





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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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<sup>3</sup> 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 on August 1, 2025.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

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

<sup>3</sup> 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 (i) decrease the transaction rebate for executions of contracts where the underlying security of the applicable option is in the Penny Interval program (“Penny options”)<sup>4</sup> which add liquidity to the MEMX Options Book<sup>5</sup> and which are made in the Professional,<sup>6</sup> Firm,<sup>7</sup> Away Market Maker<sup>8</sup> or Broker-Dealer<sup>9</sup> capacities, and (ii) introduce a tiered pricing structure applicable to the rebate provided for executions of contracts in Penny options which add liquidity and are made in the Professional capacity, 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

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<sup>4</sup> 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.

<sup>5</sup> MEMX Options provides Fee Code “D” for transactions which add liquidity to the MEMX Options Book.

<sup>6</sup> As set forth on the Fee Schedule, “Professional” applies to any order for the account of a Professional. The term “Professional” means any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members. See Exchange Rule 16.1. MEMX Options provides fee qualifier “p” for professional transactions.

<sup>7</sup> As set forth on the Fee Schedule, “Firm” applies to any order for the proprietary account of an OCC clearing member. MEMX Options provides fee qualifier “f” for firm transactions.

<sup>8</sup> As set forth on the Fee Schedule, “Away Market Maker” applies to any order for the account of a market maker on another options exchange. MEMX Options provides fee qualifier “a” for away market maker transactions.

<sup>9</sup> As set forth on the Fee Schedule, “Broker Dealer” applies to any order for the account of a broker-dealer, including a foreign broker dealer. MEMX Options provides fee qualifier “b” for broker-dealer transactions.

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 18.1% of the market share and currently the Exchange represents only approximately 3.7% of the market share.<sup>10</sup> 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.

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

Currently, the Exchange provides a standard transaction rebate of \$0.42 per contract for executions of Penny options (as defined above) in the Professional, Firm, 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 such contracts from \$0.42 per contract to \$0.40 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 its transaction

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<sup>10</sup> Market share percentage calculated as of July 29, 2025. The Exchange receives and processes data made available through the consolidated data feeds (*i.e.*, OPRA).

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. The Exchange believes that the reduced rebate continues to be in line with or exceeds the rebates provided by other national securities exchanges and will continue to incentivize Members to route order flow to the Exchange.<sup>11</sup>

### Adoption of Volume Tier

The Exchange is also proposing to introduce a tiered pricing structure applicable to the rebate provided for executions that add liquidity in Penny options that are made in the Professional capacity ("Added Professional Penny Volume").<sup>12</sup> Under this structure, the Exchange will provide enhanced rebates for Members that meet certain volume criteria. Specifically, under the proposed Volume Tier 1, the Exchange is proposing to provide an enhanced rebate of \$0.47 per contract for executions of Added Professional Penny Volume for Members that qualify for Volume Tier 1<sup>13</sup> by achieving an ADAV<sup>14</sup> in

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<sup>11</sup> See, e.g., the Nasdaq Options pricing schedule (available at: <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>), which reflects rebates ranging from \$0.10 to \$0.47 per contract to add liquidity in Penny symbols as a Professional, Firm, Broker-Dealer, or Non-NOM Market Maker, depending on the amount of volume transacted by the market participant. See also, the MIAX Pearl fee schedule, (available at: <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>), which reflects rebates ranging from \$0.25 per contract to \$0.48 per contract to add liquidity in Penny symbols as Non-Priority Customer, BD, and Non-MIAX Pearl Market Maker, depending on the amount of volume transacted by the market participant.

<sup>12</sup> In connection with the adoption of its first volume-based tier as proposed herein, the Exchange is proposing to add language under a new "Notes" section indicating: *"To the extent a Member qualifies for multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply."*

<sup>13</sup> Executions of Added Professional Penny Volume for Members that qualify for the Volume Tier 1 receive a Fee Code of "Dp1P" for such executions on the monthly invoices provided to Members. The Exchange is proposing to add a note under the Volume Tier pricing table on the Fee Schedule that contains this information.

