

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101370; File No. SR-MEMX-2024-40)

October 17, 2024

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule Regarding Options Market Data Products

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 October 4, 2024, MEMX LLC ("MEMX" or the "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 amend the Market Data section of its fee schedule applicable to its equity options platform ("MEMX Options") to adopt fees for certain of its market data products, which are currently offered free of charge, pursuant to MEMX 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 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.

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 Market Data section of the Exchange’s fee schedule applicable to MEMX Options (“MEMX Options Fee Schedule”) to adopt fees for certain of its options market data products which are currently offered free of charge, namely MEMOIR Options Depth and MEMOIR Options Top (collectively, the “Options Data Feeds”). As set forth below, the Exchange believes that the proposed fees are fair and reasonable and has based its proposal on a detailed cost analysis, as well as other factors including a comparison to competitor pricing. The Exchange is proposing to implement the proposed fees immediately. The Exchange previously filed this proposal on March 28, 2024 (SR-MEMX-2024-11) (the “Initial Proposal”). On April 15, 2024, the Exchange withdrew the Initial Proposal and replaced it with SR-MEMX-2024-14 (the “Second Proposal”),³ on June 14, 2024, the Exchange withdrew the Second Proposal and replaced it with SR-MEMX-2024-25 (the “Third Proposal”),⁴ and on August 8, 2024, the Exchange withdrew the Third Proposal and replaced it with SR-MEMX-2024-31 (the “Fourth Proposal”).⁵ Now, the Exchange is withdrawing the Fourth Proposal and is replacing it with the current filing.

³ See Securities Exchange Act Release No. 99998 (April 19, 2024), 89 FR 32507 (April 26, 2024) (SR-MEMX-2024-14).

⁴ See Securities Exchange Act Release No. 100435 (June 26, 2024), 89 FR 54878 (July 2, 2024) (SR-MEMX-2024-25).

⁵ See Securities Exchange Act Release No. 100793 (August 21, 2024), 89 FR 68664 (August 27, 2024) (SR-MEMX-2024-31).

Before setting forth the additional details regarding the proposal as well as the cost analysis conducted by the Exchange, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

MEMX Options offers two separate data feeds to subscribers – MEMOIR Options Depth and MEMOIR Options Top. The Exchange notes that there is no requirement that any subscribing entity (“Firm”) subscribe to a particular Options Data Feed or any Options Data Feed whatsoever, but instead, a Firm may choose to maintain subscriptions to those Options Data Feeds they deem appropriate based on their business model. The proposed fee will not apply differently based upon the size or type of Firm, but rather based upon the subscriptions a Firm has to Options Data Feeds. The proposed pricing for each of the Options Data Feeds is set forth below.

MEMOIR Options Depth

The MEMOIR Options Depth feed is a MEMX-only market data feed that contains depth of book quotations and execution information based on options orders entered in the System.⁶ For the receipt of access to the MEMOIR Options Depth feed, the Exchange proposes to charge \$1,500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Options Depth feed for purposes of internal distribution (i.e., an “Internal Distributor”), for external redistribution (i.e. an “External Distributor”), or both. The Exchange proposes to define an Internal Distributor as “a Distributor that receives an Exchange Data product and then distributes that data to one or more data recipients within the Distributor’s own organization,”⁷ and an External Distributor as “a Distributor that receives an Exchange

⁶ See MEMX Rule 21.15(b)(1).

⁷ See Market Data Definitions under the proposed MEMX Options Fee Schedule. The Exchange also proposes to adopt a definition for “Distributor”, which would mean any entity that receives an Exchange

Data product and then distributes that data to a third party or one or more data recipients outside the Distributor's own organization.”⁸ The proposed access fee will be charged only once per month per Firm regardless of whether the Firm uses the MEMOIR Options Depth feed for internal distribution, external distribution, or both.⁹

MEMOIR Options Top

The MEMOIR Options Top feed is a MEMX-only market data feed that contains top of book quotations and executions based on options orders entered into the System.¹⁰ For the receipt of access to the MEMOIR Options Top feed, the Exchange proposes to charge \$750 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Options Top feed for purposes of internal distribution (i.e., an Internal Distributor), external redistribution (i.e. an External Distributor), or both. The proposed access fee for internal and external distribution will be charged only once per month per Firm regardless of whether the Firm uses the MEMOIR Options Top feed for internal distribution, external distribution, or both.

