

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103439; File No. SR-MEMX-2025-21]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange’s Fee Schedule Concerning Equities Transaction Pricing

July 11, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 30, 2025, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange’s fee schedule applicable to Members³ (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c). As is further described below, the Exchange proposes to (i) increase the fee for executions of Retail Orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange and (ii) modify the Liquidity Provision Tiers by reducing the rebate and modifying the required criteria under Liquidity Provision 2 and reducing the rebates under Liquidity Provision Tiers 3, 4, and 5. The Exchange proposes to implement the changes to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

Fee Schedule pursuant to this proposal on July 1, 2025. 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 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 Fee Schedule to: (i) increase the fee for executions of Retail Orders⁴ in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, "Removed Retail Volume"); and (ii) modify the Liquidity Provision Tiers by reducing the rebate and modifying the required criteria under Liquidity Provision 2 and reducing the rebates under Liquidity Provision Tiers 3, 4, and 5, each 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. More specifically, the Exchange

⁴ A "Retail Order" means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.21(a).

is only one of 18 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 12.7% of the total market share of executed volume of equities trading.⁵ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2.2% of the overall market share.⁶ The Exchange in particular operates a “Maker-Taker” model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Increase Standard Fee for Removed Retail Volume

Currently, the Exchange charges a standard fee of \$0.0028 per share for executions of Removed Retail Volume. The Exchange now proposes to increase the standard fee for executions of Removed Retail Volume to \$0.0030 per share.⁷ The purpose of increasing the

⁵ Market share percentage calculated as of June 26, 2025. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

⁶ Id.

⁷ The proposed standard fee for executions of Removed Retail Volume is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Retail Order” with a Fee Code of “RrA” on execution reports.

standard fee for executions of Removed Retail Volume is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would generate additional revenue to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the increase proposed herein, the proposed standard fee for executions of Removed Retail Volume remains in line with the standard fees charged by other exchanges for executions of Retail Orders in securities priced at or above \$1.00 per share that remove liquidity.⁸

Liquidity Provision Tiers

The Exchange currently provides a base rebate of \$0.0015 per share for executions of displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange (such orders, "Added Displayed Volume").⁹ 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. The Exchange now proposes to reduce the rebate and modify the required criteria under Liquidity Provision Tier 2 and reduce the rebates under Liquidity Provision Tiers 3, 4, and 5, as further described below.

⁸ See, e.g., the Cboe EDGX equities fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/), which reflects a standard fee of \$0.0030 per share for executions of Retail orders in securities priced at or above \$1.00 per share that remove liquidity; the Cboe BZX equities fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) which reflects a standard fee of \$0.0030 per share for executions of Retail orders in securities priced at or above \$1.00 per share that remove liquidity.

⁹ The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description "Added non-displayed volume" with a Fee Code of "B", "D" or "J", as applicable, on execution reports.

First, 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 ADAV¹⁰ that is equal to or greater than 0.20% of the TCV¹¹ and an ADV¹² that is equal or greater than 0.50% of the TCV; or 2) an ADAV that is equal to or greater than 0.30% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 2 to \$0.0031 per share,¹³ and to modify the required criteria such that a Member would now qualify for such tier by achieving: 1) an ADAV that is equal to or greater than 0.20% of the TCV and an ADV that is equal to or greater than 0.50% of the TCV; or 2) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV that is equal to or greater than 6,000,000 shares. Thus, such proposed change would keep the existing first alternative criteria intact and modify the second alternative criteria to include a reduced ADAV threshold in securities priced at or above \$1.00 per share and a Non-Displayed ADAV threshold. The Exchange is not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under Liquidity Provision Tier 2.

¹⁰ 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, and “Displayed ADAV” means ADAV with respect to displayed orders.

¹¹ 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.

¹² As set forth on the Fee Schedule, “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

¹³ The proposed 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.