<sup>14</sup> As proposed, the term "ADAV" means the average daily added volume calculated as the number of contracts added per day. ADAV is calculated on a monthly basis. The Exchange is proposing to add this definition under the "Definitions" section of the Fee Schedule.

the Customer, Professional, Firm, Away Market Maker, and/or Broker-Dealer capacities in Penny symbols that is equal to or greater than 0.125% of the equity and ETF option TCV.<sup>15</sup> As proposed, ADAV will be calculated on a monthly basis, and Members that qualify for the Volume Tier by achieving the specified ADAV threshold in a particular month will receive the proposed enhanced rebate of \$0.47 per contract for all executions of Added Professional Penny Volume in that month.

The Exchange proposes to exclude from the calculation of ADAV and TCV any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours and on any day with a scheduled early market close, and the Exchange is proposing to add this information to a new "Notes" section of the Fee Schedule which will be placed directly following the existing "Definitions" section.<sup>16</sup> The Exchange believes that Exchange system disruptions and/or early market closes could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Member qualifies for the Volume Tier to avoid penalizing Members that might otherwise have met the applicable volume threshold.

The Exchange believes that the proposed tiered pricing structure provides an incremental incentive for Members to strive for higher ADAV on the Exchange to

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<sup>15</sup> As proposed, the term "TCV" means the total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply. The Exchange is also proposing to add this definition under the "Definitions" section of the Fee Schedule.

<sup>16</sup> The Exchange is also proposing to move the existing text which appears under the current "Definitions" section to the new "Notes" section: "*All references to "per contract" mean "per contract executed."*"

receive the proposed enhanced rebate for executions of Added Professional Penny Volume. As such, the proposed Volume Tier is designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Further, as noted above,<sup>17</sup> the Exchange notes that other options exchanges maintain tiered pricing structures whereby enhanced rebates are provided for members that meet certain volume requirements, and at least one other exchange maintains a similar tier with a rebate applicable to Added Professional Penny Volume.<sup>18</sup>

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,<sup>19</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>20</sup> 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

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<sup>17</sup> See supra note 11.

<sup>18</sup> See Nasdaq Options Pricing Schedule, *Section 2 Nasdaq Options Market - Fees and Rebates*, (available at: <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>) Tier 6 (providing a \$0.47 rebate for transactions of Added Professional Penny Volume for a Participant that adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.70% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant : (1) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.10% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS).

<sup>19</sup> 15 U.S.C. 78f.

<sup>20</sup> 15 U.S.C. 78f(b)(4) and (5).

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.”<sup>21</sup>

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 reduce the rebate for executions on Penny options in the Professional, Firm, Away Market Maker and Broker-

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<sup>21</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

dealer capacities that add liquidity to the Exchange to \$0.40 per contract is reasonable and equitable because it is 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 Penny options. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the reduced rebate will apply to all market participants who make executions of Penny options in a Professional, Firm, Away Market Maker and/or Broker dealer capacity which add liquidity to the MEMX Options Book.

The Exchange further believes the proposed reduced rebate is appropriate because it exceeds or is comparable to, and competitive with, the rebates provided by other exchanges for executions in the same capacities in Penny options which add liquidity.<sup>22</sup>

As noted above, Volume Tiers like that proposed in this filing have been widely adopted by options exchanges and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process.<sup>23</sup> The Exchange believes the proposed Volume Tier is equitable and not unfairly discriminatory for these same reasons, as it is open to all Members and is designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow in this regard, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a

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<sup>22</sup> See supra note 11.

