Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2024 - * 38
Amendment No. (req. for Amendments *)

Filing by MEMX LLC

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

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

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

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

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

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

Proposal to amend the Exchange's fee schedule.

Contact Information

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

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

Signature

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

Date 09/30/2024
By Lauren Strathman (Name *)
(Title *) 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: 2024.09.30 14:52:12 -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 EFFS website.

Form 19b-4 Information *

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Options October 2024 Pricing (Informa

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 October 2024 Pricing (Exhibit

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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Options October 2024 Pricing(Exhibit !

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] MEMX LLC ("MEMX" or the "Exchange") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] 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

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[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 increase 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")[4] which add liquidity to the MEMX Options Book[5] and which are made in the Customer capacity ("Customer") [6], 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 17 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% of the market share and currently the Exchange represents only approximately 3% of the market share.[7] 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

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4 MEMX Options provides Fee Code "N" for transactions in Non-Penny options. Fee Codes are provided by the Exchange on the monthly invoices provided to Options Members.

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

6 Customer capacity applies to any order for the account of a Priority Customer. "Priority Customer" means any person or entity that is neither a broker or dealer in securities nor a Professional. See Rule 16.1 of the MEMX Rulebook. MEMX Options provides fee qualifier "c" for Customer transactions.

7 Market share percentage calculated as of September 30, 2024. The Exchange receives and processes data made available through the consolidated data feeds (i.e., OPRA).

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.

Increased Transaction Rebate for Executions of Non-Penny Options in the Customer Capacity Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of $1.15 per contract on Non-Penny options (as defined above) in the Customer capacity which add liquidity to the MEMX Options Book. Now, the Exchange proposes to amend the standard transaction rebate on such contracts from $1.15 per contract to $1.19 per contract. The purpose of increasing the rebate is to incentivize Members to execute additional contracts in Non-Penny names in the Customer capacity which add liquidity. The Exchange's proposal is designed to encourage the execution of additional contracts on the Exchange in order to enhance volume, deepen liquidity and promote price discovery on the MEMX Options platform. The Exchange believes that the increased rebate is in line with or exceeds the rebates provided by other national securities exchanges and will incentivize Members to route additional order flow to the Exchange.[8]

b. Statutory Basis

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[8] See, e.g., note 10 of the of the Nasdaq Options Market trading fee schedule on its public website (available at: https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7) which reflects a $1.15 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer for Nasdaq Options Market participants who meet certain volume requirements on the Nasdaq Options Market. As MEMX Options is a comparatively new market, the Exchange believes that providing a higher rebate ($1.19) for Customer executions which add liquidity in Non-Penny options without requiring Members to achieve specific volume requirements will incentivize additional order flow to the Exchange.

The Exchange believes that its proposal to amend its Options Fee Schedule is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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 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."[11]

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9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4) and (5).

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

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 the proposed change to increase the rebate for executions on Non-Penny options in the Customer capacity that add liquidity to the Exchange to $1.19 per contract is reasonable and equitable because it is designed to incentivize Members to submit additional liquidity-adding orders in Non-Penny options to the Exchange in the Customer capacity, which would enhance liquidity on the Exchange and promote price discovery and price formation, and would be applicable to all Members. The Exchange further believes the proposed increased rebate is appropriate because it exceeds or is comparable to, and competitive with, the rebates provided by other exchanges for executions in the Customer capacity in Non-Penny options which add liquidity.[12]

Further, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory for Members to receive a higher rebate for executions of contracts in Non-Penny options in the Customer capacity which add liquidity to the Exchange, as compared to the rebate provided for executions of contracts in Non-Penny options in non-Customer capacities (i.e., Market Maker, Professional, Firm, Away Market Maker, or Broker-Dealer capacities) which add liquidity to the Exchange. The securities markets

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12 See supra note 8.

generally, and the Exchange in particular, have historically aimed to improve markets for investors and develop various features within the market structure for the benefit of public customers (i.e., the Customer capacity on the Exchange) who are not professionals.[13] The Exchange believes it promotes the best interests of investors to charge lower transaction costs and provide higher rebates for Customers, who are not Professionals, and that the Exchange's proposed fee structure provides right-sized incentives which will continue to attract 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 Act[14] 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

