

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 43

Amendment No. (req. for Amendments *)

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) *

Section 806(e)(2) *

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposal to amend the Exchange's fee schedule.

Contact Information

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

First Name * Anders Last Name * Franzon

Title * General Counsel

E-mail * afranzon@memx.com

Telephone * (551) 370-1003 Fax

Signature

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

Date 10/31/2024


(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: 2024.10.31 12:49:34 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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Options November 2024 Pricing (Infor

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

Exhibit 1 - Notice of Proposed Rule Change *

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Options November 2024 Pricing (Exhi

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

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

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

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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

Options November 2024 Pricing (Exhit

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

Add Remove View

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Exchange’s fee schedule applicable to Members³ pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the MEMX Options Fee Schedule (the “Options Fee Schedule”) pursuant to this proposal immediately.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

Ikee Gardner
Counsel
MEMX LLC
(551) 370-1019

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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 Options Fee Schedule to (1) amend the Transaction Fees section of the Options Fee Schedule to separate the existing transaction rebates and fees for executions of contracts made in the Market Maker capacity⁴ from transaction rebates and fees for executions of contracts made in the Professional,⁵ Firm,⁶ Away Market Maker,⁷ or Broker-Dealer⁸ capacities;⁹ (2) reduce the transaction rebate for executions of contracts where the underlying security of the applicable option is in the Penny Interval program (“Penny options”)¹⁰ which add liquidity to the MEMX Options Book¹¹ and which are made in the Professional, Firm, Away Market Maker, or Broker-Dealer capacities; and (3) reduce the transaction rebate for executions of contracts where the underlying security of the applicable option is not in the Penny Interval program (“Non-Penny options”)¹² which add liquidity to the MEMX Options Book and which are made in the Professional, Firm, Away Market Maker, or Broker-Dealer capacities, each as further described below.

⁴ MEMX Options provides fee qualifier “m” for market maker transactions. Fee qualifiers will be provided by the Exchange on the monthly invoices provided to Options Members.

⁵ MEMX Options provides fee qualifier “p” for professional transactions.

⁶ MEMX Options provides fee qualifier “F” for firm transactions.

⁷ MEMX Options provides fee qualifier “a” for away market maker transactions.

⁸ MEMX Options provides fee qualifier “b” for broker-dealer transactions.

⁹ Each of professional transactions, firm transactions, away market maker transactions, and broker-dealer transactions, and market maker transactions are referred to as “non-Customer” transactions.

¹⁰ MEMX Options provides Fee Code “P” for transactions in Penny options. Fee Codes are provided by the Exchange on the monthly invoices provided to Options Members.

¹¹ MEMX Options provides Fee Code “D” for transactions which add liquidity to the MEMX Options Book.

¹² MEMX Options provides Fee Code “N” for transactions in Non-Penny options.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange is one of only 18 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 17.13% of the market share and currently the Exchange represents only approximately 3.29% of the market share.¹³ In such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, discontinue, or reduce use of certain categories of products in response to fee changes. Accordingly competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract.

**Amended Transaction Fees Section of the Options Fee Schedule to Separate
the Transaction Rebates and Fees for Executions in the Market Maker Capacity
from Executions in Other Non-Customer Capacities**

Currently, the Exchange provides the same standard transaction rebates and fees for all executions in Market Maker, Professional, Firm, Away Market Maker, and Broker-Dealer capacities (each a "non-Customer" capacity). Specifically, the Exchange provides a standard transaction rebate of \$0.45 per contract for executions of Penny

¹³ Market share percentage calculated as of October 31, 2024. The Exchange receives and processes data made available through the consolidated data feeds (i.e., OPRA).

