

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”),¹ and Rule 19b-4 thereunder,² 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 Members³ pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the MEMX Options Fee Schedule (the “Options Fee Schedule”) pursuant to this proposal on March 3, 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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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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 Options Fee Schedule to decrease the transaction rebate for executions of contracts where the underlying security of the applicable option is not in the Penny Interval program (“Non-Penny options”)⁴ which add liquidity to the MEMX Options Book⁵ and which are made in the Customer capacity (“Customer”)⁶, as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange is one of only 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 17% of the market share and currently the Exchange represents only approximately 3% of the market share.⁷ In such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month

⁴ MEMX Options provides Fee Code “N” for transactions in Non-Penny options. Fee Codes are provided by the Exchange on the monthly invoices provided to Options Members.

⁵ MEMX Options provides Fee Code “D” for transactions which add liquidity to the MEMX Options Book.

⁶ Customer capacity applies to any order for the account of a Priority Customer. “Priority Customer” means any person or entity that is neither a broker or dealer in securities nor a Professional. See Rule 16.1 of the MEMX Rulebook. MEMX Options provides fee qualifier “c” for Customer transactions.

⁷ Market share percentage calculated as of February 26, 2025. The Exchange receives and processes data made available through the consolidated data feeds (i.e., OPRA).

demonstrates that market participants can shift order flow, discontinue, or reduce use of certain categories of products in response to fee changes. Accordingly competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract.

Reduced Transaction Rebate for Executions of Non-Penny Options in the Customer Capacity Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of \$1.19 per contract on Non-Penny options (as defined above) in the Customer capacity which add liquidity to the MEMX Options Book. Now, the Exchange proposes to reduce the standard transaction rebate on such contracts from \$1.19 per contract to \$1.17 per contract. The purpose of reducing the rebate is for business and competitive reasons as the Exchange believes that reducing such rebate would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book. The Exchange believes that the reduced rebate continues to

be in line with or exceeds the rebates provided by other national securities exchanges and will continue to incentivize Members to route order flow to the Exchange.⁸

b. Statutory Basis

The Exchange believes that its proposal to amend its Options Fee Schedule is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Options Members and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

MEMX Options operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and

⁸ See, e.g., note 10 of the of the Nasdaq Options Market trading fee schedule on its public website (available at: <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7>) which reflects a \$1.15 per contract Rebate to Add Liquidity in Non-Penny Symbols as Customer for Nasdaq Options Market participants who meet certain volume requirements on the Nasdaq Options Market. As MEMX Options is a comparatively new market, the Exchange believes that providing a comparatively higher rebate (\$1.17) for Customer executions which add liquidity in Non-Penny options without requiring Members to achieve specific volume requirements will continue to incentivize additional order flow to the Exchange. The Exchange believes that the proposed reduced rebate remains in line with the rebates offered by other national securities exchanges for Non-Penny executions in the Customer capacity.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹¹

Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that the proposed change to reduce the rebate for executions on Non-Penny options in the Customer capacity that add liquidity to the Exchange to \$1.17 per contract is reasonable and equitable because it is designed to decrease the Exchange’s expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange’s overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book in non-Penny options. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the reduced rebate will apply to all market participants who make executions of non-Penny options in a Customer capacity which add liquidity to the MEMX Options Book.

¹¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

The Exchange further believes the proposed reduced rebate is appropriate because it exceeds or is comparable to, and competitive with, the rebates provided by other exchanges for executions in the Customer capacity in Non-Penny options which add liquidity.¹²

For the reasons discussed above, the Exchange submits that its proposed change to the Options Transaction Fee Schedule satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act¹³ 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 are not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed rebate described herein is appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to decrease the Exchange's expenditures, generate additional revenue with respect to its transaction pricing, incentivize market participants to direct additional order flow to the MEMX Options platform, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market

¹² See supra note **Error! Bookmark not defined.**

¹³ 15 U.S.C. 78f(b)(4) and (5).

participants. Further, MEMX Options' proposed reduced rebate exceeds rebates assessed by other options exchanges.¹⁴ As a result, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁵

Intramarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rebate applies equally to all Options Members. The proposal is intended to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing, in a manner that is comparable with the rebates offered by other exchanges for executions in the Customer capacity in non-Penny options. The Exchange believes that the proposed reduced rebate is consistent with the Exchange's overall pricing philosophy. As the proposed rebate is equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Intermarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will increase competition and is intended to encourage market participants to trade on the

¹⁴ See supra note 8.

¹⁵ See supra note 11.

exchange by providing rebates that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rebate is equally applicable to all market participants, the Exchange does not believe there is any burden on intermarket competition.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁷ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁶ Id.

¹⁷ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

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,¹⁸ 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.¹⁹

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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 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.