

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Exchange’s fee schedule (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to 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:

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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: (i) extend the waiver ("Membership Fee Waiver") of membership fees ("Membership Fees") which is currently in place for all new Members³ of the Exchange, for an additional month beyond the program's current expiration on January 31, 2024; and (ii) extend the waiver of Connectivity and Application Session Fees solely related to participation on the Exchange's platform for trading equity options on MEMX Options ("Options Connectivity Fee Waiver"), which is currently in place for all new Members and non-Members⁴ of the Exchange, for an additional month beyond the program's current expiration on January 31, 2024.⁵ The Exchange will continue to implement both the Membership Fee Waiver (as defined above) for all new Members who join the Exchange and the Options Connectivity Fee Waiver (as defined above) for all Members and non-Members of the Exchange prior to and including February 29, 2024. The Exchange notes that the proposed change does not amend any existing fee or rebate for equities or options transactions, market data or connectivity fees. The sole change proposed herein is to extend the timeframe during which the Exchange will waive Membership Fees and Options Connectivity Fees for new Members and non-Members of the Exchange.

³ See Exchange Rule 1.5(p).

⁴ Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services to Members, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

⁵ The Exchange initially filed the proposed changes on January 31, 2024 (SR-MEMX-2024-03). On February 8, 2024, the Exchange withdrew that filing and submitted this filing.

Membership Fee Waiver

Currently, MEMX applies a Membership Fee Waiver to all new Members of the Exchange, which is set to expire on January 31, 2024. Under the current Membership Fee Waiver, new Members who join the Exchange after January 31, 2024, would be assessed Membership Fees of \$200 per month to maintain active membership, and new Members whose Membership Fees were waived during the Waiver Period would be assessed Membership Fees of \$200 per month beginning February 1, 2024. In addition, in September of 2023 the Exchange adopted specific fees applicable to participation on the Exchange's platform for trading equity options ("MEMX Options").⁶ The current Membership Fee Waiver has also been applied to new Members of MEMX Options, and thus such fees have not been imposed on such Members to date.

The Exchange believes that the existing Membership Fee Waiver has been effective in incentivizing options market participants to join MEMX Options. MEMX Options launched in September of 2023, and has been conducting a staged rollout of options available for trading on the Exchange since that time. The Exchange believes that its rollout will be complete in February of 2024 and would like to extend the Membership Fee Waiver until after its rollout is complete in the event there are options firms that are waiting to join the Exchange until after such rollout is complete. In addition, the Exchange believes the Membership Fee Waiver is a proper incentive for new participants on MEMX Options to continue to increase their participation as they become accustomed to the new trading platform.

⁶ See Securities Exchange Act Release No. 98648 (September 29, 2023), 88 FR 68762 (October 4, 2023) (SR-MEMX-2023-26).

Accordingly, the Exchange proposes to extend the time period of the Membership Fee Waiver to expire on February 29, 2024. The Exchange proposes to continue to waive Membership Fees for all new Members who join the exchange on or before February 29, 2024. Under the proposed Membership Fee Waiver, new Members who join the Exchange after February 29, 2024, will be assessed Membership Fees to maintain active membership and if applicable, Members who participate on MEMX Options will be assessed the specific Additional Fees⁷ applicable to such participation. Similarly, new Members whose Membership Fees have been waived since joining the Exchange will be assessed Membership Fees, including Additional Fees applicable to participation on MEMX Options, if applicable, beginning March 1, 2024. In addition, new Members of MEMX Options who join after February 29, 2024, will be assessed Membership Fees of \$200 per month to maintain active membership, and new Members whose Membership Fees were waived will be assessed Membership Fees of \$200 per month beginning March 1, 2024. Specifically, the Exchange is proposing to amend the Exchange's Membership Fee Schedule to provide that Membership Fees will be waived for new Members of the Exchange until March 1, 2024.