options (as defined above) in all non-Customer capacities which add liquidity to the MEMX Options Book, a standard transaction rebate of \$0.80 per contract for executions of non-Penny options (as defined above) in all non-Customer capacities which add liquidity to the MEMX Options Book, a standard transaction fee of \$0.50 per contract for executions of Penny options in all non-Customer capacities which remove liquidity from the MEMX Options Book, and a standard transaction fee of \$1.21 per contract for executions of non-Penny options in all non-Customer capacities which remove liquidity from the MEMX Options Book. The Transaction Fees table within the Options Fee Schedule currently groups together all non-Customer capacities and shows that executions made in any non-Customer capacity receive the same standard transaction rebates and fees. Now, the Exchange proposes to provide different transaction rebates and fees for executions in the Market Maker capacity than are provided for other non-Customer capacities (namely, different than the transaction rebates and fees provided for executions in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities). As such, the Exchange proposes to delete the rows “Professional (“p”)”, “Firm (“f”)”, “Away Market Maker (“a”)”, and “Broker-Dealer (“b”)” in the fourth row of the table and to create a new fifth row of the table that separates out the fees and rebates applicable to executions in the Market Maker capacity. The Exchange does not propose to change any of the fees charged or rebates provided for any executions in the Market Maker capacity, which remain in the fourth row of the table.

The Exchange proposes to make these changes in order to align its Options Fee Schedule with those of other national securities exchanges and to offer different transaction fees and rebates for executions made in the non-Customer, non-Market Maker capacity from transactions made in the Customer capacity and in the Market Maker

capacity. The Exchange notes that the Options Fee Schedules of several national securities exchanges separate transaction fees and rebates for executions in the Market Maker capacity from the transaction fees and rebates for executions made in other non-Customer capacities.¹⁴ The Exchange also notes that other national securities exchanges have established separate transaction fees and rebates for executions made in each non-Customer capacity.¹⁵

¹⁴ See the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The Cboe C2 Options Fee Schedule separates executions in the C2 Market-Maker capacity from executions in other non-Customer capacities (the “Non-Customer, Non-Market-Maker” capacity on the C2 Options Fee Schedule). Specifically, the C2 Options Fee Schedule provides a transaction rebate of \$0.41 for executions of Penny options in the C2 Market-Maker capacity which add liquidity to C2, a transaction fee of \$0.50 for Penny options executed in the C2 Market-Maker capacity which remove liquidity from C2, a transaction rebate of \$0.73 for executions of non-Penny options in the C2 Market-Maker capacity which add liquidity to C2, and a transaction fee of \$0.90 for executions of non-Penny options in the C2 Market-Maker capacity which remove liquidity from C2. The C2 Options Fee Schedule groups together transactions in the “Non-Customer, Non-Market Maker” capacities, which includes Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, and Joint Back Office capacities. The C2 Options Fee Schedule provides a transaction rebate of \$0.36 for executions of Penny options in the Non-Customer, Non-Market Maker capacity which add liquidity to C2, a transaction fee of \$0.50 for Penny options executed in the Non-Customer, Non-Market Maker capacity which remove liquidity from C2, a transaction rebate of \$0.65 for executions of non-Penny options in the Non-Customer, Non-Market Maker capacity which add liquidity to C2, and a transaction fee of \$0.93 for executions of non-Penny options in the Non-Customer, Non-Market Maker capacity which remove liquidity from C2. See also the MIAX Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>. The MIAX Pearl Options Fee Schedule separates executions in the “All MIAX Pearl Market Maker” capacity from executions in other non-Customer capacities (the “Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Makers” origin capacities listed on the MIAX Pearl Options Fee Schedule. Specifically, the MIAX Pearl Options Fee Schedule sets forth a rebate ranging from \$0.25 to \$0.48 (based on tier) for executions of Penny options in the MIAX Pearl Market Maker capacity which add liquidity to MIAX Pearl where the contra side of the contract arises from a non-Priority Customer, a rebate ranging from \$0.22 to \$0.46 (based on tier) for executions of Penny options in the MIAX Pearl Market Maker capacity which add liquidity to MIAX Pearl where the contra side of the contract arises from a Priority Customer, a fee of \$0.50 for executions of Penny Options in the MIAX Pearl Market Maker capacity which remove liquidity from MIAX Pearl, a rebate ranging from \$0.30 to \$0.85 (based on tier) for executions of non-Penny options in the MIAX Pearl Market Maker capacity which add liquidity to MIAX Pearl, and a fee ranging from \$1.07 to \$1.10 (based on tier) for executions of non-Penny options in the MIAX Pearl Market Maker capacity which remove liquidity from MIAX Pearl.

