

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104745; File No. SR-MEMX-2026-02]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule to Adopt a New Methodology for Assessment and Collection of the Options Regulatory Fee (ORF)

January 29, 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 January 28, 2026, 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 related to the Options Regulatory Fee (“ORF”) to adopt a new methodology for assessment and collection of ORF for transactions that occur on the Exchange (“On-Exchange ORF”). 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 Exchange proposes to amend its current assessment and collection of a regulatory fee to assess On-Exchange ORF only for options transactions that occur on the Exchange that would clear in the customer³ range at The Options Clearing Corporation (“OCC”). The Exchange would no longer assess a regulatory fee for options transactions that occur on other exchanges. This proposal only proposes to amend the method of assessment and collection of the fee. A future rule filing would be filed to set the applicable On-Exchange ORF rate in advance of assessing and collecting it under the proposed method. The following provides more detail regarding the proposal.

Background

Today, ORF is assessed by MEMX to each Member for all options transactions, cleared or ultimately cleared by the Member in the “customer” range, regardless of the exchange on which the transaction occurs. The ORF is collected by OCC on behalf of the Exchange from

³ Currently, the ORF is assessed by MEMX Options and collected via OCC on executions for the account of Public Customers, including Professionals, and Broker-Dealers including Foreign Broker-Dealers. These market participants clear in the “C” range at OCC. ORF will continue to be assessed to executions for the account of these market participants under the proposed methodology. On the Exchange, a “Public Customer” means a person that is not a broker or dealer in securities and includes both Priority Customers and Professionals. A “Priority Customer” means a person or entity that is a Public Customer and is not a Professional. A “Professional” is any person or entity that (a) is not a broker or dealer in securities, and (b) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Executions for the account of an OCC clearing member firm proprietary account, joint back office account clearing in the Firm range, or account of a market maker clearing in the Market Maker range are not charged an ORF, nor would they be charged an ORF under the current proposal.

either: (1) a Member that was the ultimate clearing firm⁴ for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm⁵ for the transaction. The Exchange uses reports from OCC to determine the identity of the executing clearing firm and ultimate clearing firm. Pursuant to a separately filed rule change, the current ORF rate of \$0.0015 will sunset as of June 30, 2026.⁶

To illustrate how the ORF is assessed and collected, the Exchange provides the following set of examples.

1. For all transactions executed on the Exchange, if the ultimate clearing firm is a Member of the Exchange, the ORF is assessed to and collected from that Member. If the ultimate clearing firm is not a Member of the Exchange, the ORF is collected from that non-Member clearing firm but assessed to the executing clearing firm.
2. If the transaction is executed on an away exchange, the ORF is only assessed and collected if either the executing clearing firm or ultimate clearing firm are Members of the Exchange. If the ultimate clearing firm is a Member of the Exchange, the ORF is assessed to and collected from that ultimate clearing firm. If the ultimate clearing firm is not a Member of the Exchange, the ORF is assessed to the executing clearing

⁴ The Exchange takes into account any CMTA transfers when determining the ultimate clearing firm for a transaction. CMTA or Clearing Member Trade Assignment is a form of “give up” whereby the position will be assigned to a specific clearing firm at the OCC.

⁵ Throughout this filing, “executing clearing firm” means the clearing firm through which the entering broker indicated that the transaction would be cleared at the time it entered the original order which executed, and that clearing firm could be a designated “give up”, if applicable. The executing clearing firm may be the ultimate clearing firm if no CMTA transfer occurs. If a CMTA transfer occurs, however, the ultimate clearing firm would be the clearing firm that the position was transferred to for clearing via CMTA.

⁶ See Securities Exchange Act Release No. 104608 (January 14, 2026) 91 FR 2393 (January 20, 2026) (SR-MEMX-2025-36). Further, in order to avoid confusion, the Exchange is proposing to delete the language on the Fee Schedule that states that the ORF will automatically sunset on June 30, 2026, and replace it with a header above the current ORF that states "Effective through June 30, 2026". The Exchange is proposing to describe the On Exchange ORF methodology below this section, with the header "Effective as of July 1, 2026".

firm (again, only if that executing clearing firm is a Member of the Exchange), and collected from the ultimate clearing firm. Thus, to reiterate, if neither the executing clearing firm nor the ultimate clearing firm are members of the Exchange, no ORF is assessed or collected.

Finally, the Exchange does not assess the ORF on outbound linkage trades. “Linkage trades” are tagged in the Exchange’s system, so the Exchange can distinguish them from other trades.