Billing Process

The Exchange proposes to bill for the Options Data Feeds in the same manner as it does for the market data products it provides for its equities Exchange, (the “Equities Data Feeds”), and to make this clear on the Fee Schedule. Specifically, the Fee Schedule would state that “[f]ees for Market Data products are assessed based on each active product at the close of

Data product directly from the Exchange or indirectly through another entity and then distributes internally or externally to a third party.

⁸ See Market Data Definitions under the proposed MEMX Options Fee Schedule.

⁹ The proposed definitions of Internal Distributor and External Distributor are the same definitions used in the Exchange's Equities Fee Schedule.

¹⁰ See MEMX Rule 21.15(b)(2).

business on the first day of each month,” and that “[i]f a product is cancelled by a subscriber’s submission of a written request or via the MEMX User Portal prior to such fee being assessed, then the subscriber will not be obligated to pay the applicable product fee. MEMX does not return pro rated fees if a product is not used for an entire month.” The Exchange believes that this billing methodology has been efficient with respect to the Equities Data Feeds and is well understood by market participants.

Additional Discussion – Background

The Exchange launched MEMX Options on September 27, 2023. As a new entrant in the equity options trading space, MEMX did not begin charging fees for options market data until April 1, 2024. The objective of this approach was to eliminate any fee-based barriers for Members to join the Exchange, which the Exchange believes was helpful in its ability to attract order flow as a new options exchange. Further, the Exchange did not initially charge for options market data because MEMX believes that any exchange should first deliver meaningful value to Members and other market participants before charging fees for its products and services.

The Exchange also did not begin charging for the Equities Data Feeds until 2022, nearly two years after it launched as a national securities exchange in 2020. In connection with the adoption of fees for the Equities Data Feeds, the Exchange conducted an extensive cost analysis (the “2022 Cost Analysis”),¹¹ and the Exchange’s Initial and Second Proposal to adopt fees for Options Data Feeds stemmed from the same cost analysis, which it reviewed and updated for 2024 (the “2024 Cost Analysis”). The 2024 Cost Analysis combined costs for providing market data for both its equities and options trading platforms (the “Exchange Data Feeds”) due to the

¹¹ See Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR-MEMX-2023-04).

fact that in general, the Exchange did not add a significant amount of marginal costs for the provision of options market data, and as such, costs associated with the provision of Equities Data Feeds became shared costs for the provision of Options Data Feeds. For example, the Exchange did not hire additional staff specifically to sell or otherwise manage options market data, rather, the existing team absorbed the additional workload. Nevertheless, as discussed more fully below, the Exchange has revised its cost analysis in this proposal by focusing solely on the marginal costs associated with the addition of providing the Options Data Feeds, and allocating those costs according to the same principles utilized in the 2024 Cost Analysis (the “Options Market Data Cost Analysis”). Pursuant to the Options Market Data Analysis, the Exchange calculated the total marginal costs for providing the Options Data Feeds in 2024 at approximately \$307,001. In order to establish fees that are designed to recover the marginal costs of providing the Options Data Feeds with a reasonable profit margin, the Exchange is proposing to modify its Fee Schedule, as described above. In addition to the Options Market Data Cost Analysis, described below, the Exchange believes that its proposed approach to market data fees is in line with that of its competitors.

Additional Discussion – Comparison with Other Exchanges

The proposed fee structure for the Options Data Feeds is not novel but is instead comparable to the fee structure currently in place for the options exchanges operated by MIAX, in particular, MIAX Pearl Options (“MIAX Pearl”),¹² and the options exchanges operated by Nasdaq, in particular, Nasdaq BX Options (“BX Options”).¹³ The Exchange is proposing fees for

¹² See MIAX Pearl Options Fee Schedule, available at: <https://www.miaxglobal.com/markets/us-options/pearl-options/fees> (the “MIAX Pearl Fee Schedule”).

