted on the Exchange's affiliates, Nasdaq ISE, LLC ("ISE") and Nasdaq GEMX, LLC ("GEMX"). In particular, the Exchange proposes to amend Supplementary Material .03(c) to Rule 713 to provide that, the Preferred Market Maker has participation rights equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote, (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Professional Order or market maker quotation at the best price and forty percent (40%) if there are two (2) or more other Professional Orders and/or market maker quotes at the best price, or (iii) *the full size of a Preferred Order for five (5) contracts or fewer if the Primary Market Maker appointed to the options class is designated as the Preferred Market Maker—i.e.*, the small order allocation entitlement contained in Supplementary Material .01(c) to Rule 713. Thus, the PMM appointed to an options class would receive an allocation entitlement for orders of five contracts or fewer, regardless of whether that order is

submitted as a Preferred Order. The Exchange believes that this is appropriate since the PMMs obligations to the market are the same regardless of whether an order happens to be submitted with a preference instruction. PMM equivalents on other options exchanges currently receive this participation right when preferred, in addition to the regular 60% or 40% preferred allocation currently provided in the rule.<sup>7</sup> Preferred CMMs will continue to receive the same allocation entitlement that they receive today.

Pursuant to Supplementary Material .01(c) to Rule 713 the Exchange evaluates on a quarterly basis what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or fewer executed by PMMs. The Exchange represents that this review will extend to the small order entitlement for Preferred PMMs. Thus, consistent with Supplementary Material .01(c) to Rule 713, the Exchange will reduce the size of the orders included in the small order entitlement if such percentage is over forty percent (40%).

#### Implementation

The proposed rule change will be implemented on the Exchange's new INET trading system, which is scheduled to launch in Q3 2017,<sup>8</sup> provided that the Exchange will provide notice of this change in a circular to be distributed to members prior to implementing the new allocation entitlement on INET. The INET migration will take place on a symbol by symbol basis as specified by the Exchange in a notice to be provided to Members. The Exchange is proposing to implement this rule change on the INET platform as the symbols migrate to that platform. As such, PMMs will begin receiving the small order entitlement in symbols as they migrate to the INET platform.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup> In particular, the proposal is consistent

<sup>3</sup> See Supplementary Material .03(a) to Rule 713.

<sup>4</sup> If the Preferred Market Maker is not quoting at a price equal to the NBBO at the time the Preferred Order is received, the Exchange's regular allocation procedure applies to the execution of the Preferred Order. See Supplementary Material .03(b) to Rule 713.

<sup>5</sup> See Supplementary Material .03(c) to Rule 713.

<sup>6</sup> See Supplementary Material .01(c) to Rule 713.

<sup>7</sup> See MIAX Rule 514(g), (i). See also Securities Exchange Act Release Nos. 80239 (March 14, 2017), 82 FR 14413 (March 20, 2017) (SR-ISEGemini-2017-14); 80438 (April 12, 2017), 82 FR 18329 (April 18, 2017) (SR-ISE-2017-31).

<sup>8</sup> See SR-MRX-2017-02 (pending publication).

<sup>9</sup> 15 U.S.C. 78f(b).

with Section 6(b)(5) of the Act,<sup>10</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it will allow EAMs to send Preferred Orders to the PMM appointed in an options class without inadvertently disadvantaging the PMM compared to if the order was not preferred. The regular allocation entitlements for PMMs, including the small order entitlement, are designed to balance the obligations that the PMM has to the market with corresponding benefits. The Exchange believes that it is appropriate to provide the small order entitlement also when the PMM is designated as a Preferred Market Maker as the obligations that the PMM has to the market are not diminished when it receives a Preferred Order. Other options exchanges similarly provide the small order entitlement to the PMM regardless of whether the order is submitted as a Preferred Order.<sup>11</sup> At the same time, the proposed rule change does not amend the current participation rights for Preferred CMMs, which is also consistent with allocation rules of other options exchanges. While the Exchange believes that it is appropriate to grant PMMs an allocation entitlement for small sized orders preferred to them in recognition of the obligations that PMMs have to maintain fair and orderly markets, the Exchange does not believe that it is appropriate at this time to extend this entitlement to CMMs, preferred or otherwise.

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

In accordance with Section 6(b)(8) of the Act,<sup>12</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to allow EAMs to send Preferred Orders to the PMM appointed in an options class without inadvertently disadvantaging the PMM by reducing its participation rights. The proposed allocation entitlements are equivalent to those currently in effect on other

options exchanges.<sup>13</sup> The proposed rule change is therefore not designed to impose any significant burden on competition.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</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.

#### **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-2017-05 on the subject line.

<sup>13</sup> See *supra* note 7.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

##### *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-2017-05. 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 Web site (<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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2017-05 and should be submitted on or before June 22, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See *supra* note 7.

<sup>12</sup> 15 U.S.C. 78f(b)(8).

<sup>16</sup> 17 CFR 200.30-3(a)(12).