¹⁵ See the Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Cboe BZX Options Fee Schedule establishes separate ranges of transaction fees and rebates, based on tier, for executions made in the Customer, Professional, Firm/Broker-Dealer/Joint Back Office, Market Maker, and Away Market Maker capacities. See also the MIAX Options Fee Schedule, available at

Reduced Transaction Rebate for Executions of Penny Options in the Professional, Firm, Away Market Maker, or Broker Dealer Capacities Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of \$0.45 per contract for executions of Penny options (as defined above) in the Professional, Firm, Market Maker, Away Market Maker, and Broker Dealer capacities which add liquidity to the MEMX Options Book. Now, the Exchange proposes to reduce the standard transaction rebate on contracts for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.45 per contract to \$0.42 per contract. Specifically, the Exchange proposes to create a separate line on the Options Fee Schedule for executions made in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities and to note on the Options Fee Schedule that the standard transaction rebates for executions of Penny options in such capacities which add liquidity to the MEMX Options Book is \$0.42 per contract.

The purpose of reducing the rebate is for business and competitive reasons as the Exchange believes that reducing such rebate would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book. As noted above, other national securities exchanges separate out the transaction rebate provided for executions in non-Customer, non-Market Maker capacities from those executions made in Customer capacity and executions made in the

<https://www.miaxglobal.com/markets/us-options/miax-options/fees> . The MIAX Options Fee Schedule establishes separate ranges of transaction fees and rebates for executions made in the capacity of all MIAX Market Makers, Priority Customers, Public Customers that are not Priority Customers, Non-MIAX Market Makers, Non-Member Broker-Dealer, and Firm capacity.

Market Maker capacity. The Exchange notes that the proposed reduced rebate is competitive with, or exceeds the transaction rebate provided by other national securities exchanges for executions in non-Customer, non-Market Maker capacities in Penny options which add liquidity.¹⁶

Reduced Transaction Rebate for Executions of Non-Penny Options in the Professional, Firm, Away Market Maker, or Broker Dealer Capacities Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of \$0.80 per contract for executions of non-Penny options (as defined above) in the Professional, Firm, Market Maker, Away Market Maker, and Broker Dealer capacities which add liquidity to the MEMX Options Book. Now, the Exchange proposes to reduce; the standard transaction rebate on contracts for the execution of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.80 per contract to \$0.72 per contract. Specifically, the Exchange proposes to create a separate line on the Options Fee Schedule for executions made in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities and to note on the Options Fee Schedule that the standard transaction rebates for execution of non-Penny options in such capacities which add liquidity to the MEMX Book is \$0.72 per contract.

The purpose of reducing the rebate is for business and competitive reasons as the Exchange believes that reducing such rebate would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX

¹⁶ See infra note 22.

Options Book. As discussed above, other national securities exchanges separate out the transaction rebate for non-Customer, non-Market Maker capacities from those executions made in the Customer capacity. The Exchange notes that the proposed reduced rebate is competitive with, or exceeds the transaction rebate provided by other national securities exchanges for executions in non-Customer, non-Market Maker capacities in non-Penny options which add liquidity.¹⁷

b. Statutory Basis

The Exchange believes that its proposal to amend its Options Fee Schedule is consistent with the provisions of Section 6 of the Act,¹⁸ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Options Members and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

¹⁷ See *infra* note 23.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰

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

The Exchange believes that it is reasonable and equitable to provide different transaction rebates and fees for executions in non-Customer, non-Market Maker capacities, than for executions in the Customer capacity or in the Market Maker capacity. The Exchange believes that providing different rebates and assessing different fees for executions in non-Customer, non-Market Maker capacities is equitable and not unfairly discriminatory because each Member who executes contracts in such capacities will be assessed the respective fees or provided the respective rebates. As noted above, other national securities exchanges separate transaction fees and rebates for executions in the

²⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

Market Maker capacity from the transaction fees and rebates for executions made in other non-Customer capacities.²¹

The Exchange believes that the proposed changes to reduce the rebate for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.45 per contract to \$0.42 per contract, and to reduce the rebate for executions of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.80 per contract to \$0.72 per contract, are reasonable because such changes are designed to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book in both Penny and non-Penny options. The Exchange believes that the proposed changes are equitable and not unfairly discriminatory because the reduced rebates will apply to all market participants who make executions of Penny options or non-Penny options, respectively, in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book.

The Exchange believes the proposed reduced rebate for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book is appropriate because it exceeds or is comparable to, and competitive with, the rebates provided by other exchanges for executions of Penny options made in non-Market Maker and non-Customer capacities which add liquidity.²²

²¹ See supra note 14.

²² For example, the Cboe C2 Options Exchange offers a rebate of \$0.36 for transaction in non-Customer, non-Market Maker capacities in Penny options which add liquidity to the C2 Book. See

Similarly, the Exchange believes that the proposed reduced rebate for executions of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book is appropriate because it exceeds or is comparable to, and competitive with, the rebates offered by other national securities exchanges on Options platforms for executions of non-Penny options made in non-Market Maker and non-Customer capacities which add liquidity.²³ The Exchange believes that the proposed reduced rebates which add liquidity to the MEMX Book in Penny and non-Penny options in non-Market Maker, non-Customer capacities will provide right-sized incentives which will continue to attract non-Market Maker, non-Customer order flow to the Exchange.

For the reasons discussed above, the Exchange submits that its proposed change to the Options Transaction Fee Schedule satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁴ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and are not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding burden on competition, the Exchange believes that its transaction pricing is subject to significant

the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The MIAX Pearl Options Exchange offers rebates ranging from \$0.22 to \$0.48 for transactions in non-Priority Customer, Firm, Broker-Dealer, and Non-MIAX Pearl Market Maker capacities in Penny options which add liquidity to the MIAX Pearl Options Book. See the MIAX Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>.

²³ For example, the Cboe C2 Options Exchange offers a rebate of \$0.65 for transaction in non-Customer, non-Market Maker capacities in non-Penny options which add liquidity to the C2 Book. See the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The MIAX Pearl Options Exchange offers rebates ranging from \$0.85 to \$0.30 for transactions in non-Priority Customer, Firm, Broker-Dealer, and Non-MIAX Pearl Market Maker capacities in non-Penny options which add liquidity to the MIAX Pearl Options Book. See the MIAX Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>.

²⁴ 15 U.S.C. 78f(b)(4) and (5).

competitive forces, and that the proposed rebate described herein is appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to decrease the Exchange's expenditures, generate additional revenue with respect to its transaction pricing, incentivize market participants to direct additional order flow to the MEMX Options platform, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants. Further, MEMX Options' proposed modified transaction fees and rebates exceed or are comparable to the transaction fees and rebates assessed by other options exchanges.²⁵ As a result, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁶

Intramarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rebate applies equally to all Options Members. The proposed pricing structure is intended to decrease the Exchange's

²⁵ See supra notes 22 and 23.

²⁶ See supra note 20.

expenditures and generate additional revenue with respect to its transaction pricing, in a manner that is comparable with the rebates and fees offered by other exchanges for executions in the non-Customer, non-Market Maker capacities in both Penny and non-Penny options. The Exchange believes that the proposed reduced rebates are consistent with the Exchange's overall pricing philosophy. As the proposed rebate is equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Intermarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to provide rebates for executions in non-Customer, non-Market Maker capacities which add liquidity to the MEMX Options book which are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rebate is equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors

and listed companies.”²⁷ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁸ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁹ 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-

²⁷ See supra note 20.

²⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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.³⁰

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 5. Text of Proposed Fee Schedule.