¹³ See the Nasdaq BX Options Fee Schedule, available at: <https://listingcenter.nasdaq.com/rulebook/bx/rules/bx-options-7>.

its Options Data Feeds that are similar in structure to MIAX Pearl and BX Options and rates that are equal to, or lower than, than the rates data recipients pay for comparable data feeds from those exchanges, in a more simplified fashion.¹⁴ The Exchange notes that other competitors maintain fees applicable to options market data that are considerably higher than those proposed by the Exchange, including Cboe BZX Options (“BZX Options”), NYSE Arca Options and NYSE American Options.¹⁵ However, the Exchange has focused its comparison on MIAX Pearl and BX Options because their similar market data products are offered at prices lower than several other incumbent exchanges, which is a similar approach to that proposed by the Exchange.¹⁶

¹⁴ As noted below, based on its review of MIAX Pearl’s Fee Schedule, the Exchange believes that MIAX Pearl charges separate fees for Internal and External Distribution of its options data feeds, and while its External Distribution fees are identical to the Exchange’s proposed flat fee for all uses for both comparable products, its Internal Distribution Fees are slightly lower than what the Exchange is proposing for access to the Exchange’s Options Data Feeds. Nevertheless, given that the Exchange allows both Internal and External Distribution for a single fee for a single data feed, the Exchange believes its proposed fees remain comparable and competitive with MIAX Pearl.

¹⁵ Fees for BZX Options Depth, which is the comparable product to MEMOIR Options Depth, are \$3,000 for internal distribution and \$2,000 for external distribution compared to the Exchange’s proposed fee of \$1,500 for all uses. In addition, BZX Options charges professional user fees of \$30 per month and non-professional user fees of \$1.00 per month for each entity to which it distributes the feed (alternatively, it offers distributors an option to purchase a monthly Enterprise Fee of \$3,500 to distribute to an unlimited number of users), which the Exchange is not proposing to charge. Fees for BZX Options Top, which is the comparable product to MEMOIR Options Top, are \$3,000 for internal distribution, \$2,000 for external distribution, with Professional User Fees of \$5 per month, Non-Professional Fees of \$0.10 per month per user, or an Enterprise Fee ranging anywhere from \$20,000 to \$60,000 per month depending on the number of users to which the distributor plans to distribute the feed. Again, the Exchange is not proposing any additional User Fees for MEMOIR Options Top, but rather, a flat fee of \$750 for all uses. See the BZX Options Fee Schedule, available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Fees for NYSE Arca Options Deep and NYSE American Options Deep, which are the comparable products to MEMOIR Options Depth, are \$3,000 for access (internal use) and \$2,000 for redistribution (external distribution), and \$5,000 for non-display use, compared to the Exchange’s proposed fee of \$1,500 for all uses. NYSE Arca Options and NYSE American Options also charge professional user fees of \$50 per User, and Non-Professional User Fees of \$1.00 per user, capped at \$5,000 per month. Again, the Exchange does not require any counting of users and has instead proposed a flat fee of \$1,500 for all uses. Fees for the NYSE Arca Options Top and NYSE American Options Top, which are the comparable products to MEMOIR Options Top are the same as above (\$3,000 for internal, \$2,000 for external and \$5,000 for non-display, with the additional Professional and Non-Professional User Fees), compared to the Exchange’s proposed fee of \$750 for all uses. See NYSE Proprietary Market Data Pricing Guide, available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.

¹⁶ See supra notes 12-13.

The fees for the MIAX Pearl Liquidity Feed—which like the MEMOIR Options Depth feed, includes top of book, depth of book, trades, and administrative messages—consist of an internal distributor access fee of \$1,250 per month and an external distributor access fee of \$1,500 per month. As such, the Exchange’s proposed rate for all uses of \$1,500 per month is equal to what MIAX Pearl charges for external distribution, and \$250 higher than what it charges for internal distribution only.¹⁷

The fees for the MIAX Pearl Top of Market Feed – which is the comparable product to MEMOIR Options Top, consist of an internal distributor access fee of \$500 per month and an external distributor access fee of \$750. Again, the Exchange’s proposed rate for all uses of \$750 per month is identical to what MIAX Pearl charges for external distribution, and \$250 higher than what it charges for internal distribution.

