

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94590; File No. SR-MEMX-2022-06)

April 4, 2022

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule Concerning Volume Calculations for Transaction Pricing Tiers

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 March 31, 2022, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on April 1, 2022. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to exclude any days that the MSCI Equity Indexes and the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced from the volume calculations used by the Exchange for purposes of determining a Member's qualification for the Exchange's transaction pricing tiers/incentives. Currently, the Exchange's Fee Schedule includes a note stating that the Exchange excludes from its calculations of ADAV,⁴ ADV⁵ and TCV,⁶ and for purposes of determining qualification for the Displayed Liquidity Incentive: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; and (2) the day that Russell Investments reconstitutes its family of indexes (i.e., the last Friday in June). Now, the Exchange proposes to include in this list of days excluded from such calculations any day that the MSCI Equities Indexes are rebalanced ("MSCI Rebalance Day"), which occur on a quarterly

⁴ As set forth on the Fee Schedule, "ADAV" means average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis.

⁵ As set forth on the Fee Schedule, "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

⁶ As set forth on the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

basis each year, and any day that the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (“S&P Rebalance Day”), which also occur on a quarterly basis each year.

For the same reasons that the Exchange currently excludes the day that Russell Investments reconstitutes its family of indexes (“Russell Reconstitution Day”) from these calculations,⁷ the Exchange believes it is appropriate to exclude MSCI Rebalance Days and S&P Rebalance Days from these calculations in the same manner, as such days typically have extraordinarily high and/or abnormally distributed trading volumes, which the Exchange believes is attributed to market participants who are not generally as active entering the market to rebalance their holdings in-line with these rebalances, and the Exchange believes this change to normal activity may affect a Member’s ability to meet the applicable volume thresholds under its volume-based tiers, as well as the daily quoting requirements under the Displayed Liquidity Incentive. The Exchange notes that the proposed exclusion of MSCI Rebalance Days and S&P Rebalance Days from the relevant calculations would be applied in the same manner that the Exchange currently excludes system disruption days and the Russell Reconstitution Day from such calculations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among

⁷ See Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090, 32092 (June 16, 2021) (SR-MEMX-2021-07).

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4) and (5).

its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and appropriate because, as described above, MSCI Rebalance Days and S&P Rebalance Days typically have extraordinarily high and/or abnormally distributed trading volumes which, in turn, may affect a Member's ability to meet the applicable volume thresholds and/or daily quoting requirements under its transaction pricing tiers/incentives, and the Exchange believes that excluding such days from the relevant calculations for purposes of determining a Member's qualification for such tiers/incentives would help to avoid penalizing Members that might otherwise have met the requirements to qualify for such tiers/incentives due to abnormal market conditions.

Additionally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all Members uniformly, in that each Member's volume and quoting activities for purposes of pricing tiers/incentives would continue to be calculated in a uniform manner and would now exclude MSCI Rebalance Days and S&P Rebalance Days.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act¹⁰ 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 is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

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. Rather, as

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

described above, the proposed change is intended to avoid penalizing Members that might otherwise have met the applicable volume thresholds and/or quoting requirements to qualify for the Exchange's transaction pricing tiers/incentives due to the abnormal trading volumes and market conditions typically experienced in the equities markets on MSCI Rebalance Days and S&P Rebalance Days. The Exchange does not believe the proposal would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange believes the proposal is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers/incentives. Additionally, the Exchange believes the proposal would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the proposed exclusion of MSCI Rebalance Days and S&P Rebalance Days from the relevant calculations will apply to all Members uniformly and in the same manner that the Exchange currently excludes system disruption days and the Russell Reconstitution Day from such calculations.

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 Act¹¹ and Rule 19b-4(f)(2)¹² 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2022-06 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-2022-06. This file number should be included on the subject line if e-mail 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2022-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).