ORF Revenue and Monitoring of ORF

Today, revenue generated from ORF, when combined with all of the Exchange’s other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Member customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support to the regulatory function from such areas as human resources, legal, compliance, information technology, facilities and accounting as well as shared costs necessary to operate the Exchange to carry out its regulatory function, such as hardware, data center costs, and connectivity. Today, these indirect expenses are estimated to be approximately 20% of the Exchange’s total regulatory costs for 2026. Thus, direct expenses are estimated to be approximately 80% of total regulatory costs for 2026.⁷ In addition, based on the Exchange’s

⁷ These expectations are estimated and may be subject to change.

analysis of its regulatory work associated with options regulation, and considering other regulatory revenue, it is the Exchange's practice that revenue generated from ORF not exceed 75% of total annual regulatory costs.

Proposal for On-Exchange ORF

MEMX appreciates the evolving changes in the market and regulatory environment and has been evaluating its current methodologies and practices for the assessment and collection of ORF while considering industry and Commission feedback. As a result of this review, the Exchange is proposing the On-Exchange ORF, which assesses a regulatory fee to only Exchange transactions that would clear in the Customer range at OCC (as is the case today).⁸ The following scenarios reflect how the On-Exchange ORF will be assessed and collected:

1. If a Member is the executing clearing firm on a transaction that occurred on the Exchange, the fee would be assessed to and collected from that Member by OCC on behalf of the Exchange.

2. If a Member is the executing clearing firm and the transaction is "given up" to a clearing give-up (the "clearing firm"), the On-Exchange ORF is assessed to the executing clearing firm, (the On-Exchange ORF remains the obligation of the executing clearing firm under the proposal), but the On-Exchange ORF will be collected from the clearing firm, regardless of whether that clearing firm is a Member of the Exchange.

The Exchange expects to provide Members sufficient information in connection with their invoice in order to reconcile charges associated with ORF. In addition, the proposed method for collecting On-Exchange ORF will only consider CMTAs reported to the Exchange and not those reported directly to OCC. As described above, today's ORF is the responsibility of the

⁸ See supra note 4.

executing clearing firm and collected from the CMTA ultimate clearing firm (which may be a non-Member) as an administrative convenience. The Exchange understands that a CMTA may be added at order entry, via post-trade edit on the Exchange, or post-trade at OCC. CMTA transfers that occur at OCC do not necessarily contain reliable information regarding the Exchange on which the original transaction occurred.⁹ Without specific information as to where the original transaction occurred, the Exchange would not be able to accurately account for CMTA transfers that occur at OCC. Therefore, the Exchange will only account for CMTAs that occur on the Exchange (which may be a non-Member) and exclude CMTAs occurring at OCC.¹⁰

With this proposal, the Exchange intends to collect ORF under its current methodology for assessment and collection of ORF until at least June 30, 2026. The Exchange is prepared to implement On-Exchange ORF effective July 1, 2026 if by April 1, 2026 all U.S. options exchanges charging an ORF have filed to modify their current methodologies of assessment of the fee to limit the fee to transactions occurring on their respective exchange.¹¹ However, if all other options exchanges have not filed to adopt a similar methodology by April 1, the Exchange will delay implementation commensurate with the additional time required for other options exchanges to adopt a similar method for collection and assessment of ORF. The Exchange will at that time file a separate rule filing with the amount of the On-Exchange ORF in advance of assessing and collecting the fee under the proposed method. As is the case today, the Exchange will notify Members via Regulatory Circular of the applicable On-Exchange ORF rate at least 30 calendar days prior to the effective date of the change. The Exchange believes a fee to recover a

⁹ Under the current methodology for assessing ORF, the Exchange on which the transaction occurred is irrelevant.

¹⁰ Adjustments that were made the same day as the trade on MEMX will be taken into account.

¹¹ The Exchange estimates it will take approximately three months to implement the system changes associated with On-Exchange ORF.

material portion of costs for regulatory programs associated with monitoring activities is reasonable; however, the Exchange would consider alternative approaches for assessment and collection of the fee in order to achieve consistency across the industry.

The Exchange will continue to monitor the amount of revenue collected from On-Exchange ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. Further, the Exchange expects to continue its current practice that revenue generated from On-Exchange ORF not exceed 75% of total annual regulatory costs. And as is the Exchange's practice today, revenue generated by On-Exchange ORF will not be used for non-regulatory purposes.

The Exchange will continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the On-Exchange ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the On-Exchange ORF via an Exchange Notice in advance of any change.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ 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 Act¹⁴ in that it is designed to promote

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78f(b)(5).

