

Filing by MEMX LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | Rule | | |
| | | | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| | | | <input checked="" type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(6) | |

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend the Exchange's fee schedule.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Anders Last Name * Franzon

Title * General Counsel

E-mail * afranzon@memx.com

Telephone * (551) 370-1003 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, MEMX LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/15/2023


(Title *)

By Lauren Strathman

Chief Compliance Officer

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Digitally signed by Lauren Strathman
Date: 2023.09.15 11:22:38 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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Options Transaction Fees (Information)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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Options Transaction Fees (Exhibit 1).c

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

Options Transaction Fees (Exhibit 5).c

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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 applicable to Members³ pursuant to Exchange Rules 15.1(a) and (c). Specifically, the Exchange proposes to adopt transaction fees (“Transaction Fees”), routing fees (“Routing Fees”), and definitions (“Definitions”) within the MEMX Options Fee Schedule (the “Options Fee Schedule”). The Transaction Fees section of the Options Fee Schedule would establish transaction fees and rebates applicable to Options Members trading on the Exchange’s options trading platform (such platform, “MEMX Options” and such Members, “Options Members”). The Routing Fees section of the Options Fee Schedule would establish fees for Options Members who route their orders to away exchanges. The Definitions section of the Options Fee Schedule would define and clarify terms used in the Options Fee Schedule.

The Exchange will commence operation of MEMX Options on September 20, 2023. As such, the Exchange proposes to implement the Options Fee Schedule pursuant to this proposal on September 20, 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

(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.

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

Anders Franzon
General Counsel
MEMX LLC
(551) 370-1003

Ikee Gardner
Counsel
MEMX LLC
(551) 370-1019

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

a. Purpose

The purpose of the proposed rule change is to (i) establish transaction rebates and fees applicable to all Options Members trading on MEMX Options; (ii) establish routing fees applicable to all Options Members trading on MEMX Options who route orders to away exchanges; and (iii) define and clarify terms used in the Options Fee Schedule.

Transaction Fees

The proposed Transaction Fees section of the Options Fee Schedule sets forth transaction rebates and fees for executions on MEMX Options. MEMX Options will operate a “Maker-Taker” model whereby it provides rebates to Options Members that provide liquidity and charges fees to those that remove liquidity, as further described below. The proposed rebates and fees vary depending on whether a transaction was

executed in a customer capacity (“Customer”)⁴ or in a non-customer capacity (“Non-Customer”)⁵, whether the underlying security of the applicable option is in the Penny Pilot Program (“Penny options”) or not in the Penny Pilot Program (“Non-Penny options”), and, finally, whether the transaction adds or removes liquidity from the MEMX Options Book.

The Exchange will provide fee qualifiers to distinguish between Customer transactions and Non-Customer transactions.⁶ MEMX Options will provide Fee Codes to distinguish between transactions in Penny options and transactions in Non-Penny options.⁷ MEMX Options will also provide Fee Codes to distinguish between transactions that add liquidity to the MEMX Options Book and transactions that remove liquidity from the MEMX Options Book.⁸

Options Members shall be assessed lower transaction fees and smaller rebates for order executions in Penny options than for order executions in Non-Penny options, for

⁴ Customer capacity applies to any order for the account of a Priority Customer. “Priority Customer” means any person or entity that is neither a broker or dealer in securities nor a Professional. See Rule 16.1 of the MEMX Rulebook.

⁵ Non-Customer capacity applies to any transaction that is not a Customer order.

⁶ MEMX Options will provide fee qualifier “c” for Customer transactions. MEMX Options will provide fee qualifier “m” for market maker transactions, fee qualifier “p” for professional transactions, fee qualifier “f” for firm transactions, fee qualifier “a” for away market maker transactions, and fee qualifier “b” for broker-dealer transactions. Each of market maker transactions, professional transactions, firm transactions, away market maker transactions, and broker-dealer transactions shall be referred to as “Non-Customer” transactions. Fee qualifiers will be provided by the Exchange on the monthly invoices provided to Options Members.

⁷ MEMX Options will provide Fee Code “P” for transactions in Penny options and Fee Code “N” for transactions in Non-Penny options. Fee Codes will be provided by the Exchange on the monthly invoices provided to Options Members.

⁸ MEMX Options will provide Fee Code “D” for transactions which add liquidity to the MEMX Options Book, and Fee Code “R” for transactions that remove liquidity from the MEMX Options Book. Fee Codes will be provided by the Exchange on the monthly invoices provided to Options Members.

which Members will be assessed higher transaction fees and larger rebates. As noted above, Options Members shall be assessed fees for removing liquidity from the MEMX Options Book and provided rebates for adding liquidity to the MEMX Options Book. At this time, the Exchange will not differentiate between fees charged and rebates assessed for different types of Non-Customer transactions; instead, all Non-Customer transactions (i.e., transactions for the accounts of market makers, professionals, firms, away market makers, or broker dealers) will be assessed the same fees and rebates.