<sup>23</sup> Id.

trading venue. Additionally, the Exchange believes the proposed enhanced rebate for executions of Added Professional Penny Volume for qualifying Members (i.e., \$0.47 per contract) is reasonable, as it is in line with what other exchanges offer under similar volume tiers.<sup>24</sup> Thus, the Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to pay such higher rebate for executions of Added Professional Penny Volume to Members that qualify for the Volume Tier in comparison with the standard rebate in recognition of benefits to the Exchange and market participants described above, particularly as the magnitude of the additional rebate is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve.

Additionally, the Exchange believes that excluding days when the Exchange closes early or when there is a Exchange system disruption lasting longer than 60 minutes when determining whether a Member qualifies for the proposed Volume Tier during a month is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed Volume Tier due to Exchange system disruptions and/or abnormal market conditions. The Exchange notes that the exclusion of Exchange system disruption days and days with a scheduled early market close is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining

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<sup>24</sup> See supra note 18.

whether members qualify for certain pricing incentives, including calculations of ADAV for Volume Tiers specifically.<sup>25</sup>

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<sup>26</sup> 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 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, and 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 reduced rebate and proposed new Volume Tier are both in line with rebates assessed by other options exchanges.<sup>27</sup> As a

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<sup>25</sup> See supra note 11.

<sup>26</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>27</sup> See supra notes 11 and 18.

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."<sup>28</sup>

#### *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 reduced rebate and Volume Tier apply equally to all Options Members. The proposed reduced rebate for executions of added volume in Penny options made in a Professional, Firm, Away Market Maker or Broker Dealer capacity 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 offered by other exchanges for executions in the same capacities that add liquidity in Penny options. Similarly, the opportunity to qualify for the Volume Tier and thus received an enhanced rebate for executions of Added Professional Penny Volume would be available to all Members that meet the associated volume requirement in any month. The Exchange believes the volume requirement of the Volume Tier is attainable for several market participants who execute Added Professional Volume on the Exchange and is reasonably related to the enhanced market quality that the Volume Tier is designed to promote. As such, the Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *Intermarket Competition*

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<sup>28</sup> See supra note 11.

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. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges and off-exchange venues. Therefore, no exchange possesses significant pricing power in the execution of option order flow. To the contrary, the Exchange believes that the proposal will increase competition and is intended to encourage market participants to trade on the exchange by providing rebates and a new Volume Tier that is 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.

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.”<sup>29</sup> 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

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<sup>29</sup> Id.

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’....”<sup>30</sup> 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,<sup>31</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)

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<sup>30</sup> 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)).

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>32</sup>

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 5. Text of Proposed Fee Schedule.

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<sup>32</sup> 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2025-24]

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

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members<sup>3</sup> (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). As is further described below, the Exchange proposes to (i) decrease the transaction rebate for executions of contracts where the underlying security of the applicable option is in the Penny Interval program which add liquidity to the MEMX Options Book and which are made in the Professional, Firm, Away Market Maker or Broker-Dealer capacities, and (ii) introduce a tiered pricing structure applicable to the rebate provided for executions of contracts in Penny options which add liquidity

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

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

<sup>3</sup> See Exchange Rule 1.5(p).

and are made in the Professional capacity. The Exchange proposes to implement the changes to the MEMX Options Fee Schedule (the “Options Fee Schedule”) pursuant to this proposal on August 1, 2025. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Options Fee Schedule to (i) decrease the transaction rebate for executions of contracts where the underlying security of the applicable option is in the Penny Interval program (“Penny options”)<sup>4</sup> which add liquidity to the MEMX Options Book<sup>5</sup> and which are made in the

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<sup>4</sup> 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.

<sup>5</sup> MEMX Options provides Fee Code “D” for transactions which add liquidity to the MEMX Options Book.

Professional,<sup>6</sup> Firm,<sup>7</sup> Away Market Maker<sup>8</sup> or Broker-Dealer<sup>9</sup> capacities, and (ii) introduce a tiered pricing structure applicable to the rebate provided for executions of contracts in Penny options which add liquidity and are made in the Professional capacity, 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 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 18.1% of the market share and currently the Exchange represents only approximately 3.7% of the market share.<sup>10</sup> 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

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<sup>6</sup> As set forth on the Fee Schedule, “Professional” applies to any order for the account of a Professional. The term “Professional” means any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members. See Exchange Rule 16.1. MEMX Options provides fee qualifier “p” for professional transactions.