Options Connectivity Fee Waiver

Currently, MEMX applies an Options Connectivity Fee Waiver to all Members and non-Members of the Exchange, which is set to expire on January 31, 2024. Under the current Options Connectivity Fee Waiver, fees charged to Members and Non-

⁷ Additional Fees applicable to Options Members, per the Exchange's Fee Schedule, include monthly fees specifically applicable to Options Order Entry Firms or Options Market Makers, both as defined in the Fee Schedule.

Members for physical connectivity to MEMX Options⁸ and for application sessions (otherwise known as “logical ports”) that a Member utilizes in connection with their participation on MEMX Options would not be assessed until February 1, 2024. Specifically, the physical connectivity fees are \$6,000 per month for a physical connection in the data center where the Exchange primarily operates under normal market conditions (“Primary Data Center”), and \$3,000 per month for a physical connection at the geographically diverse data center, which is operated for backup and disaster recovery purposes (“Secondary Data Center”), and the application session fees are \$450 per month for an application session used for order entry (“Order Entry Port”) and \$450 per month for an application session for receipt of drop copies (“Drop Copy Port”), to the extent such ports are in the Primary Data Center.⁹

The Exchange believes that the existing Options Connectivity Waiver has been effective in incentivizing options market participants to join MEMX Options. As noted above, MEMX Options launched in September of 2023, and has been conducting a staged rollout of options available for trading on the Exchange since that time. The Exchange believes that its rollout will be complete in February of 2024 and would like to extend the Options Connectivity Fee Waiver until after its rollout is complete in the event there are options firms that are waiting to join the Exchange until after such rollout is complete. In addition, the Exchange believes the Options Connectivity Fee Waiver is a

⁸ Physical connections may be used to access both MEMX equities and options platforms, as such, the Exchange internally verifies whether new connections are being used solely for Options connections in order to determine whether such connection qualifies for the Options Connectivity Fee Waiver.

⁹ See Securities Exchange Act Release No. 99275 (January 4, 2024), 89 FR 1606 (January 10, 2024) (SR-MEMX-2023-39).

proper incentive for new participants on MEMX Options to continue to increase their participation as they become accustomed to the new trading platform.

Accordingly, the Exchange proposes to extend the time period of the Options Connectivity Fee Waiver to expire on February 29, 2024. The Exchange proposes to continue to waive Options Connectivity Fees for all Members and non-Members of exchange on or before February 29, 2024. Under the proposed Membership Fee Waiver, applicable Options Connectivity Fees of \$6,000 per month for each physical connection in the Primary Data Center and \$3,000 per month for each physical connection in the Secondary Center, and \$450 per month for each Order Entry Port and Drop Copy Port in the Exchange's Primary Data Center will be assessed to Members and non-Members beginning March 1, 2024. Specifically, the Exchange is proposing to amend the Exchange's Connectivity Fee Schedule to provide that all Connectivity and Application Sessions fees solely related to participation on MEMX Options shall be waived until March 1, 2024.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes it is reasonable to extend the timeframe of the Membership Fee Waiver for new Members of the Exchange, primarily to continue to provide an incentive for options trading firms to continue to apply for Exchange membership during the current phase of the rollout of MEMX Options. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. Extending the timeframe of the Membership Fee Waiver will continue to encourage additional liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange. Although the proposed extension of the Membership Fee Waiver timeframe is intended primarily to encourage new participants to join the Exchange in order to participate on the MEMX Options market and the Exchange believes the participants that will benefit from this waiver are firms that will do so, the Exchange also believes that it is reasonable to continue applying the Membership Fee Waiver broadly to all new participants on the Exchange during the timeframe extension, including firms that would trade only on the Exchange's market for equity securities or on both the Exchange's market for equity securities and MEMX Options.

In addition, the Exchange believes that the proposed extension of the Membership Fee Waiver is equitable and not unfairly discriminatory in that it will apply uniformly to all new Members of the Exchange. Further, the Exchange believes that the proposed extension of the waiver is reasonable, equitable and not unfairly discriminatory to current Members of the Exchange because the majority of the Exchange's existing Members

joined at a time when the Exchange did not impose membership fees (also to incentivize such participants to join), and thus have already received this benefit.

