

Filing by MEMX LLC

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

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"/>
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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)		
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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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.

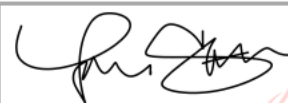
First Name *	Anders	Last Name *	Franzon
Title *	General Counsel		
E-mail *	afranzon@memx.com		
Telephone *	(551) 370-1003	Fax	

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	09/29/2023	(Title *)
By	Lauren Strathman (Name *)	Chief Compliance Officer

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: 2023.09.29 12:11:43 -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 *

Add Remove View

October 2023 Pricing Filing (Informatic

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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October 2023 Pricing Filing (Exhibit 1)

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

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October 2023 Pricing Filing (Exhibit 5)

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 (the “Fee Schedule”) applicable to Members³ of the Exchange’s equities trading platform (“MEMX Equities”) pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately.

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.

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

Ikee Gardner
Counsel
MEMX LLC

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

(551) 370-1003

(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 amend the Fee Schedule to add clarifying language to the MEMX Equities Liquidity Provision Tiers. The Exchange notes that certain criteria of Liquidity Provision Tier 4⁴ (namely, criteria (2)),⁵ will expire no later than October 31, 2023 and Liquidity Provision Tier 6⁶ will expire no later than November 30, 2023. As described below, the Exchange wishes to add language clarifying the applicability of other language on the Fee Schedule to such Tiers in light of their expiration. The Exchange does not propose to change the rebates offered to Members under Liquidity Provision Tier 4 or Liquidity Provision Tier 6, nor does the Exchange propose to change the criteria under such tiers. Rather, the Exchange wishes to make clear which months Members are eligible for such tiers.

⁴ The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 4” with a Fee Code of “B4”, “D4” or “J4”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

⁵ This criteria provides that a Member may qualify for Liquidity Provision Tier 4 by achieving a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal to or greater than 50% of the Member’s April 2023 Displayed ADAV of the TCV. As set forth on the Fee Schedule, “Displayed ADAV” means ADAV with respect to displayed orders. “ADAV” means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis. “Step-Up Displayed ADAV” means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV. “TCV” is total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See also the Exchange’s Fee Schedule (available at <https://info.memxtrading.com/fee-schedule/>).

⁶ The pricing for Liquidity Provision Tier 6 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 6” with a Fee Code of “B6”, “D6” or “J6”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

The Liquidity Provision Tiers section of the Fee Schedule contains the following language in the first footnote (denoted by “*”): “Members that qualify for Tier 4, 5, or 6 based on activity in a given month will also receive the associated Tier 4, 5, or 6 rebate during the following month.” The second footnote (denoted by “**”) of the Liquidity Provision Tiers section of the Fee Schedule provides that Criteria 2 of Liquidity Provision Tier 4 will expire no later than October 31, 2023. The third footnote (denoted by “***) of the Liquidity Provision Tiers section of the Fee Schedule provides that Liquidity Provision Tier 6 will expire no later than November 30, 2023. The Exchange now proposes to add clarifying language to the second and third footnote of the Liquidity Provision Tiers section, in order to make it more clear to Members that the months in which they are eligible to qualify for either (i) Liquidity Provision Tier 4 rebates based upon Criteria (2) of such tier, or (ii) Liquidity Provision Tier 6 rebates.

Clarify Liquidity Provision Tier 4 Criteria (2)

Currently, the second footnote of the Liquidity Provision Tiers section of the Fee Schedule states that “Criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023”. The Exchange wishes to clarify that, since Criteria (2) of Liquidity Provision 4 will expire on October 31, 2023, a Member’s activity during the month of October will not qualify such Member for the Liquidity Provision 4 rebate in the following month if the Member qualifies for the tier based on Criteria (2). Thus, a Member qualifying based on Criteria (2) will not qualify for the Liquidity Provision 4 rebate in November based on October activity, because Criteria (2) expires as of October 31. The Exchange now proposes to amend the second footnote of the Liquidity Provision Tiers section to add the following sentence: “Due to the expiration of Criteria (2), Members that qualify for Tier 4 based on activity meeting Criteria (2) in October 2023

will not receive the Liquidity Provision Tier 4 rebate during the following month.” The Exchange wishes to make clear that, while a Member whose October activity meets Tier 4 via Criteria (2) would be eligible to receive Tier 4 rebates in October, such Member is not eligible to qualify for the Tier 4 rebate in the following month (November 2023) based on October activity. As noted above, the Exchange does not propose to change the Tier 4 rebate, nor does the Exchange propose to modify the criteria to achieve such rebate. The Exchange believes that this proposed clarifying language will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to achieve certain volume thresholds on the Exchange on an ongoing basis.

