

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 implement an equity rights program.

**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	05/22/2024	(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: 2024.05.22 09:00:59 -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

3rd warrants re-file (Information).docx

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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3rd Warrants re-file (Exhibit 1).docx

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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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 “Exchange Act” or “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> MEMX LLC (“MEMX” or the “Exchange”) is filing with the U.S. Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to implement an equity rights program (the “Warrants Program” or the “Jump Ball Program”) related to fees charged for the trading of options on the Exchange’s options platform (“MEMX Options”).

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of MEMX Holdings LLC (“Holdco”) on June 8, 2023. Further details of the Warrants Program were approved by the Board of Directors of Holdco on April 19, 2024. Holdco is the parent company of the Exchange and directly or indirectly owns all of the limited liability company membership interests in the Exchange. The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Exchange 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4

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 Exchange proposes to implement the Warrants Program pursuant to which warrants representing the right to acquire equity in the Exchange's parent holding company upon vesting would be issued to participants on MEMX Options who also participate in the Warrants Program ("Participants"), in exchange for payment of the initial prepayment fee ("Prepayment Fee") and the achievement of certain liquidity volume thresholds on the Exchange's options platform ("MEMX Options") over a 24-month period (the "Term"). The Warrants Program commenced on May 1, 2024 (the "Effective Date") and will end on May 1, 2026.<sup>3</sup> The purpose of the Warrants Program is to promote the long-term interests of MEMX by providing incentives designed to encourage MEMX market participants to contribute to the growth and success of MEMX Options via actively providing and taking liquidity on the MEMX Options market. Participants in the Warrants Program will be able to vest their warrants through the

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<sup>3</sup> The Exchange initially filed the proposal to implement the Warrants Program on April 25, 2024 (SR-MEMX-2024-15) (the "Initial Proposal"). On May 10, 2024, the Exchange withdrew the Initial Proposal and replaced the proposal with SR-MEMX-2024-18 (the "Second Proposal"). The Exchange recently withdrew the Second Proposal and is replacing it with the current filing (SR-MEMX-2024-21).

process described in the following paragraphs and consequently will have the opportunity to share in the benefits of MEMX's increased enterprise value.

Participants who executed a Purchase Agreement and who provide a Prepayment Fee in the amount of \$500,000 in advance of April 30, 2024 (the "Commitment Deadline") or such later date specified by the Exchange were issued a "ticket" indicating that the Participant has been accepted into the Warrants Program. Participants may purchase more than one ticket. The total number of tickets available for purchase is capped at 25 tickets. Upon making the Prepayment Fee corresponding to the number of tickets purchased, a Participant will be able to apply the Prepayment Fee to various fees for trading on MEMX Options, including MEMX Options connectivity fees,<sup>4</sup> MEMX Options market data fees,<sup>5</sup> MEMX Options membership fees,<sup>6</sup> and MEMX Options transaction fees.<sup>7</sup> The Prepayment Fee does not expire and a Participant may apply the Prepayment Fee to any of the above listed fees at any time. A Participant will obtain 279,600 unvested warrants per ticket that will vest on an equalized basis each calendar month during the Term (each such calendar month during the Term of the Warrants Program, a "Measurement Period") if such Participant satisfies certain volume commitments on MEMX Options, as described below.

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<sup>4</sup> See the MEMX Connectivity Fee Schedule, available at <https://info.memxtrading.com/connectivity-fees/>.

<sup>5</sup> See the MEMX Options Fee Schedule, available at <https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/>.

<sup>6</sup> See the MEMX Membership Fee Schedule, available at <https://info.memxtrading.com/membership-fees/>.

<sup>7</sup> See the MEMX Options Fee Schedule, available at <https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/>.