The Fee Codes and fee qualifiers will be used to make clear to Members what rebates were provided to them and which fees were assessed.⁹ The Exchange believes that designating the Fee Codes will make clear the different types of fees and rebates passed back to Members on execution reports and will be useful for the Exchange in considering potential pricing modifications as it continues to evaluate its pricing structure on an ongoing basis after the launch of MEMX Options. The Exchange's Fee Codes and fee qualifiers will assist the Exchange and Options Members with financial planning, tracking, and reconciliation of invoices generated by the Exchange.

Transactions for Customer accounts in Penny options that remove liquidity from the MEMX Book will be assessed a fee of \$0.46 per contract. Transactions for Non-Customer accounts in Penny options that remove liquidity will be assessed a fee of \$0.50 per contract. Transactions for Customer accounts in Non-Penny options that remove liquidity from the MEMX Book will be assessed a fee of \$0.85 per contract. Finally, transactions for Non-Customer accounts in Non-Penny options that remove liquidity will

⁹ For example, for a Customer order in a Penny option that removes liquidity from the MEMX Book, the Exchange would pass back the Fee Code RcP. As another example, for a Non-Customer Away Market Maker order in a Non-Penny option that adds liquidity to the MEMX Book, the Exchange would pass back the Fee Code DaN.

be assessed a fee of \$1.10 per contract. The purpose of the proposed transaction fees is to assess right-sized fees for orders that remove liquidity from the Exchange.

Transactions for Customer accounts in Penny options that add liquidity to the MEMX Options Book will receive a rebate of \$0.49 per contract. Transactions for Non-Customer accounts in Penny options that add liquidity will receive a rebate of \$0.45 per contract. Transactions for Customer accounts in Non-Penny options that add liquidity to the MEMX Options Book will receive a rebate of \$1.04 per contract. Finally, transactions for Non-Customer accounts in Non-Penny options that add liquidity will receive a rebate of \$0.80 per contract. The purpose of the proposed transaction rebates is to provide right-sized incentives for Options Members to trade on the Exchange and to incentivize order flow to be directed to the Exchange.

The Exchange does not initially propose to charge tiered fees or provide tiered rebates according to the volume of orders submitted to MEMX Options. Accordingly, all fees and rebates described above are applicable to all Options Members regardless of the overall volume of an Options Member's activities on MEMX Options.

Routing Fees

The Exchange proposes to assess Routing Fees on orders routed to other options exchanges. The amount of the applicable fee will be based on whether the order is for a Penny or Non-Penny option. At this time, the Exchange will not charge different routing fees according to the capacity of the order. The Exchange will charge a fee of \$0.60 for Penny options routed to another options exchange and \$1.20 for Non-Penny options routed to another options exchange.

The purpose of the proposed Routing Fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of Options Members.

In determining its proposed Routing Fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will use its affiliated broker-dealer, MEMX Execution Services, to route orders to other options exchanges or to other broker-dealers that will route such orders to other options exchanges. Routing services offered by the Exchange and its affiliated broker-dealer are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. The proposed structure for routing fees is similar to the fee structure in place for routing at various other exchanges.¹⁰ The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges.

Definitions

The Exchange has included a Definitions section within the Options Fee Schedule. The purpose of the Definitions section is to streamline the Options Fee Schedule by placing many of the defined terms used in the Options Fee Schedule in one location. The Definitions section defines the terms "Penny Program Securities", "Away Market Maker", "Broker Dealer", "Customer", "Firm", "Market Maker", and "Professional". Many of the defined terms are also defined in the Exchange Rules,

¹⁰ See Exchange Act Release Nos. 97896 (July 13, 2023), 88 FR 46313 (July 19, 2023) (SR-PEARL-2023-30); 97901 (July 13, 2023), 88 FR 46202 (July 19, 2023) (SR-EMERALD-2023-15); 85591 (April 10, 2019), 84 FR 15645 (April 16, 2019) (SR-CboeBZX-2019-024); 91677 (April 26, 2021), 86 FR 22989 (April 30, 2021) (SR-NASDAQ-2021-021); and 97234 (March 31, 2023), 88 FR 20589 (April 6, 2023) (SR-NYSEARCA-2023-28).

particularly in Exchange Rule 16.1. The Exchange notes that other exchanges have Definitions sections in their respective fee schedules,¹¹ and the Exchange believes that including such section makes the Options Fee Schedule more readable and user-friendly.

b. Statutory Basis

The Exchange believes that its proposal to amend its Options Fee Schedule is consistent with the provisions of Section 6 of the Act,¹² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Options Members and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Upon its launch, MEMX Options will operate in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their

¹¹ See, e.g., the MIAX Pearl Options Fee Schedule, available at https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf; the CBOE BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/; and the Nasdaq Options Market Fee Schedule, available at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, 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.”¹⁴

Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge \$0.46 for orders for Customer accounts that remove liquidity in Penny options, because it is comparable to the transaction fees charged by other exchanges for Customer transactions that remove liquidity in Penny options.¹⁵ The Exchange further

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁵ For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee ranging from \$0.47-\$0.48 for Customer transactions that remove liquidity in Penny options; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. The Cboe BZX Options trading fee schedule on its public website reflects a transaction fee ranging from \$0.46-\$0.48 for Customer transactions that remove liquidity in Penny options; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Nasdaq Options Market trading fee schedule on its public website reflects a transaction fee of \$0.49 for Customer transactions that remove liquidity in Penny options; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Additionally, the NYSE Arca Options trading fee schedule on its public website reflects a transaction fee of \$0.46-\$0.49 for Customer transactions that remove liquidity in Penny options; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members..

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge \$0.50 for orders for Non-Customer accounts in Penny options that remove liquidity because it is comparable to the transaction fee charged by other exchanges for Non-Customer transactions in Penny options that remove liquidity.¹⁶ The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge \$0.85 for orders for Customer accounts in Non-Penny options that remove liquidity because it is comparable to the transaction fees charged by other exchanges for

¹⁶ For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee of \$0.50 for Non-Customer transactions that remove liquidity in Penny options; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market maker and professional customers that remove liquidity in Penny options are assessed a \$0.47-\$0.50 fee and transactions for the accounts of broker dealers that remove liquidity in Penny options are assessed a \$0.46-\$0.50 fee; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of firms, broker-dealers, and market makers that remove liquidity in Penny options are assessed a fee of \$0.50 and transactions for the accounts of professional customers that remove liquidity in Penny options are assessed a fee of \$0.49; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers, broker-dealers, and professional customers that remove liquidity in Penny options are assessed a fee of \$0.50; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

Customer transactions in Non-Penny options that remove liquidity.¹⁷ The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge \$1.10 for orders in Non-Customer accounts in Non-Penny options that remove liquidity because it is comparable to the transaction fees charged by other exchanges for Non-Customer transactions in Non-Penny options that remove liquidity.¹⁸ The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

¹⁷ For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee of \$0.85 for Customer transactions that remove liquidity in Non-Penny options; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Similarly, the Cboe BZX Options trading fee schedule on its public website also reflects a \$0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Similarly, the Nasdaq Options Market trading fee schedule on its public website also reflects a \$0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Lastly and similarly, the NYSE Arca Options trading fee schedule on its public website reflects a \$0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

¹⁸ For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that remove liquidity in Non-Penny options are assessed a \$1.07-\$1.10 fee and transactions for the accounts of professional customers, firms, and broker-dealers that remove liquidity in Non-Penny options are assessed a \$1.09-\$1.10 fee; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers, firms, broker-dealers, and professional customers that remove liquidity in Non-Penny options are assessed a \$1.07-\$1.10 fee; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of market makers, broker-dealers, and firms that remove liquidity in Non-Penny options are assessed a \$1.10 fee and transactions for the accounts of professional customers that remove liquidity in Non-Penny options are assessed a \$0.85 fee; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers, firms, broker-dealers, and professional customers that remove liquidity in Non-Penny options are assessed a \$1.10 fee; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of \$0.49 for orders for Customer accounts in Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Customer transactions in Penny options that add liquidity.¹⁹ The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of \$0.45 for orders for Non-Customer accounts in Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for

¹⁹ For example, the MIAX Pearl Options trading fee schedule on its public website reflects a rebate ranging from \$0.25-\$0.52 for Customer transactions that add liquidity in Penny options; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. The Cboe BZX Options trading fee schedule on its public website reflects a rebate ranging from \$0.25-\$0.53 for Customer transactions that add liquidity in Penny options; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Nasdaq Options Market trading fee schedule on its public website reflects a rebate ranging from \$0.20-\$0.48 for Customer transactions that add liquidity in Penny options; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>.

Non-Customer transactions in Penny options that add liquidity.²⁰ The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of \$1.04 for orders for Customer accounts in Non-Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for

²⁰ For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options with a Priority Customer on the contra side are provided a \$0.22-\$0.46 rebate, and transactions for the accounts of professional customers and firms that add liquidity in Penny options with a non-Priority Customer on the contra side are provided a \$0.25-\$0.48 rebate; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options are provided a \$0.29-\$0.38 rebate, transactions for the accounts of professional customers that add liquidity in Penny options are provided a \$0.25-\$0.48 rebate, and transactions for the account of firms and broker-dealers that add liquidity in Penny options are provided a \$0.25-\$0.46 rebate; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options are provided a \$0.20-\$0.48 rebate, and transactions for the accounts of professional customers that add liquidity in Penny options are provided a \$0.20-\$0.47 rebate; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>.

