

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104608; File No. SR-MEMX-2025-36]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule to Extend the Sunset Provision Related to the Options Regulatory Fee (ORF)

January 14, 2026.

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 December 31, 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 and non-Members of the Exchange (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c) to extend the current sunset date of December 31, 2025 applicable to the Options Regulatory Fee (“ORF”) to June 30, 2026. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on January 1, 2026. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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 Exchange proposes to amend its Options Fee Schedule related to the ORF to extend the current sunset date of December 31, 2025 to June 30, 2026, and thus continue charging the previously established ORF in the amount of \$0.0015 per contract side through June 30, 2026. As discussed herein, the ORF sunset date was initially proposed to provide time for the Exchange to discuss alternative ORF models with its Members. At this point, alternative models are continuing to be pursued among industry participants, and other exchanges have recently filed proposals with the Commission that propose modified ORF assessment and collection methodologies.⁴ The Exchange is committed to switching to a new, unified model as soon as a consistent framework has been established by the Commission, adopted by all the options exchanges, and necessary regulatory filings submitted. Thus, while the Exchange continues to engage in the process surrounding ORF reform, it is necessary to continue to fund its regulatory program via the ORF so that it may operate on equal footing with each of the seventeen (17) other options exchanges that charge similar regulatory fees in amounts that exceed the relatively modest amounts collected by the Exchange.

⁴ Proposals have been filed by each of the four options markets operated by Cboe Exchange, Inc. (collectively, the "Cboe Proposals"); see, e.g. Securities Exchange Act Release No. 104403 (December 15, 2025) (SR-CboeBZX-2025-157) (Notice of filing and immediate effectiveness of a proposed rule change to adopt a new methodology for assessment and collection of the Options Regulatory Fee (ORF)).

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. Currently, all other registered options exchanges impose ORF on their members, and those exchanges also charge ORF for executions occurring on MEMX Options cleared by their customers.⁵

⁵ See Securities Exchange Act Release Nos. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (SR-CBOE-2008-05) (notice of filing and immediate effectiveness of Cboe Exchange, Inc. ("Cboe") adopting an ORF applicable to transactions across all options exchanges) 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100) (notice of filing and immediate effectiveness of Nasdaq PHLX LLC ("Phlx") adopting an ORF applicable to transactions across all options exchanges); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR-ISE-2009-105) (notice of filing and immediate effectiveness of Nasdaq ISE, LLC ("ISE") adopting an ORF applicable to transactions across all options exchanges); 61388 (January 20, 2010) , 75 FR 4431 (January 27, 2010) (SR-BX-2010-001) (notice of filing and immediate effectiveness of Nasdaq OMX BX, Inc. ("BX") adopting an ORF applicable to transactions across all options exchanges); 70200 (August 14, 2013) 78 FR 51242 (August 20, 2013)(SR-Topaz-2013-01)) (notice of filing and immediate effectiveness of Nasdaq GEMX, LLC ("GEMX"), formerly known as ISE Gemini and Topaz Exchange, adopting an ORF applicable to transactions across all options exchanges); 64400 (May 4, 2011), 76 FR 27118 (May 10, 2011) (SR-NYSEAmex-2011-27) (notice of filing and immediate effectiveness of NYSE Amex LLC ("NYSE AMEX") adopting an ORF applicable to transactions across all options exchanges); 64399 (May 4, 2011), 76 FR 27114 (May 10, 2011) (SR-NYSEArca-2011-20) (notice of filing and immediate effectiveness of NYSE Arca, Inc. ("NYSE Arca") adopting an ORF applicable to transactions across all options exchanges); 65913 (December 8, 2011), 76 FR 77883 (December 14, 2011) (SR-NASDAQ-2011-163) (notice of filing and immediate effectiveness of Nasdaq Options Market ("NOM") adopting an ORF applicable to transactions across all options exchanges); 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (SR-BOX-2012-002) (notice of filing and immediate effectiveness of BOX Options Exchange LLC ("BOX") adopting an ORF applicable to transactions across all options exchanges); 67596 (August 6, 2012), 77 FR 47902 (August 10, 2012) (SR-C2-2012-023) (notice of filing and immediate effectiveness of C2 Options Exchange, Inc. ("C2") adopting an ORF applicable to transactions across all options exchanges); 68711 (January 23, 2013) 78 FR 6155 (January 29, 2013) (SR-MIAX-2013-01) (notice of filing and immediate effectiveness of Miami International Securities Exchange LLC ("MIAX") adopting an ORF applicable to transactions across all options exchanges); 74214 (February 5, 2015), 80 FR 7665 (February 11, 2015) (SR-BATS-2015-08) (notice of filing and immediate effectiveness of Cboe BZX Exchange, Inc. ("BZX") formerly known as BATS, adopting an ORF applicable to transactions across all options exchanges) ; 80025 (February 13, 2017) 82 FR 11081 (February 17, 2017) (SR-BatsEDGX-2017-04) (notice of filing and immediate effectiveness of Cboe EDGX Exchange, Inc. ("EDGX") formerly known as Bats EDGX Exchange, Inc., adopting an ORF applicable to transactions across all options exchanges); 80875 (June 7, 2017) 82 FR 27096 (June 13, 2017) (SR-PEARL-2017-26) (notice of filing and immediate effectiveness of MIAX Pearl, LLC ("MIAX Pearl") adopting an ORF applicable to transactions across all options exchanges); 85127 (February 13, 2019) 84 FR 5173 (February 20, 2019) (SR-MRX-2019-03) (notice of filing and immediate