While the Exchange’s proposed fee is slightly higher than what MIAX Pearl charges for internal distribution of its similar products, the Exchange believes that the simplicity of a single fee is preferable, specifically by reducing audit risk and simplifying reporting, both for the Exchange and its customers. Further, to the extent MIAX Pearl assesses both fees for both uses, it would cost more overall to receive and provide both internal and external distribution of MIAX Pearl’s comparable options data feeds than it does to receive and provide both internal and external distribution of the Exchange’s Options Data Feeds.

As an additional cost comparison, the fees for both Nasdaq BX Options Depth of Market Feed (“BX Depth”) and Top of Market Feed (“BX Top”) are \$1,500 per month for internal distribution and \$2,000 for external distribution, with an added \$2,500 fee for a non-Display

¹⁷ See MIAX Pearl Options Fee Schedule, supra note 12.

Enterprise License.¹⁸ While one distributor fee allows access to both BX Top and BX Depth, (for example, \$1,500 per month would allow a BX Options customer internal distribution of both BX Top and BX Depth) if a BX Options Customer wanted the same access provided under the Exchange's proposed fees, (i.e. for all uses) it would need to pay an additional \$2,000 for external distribution and \$2,500 per month for a non-display enterprise license fee. In addition, BX Options charges monthly per subscriber fees for professional or non-professional use¹⁹ which the Exchange will not charge for its similar market data products.

Additional Discussion –Options Market Data Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, in proposing to charge fees for Options Data Feeds, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members – both generally and in relation to other Members, i.e., to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the

¹⁸ See Nasdaq BX Options Fee Schedule, supra note 13.

¹⁹ Id.

proposed fees are so clearly consistent with the Act based on its Options Market Data Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,²⁰ and Rule 19b-4 thereunder,²¹ with respect to the types of information self-regulatory organizations (“SROs”) should provide when filing fee changes, and Section 6(b) of the Act,²² which requires, among other things, that exchange fees be reasonable and equitably allocated,²³ not designed to permit unfair discrimination,²⁴ and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²⁵ This rule change proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.²⁶

As noted above, MEMX recently conducted a study of its aggregate costs to produce the Exchange Data Feeds – the 2024 Cost Analysis, and it used the 2024 Cost Analysis as the foundation of the Options Market Data Cost Analysis, which ultimately went a step further in separately assessing the marginal costs associated with the provision of the Options Data Feeds as a subset of the total aggregate costs originally allocated towards the provision of the Exchange Data Feeds (i.e. both the Equities and Options Data Feeds) and allocating those marginal costs

²⁰ 15 U.S.C. 78s(b)(1).

²¹ 17 CFR 240.19b-4.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(4).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b)(8).

²⁶ In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (“Fee Guidance”). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX’s view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>.

towards the provision of the Options Data Feeds.

Prior to discussing how the Exchange allocated applicable costs under the Options Market Data Cost Analysis, the Exchange believes it is first necessary to set forth its process in conducting the 2024 Cost Analysis. The 2024 Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange – transaction execution, market data, membership services and trading permits, regulatory services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (i.e., personnel), and certain general and administrative expenses (“cost drivers”). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (e.g., message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (80%), with smaller allocations to logical ports (11%), and the remainder to the provision of transaction execution, regulatory services, and market data services (9%). The allocation methodology was decided through conversations with senior management familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to

fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange generally must cover its expenses from these four primary sources of revenue.

Through the Exchange’s extensive 2024 Cost Analysis, the Exchange analyzed every expense item in the Exchange’s general expense ledger to determine whether each such expense relates to the provision of the Exchange Data Feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of the Exchange Data Feeds, and thus bears a relationship that is, “in nature and closeness,” directly related to the Exchange Data Feeds. Based on its analysis, MEMX calculated its aggregate annual costs for providing the Exchange Data Feeds at \$3,683,375.

The following chart details the individual line-item (annual) costs considered by MEMX to be related to offering the Exchange Data Feeds to its Members and other customers as well as a percentage of the Exchange’s overall costs that such costs represent for such area (e.g., as set forth below, the Exchange allocated approximately 8% of its overall Human Resources cost to offering Exchange Data Feeds).