Customer transactions in Non-Penny options that add liquidity.²¹ The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of \$0.80 for orders for Non-Customer accounts in Non-Penny options that add liquidity because it is comparable to the rebate provided by other

²¹ For example, per the MIAX Pearl Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a \$0.85-\$1.04 rebate; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a \$0.85-\$1.05 rebate; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a \$0.80-\$1.10 rebate; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Lastly, per the NYSE Arca Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a \$0.75 rebate; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

exchanges for Non-Customer transactions in Non-Penny options that add liquidity.²² The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge fees of \$0.60 for routing in Penny options and \$1.20 for routing in Non-Penny options, because these routing fees are comparable to those charged by other exchanges for routing Penny and Non-Penny options to away exchanges.²³ Additionally, the Exchange believes these fees are equitable and not unfairly discriminatory because these fees will apply equally to all Options Members.

²² For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a \$0.30-\$0.85 rebate and transactions for the accounts of professional customers and firms that add liquidity in Non-Penny options are provided a \$0.30-\$0.85 rebate; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a \$0.40-\$0.88 rebate, transactions for the accounts of professional customers that add liquidity in Non-Penny options are provided a \$0.65 rebate, transactions for the accounts of away market makers that add liquidity in Non-Penny options are provided a \$0.30-\$0.52 rebate, and transactions for the accounts of firms and broker-dealers that add liquidity in Non-Penny options are provided a \$0.30-\$0.82 rebate; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a \$0.05-0.40 rebate and transactions for the accounts of professional customers that add liquidity in Non-Penny options are provided a \$0.75 rebate; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

²³ For example, per the NYSE Arca Options trading fee schedule on its public website, the fee for routing in Penny options is \$0.61 and the fee for routing in Non-Penny options is \$1.21; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

Lastly, the Exchange believes that it is reasonable to add a definitions section to clarify the terms used in the Options Fee Schedule, because it will clearly set forth the terms used in the Transaction Fees portion of the Options Fee Schedule. The Exchange further believes the definition section is reasonable as other national securities exchanges include a definition section in their fee schedule.²⁴ The Exchange believes this section is equitable and not unfairly discriminatory because the definitions section (as part of the Options Fee Schedule) will be distributed to all Members so that all Members will have equal clarity on fees charged and rebates provided.

For the reasons discussed above, the Exchange submits that its proposed fee structure and changes to the Options Transaction Fee Schedule satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As a new entrant in the already highly competitive environment for options trading, the

²⁴ See supra note 11.

²⁵ 15 U.S.C. 78f(b)(4) and (5).

Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. MEMX Options proposes transaction fees, rebates, and routing fees that are comparable to transaction fees, rebates and routing fees assessed by other options exchanges. As a result, 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."²⁶

Intramarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees and rebates apply equally to all Options Members. The proposed pricing structure is intended to encourage participants to trade on MEMX Options by providing rebates that are comparable to those offered by other exchanges as well as providing competitive fees. The Exchange believes that the proposed rebates and fees will help to encourage Options Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed fees and rebates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Intermarket Competition

²⁶ See supra note 14.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to draw volume to the Exchange as it commences operations. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. Currently, no single registered options exchange has more than approximately 18% of the total market share of executed volume of listed options trading.²⁷ As a new exchange, the Exchange expects to face intense competition from existing exchanges. The proposed pricing structure is intended to encourage market participants to trade on the exchange by providing rebates and assessing fees that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the

²⁷ Market share percentage calculated as of September 14, 2023. The Exchange receives and processes data made available through the consolidated data feeds (*i.e.*, OPRA).

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.”²⁸ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁹ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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)

²⁸ See supra note 14.

²⁹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁰ 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.³¹

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.

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.

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

³¹ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2023-24]

[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 pursuant to Exchange Rules 15.1(a) and (c). Specifically, the Exchange proposes to adopt transaction fees ("Transaction Fees"), routing fees ("Routing Fees"), and definitions ("Definitions") within the MEMX Options Fee Schedule (the "Options Fee Schedule"). The Transaction Fees section of the Options Fee Schedule would establish transaction fees and rebates applicable to Options Members trading on the Exchange's options trading platform (such platform, "MEMX Options" and such Members, "Options Members"). The Routing Fees section of the Options Fee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

Schedule would establish fees for Options Members who route their orders to away exchanges. The Definitions section of the Options Fee Schedule would define and clarify terms used in the Options Fee Schedule. The Exchange will commence operations of MEMX Options on September 20, 2023. As such, the Exchange proposes to implement the changes to the Options Fee Schedule pursuant to this proposal on September 20, 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

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

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

1. Purpose

The purpose of the proposed rule change is to (i) establish transaction rebates and fees applicable to all Options Members trading on MEMX Options; (ii) establish routing fees applicable to all Options Members trading on MEMX Options who route orders to away exchanges; and (iii) define and clarify terms used in the Options Fee Schedule.