The Exchange notes that in 2019, the Commission issued suspensions of and orders instituting proceedings to determine whether to approve or disapprove a proposed rule change to modify the Options Regulatory Fee of NYSE American, NYSE Arca, MIAX, MIAX Pearl, MIAX Emerald, Cboe, Cboe EDGX Options, and C2.⁶ Each of those exchanges had filed to increase their ORF, and the Commission indicated that each of those filings lacked detail and specificity, signaling that more information was needed to speak to whether the proposed increased ORFs were reasonable, equitably allocated and not unfairly discriminatory, particularly given that the ORF is assessed on transactions that clear in the “customer” range and regardless of the exchange on which the transaction occurs. The Commission also noted that the filings provided only broad general statements regarding options transaction volume and did not provide any information on those exchanges’ historic or projected options regulatory costs (including the costs of regulating activity that cleared in the “customer” range and the costs of regulating activity that occurred off exchange), the amount of regulatory revenue they had generated and expected to generate from the ORF as well as other sources, or the “material portion” of options regulatory expenses that they sought to recover from the ORF. Each of those exchanges withdrew their filings, but continue charging ORF today as discussed above. Since that time,

effectiveness of Nasdaq MRX, LLC (“MRX”) adopting an ORF applicable to transactions across all options exchanges); 85251 (March 6, 2019) 84 FR 8931 (March 12, 2019) (SR-EMERALD-2019-01) (notice of filing and immediate effectiveness of MIAX Emerald LLC (“MIAX Emerald”) adopting an ORF applicable to transactions across all options exchanges); 100924 (August 27, 2024) 89 FR 71496 (September 3, 2024) (notice of filing and immediate effective of MIAX Sapphire LLC (“MIAX Sapphire”) adopting an ORF applicable to transactions across all options exchanges).