The Exchange believes it is reasonable to extend the timeframe of the Options Connectivity Fee Waiver for new and existing Members and non-Members of the Exchange, primarily to continue to provide an incentive for options trading firms to continue to apply for Exchange membership during the current phase of the rollout of MEMX Options. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. Extending the timeframe of the Options Connectivity Fee Waiver will continue to encourage additional liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange.

In addition, the Exchange believes that the proposed extension of the Options Connectivity Fee Waiver is equitable and not unfairly discriminatory in that it will apply uniformly to all Members and non-Members of the Exchange.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage market participants who have not already done so to join the Exchange. As a result, if such participants do join the Exchange and route their orders to the Exchange or support other Members that route orders (i.e., clearing firms) the Exchange believes the proposal would further enhance its competitiveness as a market.

Encouraging additional participants to join the Exchange will enable a greater number of participants to participate on MEMX Options during the continued rollout of the platform. Further, the Exchange believes that by continuing to make the Membership Fee Waiver applicable to both the Exchange's options platform and the Exchange's equity platform for an extended time period, the proposal will enhance the competitiveness of both platforms. Attracting a greater number of participants will foster greater competition on the Exchange, particularly in the case of MEMX Options which is a quote-driven market. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹²

Intramarket Competition

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

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize new participants to join the Exchange and the majority of the Exchange's current members

¹² Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

joined at a time when the Exchange did not impose membership fees (also to incentivize such participants to join), and thus have already received this benefit. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. The proposal will be of particular importance in encouraging additional liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange. Similarly, the Exchange believes that extending the timeframe of the Options Connectivity Fee Waiver will continue to provide an incentive for options trading firms to continue to participate on the Exchange during the current phase of the rollout of MEMX Options. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As described above, the proposed extension of the Membership Fee Waiver and Options Connectivity Fee Waiver timeframes will incent market participants to join the Exchange during the extended Waiver periods. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other options exchanges during the continued rollout of MEMX Options. In addition, as noted above, the Exchange has intentionally proposed to apply the Membership Fee Waiver broadly so that it continues to be applicable to new Members that will participate on the Exchange's market for equity securities or that will participate on such market as well as MEMX Options, and thus, the proposal may also

better enable the Exchange to compete with other options exchanges and equities exchanges.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹³ 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.¹⁴

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2024-05]

[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

(a) The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to: (i) extend the waiver ("Membership Fee Waiver") of membership fees ("Membership Fees") which is currently in place for all new Members³ of the Exchange, for an additional month beyond the program's current expiration on January 31, 2024; and (ii) extend the waiver of Connectivity and Application Session Fees solely related to participation on the Exchange's platform for trading equity options on MEMX Options ("Options Connectivity Fee Waiver"), which is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

currently in place for all new Members and non-Members⁴ of the Exchange, for an additional month beyond the program's current expiration on January 31, 2024. The Exchange will continue to implement both the Membership Fee Waiver (as defined above) for all new Members who join the Exchange and the Options Connectivity Fee Waiver (as defined above) for all Members and non-Members of the Exchange prior to and including February 29, 2024. 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 amend the Fee Schedule to: (i) extend the waiver ("Membership Fee Waiver") of membership fees ("Membership Fees") which is currently in place for all new Members⁵ of the Exchange, for an additional month beyond the program's current expiration on January 31, 2024; and (ii) extend the

⁴ Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services to Members, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

⁵ See Exchange Rule 1.5(p).

waiver of Connectivity and Application Session Fees solely related to participation on the Exchange's platform for trading equity options on MEMX Options ("Options Connectivity Fee Waiver"), which is currently in place for all new Members and non-Members⁶ of the Exchange, for an additional month beyond the program's current expiration on January 31, 2024.⁷ The Exchange will continue to implement both the Membership Fee Waiver (as defined above) for all new Members who join the Exchange and the Options Connectivity Fee Waiver (as defined above) for all Members and non-Members of the Exchange prior to and including February 29, 2024. The Exchange notes that the proposed change does not amend any existing fee or rebate for equities or options transactions, market data or connectivity fees. The sole change proposed herein is to extend the timeframe during which the Exchange will waive Membership Fees and Options Connectivity Fees for new Members and non-Members of the Exchange.