Clarify Liquidity Provision Tier 6

Currently, the third footnote of the Liquidity Provision Tiers section of the Fee Schedule states that “Liquidity Provision Tier 6 will expire no later than November 30, 2023.” The Exchange wishes to clarify that, since Liquidity Provision 6 will expire on November 30, 2023, a Member’s activity during the month of November will not qualify such Member for the Liquidity Provision 6 rebate in the following month. Thus, a Member’s activity in November will not qualify the Member for the Liquidity Provision 6 rebate in December based on November activity, because Criteria (2) expires as of November 30. The Exchange now proposes to amend the third footnote to add the following sentence: “Due to the expiration of Tier 6, Members that qualify for Tier 6 based on activity in November 2023, will not receive the Liquidity Provision Tier 6 rebate during the following month.” The Exchange wishes to make clear that, while a Member who qualifies for Tier 6 rebates based upon November activity would be eligible to receive Tier 6 rebates in November 2023, such Member would not qualify for Tier 6

rebates in the following month (December 2023) based on November activity. As noted above, the Exchange does not propose to change the Tier 6 rebate, nor does the Exchange propose to modify the criteria to achieve such rebate. The Exchange believes that this proposed clarifying language will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to achieve certain volume thresholds on the Exchange on an ongoing basis.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, 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 permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that volume-based incentives (such as Liquidity Provision Tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discount that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes the proposed clarifying language to the second and third footnotes in the Liquidity Provision Tiers section of the Fee Schedule is reasonable

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4) and (5).

because it is designed to avoid confusion in reading the Fee Schedule. The Liquidity Provision Tiers continue to provide Members with incremental incentives to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to encourage Members to maintain or increase their order flow to the Exchange. The Exchange believes that the proposed clarifying language will provide Members with an added layer of certainty with respect to the expiring Tiers, namely Liquidity Provision Tier 4 Criteria (2) and Liquidity Provision Tier 6.

The Exchange also believes the proposed change is equitable and not unfairly discriminatory because it will apply equally to all Members and because the opportunity to qualify for Liquidity Provision Tiers is open to all members on an equal basis. Upon the expiration of Liquidity Provision Tier 4 Criteria (2) for activity on the Exchange after October 31, 2023, no Member will be able to qualify for Liquidity Provision Tier 4 based on Criteria (2). Similarly, upon the expiration of Liquidity Provision Tier 6 for activity on the Exchange after November 30, 2023, no Member will be able to qualify for Liquidity Provision Tier 6.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act⁹ 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.

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

⁹ 15 U.S.C. 78f(b)(4) and (5).

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. Rather, as described above, the proposed change is intended to provide clear and easy-to-understand language in its Fee Schedule related to the expiring Tiers, as described above. The Exchange believes that providing clarifying language enables Members to make better decisions about where to route their orders and would enable the Exchange to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

The Exchange does not believe the proposal would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange believes the proposal is not concerned with competitive issues, but rather relates to clarifying the applicability of certain expiring Tiers, as described above. Additionally, the Exchange believes the proposal would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the proposed changes will apply to all Members uniformly and in the same manner.