COSTS DRIVER	COSTS	% of ALL
Human Resources	\$2,606,282	8%
Data Center	\$69,340	2%
Technology (Hardware, Software Licenses, etc.)	\$287,141	7%
Depreciation	\$397,471	5%
Allocated Shared Expenses	\$323,141	4%
TOTAL	\$3,683,375	5.8%

Options Market Data Cost Analysis

As noted above, the 2024 Cost Analysis estimated aggregate annual costs for providing the Exchange Data Feeds at \$3,683,375. Based on the limited number of additional resources specifically devoted to providing and administering the Options Data Feeds, the Exchange

determined it was appropriate to conduct an allocation of only marginal costs related to the provision of the Options Data Feeds. In conducting this analysis, the Exchange adopted an allocation model for four of the five categories (all but Human Resources, as described below) that was proportionally based upon the number of products sold in equities and options, and given the fact that the Exchange offers more data feeds and charges for Professional and Non-Professional User Fees in equities, the resulting allocation was 95.1% towards equities, and 4.9% towards options.

For Human Resources, however, the Exchange determined it appropriate to employ a slightly different allocation model in order to accurately identify the Exchange's marginal costs attributed to the provision of the Options Data Feeds. As described more fully below, the Exchange consulted with senior managers and department leaders in order to identify and distinguish Human Resources costs which directly support the Options Data Feeds (these Human Resources costs, hereinafter "direct" costs). The Exchange then added such direct cost allocation to 4.9% of the remaining "indirect" Human Resources costs (the calculation of which was based on the same proportional model for the remaining four categories) to find a total Human Resources Options Data Feeds cost allocation of approximately 9.8% of the total Human Resources allocated toward the provision of the Exchange Data Feeds.

The Exchange determined that this combined approach was appropriate for Human Resources given the fact that department leaders have direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange, and thus, it is possible to be more precise when it comes to Human Resources costs, enabling managers to separate out time "directly" spent on the Options and Equities Data Feeds, respectively, in order to arrive at the direct costs noted above. This same approach would not be as effective with

respect to the remaining categories, as managers do not have the same quantifiable knowledge and costs for the remaining categories are determined with precision by using an allocated costs model. For example, surveying managers about the specific percentage of Depreciation or Data Center costs that are attributed to the provision of the Options Data Feeds would not yield an accurate result, whereas the allocated costs model provides an accurate measure of such costs.

The following chart details the individual line-item costs considered by MEMX to be related to offering the Options Data Feeds to its Members and other customers as a well as the percentage of the Exchange's overall Exchange Data Feed costs that such costs represent for such area (e.g., as set for the below, the Exchange allocated approximately 9.8% of the Human Resources costs allocated to the provision of the Exchange Data Feeds to the Options Data Feeds, or \$254,331 annually).²⁷

COSTS DRIVER	COSTS	% of Market Data Total
Human Resources	\$254,331	9.8%
Data Center	\$3,391	4.9%
Technology (Hardware, Software Licenses, etc.)	\$14,041	4.9%
Depreciation	\$19,436	4.9%
Allocated Shared Expenses	\$15,802	4.9%
TOTAL	\$307,001	

Human Resources

In allocating personnel (Human Resources) costs, in order to not double count any allocations and to ensure that each employee's time is 100% allocated, the Exchange first excluded any employee time allocated towards options regulation in order to recoup costs via the

²⁷ It follows that the remaining percentage of costs allocated to the Exchange Data Feeds in the 2024 Cost Analysis were allocated to the provision of the Equities Data feeds in the Options Market Data Cost Analysis. For example, the 2024 Cost Analysis allocated \$2,606,282 of Human Resources costs to the provision of the Exchange Data feeds. In the Options Market Data Cost Analysis, the Exchange then allocated \$254,331, or 9.8% of that total to the provision of Options Data Feeds, and thus the remaining \$2,351,951 (or 90.2%) to the provision of the Equities Data Feeds.