Transaction Fees

The proposed Transaction Fees section of the Options Fee Schedule sets forth transaction rebates and fees for executions on MEMX Options. MEMX Options will operate a "Maker-Taker" model whereby it provides rebates to Options Members that provide liquidity and charges fees to those that remove liquidity, as further described

below. The proposed rebates and fees vary depending on whether a transaction was executed in a customer capacity (“Customer”)⁴ or in a non-customer capacity (“Non-Customer”)⁵, whether the underlying security of the applicable option is in the Penny Pilot Program (“Penny options”) or not in the Penny Pilot Program (“Non-Penny options”), and, finally, whether the transaction adds or removes liquidity from the MEMX Options Book.

The Exchange will provide fee qualifiers to distinguish between Customer transactions and Non-Customer transactions.⁶ MEMX Options will provide Fee Codes to distinguish between transactions in Penny options and transactions in Non-Penny options.⁷ MEMX Options will also provide Fee Codes to distinguish between transactions that add liquidity to the MEMX Options Book and transactions that remove liquidity from the MEMX Options Book.⁸

Options Members shall be assessed lower transaction fees and smaller rebates for

⁴ Customer capacity applies to any order for the account of a Priority Customer. “Priority Customer” means any person or entity that is neither a broker or dealer in securities nor a Professional. See Rule 16.1 of the MEMX Rulebook.

⁵ Non-Customer capacity applies to any transaction that is not a Customer order.

⁶ MEMX Options will provide fee qualifier “c” for Customer transactions. MEMX Options will provide fee qualifier “m” for market maker transactions, fee qualifier “p” for professional transactions, fee qualifier “f” for firm transactions, fee qualifier “a” for away market maker transactions, and fee qualifier “b” for broker-dealer transactions. Each of market maker transactions, professional transactions, firm transactions, away market maker transactions, and broker-dealer transactions shall be referred to as “Non-Customer” transactions. Fee qualifiers will be provided by the Exchange on the monthly invoices provided to Options Members.

⁷ MEMX Options will provide Fee Code “P” for transactions in Penny options and Fee Code “N” for transactions in Non-Penny options. Fee Codes will be provided by the Exchange on the monthly invoices provided to Options Members.

⁸ MEMX Options will provide Fee Code “D” for transactions which add liquidity to the MEMX Options Book, and Fee Code “R” for transactions that remove liquidity from the MEMX Options Book. Fee Codes will be provided by the Exchange on the monthly invoices provided to Options Members.

order executions in Penny options than for order executions in Non-Penny options, for which Members will be assessed higher transaction fees and larger rebates. As noted above, Options Members shall be assessed fees for removing liquidity from the MEMX Options Book and provided rebates for adding liquidity to the MEMX Options Book. At this time, the Exchange will not differentiate between fees charged and rebates assessed for different types of Non-Customer transactions; instead, all Non-Customer transactions (i.e., transactions for the accounts of market makers, professionals, firms, away market makers, or broker dealers) will be assessed the same fees and rebates.

The Fee Codes and fee qualifiers will be used to make clear to Members what rebates were provided to them and which fees were assessed.⁹ The Exchange believes that designating the Fee Codes will make clear the different types of fees and rebates passed back to Members on execution reports and will be useful for the Exchange in considering potential pricing modifications as it continues to evaluate its pricing structure on an ongoing basis after the launch of MEMX Options. The Exchange's Fee Codes and fee qualifiers will assist the Exchange and Options Members with financial planning, tracking, and reconciliation of invoices generated by the Exchange.

Transactions for Customer accounts in Penny options that remove liquidity from the MEMX Book will be assessed a fee of \$0.46 per contract. Transactions for Non-Customer accounts in Penny options that remove liquidity will be assessed a fee of \$0.50 per contract. Transactions for Customer accounts in Non-Penny options that remove liquidity from the MEMX Book will be assessed a fee of \$0.85 per contract. Finally,

⁹ For example, for a Customer order in a Penny option that removes liquidity from the MEMX Book, the Exchange would pass back the Fee Code RcP. As another example, for a Non-Customer Away Market Maker order in a Non-Penny option that adds liquidity to the MEMX Book, the Exchange would pass back the Fee Code DaN.

transactions for Non-Customer accounts in Non-Penny options that remove liquidity will be assessed a fee of \$1.10 per contract. The purpose of the proposed transaction fees is to assess right-sized fees for orders that remove liquidity from the Exchange.