Membership Fee Waiver

Currently, MEMX applies a Membership Fee Waiver to all new Members of the Exchange, which is set to expire on January 31, 2024. Under the current Membership Fee Waiver, new Members who join the Exchange after January 31, 2024, would be assessed Membership Fees of \$200 per month to maintain active membership, and new Members whose Membership Fees were waived during the Waiver Period would be assessed Membership Fees of \$200 per month beginning February 1, 2024. In addition,

⁶ Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services to Members, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

⁷ The Exchange initially filed the proposed changes on January 31, 2024 (SR-MEMX-2024-03). On February 8, 2024, the Exchange withdrew that filing and submitted this filing.

in September of 2023 the Exchange adopted specific fees applicable to participation on the Exchange's platform for trading equity options ("MEMX Options").⁸ The current Membership Fee Waiver has also been applied to new Members of MEMX Options, and thus such fees have not been imposed on such Members to date.

The Exchange believes that the existing Membership Fee Waiver has been effective in incentivizing options market participants to join MEMX Options. MEMX Options launched in September of 2023, and has been conducting a staged rollout of options available for trading on the Exchange since that time. The Exchange believes that its rollout will be complete in February of 2024 and would like to extend the Membership Fee Waiver until after its rollout is complete in the event there are options firms that are waiting to join the Exchange until after such rollout is complete. In addition, the Exchange believes the Membership Fee Waiver is a proper incentive for new participants on MEMX Options to continue to increase their participation as they become accustomed to the new trading platform.

Accordingly, the Exchange proposes to extend the time period of the Membership Fee Waiver to expire on February 29, 2024. The Exchange proposes to continue to waive Membership Fees for all new Members who join the exchange on or before February 29, 2024. Under the proposed Membership Fee Waiver, new Members who join the Exchange after February 29, 2024, will be assessed Membership Fees to maintain active membership and if applicable, Members who participate on MEMX Options will be assessed the specific Additional Fees⁹ applicable to such participation. Similarly, new

⁸ See Securities Exchange Act Release No. 98648 (September 29, 2023), 88 FR 68762 (October 4, 2023) (SR-MEMX-2023-26).

⁹ Additional Fees applicable to Options Members, per the Exchange's Fee Schedule, include

Members whose Membership Fees have been waived since joining the Exchange will be assessed Membership Fees, including Additional Fees applicable to participation on MEMX Options, if applicable, beginning March 1, 2024. In addition, new Members of MEMX Options who join after February 29, 2024, will be assessed Membership Fees of \$200 per month to maintain active membership, and new Members whose Membership Fees were waived will be assessed Membership Fees of \$200 per month beginning March 1, 2024. Specifically, the Exchange is proposing to amend the Exchange's Membership Fee Schedule to provide that Membership Fees will be waived for new Members of the Exchange until March 1, 2024.

Options Connectivity Fee Waiver

Currently, MEMX applies an Options Connectivity Fee Waiver to all Members and non-Members of the Exchange, which is set to expire on January 31, 2024. Under the current Options Connectivity Fee Waiver, fees charged to Members and Non-Members for physical connectivity to MEMX Options¹⁰ and for application sessions (otherwise known as "logical ports") that a Member utilizes in connection with their participation on MEMX Options would not be assessed until February 1, 2024. Specifically, the physical connectivity fees are \$6,000 per month for a physical connection in the data center where the Exchange primarily operates under normal market conditions ("Primary Data Center"), and \$3,000 per month for a physical connection at the geographically diverse data center, which is operated for backup and

monthly fees specifically applicable to Options Order Entry Firms or Options Market Makers, both as defined in the Fee Schedule.

