SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98701; File No. SR-MEMX-2023-27)

October 6, 2023

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)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on September 29, 2023, 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[4] (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 immediately. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning the

1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 See Exchange Rule 1.5(p).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to add clarifying language to the MEMX Equities Liquidity Provision Tiers. The Exchange notes that certain criteria of Liquidity Provision Tier 4[5] (namely, criteria (2)),[6] will expire no later than October 31, 2023 and Liquidity Provision Tier 6[7] will expire no later than November 30, 2023. As described below, the Exchange wishes to add language clarifying the applicability of other language on the Fee Schedule to such Tiers in light of their expiration. The Exchange does not propose to change the rebates offered to Members under Liquidity Provision Tier 4 or Liquidity Provision Tier 6, nor does the Exchange propose to change the criteria under such tiers. Rather, the Exchange wishes to make clear which months Members are eligible for such tiers.

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5 The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 4" with a Fee Code of "B4", "D4" or "J4", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

6 This criteria provides that a Member may qualify for Liquidity Provision Tier 4 by achieving a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal to or greater than 50% of the Member's April 2023 Displayed ADAV of the TCV. As set forth on the Fee Schedule, "Displayed ADAV" means ADAV with respect to displayed orders. "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis. "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV. "TCV" is 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. See also the Exchange's Fee Schedule (available at https://info.memxtrading.com/fee-schedule/).

7 The pricing for Liquidity Provision Tier 6 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 6" with a Fee Code of "B6", "D6" or "J6", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

The Liquidity Provision Tiers section of the Fee Schedule contains the following language in the first footnote (denoted by "*"): "Members that qualify for Tier 4, 5, or 6 based on activity in a given month will also receive the associated Tier 4, 5, or 6 rebate during the following month." The second footnote (denoted by "**") of the Liquidity Provision Tiers section of the Fee Schedule provides that Criteria 2 of Liquidity Provision Tier 4 will expire no later than October 31, 2023. The third footnote (denoted by "***") of the Liquidity Provision Tiers section of the Fee Schedule provides that Liquidity Provision Tier 6 will expire no later than November 30, 2023. The Exchange now proposes to add clarifying language to the second and third footnote of the Liquidity Provision Tiers section, in order to make it more clear to Members that the months in which they are eligible to qualify for either (i) Liquidity Provision Tier 4 rebates based upon Criteria (2) of such tier, or (ii) Liquidity Provision Tier 6 rebates.

Clarify Liquidity Provision Tier 4 Criteria (2)

Currently, the second footnote of the Liquidity Provision Tiers section of the Fee Schedule states that "Criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023". The Exchange wishes to clarify that, since Criteria (2) of Liquidity Provision 4 will expire on October 31, 2023, a Member's activity during the month of October will not qualify such Member for the Liquidity Provision 4 rebate in the following month if the Member qualifies for the tier based on Criteria (2). Thus, a Member qualifying based on Criteria (2) will not qualify for the Liquidity Provision 4 rebate in November based on October activity, because Criteria (2) expires as of October 31. The Exchange now proposes to amend the second footnote of the Liquidity Provision Tiers section to add the following sentence: "Due to the expiration of Criteria (2), Members that qualify for Tier 4 based on activity meeting Criteria (2) in October 2023 will not receive the Liquidity Provision Tier 4 rebate during the following month." The

Exchange wishes to make clear that, while a Member whose October activity meets Tier 4 via Criteria (2) would be eligible to receive Tier 4 rebates in October, such Member is not eligible to qualify for the Tier 4 rebate in the following month (November 2023) based on October activity. As noted above, the Exchange does not propose to change the Tier 4 rebate, nor does the Exchange propose to modify the criteria to achieve such rebate. The Exchange believes that this proposed clarifying language will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to achieve certain volume thresholds on the Exchange on an ongoing basis.

Clarify Liquidity Provision Tier 6

Currently, the third footnote of the Liquidity Provision Tiers section of the Fee Schedule states that "Liquidity Provision Tier 6 will expire no later than November 30, 2023." The Exchange wishes to clarify that, since Liquidity Provision 6 will expire on November 30, 2023, a Member's activity during the month of November will not qualify such Member for the Liquidity Provision 6 rebate in the following month. Thus, a Member's activity in November will not qualify the Member for the Liquidity Provision 6 rebate in December based on November activity, because Criteria (2) expires as of November 30. The Exchange now proposes to amend the third footnote to add the following sentence: "Due to the expiration of Tier 6, Members that qualify for Tier 6 based on activity in November 2023, will not receive the Liquidity Provision Tier 6 rebate during the following month." The Exchange wishes to make clear that, while a Member who qualifies for Tier 6 rebates based upon November activity would be eligible to receive Tier 6 rebates in November 2023, such Member would not qualify for Tier 6 rebates in the following month (December 2023) based on November activity. As noted above, the Exchange does not propose to change the Tier 6 rebate, nor does the Exchange propose to modify the criteria to achieve such rebate. The Exchange believes that this proposed clarifying language will provide Members with additional certainty when trading on the Exchange, which in turn, will incentivize Members to achieve certain volume thresholds on the Exchange on an ongoing basis.

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 notes that volume-based incentives (such as Liquidity Provision Tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discount 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/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process.

The Exchange believes the proposed clarifying language to the second and third footnotes in the Liquidity Provision Tiers section of the Fee Schedule is reasonable because it is designed to avoid confusion in reading the Fee Schedule. The Liquidity Provision Tiers continue to provide Members with incremental incentives to achieve certain volume thresholds on the

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4) and (5).

Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to encourage Members to maintain or increase their order flow to the Exchange. The Exchange believes that the proposed clarifying language will provide Members with an added layer of certainty with respect to the expiring Tiers, namely Liquidity Provision Tier 4 Criteria (2) and Liquidity Provision Tier 6.

The Exchange also believes the proposed change is equitable and not unfairly discriminatory because it will apply equally to all Members and because the opportunity to qualify for Liquidity Provision Tiers is open to all members on an equal basis. Upon the expiration of Liquidity Provision Tier 4 Criteria (2) for activity on the Exchange after October 31, 2023, no Member will be able to qualify for Liquidity Provision Tier 4 based on Criteria (2). Similarly, upon the expiration of Liquidity Provision Tier 6 for activity on the Exchange after November 30, 2023, no Member will be able to qualify for Liquidity Provision Tier 6.

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 Act[10] 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. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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 described above, the proposed change is intended to provide clear and easy-to-understand language in its Fee Schedule related to the expiring Tiers, as described above. The Exchange

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

believes that providing clarifying language enables Members to make better decisions about where to route their orders and would enable the Exchange to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

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 clarifying the applicability of certain expiring Tiers, as described above. 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 changes will apply to all Members uniformly and in the same manner.

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[11] 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 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.

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11 15 U.S.C. 78s(b)(3)(A)(ii).

12 17 CFR 240.19b-4(f)(2).

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-2023-27 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-2023-27. 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-2023-27 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.[13]

J. Lynn Taylor,

Assistant Secretary.

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[13] 17 CFR 200.30-3(a)(12).