Options Regulatory Fee (“ORF”), as well as all other revenue streams, including transaction execution, membership services, physical connectivity, and application sessions.²⁸ Of the remaining time left over, the Exchange considered the amount of employee time for employees whose functions include directly providing services necessary to offer the Exchange Data Feeds (primarily the Exchange’s systems engineering, member experience, and market operations teams), including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security, compliance and finance personnel). The Exchange notes that it has fewer than 100 employees and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing the Exchange Data Feeds, and confirming that the proposed allocation was reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing the Options Data Feeds and Equities Data Feeds, respectively. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Next, of the *direct* time allocated to the Exchange Data Feeds (which amounted to approximately 61.3% of the total Human Resources allocated to the Exchange Data Feeds, or approximately \$1,597,398), the Exchange determined that approximately 87% of the direct time spent on the Exchange Data Feeds was focused on the Equities Data Feeds, and approximately

²⁸ See Securities Exchange Act Release No. 99259 (January 2, 2024), 89 FR 965 (January 8, 2024) (SR-MEMX-2023-38). See also Securities Exchange Act Release No. 100021 (April 24, 2024), 89 FR 34298 (April 30, 2024) (SR-MEMX-2024-13).

13% of that time was focused on the Options Data Feeds.²⁹ Again, these estimates were determined by consulting with department leaders, determining which employees are involved in tasks related to providing the Equities and Options Data Feeds, respectively, and confirming those proposed allocations were reasonable based on an understanding of the percentage of time employees devote to those tasks. Notably, the Exchange did not hire additional personnel to focus solely on the Options Data Feeds, however, additional hiring occurred to support the launch of MEMX Options and certain of those personnel have significant responsibilities with respect to the provision of the Exchange Data Feeds, which supports the slightly higher Human Resources cost allocated towards the provision of the Options Data Feeds. The Exchange believes that a higher allocation is also reasonable because the Human Resources component of providing the Options Data Feeds does require additional resources as compared to other components necessary to provide such data feeds, particularly with respect to the sales function, ongoing support, and application of the Exchange's policies with respect to the provision of market data. Further, as MEMX Options grows, it is likely that additional personnel will be necessary to support such growth in order to provide customer support, including with respect to the Options Data Feeds.

Finally, for the remaining Human Resources costs allocated toward the provision of the Exchange Data Feeds that were not already allocated as "direct" costs (i.e. the remaining 38.7% of the total Human Resources costs allocated towards the provision of the Exchange Data Feeds, or \$1,008,883), the Exchange applied the same allocation model as it did for the remaining categories that was proportionally based on the number of products sold in Equities and Options, or 95.1% towards Equities and 4.9% towards Options, in order to determine the remaining costs

²⁹ Specifically, 13% of the direct Human Resources cost allocated towards the provision of the Options Data Feeds totaled approximately \$204,996.

that should be allocated toward the provision of Options Data Feeds.³⁰ Accordingly, a total of approximately \$254,331 of the Exchange's Human Resources costs, comprised of both direct and indirect costs, were allocated towards the provision of the Options Data feeds, or approximately 9.8%. Again, the Exchange believes that a higher allocation of Human Resources costs is appropriate, given the Exchange's consideration of both the direct time attributed towards the provision of the Options Data Feeds coupled with a proportional allocation of Human Resources time that indirectly supports the provision of the Options Data Feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the Exchange Data Feeds in the third-party data centers where the Exchange maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties). Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated \$3,391 of its Data Center costs (i.e. 4.9% of the costs allocated towards the Exchange Data Feeds in the 2024 Cost Analysis) towards the provision of the Options Data Feeds.

Technology

The Technology category includes the Exchange's network infrastructure, other hardware, software, and software licenses used to operate and monitor physical assets necessary to provide the Exchange Data Feeds. Of note, certain of these costs were included in separate Network Infrastructure and Hardware and Software Licenses categories in the 2022 Cost Analysis; however, in order to align more closely with the Exchange's audited financial

³⁰ Specifically, 4.9% of the indirect Human Resources costs allocated towards the provision of the Options Data Feeds totaled approximately \$49,334.

statements, these costs were combined into the broader Technology category. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated approximately \$14,041 of its Technology costs to the Options Data Feeds in 2024.

Depreciation

The vast majority of the software the Exchange uses with respect to its operations, including the software used to generate and disseminate the Options Data Feeds has been developed in-house and the cost of such development is depreciated over time. Accordingly, the Exchange included Depreciation costs related to depreciated software used to generate and disseminate the Options Data Feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the Options Data Feeds in the near-term, as well as the servers used at the Exchange's primary and back-up data centers specifically used for the Options Data Feeds. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated approximately \$19,346 of its Depreciation costs towards the provision of the Options Data Feeds.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses were allocated to the Options Data Feeds. The costs included in general shared expenses allocated to the Options Data Feeds include office space and office expenses (e.g., occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The cost of paying individuals to serve on the Exchange's Board of Directors or any

committee was not allocated to providing Options Data Feeds. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated \$15,802 of its Allocated Shared Expenses to the Options Data Feeds in 2024.