¹⁰ Physical connections may be used to access both MEMX equities and options platforms, as such, the Exchange internally verifies whether new connections are being used solely for Options connections in order to determine whether such connection qualifies for the Options Connectivity Fee Waiver.

disaster recovery purposes (“Secondary Data Center”), and the application session fees are \$450 per month for an application session used for order entry (“Order Entry Port”) and \$450 per month for an application session for receipt of drop copies (“Drop Copy Port”), to the extent such ports are in the Primary Data Center.¹¹

The Exchange believes that the existing Options Connectivity Waiver has been effective in incentivizing options market participants to join MEMX Options. As noted above, MEMX Options launched in September of 2023, and has been conducting a staged rollout of options available for trading on the Exchange since that time. The Exchange believes that its rollout will be complete in February of 2024 and would like to extend the Options Connectivity Fee Waiver until after its rollout is complete in the event there are options firms that are waiting to join the Exchange until after such rollout is complete. In addition, the Exchange believes the Options Connectivity Fee Waiver is a proper incentive for new participants on MEMX Options to continue to increase their participation as they become accustomed to the new trading platform.

Accordingly, the Exchange proposes to extend the time period of the Options Connectivity Fee Waiver to expire on February 29, 2024. The Exchange proposes to continue to waive Options Connectivity Fees for all Members and non-Members of exchange on or before February 29, 2024. Under the proposed Membership Fee Waiver, applicable Options Connectivity Fees of \$6,000 per month for each physical connection in the Primary Data Center and \$3,000 per month for each physical connection in the Secondary Center, and \$450 per month for each Order Entry Port and Drop Copy Port in the Exchange’s Primary Data Center will be assessed to Members and non-Members

¹¹ See Securities Exchange Act Release No. 99275 (January 4, 2024), 89 FR 1606 (January 10, 2024) (SR-MEMX-2023-39).

beginning March 1, 2024. Specifically, the Exchange is proposing to amend the Exchange's Connectivity Fee Schedule to provide that all Connectivity and Application Sessions fees solely related to participation on MEMX Options shall be waived until March 1, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and furthers the objectives of 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 members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable to extend the timeframe of the Membership Fee Waiver for new Members of the Exchange, primarily to continue to provide an incentive for options trading firms to continue to apply for Exchange membership during the current phase of the rollout of MEMX Options. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. Extending the timeframe of the Membership Fee Waiver will continue to encourage additional liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange. Although the proposed extension of the Membership Fee Waiver timeframe is intended primarily to encourage new

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4) and (5).

participants to join the Exchange in order to participate on the MEMX Options market and the Exchange believes the participants that will benefit from this waiver are firms that will do so, the Exchange also believes that it is reasonable to continue applying the Membership Fee Waiver broadly to all new participants on the Exchange during the timeframe extension, including firms that would trade only on the Exchange's market for equity securities or on both the Exchange's market for equity securities and MEMX Options.

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

The Exchange believes it is reasonable to extend the timeframe of the Options Connectivity Fee Waiver for new and existing Members and non-Members of the Exchange, primarily to continue to provide an incentive for options trading firms to continue to apply for Exchange membership during the current phase of the rollout of MEMX Options. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. Extending the timeframe of the Options Connectivity Fee Waiver will continue to encourage additional liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the

Exchange.

