

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Exchange’s fee schedule applicable to Members<sup>3</sup> (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c). The purpose of the proposed rule change is to amend the Fee Schedule to remove an expired criteria under Liquidity Provision Tier 2. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal January 1, 2025.

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

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General Counsel

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Rule 1.5(p).

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

a. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to remove an expired criteria under Liquidity Provision Tier 2.

The Exchange currently provides a base rebate of \$0.0015 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Volume").<sup>4</sup> The Exchange also currently offers Liquidity Provision Tiers 1-5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. With respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of \$0.0032 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV<sup>5</sup> that is equal to or greater than 0.20% of the TCV<sup>6</sup> and an ADV<sup>7</sup> that is equal to or greater than 0.50% of the TCV; or (2) a Step-Up ADAV<sup>8</sup> from June 2024 (excluding Retail Orders) that is equal to or greater than 0.05% of the TCV in

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<sup>4</sup> The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume" with a Fee Code of "B", "D" or "J", as applicable, on execution reports.

<sup>5</sup> As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis.

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

<sup>7</sup> As set forth on the Fee Schedule, "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

<sup>8</sup> As set forth on the Fee Schedule, "Step Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

securities priced at or above \$1.00 per share and an ADAV (excluding Retail Orders) that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share; or (3) an ADAV that is equal to or greater than 0.30% of the TCV.<sup>9</sup> Additionally, the Fee Schedule indicates that criteria (2) of Liquidity Provision Tier 2 will expire no later than December 31, 2024. Now, given the expiration of criteria (2) of Liquidity Provision Tier 2, it is necessary to modify the Fee Schedule to delete this criteria (2) as well as the note under the Liquidity Provision Tiers pricing table that indicates its expiration, as both are no longer applicable and otherwise obsolete. The Exchange is not proposing to make any changes to this or any other Liquidity Provision Tier, and as such, Liquidity Provision Tier 2 will now consist solely of the previously existing criteria (1) and (3), and criteria (3) will be re-numbered as criteria (2).

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to modify Liquidity Provision Tier 2 to remove the expired criteria (2) is reasonable because there was an expiration date associated with this criteria that has now passed. As such, this criteria is no longer

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<sup>9</sup> The pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 2” with a Fee Code of “B2”, “D2” or “J2”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

available under this tier, and should not remain on the Fee Schedule. The Exchange believes that the enhanced rebate for executions of Added Displayed Volume provided under Liquidity Provision Tier 2, which the Exchange is not proposing to change with this proposal, remains commensurate with the required criteria under such tier, as modified, and is reasonably related to the market quality benefits that such tier is designed to achieve. The Exchange also believes the enhanced rebate for executions of Added Displayed Volume provided under Liquidity Provision Tier 2 remains equitable and not unfairly discriminatory, as such enhanced rebate will continue to apply equally to all qualifying Members.

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<sup>12</sup> 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.

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

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change is not designed to address any competitive issues but rather is designed to enhance the clarity of the Fee Schedule and alleviate possible Member confusion that may arise from the inclusion of obsolete language.

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<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> 15 U.S.C. 78f(b)(8).

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>14</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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 under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>15</sup>

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5. Text of Proposed Fee Schedule.