³⁰ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2024-43]

[Insert date]

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the MEMX Options Fee Schedule (the "Options Fee Schedule") pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Options Fee Schedule to (1) amend the Transaction Fees section of the Options Fee Schedule to separate the existing transaction rebates and fees for executions of contracts made in the Market Maker capacity⁴ from transaction rebates and fees for executions of contracts made in the Professional,⁵ Firm,⁶ Away Market Maker,⁷ or Broker-Dealer⁸ capacities;⁹ (2) reduce the transaction rebate for executions of contracts where the underlying security of the applicable option is in the Penny Interval program ("Penny options")¹⁰ which add liquidity to the MEMX Options Book¹¹ and which are made in the Professional, Firm, Away Market Maker, or Broker-Dealer capacities; and (3) reduce the transaction rebate for executions of contracts where the underlying security of the applicable option is not in

⁴ MEMX Options provides fee qualifier "m" for market maker transactions. Fee qualifiers will be provided by the Exchange on the monthly invoices provided to Options Members.

⁵ MEMX Options provides fee qualifier "p" for professional transactions.

⁶ MEMX Options provides fee qualifier "f" for firm transactions.

⁷ MEMX Options provides fee qualifier "a" for away market maker transactions.

⁸ MEMX Options provides fee qualifier "b" for broker-dealer transactions.

⁹ Each of professional transactions, firm transactions, away market maker transactions, and broker-dealer transactions, and market maker transactions are referred to as "non-Customer" transactions.

¹⁰ MEMX Options provides Fee Code "P" for transactions in Penny options. Fee Codes are provided by the Exchange on the monthly invoices provided to Options Members.

¹¹ MEMX Options provides Fee Code "D" for transactions which add liquidity to the MEMX Options Book.

the Penny Interval program (“Non-Penny options”)¹² which add liquidity to the MEMX Options Book and which are made in the Professional, Firm, Away Market Maker, or Broker-Dealer capacities, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange is one of only 18 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 17.13% of the market share and currently the Exchange represents only approximately 3.29% of the market share.¹³ In such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, discontinue, or reduce use of certain categories of products in response to fee changes. Accordingly competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange’s Fee Schedule sets forth standard rebates and rates applied per contract.

**Amended Transaction Fees Section of the Options Fee Schedule to Separate
the Transaction Rebates and Fees for Executions in the Market Maker Capacity
from Executions in Other Non-Customer Capacities**

¹² MEMX Options provides Fee Code “N” for transactions in Non-Penny options.

¹³ Market share percentage calculated as of October 31, 2024. The Exchange receives and processes data made available through the consolidated data feeds (i.e., OPRA).

Currently, the Exchange provides the same standard transaction rebates and fees for all executions in Market Maker, Professional, Firm, Away Market Maker, and Broker-Dealer capacities (each a “non-Customer” capacity). Specifically, the Exchange provides a standard transaction rebate of \$0.45 per contract for executions of Penny options (as defined above) in all non-Customer capacities which add liquidity to the MEMX Options Book, a standard transaction rebate of \$0.80 per contract for executions of non-Penny options (as defined above) in all non-Customer capacities which add liquidity to the MEMX Options Book, a standard transaction fee of \$0.50 per contract for executions of Penny options in all non-Customer capacities which remove liquidity from the MEMX Options Book, and a standard transaction fee of \$1.21 per contract for executions of non-Penny options in all non-Customer capacities which remove liquidity from the MEMX Options Book. The Transaction Fees table within the Options Fee Schedule currently groups together all non-Customer capacities and shows that executions made in any non-Customer capacity receive the same standard transaction rebates and fees. Now, the Exchange proposes to provide different transaction rebates and fees for executions in the Market Maker capacity than are provided for other non-Customer capacities (namely, different than the transaction rebates and fees provided for executions in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities). As such, the Exchange proposes to delete the rows “Professional (“p”)", “Firm (“f”)", “Away Market Maker (“a”)", and “Broker-Dealer (“b”)" in the fourth row of the table and to create a new fifth row of the table that separates out the fees and rebates applicable to executions in the Market Maker capacity. The Exchange does not propose to change any of the fees charged or rebates provided for any executions in the

Market Maker capacity, which remain in the fourth row of the table.