⁶ See Securities Exchange Act Release No. 87168 (September 30, 2019), 84 FR 53210 (October 4, 2019) (SR-Emerald-2019-29); Securities Exchange Act Release No. 87167 (September 30, 2019), 84 FR 53189 (October 4, 2019) (SR-PEARL-2019-23); Securities Exchange Act Release No. 87169 (September 30, 2019), 84 FR 53195 (October 4, 2019) (SR-MIAX-2019-35); Securities Exchange Act Release No. 87170 (September 30, 2019), 84 FR 53213 (October 4, 2019) (SR-CBOE-2019-040); Securities Exchange Act Release No. 87172 (September 30, 2019) 84 FR 53192 (October 4, 2019) (SR-CboeEDGX-2019-051); Securities Exchange Act Release No 87171 (September 30, 2019), 84 FR 53200 (October 4, 2019) (SR-C2-2019-018); Securities Exchange Act Release No. 86832 (August 30, 2019), 84 FR 46980 (September 6, 2019) (SR-NYSEArca-2019-49); Securities Exchange Act Release No. 86833 (August 30, 2019) 84 FR 47029 (September 6, 2019) (SR-NYSEAMER-2019-27).

MEMX Options launched and commenced operations and as noted previously, its initial ORF filing was also suspended.⁷ Unlike its competitors noted above, however, the Exchange did not have a previously implemented ORF to continue charging notwithstanding said suspensions. As such, the Exchange proposed to establish an ORF but has maintained a sunset date, in order to allow it time to inform its approach to the ORF moving forward.

As previously noted, the Exchange appreciates the evolving changes in the market and regulatory environment and, in connection with industry and other feedback, is continuing to evaluate the current methodologies and practices for the assessment and collection of ORF. If during the proposed sunset period of January 1, 2026 through June 30, 2026, a viable alternative methodology for the ORF presents itself, the Exchange would endeavor to implement said alternative prior to the proposed sunset date. In other words, the existence of the sunset date of June 30, 2026 for the Exchange's current ORF would not preclude the Exchange from filing to modify its ORF methodology prior to that date, if applicable.

Until that time, the Exchange believes it is reasonable, appropriate and fair to fund a portion of its regulatory program through the same regulatory fee charged by every other options exchange. Further, the Exchange emphasizes that other exchanges will be charging ORF for transactions occurring on MEMX Options, and as such, it follows that the Exchange that is primarily responsible for monitoring those transactions should also be able to charge the ORF for activity occurring on its own market, as well as transactions it surveils on away markets.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with

⁷ See Securities Exchange Act Release No. 98585 (September 28, 2023), 88 FR 68692 (October 4, 2023) (SR-MEMX-2023-25).

Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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 and dealers.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive, and enforcement activities. Extending the current ORF sunset date is reasonable because continued collection of ORF will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs, thereby ensuring proper regulatory funding. Moreover, the Exchange's ORF rate is significantly lower than the amount of ORF assessed by other exchange groups.¹¹

The Exchange notes that while certain individual options exchanges do charge a lower ORF than that currently charged by the Exchange, each of these options exchanges is part of an exchange "group" (i.e., affiliated with other options exchanges). In turn, each of these exchange

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See, e.g., Cboe Options Fee Schedule, which provides an ORF rate of \$0.0023 per contract that will sunset on December 31, 2025, at which point it will revert to a rate of \$0.0017 per contract, BOX Options Fee Schedule Section II(C), which provides an ORF rate of \$0.00295 per contract, MIAX Options Fee Schedule, Section 2(b), which provides an ORF rate of \$0.0015 per contract until January 2026, when it will increase to \$0.0017 per contract.

groups charges more than three (3) to four (4) times the amount of ORF as a group when compared to the Exchange's ORF rate.¹² While each additional options exchange is its own legal entity with regulatory obligations under the Act to regulate its members, there is significant scale that can be achieved for an exchange group that operates multiple exchanges, including with respect to regulation, and this scale allows such options exchanges to operate with a lower assessment of ORF. In other words, the initial fixed costs associated with implementing an exchange group's options regulatory program are scalable as additional options exchanges are launched by that exchange group.