Participants shall vest warrants on a pro-rata basis based upon meeting or outperforming volume commitments during each Measurement Period, as is discussed below. The volume commitments may be met by trading activity in any listed equity option or exchange-traded fund option on MEMX Options.<sup>8</sup> Participants that trade options which are not in the Penny Program<sup>9</sup> (such options, “Non-Penny” options) will receive double credit for such Non-Penny activity for purposes of calculating the Participant’s performance during the Measurement Period. Each vested warrant entitles a Participant to purchase equity ownership of one Nonvoting Common Unit<sup>10</sup> of Holdco at a particular strike price. Only vested warrants are eligible to be exercised, and un-vested warrants are not exercisable. The total equity ownership of Holdco Units, including any purchased through the exercise of vested warrants, shall be subject to the ownership limitations of the Seventh Amended and Restated Limited Liability Company Agreement of MEMX Holdings LLC, as amended (the “Holdco LLC Agreement”).<sup>11</sup>

### **Volume Requirements**

The target performance (“Target Performance”) for any Participant is 25 basis points of Total Consolidated Volume<sup>12</sup> (“TCV”) on MEMX Options per Measurement Period, per ticket. Thus, if a Participant achieves the Target Performance during any

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<sup>8</sup> The Exchange does not currently list or trade index options.

<sup>9</sup> See Exchange Rule 21.5(d).

<sup>10</sup> “Nonvoting Common Units” is defined in Section 3.2(g)(iii) of the Seventh Amended and Restated Limited Liability Company Agreement of MEMX Holdings LLC.

<sup>11</sup> See, e.g., Section 3.5(a)(ii) of the Holdco LLC Agreement, which states that “[n]o Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Units constituting more than twenty percent (20%) of any class of Units.”

<sup>12</sup> Total Consolidated Volume is 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.

Measurement Period, the Participant's full allotment of unvested warrants for that Measurement Period will vest (i.e., 11,650 warrants per calendar month, per ticket). The Target Performance for any Participant is on a per ticket basis, thus, a Participant with two tickets has a Target Performance of 50 basis points of TCV per Measurement Period, a Participant with three tickets has a Target Performance of 75 basis points of TCV per Measurement Period, and so forth. During any Measurement Period, Participants that do not meet the Target Performance but meet certain minimum performance levels will have their warrants vest proportionally to their performance, as illustrated in the following table. If a Participant reaches a minimum percentage of the volume commitment set out in the second column of the below table (equivalent to the number of basis points set out in the third column of the below table), the Participant will earn a reduced number of warrants on a proportional basis applicable to such Measurement Period.

<b>Measurement Period</b>	<b>Performance Minimum Percentage</b>	<b>Performance Minimum Basis Points</b>
Month 1 through Month 3	40%	10 bps
Month 4 through Month 6	50%	12.5 bps
Month 7 through Month 24	60%	15 bps

For example, if a Participant with one ticket achieves 10 basis points of volume on MEMX Options in the month 1 Measurement Period, the Participant will vest 40% of their warrants for such month (4,660 vested warrants). As another example, if a Participant with two tickets achieves 13 basis points of volume on MEMX Options during the month 1 Measurement Period, the Participant will vest 26% of their warrants for such month (i.e., 13 basis points of the 50 basis point Target Performance based on

two tickets) on a proportional basis (6,058 vested warrants). However, if a Participant with any number of tickets achieves 8 basis points of volume on MEMX Options in the month 1 Measurement Period, the Participant will vest no warrants for such month.

If a Participant fails to meet the performance minimum for any Measurement Period corresponding to month 1 through month 11, such Participant will have the opportunity to vest their unvested warrants if such Participant over-performs in a subsequent Measurement Period that corresponds to month 2 through month 12. For example, if a Participant with one ticket achieves 25 basis points of volume on MEMX Options in month 1, 12.5 basis points in month 2, 37.5 basis points in month 3, and 25 basis points in months 4 through 12, such Participant can recover their un-vested 5,825 warrants from month 2 based on such Participant's activity in month 3. Using the same example, if the Participant achieves the same number of basis points noted in the above example in this paragraph for months 1, 2, and 4 through 12 but only achieves 31 basis points in month 3, such Participant can recover 2,796 of the un-vested 5,825 warrants from month 2, and would forfeit the remaining 3,029 warrants. Partial basis points and partial warrants achieved will be rounded according to standard rounding conventions (i.e., rounded up if equal to or greater than 0.5, rounded down if below 0.5). To again use the same example, if the Participant achieves the same number of basis points noted in the first example of this paragraph in months 1, 2, and 4 through 12 but only achieves 30.65 basis points in month 3, such Participant can recover 2,633 of the un-vested 5,825 warrants from month 2 (rounding up from 2,632.9 un-vested warrants), and would forfeit the remaining 3,192 warrants.