Cost Analysis – Additional Discussion

Based on the current number of subscribers to the Options Data Feeds,³¹ the Exchange anticipates annual 2024 revenue for Options Data Feeds of \$342,000.³² The proposed fees for the Options Data Feeds are designed to permit the Exchange to cover the marginal costs allocated to providing the Options Data Feeds with a profit margin that the Exchange believes is modest (approximately 10%),³³ which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the Options Data Feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.).

The Exchange like other exchanges is, after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost Analysis and related projections demonstrate this fact.

³¹ In the Initial and Second Filings, the Exchange's revenue projections anticipated a drop in subscriptions once the Exchange began charging for the Options Data Feeds, which did indeed occur. Specifically, of the nineteen (19) customers receiving the Options Data Feeds free of charge, four (4) requested removal once the Exchange began charging in April 2024.

³² This revenue projection is based on 14 MEMX Options Depth and 10 MEMX Options Top subscriptions per month in 2024.

³³ The Exchange calculated this profit margin by dividing the annual projected profit of \$34,999 by the annual projected revenue of \$342,000 and multiplying by 100.

As a general matter, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of Options Data Feeds it will receive additional revenue to offset future cost increases. However, if use of Options Data Feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs with a reasonable profit margin.³⁴ Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (e.g., to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable margin, or decrease fees in the event that revenue or the profit margin materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of

³⁴ The Exchange notes that it does not believe that a 10% profit margin is necessarily competitive, and instead that this is likely significantly below the mark-up many businesses place on their products and services.

Section 6(b)³⁵ of the Act in general, and furthers the objectives of Section 6(b)(4)³⁶ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)³⁷ of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes prior to addressing the specific reasons the Exchange believes the proposed fees and fee structure are reasonable, equitably allocated and not unreasonably discriminatory, that the proposed definitions and fee structure described above are consistent with the definitions and fee structure used by most U.S. options exchanges, MIAX Pearl and BX Options in particular. As such, the Exchange believes it is adopting a model that is easily understood by Members and non-Members, most of which also subscribe to market data products from other exchanges. For this reason, the Exchange believes that the proposed definitions and fee structure described above are consistent with the Act generally, and Section 6(b)(5)³⁸ of the Act in particular.

³⁵ 15 U.S.C. 78f.

³⁶ 15 U.S.C. 78f(b)(4).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ 15 U.S.C. 78f(b)(5).

One of the primary objectives of MEMX is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure, with fees that are discounted when compared to comparable data products and services offered by competitors.³⁹

Reasonableness

Overall. With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) “platform” competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee’s terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a

³⁹ See supra note 15.

reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange's marginal costs of offering the Options Data Feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual marginal costs of providing market data in options with a reasonable profit margin. The Exchange also believes that performing the Options Market Data Cost Analysis utilizing the marginal costs related to the Options Data Feeds is reasonable because as a new entrant in the equity options space, the Exchange simply cannot charge more at this time based on what its competitors charge and what other options are available to market participants for the receipt of options market data. If the Exchange chose to allocate the average cost of providing market data to options and equities via a 50/50 split, then based on its proposed pricing and the revenues projected, the analysis would result in a profit margin for the Options Data Feeds of -265%.⁴⁰ Alternatively, the Exchange would need to significantly increase the fees charged for the Options Data Feeds, which in turn, the Exchange believes would result in customers canceling their access to such Options Data Feeds and potentially participating less on the Exchange. Accordingly, the Exchange believes it is reasonable to seek to recover only the marginal costs associated with the Options Data Feeds in this proposal. As discussed in the Purpose section, the Exchange estimates that the Options Data Feed fees proposed herein will result in annual revenue of approximately \$342,000, representing a profit margin of

