

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100247; File No. SR-MEMX-2024-21)

May 30, 2024

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness
of a Proposed Rule Change to Implement an Equity Rights Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 22, 2024, MEMX LLC (“MEMX” or “Exchange”) filed with the Securities and Exchange Commission (“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 implement an equity rights program (the “Warrants Program” or the “Jump Ball Program”) related to fees charged for the trading of options on the Exchange’s options platform (“MEMX Options”). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes to implement the Warrants Program pursuant to which warrants representing the right to acquire equity in the Exchange’s parent holding company upon vesting would be issued to participants on MEMX Options who also participate in the Warrants Program (“Participants”), in exchange for payment of the initial prepayment fee (“Prepayment Fee”) and the achievement of certain liquidity volume thresholds on the Exchange’s options platform (“MEMX Options”) over a 24-month period (the “Term”). The Warrants Program commenced on May 1, 2024 (the “Effective Date”) and will end on May 1, 2026.³ The purpose of the Warrants Program is to promote the long-term interests of MEMX by providing incentives designed to encourage MEMX market participants to contribute to the growth and success of MEMX Options via actively providing and taking liquidity on the MEMX Options market. Participants in the Warrants Program will be able to vest their warrants through the process described in the following paragraphs and consequently will have the opportunity to share in the benefits of MEMX’s increased enterprise value.

Participants who executed a Purchase Agreement and who provide a Prepayment Fee in the amount of \$500,000 in advance of April 30, 2024 (the “Commitment Deadline”) or such later date specified by the Exchange were issued a “ticket” indicating that the Participant has been

³ The Exchange initially filed the proposal to implement the Warrants Program on April 25, 2024 (SR-MEMX-2024-15) (the “Initial Proposal”). On May 10, 2024, the Exchange withdrew the Initial Proposal and replaced the proposal with SR-MEMX-2024-18 (the “Second Proposal”). The Exchange recently withdrew the Second Proposal and is replacing it with the current filing (SR-MEMX-2024-21).

accepted into the Warrants Program. Participants may purchase more than one ticket. The total number of tickets available for purchase is capped at 25 tickets. Upon making the Prepayment Fee corresponding to the number of tickets purchased, a Participant will be able to apply the Prepayment Fee to various fees for trading on MEMX Options, including MEMX Options connectivity fees,⁴ MEMX Options market data fees,⁵ MEMX Options membership fees,⁶ and MEMX Options transaction fees.⁷ The Prepayment Fee does not expire and a Participant may apply the Prepayment Fee to any of the above listed fees at any time. A Participant will obtain 279,600 unvested warrants per ticket that will vest on an equalized basis each calendar month during the Term (each such calendar month during the Term of the Warrants Program, a “Measurement Period”) if such Participant satisfies certain volume commitments on MEMX Options, as described below.

Participants shall vest warrants on a pro-rata basis based upon meeting or outperforming volume commitments during each Measurement Period, as is discussed below. The volume commitments may be met by trading activity in any listed equity option or exchange-traded fund option on MEMX Options.⁸ Participants that trade options which are not in the Penny Program⁹ (such options, “Non-Penny” options) will receive double credit for such Non-Penny activity for purposes of calculating the Participant’s performance during the Measurement Period. Each vested warrant entitles a Participant to purchase equity ownership of one Nonvoting Common

⁴ See the MEMX Connectivity Fee Schedule, available at <https://info.memxtrading.com/connectivity-fees/>.

⁵ See the MEMX Options Fee Schedule, available at <https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/>.

⁶ See the MEMX Membership Fee Schedule, available at <https://info.memxtrading.com/membership-fees/>.

⁷ See the MEMX Options Fee Schedule, available at <https://info.memxtrading.com/us-options-trading-resources/us-options-fee-schedule/>.

⁸ The Exchange does not currently list or trade index options.

⁹ See Exchange Rule 21.5(d).

Unit¹⁰ of Holdco at a particular strike price. Only vested warrants are eligible to be exercised, and un-vested warrants are not exercisable. The total equity ownership of Holdco Units, including any purchased through the exercise of vested warrants, shall be subject to the ownership limitations of the Seventh Amended and Restated Limited Liability Company Agreement of MEMX Holdings LLC, as amended (the “Holdco LLC Agreement”).¹¹