As another example, if a Participant with one ticket achieved 10 basis points of volume on MEMX Options in each of months 1, 2, and 3, 12.5 basis points in each of months 4, 5, and 6, 40 basis points in each of months 7, 8, and 9, and 37.5 basis points in each of months 10, 11, and 12, such Participant can recover 6,990 un-vested warrants from each of months 1, 2, and 3 and 5,825 un-vested warrants from each of months 4, 5, and 6, for a total of 38,445 warrants recovered. If the Participant in the example above had three tickets, the warrants would vest such that such participant would earn 4,660 warrants in each of months 1, 2, and 3, would earn 5,825 warrants in each of months 4, 5, and 6, would earn 18,640 warrants in each of months 7, 8, and 9, and would earn 17,475 warrants in each of months 10, 11, and 12, for a total of 139,800 warrants vested. Such participant would recover none of the 279,600 warrants forfeited for the year. Further, if a Participant with one ticket achieves 25 basis points of volume on MEMX Options in month 1, 12.5 basis points in each of months 2 through 4, 25 basis points in each of months 5 through 12, and 50 basis points in month 13, the Participant's over-performance in month 13 cannot be applied to vest units from under-performing activity in months 1-11.

If a Participant fails to meet the performance minimum for a Measurement Period corresponding to month 13 through month 23, such Participant will similarly have the opportunity to vest their unvested warrants if such Participant over-performs in a subsequent Measurement Period that corresponds to month 14 through month 24. For example, if a Participant achieves 15 basis points of volume on MEMX Options in month 13, 25 basis points in month 14, 45 basis points in month 15, and 25 basis points in each of months 16 through 24, such Participant can recover their un-vested 4,660 warrants

from month 13 based on such Participant's activity in month 15. As a further example, if a Participant achieves the same number of basis points noted in the above example in this paragraph for months 13, 14, and 16 through 24, but achieves 27.14 basis points in month 15, such Participant can recover 997 of the un-vested 4,660 warrants from month 13 (rounded down from 997.24 un-vested warrants), and would forfeit the remaining 3,663 warrants.

### **Restrictions on Vesting**

Each vested warrant shall be exercisable from the time of vesting until the seventh anniversary of the first day of the first calendar month after the Effective Date. Vested warrants may be exercised when a Participant pays the exercise price of the warrant. Warrants have not been registered under the Securities Act of 1933. Each Participant will have a standard piggyback registration right to include the Nonvoting Common Units issuable upon exercise of the warrants should Holdco at a later date file a Registration Statement under the Securities Act of 1933. The Nonvoting Common Units may not be transferred except pursuant to an effective registration statement under the Securities Act of 1933 and such state securities laws, or an exemption from such registration thereunder, and are subject to transfer restrictions set forth in the Holdco LLC Agreement.<sup>13</sup> In the event of a Qualified Public Offering as defined in the Holdco LLC Agreement, the

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<sup>13</sup> See, e.g., Sections 10.3, 10.4, and 10.5 of the Holdco LLC Agreement. The Exchange notes that such Sections refer to Common Members throughout, rather than specifically referring to Nonvoting Common Units. Section 1.1 of the Holdco LLC Agreement defines a "Common Member" as a member in Holdco "holding Common Units in its capacity as such, together with its Affiliates that hold Common Units...." Accordingly, the term Common Member includes any Holdco member, and does not distinguish between Holdco members holding Voting Common Units and members holding Nonvoting Common Units. As such, the transfer restrictions noted in the Holdco LLC Agreement, which refer to Common Members, are applicable to Nonvoting Common Units.

Nonvoting Common Units are subject to the transfer restrictions in Section 10.3 of the Holdco LLC Agreement, and MEMX shall have right of first offer on the transfer of such Nonvoting Common Units. In the event that Holdco sells Nonvoting Common Units to the public in an initial public offering pursuant to a registration statement declared effective by the SEC, then Holdco will give any Participant who holds warrants notice of the date when the initial public offering will take place. In such case, the fair market value of the Nonvoting Common Units will be as specified in the final prospectus regarding the initial public offering as filed with the SEC.