Transactions for Customer accounts in Penny options that add liquidity to the MEMX Options Book will receive a rebate of \$0.49 per contract. Transactions for Non-Customer accounts in Penny options that add liquidity will receive a rebate of \$0.45 per contract. Transactions for Customer accounts in Non-Penny options that add liquidity to the MEMX Options Book will receive a rebate of \$1.04 per contract. Finally, transactions for Non-Customer accounts in Non-Penny options that add liquidity will receive a rebate of \$0.80 per contract. The purpose of the proposed transaction rebates is to provide right-sized incentives for Options Members to trade on the Exchange and to incentivize order flow to be directed to the Exchange.

The Exchange does not initially propose to charge tiered fees or provide tiered rebates according to the volume of orders submitted to MEMX Options. Accordingly, all fees and rebates described above are applicable to all Options Members regardless of the overall volume of an Options Member's activities on MEMX Options.

Routing Fees

The Exchange proposes to assess Routing Fees on orders routed to other options exchanges. The amount of the applicable fee will be based on whether the order is for a Penny or Non-Penny option. At this time, the Exchange will not charge different routing fees according to the capacity of the order. The Exchange will charge a fee of \$0.60 for Penny options routed to another options exchange and \$1.20 for Non-Penny options routed to another options exchange.

The purpose of the proposed Routing Fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of Options Members. In determining its proposed Routing Fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will use its affiliated broker-dealer, MEMX Execution Services, to route orders to other options exchanges or to other broker-dealers that will route such orders to other options exchanges. Routing services offered by the Exchange and its affiliated broker-dealer are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. The proposed structure for routing fees is similar to the fee structure in place for routing at various other exchanges.¹⁰ The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges.

Definitions

The Exchange has included a Definitions section within the Options Fee Schedule. The purpose of the Definitions section is to streamline the Options Fee Schedule by placing many of the defined terms used in the Options Fee Schedule in one location. The Definitions section defines the terms "Penny Program Securities", "Away

¹⁰ See Exchange Act Release Nos. 97896 (July 13, 2023), 88 FR 46313 (July 19, 2023) (SR-PEARL-2023-30); 97901 (July 13, 2023), 88 FR 46202 (July 19, 2023) (SR-EMERALD-2023-15); 85591 (April 10, 2019), 84 FR 15645 (April 16, 2019) (SR-CboeBZX-2019-024); 91677 (April 26, 2021), 86 FR 22989 (April 30, 2021) (SR-NASDAQ-2021-021); and 97234 (March 31, 2023), 88 FR 20589 (April 6, 2023) (SR-NYSEARCA-2023-28).

Market Maker”, “Broker Dealer”, “Customer”, “Firm”, “Market Maker”, and “Professional”. Many of the defined terms are also defined in the Exchange Rules, particularly in Exchange Rule 16.1. The Exchange notes that other exchanges have Definitions sections in their respective fee schedules,¹¹ and the Exchange believes that including such section makes the Options Fee Schedule more readable and user-friendly.

2. Statutory Basis

The Exchange believes that its proposal to amend its Options Fee Schedule is consistent with the provisions of Section 6 of the Act,¹² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Options Members and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Upon its launch, MEMX Options will operate in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or

¹¹ See, e.g., the MIAx Pearl Options Fee Schedule, available at https://www.miaxglobal.com/sites/default/files/page-files/MIAx_Pearl_Options_Fee_Schedule_08082023.pdf; the CBOE BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/; and the Nasdaq Options Market Fee Schedule, available at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, 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.”¹⁴

Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge \$0.46 for orders for Customer accounts that remove liquidity in Penny options, because it is comparable to the transaction fees charged by other exchanges for

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

Customer transactions that remove liquidity in Penny options.¹⁵ The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members..

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge \$0.50 for orders for Non-Customer accounts in Penny options that remove liquidity because it is comparable to the transaction fee charged by other exchanges for Non-Customer transactions in Penny options that remove liquidity.¹⁶ The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

¹⁵ For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee ranging from \$0.47-\$0.48 for Customer transactions that remove liquidity in Penny options; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. The Cboe BZX Options trading fee schedule on its public website reflects a transaction fee ranging from \$0.46-\$0.48 for Customer transactions that remove liquidity in Penny options; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Nasdaq Options Market trading fee schedule on its public website reflects a transaction fee of \$0.49 for Customer transactions that remove liquidity in Penny options; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Additionally, the NYSE Arca Options trading fee schedule on its public website reflects a transaction fee of \$0.46-\$0.49 for Customer transactions that remove liquidity in Penny options; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

¹⁶ For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee of \$0.50 for Non-Customer transactions that remove liquidity in Penny options; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market maker and professional customers that remove liquidity in Penny options are assessed a \$0.47-\$0.50 fee and transactions for the accounts of broker dealers that remove liquidity in Penny options are assessed a \$0.46-\$0.50 fee; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of firms, broker-dealers, and market makers that remove liquidity in Penny options are assessed a fee of \$0.50 and transactions for the accounts of professional customers that remove liquidity in Penny options are assessed a fee of \$0.49; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers, broker-dealers, and professional customers that remove liquidity in Penny options are assessed a fee of \$0.50; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge \$0.85 for orders for Customer accounts in Non-Penny options that remove liquidity because it is comparable to the transaction fees charged by other exchanges for Customer transactions in Non-Penny options that remove liquidity.¹⁷ The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge \$1.10 for orders in Non-Customer accounts in Non-Penny options that remove liquidity because it is comparable to the transaction fees charged by other