The Exchange proposes to make these changes in order to align its Options Fee Schedule with those of other national securities exchanges and to offer different transaction fees and rebates for executions made in the non-Customer, non-Market Maker capacity from transactions made in the Customer capacity and in the Market Maker capacity. The Exchange notes that the Options Fee Schedules of several national securities exchanges separate transaction fees and rebates for executions in the Market Maker capacity from the transaction fees and rebates for executions made in other non-Customer capacities.¹⁴ The Exchange also notes that other national securities exchanges

¹⁴ See the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The Cboe C2 Options Fee Schedule separates executions in the C2 Market-Maker capacity from executions in other non-Customer capacities (the “Non-Customer, Non-Market-Maker” capacity on the C2 Options Fee Schedule). Specifically, the C2 Options Fee Schedule provides a transaction rebate of \$0.41 for executions of Penny options in the C2 Market-Maker capacity which add liquidity to C2, a transaction fee of \$0.50 for Penny options executed in the C2 Market-Maker capacity which remove liquidity from C2, a transaction rebate of \$0.73 for executions of non-Penny options in the C2 Market-Maker capacity which add liquidity to C2, and a transaction fee of \$0.90 for executions of non-Penny options in the C2 Market-Maker capacity which remove liquidity from C2. The C2 Options Fee Schedule groups together transactions in the “Non-Customer, Non-Market Maker” capacities, which includes Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, and Joint Back Office capacities. The C2 Options Fee Schedule provides a transaction rebate of \$0.36 for executions of Penny options in the Non-Customer, Non-Market Maker capacity which add liquidity to C2, a transaction fee of \$0.50 for Penny options executed in the Non-Customer, Non-Market Maker capacity which remove liquidity from C2, a transaction rebate of \$0.65 for executions of non-Penny options in the Non-Customer, Non-Market Maker capacity which add liquidity to C2, and a transaction fee of \$0.93 for executions of non-Penny options in the Non-Customer, Non-Market Maker capacity which remove liquidity from C2. See also the MIAX Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>. The MIAX Pearl Options Fee Schedule separates executions in the “All MIAX Pearl Market Maker” capacity from executions in other non-Customer capacities (the “Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Makers” origin capacities listed on the MIAX Pearl Options Fee Schedule. Specifically, the MIAX Pearl Options Fee Schedule sets forth a rebate ranging from \$0.25 to \$0.48 (based on tier) for executions of Penny options in the MIAX Pearl Market Maker capacity which add liquidity to MIAX Pearl where the contra side of the contract arises from a non-Priority Customer, a rebate ranging from \$0.22 to \$0.46 (based on tier) for executions of Penny options in the MIAX Pearl Market Maker capacity which add liquidity to MIAX Pearl where the contra side of the contract arises from a Priority Customer, a fee of \$0.50 for executions of Penny Options in the MIAX Pearl Market Maker capacity which remove liquidity from MIAX Pearl, a rebate ranging from \$0.30 to \$0.85 (based on tier) for executions of non-Penny options in the MIAX Pearl Market Maker capacity which add liquidity to

have established separate transaction fees and rebates for executions made in each non-Customer capacity.¹⁵

Reduced Transaction Rebate for Executions of Penny Options in the Professional, Firm, Away Market Maker, or Broker Dealer Capacities Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of \$0.45 per contract for executions of Penny options (as defined above) in the Professional, Firm, Market Maker, Away Market Maker, and Broker Dealer capacities which add liquidity to the MEMX Options Book. Now, the Exchange proposes to reduce the standard transaction rebate on contracts for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.45 per contract to \$0.42 per contract. Specifically, the Exchange proposes to create a separate line on the Options Fee Schedule for executions made in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities and to note on the Options Fee Schedule that the standard transaction rebates for executions of Penny options in such capacities which add liquidity to the MEMX Options Book is \$0.42 per contract.