All applicants will be subject to the same eligibility and designation criteria, and all Participants will participate in the Program on the same terms, conditions and restrictions. To be designated as a Participant, an applicant must: (i) be a registered broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 (the “Act”); (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933;<sup>14</sup> and (iii) have executed all required documentation for participation in the Warrants Program. Participants may be, but are not required to be, current investors in Holdco, and the Exchange anticipates both current and new investors to participate in the Warrants Program. Participants must have executed the definitive documentation, satisfied the eligibility criteria required of Warrants Program participants enumerated above, and tendered the Prepayment Fee by the Commitment Deadline.

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<sup>14</sup> The purpose of this criterion relates to the ability of Holdco to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of “accredited investor” under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. As noted above, a Participant will be required to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all Participants will satisfy this criterion.

As discussed above, the purpose of the Program is to encourage Participants to direct greater trade volume to MEMX Options to enhance trading volume on MEMX's options platform. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges have previously engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.<sup>15</sup> The Warrants Program similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Warrants Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MEMX.

b. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to

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<sup>15</sup> See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31); 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR-MIAX-2015-02); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR-BOX-2015-03); 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR-BOX-2015-16); 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28); 83012 (April 9, 2018), 83 FR 16163 (April 13, 2018) (SR-PEARL-2018-08); and 89730 (September 1, 2020), 85 FR 55530 (September 8, 2020) (SR-PEARL-2020-10).

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>18</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>19</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, because all Participants may elect to participate (or elect not to participate) in the Warrants Program and vest warrants on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Participants have the ability to satisfy the eligibility criteria to obtain a “ticket” for participation. Any Participant that becomes a ticket holder and pays the Prepayment Fee and otherwise satisfies the eligibility criteria has the same opportunity for their warrants to vest through volume contributions. The volume performance requirements are the same for all Participants, all Participants have the same opportunity to earn vested warrants on a proportional basis based upon meeting fixed volume threshold amounts during the Measurement Periods that will apply to all Participants. This ensures that all Participants will have the same opportunity to vest warrants and to exercise those warrants to purchase Non-Voting Common Units if they

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<sup>18</sup> See id.

<sup>19</sup> 15 U.S.C. 78f(b)(4).

so choose. As noted above, Participants may be, but are not required to be, current investors in Holdco, and the Exchange anticipates both current and new investors to participate in the Warrants Program.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that is designed to increase trading volume on the Exchange's recently launched Options platform. The Warrants Program is designed to reward Participants for bringing their orders and quotes to the Exchange to be executed on the Exchange. The Exchange believes it is appropriate to exclude options on indices from the volume calculation because the Exchange wishes to support volume in equity options and ETFs on the MEMX Options platform and MEMX Options does not currently trade index options. The Exchange also believes it is appropriate to provide double credit for activity in Non-Penny options for purposes of calculating the Participant's performance during the Measurement Period to encourage and reward such activity because the Exchange's fees for such products generate additional revenue for the Exchange as compared to options that are in the Penny Program.

The Exchange believes the Warrants Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Warrants Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Warrants Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices,

all of which perfects the mechanism for a free and open market and national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by providing market participants the opportunity to execute orders and post liquidity on the Exchange's options market.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incentivizing Participants to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded on the Exchange. To the extent that there is an additional competitive burden on non-Participants, the Exchange believes that this is appropriate because the Program should incentivize Participants to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its market and increases the volume of contracts traded on the Exchange. To the extent that this purpose is achieved, the Exchange believes that all of the Exchange's market participants would benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing a program to attract order flow like the one proposed in this filing is consistent with the above-mentioned goals of the Act. This is

especially true for the smaller options markets, such as MEMX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MEMX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the Warrants Program could cause any competitive harm to the options market or to market participants. Rather, the Warrants Program is a modest attempt to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the Warrants Program results in a modest percentage increase in the average daily trading volume on MEMX, while such percentage would represent a large volume increase for MEMX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Program will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of MEMX equity participation into the determination.