¹⁷ For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee of \$0.85 for Customer transactions that remove liquidity in Non-Penny options; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Similarly, the Cboe BZX Options trading fee schedule on its public website also reflects a \$0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Similarly, the Nasdaq Options Market trading fee schedule on its public website also reflects a \$0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Lastly and similarly, the NYSE Arca Options trading fee schedule on its public website reflects a \$0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

exchanges for Non-Customer transactions in Non-Penny options that remove liquidity.¹⁸

The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of \$0.49 for orders for Customer accounts in Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Customer transactions in Penny options that add liquidity.¹⁹ The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the

¹⁸ For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that remove liquidity in Non-Penny options are assessed a \$1.07-\$1.10 fee and transactions for the accounts of professional customers, firms, and broker-dealers that remove liquidity in Non-Penny options are assessed a \$1.09-\$1.10 fee; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers, firms, broker-dealers, and professional customers that remove liquidity in Non-Penny options are assessed a \$1.07-\$1.10 fee; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of market makers, broker-dealers, and firms that remove liquidity in Non-Penny options are assessed a \$1.10 fee and transactions for the accounts of professional customers that remove liquidity in Non-Penny options are assessed a \$0.85 fee; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers, firms, broker-dealers, and professional customers that remove liquidity in Non-Penny options are assessed a \$1.10 fee; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

¹⁹ For example, the MIAX Pearl Options trading fee schedule on its public website reflects a rebate ranging from \$0.25-\$0.52 for Customer transactions that add liquidity in Penny options; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. The Cboe BZX Options trading fee schedule on its public website reflects a rebate ranging from \$0.25-\$0.53 for Customer transactions that add liquidity in Penny options; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Nasdaq Options Market trading fee schedule on its public website reflects a rebate ranging from \$0.20-\$0.48 for Customer transactions that add liquidity in Penny options; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>.

Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of \$0.45 for orders for Non-Customer accounts in Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Non-Customer transactions in Penny options that add liquidity.²⁰ The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of \$1.04 for orders for Customer accounts in Non-Penny options

²⁰ For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options with a Priority Customer on the contra side are provided a \$0.22-\$0.46 rebate, and transactions for the accounts of professional customers and firms that add liquidity in Penny options with a non-Priority Customer on the contra side are provided a \$0.25-\$0.48 rebate; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options are provided a \$0.29-\$0.38 rebate, transactions for the accounts of professional customers that add liquidity in Penny options are provided a \$0.25-\$0.48 rebate, and transactions for the account of firms and broker-dealers that add liquidity in Penny options are provided a \$0.25-\$0.46 rebate; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options are provided a \$0.20-\$0.48 rebate, and transactions for the accounts of professional customers that add liquidity in Penny options are provided a \$0.20-\$0.47 rebate; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>.

that add liquidity because it is comparable to the rebate provided by other exchanges for Customer transactions in Non-Penny options that add liquidity.²¹ The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of \$0.80 for orders for Non-Customer accounts in Non-Penny options that add liquidity because it is comparable to the rebate provided by other

²¹ For example, per the MIAX Pearl Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a \$0.85-\$1.04 rebate; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a \$0.85-\$1.05 rebate; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a \$0.80-\$1.10 rebate; see <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>. Lastly, per the NYSE Arca Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a \$0.75 rebate; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

exchanges for Non-Customer transactions in Non-Penny options that add liquidity.²² The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge fees of \$0.60 for routing in Penny options and \$1.20 for routing in Non-Penny options, because these routing fees are comparable to those charged by other exchanges for routing Penny and Non-Penny options to away exchanges.²³ Additionally, the Exchange believes these fees are equitable and not unfairly discriminatory because these fees will apply equally to all Options Members.

²² For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a \$0.30-\$0.85 rebate and transactions for the accounts of professional customers and firms that add liquidity in Non-Penny options are provided a \$0.30-\$0.85 rebate; see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf. Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a \$0.40-\$0.88 rebate, transactions for the accounts of professional customers that add liquidity in Non-Penny options are provided a \$0.65 rebate, transactions for the accounts of away market makers that add liquidity in Non-Penny options are provided a \$0.30-\$0.52 rebate, and transactions for the accounts of firms and broker-dealers that add liquidity in Non-Penny options are provided a \$0.30-\$0.82 rebate; see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a \$0.05-0.40 rebate and transactions for the accounts of professional customers that add liquidity in Non-Penny options are provided a \$0.75 rebate; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

²³ For example, per the NYSE Arca Options trading fee schedule on its public website, the fee for routing in Penny options is \$0.61 and the fee for routing in Non-Penny options is \$1.21; see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

Lastly, the Exchange believes that it is reasonable to add a definitions section to clarify the terms used in the Options Fee Schedule, because it will clearly set forth the terms used in the Transaction Fees portion of the Options Fee Schedule. The Exchange further believes the definition section is reasonable as other national securities exchanges include a definition section in their fee schedule.²⁴ The Exchange believes this section is equitable and not unfairly discriminatory because the definitions section (as part of the Options Fee Schedule) will be distributed to all Members so that all Members will have equal clarity on fees charged and rebates provided.