<sup>7</sup> As set forth on the Fee Schedule, “Firm” applies to any order for the proprietary account of an OCC clearing member. MEMX Options provides fee qualifier “f” for firm transactions.

<sup>8</sup> As set forth on the Fee Schedule, “Away Market Maker” applies to any order for the account of a market maker on another options exchange. MEMX Options provides fee qualifier “a” for away market maker transactions.

<sup>9</sup> As set forth on the Fee Schedule, “Broker Dealer” applies to any order for the account of a broker-dealer, including a foreign broker dealer. MEMX Options provides fee qualifier “b” for broker-dealer transactions.

<sup>10</sup> Market share percentage calculated as of July 29, 2025. The Exchange receives and processes data made available through the consolidated data feeds (i.e., OPRA).

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.

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

Currently, the Exchange provides a standard transaction rebate of \$0.42 per contract for executions of Penny options (as defined above) in the Professional, Firm, 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 such contracts from \$0.42 per contract to \$0.40 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 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. The Exchange believes that the reduced rebate continues to be in line with or exceeds the rebates provided by other national securities exchanges and will continue to incentivize Members to route order flow to the Exchange.<sup>11</sup>

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<sup>11</sup> See, e.g., the Nasdaq Options pricing schedule (available at: <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>), which reflects rebates ranging from \$0.10 to \$0.47 per contract to add liquidity in Penny symbols as a Professional, Firm, Broker-Dealer, or Non-NOM Market Maker, depending on the amount of volume transacted by the market participant. See also, the MIAX Pearl fee schedule, (available at: <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>), which reflects rebates ranging from \$0.25 per contract to \$0.48 per contract to add liquidity in Penny symbols as Non-Priority Customer, BD, and Non-MIAX Pearl Market Maker, depending on the amount of volume transacted by the market participant.

### Adoption of Volume Tier

The Exchange is also proposing to introduce a tiered pricing structure applicable to the rebate provided for executions that add liquidity in Penny options that are made in the Professional capacity (“Added Professional Penny Volume”).<sup>12</sup> Under this structure, the Exchange will provide enhanced rebates for Members that meet certain volume criteria. Specifically, under the proposed Volume Tier 1, the Exchange is proposing to provide an enhanced rebate of \$0.47 per contract for executions of Added Professional Penny Volume for Members that qualify for Volume Tier 1<sup>13</sup> by achieving an ADAV<sup>14</sup> in the Customer, Professional, Firm, Away Market Maker, and/or Broker-Dealer capacities in Penny symbols that is equal to or greater than 0.125% of the equity and ETF option TCV.<sup>15</sup> As proposed, ADAV will be calculated on a monthly basis, and Members that qualify for the Volume Tier by achieving the specified ADAV threshold in a particular month will receive the proposed enhanced rebate of \$0.47 per contract for all executions of Added Professional Penny Volume in that month.

The Exchange proposes to exclude from the calculation of ADAV and TCV any

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<sup>12</sup> In connection with the adoption of its first volume-based tier as proposed herein, the Exchange is proposing to add language under a new “Notes” section indicating: *“To the extent a Member qualifies for multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply.”*

<sup>13</sup> Executions of Added Professional Penny Volume for Members that qualify for the Volume Tier 1 receive a Fee Code of “Dp1P” for such executions on the monthly invoices provided to Members. The Exchange is proposing to add a note under the Volume Tier pricing table on the Fee Schedule that contains this information.

<sup>14</sup> As proposed, the term “ADAV” means the average daily added volume calculated as the number of contracts added per day. ADAV is calculated on a monthly basis. The Exchange is proposing to add this definition under the “Definitions” section of the Fee Schedule.