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 Exchange believes that the proposed change to assess and collect an On-Exchange ORF is reasonable, equitable and not unfairly discriminatory for various reasons. First, On-Exchange ORF is reasonable, equitable and not unfairly discriminatory in that it is charged to all Exchange transactions that clear in the Customer range at the OCC. Similar to ORF today, the Exchange believes On-Exchange ORF ensures fairness by assessing a specific fee to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Over recent years, options trading volume has increased with a growing percentage of the volume applicable to customer transactions. Customers trading on the Exchange (through a Member) benefit from the protections of a robust regulatory program including the maintenance of fair and orderly markets and protections against fraud and other manipulation. The Exchange believes it is equitable and not unfairly discriminatory to assess a regulatory fee to transactions that clear in the Customer range to cover regulatory costs, but not to transactions clearing in the Firm or Market Maker range because Clearing Members and Market Makers (who clear in the Firm and Market Maker range), as those market participants are generally subject to other Exchange fees, fines and obligations. For example, Clearing Members and Market Makers¹⁵ are required to pay Exchange application fees, permit fees and connectivity fees, amongst others. In addition, all fines issued by the Exchange for regulatory infractions are

¹⁵ Market Maker means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter 22 of the Exchange Rules. See Exchange Rule 16.1.

assessed only to Members and would be applied to regulatory revenues. As with today's ORF, the Exchange expects that Members from whom On-Exchange ORF is collected will pass through the fee to their customers (as the Exchange understands occurs today). In addition, Market Makers in particular are subject to various quoting and other obligations to ensure that they provide stable and liquid markets, which benefit all market participants including customers. Excluding Market Maker transactions from On-Exchange Exchange ORF will allow Market Makers to better manage their costs more effectively thus enabling them to better allocate resources toward technology, risk management, and capacity to ensure continued liquidity provision.

In addition to the overall increase in Customer-range volume generally, regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (e.g., staff and travel expenses), as well as investigations into customer complaints and terminations of registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Clearing Member proprietary transactions) of its regulatory program.¹⁶ While the Exchange notes that it has broad regulatory responsibilities with respect to its Members' activities, irrespective of where their transactions take place, the Exchange believes it is reasonable to assess the proposed

¹⁶ If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify On-Exchange ORF or assess a separate regulatory fee on Member proprietary transactions if the Exchange deems advisable.

fee to only those transactions occurring on the Exchange. The proposed change more narrowly tailors the fee to products and transactions with a direct connection to the Exchange. With this proposal, transactions that would clear in the Customer range occurring on other exchanges would no longer be subject to an ORF assessed by the Exchange.

The Exchange believes it is equitable and not unduly discriminatory to modify the method of collecting the fee such that On-Exchange ORF will not consider CMTAs reported directly to OCC as is done in today's method of ORF. CMTA transfers are considered today under the current collection methodology for ORF as a convenience to industry members in administering a pass through of the fee to their customers. Limiting the On-Exchange ORF to transactions on the Exchange poses a limitation in the use of CMTA for this purpose. The Exchange understands that a CMTA may be added at order entry, via post-trade edit on the Exchange, or post-trade at OCC. CMTA transfers that occur at OCC do not necessarily contain reliable information regarding the Exchange on which the original transaction occurred.¹⁷ Without specific information as to where the original transaction occurred, the Exchange would not be able to accurately account for CMTA transfers that occur at OCC.

The Exchange further believes that the proposed change to the method for assessment and collection of the fee is reasonable because it would help ensure that revenue collected from the On-Exchange ORF, in combination with other regulatory fees and fines, would help offset, but not exceed, the Exchange's total regulatory costs.

As discussed, On-Exchange ORF is similarly designed to the current ORF, in that

¹⁷ Under the current methodology for assessing ORF, the Exchange on which the transaction occurred is irrelevant.

revenues generated from the fee would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the practice across the options industry today and the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

As noted above, the Exchange will also continue to monitor on at least a semi-annual basis the amount of revenue collected from the On-Exchange ORF, even as amended, to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues would exceed its regulatory costs in a given year, the Exchange will reduce the On-Exchange ORF by submitting a fee change filing to the Commission.

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 On-Exchange ORF applies to all customer activity on the Exchange, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the On-Exchange ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. In addition, the Exchange will not implement the On-Exchange ORF until all other options exchanges are prepared to adopt a similar model to avoid overlapping ORFs.

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 Act¹⁸ and Rule 19b-4(f)(2)¹⁹ 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
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2026-02 on the subject line.

Paper comments:

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

- 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-2026-02. 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-2026-02 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.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).