Extending the sunset date is also reasonable because doing so would allow the Exchange to recoup a portion of its regulatory expenses via the ORF as other options exchanges do. If the Exchange were not allowed to charge an ORF, then after the current sunset date of December 31, 2025, it would be forced to pay for its regulatory program solely out of business revenues while working towards an alternative ORF solution, unlike every other competing exchange, each of which would continue to assess an ORF, including on transactions executed on MEMX Options. This would impact MEMX's ability to assure adequate funding of its regulatory program.

Extending the ORF sunset date to June 30, 2026, is also equitable and not unfairly

¹² Each of NYSE Arca Options, NYSE American Options, MIAX Pearl, MIAX Emerald, MIAX Sapphire, Cboe BZX Options, Cboe C2 Options, Cboe EDGX Options, Nasdaq Options Exchange, Nasdaq MRX Options, Nasdaq GEMX Options, Nasdaq PHLX Options, Nasdaq ISE Options, and Nasdaq BX Options, currently charges a lower rate than \$0.0015 per contract, which is the rate proposed by the Exchange. However, the NYSE exchanges, comprised of two options exchanges, are currently waiving their ORF of \$0.0023 per contract until December 31, 2025, and in January 2026 each of their ORFs will increase to \$0.0026 per contract, resulting in an aggregate ORF rate of \$0.0052 per contract (over three times the Exchange's current rate). Additionally, the Cboe exchanges, comprised of four options exchanges, charge an aggregate ORF rate of \$0.0027 per contract (more than the Exchange's current rate), the MIAX exchanges, comprised of four options exchanges, charge an aggregate ORF rate of \$0.0048 per contract (nearly three times the Exchange's current rate) and in January 2026 their aggregate ORF rate will increase to \$0.0052 per contract; and the Nasdaq exchanges, comprised of six options exchanges, charge an aggregate ORF rate of \$0.00215 per contract, which beginning January 1 2026, will also increase significantly, to \$0.0829 per contract, and starting in February 2026, will decrease to \$0.0063 per contract (over four times the Exchange's current rate).

discriminatory because prior to the proposed sunset date, the ORF would continue to be objectively allocated to Members in a manner that is consistent with the ORF currently imposed by the other seventeen (17) options exchanges. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than 75% of the Exchange's regulatory costs, which is consistent with the Exchange's limited liability company agreement that states in Section 17.4(b): “[a]ny Regulatory Funds shall not be used for non-regulatory purposes or distributed, advanced or allocated to any Company Member, but rather, shall be applied to fund regulatory operations of the Company (including surveillance and enforcement activities)...”¹³

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposal will not create an unnecessary or inappropriate intra-market burden on competition because the Exchange's ORF is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. This proposal will not create an unnecessary or inappropriate inter-market burden on competition because it will be a regulatory fee that supports regulation and customer protection in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

The Exchange's ORF, as described herein, is lower than or comparable to fees charged

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See MEMX LLC – LLC Agreement at <https://info.memxtrading.com/regulation/governance/>.

by other options exchanges (though as noted above, some exchange groups do have options exchanges operating with a lower ORF on a standalone basis).

The Exchange notes that while it does not believe that its ORF will impose any burden on inter-market competition, the Exchange being precluded from charging an ORF after December 31, 2025, while other options exchanges are permitted to continue to charge ORF would, in-fact, significantly burden the Exchange's ability to assure adequate funding of its regulatory program. As noted above, the Exchange is a new entrant in the highly competitive environment for equity options trading. As also noted above, all seventeen (17) other registered options exchanges currently impose the ORF on their members, and such ORF fees imposed by other options exchanges currently do and will continue to extend to executions occurring on the Exchange. The Exchange notes that it is not precluded from adopting an alternative model during the proposed sunset period, however, while alternative ORF models are in development, in order to be treated similarly to these other exchanges, it must, in fact, impose an ORF on its Members during this period, and the inability to do so would result in an unfair disadvantage to the Exchange.

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 Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2025-36 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-2025-36. 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 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-2025-36 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.¹⁶

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).