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 written 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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>20</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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.<sup>21</sup>

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.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2024-21]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Implement an Equity Rights Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 implement an equity rights program (the “Warrants Program” or the “Jump Ball Program”) related to fees charged for the trading of options on the Exchange’s options platform (“MEMX Options”). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to implement the Warrants Program pursuant to which warrants representing the right to acquire equity in the Exchange’s parent holding company upon vesting would be issued to participants on MEMX Options who also participate in the Warrants Program (“Participants”), in exchange for payment of the initial prepayment fee (“Prepayment Fee”) and the achievement of certain liquidity volume thresholds on the Exchange’s options platform (“MEMX Options”) over a 24-month period (the “Term”). The Warrants Program commenced on May 1, 2024 (the “Effective Date”) and will end on May 1, 2026.<sup>3</sup> The purpose of the Warrants Program is to promote the long-term interests of MEMX by providing incentives designed to encourage MEMX market participants to contribute to the growth and success of MEMX Options via actively providing and taking liquidity on the MEMX Options market. Participants in the Warrants Program will be able to vest their warrants through the process described in the following paragraphs and consequently will have the opportunity to share in the benefits of MEMX’s increased enterprise value.

Participants who executed a Purchase Agreement and who provide a Prepayment

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<sup>3</sup> The Exchange initially filed the proposal to implement the Warrants Program on April 25, 2024 (SR-MEMX-2024-15) (the “Initial Proposal”). On May 10, 2024, the Exchange withdrew the Initial Proposal and replaced the proposal with SR-MEMX-2024-18 (the “Second Proposal”). The Exchange recently withdrew the Second Proposal and is replacing it with the current filing (SR-MEMX-2024-21).

Fee in the amount of \$500,000 in advance of April 30, 2024 (the “Commitment Deadline”) or such later date specified by the Exchange were issued a “ticket” indicating that the Participant has been accepted into the Warrants Program. Participants may purchase more than one ticket. The total number of tickets available for purchase is capped at 25 tickets. Upon making the Prepayment Fee corresponding to the number of tickets purchased, a Participant will be able to apply the Prepayment Fee to various fees for trading on MEMX Options, including MEMX Options connectivity fees,<sup>4</sup> MEMX Options market data fees,<sup>5</sup> MEMX Options membership fees,<sup>6</sup> and MEMX Options transaction fees.<sup>7</sup> The Prepayment Fee does not expire and a Participant may apply the Prepayment Fee to any of the above listed fees at any time. A Participant will obtain 279,600 unvested warrants per ticket that will vest on an equalized basis each calendar month during the Term (each such calendar month during the Term of the Warrants Program, a “Measurement Period”) if such Participant satisfies certain volume commitments on MEMX Options, as described below.

Participants shall vest warrants on a pro-rata basis based upon meeting or outperforming volume commitments during each Measurement Period, as is discussed below. The volume commitments may be met by trading activity in any listed equity option or exchange-traded fund option on MEMX Options.<sup>8</sup> Participants that trade

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<sup>4</sup> See the MEMX Connectivity Fee Schedule, available at <https://info.memxtrading.com/connectivity-fees/>.

<sup>5</sup> See the MEMX Options Fee Schedule, available at <https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/>.

<sup>6</sup> See the MEMX Membership Fee Schedule, available at <https://info.memxtrading.com/membership-fees/>.

<sup>7</sup> See the MEMX Options Fee Schedule, available at <https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/>.

