

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99261; File No. SR-MEMX-2023-42)

January 2, 2024

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 Membership Fee Waiver

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 28, 2023, 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 (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to extend the waiver (the "Membership Fee Waiver") of membership fees ("Membership Fees") which is currently in place for all new Members<sup>3</sup> of the Exchange, for an additional month beyond the program's current expiration on December 31, 2023. The Exchange will continue to waive Membership Fees for new Members who join the Exchange through January 31, 2024. The text of the proposed rule change is provided in Exhibit 5.

---

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

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

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

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 Exchange proposes to extend the time period for the waiver of Membership Fees until January 31, 2024. The Exchange will continue to implement the Membership Fee Waiver (as defined above) for all new Members who join the Exchange prior to and including January 31, 2024. The Exchange notes that the proposed change does not amend any existing fee or rebate for equities transactions, market data or connectivity fees. The sole change proposed herein is to extend the timeframe during which the Exchange will waive Membership Fees for new Members of the Exchange.

Currently, MEMX applies a Membership Fee Waiver to all new Members of the Exchange which is set to expire on December 31, 2023. Under the current Membership Fee Waiver, new Members who join the Exchange after December 31, 2023, would be assessed Membership Fees of \$200 per month to maintain active membership, and new Members whose Membership Fees were waived during the Waiver Period would be assessed Membership Fees of \$200 per month beginning January 1, 2024. In addition, in September of 2023 the Exchange adopted specific fees applicable to participation on the

Exchange's platform for trading equity options ("MEMX Options").<sup>4</sup> The current Membership Fee Waiver has also been applied to new Members of MEMX Options, and thus such fees have not been imposed on such Members to date.

The Exchange believes that the existing Membership Fee Waiver has been effective in incentivizing options market participants to join MEMX Options. MEMX Options launched in September of 2023, and has been conducting a staged rollout of options available for trading on the Exchange since that time. The Exchange believes that its rollout will be complete in January of 2024 and would like to extend the Membership Fee Waiver until after its rollout is complete in the event there are options firms that are waiting to join the Exchange until after such rollout is complete. In addition, the Exchange believes the Membership Fee Waiver is a proper incentive for new participants on MEMX Options to continue to increase their participation as they become accustomed to the new trading platform.

Accordingly, the Exchange proposes to extend the time period of the Membership Fee Waiver to expire on January 31, 2024. The Exchange proposes to continue to waive Membership Fees for all new Members who join the exchange on or before January 31, 2024. Under the proposed Membership Fee Waiver, new Members who join the Exchange after January 31, 2024, will be assessed Membership Fees to maintain active membership and if applicable, Members who participate on MEMX Options will be assessed the specific Additional Fees applicable to such participation. Similarly, new Members whose Membership Fees have been waived since joining the Exchange will be

---

<sup>4</sup> See Securities Exchange Act Release No. 98648 (September 29, 2023), 88 FR 68762 (October 4, 2023) (SR-MEMX-2023-26).

assessed Membership Fees, including Additional Fees applicable to participation on MEMX Options, if applicable, beginning February 1, 2024. In addition, new Members of MEMX Options who join after January 31, 2024, will be assessed Membership Fees of \$200 per month to maintain active membership, and new Members whose Membership Fees were waived will be assessed Membership Fees of \$200 per month beginning February 1, 2024. Specifically, the Exchange is proposing to amend the description under “Membership” in the Exchange’s Fee Schedule, noting that Membership Fees will be waived for new Members of the Exchange until February 1, 2024.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable to extend the timeframe of the Membership Fee Waiver for new Members of the Exchange, primarily to continue to provide an incentive for options trading firms to continue to apply for Exchange membership during the current phase of the rollout of MEMX Options. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. Extending the timeframe of the Membership Fee Waiver will

---

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

continue to encourage additional liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange. Although the proposed extension of the Membership Fee Waiver timeframe is intended primarily to encourage new participants to join the Exchange in order to participate on the MEMX Options market and the Exchange believes the participants that will benefit from this waiver are firms that will do so, the Exchange also believes that it is reasonable to continue applying the Membership Fee Waiver broadly to all new participants on the Exchange during the timeframe extension, including firms that would trade only on the Exchange's market for equity securities or on both the Exchange's market for equity securities and MEMX Options.

In addition, the Exchange believes that the proposed extension of the Membership Fee Waiver is equitable and not unfairly discriminatory in that it will apply uniformly to all new Members of the Exchange. Further, the Exchange believes that the proposed extension of the waiver is reasonable, equitable and not unfairly discriminatory to current Members of the Exchange because the majority of the Exchange's existing Members joined at a time when the Exchange did not impose membership fees (also to incentivize such participants to join), and thus have already received this benefit.

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

The Exchange does not believe that the proposed rule change 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 Exchange believes that the proposed change would encourage market participants who have not already done so to join the Exchange. As a result, if such participants do join the Exchange and route their orders to the

Exchange or support other Members that route orders (i.e., clearing firms) the Exchange believes the proposal would further enhance its competitiveness as a market.

Encouraging additional participants to join the Exchange will enable a greater number of participants to participate on MEMX Options during the continued rollout of the platform. Further, the Exchange believes that by continuing to make the Membership Fee Waiver applicable to both the Exchange's options platform and the Exchange's equity platform for an extended time period, the proposal will enhance the competitiveness of both platforms. Attracting a greater number of participants will foster greater competition on the Exchange, particularly in the case of MEMX Options which is a quote-driven market. 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."<sup>7</sup>

#### *Intramarket Competition*

As discussed above, the Exchange believes that the proposal would encourage new participants to apply for Exchange membership, thereby enhancing liquidity and market quality on the Exchange, 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.

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize new

---

<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

participants to join the Exchange and the majority of the Exchange's current members joined at a time when the Exchange did not impose membership fees (also to incentivize such participants to join), and thus have already received this benefit. The options markets are quote-driven markets and are dependent on liquidity providers for liquidity and price discovery. The proposal will be of particular importance in encouraging additional liquidity providers to become members of the Exchange, which may result in more trading opportunities, enhanced competition, and improved overall market quality on the Exchange. 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 described above, the proposed extension of the Membership Fee Waiver timeframe will incent market participants to join the Exchange during the extended Membership Fee Waiver period. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other options exchanges during the continued rollout of MEMX Options. In addition, as noted above, the Exchange has intentionally proposed to apply the waiver broadly so that it continues to be applicable to new Members that will participate on the Exchange's market for equity securities or that will participate on such market as well as MEMX Options, and thus, the proposal may also better enable the Exchange to compete with other options exchanges and equities exchanges.

#### 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 Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> 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](mailto:rule-comments@sec.gov). Please include file number SR-MEMX-2023-42 on the subject line.

---

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).



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-2023-42. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2023-42 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.<sup>10</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>10</sup> 17 CFR 200.30-3(a)(12).