⁴⁰ In calculating this margin, for all categories other than Human Resources, the Exchange split the applicable expenses 50/50 between the Equities Data Feeds and the Options Data Feeds. For Human Resources, the Exchange first allocated the 8% of the total Exchange Data Feeds Human Resources costs which were determined to be directly related to the provision of the Options Data Feeds (i.e. 8%, as noted above), plus 50% of the remaining Human Resources costs not otherwise directly related to the provision of the Equities Data Feeds and thus allocated thereto.

approximately 10% for the provision of Options Market Data. As such, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup some or all of its marginal expenses for providing options market data (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the Options Data Feeds are reasonable when compared to fees for comparable products, such as the MIAX Pearl Top of Market Feed, the MIAX Pearl Liquidity Feed, and the BX Options Top and Depth Feeds, compared to which the Exchange's proposed fees are equivalent or lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the Options Data Feeds.⁴¹ Additionally, the Exchange's single flat fee for each of its Options Data Feeds, regardless of use type, offers a more simplistic approach to market data pricing. Specifically with respect to the MEMOIR Options Depth feed, the Exchange believes that the proposed fee for such feed is reasonable because it represents not only the value of the data available from the MEMOIR Options Top feed, which has a lower proposed fee, but also the value of receiving the depth-of-book data on an order-by-order basis. The Exchange believes it is reasonable to have pricing based, in part, upon the amount of information contained in each data feed, which may have additional value to market participants. The MEMOIR Options Top feed, as described above, can be utilized to trade on the Exchange but contains less information than that is available on

⁴¹ Id. [sic]

the MEMOIR Options Depth feed. Thus, the Exchange believes it reasonable for the products to be priced as proposed, with MEMOIR Options Depth having a higher price than MEMOIR Options Top.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Options Data Feeds are reasonable.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the Options Data Feeds. Any Firm that chooses to subscribe to one or both of the Options Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or both of the Options Data Feeds is based on objective differences in usage of Options Data Feeds among different Firms, which are still ultimately in the control of any particular Firm. The Exchange believes the proposed pricing between Options Data Feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed, which may have additional value to market participants. The MEMOIR Options Top feed, as described above, can be utilized to trade on the Exchange but contains less information than that is available on the MEMOIR Options Depth feed. Thus, the Exchange believes it is an equitable allocation of fees for the products to be priced as proposed, with MEMOIR Options Top having the lower price of the two Options Data Feeds.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the Options Data Feeds are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between the feeds themselves.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same Options Data Feed(s). Any Firm that chooses to subscribe to the Options Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Because the proposed fee for MEMOIR Options Depth is higher, Firms seeking lower cost options may instead choose to receive data through the MEMOIR Options Top feed for a lower cost. Alternatively, Firms can choose to receive data solely from the Options Price Reporting Authority (“OPRA”) for a lower cost. The Exchange notes that Firms can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each Firm has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed, which may have additional value to a market participant. As described above, the MEMOIR Options Top feed can be utilized to trade on the Exchange but contains less information than that is available on the MEMOIR Options Depth feed. Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with MEMOIR Options Top having a lower price than MEMOIR Options Depth.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are not unfairly discriminatory.

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

In accordance with Section 6(b)(8) of the Act,⁴² the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees for Options Data Feeds place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of Options Data Feeds by each market participant based on the type of business they operate, and the decision to subscribe to one or both Options Data Feeds is based on objective differences in usage of Options Data Feeds among different Firms, which are still ultimately in the control of any particular Firm, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees for Options Data Feeds do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of Options Data Feeds consumed by various market participants.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not regulatorily required to subscribe to any of the Options Data Feeds, as described above. Additionally, other exchanges have similar market data fees in place for their participants, but with comparable and in many cases higher rates for options market data feeds.⁴³ The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable

⁴² 15 U.S.C. 78f(b)(8).

⁴³ See supra note 15.

costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing options exchanges are free to adopt comparable fee structures subject to the SEC rule filing process.

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 Act⁴⁴ and Rule 19b-4(f)(2)⁴⁵ 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

⁴⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁵ 17 CFR 240.19b-4(f)(2).

- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-40 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-2024-40. 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-2024-40 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.⁴⁶

Sherry R. Haywood,

Assistant Secretary.

⁴⁶ 17 CFR 200.30-3(a)(12).