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13 The Exchange notes that, since the inception of MEMX Options, it has historically imposed different, and higher, transaction fees for executions in the non-Customer capacity than for executions in the Customer capacity. Similarly, since the inception of MEMX Options, the Exchange has historically provided different, and lower, rebates for executions in the non-Customer capacity than in the Customer capacity. See Securities Exchange Act Release No. 34-98533 (September 26, 2023), 88 FR 67846 (October 2, 2023) (adopting a $1.10 per contract fee for non-Customers (Market Makers, Professionals, Firms, Away Market Makers, and Broker-Dealers) to remove liquidity in Non-Penny options as compared to a $0.85 per contract fee for Customers to remove liquidity in Non-Penny options, and a $0.80 per contract rebate for non-Customers to add liquidity in Non-Penny options as compared to a $1.04 per contract rebate for Customers to add liquidity in Non-Penny options. The Exchange notes that similar fee structures are common at other options exchanges. See, e.g., the Cboe BZX Options fee schedule on its public website (available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/), which reflects a higher $1.15 fee for Professional, Firm, Broker-Dealer, JBO, Market Maker, and Away Market Maker executions which remove liquidity in Non-Penny options and a lower $0.85 fee for Customer executions which remove liquidity in Non-Penny options. The Cboe BZX Options fee schedule also reflects lower rebates ranging from $0.30 to $0.88 for non-Customer executions which add liquidity in non-Penny options and a higher $1.05 rebate for Customer executions which add liquidity in Non-Penny options.

14 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. As a relatively new entrant in the already highly competitive environment for options trading, the Exchange believes that the proposed change would encourage the submission of additional order flow to the Exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. Further, MEMX Options' proposed modified transaction rebate exceeds or is comparable to the transaction rebates assessed by other options exchanges.[15] 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."[16]

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 encourage participants to trade on MEMX Options by providing rebates that are comparable to those offered by other

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15 See supra note 8.

16 See supra note 11.

exchanges as well as providing competitive fees. The Exchange believes that the proposed rebate will help to encourage Options 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.

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 encourage market participants to trade on the exchange by providing rebates that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed 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."[17] The fact that this market is competitive has also long been

[17] See supra note 11.

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'….".[18] 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,[19] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission

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18 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 15 U.S.C. 78s(b)(3)(A)(ii).

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.[20]

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.

[20] 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2024-38]
[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 Members[3] 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

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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 increase 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")[4] which add liquidity to the MEMX Options Book[5] and which are made in the Customer capacity ("Customer") [6], 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 17 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% of the market share and currently the Exchange represents only approximately 3% of the market share.[7] In such a low-concentrated and highly

[4] MEMX Options provides Fee Code "N" for transactions in Non-Penny options. Fee Codes are provided by the Exchange on the monthly invoices provided to Options Members.

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

[6] Customer capacity applies to any order for the account of a Priority Customer. "Priority Customer" means any person or entity that is neither a broker or dealer in securities nor a Professional. See Rule 16.1 of the MEMX Rulebook. MEMX Options provides fee qualifier "c" for Customer transactions.

[7] Market share percentage calculated as of September 30, 2024. The Exchange receives and processes data made available through the consolidated data feeds (i.e., OPRA).

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.

Increased Transaction Rebate for Executions of Non-Penny Options in the Customer Capacity Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of $1.15 per contract on Non-Penny options (as defined above) in the Customer capacity which add liquidity to the MEMX Options Book. Now, the Exchange proposes to amend the standard transaction rebate on such contracts from $1.15 per contract to $1.19 per contract. The purpose of increasing the rebate is to incentivize Members to execute additional contracts in Non-Penny names in the Customer capacity which add liquidity. The Exchange's proposal is designed to encourage the execution of additional contracts on the Exchange in order to enhance volume, deepen liquidity and promote price discovery on the MEMX Options platform. The Exchange believes that the increased rebate is in line with or exceeds the rebates provided by other national securities exchanges and will incentivize Members to route additional order flow to the Exchange.[8]

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[8] See, e.g., note 10 of the of the Nasdaq Options Market trading fee schedule on its public website (available at: https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7) which reflects a $1.15 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer for

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,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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 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

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Nasdaq Options Market participants who meet certain volume requirements on the Nasdaq Options Market. As MEMX Options is a comparatively new market, the Exchange believes that providing a higher rebate ($1.19) for Customer executions which add liquidity in Non-Penny options without requiring Members to achieve specific volume requirements will incentivize additional order flow to the Exchange.

9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4) and (5).