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,¹⁰ 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.¹¹

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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2023-27]

[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 implement the changes to the Fee Schedule pursuant to this proposal immediately. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to add clarifying language to the MEMX Equities Liquidity Provision Tiers. The Exchange notes that certain criteria of Liquidity Provision Tier 4⁴ (namely, criteria (2)),⁵ will expire no later than October 31, 2023 and Liquidity Provision Tier 6⁶ will expire no later than November 30, 2023. As described below, the Exchange wishes to add language clarifying the applicability of other language on the Fee Schedule to such Tiers in light of their expiration. The Exchange does not propose to change the rebates offered to Members under Liquidity Provision Tier 4 or Liquidity Provision Tier 6, nor does the Exchange propose to change the criteria under such tiers. Rather, the Exchange wishes to

⁴ The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 4" with a Fee Code of "B4", "D4" or "J4", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

⁵ This criteria provides that a Member may qualify for Liquidity Provision Tier 4 by achieving a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal to or greater than 50% of the Member's April 2023 Displayed ADAV of the TCV. As set forth on the Fee Schedule, "Displayed ADAV" means ADAV with respect to displayed orders. "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis. "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV. "TCV" is total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See also the Exchange's Fee Schedule (available at <https://info.memxtrading.com/fee-schedule/>).

⁶ The pricing for Liquidity Provision Tier 6 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 6" with a Fee Code of "B6", "D6" or "J6", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

make clear which months Members are eligible for such tiers.

The Liquidity Provision Tiers section of the Fee Schedule contains the following language in the first footnote (denoted by “*”): “Members that qualify for Tier 4, 5, or 6 based on activity in a given month will also receive the associated Tier 4, 5, or 6 rebate during the following month.” The second footnote (denoted by “**”) of the Liquidity Provision Tiers section of the Fee Schedule provides that Criteria 2 of Liquidity Provision Tier 4 will expire no later than October 31, 2023. The third footnote (denoted by “***) of the Liquidity Provision Tiers section of the Fee Schedule provides that Liquidity Provision Tier 6 will expire no later than November 30, 2023. The Exchange now proposes to add clarifying language to the second and third footnote of the Liquidity Provision Tiers section, in order to make it more clear to Members that the months in which they are eligible to qualify for either (i) Liquidity Provision Tier 4 rebates based upon Criteria (2) of such tier, or (ii) Liquidity Provision Tier 6 rebates.

Clarify Liquidity Provision Tier 4 Criteria (2)

Currently, the second footnote of the Liquidity Provision Tiers section of the Fee Schedule states that “Criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023”. The Exchange wishes to clarify that, since Criteria (2) of Liquidity Provision 4 will expire on October 31, 2023, a Member’s activity during the month of October will not qualify such Member for the Liquidity Provision 4 rebate in the following month if the Member qualifies for the tier based on Criteria (2). Thus, a Member qualifying based on Criteria (2) will not qualify for the Liquidity Provision 4 rebate in November based on October activity, because Criteria (2) expires as of October 31. The Exchange now proposes to amend the second footnote of the Liquidity Provision

Tiers section to add the following sentence: “Due to the expiration of Criteria (2), Members that qualify for Tier 4 based on activity meeting Criteria (2) in October 2023 will not receive the Liquidity Provision Tier 4 rebate during the following month.” The Exchange wishes to make clear that, while a Member whose October activity meets Tier 4 via Criteria (2) would be eligible to receive Tier 4 rebates in October, such Member is not eligible to qualify for the Tier 4 rebate in the following month (November 2023) based on October activity. As noted above, the Exchange does not propose to change the Tier 4 rebate, nor does the Exchange propose to modify the criteria to achieve such rebate. The Exchange believes that this proposed clarifying language will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to achieve certain volume thresholds on the Exchange on an ongoing basis.

Clarify Liquidity Provision Tier 6

Currently, the third footnote of the Liquidity Provision Tiers section of the Fee Schedule states that “Liquidity Provision Tier 6 will expire no later than November 30, 2023.” The Exchange wishes to clarify that, since Liquidity Provision 6 will expire on November 30, 2023, a Member’s activity during the month of November will not qualify such Member for the Liquidity Provision 6 rebate in the following month. Thus, a Member’s activity in November will not qualify the Member for the Liquidity Provision 6 rebate in December based on November activity, because Criteria (2) expires as of November 30. The Exchange now proposes to amend the third footnote to add the following sentence: “Due to the expiration of Tier 6, Members that qualify for Tier 6 based on activity in November 2023, will not receive the Liquidity Provision Tier 6

rebate during the following month.” The Exchange wishes to make clear that, while a Member who qualifies for Tier 6 rebates based upon November activity would be eligible to receive Tier 6 rebates in November 2023, such Member would not qualify for Tier 6 rebates in the following month (December 2023) based on November activity. As noted above, the Exchange does not propose to change the Tier 6 rebate, nor does the Exchange propose to modify the criteria to achieve such rebate. The Exchange believes that this proposed clarifying language will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to achieve certain volume thresholds on the Exchange on an ongoing basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, 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 permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that volume-based incentives (such as Liquidity Provision Tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discount that are reasonably related to the value to an exchange’s market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4) and (5).

the introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes the proposed clarifying language to the second and third footnotes in the Liquidity Provision Tiers section of the Fee Schedule is reasonable because it is designed to avoid confusion in reading the Fee Schedule. The Liquidity Provision Tiers continue to provide Members with incremental incentives to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to encourage Members to maintain or increase their order flow to the Exchange. The Exchange believes that the proposed clarifying language will provide Members with an added layer of certainty with respect to the expiring Tiers, namely Liquidity Provision Tier 4 Criteria (2) and Liquidity Provision Tier 6.

The Exchange also believes the proposed change is equitable and not unfairly discriminatory because it will apply equally to all Members and because the opportunity to qualify for Liquidity Provision Tiers is open to all members on an equal basis. Upon the expiration of Liquidity Provision Tier 4 Criteria (2) for activity on the Exchange after October 31, 2023, no Member will be able to qualify for Liquidity Provision Tier 4 based on Criteria (2). Similarly, upon the expiration of Liquidity Provision Tier 6 for activity on the Exchange after November 30, 2023, no Member will be able to qualify for Liquidity Provision Tier 6.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act⁹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and

⁹ 15 U.S.C. 78f(b)(4) and (5).

other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

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. Rather, as described above, the proposed change is intended to provide clear and easy-to-understand language in its Fee Schedule related to the expiring Tiers, as described above. The Exchange believes that providing clarifying language enables Members to make better decisions about where to route their orders and would enable the Exchange to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

The Exchange does not believe the proposal would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange believes the proposal is not concerned with competitive issues, but rather relates to clarifying the applicability of certain expiring Tiers, as described above.

Additionally, the Exchange believes the proposal would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the proposed changes will apply to all Members uniformly and in the same manner.

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 Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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-2023-27 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-2023-27. This file

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2023-27 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.¹²

¹² 17 CFR 200.30-3(a)(12).

Sherry R. Haywood,

Assistant Secretary.

Exhibit 5

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

MEMX Equities Fee Schedule
(EFFECTIVE OCTOBER 1[SEPTEMBER 28], 2023)

* * * * *

Liquidity Provision Tiers

Tier	Rebate Per Share	Required Criteria
Tier 1	\$(0.0033)	Member has an ADAV (excluding Retail Orders) \geq 0.45% of the TCV
Tier 2	\$(0.00325)	Member has (1) an ADAV \geq 0.25% of the TCV; and (2) a Non-Displayed ADAV \geq 4,000,000 shares
Tier 3	\$(0.0031)	Member has an ADAV \geq 0.20% of the TCV
Tier 4*	\$(0.0029)	Member has (1) an ADAV \geq 0.15% of the TCV; or (2) a Displayed ADAV \geq 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 \geq 50% of the Member's April 2023 Displayed ADAV of the TCV**
Tier 5*	\$(0.0027)	Member has an ADAV \geq 0.075% of the TCV
Tier 6*	\$(0.0024)	Member has a Displayed ADAV \geq 0.007% of the TCV and has a Step-Up Displayed ADAV of the TCV from May 2023 \geq 50% of the Member's May 2023 Displayed ADAV of the TCV***

* Members that qualify for Tier 4, 5, or 6 based on activity in a given month will also receive the associated Tier 4, 5, or 6 rebate during the following month.

** Criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023. Due to the expiration of Criteria (2), Members that qualify for Tier 4 based on activity meeting Criteria (2) in October 2023, will not receive the Liquidity Provision Tier 4 rebate during the following month.

*** Liquidity Provision Tier 6 will expire no later than November 30, 2023. Due to the expiration of Tier 6, Members that qualify for Tier 6 based on activity in November 2023, will not receive the Liquidity Provision Tier 6 rebate during the following month.

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