The purpose of reducing the rebate is for business and competitive reasons as the Exchange believes that reducing such rebate would decrease the Exchange's expenditures

MIAX Pearl, and a fee ranging from \$1.07 to \$1.10 (based on tier) for executions of non-Penny options in the MIAX Pearl Market Maker capacity which remove liquidity from MIAX Pearl.

¹⁵ See the Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Cboe BZX Options Fee Schedule establishes separate ranges of transaction fees and rebates, based on tier, for executions made in the Customer, Professional, Firm/Broker-Dealer/Joint Back Office, Market Maker, and Away Market Maker capacities. See also the MIAX Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/miax-options/fees>. The MIAX Options Fee Schedule establishes separate ranges of transaction fees and rebates for executions made in the capacity of all MIAX Market Makers, Priority Customers, Public Customers that are not Priority Customers, Non-MIAX Market Makers, Non-Member Broker-Dealer, and Firm capacity.

with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book. As noted above, other national securities exchanges separate out the transaction rebate provided for executions in non-Customer, non-Market Maker capacities from those executions made in Customer capacity and executions made in the Market Maker capacity. The Exchange notes that the proposed reduced rebate is competitive with, or exceeds the transaction rebate provided by other national securities exchanges for executions in non-Customer, non-Market Maker capacities in Penny options which add liquidity.¹⁶

Reduced Transaction Rebate for Executions of Non-Penny Options in the Professional, Firm, Away Market Maker, or Broker Dealer Capacities Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of \$0.80 per contract for executions of non-Penny options (as defined above) in the Professional, Firm, Market Maker, Away Market Maker, and Broker Dealer capacities which add liquidity to the MEMX Options Book. Now, the Exchange proposes to reduce; the standard transaction rebate on contracts for the execution of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.80 per contract to \$0.72 per contract. Specifically, the Exchange proposes to create a separate line on the Options Fee Schedule for executions made in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities and to note on the Options Fee Schedule that the standard transaction rebates for execution of non-Penny

¹⁶ See infra note 22.

options in such capacities which add liquidity to the MEMX Book is \$0.72 per contract.

The purpose of reducing the rebate is for business and competitive reasons as the Exchange believes that reducing such rebate would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book. As discussed above, other national securities exchanges separate out the transaction rebate for non-Customer, non-Market Maker capacities from those executions made in the Customer capacity. The Exchange notes that the proposed reduced rebate is competitive with, or exceeds the transaction rebate provided by other national securities exchanges for executions in non-Customer, non-Market Maker capacities in non-Penny options which add liquidity.¹⁷

2. Statutory Basis

The Exchange believes that its proposal to amend its Options Fee Schedule is consistent with the provisions of Section 6 of the Act,¹⁸ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Options Members and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers,

¹⁷ See infra note 23.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

issuers, brokers, or dealers.

MEMX Options operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰

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

The Exchange believes that it is reasonable and equitable to provide different transaction rebates and fees for executions in non-Customer, non-Market Maker capacities, than for executions in the Customer capacity or in the Market Maker capacity. The Exchange believes that providing different rebates and assessing different fees for executions in non-Customer, non-Market Maker capacities is equitable and not unfairly

²⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

discriminatory because each Member who executes contracts in such capacities will be assessed the respective fees or provided the respective rebates. As noted above, other national securities exchanges separate transaction fees and rebates for executions in the Market Maker capacity from the transaction fees and rebates for executions made in other non-Customer capacities.²¹

The Exchange believes that the proposed changes to reduce the rebate for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.45 per contract to \$0.42 per contract, and to reduce the rebate for executions of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.80 per contract to \$0.72 per contract, are reasonable because such changes are designed to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book in both Penny and non-Penny options. The Exchange believes that the proposed changes are equitable and not unfairly discriminatory because the reduced rebates will apply to all market participants who make executions of Penny options or non-Penny options, respectively, in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book.

