

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96414; File No. SR-MEMX-2022-31)

November 30, 2022

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 November 17, 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 November 17, 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 day with a scheduled early market close from the volume calculations used by the Exchange for purposes of determining a Member's qualification for the Exchange's transaction pricing tiers. Specifically, the Exchange proposes to exclude any day with a scheduled early market close from its calculations of ADAV,⁴ ADV⁵ and TCV,⁶ and for purposes of determining qualification for the Displayed Liquidity Incentive.

Currently, the Exchange's Fee Schedule provides that the Exchange excludes from its calculations of ADAV, ADV and TCV, 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; (2) the day that Russell Investments reconstitutes its family of indexes (i.e., the last Friday in June); (3) any day

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.

that the MSCI Equities Indexes are rebalanced (i.e., on a quarterly basis); and (4) any day that the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (i.e., on a quarterly basis).

The Exchange excludes these days from such calculations in order to avoid penalizing Members that might otherwise qualify for certain tiered pricing but that, because of special circumstances on a particular day, did not participate on the Exchange to the extent that they might have otherwise participated. Similarly, the Exchange believes that scheduled early market closes, which typically are the day before or after a holiday, may preclude some Members from submitting orders to the Exchange at the same level as they might otherwise. The Exchange notes that it is not proposing to modify any of the existing fees or rebates or the volume thresholds at which a Member may qualify for certain fees or rebates pursuant to its tiered pricing structure. Rather, as noted above, the Exchange is proposing to modify its Fee Schedule by including in the list of days excluded from its calculations of ADAV, ADV and TCV, and for purposes of determining qualification for the Displayed Liquidity Incentive, any day with a scheduled early market close.

The Exchange believes that excluding days with a scheduled early market close from its calculations of ADAV, ADV and TCV, and for purposes of determining qualification for the Displayed Liquidity Incentive, will provide Members with increased certainty as to their monthly cost for trades executed on the Exchange. In addition, the Exchange notes that excluding days with a scheduled early market close from volume calculations for purposes of determining a Member's qualification for pricing tiers is consistent with the practice of other exchanges.⁷

⁷ See, e.g., Cboe BZX Exchange, Inc. equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); see also Securities Exchange Act Release No. 72589 (July 10, 2014), 79 FR 41618 (July 16, 2014) (SR-BATS-2014-025).

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 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 the proposed change to exclude any day with a scheduled early market close from the volume calculations used by the Exchange for purposes of determining a Member's qualification for the Exchange's transaction pricing tiers is reasonable because, as described above, it will help provide Members with a greater level of certainty as to their level of rebates and costs for trading in any month where there is a scheduled early market close. The Exchange is not proposing to amend the thresholds a Member must achieve to become eligible for, or the dollar value associated with, the tiered rebates or fees. Eliminating the inclusion of any day with a scheduled early market close would, in many cases, be excluding a day that would otherwise lower a Member's ADAV and/or ADV as a percentage of the TCV, as well as negatively impact a Member's average quoting activity for purposes of the Displayed Liquidity Incentive Tiers. Thus, the Exchange believes the proposed change will make the majority of Members more likely to meet the minimum or higher tier thresholds, incentivizing Members to increase their participation on the Exchange in order to meet the next highest tier. Additionally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the methodology for calculating ADAV, ADV and TCV, and for purposes of

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4) and (5).

determining qualification for the Displayed Liquidity Incentive, will apply equally to all Members, in that each Member's volume and quoting activities for purposes of the Exchange's transaction pricing tiers would continue to be calculated in a uniform manner and would now exclude any day with a scheduled early market close. Further, the Exchange believes that a tiered pricing model not significantly altered by a day of atypical trading behavior, which allows Members to predictably calculate their costs associated with trading activity on the Exchange, is reasonable, fair and equitable and not unreasonably discriminatory, as it is uniform in application amongst Members and should enable such participants to operate their business without concern of unpredictable and potentially significant changes in expenses.

In addition, as noted above, the proposed exclusion of any day with a scheduled early market close from volume calculations for purposes of determining a Member's qualification for pricing tiers is consistent with the practice of other exchanges, and therefore, such proposal does not raise any new or novel issues that have not previously been considered by the Commission.¹⁰

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 Act¹¹ 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, the

¹⁰ See supra note 7.

¹¹ 15 U.S.C. 78f(b)(4) and (5).

Exchange believes the proposed change will help to promote intramarket competition by avoiding a penalty to Members for days when overall trading activity might be significantly lower than a typical trading day. 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 any day with a scheduled early market close from the relevant calculations will apply equally to all Members and in the same manner that the Exchange currently excludes certain system disruption and index rebalance days from such calculations. 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 such competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers.

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 Act¹² and Rule 19b-4(f)(2)¹³ 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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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-2022-31 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-2022-31. 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-2022-31 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.¹⁴

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¹⁴ 17 CFR 200.30-3(a)(12).