Second, with respect to Liquidity Provision Tier 3,¹⁴ the Exchange currently provides an enhanced rebate of \$0.0030 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: 1) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share; or 2) an ADAV that is equal to or greater than 0.175% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 3 to \$0.0029 per share. The Exchange is not proposing to change the criteria required to qualify for Liquidity Provision Tier 3. The Exchange is also not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

Third, with respect to Liquidity Provision Tier 4,¹⁵ the Exchange currently provides an enhanced rebate of \$0.0029 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an ADAV (excluding Retail Orders) that is equal to or greater than 0.09% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 4 to \$0.0028 per share. The Exchange is not proposing to change the criteria required to qualify for Liquidity Provision Tier 4. The Exchange is also not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

Lastly, with respect to Liquidity Provision Tier 5,¹⁶ the Exchange currently provides an

¹⁴ The pricing for Liquidity Provision Tier 3 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 3” with a Fee Code of “B3”, “D3” or “J3”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

¹⁵ The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 4” with a Fee Code of “B4”, “D4” or “J4”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

¹⁶ The pricing for Liquidity Provision Tier 5 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 5” with a Fee Code of “B5”, “D5” or “J5”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

enhanced rebate of \$0.0025 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.06% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 5 to \$0.0024 per share. The Exchange is not proposing to change the criteria required to qualify for Liquidity Provision Tier 5. The Exchange is also not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

The purpose of reducing the rebates for executions of Added Displayed Volume under Liquidity Provision Tiers 2, 3, 4, and 5 as proposed (i.e., by \$0.0001 per share), which the Exchange believes is a modest reduction and remains commensurate with the required criteria, is for business and competitive reasons, as the Exchange believes that such reduction 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 added liquidity.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described

above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1-5 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁷ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ 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.

As discussed above, the Exchange 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 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.”¹⁹

The Exchange believes that the ever-shifting market share among the exchanges from

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

¹⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

month to month demonstrates that market participants can shift order flow or discontinue use of certain categories of products, in response to new or different pricing structures being introduced into the market. 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 designed to incentivize market participants to direct additional order flow, including displayed liquidity-adding and/or liquidity removing orders to the Exchange, 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 increase the standard fee charged for executions Removed Retail Volume is reasonable because it represents only a modest increase from the current standard fee charged for executions of Removed Retail Volume and, as noted above, remains in line with the standard fees charged by other executions of Retail orders in securities priced at or above \$1.00 per share that remove liquidity.²⁰ The Exchange also believes the proposed standard fee charged for executions of Removed Retail Volume is equitable and not unfairly discriminatory, as such fee will apply equally to all Members submitting Retail Orders to the Exchange.

The Exchange notes that volume and quoting-based incentives (such as tiers) have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits that are reasonably related to the value to an exchange's market quality

²⁰ See supra note 8.

associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tiers 2, 3, 4, and 5, as modified by the proposed changes to the rebates and criteria, as applicable, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would continue to provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding orders to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that the proposed changes to such tiers reflect a reasonable and equitable allocation of fees and rebates, because, as noted above, the Exchange believes in each case that the proposed new rebate represents a modest reduction, as applicable, remains commensurate with the corresponding required criteria under such tier, and is reasonably related to the market quality benefits that the tier is designed to achieve, as described above.

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 Act²¹ 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. As described more fully below in the Exchange's statement regarding the burden on

²¹ 15 U.S.C. 78f(b)(4) and (5).

competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed additive rebate described herein is appropriate to address such forces.

B. 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 incentivize market participants to direct additional order flow to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, 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."²²

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and/or removing orders to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange,

²² See supra note 19.

thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed modified Liquidity Provision Tiers 2, 3, 4, and 5, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume under such tiers, would be available to all Members that meet the associated volume requirements in any month. Additionally, as noted above, the proposed increased standard fee for executions of Removed Retail Volume would continue to apply equally to all Members in the same manner that such standard fees currently do today. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange 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. Members have numerous alternative venues that they may participate on and direct their order flow to, including 17 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 12.7% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to Added

Displayed Volume and Removed Retail Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

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.”²³

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,

²³ Id.

regulatory or otherwise, in the execution of order flow from broker dealers'....".²⁴ 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.

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 Act²⁵ and Rule 19b-4(f)(2)²⁶ 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:

²⁴ 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)).

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁶ 17 CFR 240.19b-4(f)(2).

- 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-2025-21 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-2025-21. 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 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-2025-21 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.²⁷

Sherry R. Haywood,

Assistant Secretary.

²⁷ 17 CFR 200.30-3(a)(12).