The Exchange believes the proposed reduced rebate for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book is appropriate because it exceeds or is comparable to, and

²¹ See supra note 14.

competitive with, the rebates provided by other exchanges for executions of Penny options made in non-Market Maker and non-Customer capacities which add liquidity.²² Similarly, the Exchange believes that the proposed reduced rebate for executions of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book is appropriate because it exceeds or is comparable to, and competitive with, the rebates offered by other national securities exchanges on Options platforms for executions of non-Penny options made in non-Market Maker and non-Customer capacities which add liquidity.²³ The Exchange believes that the proposed reduced rebates which add liquidity to the MEMX Book in Penny and non-Penny options in non-Market Maker, non-Customer capacities will provide right-sized incentives which will continue to attract non-Market Maker, non-Customer order flow to the Exchange.

For the reasons discussed above, the Exchange submits that its proposed change to the Options Transaction Fee Schedule satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁴ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and are

²² For example, the Cboe C2 Options Exchange offers a rebate of \$0.36 for transaction in non-Customer, non-Market Maker capacities in Penny options which add liquidity to the C2 Book. See the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The MIAX Pearl Options Exchange offers rebates ranging from \$0.22 to \$0.48 for transactions in non-Priority Customer, Firm, Broker-Dealer, and Non-MIAX Pearl Market Maker capacities in Penny options which add liquidity to the MIAX Pearl Options Book. See the MIAX Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>.

²³ For example, the Cboe C2 Options Exchange offers a rebate of \$0.65 for transaction in non-Customer, non-Market Maker capacities in non-Penny options which add liquidity to the C2 Book. See the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The MIAX Pearl Options Exchange offers rebates ranging from \$0.85 to \$0.30 for transactions in non-Priority Customer, Firm, Broker-Dealer, and Non-MIAX Pearl Market Maker capacities in non-Penny options which add liquidity to the MIAX Pearl Options Book. See the MIAX Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>.

²⁴ 15 U.S.C. 78f(b)(4) and (5).

not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed rebate described herein is appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to decrease the Exchange's expenditures, generate additional revenue with respect to its transaction pricing, incentivize market participants to direct additional order flow to the MEMX Options platform, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants. Further, MEMX Options' proposed modified transaction fees and rebates exceed or are comparable to the transaction fees and rebates assessed by other options exchanges.²⁵ As a result, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁶

Intramarket Competition

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

²⁵ See supra notes 22 and 23.

²⁶ See supra note 20.

burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rebate applies equally to all Options Members. The proposed pricing structure is intended to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing, in a manner that is comparable with the rebates and fees offered by other exchanges for executions in the non-Customer, non-Market Maker capacities in both Penny and non-Penny options. The Exchange believes that the proposed reduced rebates are consistent with the Exchange's overall pricing philosophy. As the proposed rebate is equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Intermarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to provide rebates for executions in non-Customer, non-Market Maker capacities which add liquidity to the MEMX Options book which are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rebate is equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in

the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁷ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁸ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

²⁷ See supra note 20.

²⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

19(b)(3)(A)(ii) of the Act²⁹ and Rule 19b-4(f)(2)³⁰ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-43 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-2024-43. This file number should be included on the subject line if email is used. To help the Commission

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

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-2024-43 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.³¹

Sherry R. Haywood,

Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

**MEMX Options Fee Schedule
(EFFECTIVE NOVEMBER 1, 2024)**

Transaction Fees

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

Capacity	Penny (“P”)		Non-Penny (“N”)	
	Add (“D”)	Remove (“R”)	Add (“D”)	Remove (“R”)
Customer (“c”)	(\$0.49)	\$0.46	(\$1.19)	\$0.85
Market Maker (“m”)	(\$0.45)	\$0.50	(\$0.80)	\$1.21
[Professional (“p”)]				
[Firm (“f”)]				
[Away Market Maker (“a”)]				
[Broker-Dealer (“b”)]	(\$0.42)	\$0.50	(\$0.72)	\$1.21
<u>Professional (“p”)</u>				
<u>Firm (“f”)</u>				
<u>Away Market Maker (“a”)</u>				
<u>Broker-Dealer (“b”)</u>				

* * * * *