<sup>8</sup> The Exchange does not currently list or trade index options.

options which are not in the Penny Program<sup>9</sup> (such options, “Non-Penny” options) will receive double credit for such Non-Penny activity for purposes of calculating the Participant’s performance during the Measurement Period. Each vested warrant entitles a Participant to purchase equity ownership of one Nonvoting Common Unit<sup>10</sup> of Holdco at a particular strike price. Only vested warrants are eligible to be exercised, and un-vested warrants are not exercisable. The total equity ownership of Holdco Units, including any purchased through the exercise of vested warrants, shall be subject to the ownership limitations of the Seventh Amended and Restated Limited Liability Company Agreement of MEMX Holdings LLC, as amended (the “Holdco LLC Agreement”).<sup>11</sup>

### **Volume Requirements**

The target performance (“Target Performance”) for any Participant is 25 basis points of Total Consolidated Volume<sup>12</sup> (“TCV”) on MEMX Options per Measurement Period, per ticket. Thus, if a Participant achieves the Target Performance during any Measurement Period, the Participant’s full allotment of unvested warrants for that Measurement Period will vest (i.e., 11,650 warrants per calendar month, per ticket). The Target Performance for any Participant is on a per ticket basis, thus, a Participant with two tickets has a Target Performance of 50 basis points of TCV per Measurement Period, a Participant with three tickets has a Target Performance of 75 basis points of TCV per

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<sup>9</sup> See Exchange Rule 21.5(d).

<sup>10</sup> “Nonvoting Common Units” is defined in Section 3.2(g)(iii) of the Seventh Amended and Restated Limited Liability Company Agreement of MEMX Holdings LLC.

<sup>11</sup> See, e.g., Section 3.5(a)(ii) of the Holdco LLC Agreement, which states that “[n]o Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Units constituting more than twenty percent (20%) of any class of Units.”

<sup>12</sup> Total Consolidated Volume is 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.

Measurement Period, and so forth. During any Measurement Period, Participants that do not meet the Target Performance but meet certain minimum performance levels will have their warrants vest proportionally to their performance, as illustrated in the following table. If a Participant reaches a minimum percentage of the volume commitment set out in the second column of the below table (equivalent to the number of basis points set out in the third column of the below table), the Participant will earn a reduced number of warrants on a proportional basis applicable to such Measurement Period.

<b>Measurement Period</b>	<b>Performance Minimum Percentage</b>	<b>Performance Minimum Basis Points</b>
Month 1 through Month 3	40%	10 bps
Month 4 through Month 6	50%	12.5 bps
Month 7 through Month 24	60%	15 bps

For example, if a Participant with one ticket achieves 10 basis points of volume on MEMX Options in the month 1 Measurement Period, the Participant will vest 40% of their warrants for such month (4,660 vested warrants). As another example, if a Participant with two tickets achieves 13 basis points of volume on MEMX Options during the month 1 Measurement Period, the Participant will vest 26% of their warrants for such month (i.e., 13 basis points of the 50 basis point Target Performance based on two tickets) on a proportional basis (6,058 vested warrants). However, if a Participant with any number of tickets achieves 8 basis points of volume on MEMX Options in the month 1 Measurement Period, the Participant will vest no warrants for such month.

If a Participant fails to meet the performance minimum for any Measurement Period corresponding to month 1 through month 11, such Participant will have the

opportunity to vest their unvested warrants if such Participant over-performs in a subsequent Measurement Period that corresponds to month 2 through month 12. For example, if a Participant with one ticket achieves 25 basis points of volume on MEMX Options in month 1, 12.5 basis points in month 2, 37.5 basis points in month 3, and 25 basis points in months 4 through 12, such Participant can recover their un-vested 5,825 warrants from month 2 based on such Participant's activity in month 3. Using the same example, if the Participant achieves the same number of basis points noted in the above example in this paragraph for months 1, 2, and 4 through 12 but only achieves 31 basis points in month 3, such Participant can recover 2,796 of the un-vested 5,825 warrants from month 2, and would forfeit the remaining 3,029 warrants. Partial basis points and partial warrants achieved will be rounded according to standard rounding conventions (i.e., rounded up if equal to or greater than 0.5, rounded down if below 0.5). To again use the same example, if the Participant achieves the same number of basis points noted in the first example of this paragraph in months 1, 2, and 4 through 12 but only achieves 30.65 basis points in month 3, such Participant can recover 2,633 of the un-vested 5,825 warrants from month 2 (rounding up from 2,632.9 un-vested warrants), and would forfeit the remaining 3,192 warrants.