For the reasons discussed above, the Exchange submits that its proposed fee structure and changes to the Options Transaction Fee Schedule satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As a new entrant in the already highly competitive environment for options trading, the

²⁴ See supra note 11.

²⁵ 15 U.S.C. 78f(b)(4) and (5).

Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. MEMX Options proposes transaction fees, rebates, and routing fees that are comparable to transaction fees, rebates and routing fees assessed by other options exchanges. As a result, 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."²⁶

Intramarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees and rebates apply equally to all Options Members. The proposed pricing structure is intended to encourage participants to trade on MEMX Options by providing rebates that are comparable to those offered by other exchanges as well as providing competitive fees. The Exchange believes that the proposed rebates and fees will help to encourage Options Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed fees and rebates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Intermarket Competition

The Exchange does not believe that the proposed rule change will impose any

²⁶ See supra note 14.

burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to draw volume to the Exchange as it commences operations. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. Currently, no single registered options exchange has more than approximately 18% of the total market share of executed volume of listed options trading.²⁷ As a new exchange, the Exchange expects to face intense competition from existing exchanges. The proposed pricing structure is intended to encourage market participants to trade on the exchange by providing rebates and assessing fees that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also,

²⁷ Market share percentage calculated as of September 14, 2023. The Exchange receives and processes data made available through the consolidated data feeds (i.e., OPRA).

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.”²⁸ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁹ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 Act³⁰ and Rule 19b-4(f)(2)³¹ thereunder.

At any time within 60 days of the filing of the proposed rule change, the

²⁸ See supra note 14.

²⁹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

³¹ 17 CFR 240.19b-4(f)(2).

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-2023-24 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-2023-24. 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-2023-24 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.³²

Sherry R. Haywood,

Assistant Secretary.

³² 17 CFR 200.30-3(a)(12).

Exhibit 5

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

**MEMX Options Fee Schedule
(EFFECTIVE SEPTEMBER 20, 2023)**

Transaction Fees

MEMX Options Members are charged per contract fees or provided per contract rebates based on contracts executed within each of the Fee Code categories below.

| <u>Capacity</u> | <u>Penny (“P”)</u> | | <u>Non-Penny (“N”)</u> | |
|--------------------------------|--------------------|---------------------|------------------------|---------------------|
| | <u>Add (“D”)</u> | <u>Remove (“R”)</u> | <u>Add (“D”)</u> | <u>Remove (“R”)</u> |
| <u>Customer (“c”)</u> | <u>(\$0.49)</u> | <u>\$0.46</u> | <u>(\$1.04)</u> | <u>\$0.85</u> |
| <u>Market Maker (“m”)</u> | <u>(\$0.45)</u> | <u>\$0.50</u> | <u>(\$0.80)</u> | <u>\$1.10</u> |
| <u>Professional (“p”)</u> | | | | |
| <u>Firm (“f”)</u> | | | | |
| <u>Away Market Maker (“a”)</u> | | | | |
| <u>Broker-Dealer (“b”)</u> | | | | |

Routing Fees

The Routing Fee applies to orders routed to and executed on another exchange.

| | <u>Penny (“P”)</u> | <u>Non-Penny (“N”)</u> |
|--------------------------|--------------------|------------------------|
| <u>Routing Fee (“Z”)</u> | <u>\$0.60</u> | <u>\$1.20</u> |

Definitions

- All references to “per contract” mean “per contract executed.”
- Capitalized terms not defined herein shall have the meanings set forth in the MEMX Rulebook.
- “Penny Program Securities” are those issues quoted pursuant to Rule 21.5(d) of the MEMX Rulebook.
- “Away Market Maker” applies to any order for the account of a market maker on another options exchange.
- “Broker Dealer” applies to any order for the account of a broker dealer, including a foreign broker dealer.
- “Customer” applies to any order for the account of a Priority Customer. “Priority Customer” shall have the meaning set forth in Rule 16.1 of the MEMX Rulebook.
- “Firm” applies to any order for the proprietary account of an OCC clearing member.
- “Market Maker” applies to any order for the account of a registered Market Maker.
- “Professional” applies to any order for the account of a Professional.

* * * * *