<sup>15</sup> As proposed, the term “TCV” means the total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply. The Exchange is also proposing to add this definition under the “Definitions” section of the Fee Schedule.

trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours and on any day with a scheduled early market close, and the Exchange is proposing to add this information to a new "Notes" section of the Fee Schedule which will be placed directly following the existing "Definitions" section.<sup>16</sup> The Exchange believes that Exchange system disruptions and/or early market closes could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Member qualifies for the Volume Tier to avoid penalizing Members that might otherwise have met the applicable volume threshold.

The Exchange believes that the proposed tiered pricing structure provides an incremental incentive for Members to strive for higher ADAV on the Exchange to receive the proposed enhanced rebate for executions of Added Professional Penny Volume. As such, the proposed Volume Tier is designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Further, as noted above,<sup>17</sup> the Exchange notes that other options exchanges maintain tiered pricing structures whereby enhanced rebates are provided for members that meet certain volume requirements, and at least one other exchange maintains a similar tier with a rebate

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<sup>16</sup> The Exchange is also proposing to move the existing text which appears under the current "Definitions" section to the new "Notes" section: "*All references to "per contract" mean "per contract executed."*"

<sup>17</sup> See supra note 11.

applicable to Added Professional Penny Volume.<sup>18</sup>

## 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,<sup>19</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>20</sup> 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

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<sup>18</sup> See Nasdaq Options Pricing Schedule, *Section 2 Nasdaq Options Market - Fees and Rebates*, (available at: <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>) Tier 6 (providing a \$0.47 rebate for transactions of Added Professional Penny Volume for a Participant that adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.70% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant : (1) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.10% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS).

<sup>19</sup> 15 U.S.C. 78f.

<sup>20</sup> 15 U.S.C. 78f(b)(4) and (5).

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.”<sup>21</sup>

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 reduce the rebate for executions on Penny options in the Professional, Firm, Away Market Maker and Broker-dealer capacities that add liquidity to the Exchange to \$0.40 per contract is reasonable and equitable because it is 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 Penny options. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the reduced rebate will apply to all market participants who make executions of Penny options in a Professional, Firm, Away Market Maker and/or Broker dealer capacity which add liquidity to the MEMX Options Book.

The Exchange further believes the proposed reduced rebate is appropriate because

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<sup>21</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

it exceeds or is comparable to, and competitive with, the rebates provided by other exchanges for executions in the same capacities in Penny options which add liquidity.<sup>22</sup>

As noted above, Volume Tiers like that proposed in this filing have been widely adopted by options exchanges and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process.<sup>23</sup> The Exchange believes the proposed Volume Tier is equitable and not unfairly discriminatory for these same reasons, as it is open to all Members and is designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow in this regard, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Additionally, the Exchange believes the proposed enhanced rebate for executions of Added Professional Penny Volume for qualifying Members (i.e., \$0.47 per contract) is reasonable, as it is in line with what other exchanges offer under similar volume tiers.<sup>24</sup> Thus, the Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to pay such higher rebate for executions of Added Professional Penny Volume to Members that qualify for the Volume Tier in comparison with the standard rebate in recognition of benefits to the Exchange and market participants described above, particularly as the magnitude of the additional

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<sup>22</sup> See supra note 11.

<sup>23</sup> Id.

<sup>24</sup> See supra note 18.

rebate is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve.

Additionally, the Exchange believes that excluding days when the Exchange closes early or when there is a Exchange system disruption lasting longer than 60 minutes when determining whether a Member qualifies for the proposed Volume Tier during a month is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed Volume Tier due to Exchange system disruptions and/or abnormal market conditions. The Exchange notes that the exclusion of Exchange system disruption days and days with a scheduled early market close is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives, including calculations of ADAV for Volume Tiers specifically.<sup>25</sup>

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<sup>26</sup> 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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<sup>25</sup> See supra note 11.