As another example, if a Participant with one ticket achieved 10 basis points of volume on MEMX Options in each of months 1, 2, and 3, 12.5 basis points in each of months 4, 5, and 6, 40 basis points in each of months 7, 8, and 9, and 37.5 basis points in each of months 10, 11, and 12, such Participant can recover 6,990 un-vested warrants from each of months 1, 2, and 3 and 5,825 un-vested warrants from each of months 4, 5, and 6, for a total of 38,445 warrants recovered. If the Participant in the example above

had three tickets, the warrants would vest such that such participant would earn 4,660 warrants in each of months 1, 2, and 3, would earn 5,825 warrants in each of months 4, 5, and 6, would earn 18,640 warrants in each of months 7, 8, and 9, and would earn 17,475 warrants in each of months 10, 11, and 12, for a total of 139,800 warrants vested. Such participant would recover none of the 279,600 warrants forfeited for the year. Further, if a Participant with one ticket achieves 25 basis points of volume on MEMX Options in month 1, 12.5 basis points in each of months 2 through 4, 25 basis points in each of months 5 through 12, and 50 basis points in month 13, the Participant's over-performance in month 13 cannot be applied to vest units from under-performing activity in months 1-11.

If a Participant fails to meet the performance minimum for a Measurement Period corresponding to month 13 through month 23, such Participant will similarly have the opportunity to vest their unvested warrants if such Participant over-performs in a subsequent Measurement Period that corresponds to month 14 through month 24. For example, if a Participant achieves 15 basis points of volume on MEMX Options in month 13, 25 basis points in month 14, 45 basis points in month 15, and 25 basis points in each of months 16 through 24, such Participant can recover their un-vested 4,660 warrants from month 13 based on such Participant's activity in month 15. As a further example, if a Participant achieves the same number of basis points noted in the above example in this paragraph for months 13, 14, and 16 through 24, but achieves 27.14 basis points in month 15, such Participant can recover 997 of the un-vested 4,660 warrants from month 13 (rounded down from 997.24 un-vested warrants), and would forfeit the remaining 3,663 warrants.

### **Restrictions on Vesting**

Each vested warrant shall be exercisable from the time of vesting until the seventh anniversary of the first day of the first calendar month after the Effective Date. Vested warrants may be exercised when a Participant pays the exercise price of the warrant. Warrants have not been registered under the Securities Act of 1933. Each Participant will have a standard piggyback registration right to include the Nonvoting Common Units issuable upon exercise of the warrants should Holdco at a later date file a Registration Statement under the Securities Act of 1933. The Nonvoting Common Units may not be transferred except pursuant to an effective registration statement under the Securities Act of 1933 and such state securities laws, or an exemption from such registration thereunder, and are subject to transfer restrictions set forth in the Holdco LLC Agreement.<sup>13</sup> In the event of a Qualified Public Offering as defined in the Holdco LLC Agreement, the Nonvoting Common Units are subject to the transfer restrictions in Section 10.3 of the Holdco LLC Agreement, and MEMX shall have right of first offer on the transfer of such Nonvoting Common Units. In the event that Holdco sells Nonvoting Common Units to the public in an initial public offering pursuant to a registration statement declared effective by the SEC, then Holdco will give any Participant who holds warrants notice of the date when the initial public offering will take place. In such case, the fair market value of the Nonvoting Common Units will be as specified in the final prospectus

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<sup>13</sup> See, e.g., Sections 10.3, 10.4, and 10.5 of the Holdco LLC Agreement. The Exchange notes that such Sections refer to Common Members throughout, rather than specifically referring to Nonvoting Common Units. Section 1.1 of the Holdco LLC Agreement defines a “Common Member” as a member in Holdco “holding Common Units in its capacity as such, together with its Affiliates that hold Common Units...” Accordingly, the term Common Member includes any Holdco member, and does not distinguish between Holdco members holding Voting Common Units and members holding Nonvoting Common Units. As such, the transfer restrictions noted in the Holdco LLC Agreement, which refer to Common Members, are applicable to Nonvoting Common Units.

regarding the initial public offering as filed with the SEC.

