

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Exchange’s fee schedule (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to waive the membership fees (“Membership Fees”) for approximately the next six months for all new Members³ of the Exchange. The Exchange will implement the membership fee waiver (the “Membership Fee Waiver”) for the period of time commencing immediately and ending on December 31, 2023.

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

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

a. Purpose

The Exchange proposes to modify its fee schedule in order to waive the Membership Fees for all new Members of the Exchange who join the Exchange through December 31, 2023. The Exchange will implement the Membership Fee Waiver (as defined above) until December 31, 2023. The Exchange notes that the proposed change does not amend any existing fee or rebate for equities transactions, market data or connectivity fees. The sole change proposed herein is to waive membership fees for new Members of the Exchange, as described below.

MEMX currently charges \$200 per month to maintain active membership. In preparation for the launch of the Exchange's options market ("MEMX Options")⁴, the Exchange wishes to encourage additional participants to join the Exchange by waiving the Exchange's membership fee for such new participants. The Exchange proposes to apply the Membership Fee Waiver to all new Members ending on December 31, 2023.

⁴ On August 8, 2022, the Commission approved SR-MEMX-2022-10, which proposed rules for the trading of options on the Exchange. See Securities Exchange Act Release No. 95445 (August 9, 2022), 87 FR 49884 (August 12, 2022) (SR-MEMX-2022-010). The Exchange plans to launch MEMX Options in September of 2023.

Specifically, the Exchange is proposing to add a description under “Membership” in the Exchange’s Fee Schedule, noting that Membership Fees will be waived for new Members of the Exchange until January 1, 2024.

Although the Exchange notes that the proposed change is intended primarily to encourage new participants to join the Exchange in order to participate on the MEMX Options market and the Exchange believes the participants that will benefit from this waiver are firms that will do so, the Exchange is intentionally proposing the waiver to apply broadly to all new participants on the Exchange, including firms that would trade only on the Exchange’s market for equity securities or on both the Exchange’s market for equity securities and MEMX Options.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable to waive the Membership Fee for new Members of the Exchange, primarily to provide an incentive for options trading firms to apply for Exchange membership in advance of the launch of MEMX Options. The

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4) and (5).

options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. The proposal will be of particular importance in encouraging liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange. Although the proposed change is intended primarily to encourage new participants to join the Exchange in order to participate on the MEMX Options market and the Exchange believes the participants that will benefit from this waiver are firms that will do so, the Exchange also believes that it is reasonable to adopt the waiver in a manner that applies broadly to all new participants on the Exchange, including firms that would trade only on the Exchange's market for equity securities or on both the Exchange's market for equity securities and MEMX Options.

In addition, the Exchange believes that the proposed Membership Fee Waiver is equitable and not unfairly discriminatory in that it will apply uniformly to all new Members of the Exchange. Further, the Exchange believes that the waiver is reasonable, equitable and not unfairly discriminatory to current Members of the Exchange because the majority of the Exchange's current Members joined at a time when the Exchange did not impose membership fees (also to incentivize such participants to join), and thus have already received this benefit.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage market participants who have not already done so to join the Exchange.

As a result, if such participants do join the Exchange and route their orders to the Exchange or support other Members that route orders (i.e., clearing firms) the Exchange believes the proposal would enhance its competitiveness as a market. Encouraging additional participants to join the Exchange will enable a greater number of participants to be onboard when MEMX Options launches. Attracting a greater number of participants will foster greater competition on the Exchange, particularly in the case of MEMX Options which is a quote-driven market. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."⁷

Intramarket Competition

As discussed above, the Exchange believes that the proposal would encourage new participants to apply for Exchange membership, thereby enhancing liquidity and market quality on the Exchange, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange.

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize new participants to join the Exchange and the majority of the Exchange's current members joined at a time when the Exchange did not impose membership fees (also to incentivize

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

such participants to join), and thus have already received this benefit. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. The proposal will be of particular importance in encouraging liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As described above, the proposed Membership Fee Waiver will incentive market participants to join the Exchange during the Membership Fee Waiver period. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other options exchanges at the time MEMX Options launches. In addition, as noted above, the Exchange has intentionally proposed to adopt the waiver broadly so that it is also applicable to new Members that will participate on the Exchange's market for equity securities or that will participate on such market as well as MEMX Options, and thus, the proposal may also better enable the Exchange to compete with other equities exchanges.

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

The Exchange neither solicited nor received comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.⁹

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 15 U.S.C. 78s(b)(2)(B).

11. Exhibits

Exhibit 1. Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5. Text of Proposed Fee Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2023-13]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "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 is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to waive the membership fees ("Membership Fees") for approximately the next six months for all new Members of the Exchange. The Exchange will implement the membership fee waiver (the "Membership Fee Waiver") for the period of time commencing immediately and ending on December 31, 2023. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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

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

1. Purpose

The Exchange proposes to modify its fee schedule in order to waive the Membership Fees for all new Members of the Exchange who join the Exchange through December 31, 2023. The Exchange will implement the Membership Fee Waiver (as defined above) until December 31, 2023. The Exchange notes that the proposed change does not amend any existing fee or rebate for equities transactions, market data or connectivity fees. The sole change proposed herein is to waive membership fees for new Members of the Exchange, as described below.

MEMX currently charges \$200 per month to maintain active membership. In preparation for the launch of the Exchange’s options market (“MEMX Options”)⁴, the Exchange wishes to encourage additional participants to join the Exchange by waiving the Exchange’s membership fee for such new participants. The Exchange proposes to apply the Membership Fee Waiver to all new Members ending on December 31, 2023.

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2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

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

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believes the proposal would enhance its competitiveness as a market. Encouraging additional participants to join the Exchange will enable a greater number of participants to be onboard when MEMX Options launches. Attracting a greater number of participants will foster greater competition on the Exchange, particularly in the case of MEMX Options which is a quote-driven market. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."⁷

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

The Exchange neither solicited nor received comments on the proposed rule change.

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 Act⁸ and Rule 19b-4(f)(2)⁹ thereunder.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2023-13 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-MEMX-2023-13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2023-13 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Sherry R. Haywood,

Assistant Secretary.

¹⁰ 17 CFR 200.30-3(a)(12).

Exhibit 5

Proposed new language is underlined; Proposed deletions are in [brackets].

MEMX Fee Schedule
(EFFECTIVE [JUNE 1] JUNE 30, 2023)

* * * * *

Membership, Market Data, and Connectivity Fees**Membership**

MEMX charges \$200 per month to maintain active membership. The MEMX membership fee is assessed to each active Member at the close of business on the first day of each month. If a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to such fee being assessed and the Member does not utilize the facilities of the Exchange while such voluntary termination of rights is pending, then the Member will not be obligated to pay the monthly membership fee. MEMX does not return pro rated fees if a membership is not active for an entire month.

Membership fees for new Members of the Exchange are waived until January 1, 2024.

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