In addition, the Exchange believes that the proposed extension of the Options Connectivity Fee Waiver is equitable and not unfairly discriminatory in that it will apply uniformly to all Members and non-Members of the Exchange.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage market participants who have not already done so to join the Exchange. As a result, if such participants do join the Exchange and route their orders to the Exchange or support other Members that route orders (i.e., clearing firms) the Exchange believes the proposal would further enhance its competitiveness as a market. Encouraging additional participants to join the Exchange will enable a greater number of participants to participate on MEMX Options during the continued rollout of the platform. Further, the Exchange believes that by continuing to make the Membership Fee Waiver applicable to both the Exchange's options platform and the Exchange's equity platform for an extended time period, the proposal will enhance the competitiveness of both platforms. Attracting a greater number of participants will foster greater competition on the Exchange, particularly in the case of MEMX Options which is a quote-driven market. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types

of orders, large and small.”¹⁴

Intramarket Competition

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

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize new participants to join the Exchange and the majority of the Exchange’s current members joined at a time when the Exchange did not impose membership fees (also to incentivize such participants to join), and thus have already received this benefit. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. The proposal will be of particular importance in encouraging additional liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange. Similarly, the Exchange believes that extending the timeframe of the Options Connectivity Fee Waiver will continue to provide an incentive for options trading firms to continue to participate on the Exchange during the current phase of the rollout of MEMX Options. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not

¹⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As described above, the proposed extension of the Membership Fee Waiver and Options Connectivity Fee Waiver timeframes will incent market participants to join the Exchange during the extended Waiver periods. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other options exchanges during the continued rollout of MEMX Options. In addition, as noted above, the Exchange has intentionally proposed to apply the Membership Fee Waiver broadly so that it continues to be applicable to new Members that will participate on the Exchange's market for equity securities or that will participate on such market as well as MEMX Options, and thus, the proposal may also better enable the Exchange to compete with other options exchanges and equities exchanges.

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 Act¹⁵ and Rule 19b-4(f)(2)¹⁶ 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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-2024-05 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-2024-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet 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-2024-05 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.¹⁷

Sherry R. Haywood,

Assistant Secretary.

¹⁷

17 CFR 200.30-3(a)(12).

Exhibit 5

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

MEMX Membership Fee Schedule
(EFFECTIVE [DECEMBER 28]FEBRUARY 8, 2024[3])

MEMX charges the following monthly fees to maintain active membership.

Fees applicable to all Members

Member Type	Monthly Fee
All Members	\$200

Additional Fees applicable to Options Trading Members

Member Type	Monthly Fee
Options Order Entry Firm	\$1,000
Options Market Maker	\$7,000

- The MEMX membership fee is assessed to each active Member at the close of business on the first day of each month.
- If a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to such fee being assessed and the Member does not utilize the facilities of the Exchange while such voluntary termination of rights is pending, then the Member will not be obligated to pay the monthly membership fee.
- MEMX does not return pro-rated fees if a membership is not active for an entire month.
- Membership fees for new members of the Exchange are waived until [February]March 1, 2024.

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MEMX Connectivity Fee Schedule
(EFFECTIVE [DECEMBER 21, 2023]FEBRUARY 8, 2024)

Physical Connectivity

Product	Location	Fee
xNet Physical Connection	Primary Data Center	\$6,000
xNet Physical Connection	Secondary Data Center	\$3,000

Application Sessions

Product	Location	Fee
Order Entry Port	Primary Data Center	\$450
Drop Copy Port	Primary Data Center	\$450

Notes:

- A Physical Connection can be used to access MEMX Equities and/or MEMX Options.
- An Application Session can only be used to access one MEMX trading platform, i.e., MEMX Equities or MEMX Options.
- Fees for Connectivity and Application Sessions are assessed based on each active product at the close of business on the first day of each month. If a product is cancelled by a Member submission of a written request or via the MEMX User Portal prior to such fee being assessed then the Member will not be obligated to pay the applicable product fee. MEMX does not return pro-rated fees if a product is not used for an entire month.
- MEMX does not charge for: (1) Order Entry Ports or Drop Copy Ports in the Secondary Data Center, or (2) any Test Facility Ports or MEMOIR Gap Fill Ports.
- All Connectivity and Application Sessions fees solely related to participation on MEMX Options shall be waived until [February]March 1, 2024.

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