All applicants will be subject to the same eligibility and designation criteria, and all Participants will participate in the Program on the same terms, conditions and restrictions. To be designated as a Participant, an applicant must: (i) be a registered broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 (the “Act”); (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933;<sup>14</sup> and (iii) have executed all required documentation for participation in the Warrants Program. Participants may be, but are not required to be, current investors in Holdco, and the Exchange anticipates both current and new investors to participate in the Warrants Program. Participants must have executed the definitive documentation, satisfied the eligibility criteria required of Warrants Program participants enumerated above, and tendered the Prepayment Fee by the Commitment Deadline.

As discussed above, the purpose of the Program is to encourage Participants to direct greater trade volume to MEMX Options to enhance trading volume on MEMX's options platform. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges have previously engaged in the practice of incentivizing increased order flow in order to attract liquidity

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<sup>14</sup> The purpose of this criterion relates to the ability of Holdco to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of “accredited investor” under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. As noted above, a Participant will be required to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all Participants will satisfy this criterion.

providers through equity sharing arrangements.<sup>15</sup> The Warrants Program similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Warrants Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MEMX.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>17</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act<sup>18</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>19</sup> which requires

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<sup>15</sup> See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31); 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR-MIAX-2015-02); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR-BOX-2015-03); 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR-BOX-2015-16); 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28); 83012 (April 9, 2018), 83 FR 16163 (April 13, 2018) (SR-PEARL-2018-08); and 89730 (September 1, 2020), 85 FR 55530 (September 8, 2020) (SR-PEARL-2020-10).

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See *id.*

<sup>19</sup> 15 U.S.C. 78f(b)(4).

that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, because all Participants may elect to participate (or elect not to participate) in the Warrants Program and vest warrants on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Participants have the ability to satisfy the eligibility criteria to obtain a “ticket” for participation. Any Participant that becomes a ticket holder and pays the Prepayment Fee and otherwise satisfies the eligibility criteria has the same opportunity for their warrants to vest through volume contributions. The volume performance requirements are the same for all Participants, all Participants have the same opportunity to earn vested warrants on a proportional basis based upon meeting fixed volume threshold amounts during the Measurement Periods that will apply to all Participants. This ensures that all Participants will have the same opportunity to vest warrants and to exercise those warrants to purchase Non-Voting Common Units if they so choose. As noted above, Participants may be, but are not required to be, current investors in Holdco, and the Exchange anticipates both current and new investors to participate in the Warrants Program.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that is designed to increase trading volume on the Exchange’s recently launched Options platform. The Warrants Program is designed to reward Participants for bringing their orders and quotes to the Exchange to be executed on the Exchange. The Exchange believes it is appropriate to exclude options on indices from the volume calculation because the Exchange wishes to support volume in equity options and ETFs on the MEMX Options platform and MEMX Options does not currently trade index options. The Exchange also believes it is appropriate to provide double credit for activity in Non-Penny options for purposes of calculating the Participant’s performance during the Measurement Period to encourage and reward such activity because the Exchange’s

fees for such products generate additional revenue for the Exchange as compared to options that are in the Penny Program.

The Exchange believes the Warrants Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Warrants Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Warrants Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will improve competition by providing market participants the opportunity to execute orders and post liquidity on the Exchange's options market.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incentivizing Participants to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded on the Exchange. To the extent that there is an additional competitive burden on non-Participants, the Exchange believes that this is appropriate because the Program should incent Participants to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its market and increases the

volume of contracts traded on the Exchange. To the extent that this purpose is achieved, the Exchange believes that all of the Exchange's market participants would benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing a program to attract order flow like the one proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MEMX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MEMX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the Warrants Program could cause any competitive harm to the options market or to market participants. Rather, the Warrants Program is a modest attempt to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the Warrants Program results in a modest percentage increase in the average daily trading volume on MEMX, while such percentage would represent a large volume increase for MEMX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Program will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of MEMX equity participation into the determination.

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 Act<sup>20</sup> and Rule 19b-4(f)(2)<sup>21</sup> 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](mailto:rule-comments@sec.gov). Please include file number SR-MEMX-2024-21 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.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to file number SR-MEMX-2024-21. 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-2024-21 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.<sup>22</sup>

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

**Sherry R. Haywood,**

*Assistant Secretary.*