<sup>26</sup> 15 U.S.C. 78f(b)(4) and (5).

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, and 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 reduced rebate and proposed new Volume Tier are both in line with rebates assessed by other options exchanges.<sup>27</sup> 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."<sup>28</sup>

*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 reduced rebate and Volume Tier apply equally to all Options Members. The proposed reduced rebate for executions of added volume in Penny options made in a Professional, Firm, Away Market Maker or Broker

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<sup>27</sup> See supra notes 11 and 18.

<sup>28</sup> See supra note 11.

Dealer capacity 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 offered by other exchanges for executions in the same capacities that add liquidity in Penny options. Similarly, the opportunity to qualify for the Volume Tier and thus received an enhanced rebate for executions of Added Professional Penny Volume would be available to all Members that meet the associated volume requirement in any month. The Exchange believes the volume requirement of the Volume Tier is attainable for several market participants who execute Added Professional Volume on the Exchange and is reasonably related to the enhanced market quality that the Volume Tier is designed to promote. As such, the Exchange does not believe the proposed changes would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *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. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges and off-exchange venues. Therefore, no exchange possesses significant pricing power in the execution of option order flow. To the contrary, the Exchange believes that the proposal will increase competition and is intended to encourage market participants to trade on the exchange by providing rebates and a new Volume Tier that is 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.

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.”<sup>29</sup> 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’ ....”<sup>30</sup> 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

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<sup>29</sup> Id.

<sup>30</sup> 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)).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>31</sup> and Rule 19b-4(f)(2)<sup>32</sup> thereunder.

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

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-MEMX-2025-24 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-2025-24. This file

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<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>32</sup> 17 CFR 240.19b-4(f)(2).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2025-24 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>33</sup> 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[JUNE] 1, 2025)**

**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	(\$1.17)	\$0.85
Market Maker (“m”)	(\$0.45)	\$0.50	(\$0.80)	\$1.21
Professional (“p”)	(\$0.40[2])	\$0.50	(\$0.72)	\$1.21
Firm (“f”)				
Away Market Maker (“a”)				
Broker-Dealer (“b”)				

**Volume Tier**

<u>Tier</u>	<u>Capacity</u>	<u>Required Criteria</u>	<u>Per Contract Rebate for Added Liquidity in Penny Symbols</u>
<u>Tier 1*</u>	<u>Professional (“p”)</u>	<u>Member has an ADAV in the Customer, Professional, Firm, Away Market Maker, and/or Broker-Dealer capacity in Penny Symbols <math>\geq</math> 0.125% of the equity and ETF option TCV</u>	<u>(\$0.47)</u>

\*Applies to Fee Code “p”. Applicable executions will be assigned the Fee Code “Dp1P” for Members that meet the required criteria under Volume Tier 1.

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**Definitions**

- [All references to “per contract” mean “per contract executed.”]
- “ADAV” means average daily added volume calculated as the number of contracts added per day. ADAV is calculated on a monthly basis.
- Capitalized terms not defined herein shall have the meanings set forth in the MEMX Rulebook.

- “Penny Program Securities” are those issues quoted pursuant to Rule 21.5(d) of the MEMX Rulebook.
- “Away Market Maker” applies to any order for the account of a market maker on another options exchange.
- “Broker Dealer” applies to any order for the account of a broker dealer, including a foreign broker dealer.
- “Customer” applies to any order for the account of a Priority Customer. “Priority Customer” shall have the meaning set forth in Rule 16.1 of the MEMX Rulebook.
- “Firm” applies to any order for the proprietary account of an OCC clearing member.
- “Market Maker” applies to any order for the account of a registered Market Maker.
- “Professional” applies to any order for the account of a Professional.
- “TCV” means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

### Notes

- To the extent a Member qualifies for multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply.
- All references to “per contract” mean “per contract executed”.
- The Exchange excludes from its calculation of ADAV and TCV any trading day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours and on any day with a scheduled early market close.

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