Volume Requirements

The target performance (“Target Performance”) for any Participant is 25 basis points of Total Consolidated Volume¹² (“TCV”) on MEMX Options per Measurement Period, per ticket. Thus, if a Participant achieves the Target Performance during any Measurement Period, the Participant’s full allotment of unvested warrants for that Measurement Period will vest (i.e., 11,650 warrants per calendar month, per ticket). The Target Performance for any Participant is on a per ticket basis, thus, a Participant with two tickets has a Target Performance of 50 basis points of TCV per Measurement Period, a Participant with three tickets has a Target Performance of 75 basis points of TCV per Measurement Period, and so forth. During any Measurement Period, Participants that do not meet the Target Performance but meet certain minimum performance levels will have their warrants vest proportionally to their performance, as illustrated in the following table. If a Participant reaches a minimum percentage of the volume commitment set out in the second column of the below table (equivalent to the number of basis points set out in the third column of the below table), the Participant will earn a reduced number

¹⁰ “Nonvoting Common Units” is defined in Section 3.2(g)(iii) of the Seventh Amended and Restated Limited Liability Company Agreement of MEMX Holdings LLC.

¹¹ See, e.g., Section 3.5(a)(ii) of the Holdco LLC Agreement, which states that “[n]o Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Units constituting more than twenty percent (20%) of any class of Units.”

¹² Total Consolidated Volume is 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.

of warrants on a proportional basis applicable to such Measurement Period.

Measurement Period	Performance Minimum Percentage	Performance Minimum Basis Points
Month 1 through Month 3	40%	10 bps
Month 4 through Month 6	50%	12.5 bps
Month 7 through Month 24	60%	15 bps

For example, if a Participant with one ticket achieves 10 basis points of volume on MEMX Options in the month 1 Measurement Period, the Participant will vest 40% of their warrants for such month (4,660 vested warrants). As another example, if a Participant with two tickets achieves 13 basis points of volume on MEMX Options during the month 1 Measurement Period, the Participant will vest 26% of their warrants for such month (i.e., 13 basis points of the 50 basis point Target Performance based on two tickets) on a proportional basis (6,058 vested warrants). However, if a Participant with any number of tickets achieves 8 basis points of volume on MEMX Options in the month 1 Measurement Period, the Participant will vest no warrants for such month.

If a Participant fails to meet the performance minimum for any Measurement Period corresponding to month 1 through month 11, such Participant will have the opportunity to vest their unvested warrants if such Participant over-performs in a subsequent Measurement Period that corresponds to month 2 through month 12. For example, if a Participant with one ticket achieves 25 basis points of volume on MEMX Options in month 1, 12.5 basis points in month 2, 37.5 basis points in month 3, and 25 basis points in months 4 through 12, such Participant can recover their un-vested 5,825 warrants from month 2 based on such Participant's activity in month 3. Using the same example, if the Participant achieves the same number of basis points

noted in the above example in this paragraph for months 1, 2, and 4 through 12 but only achieves 31 basis points in month 3, such Participant can recover 2,796 of the un-vested 5,825 warrants from month 2, and would forfeit the remaining 3,029 warrants. Partial basis points and partial warrants achieved will be rounded according to standard rounding conventions (i.e., rounded up if equal to or greater than 0.5, rounded down if below 0.5). To again use the same example, if the Participant achieves the same number of basis points noted in the first example of this paragraph in months 1, 2, and 4 through 12 but only achieves 30.65 basis points in month 3, such Participant can recover 2,633 of the un-vested 5,825 warrants from month 2 (rounding up from 2,632.9 un-vested warrants), and would forfeit the remaining 3,192 warrants.

As another example, if a Participant with one ticket achieved 10 basis points of volume on MEMX Options in each of months 1, 2, and 3, 12.5 basis points in each of months 4, 5, and 6, 40 basis points in each of months 7, 8, and 9, and 37.5 basis points in each of months 10, 11, and 12, such Participant can recover 6,990 un-vested warrants from each of months 1, 2, and 3 and 5,825 un-vested warrants from each of months 4, 5, and 6, for a total of 38,445 warrants recovered. If the Participant in the example above had three tickets, the warrants would vest such that such participant would earn 4,660 warrants in each of months 1, 2, and 3, would earn 5,825 warrants in each of months 4, 5, and 6, would earn 18,640 warrants in each of months 7, 8, and 9, and would earn 17,475 warrants in each of months 10, 11, and 12, for a total of 139,800 warrants vested. Such participant would recover none of the 279,600 warrants forfeited for the year. Further, if a Participant with one ticket achieves 25 basis points of volume on MEMX Options in month 1, 12.5 basis points in each of months 2 through 4, 25 basis points in each of months 5 through 12, and 50 basis points in month 13, the Participant's over-performance in month 13 cannot be applied to vest units from under-performing activity in months 1-11.