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."[11]

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 the proposed change to increase the rebate for executions on Non-Penny options in the Customer capacity that add liquidity to the Exchange to $1.19 per contract is reasonable and equitable because it is designed to incentivize Members to submit additional liquidity-adding orders in Non-Penny options to the Exchange in the Customer capacity, which would enhance liquidity on the Exchange and promote price discovery and price formation, and would be applicable to all Members. The Exchange further believes the proposed increased rebate is appropriate because it exceeds or is comparable to, and competitive with, the rebates provided by other exchanges for executions in the Customer capacity in Non-Penny options which add liquidity.[12]

Further, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory for Members to receive a higher rebate for executions of contracts in Non-

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

12 See supra note 8.

Penny options in the Customer capacity which add liquidity to the Exchange, as compared to the rebate provided for executions of contracts in Non-Penny options in non-Customer capacities (i.e., Market Maker, Professional, Firm, Away Market Maker, or Broker-Dealer capacities) which add liquidity to the Exchange. The securities markets generally, and the Exchange in particular, have historically aimed to improve markets for investors and develop various features within the market structure for the benefit of public customers (i.e., the Customer capacity on the Exchange) who are not professionals.[13] The Exchange believes it promotes the best interests of investors to charge lower transaction costs and provide higher rebates for Customers, who are not Professionals, and that the Exchange's proposed fee structure provides right-sized incentives which will continue to attract 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 Act[14] in that it provides for the equitable allocation of reasonable dues,

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[13] The Exchange notes that, since the inception of MEMX Options, it has historically imposed different, and higher, transaction fees for executions in the non-Customer capacity than for executions in the Customer capacity. Similarly, since the inception of MEMX Options, the Exchange has historically provided different, and lower, rebates for executions in the non-Customer capacity than in the Customer capacity. See Securities Exchange Act Release No. 34-98533 (September 26, 2023), 88 FR 67846 (October 2, 2023) (adopting a $1.10 per contract fee for non-Customers (Market Makers, Professionals, Firms, Away Market Makers, and Broker-Dealers) to remove liquidity in Non-Penny options as compared to a $0.85 per contract fee for Customers to remove liquidity in Non-Penny options, and a $0.80 per contract rebate for non-Customers to add liquidity in Non-Penny options as compared to a $1.04 per contract rebate for Customers to add liquidity in Non-Penny options. The Exchange notes that similar fee structures are common at other options exchanges. See, e.g., the Cboe BZX Options fee schedule on its public website (available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/), which reflects a higher $1.15 fee for Professional, Firm, Broker-Dealer, JBO, Market Maker, and Away Market Maker executions which remove liquidity in Non-Penny options and a lower $0.85 fee for Customer executions which remove liquidity in Non-Penny options. The Cboe BZX Options fee schedule also reflects lower rebates ranging from $0.30 to $0.88 for non-Customer executions which add liquidity in non-Penny options and a higher $1.05 rebate for Customer executions which add liquidity in Non-Penny options.

[14] 15 U.S.C. 78f(b)(4) and (5).

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 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. As a relatively new entrant in the already highly competitive environment for options trading, the Exchange believes that the proposed change would encourage the submission of additional order flow to the Exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. Further, MEMX Options' proposed modified transaction rebate exceeds or is comparable to the transaction rebates assessed by other options exchanges.[15] 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."[16]

Intramarket Competition

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

15 See supra note 8.

16 See supra note 11.

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 encourage participants to trade on MEMX Options by providing rebates that are comparable to those offered by other exchanges as well as providing competitive fees. The Exchange believes that the proposed rebate will help to encourage Options 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.

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 encourage market participants to trade on the exchange by providing rebates that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed 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."[17] 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'….".[18] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[19] and Rule 19b-4(f)(2)[20] thereunder.

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

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17 See supra note 11.

18 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 15 U.S.C. 78s(b)(3)(A)(ii).

20 17 CFR 240.19b-4(f)(2).

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-38 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-2024-38. 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-2024-38 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.[21]

Sherry R. Haywood,

Assistant Secretary.

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[21] 17 CFR 200.30-3(a)(12).

Exhibit 5

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

MEMX Options Fee Schedule
(EFFECTIVE [AUGUST 9]OCTOBER 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[5])	$0.85
Market Maker ("m")	($0.45)	$0.50	($0.80)	$1.21
Professional ("p")				
Firm ("f")				
Away Market Maker ("a")				
Broker-Dealer ("b")				

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