If a Participant fails to meet the performance minimum for a Measurement Period corresponding to month 13 through month 23, such Participant will similarly have the opportunity to vest their unvested warrants if such Participant over-performs in a subsequent Measurement Period that corresponds to month 14 through month 24. For example, if a Participant achieves 15 basis points of volume on MEMX Options in month 13, 25 basis points in month 14, 45 basis points in month 15, and 25 basis points in each of months 16 through 24, such Participant can recover their un-vested 4,660 warrants from month 13 based on such Participant's activity in month 15. As a further example, if a Participant achieves the same number of basis points noted in the above example in this paragraph for months 13, 14, and 16 through 24, but achieves 27.14 basis points in month 15, such Participant can recover 997 of the un-vested 4,660 warrants from month 13 (rounded down from 997.24 un-vested warrants), and would forfeit the remaining 3,663 warrants.

Restrictions on Vesting

Each vested warrant shall be exercisable from the time of vesting until the seventh anniversary of the first day of the first calendar month after the Effective Date. Vested warrants may be exercised when a Participant pays the exercise price of the warrant. Warrants have not been registered under the Securities Act of 1933. Each Participant will have a standard piggyback registration right to include the Nonvoting Common Units issuable upon exercise of the warrants should Holdco at a later date file a Registration Statement under the Securities Act of 1933. The Nonvoting Common Units may not be transferred except pursuant to an effective registration statement under the Securities Act of 1933 and such state securities laws, or an exemption from such registration thereunder, and are subject to transfer restrictions set forth in

the Holdco LLC Agreement.¹³ In the event of a Qualified Public Offering as defined in the Holdco LLC Agreement, the Nonvoting Common Units are subject to the transfer restrictions in Section 10.3 of the Holdco LLC Agreement, and MEMX shall have right of first offer on the transfer of such Nonvoting Common Units. In the event that Holdco sells Nonvoting Common Units to the public in an initial public offering pursuant to a registration statement declared effective by the SEC, then Holdco will give any Participant who holds warrants notice of the date when the initial public offering will take place. In such case, the fair market value of the Nonvoting Common Units will be as specified in the final prospectus regarding the initial public offering as filed with the SEC.

All applicants will be subject to the same eligibility and designation criteria, and all Participants will participate in the Program on the same terms, conditions and restrictions. To be designated as a Participant, an applicant must: (i) be a registered broker-dealer pursuant to Section 15 of the Securities Exchange Act of 1934 (the “Act”); (ii) qualify as an “accredited investor” as such term is defined in Regulation D of the Securities Act of 1933;¹⁴ and (iii) have executed all required documentation for participation in the Warrants Program. Participants may be, but are not required to be, current investors in Holdco, and the Exchange anticipates both current and new investors to participate in the Warrants Program. Participants must have

¹³ See, e.g., Sections 10.3, 10.4, and 10.5 of the Holdco LLC Agreement. The Exchange notes that such Sections refer to Common Members throughout, rather than specifically referring to Nonvoting Common Units. Section 1.1 of the Holdco LLC Agreement defines a “Common Member” as a member in Holdco “holding Common Units in its capacity as such, together with its Affiliates that hold Common Units....” Accordingly, the term Common Member includes any Holdco member, and does not distinguish between Holdco members holding Voting Common Units and members holding Nonvoting Common Units. As such, the transfer restrictions noted in the Holdco LLC Agreement, which refer to Common Members, are applicable to Nonvoting Common Units.

¹⁴ The purpose of this criterion relates to the ability of Holdco to sell shares of common stock pursuant to an exemption from registration under the Securities Act of 1933. The definition of “accredited investor” under Rule 501(a)(1) of the Securities Act of 1933 includes any broker or dealer registered pursuant to Section 15 of the Act. As noted above, a Participant will be required to be registered as a broker or dealer pursuant to Section 15 of the Act, therefore all Participants will satisfy this criterion.

executed the definitive documentation, satisfied the eligibility criteria required of Warrants Program participants enumerated above, and tendered the Prepayment Fee by the Commitment Deadline.

As discussed above, the purpose of the Program is to encourage Participants to direct greater trade volume to MEMX Options to enhance trading volume on MEMX's options platform. Increased volume will provide for greater liquidity and enhanced price discovery, which benefits all market participants. Other exchanges have previously engaged in the practice of incentivizing increased order flow in order to attract liquidity providers through equity sharing arrangements.¹⁵ The Warrants Program similarly intends to attract order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from these other market participants. The Warrants Program will similarly reward the liquidity providers that provide this additional volume with a potential proprietary interest in MEMX.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

¹⁵ See, e.g., Securities Exchange Act Release Nos. 62358 (June 22, 2010), 75 FR 37861 (June 30, 2010) (SR-NSX-2010-06); 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-018); 69200 (March 21, 2013), 78 FR 18657 (March 27, 2013) (SR-CBOE-2013-31); 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR-MIAX-2015-02); 74114 (January 22, 2015), 80 FR 4611 (January 28, 2015) (SR-BOX-2015-03); 74576 (March 25, 2015), 80 FR 17122 (March 31, 2015) (SR-BOX-2015-16); 80909 (June 12, 2017), 82 FR 27743 (June 16, 2017) (SR-MIAX-2017-28); 83012 (April 9, 2018), 83 FR 16163 (April 13, 2018) (SR-PEARL-2018-08); and 89730 (September 1, 2020), 85 FR 55530 (September 8, 2020) (SR-PEARL-2020-10).

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, because all Participants may elect to participate (or elect not to participate) in the Warrants Program and vest warrants on the same terms and conditions, assuming they satisfy the same eligibility criteria as described above. The eligibility criteria are objective; thus, all Participants have the ability to satisfy the eligibility criteria to obtain a “ticket” for participation. Any Participant that becomes a ticket holder and pays the Prepayment Fee and otherwise satisfies the eligibility criteria has the same opportunity for their warrants to vest through volume contributions. The volume performance requirements are the same for all Participants, all Participants have the same opportunity to earn vested warrants on a proportional basis based upon meeting fixed volume threshold amounts during the Measurement Periods that will apply to all Participants. This ensures that all Participants will have the same opportunity to vest warrants and to exercise those warrants to purchase Non-Voting Common Units if they so choose. As noted above, Participants may be, but are not required to be, current investors in Holdco, and the

¹⁸ See id.

¹⁹ 15 U.S.C. 78f(b)(4).

Exchange anticipates both current and new investors to participate in the Warrants Program.

The Exchange believes that the methodology used to calculate the volume thresholds is fair, reasonable and not unfairly discriminatory because it is based on objective criteria that is designed to increase trading volume on the Exchange's recently launched Options platform. The Warrants Program is designed to reward Participants for bringing their orders and quotes to the Exchange to be executed on the Exchange. The Exchange believes it is appropriate to exclude options on indices from the volume calculation because the Exchange wishes to support volume in equity options and ETFs on the MEMX Options platform and MEMX Options does not currently trade index options. The Exchange also believes it is appropriate to provide double credit for activity in Non-Penny options for purposes of calculating the Participant's performance during the Measurement Period to encourage and reward such activity because the Exchange's fees for such products generate additional revenue for the Exchange as compared to options that are in the Penny Program.

The Exchange believes the Warrants Program is equitable and reasonable because an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Warrants Program. Additionally, the Exchange believes the proposed rule change is consistent with the Act because, as described above, the Warrants Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The

Exchange believes that the proposed rule change will improve competition by providing market participants the opportunity to execute orders and post liquidity on the Exchange's options market.

The Exchange believes that the proposed change would increase both intermarket and intramarket competition by incentivizing Participants to direct their orders to the Exchange, which will enhance the quality of quoting and increase the volume of contracts traded on the Exchange. To the extent that there is an additional competitive burden on non-Participants, the Exchange believes that this is appropriate because the Program should incent Participants to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its market and increases the volume of contracts traded on the Exchange. To the extent that this purpose is achieved, the Exchange believes that all of the Exchange's market participants would benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing a program to attract order flow like the one proposed in this filing is consistent with the above-mentioned goals of the Act. This is especially true for the smaller options markets, such as MEMX, which is competing for volume with much larger exchanges that dominate the options trading industry. As a new exchange, MEMX has a nominal percentage of the average daily trading volume in options, so it is unlikely that the Warrants Program could cause any competitive harm to the options market or to market participants. Rather, the Warrants Program is a modest attempt to attract order volume away from larger competitors by adopting an innovative pricing strategy. The Exchange notes that if the Warrants

Program results in a modest percentage increase in the average daily trading volume on MEMX, while such percentage would represent a large volume increase for MEMX, it would represent a minimal reduction in volume of its larger competitors in the industry. The Exchange believes that the Program will help further competition, because market participants will have yet another additional option in determining where to execute orders and post liquidity if they factor the benefits of MEMX equity participation into the determination.

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 Act²⁰ and Rule 19b-4(f)(2)²¹ 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:

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

Electronic Comments:

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

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MEMX-2024-21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-MEMX-2024-21 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.²²

Sherry R. Haywood,

Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).